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A
New Law-Dictionary:

CONTAINING,

The Interpretation and Definition of WORDS and TERMS uſed in the LAW; and alſo the WHOLE LAW, and the PRACTICE thereof, Under all the HEADS and TITLES of the ſame.

Together with

Such Informations relating thereto, as Explain the **Hiſtory** and **Antiquity** of the **Law**, and our *Manners*, *Cuſtoms*, and *Original Government*.

Collected and Abſtracted from

All Dictionaries, Abridgments, Inſtitutes, Reports, Year-Books, Charters, Regiſters, Chronicles, and Hiſtories, Publiſhed to this Time.

And fitted for the Uſe of

Barriſters, Students, and Practiſers of the Law, Members of Parliament, and other Gentlemen, Juſtices of Peace, Clergymen, *&c.*

The Fifth Edition, with Great Additions and Improvements, and the LAW-PROCEEDINGS done into *Engliſh*.

To which is annexed,

A TABLE of References to all the Arguments and Reſolutions of the Lord Chief Juſtice HOLT; In the ſeveral Volumes of the Reports.

By *GILES JACOB*, Gent.

In the SAVOY:

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J. and **H. Pemberton**. MDCCXLIV.

To the RIGHT HONOURABLE

Sir *ROBERT RAYMOND*, Knt.

Lord Chief Juſtice of *England*.

My LORD,

AT length, by your Lordſhip's generous Encouragement, vouchſafed me on a former Dedication to your Lordſhip, my New *Law-Dictionary* appears to the World committed to your Patronage and Protection, and as You are univerſally allowed to be the moſt proper Patron for a Work of this Nature.

It hath been often obſerv'd to be a Commendation to any Perſon, to attempt any Great and Uſeful Undertaking; but it is not every One who engages in it, is Able to perform it: Whatever Cenſure, in this Particular, is paſs'd upon me by the Readers, my Judges, I have one very great Satisfaction; which is, that your Lordſhip is at the Head of them, whoſe powerful Influence and kind Interpretation will ſilence others into Candor and Good Nature.

To ſay, That every Thing Praiſe-Worthy belongs to your Lordſhip, is not to pay the Debt of Compliment, but of Merit: As by indefatigable Study and Application to Buſineſs, Reputation ever attended You; ſo on your Advancement to the Supreme Station of the Common Law, your Behaviour therein hath evidently gain'd You univerſal Approbation. There have been Many who have filled the prime Offices of Judicature, which muſt always be ſupply'd with a Succeſſion of Men, tho' few that have adorned them; But 'tis your Lordſhip's Glory to do both: And after the Great *Lord Chief Juſtice* HOLT, it is the Happineſs of the preſent Age to boaſt of a RAYMOND.

My Lord, Applauſe and Popularity Court You, whilſt You endeavour to ſhun them, for they are the natural Reward of doing impartial Juſtice; and thoſe who leaſt ſeek them in Publick Authority, by their great Integrity and conſummate Abilities have the largeſt Share of Them: It is impoſſible to be otherwiſe, than that your Lordſhip ſhould be a Favourite of Mankind, when your whole Conduct is ſo exceeding Juſt and Upright, as to merit the Higheſt Honour; and give me Leave to obſerve of You, what every One finds who Approaches your Lordſhip.

On a Character ſo very conſiderable as your Lordſhip's, much more might be enumerated; but I am conſcious of my Inequality to the Task, and therefore deſiſt from it, my only Aim being to ſhew how much I am,

My LORD,

Your Lordſhip's

Moſt Dutiful, and moſt

Obliged Humble Servant,

Giles Jacob.

THE

PREFACE.

ALL Prefaces to Treatiſes, are intended by Authors either to Explain the Works to which they belong, and ſet forth the Reaſons of their Engaging in them, or to Vindicate their Writings and Reputations from thoſe Reflections which may be caſt upon them by the Critical Part of Mankind; and I think it Neceſſary for me to ſay ſomething on theſe Heads, in my Preface to this Work.

According to a Great Writer, the Study of the Law *is not rendered eaſy by* numerous Volumes, *but by reducing the* Senſe *into a compleat* methodical Syſtem; *and the Difficulty and Diſagreeableneſs of this Study, is not to be imputed to any material Defect in it ſelf, but to the* Manner *in which the* Books *that contain this Learning are* Written: *The Juſtice of this Wiſe Obſervation, hath been always acknowledged; As our Abridgments of the Law abound with Tautologies and Confuſion, and are generally ſpeaking very voluminous to little Purpoſe, which has been a Principal Reaſon for my Attempting the following Sheets.*

This large Work now publiſhed, contains the Derivations *and* Definitions *of* Words *and* Terms *uſed in the* LAW, *and likewiſe the* whole Law, *with the* Practice *thereof, collected and abſtracted from all other Books in an eaſy conciſe Method; for the* Univerſal Uſe *of all Counſellors at Law, either in their Chambers or on their Circuits, Students of the Inns of Courts, and Practiſers of the Law, and other Perſons of what Degree or Profeſſion ſoever, and for all Studies and Offices, being a Kind of* Library; *ſo that although I have the Interpretation of Words, to give it the Title of a* Dictionary, *yet my Scheme is very different from the other Law-Dictionaries: And the Great*

Lawyer Sir Edward Coke *having obſerv'd, that the* Forms of Writs, *and judicial* Proceedings, *do much contribute to the Right Underſtanding of our Law; Therefore theſe, together with* Forms of Deeds and Conveyances, *illuſtrating the Practice on that Head, are here inſerted: Further, the Reader will find interſperſed, taken from the moſt antient Treatiſes of the* Britiſh, Saxon, Daniſh, *and* Norman *Laws, ſuch Informations as Explain the* Hiſtory *and* Antiquity *of the* Law, *with our Manners, Cuſtoms and Original Form of Government.*

As in this Age it is become common for Arts *and* Sciences *to be comprehended in* Dictionaries, *I have purſued this Method, and the Knowledge of the Arts themſelves, cannot be improper to follow the Terms and Definitions of them. Under the* Heads of Law, *by the Advice of my Learned and Judicious Friends, I have gone through and gather'd* every Thing *I could find any ways* Uſeful; *and there is nothing Collected, but ſome Benefit may be drawn from it, either as immediately to the Purpoſe, or Explanatory of what the ſame hath Relation to: In my Larger Heads, where they interfere with others, I have but juſt touch'd upon the Matters interfering; and left the particular Learning to the more proper Heads where 'tis expected to be found, at the ſame Time ſome Notice being required under the general Titles.*

I may with great Truth affirm, that conſiderably above two Thirds *of my* Work, *with ſome* Hundreds *of very* material Words, *are intirely* New *in a Performance of this Kind; and the remaining Part is greatly* Improv'd, *although Abridg'd as to Quantity by omitting a great Deal of Obſolete Matter. There is not any Thing in the following Dictionary, directly the ſame as appears elſewhere, but in ſuch Caſes only where it was abſolutely Neceſſary for my own Juſtification; (though the Compilers of the other Law-Dictionaries have generally tranſcribed* verbatim *from each Other. The* Law-Latin *in many Inſtances differing from other* Latin, *I have purpoſely uſed and followed it, as thoſe have done who have gone before me. Likewiſe ſeveral Words of Uſe, eſpecially relating to* Country *Affairs, are here ſtill preſerv'd from the* Law Interpreters, *though they may ſeem a little foreign to my Subject.*

As to the other Dictionaries, *let who will for the Future Write or Enlarge them, it muſt be always confeſs'd, that it was I who firſt attempted a* Body of the Law, *in any Dictionary. This I* *ought to mention, in Juſtice to myſelf; That it may not at any Time be affirmed I have wholly built on other Writers, but They on Me as to any Additions, if they ſhould fill up their Works in my Method beyond what they were in the Year* 1720, *when I firſt began this elaborate Treatiſe. And if I have borrow'd from my Own Writings hitherto Publiſhed, I have aſſumed no Freedom in ſo doing, but ſuch as Authors of the beſt Reputation have thought fit to take; who have had Occaſion to treat ſubſequently on their former Subjects, in any larger or more general Work: Alſo I have every where inſerted References unto them, ſometimes Pointing out the Beſt Editions, where One Impreſſion is eſteem'd better than another.*

I have now made deeper *and* cloſer Searches *into the* Knowledge *of the* Law, *and taken a long Journey of Obſervations and Improvements on thoſe Things which I had but juſt ſeen at a Diſtance before; which however painful to my ſelf, I am confident I have ſtruck out therein a much* eaſier Path *for Others than they had before to Walk in. I have endeavour'd to make a Right* Choice of Matter, *as well as to follow an* exact Method, *which, with the Reduction that was neceſſary to avoid Prolixity, I found no ſmall Task; And of this I may ſay with* Virgil,

Hoc Opus, hic Labor eſt.

'Tis indeed True that my great Work is chiefly Collection; *but let this be Conſider'd with it, That Collecting on the Subject of the Law, is infinitely more difficult than upon other Subjects; becauſe moſt other Subjects are treated of with Order and Connexion, but the Law of* England *is not, by reaſon of the great Number of its Branches, and the various Heads thereof.*

As for what I have already written, a prudent Author will commonly attempt many of the ſmaller Matters, by Way of Trial of his Abilities, and See their Succeſs, before he will have Courage to venture upon Larger; and if I had not Experienc'd what hath fallen in my Way, it would have been Impoſſible for me to have perfected the enſuing Treatiſe with that Advantage it is now handed to the Publick. And thus much I am obliged to ſay farther in Behalf of this Dictionary; That if notwithſtanding the infinite Pains *I have here taken, it be not in it ſelf* Authority, *it carefully refers to Books of the greateſt, which is all as can be aſſerted in Favour of any of the* Abridgments *of the*

the Law. But where there is ſuch great Variety of Learning and abundant Quantity of Nice Matter, with the utmoſt Care, *there muſt be ſome Faults and Failings to be Pardon'd by the Reader.*

In this Fifth Edition, *all the* Law-Heads *throughout are compleatly filled up, and ſome others added, from the* new Books of Reports, *and the many* late Statutes *enacted which have alter'd our Law, down to this Time; I have alſo now inſerted Variety of Select* Chancery Cases, *that have been* lately adjudg'd *in the moſt ſettled Points, diſperſed under all the Heads where they were any Ways proper or material. The Forms of* Writs *and other* Law Proceedings, *with ſeveral curious additional Precedents, appear likewiſe carefully Tranſlated into* Engliſh, *purſuant to the Act of Parliament; but* the ancient Cuſtoms *remain in* Latin, *the Language I found them in. I thus have render'd my* Uſeful Book *full and perfect in all Things; and 'tis no ſmall Pleaſure to me, that the* Second, Third *and* Fourth Editions *were very Succeſsful, and the greateſt Part of a large Impreſſion of the Work, as I had at* firſt *Compiled it, ſold off in the Space of a Year's Time, by the Approbation of my Great Patron, and favourable Acceptance of the Publick.*

I hope upon the Whole, it is here fully apparent that I have done every Thing in my Power to compleat this Great Undertaking, *and which I doubt not by my often repeated diligent Endeavours, will continue to anſwer its good End propos'd, ſo as to give entire Satiſfaction to all Perſons whatſoever.*

G. J.

A
New Law-Dictionary:
CONTAINING
The Whole Law, and The Practice thereof, under all the *Heads* and *Titles* of the Same.

A.

A, The firſt Letter of the *Alphabet*, which being prefix'd to Words in *Engliſh*, ſignifies as much as *un* in *French*, as a Man, *un Homme*.

Ab, From the Word *Abbot*, and in the Beginning of any Place ſignifieth that the Place belong'd to ſome *Abbey*.

Abacot, A Cap of State, wrought up in the Form of two Crowns, worn by our ancient *Britiſh* Kings. *Chron. Angl.* 1463. *Spelman*'s *Gloſſ.*

Abactors, (*Abactores*, derived *ab abigendo*) Stealers and Drivers away of Cattle by Herds, or in great Numbers. They are thus diſtinguiſh'd from *Fures : Nam qui ovem unam ſurripuerit, ut fur coerceтur, qui gregem ut* abactor. *MS.*

Abacus, *Arithmetick*, From the *Abacus* or Table on which the Antients made their Characters.—— *Omnium liberalium artium peritus*, Abacum *præcipue, lunarem compotum & curſum rimatus.* Knighton's Chron. lib. 1. c. 3.

Abandum, (*Abandonum*) Any Thing ſequeſtred, proſcrib'd or abandon'd. *Abandon, i. e. In Bannum res miſſa.*——A Thing *bann'd* or denounc'd as forfeited and loſt; from whence is to *abandon*, deſert, or forſake as loſt and gone.

Abarnare, From the Sax. *Abarian*, to diſcover and diſcloſe to a Magiſtrate any ſecret Crime. —— *Si homo furtivum aliquid in Domo ſua occultaverit, & ita fuerit* abarnatus, *rectum eſt ut inde habeat quod quæſivit.* Leg. Canuti Reg. cap. 104.

Abate, As derived from the *French Abater* or *Abatre*, ſignifies to proſtrate, break down or deſtroy; and in Law to *abate* a Caſtle or Fort, is interpreted to beat it down. *Old Nat. Brev.* 45. *Weſtm.* 1. *c.* 17. *Abater Maiſon*, is to ruin or caſt down a Houſe, and level it with the Ground: And as he that puts a Perſon out of Poſſeſſion of his Houſe, Land, *&c.* is ſaid to diſſeiſe; ſo he that ſteps in between the former Poſſeſſor and his Heir, is ſaid to *abate*; and this is a Term in its ſpecial Signification. *Kitch.* 173. *Old Nat. Br.* 115. To *abate* a Writ, is to defeat or overthrow it, by ſome Error or Exception. *Brit. c.* 48. In the Statute *De conjunctim Feoffatis*, the Writ ſhall be *abated*, that is, ſhall be diſabled and overthrown. 34 *Ed.* 1. *Stat.* 2. The Appeal ſhall *abate*, and be defeated by Reaſon of Covin or Deceit. *Staundf. Pl. Cr.* 148. And the Juſtices ſhall cauſe the ſaid Writ to be *abated* and quaſh'd. *Anno* 11 *H.* 6. *c.* 2.

Abatement, (from the *French*) in *Latin Intruſio*, or rather *Interpoſitio*, to diſtinguiſh it from Intruſion after the Death of Tenant for Life; is uſed in that Senſe for the Act of the *Abator*, as the *Abatement* and Entry of the Heir into the Land before he hath agreed with the Lord. *Old Nat. Br.* 91. *Abatement* when it relates to Writs or Plaints, is the quaſhing or deſtroying of the Plaintiff's Writ; and under this Signification, which is moſt general, it is an Exception alledged and made good in our Law; being as much as *Exceptio dilatoria* with the Civilians. *Brit. c.* 51. And this Exception may be taken either to the Inſufficiency of the Matter, or the Incertainty of the Allegation, by miſnaming the Plaintiff or Defendant, or the Place; to the Variance between the Writ and the Specialty or Record; to the Incertainty of the Writ, Count or Declaration; or to the Death of either of the Parties before Judgment had; or for that a Woman Plaintiff is married before, or hanging the Suit, and for many other Cauſes, upon which the Defendant prays that the Writ or Plaint may *abate*, *viz.* That the Suit of the Plaintiff may for that Time ceaſe. *Terms de Ley* 1. Some Cauſes of *Abatement*, are where the Plaintiff is incapable of maintaining his Writ, by the Defendant's being under the Protection of the Law, as being an Infant, *&c.* or by the Plaintiff's miſconceiving his Action; or aſſerting a material Thing that is falſe, ſo that it appears of his own ſhewing, he ought not to maintain his Writ in that manner, but intitle himſelf in a better Way. *Mod. Entr. Engl.* 25. On *Abatement* of Suits, all Writs and Proceſs muſt be begun *de Novo:* And one great Reaſon for the *Abatement* of Writs is, that the Party proſecuted may not be twice charg'd or vex'd for one Debt; as where the Plaintiff hath another Action depending for the ſame Matter, *&c.* 3 *Lev* 304. In an Action of Debt, *&c.* another Action depending in the Courts of *Weſtminſter*, for the ſame Matter, is a good Plea in *Abatement:* But Plea of Action in an inferior Court is not good, unleſs Judgment be given. 5 *Rep.* 62. In an Appeal, Information, *&c.* it is a good Plea in *Abatement*, that another Proſecution is depending, but not on Indictment. 2 *Hawk. Pl. Cr.* 190, 367. Error depending in the Exchequer Chamber is a good Plea in *Abatement* to Debt on Judgment in *B. R.* 5 *Mod.* 68.

A Suit may be *abated*, for that the Writ in Debt precedes the Day of Payment: For that there are not fifteen Days between the *Teſte* and the Return of the Writ. 1 *Lutw.* 16, 25. Where a Defendant binds himſelf jointly with another, and he is not named: Or the Bill is in Caſe, and ought to be in Account: And where the Plaintiff declares of ſeveral and diſtinct Cauſes of Action in the ſame Bill; or it appears by the Plaintiff's own Shewing, that he had no Cauſe of Action for the Whole or for Part, the Writ ſhall *abate*. 2 *Mod. Intr.* 18. 4 *E.* 4. 32. Where a Demand is of two Things, and it appears the Plaintiff hath an Action only for one, the Writ may not be *abated* in the whole, but ſhall ſtand for that which is good: But if it appear, that altho' he can't have this Writ which he hath brought for Part, he may have another, the Writ ſhall *abate* in the whole. 11 *Rep.* 45. 1 *Saund.* 285. A Writ of Ejectment ſhall be *abated*, on its appearing to the Court to be ſued out before the Cauſe of Action. *Cro. Car.* 272. In Caſe Adminiſtration was granted after the Action brought, and this appears, the Plaintiff's Writ *abates*. *Hob.* 245. Repugnancy in the Plaintiff's ſhewing and ſetting forth of his Matter, may cauſe an *Abatement*. 2 *And.* 96. If a Plaintiff, after Appearance be nonſuit, diſcontinue, &c. the Writ ſhall *abate*. 7 *Rep.* 27. And where the Plaintiff diſcharges Part of the Debt after the Writ purchaſed, on ſhewing the Acquittance the Writ ſhall *abate*. *Miſnomer* in the Addition, Place, Trade, Dignity, &c. of the Defendant, may *abate* the Writ; as where one pleads there is no ſuch Place, or that he is a Baronet and no Knight, &c. 1 *Vent.* 154. If the Addition of the Defendant's Quality and Dwelling be omitted in any original Writ, in a perſonal Action, Appeal or Indictment, where Exigent may be awarded, the Writ ſhall *abate*; but it ſhall not *abate* for Surpluſage in the Addition. 1 *H.* 5. *cap.* 5. Where one is miſnamed in a Bond, the Writ muſt be brought againſt him by the ſame Name as in the Bond. *Dyer* 279. And where a Defendant comes in *gratis*, or pleads by the Name alledged by the Plaintiff, he is eſtopped to alledge any Thing againſt it. *Stile* 440. To the Plea of *Miſnomer*, the Plaintiff may reply, the Defendant was known by the Name in the Writ. 1 *Salk.* 6. Where an Indictment for a capital Crime is *abated* for *Miſnomer* of the Defendant, the Court will not diſmiſs him, but cauſe him to be indicted *de novo* by his true Name. 2 *Hawk.* 367. Pleas in *Abatement* found againſt a Defendant in Capital Caſes, are not peremptory as they are in other Caſes; but he may afterwards plead over to the Felony. *Ib.* 191. And a Perſon cannot to an Action brought againſt him, plead in Diſability of himſelf, that he is attainted of Treaſon, &c. 1 *Leon. cap.* 466. Outlawry may be pleaded in *Abatement*, or in Bar; but 'tis only a Diſability till the Outlawry is reverſed. 1 *Inſt.* 128. Excommunication, or any Plea in Diſability of the Plaintiff, may not be pleaded after a General Imparlance. 1 *Lutw.* 19. After Plea in Bar to annul the Action for ever, and after Imparlance, one cannot plead in *Abatement* of the Writ. An Alien born may be pleaded in *Abatement*: But *Jews* may proſecute Actions and recover, a Plea in *Abatement* againſt them being but a Diſability ſo long as the King ſhall prohibit them to Trade. 1 *Lill.* 4. One may plead in *Abatement* of a Declaration, where 'tis by Original; but if the Action be by Bill, you muſt plead in *Abatement* of the Bill only. 5 *Mod.* 144. A little Variance between the Declaration and Bond pleaded, will not make naught the Declaration: But Incertainty will *abate* it. *Plowd.* 84. The Variance of the Declaration from the Obligation, or other Deed on which it is grounded, will ſometimes *abate* the Action: And if a Declaration aſſign Waſte in a Town, not mention'd in the original Writ, the Writ of Waſte ſhall *abate*. *Hob.* 18, 38. *Abatement* may be alſo by the Plaintiff's Entry into all or Part of what is ſued for; as in Aſſiſe for Lands, &c. A Leaſe is made for Years rendring Rent, with Clauſe of Reentry for Non-Payment, the Rent being in Arrear, the Leſſor brings Debt for it, and pending the Suit enters into the Land; in this Caſe the Writ *abates* by the Plaintiff's Entry. *Plowd.* 92. *Stile* 260. If two Defendants plead ſeveral Pleas in *Abatement*, and Iſſue is joined upon one Plea, and a Demurrer upon the other; if the Iſſue be found againſt the Plaintiff, the Writ will *abate* againſt both Defendants. *Hob.* 250. The Court *Ex Officio abates* Writs for want of proper Words of Art, Want of legal Form, &c. And falſe Latin would formerly *abate* an original Writ; but not make void any judicial Writ, Plea, &c. *Latch* 178. An Original teſted in the Reign of a King, who dieth before the Return, by the Common Law 'tis *abated* and gone, and ſhall not be returned in the Reign of another. *Dyer* 165, 206. But by Stat. 1 *Ed.* 6. *c.* 7. No Writ ſhall be *abated* in any Suit between Party and Party, by the Death of the King: Nor ſhall any Writ or Suit *abate*, on the Preferment of the Plaintiff, pending the Suit; as by his being made a Peer, one of the Juſtices, &c. And Proceſs or Suits before Juſtices of Aſſize, Gaol-Delivery, Juſtices of Peace, &c. ſhall not *abate* by any new Commiſſion or Aſſociation. *Stat. Ibid.* Informations for the King do not *abate* upon the Death of the King; but ſhall be continued by Reſummons, &c. *Moor* 748. The Death of a Husband, where Husband and Wife are proſecuted for Words ſpoke by the Wife, &c. will not *abate* the Writ or Action. *Hardr.* 151. But if the Words are by Husband and Wife, and the Husband die, the Writ ſhall *abate*. *Stile* 135. Where two Jointenants are Defendants, the Death of one of them will not *abate* the Writ. 3 *Mod.* 249. And no Plea in *Abatement* ſhall be receiv'd in any Suit for Partition; nor ſhall the ſame be *abated* by the Death of any Tenants. *Stat.* 8 & 9 *W.* 3. *cap.* 31. In Treſpaſs againſt two or three Defendants, if one of them die hanging the Writ, it ſhall not *abate*: But where one of the Defendants dieth after Judgment, and a Writ of Error is brought, it is otherwiſe. *Yelv.* 209. If a Writ of Treſpaſs be brought againſt divers Perſons, and it *abate* againſt one, it may *abate* againſt all. 8 *Rep. Blackmore*'s Caſe. Error being brought in Action of the Caſe, before the Errors were argued, one of the Defendants who was Plaintiff in the Writ of Error died; and by this it was held, that the Writ of Error was *abated*. *Yelv.* 208. In a Writ of Covenant againſt three, one of them dies; the Writ *abates* againſt him only. *Style* 421. In Aſſiſe againſt two, where one of them dieth, it ſhall not abate the Writ, if there be a Diſſeiſor and a Tenant remaining: So in *Quare Impedit*, or Replevin againſt two Perſons: And in ſuch Caſe, the Court may proceed to a *Venire fac.* and Trial againſt the Survivor only. *Jenk. Cent.* 90. 6 *Rep.* 9. *Dyer* 88. 9 *H.* 7. In *Audita Querela* by two Perſons, if one die, the Writ ſhall not *abate*. *Yelv.* 208. The Death of a Plaintiff did in all Caſes *abate* the Writ before Judgment, till the Statute 8 & 9 *W.* 3. *c.* 10. by which neither the Death of Plaintiff or Defendant ſhall *abate* it, if the Action might be originally proſecuted by and againſt the Executors or Adminiſtrators of the Parties: And if there are two or more Plaintiffs or Defendants, and one or more die, the Writ or Action ſhall not *abate*, if the Cauſe of Action ſurvives to the ſurviving Plaintiff againſt the ſurviving Defendant, &c. *Stat. Ibid.* It is held the Court will not *abate* the Plaintiff's Writ or Bill, if not pray'd properly in the Plea; tho' there needs no Pleading to *abate* a Writ, that is of itſelf *abateable*. 1 *Salk.* 298.

Abatamentum, Is a Word of Art, and ſignifies an Entry by Interpoſition. *Co. Litt.* 277. Vide *Plea*, *Writs*, &c.

Abator, Is a Perſon that *abateth* or entreth into a Houſe or Land, void by the Death of him that laſt poſſeſſed the ſame, before the Heir takes Poſſeſſion, and by that Means keeps out the Heir. *Old Nat. Br.* 115.

Abatude, Is any Thing diminiſhed. —— *Moneta* abatuda, is Money clipp'd or diminiſh'd in Value: *Si tempore ſolutionis hæc Moneta fuerit* abatuda *ſive deteriorata*. Charta Simonis Comitis Leiceſtriæ, *Anno* 1209.

Abay, or *Abey*: Ye ſhall ſore *Abey* it; that is, you ſhall ſuffer great Pain, or pay dear for it: From the Word *Buy*, the Letter *A* being added.

Abbacy, (*Abbatia*) Is the ſame as to the Government of a religious Houſe, and the Revenues thereof, ſubject to an *Abbot*, as a Biſhoprick is to a Biſhop. This Word is uſed in ſome of our antient Grants, particularly *Anno* 34 *&* 35 *Hen.* 8. in a Grant to the Counteſs of *Pembroke*. —— *Sciant quod ego* Iſabella *Comitiſſa Pembr. pro ſalute Animæ meæ, &c. Dedi Deo &* Abbatiæ *de* Nutteleg *totam* Wickham *juxta prædictam* Abbatiam, *&c.*

Abbat, or *Abbot*, (*Abbas* in Latin, in French *Abbe*, and in Saxon *Abbud*) Is a Spiritual Lord or Governor, having the Rule of a religious Houſe. The Word is alſo by ſome derived from the Syriac *Abba Pater*. Of theſe *Abbots* here in *England*, ſome were elective, ſome preſentative; and ſome were *mitred*, and ſome were not; ſuch as were mitred had Epiſcopal Authority within their Limits, being exempted from the Juriſdiction of the Dioceſan; but the other Sort of *Abbots* were ſubject to the Dioceſan in all Spiritual Government. The mitred *Abbots* were Lords of Parliament, and called *Abbots Sovereign*, and *Abbots General*, to diſtinguiſh them from the other *Abbots*. And as there were *Abbots*, ſo there were alſo *Lords Priors*, who had exempt Juriſdiction, and were likewiſe Lords of Parliament. Some reckon twenty-ſix of theſe Lords *Abbots* and Priors that ſat in Parliament. Sir *Edw. Coke* ſays, there were twenty-ſeven Parliamentary *Abbots*, and two Priors, *Co. Litt.* 97. In the Parliament 20 *R.* 2. there were but twenty-five: But *Anno* 4 *Edw.* 3. in the Summons to the Parliament at *Winton* more are named. And in *Monaſticon Anglicanum* there is alſo Mention of more; the Names of which were as follow: *Abbots* of *St. Auſtin's Canterbury*, *Ramſey*, *Peterborough*, *Croyland*, *Eveſham*, *St. Benet de Hulmo*, *Thornby*, *Colcheſter*, *Leiceſter*, *Winchcomb*, *Weſtminſter*, *Cirenceſter*, *St. Alban's*, *St. Mary's York*, *Shrewsbury*, *Selby*, *St. Peter's Glouceſter*, *Malmsbury*, *Waltham*, *Thorney*, *St. Edmond's*, *Beaulieu*, *Abingdon*, *Hide*, *Reading*, *Glaſtonbury*, and *Oſney*.——And Priors of *Spalding*, *St. John's* of *Jeruſalem*, and *Lewes*.—To which were afterwards added the *Abbots* of St. *Auſtin's Briſtol*, and of *Bardeny*, and the Priory *de Sempling-ham*. Theſe *Abbeys* and Priories, were founded by our ancient Kings, and great Men, from the Year 602 to 1133. An *Abbot* with the Monks of the ſame Houſe were called the *Convent*, and made a Corporation; but the *Abbot* was not chargeable by the Act of his Predeceſſor, unleſs it were under the common Seal, or for ſuch Things as came to the Uſe of the Houſe or Convent. *Terms de Ley* 4. By Stat. 27 *Hen.* 8. *cap.* 28. all *Abbeys*, Monaſteries, Priories, *&c.* not above the Value of 200 *l. per Ann.* were given to the King, who ſold the Lands at low Rates to the Gentry. *Anno* 29 *H.* 8. the Reſt of the *Abbots*, *&c.* made voluntary Surrenders of their Houſes, to obtain Favour of the King: And *Anno* 31 *H.* 8. a Bill was brought into the Houſe to confirm thoſe Surrenders; which paſſing, compleated the Diſſolution, except the Hoſpitals and Colleges, which were not diſſolved, the firſt till the 33d, and the laſt till the 37th of *H.* 8. when Commiſſioners were appointed to enter and ſeiſe the ſaid Lands, *&c.*

Abbatis, An Avener or Steward of the Stables; the Word was ſometimes uſed for a common Hoſtler, pronounc'd ſhort in the middle Syllable. —— Abbatis *ad cœnam dat Equis* Abbatis *avenam*. Spelm.

Abbrochment, (*Abbrocamentum*) The Buying up of Wares before they are expoſed to Sale in a Fair or Market, and ſelling the ſame by Retail; which is a Foreſtalling of a Market or Fair. *MS. de placit' coram Rege* Ed. 3. *penes* J. Trevor *Mil'*.

Abbuttals, (from the French *Abutter*, to limit or bound) Are the Buttings and Boundings of Lands, Eaſt, Weſt, North, or South, ſhewing how the ſame lie with reſpect to others; as on what Lands, Highways, or other Places, they are limited and bounded. *Camden* tells us, that Limits were diſtinguiſh'd by Hillocks rais'd in the Lands call'd *Botentines*, whence we have our Word *Butting*. The Sides on the Breadth of Lands are properly *Adjacentes*, lying or bordering; and the Ends in Length *Abuttantes*, *Abutting* or Bounding. And in old Surveys, theſe laſt are called *Head-Lands*, from *Capitare*, to Head. The Boundaries and *Buttals* of Corporation and Church Lands, and of Pariſhes, are preſerved by an annual Proceſſion. And *Abuttals* or Boundaries are of ſeveral Sorts; ſuch as Incloſures of Hedges, Ditches and Stones in common Fields; Brooks, Rivers, and Highways, *&c.* of Manors and Lordſhips.

Abdicate, (*Abdicare*) To renounce or refuſe any Thing. *Terms de Ley* 5.

Abdication, (*Abdicatio*) In general, is where a Magiſtrate, or Perſon in Office, renounces and gives up the ſame, before the Term of Service is expired. And this Word is frequently confounded with Reſignation, but differs from it, in that *Abdication* is done purely and ſimply; whereas *Reſignation* is in Favour of ſome third Perſon. *Chamb. Dict.* 'Tis ſaid to be a Renunciation, Quitting and Relinquiſhing, ſo as to have nothing further to do with a Thing; or the Doing of ſuch Actions as are inconſiſtent with the Holding of it. On King *James's* leaving the Kingdom and *Abdicating* the Government, the Lords would have had the Word *Deſertion* made uſe of; but the Commons thought it was not comprehenſive enough, for that the King might then have Liberty of Returning. *Abdication Debates.* The *Scots* called it a *Forfeiture* of the Crown, from the Verb *Forisfacio.*

Abditorium, An Abditory or Hiding-Place, to hide and preſerve Goods, Plate, or Money: And is uſed for a Cheſt in which Reliques are kept, as mentioned in the Inventory of the Church of *York*, *Mon. Angl. pag.* 173. ——*Item unum Coffeur, & una pixis de* Ebore *ornata cum argento deaurato, Item tria* Abditoria, *&c.*

Abeched, From the French *Abecher*, to feed, is an old Word, which ſignifies to be ſatisfied.

Aberemurder, (*Aberemurdrum*) Plain or downright Murder; as diſtinguiſhed from the leſs heinous Crimes of Manſlaughter and Chancemedly. It is derived from the Saxon *Æbere*, apparent, notorious, and *Mord*, Murder: And was declared a Capital Offence, without Fine or Commutation, by the Laws of *Canute*, *cap.* 93. and of *Hen.* 1. *cap.* 13. *Spelm.*

Abessed, (from the French *Abbaiſſer*, to depreſs) Hath the Signification of Humbled; and hence we derive the Words *Abaſe* and *Baſe*.

Abet, (*Abettare*) From the Saxon *A* and *Bedan* or *Beteren*, to ſtir up or incite; or from the French *Bouter*, *Impellere* or *Excitare*. In our Law it ſignifies as much as to encourage or ſet on: The Subſtantive *Abetment*, is uſed for an Encouraging or Inſtigation. *Staundf. Pl. Cr.* 105. And *Abettor* (*Abettator*) is an Inſtigator or Setter on; one that promotes or procures a Crime. *Old Nat. Br.* 21. *Abet-*

tors of Murder, are ſuch as command, procure, or counſel others to perpetrate the Murder; and in ſome Caſes theſe *Abettors* ſhall be taken as Principals, in others but as Acceſſaries; their Preſence or Abſence at the Time of committing the Fact, making the Difference. *Co. Litt.* 475. Vide *Acceſſaries.*

Abeyance, or *Abbayance*, (from the Fr. *Bayer*) To expect: It is what is in Expectation, Remembrance and Intendment of Law. By a Principle of Law, in every Land there is a Fee-ſimple in ſome Body, or it is in *Abeyance*; that is, tho' for the preſent it be in no Man, yet it is in Expectancy belonging to him that is next to enjoy the Land. *Co. Litt.* 342. *Litt. c. Diſcontin.* If a Man be Patron of a Church, and preſents one to the ſame, now the Fee of the Lands and Tenements pertaining to the Rectory is in the Parſon: But if the Parſon die, and the Church become void, then is the Fee in *Abeyance*, until there be a new Parſon preſented, admitted and inducted; for the Patron hath not the Fee, but only the Right to preſent, the Fee being in the Incumbent that is preſented. *Terms de Ley* 6. The Frank tenement of the Glebe of a Parſonage, during the Time the Parſonage is void, is in no Man; but in *Abeyance* or Expectation, belonging to him who is next to enjoy it. If a Man makes a Leaſe for Life, the Remainder to the Right Heirs of *J. S.* the Fee-ſimple is in *Abeyance* until *J. S.* dies. *Co. Litt.* 342. In this Caſe the Remainder paſſeth from the Grantor preſently; tho' it veſts not preſently in the Grantee, but is ſaid to be in *Abeyance* until *J. S.* dies, after whoſe Death the Heir has a good Remainder, and it ceaſes to be in *Abeyance. Terms de Ley.* If Lands be leaſed to *A. B.* for Life, the Remainder to another Perſon for Years, the Remainder for Years is in *Abeyance* until the Death of the Leſſee, and then it ſhall veſt in him in Remainder as a Purchaſer, and as a Chattel ſhall go to his Executors. 3 *Leon.* 23. Where Tenant for Term of another's Life dieth, the Free hold of the Lands is in *Abeyance* till the Entry of the Occupant. Fee-ſimple in *Abeyance* cannot be charged until it comes *in eſſe*, ſo as to be certainly charged or aliened; tho' by Poſſibility it may fall every Hour. *Co. Litt.* 378. The Word *Abeyance* hath been compared to what the Civilians call *Hæreditatem jacentem*; for as the Civilians ſay Lands and Goods do *jacere*, ſo the Common Lawyers ſay, that Things in like Eſtate are in *Abeyance*, as the Logicians term it *in poſſe*, or in Underſtanding; and as we ſay *in nubibus*, that is in Conſideration of Law. See *Plowd Rep. Walſingham*'s Caſe.

Abgatoria, *Abgetorium*, The Alphabet *A, B, C, &c.* This ſeems to be an *Iriſh* Word. *Mat. Weſtm.* reports of St. *Patrick* ——— Abgetoria *quoque* 345 *& eo amplius ſcripſit, totidem Epiſcopos ordinavit.* ——— The *Iriſh* ſtill call the Alphabet *Abghittin.*

Abigevus, For *Abigens*, ſignifies a Thief who hath ſtolen many Cattle, *viz. Si quis ſuem ſurripuit fur erit, & ſi quis gregem* Abigevus *erit.* Bract. l. 3. cap. 6.

Ability, The King's Iſſue are of *Ability* to inherit in *England* wheresoever born; and Children of Subjects born beyond Sea, may inherit if their Birth were within the Allegiance of the King. *Stat.* 25 *Ed.* 3. Vide *Naturalization.*

Abiſhering, Is underſtood to be quit of Amercements. It originally ſignified a Forfeiture or Amercement; and is more properly *Miſhering* or *Miskering*, according to the learned *Spelman.* Since it hath been termed a Liberty or Freedom, becauſe where-ever this Word is uſed in a Grant or Charter, the Perſons to whom made have the Forfeitures and Amercements of all others, and are themſelves free from the Control of any within their Fee. *Raſtal's Abr. Terms de Ley.*

Abjuration, (*Abjuratio*) A Forſwearing or Renouncing by Oath, ſignifies a ſworn Baniſhment, or an Oath taken to forſake the Realm for ever. *Staundf. Pl. C. l.* 2. *cap.* 40. It alſo hath now another Signification extending to the Perſon, as well as Place; as to *abjure* the Pretender by Oath, whereby a Man binds himſelf not to own any regal Authority in the Perſon called the Pretender, nor ever to pay him any Obedience, *&c.* Formerly in King *Edward* the *Confeſſor*'s Time, and other Reigns down to the 22 *H.* 8. (in Imitation of the Clemency of the *Roman* Emperors towards ſuch as fled to the Church) if a Man had committed Felony here, and he could fly to a Church or Church-yard before his Apprehenſion, he might not be taken from thence to be tried for his Crime; but on Confeſſion thereof before the Juſtice, or before the Coroner, he was admitted to his Oath to *abjure* or forſake the Realm; which Privilege he was to have forty Days, during which Time any Perſons might give him Meat and Drink for his Suſtenance, but not after, on Pain of being guilty of Felony: The Form of the Oath you may read in an ancient Tract *de officio Coronatorum*, and in *Horn*'s *Mirror of Juſtices*, *lib.* 1. But at laſt, this Puniſhment being but a perpetual Confinement of the Offender to ſome Sanctuary, wherein (upon *Abjuration* of his Liberty and free Habitation) he would chuſe to ſpend his Life, as appears by the Statute *Anno* 22 *H.* 8. *c.* 14. it is enacted 21 *Jac.* 1. *cap.* 28. That thence-after no Sanctuary or Privilege of Sanctuary ſhould be allowed; whereupon this *Abjuration* ceaſed. 2 *Inſt.* 629. An *Abjuration* or Deportation for ever into a Foreign Country, is a civil Death; and called (by the Lord *Coke*) a Divorce between Husband and Wife; and the Wife of ſuch a Perſon may bring Actions, or be impleaded during the Natural Life of the Husband, which ſhe may not do in any other Caſe: Alſo ſhall have her Dower, or Jointure, *&c. Co. Litt.* 133. This is where a Perſon ſuffers Baniſhment for any Crime. By Stat. 35 *Eliz.* Popiſh Recuſants not making the Submiſſion of Conformity, *&c.* are to *abjure* the Realm. And by 1 *W. & M.* 13 *W.* 3. 1 *Geo.* 1. *&c.* All Perſons are to *abjure* the pretended Prince of *Wales*; and refuſing the Oath, are liable to divers Penalties and Forfeitures, *&c.* This *Abjuration* Oath was invented for the Security of the Crown, and the Proteſtant Religion. See *Oaths.*

Abolition, A Deſtroying or Effacing, or putting out of Memory: And ſignifies the Leave given by the King, or Judges, to a Criminal Accuſer to deſiſt from further Proſecution. *Stat.* 25 *H.* 8. *c.* 21.

Abridge, (*Abbreviare*) Is derived from the *French* Word *Abreger*, to make ſhorter in Words ſo as to retain the Senſe and Subſtance. And in the Common Law it ſignifies particularly the making a Declaration or Count ſhorter, by ſevering ſome of the Subſtance from it: A Man is ſaid to *abridge* his Plaint in Aſſiſe; and a Woman her Demand in Action of Dower, where any Land is put into the Plaint or Demand which is not in the Tenure of the Defendant; for if the Defendant pleads Non-tenure, Joint-tenancy, *&c.* in Abatement of the Writ, the Plaintiff may leave out thoſe Lands, and pray that the Tenant may anſwer to the Reſt. The Reaſon of this Abridgment of the Plaint is, becauſe the Certainty is not ſet down in ſuch Writs, but they run in general: And though the Demandant hath abridg'd his Plaint in Part, yet the Writ will be good for the Remainder. *Brook*, Tit. *Abridgment*, *Anno* 21 *H.* 8. *c.* 3.

Abridgment, (*Abbreviamentum*) A Treatiſe or Writing *abridged* and made ſhorter.

Abrogate, (*Abrogare*) To diſannul or take away any Thing: As to *abrogate* a Law, is to lay aſide or repeal it. *Stat.* 5 *&* 6 *Ed.* 6. *c.* 3.

Abſentees, or *Des Abſentees*, Was a Parliament ſo called, held at *Dublin* 10 *May* 28 *Hen.* 8. And mentioned in Letters Patent, Dat. 29 *Hen.* 8. 4 *Co Inſt.* 354.

Abſolve, (*Abſolvere*) To *abſolve* one excommunicated, or pardon, or ſet free from Excommunication. *Vide* Aſſoile.

Abſolutions from *Rome*, High Treaſon, *&c.* *Stat.* 23 *Eliz.* See *Bull.*

Abſoniare, Was a Word uſed by the *Engliſh Saxons* in the Oath of Fealty, and ſignified to ſhun or avoid——As in the Form of the Oath among the *Saxons* recorded by Mr. *Somner: In illo Deo, pro quo ſanctum hoc ſanctificatum eſt, volo eſſe nunc Domino meo* N. *fidelis & credibilis, & amare quod amat, &* abſoniare *quod* abſoniat, *per Dei rectum, & ſeculi competentiam*——

Abſque hoc, Are Words of Exception made Uſe of in a *Traverſe*; as the Defendant pleads that ſuch a Thing was done at B. *&c.* *abſque hoc*, that it was done at, *&c.* *Mod. Ca.* 103.

Accapitum, and *Accapitare*, The ſame with Relief due to Lords of Manors.——*Capitali Domino* accapitare, *i. e.* to pay a Relief to the Chief Lord. *Fleta l.* 2. *c.* 50.

Accedas ad Curiam, Is a Writ that lies where a Man hath received falſe Judgment in a Hundred-Court, or Court Baron. It is directed to the Sheriff; and iſſued out of the Chancery, but returnable into B. *R.* or *C. B.* And is in the Nature of the Writ *de falſo judicio*, which lies for him that hath received falſe Judgment in the County-Court. In the *Regiſter of Writs*, it is ſaid to be a Writ that lies as well for Juſtice delayed, as for falſe Judgment; and that it is a Species of the Writ *Recordare*, the Sheriff being to make Record of the Suit in the inferior Court, and certify it into the King's Court. *Reg. Orig.* 9. 56. *F. N. B.* 18. *Dyer* 169.

Accedas ad Vicecomitem, Where a Sheriff hath a Writ called *Pone* deliver'd to him, but ſuppreſſeth it; this Writ is directed to the Coroner, commanding him to deliver a Writ to the Sheriff. *Reg. Orig.* 83.

Acceptance, (*Acceptatio*) Is the Taking and *Accepting* of any Thing in good Part, and as it were a tacit Agreement to a preceding Act, which might have been defeated and avoided, were it not for ſuch *Acceptance* had. For Example; If a Biſhop before the Statute 1 *Eliz.* leaſed Part of his Biſhoprick for Term of Years, reſerving Rent, and then dies; and after another is made Biſhop, who *accepts* and receives the Rent when due, by this *Acceptance*, the Leaſe is made good, which otherwiſe the new Biſhop might have avoided. It is the ſame if Baron and Feme ſeiſed of Lands in Right of the Feme, join and make a Leaſe or Feoffment, reſerving Rent; and the Baron dies, after whoſe Death the Feme receives or *accepts* the Rent; by this the Leaſe or Feoffment is confirmed, and ſhall bar her from bringing a *Cui in vita*. *Co. Litt.* 211. But if a Parſon, *&c.* make a Leaſe for Years not warranted by the Statute 32 *Hen.* 8. but is void by his Death; *Acceptance* of Rent by a new Parſon or Succeſſor, will not make it good. 1 *Saund.* 241. And if a Tenant for Life make a Leaſe for Years, there no *Acceptance* will make the Leaſe good, becauſe the Leaſe is void by his Death. *Dyer* 46, 239. So if Tenant in Dower, leaſes for Years, and dies, and the Heir *accepts* the Rent. Tenant in Tail makes a Leaſe for Years not warranted by the Statute, rendring Rent, and dies; if the Iſſue *accepts* the Rent, it ſhall bind him. 3 *Leon.* Caſe 36. And if an Infant *accepts* of Rent at his full Age, it makes the Leaſe good, and ſhall bind him: But if Tenant in Tail make a Leaſe for Years, to commence after his Death, rendring Rent, in ſuch Caſe *Acceptance* of Rent by the Iſſue, will not make the Leaſe good to bar him, becauſe the Leaſe did not take Effect in the Life of his Anceſtor. *Plowd.* 418. If a Leſſor *accepts* from his Tenant, the laſt Rent due to him, and gives the Leſſee a Releaſe for it, all Rent in Arrear is by Law preſumed to be ſatisfied. *Co. Litt.* 373. And if a Leſſee for Term of 20 Years, *accepts* of a Leaſe of the ſame Land for 10 Years, by the Leſſee's *Acceptance* of the new Leaſe, the Term of 20 Years is determined in Law. 2 *Roll. Abr.* 469. A Leaſe is made on Condition, that the Leſſee ſhall do no Waſte; if he commits Waſte, and afterwards the Leſſor *accepts* the Rent, he cannot enter. *Godb.* 47. And where a Leſſor *accepteth* of a Surrender from the Leſſee, he will be concluded of his Action of Waſte, for Waſte before the Surrender. *Acceptance* of the next Rent due, at a Day afterwards, will bar one to enter for a Condition broken before by Reaſon of Non-payment of the Rent; becauſe the Leſſor thereby affirmeth the Leaſe to have Continuance. *Co. Litt.* 211. And taking a Diſtreſs, affirmeth the Continuance of the Rent: But if Rent was due, at a Day before, and thereby the Condition was broken, one may receive that Rent, and yet re-enter: And if he *accept* of Part of the Rent, he may enter for a Condition broken, and retain the Lands until he has the whole Rent. 3 *Rep.* 64. 1 *Inſt.* 203. On *accepting* of Rent afterwards, the Leſſor muſt have Notice of the Breach of the Condition, to bar his Entry. 1 *Leon.* 626. If a Leſſor *accepts* of Rent from an Aſſignee, knowing of the Aſſignment, it bars him from Action of Debt againſt the Leſſee; for the Privity of Contract is extinguiſhed: But after ſuch *Acceptance*, the Leſſor or his Aſſigns, may maintain an Action againſt the firſt Leſſee upon his Covenant for Payment of the Rent. 1 *Saund.* 241. 3 *Rep.* 24. *Acceptance* of Rent from the Aſſignee has been adjudged a ſufficient Notice of the Aſſignment, ſo that the Leſſor could not reſort to the firſt Leſſee. 2 *Bulſt.* 151. *Acceptance* of a leſſer Sum of Money, may be in Satisfaction of a greater Sum, if it be before the Day on which the Money becomes due. 3 *Bulſt.* 301. But it will not be ſo after the Money is due. *Moor* 671. A Bill or Bond *accepted* may not be pleaded in Satisfaction of a Bond; but 'tis ſaid a new Bond may, if it be not for Payment of Money on another Day. *Hob.* 68, 69. Where the Condition of a Bond is to pay Money, *Acceptance* of another Thing is good: But if the Condition is not for Money, but a collateral Thing, it is otherwiſe. *Dyer* 56. 9 *Rep.* 79. And the *Acceptance* of uncertain Things, as Cuſtoms, *&c.* made over, may not be pleaded in Satisfaction of a certain Sum due on Bond. *Cro. Car.* 192. If a Woman hath Title to an Eſtate of Inheritance, as Dower, *&c.* ſhe ſhall not be barred by any collateral Satisfaction or Recompence: And no collateral *Acceptance* can bar any Right of Inheritance or Freehold, without ſome Releaſe, *&c.* 4 *Rep.* 1. When a Man is entitled to a Thing in groſs, he is not bound to *accept* it by Parcels; and if a Leſſor diſtrains for Rent, he is not obliged to *accept* Part of it; nor in Action of Detinue, Part of the Goods, *&c.* 3 *Salk.* 2.

Acceſſary, *Acceſſorius vel Acceſſorium*, (*Particeps Criminis*) Is where a Man is guilty of a felonious Offence, not Principally, but by Participation, as by Command, Advice, or Concealment, *&c.* And is of two Sorts, *viz.* *Before the Fact*, and *after it:* An *Acceſſary* before the Fact, is he that Commands or Procures another to commit Felony, and is not himſelf preſent when it is done; for if he be preſent, he is a Principal: And an *Acceſſary* after the Fact, is he that receives, aſſiſts or comforts any Man that hath committed Murder or Felony, which hath come to his Knowledge: But this doth not extend to a Woman, who receives or aſſiſts her Huſband, tho' a Huſband receiving his Wife, will be *Acceſſary*; and a Servant may be *Acceſſary* in relieving his Maſter, or aſſiſting him in his Eſcape, *&c.* Alſo furniſhing others with Weapons; finding a Felon a Horſe for his Journey, or relieving him with Money, Victuals, *&c.* will make Perſons

Acceſſary. H. P. C. 218. 3 *Inſt.* 108. There is likewiſe an *Acceſſary* of an *Acceſſary*; as he that receives an *Acceſſary* to a Felony. *Fitz. Coron.* 197. And *Acceſſaries* in Petit Treaſon, Murder, Robbery on the Highway, in Dwelling houſes, *&c.* ſhall not have their Clergy. 4 & 5 *P.* & *M. c.* 4. One that is preſent and aiding the Stabbing of another, is not a Principal, but *Acceſſary* to the Stabbing, within the Act 1 *Jac.* 1. There cannot be an *Acceſſary* before the Fact in Manſlaughter, becauſe it is committed of a ſudden, and unpremeditated. *H. P. C.* He who counſels or commands any Evil, ſhall be adjudged *Acceſſary* to all that follows upon it; but not to any Thing elſe: If a Perſon commandeth another to beat ſuch a Perſon, and he beats him ſo that he dies of his Wounds, the Perſon commanding will be *Acceſſary* to the Murder: But if the Command had been to beat another Perſon; or to burn ſuch a Houſe, and he burns another; he that commandeth will not be *Acceſſary.* 3 *Inſt.* 51. If I command a Perſon to do an unlawful Act, as to rob *A. B.* at one Place, and he doth it at another; or to rob him on ſuch a Day, and he doth it not himſelf, but procures another to do it; or to kill by Poiſon, and he doth it by Violence; in all theſe Caſes I ſhall be *Acceſſary:* But where the Command is to kill *A. B.* and he killeth *A. D.* this Difference in Subſtance, will not make the Commander *Acceſſary. Plowd.* 475. If a Man counſels a Woman to murder the Child in her Womb, and the Woman murder her Child after it is born, he is *Acceſſary* to the Murder. *Dyer* 185. If the Owner of ſtolen Goods, after Complaint made to a Juſtice of Peace, take his Goods, and conſent to the Eſcape of the Felon, or compound the Offence; this it is ſaid will make him *Acceſſary* after the Fact. *Lamb.* 285. But 'tis otherwiſe if before Complaint to the Juſtice, the Owner retaketh his Goods, and ſuffereth the Felon to eſcape, *&c. Lamb.* 285. *Dalt.* 400. Perſons buying or receiving ſtolen Goods, knowing the ſame to be ſtolen, are *Acceſſaries* to the Felony. *Stat.* 3 & 4 *W.* & *M.* If a Felon come to the Houſe of another, and he permits him to eſcape without Arreſt, knowing him to have committed Felony, this doth not make a Man *Acceſſary*; but if he take Money of the Felon to ſuffer ſuch Eſcape, it makes him an *Acceſſary:* And ſo it is if he ſhut the fore Door of his Houſe, whereby the Purſuers are deceived, for here is not a bare Omiſſion, but an Act done. 1 *Hale's Hiſt. P. C.* 619. If a Principal be not attainted, convict, or outlawed thereupon, the *Acceſſary* may not be arraigned; there being a Law Maxim, *Ubi non eſt principalis non poteſt eſſe acceſſorius.* If the Principal is pardoned, or hath his Clergy, the *Acceſſary* cannot be arraigned; for the Principal muſt be adjudged ſo by Law: But if the Principal is pardoned after Attainder, in ſuch Caſe the *Acceſſary* may be arraigned, becauſe it appears judicially that there was a Principal. 4 *Rep.* 43. Where there are two Principals, the Attainder of one of them gives ſufficient Foundation to arraign the *Acceſſary:* And Error in Attainder of the Principal will not avail an *Acceſſary*, for he is no Party to the Record. *Jenk Cent.* 76. If the Principal be erroneouſly attainted, it muſt ſtand good till 'tis reverſed. 9 *Rep.* By Stat. 1 *Ann. c.* 9. It is enacted, that where the Principal is convicted of Felony, or ſtands mute, or challenges above twenty of the Jury, it ſhall be lawful to proceed againſt the *Acceſſary* in the ſame Manner as if the Principal had been attainted; and notwithſtanding ſuch Principal ſhall be admitted to his Clergy, pardoned, or delivered before Attainder. And if the Principal cannot be taken, then the *Acceſſary* may be proſecuted for a Miſdemeanor, and puniſhed by Fine, Impriſonment, *&c. Stat. Ibid.* See *Stat* 5 *Ann. c.* 31. *Acceſſaries* are by Common Law, and by Statute: But in the higheſt and loweſt Offences, there are no *Acceſſaries*; but all are Principals. *Co. Litt.* 71. Vide *Murder, Principal, &c.*

Accola, An Husbandman who came from ſome other Parts or Country to till the Lands, *eo quod adveniens terram* colat.——And is thus diſtinguiſhed from *Incola, viz.* Accola *non propriam, propriam colit* Incola *terram.* Du Freſne.

Accolade, (from the *French* Accoller, *collum amplecti*) A Ceremony uſed in Knighthood by the King's putting his Hand about the Knight's Neck.

Accompt, (*Computus*) Is a Writ or Action which lies againſt a Bailiff or Receiver to a Lord or others, who by Reaſon of their Offices and Buſineſſes are to render *Accompts*; but refuſe to do it. *F. N. B.* 116. If a Man makes one his Bailiff of a Manor, *&c.* he ſhall have a Writ of *Accompt* againſt him as Bailiff: Where a Perſon makes one Receiver, to receive his Rents or Debts, *&c.* he ſhall have *Accompt* againſt him as Receiver; and if a Man make one his Bailiff, and alſo his Receiver, then he ſhall have *Accompt* againſt him in both Ways. Alſo a Perſon may have a Writ of *Accompt* againſt a Man as Bailiff or Receiver, where he was not his Bailiff or Receiver; as if a Man receive Money for my Uſe, I ſhall have an *Accompt* againſt him as Receiver; or if a Perſon deliver Money unto another to deliver over unto me, I ſhall likewiſe have *Accompt* againſt him as my Receiver: So if a Man enter into my Lands to my Uſe, and receives the Profits thereof, I ſhall have *Accompt* againſt him as Bailiff. 9 *H.* 6. 36 *H.* 6. 10 *R.* 2. *Fitz. Accompt*, 6. A Judgment in *Accompt* as Receiver, is no Bar to Action of *Accompt* as Bailiff: But 'tis ſaid a Bailiff cannot be charged as Receiver, nor a Receiver as Bailiff; becauſe then he might be twice charged. 2 *Lev.* 127. 1 *Danv. Abr.* 220, 221. The Heir may have Writ of *Accompt* before or after his full Age, againſt a Guardian in Socage: And if he ſue the Guardian for Profits of his Lands taken before he is fourteen Years old, he muſt charge him as Guardian; but if it be for taking the Profits after that Age, there he muſt ſue him as Bailiff. *Litt.* 124. *F. N. B.* 118. Where an Heir ſues a Stranger that doth intermeddle with his Land, he ſhall charge him in *Accompt* as Guardian. *F. N. B.* 18. A Man deviſes Land to be ſold by his Executors, and the Money thence ariſing to be diſtributed among his Daughters; Action of *Accompt* lies in this Caſe, for the Daughters againſt the Executors. *Jenk. Cent.* 215. 2 *Roll. Abr.* 285. An Action of *Accompt* lies againſt a Bailiff, not only for what Profits he hath made and raiſed, but alſo for what he might have made and raiſed by his Care and Induſtry, his reaſonable Charges and Expences deducted. *Co. Litt.* 172. One Merchant may have *Accompt* againſt another, where they occupy their Trade together: And if one charges me as Bailiff of his Goods *ad mercandizandum*, I ſhall anſwer for the Increaſe, and be puniſh'd for my Negligence; but if he charges me as Receiver *ad computandum*, I muſt be anſwerable only for the bare Money or Thing delivered. *F. N. B.* 117. *Co. Litt.* 272. 2 *Leon. Ca.* 245. A Man having received of another 100 *l.* to be employed in Merchandize abroad, covenants at his Return to *accompt* to him; this doth not alter the Caſe, but notwithſtanding the Covenant, Action of *Accompt* may be brought. 2 *Bulſt.* 256. And if I deliver to another Perſon Goods or Money beyond Sea, to be delivered to me again in *England* at a certain Place, and he delivers it not, I may be relieved by this Action. *F N B.* 18. Where two Perſons are adjudged jointly to *accompt*, if one diſcharges himſelf upon the *Accompt*, it will be a Diſcharge to the other; and if he be charged by the *Accompt*, it ſhall be a Charge upon the other. *Danv* 230. None ſhall be generally charged in *Accompt* but as Bailiff or Receiver, or Guardian in Socage. 1 *Danv.* 220. By the Stat. *Weſtm.* 2. 13 *Edw.* 1. *c.* 11. Maſters may aſſign Auditors to take the *Accounts* of Servants, *&c.* (this extends not to Guardians in Socage.) And if the *Accomptant* be found in arrear, the Auditors aſſigned have Power to commit him to Priſon, there to remain till he makes Agreement with the Party: But if the *Accomptant* be not allowed his reaſonable Expences and Coſts, or if he be charged with more Receipts than he ought, he may ſue out of the Chancery a Writ *ex parte talis*, directed to the Sheriff to take four Mainpernors for bringing his Body before the Barons of the Exchequer at a certain Day, and to warn the Lord or Maſter to appear at the ſame Time. Where a Man is adjudged to *accompt*, the Court ſhall aſſign him Auditors; and before the Auditors, the Plaintiff or Defendant may join Iſſue, or demur upon the Pleadings before them; which ſhall be certified to the Court, and there tried or argued: If Auditors are aſſigned, and a Day given the Defendant to *accompt* before them, if the Defendant would pray a further Day to give in his *Accompt*, the Auditors muſt grant it, and not the Court: But if the Defendant is remiſs and negligent, they muſt certify to the Court that he will not *accompt*. 1 *Danv. Abr.* 231. 1 *Mod.* 42. By 4 *&* 5 *Ann.* Actions of *Accompt* may be brought againſt the Executors and Adminiſtrators of Guardians, Bailiffs, Receivers, *&c.* And by one Jointenant, *&c.* againſt the other, his Executors and Adminiſtrators, as Bailiff for receiving more than his Share; and the Auditors appointed by the Court, where the Action ſhall be depending, are authorized to adminiſter an Oath, and examine the Parties, *&c.* The Auditors are Judges of Record. 2 *Inſt.* 380. But what may be pleaded in Bar to the Action, ſhall not be allowed to be pleaded before the Auditors. *Cro. Car.* 82, 161. Some Pleas are in Bar of the *Accompt*, and others in Diſcharge before Auditors; and ſome Pleas will be allowed before Auditors, that will not be in Bar to the *Accompt*. *Dyer* 21. 11 *Rep.* 8. In *Accompt* the Plaintiff declared of the Receipt of Money by the Hands of a Stranger; the Defendant pleaded a Gift of the Money afterwards by the Plaintiff; this was a good Plea as well in Bar of the Action, as before Auditors. *Winch* 9. If Action of *Accompt* be brought againſt one as Bailiff, he ſhall be allowed his Coſts and Expences; but 'tis otherwiſe if ſuch Action be brought againſt him as Receiver. *Co. Lit.* 172. If a Bailiff or Receiver make a Deputy, Action of *Accompt* will not lie againſt the Deputy, but againſt them. 1 *Leon.* 32. A Perſon receives Money due to me upon an Obligation, *&c.* I may either have an Action of *Accompt* againſt him as my Receiver; or Action of Debt, or on the Caſe, as owing me ſo much Money as he hath received. 1 *Lill.* 33. If I pay Money to another, I may bring an Action againſt him for ſo much Money received to my Uſe: But then he may diſcharge himſelf by alledging it was for ſome Debt, or to be paid over by my Order to ſome other Perſon, which he hath done, *&c.* 1 *Lill.* 30. An Apprentice ſhall not be charged with Action of *Accompt*: But if a Man have a Servant, whom he orders to receive Money, the Maſter ſhall have *Accompt* againſt him, if he were his Receiver. 1 *Inſt.* 172. If Money be received by a Man's Wife to his Uſe, Action of *Account* lies againſt the Husband, and he may be charged in the Declaration as his own Receipt. *Co. Lit.* 295. *Account* does not lie againſt an Infant; but it lies againſt a Man or Woman, that is Guardian, Bailiff or Receiver, being of Age and diſcovert: And tho' an Apprentice is not chargeable by this Action, for what he uſually receives in his Maſter's Trade; yet upon collateral Receipts, he ſhall be charged as well as another. 1 *Inſt.* 172. *Roll. Abr.* 117. 3 *Leon.* 92. As to other Actions of *Accompt*, they will not lie of a Thing certain; if a Man delivers 10 *l.* to merchandize with, he ſhall not have *Account* of the 10 *l.* but of the Profits, which are uncertain: And this is one Reaſon why this Action ſhall not lie for the Arrears of Rent. 1 *Danv. Abr.* 215. Action of *Account* may be brought againſt a Factor that ſells Goods and Merchandizes upon Credit, without a particular Commiſſion ſo to do, tho' the Goods are *bona peritura*. 2 *Mod.* 100. If there are two Demands in a Declaration, to which the Defendant pleads an *Accompt* ſtated, the Plaintiff can never after reſort to the Original Contract, which is thereby merged and diſcharged in the *Accompt*: If *A.* ſells his Horſe to *B.* for 10 *l.* and there being divers other Dealings between them, they come to an *Accompt* upon the Whole, and *B.* is found in Arrear 5 *l.* *A.* muſt bring his *Inſimul computaſſet* for it, and not an *Indebitatus aſſumpſit*: But if there be only one Debt betwixt the Parties, Entering into an *Accompt* for that would not determine the firſt Contract. 1 *Mod. Rep.* 206. 2 *Mod.* 44. It has been held, that mutual Demands on an *Accompt* are not extinguiſhed by ſettling it, and promiſe to pay the Ballance; wherefore *Aſſumpſit* was brought for the original Debt. *Fitzgib.* 44. *Hill.* 2 *Geo.* 2. The Pleas in this Action, are *Quod nunquam fuit Receptor*, *Quod plene computavit*, *&c.* It is no Plea in an *Accomptant* that he was robbed; but alledging it was without his Default and Negligence, will be a good Plea. *Co. Lit.* 89. That the Defendant *never was Bailiff*, is the general Bar; and it is a good Plea in Bar, by claiming a Property in the Things to be *accounted* for. 21 *Ed.* 3. 29 *E.* 3. 47. A Defendant as Receiver, cannot wage his Law, where he receives the Money by another's Hands; 'tis otherwiſe where he received it of the Plaintiff himſelf. 1 *Cro.* 919. And the Subſtance of the Action of *Account* againſt a Receiver is, that the Defendant be properly charged; as to the Time, 'tis not neceſſary to be particular therein, nor as to the *Quantum* of the Money; but the Plaintiff muſt ſhew by whoſe Hands the Defendant received it. 3 *Keb.* 425. This Action is now ſeldom uſed: Damages are not given by it, for the Judgment is only to *Accompt*. 1 *Leon.* 302. The uſual Judgment is *quod computet*, on which the Defendant is taken by *Capias ad computandum*: But there are two Judgments in this Writ, for if the Defendant cannot avoid the Suit by Plea, Judgment is firſt given, *That he do Accompt*; and having done this before the Auditors, there is another Judgment entered, that the Plaintiff ſhall recover of the Defendant ſo much as is found in Arrears. 11 *Rep.* 40. The firſt Judgment is but an Award of the Court, like to a Writ to enquire of Damages; and theſe two Judgments depend one upon another: For if Judgment be to *Accompt*, and the Party die before he hath *accounted*, the Executor cannot proceed in the Action, but it muſt be begun again; and no Writ of Error will lie upon the firſt 'till after the ſecond Judgment. *Ibid.* Where a *Scire Facias* lies upon the Record in this Action *ad Computandum*, for the Plaintiff to proceed, *&c.* See 1 *Cro.* 19. The Proceſs in *Accompt*, is Summons, *Pone* and Diſtreſs, and upon a *Nihil* returned, the Plaintiff may proceed to Outlawry. The Statute of Limitations, 21 *Jac.* 1. doth not bar a Man who is a Merchant from bringing Action of *Accompt* for Merchandize at any Time: But all other Actions of *Accompt* are within the Statute. In *Chancery* an *Accompt* fifteen or twenty Years ſtanding, the Defendant may be allowed to prove on his own *Oath*, what he can't otherwiſe make Proof of; but here the Particulars muſt be named, as to whom the Money was paid, for what, and when, *&c.* 1 *Chan. Rep.* 146. And a Defendant ſhall be diſcharged upon his Oath of Sums under 40 *s.* tho' it is held a Plaintiff ſhall not ſo charge another, or be allowed any Thing in Equity on his Oath. 2 *Chan. Caſ.* 249. 1 *Vern.* 283. See *Oath.*

A *Writ* of *Accompt* to the Sheriff of the County.

GEORGE *the Second*, &c. *To the Sheriff of* W. *Greeting: We command you that*, &c. A. B. *that he juſtly and without Delay render to* C. D. *his reaſonable Accompt, for the Time he was Bailiff of the ſaid* C. *in*, &c. *And Receiver of the Monies of him* C. *as may be reaſonably ſhewn, which to render him he ought, that no mere Clamour thereof we may hear for Default of Juſtice.* Witneſs, &c.

Accomptant General, A new Officer in the Court of *Chancery*, appointed by Act of Parliament, to receive all Money lodged in Court, in the Place of the Maſters, &c. He is to convey the Money to the Bank, and take the ſame out by Order; and ſhall only keep the Account with the Bank, for the Bank is to be anſwerable for all Money received by them, and not the *Accomptant General*, &c. *Stat.* 12 *Geo.* 1. *c.* 32. No Fees ſhall be taken by this Officer or his Clerks, on Pain of being puniſhed for Extortion; but they are to be paid Salaries, the *Accomptant General* 650*l.* per Annum, out of Intereſt made of Part of the Suitor's Money. 12 *Geo.* 2. *cap.* 24.

Accord, (*French*) Is an Agreement or Concordance between two or more Perſons, where any one is injured by a Treſpaſs, or Offence done, or on a Contract, to ſatisfy him with ſome Recompence; which if executed and performed, ſhall be a good Bar in Law, if the other Party after the *Accord* performed bring any Action for the ſame. *Terms de ley* 14. And it is to be obſerved that *Accord* executed only is pleadable in Bar, and Executory not. 1 *Mod* 69. Alſo in Pleading it, 'tis the ſafeſt Way of Satisfaction, and not of *Accord* alone. For if it be pleaded by Way of *Accord*, a preciſe Execution thereof in every Part muſt be pleaded: But by Way of Satisfaction, the Defendant need only alledge, that he paid the Plaintiff ſuch a Sum, &c. in full Satiſfaction of the *Accord*, which the Plaintiff received. 9 *Rep.* 80. The Defendant muſt plead that the Plaintiff accepted the Thing agreed upon in full Satiſfaction, &c. And if it be on a Bond, it muſt be in Satisfaction of the Money mentioned in the Condition, and not of the Bond; which can't be diſcharged but by Writing under Hand and Seal. *Cro. Jac.* 254, 650. When a Duty is created by Deed in Certainty, as by Bill, Bond, or Covenant to pay a Sum of Money, this Duty accruing by Writing, ought to be diſcharged by Matter of as high a Nature; but when no certain Duty ariſes by Deed, but the Action is for a Tort or Default, &c. for which Damages are to be recovered, there an *Accord* with Satisfaction is a good Plea. 6 *Rep.* 43. As a Contract upon Conſideration may commence by Words; ſo by an Agreement by Words for any valuable Conſideration, the Agreement may be diſſolved. In *Accord*, one Promiſe may be pleaded in Diſcharge of another, before Breach; but after Breach, it cannot be diſcharged witout a Releaſe in Writing. 2 *Mod.* 44. *Accord* with Satisfaction, is no Plea to a Covenant not broken; for the Covenant being created by Deed, by Deed muſt be diſcharged: But upon a Covenant broken, it is a good Plea in Satisfaction and Diſcharge of the Damages. *Lutw.* 359. And *Accord* made before the Covenant broke, hath been adjudged a good Bar of Action of Covenant, as it may be in Satisfaction of Damage to come. 1 *Danv. Abr.* 546. If a Contract without Deed is to deliver Goods, &c. there Money may be paid by *Accord* in Satisfaction: But if one is bound in an Obligation to deliver Goods, or to do any collateral Thing, the Obligee can't by *Accord* give Money in Satisfaction thereof: Though when one is bound to pay Money, he may give Goods or any other valuable Thing in Satisfaction. 9 *Rep.* 78. 1 *Inſt.* 212. Where Damages are uncertain, a leſſer Thing may be done in Satisfaction, and in ſuch Caſe an *Accord* and Satisfaction is a good Plea; but in Action of Debt on a Bond, there a leſſer Sum cannot be paid in Satisfaction of a greater. 4 *Mod.* 88. *Accord* with Satisfaction is a good Plea in perſonal Actions, where Damages only are to be recovered; and in all Actions which ſuppoſe a Wrong, *Vi & Armis*, where a *Capias* and *Exigent* lay at the Common Law, in Treſpaſs and Ejectment, Detinue, &c. *Accord* is a good Plea: So in an Appeal of Maihem. But in real Actions it is not a good Plea. 4 *Rep.* 1, 9, 70. 9 *Rep.* 77. Of late it hath been held, that upon mutual Promiſes an Action lies, and conſequently there being equal Remedy on both Sides, an *Accord* may be pleaded without Execution, as well as an Arbitrament. *Raym.* 450. 2 *Jones* 158. Acceptance of the Thing agreed on in theſe *Accords* is the only material Thing to make them binding. *Hob.* 178. 5 *Mod.* 86.

Accroche, (from the French *Accrocher*) To hook or grapple unto: It ſignifies as much as to encroach, and is mentioned in the Statute 25 *Ed.* 3. *c.* 8. to that Purpoſe. The *French* uſe it for Delay, as *Accrocher un Proceſ.* to ſtay the Proceedings in a Suit.

Accuſation, (*Accuſatio*) To charge any Perſon with a Crime. By *Magna Charta*, no Man ſhall be impriſoned or condemned on any *Accuſation*, without Trial by his Peers, or the Law. 9 *H.* 3. None ſhall be vexed upon any *Accuſation*, but according to the Law of the Land: And no Man may be moleſted by Petition to the King, &c. unleſs it be by Indictment, or Preſentment of lawful Men, or by Proceſs at Common Law. 25 *Ed.* 3. 28 *E.* 3. *c.* 3. None ſhall be compelled to anſwer an *Accuſation* to the King, without Preſentment, or ſome Matter of Record. *Stat.* 42 *Ed.* 3. Promoters of Suggeſtions are to find Surety to purſue them, and not making them good, ſhall ſatisfy Damages to the Party *accuſed*, and pay a Fine to the King. 38 *Ed.* 3. *c.* 9. In Treaſon there muſt be two lawful *Accuſers*. *Stat.* 5 & 6 *Ed.* 6 A Perſon is not obliged to anſwer on Oath to a Matter by which he may *accuſe* himſelf of any Crime, &c. 2 *Mod. Rep.* 278.

Acephali, The Levellers in the Reign of King *Hen.* 1. who acknowledged no Head or Superior. *Leges H.* 1. They were reckoned ſo poor that they had not a Tenement by which they might acknowledge a ſuperior Lord. *Du Cange.*

Ac etiam Bille, Words or a Clauſe of a Writ, where the Action requires good Bail. The Stat. 13 *Car.* 2. *c.* 2. which injoins the Cauſe of Action to be particularly expreſſed in the Writ or Proceſs which holds a Perſon to Bail, hath ordained the Inſerting of this Clauſe in Writs; but it ought not to be made out againſt a Peer of the Realm, or upon a penal Statute, or againſt an Executor or Adminiſtrator, or for any Debt under 10*l.* Nor in any Action of Account render, Action of Covenant, &c. unleſs the Damages are 10*l.* or more: Nor in Action of Treſpaſs, or for Battery, Wounding or Impriſonment; except there be an Order of Court for it, or a Warrant under the Hand of one of the Judges of the Court out of which the Writ Iſſues. 1 *Lill. Abr.* 13.

Achat, (Fr. *Achet*) Signifies a Contract or Bargain. Purveyors by Statute 36 *Ed.* 3. were called *Achators*, from their frequent making of Bargains.

Acherſet, A Meaſure of Corn, conjectured to be the ſame with our Quarter or eight Buſhels. The Monks of *Peterborough* had an Allowance weekly of twelve *Acherſetos* de frumento, and eight *Acherſetos* de Braſio, and Six *de Grad.* and eleven *Acherſetos* de fabis, &c.

Acholite, (*Acholitus*) An inferior Church Servant, who, next under the Subdeacon, followed or waited on the Prieſts and Deacons, and performed the meaner Offices of lighting the Candles, carrying the Bread and Wine, and paying other ſervile Attendance.

Acknowledgment Money, Is a Sum paid in ſome Parts of *England* by Tenants on the Death of their Landlords, as an Acknowledgment of their new Lords; in like Manner as Money is uſually paid on the Attornment of Tenants.——*Solvet* XIId. *ad Recognitionem cujuſlibet novi Domini de* Hope, &c.——*Ex libro Cart. Prior.* Leominſtriæ.——It is in *Latin* called, *Laudativum vel Laudemium, a laudando Domino.*

Acquietantia de Shiris & Hundredis, To be free from Suits and Services in Shires and Hundreds.

Acquietandis Plegiis, A Writ of *Juſticies* lying for the Surety againſt a Creditor, who refuſes to acquit him after the Debt is ſatisfied. *Reg. of Writs* 158.

Acquietare, Is a Law-Word, ſignifying *quietum reddere. Dr. Wilk. Gloſſ.* And it alſo ſometimes ſignifieth to pay. *Mon. Angl. Tom.* 1. *fol.* 199.

Acquittal, (from the *French* Word *Acquitter*, and the *Latin* Compound *Acquietare*) To free or diſcharge: It ſignifies in one Senſe to be free from Entries and Moleſtations of a ſuperior Lord for Services iſſuing out of Lands; and in another Signification (the moſt General) it is taken for a Deliverance and Setting free of a Perſon from the Suſpicion of Guilt; as he that on Trial is diſcharged of a Felony, is ſaid to be *Acquietatus de Felonia*; and if he be drawn in Queſtion again for the ſame Crime, he may plead *auter foits acquit*; as his Life ſhall not be twice put in Danger for the ſame Offence. 2 *Inſt.* 385. When two are indicted, the one as Principal, and the other as Acceſſary, the Principal being diſcharged, the Acceſſary of Conſequence will be *acquitted* by Law: *Acquittal* in Fact, is when a Perſon is found Not guilty of the Offence by a Jury, on Verdict, &c. But in Murder, if a Man is *acquitted*, Appeal may be brought againſt him. 3 *Inſt.* 273. If one be *acquitted* on an Indictment of Murder, ſuppoſed to be done at ſuch a Time; and after indicted again in the ſame County, for the Murder committed at another Time; here notwithſtanding that Variance, the Party may plead *auter foits Acquit*, by averring it to be the ſame Felony: So where a Perſon is indicted a ſecond Time, for Robbery upon the ſame Perſon, but at another Vill, &c. But if there be an Indictment againſt him in another County, for a Felony there done 'tis ſaid he ſhall not plead *Acquittal* of the ſame Felony in the County where firſt indicted; tho' it has been held to be otherwiſe on an Appeal. 2 *Hale*'s *Hiſt. P. C.* 244, 245. And under *Larceny* the contrary is in 2 *Hawk.* 370. Where a Man is diſcharged on ſpecial Matter found by the Grand Jury, yet he may be indicted *de novo* ſeven Years afterwards, and cannot plead this *Acquittal*; as he may upon the ſpecial Matter found by the Petit Jury, and Judgment given thereon. *Ibid.* 246. If a Perſon is lawfully *acquitted* on a malicious Proſecution, he may bring his Action, &c. for Damages, after he hath obtained a Copy of the Indictment and the Judge's Certificate: But it is uſual for the Judges of Gaol-Delivery to deny a Copy of an *Acquittal* to him who intends to bring an Action thereon, when there was probable Cauſe for a Criminal Proſecution. *Carthew*'s *Rep.* 421. A Son in Law indicted his Mother for poiſoning her Husband his Father, and ſhe being *acquitted*, brought an Action for a malicious Proſecution againſt him, and recovered Damages; and he, to requite her Kindneſs, brought an Appeal of Murder, on which ſhe was tried, convicted and executed. *Cro. Car.* 383. Alſo a Fellow having brought an Action for ſaying of him he was a Highway-man; and it appearing upon Evidence he was ſo, he was taken in Court, committed to *Newgate*, and convicted and hanged the next Seſſions. *Mod. Caſ.* 217. An Offender may be *acquitted* by the King's Pardon, or Proclamation. *Staundf.* 168.

Acquittance, (*Acquietantia*) ſignifieth a Diſcharge in Writing, of a Sum of Money, or Debt due; as where a Man is bound to pay Rent reſerved upon a Leaſe, &c. And the Party to whom due, on Receipt thereof gives a Writing under his Hand witneſſing that he is paid: This will be ſuch a Diſcharge in Law, that he cannot demand and recover the Sum or Duty again, if the *Acquittance* be produced. *Terms de Ley* 15. *Dyer* 6. 25, 51. An *Acquittance* is a Diſcharge and Bar in the Law, to Actions, &c. And if one acknowledges himſelf to be ſatisfied by Deed, it may be a good Plea in Bar, without any Thing received: But an *Acquittance*, without Seal, is only Evidence of Satisfaction, and not pleadable; for no Deed ſignifies a Deed of *Acquittance*. 1 *Inſt.* 52. The Obligor is not bound to pay Money upon a ſingle Bond, except an *Acquittance* be given him by the Obligee: Nor is he obliged to pay the Money before he hath the *Acquittance*. But in Caſe of an Obligation with a Condition, it is otherwiſe; for there one may aver Payment. And by 3 & 4 *Ann. c.* 16. If an Action of Debt is brought upon a ſingle Bill, and the Defendant hath paid the Money, ſuch Payment may be pleaded in Bar of the Action. 'Tis obſerved, that a general Receipt or *Acquittance* in full of all Demands, will diſcharge all Debts, except ſuch as are on Specialty, *viz.* Bonds, Bills and other Inſtruments ſealed and delivered; on which Account thoſe can only be deſtroyed by ſome other Specialty of equal Force, ſuch as a General Releaſe, &c. There being this Difference between that and the *general Acquittance*. See 2 *Cro.* 650. A Servant may give an *Acquittance* for the Uſe of his Maſter, where ſuch Servant uſually receives his Maſter's Rents, &c. and the Maſter ſhall be bound by it. 1 *Inſt.* 112. The Manner of Tender and Payment of Money ſhall be generally directed by him who pays it, and not by him who receives it; and the *Acquittance* ought to be given accordingly.

Acre, (from the *German* Word *Acker*, i. e. *Ager*) A Quantity of Land, containing in Length 40 Perches, and in Breadth four Perches: Or in Proportion to it, be the Length or Breadth more or leſs. By the Cuſtoms of Countries, the Perch differs in Quantity, and conſequently the *Acres* of Land: It is commonly but 16 Feet and a Half; but in *Staffordſhire* it is 24 Feet. According to the Statute 34 *Hen.* 8. concerning the Sowing of Flax, it is declared that 160 Perches make an *Acre*, which is 40 multiplied by Four: And the Ordinance of meaſuring Land, 35 *Ed.* 1. agrees with this Account. The Word *Acre* formerly meant any open Ground or Field; as *Caſtle-Acre*, *Weſt-Acre*, &c. and not a determined Quantity of Land. Alſo *Acre*, or *Acre-fight*, is an old Sort of Duel fought by ſingle Combatants, *Engliſh* and *Scotch*, between the Frontiers of their Kingdoms, with Sword and Lance; and this Duelling was called Camp-fight, and the Combatants Champions, from the open Field that was the Stage of Trial.

Actilia, Military Utenſils.——*Quilibet paratus ſit cum* Actiliis & *Harneſiis*, &c. & *quicunq; habet decem Libras in bonis*, & *non habuerit omnia cremorum* Actilia, *perdat omnia bona.* Du Cange.

Action, (*Actio*) Is the Form of a Suit given by Law for Recovery of that which is one's Due: Or it is a legal Demand of a Man's Right. 1 *Inſt.* 285. The learned *Bracton* thus defines it, *Actio nihil aliud eſt quam jus proſequendi in Judicio quod alicui debetur.* And *Actions* are either *Criminal* or *Civil*; Criminal, to have Judgment of Death, as Appeals of Death, Robbery, &c. or only to have Judgment for Damage to the Party, Fine to the King and Impriſonment, as Appeals of Maihem, &c. 1 *Inſt.* 284. 2 *Inſt.* 40. Civil *Actions* are ſuch which tend only to the Recovery of that which by Reaſon of any Contract, &c. is due to us; as *Action* of Debt, upon the Caſe,

&c. 2 *Inſt.* 61. There are alſo *Actions Penal*; which lie for ſome Penalty or Puniſhment in the Party ſued, be it corporal or pecuniary. *Bract.* *Actions upon the Statute*, brought upon the Breach of any Statute, whereby an *Action* is given that lay not before: As where one commits Perjury to the Prejudice of another, the Party that is injured ſhall have a Writ upon the Statute. *Actions Popular*, given on the Breach of ſome penal Statute, which every Man hath a Right to ſue for himſelf and the King, by Information, &c. And becauſe this *Action* is not given to one eſpecially, but generally to any that will proſecute, it is called *Action Popular*. Theſe laſt *Actions* may be rank'd under *Criminal Actions*: And *Actions Civil* are divided into *Real*, *Perſonal* and *Mix'd*. *Action Real* is that *Action* whereby a Man claims Title to Lands, Tenements or Hereditaments, in Fee, or for Life: And theſe *Actions* are Poſſeſſory, or Aunceſtrel; Poſſeſſory, of a Man's own Poſſeſſion and Seiſin; or Aunceſtrel of the Poſſeſſion or Seiſin of his Anceſtor. *Action Perſonal* is ſuch as one Man brings againſt another, on any Contract for Money or Goods, or on Account of any Offence or Treſpaſs; and it claims a Debt, Goods, Chattels, &c. or Damages for the ſame. *Action Mix'd* is an *Action* that lieth as well for the Thing demanded, as againſt the Perſon that hath it; on which the Thing is recovered, and likewiſe Damages for the Wrong ſuſtained: It ſeeks both the Thing whereof a Man is deprived, and a Penalty for the unjuſt Detention. But Detinue is no *Action mix'd*, notwithſtanding the Thing demanded and Damages for with-holding it be recovered; for it is an *Action* merely perſonal, brought only for Goods and Chattels. In a *Real Action*, ſetting forth the Title in the Writ, ſeveral Lands held by ſeveral Titles may not be demanded in the ſame Writ: In *Perſonal Actions*, ſeveral Wrongs may be comprehended in one Writ. 8 *Rep.* 87. A Bar is perpetual in *Perſonal Actions*, and the Plaintiff is without Remedy, unleſs it be by Writ of Error or Attaint: But in *Real Actions*, if the Defendant be barred, he may commence an Action of a higher Nature, and try the ſame again. 5 *Rep.* 33. *Action of Waſte* ſued againſt Tenant for Life, is in the Realty and Perſonalty; in Realty, the Place waſted being to be recovered, and in the Perſonalty, as treble Damages are to be recovered. 1 *Inſt.* 284. If a Diſſeiſor make a Feoffment to another, the Diſſeiſee ſhall have Aſſiſe of *Novel Diſſeiſin* againſt the Diſſeiſor and the Feoffee, and recover Seiſin of the Lands, and Damages for the Profits: And ſo it is of *Actions mix'd*, not only in Waſte, but *Quare Impedit*, &c. *Terms de Ley* 18. But if a Leſſee for Years commit Waſte, and dies, *Action of Waſte* may not be had againſt his Executor or Adminiſtrator, for Waſte done by the Deceaſed. And where a Keeper of a Priſon permits one in Execution to eſcape, and afterwards dieth, no *Action* will lie againſt his Executors. Alſo if a Battery be committed on a Man, and he that is the Aggreſſor, or the Party on whom committed, die, the *Action* is gone: For *Perſonal Actions* die with the *Perſon*. 1 *Inſt.* 53. *Actions Real* and *Mix'd*, Ejectment, Waſte, Treſpaſſes, *Quare Clauſum fregit*, &c. are to be laid in the ſame County where the Land lieth: *Perſonal* and *Tranſitory Actions*, as Debt, Detinue, Aſſault and Battery, &c. may be brought in any County, (except it be againſt Officers of Places, &c. by Statute 21 *Jac.* 1.) 1 *Inſt.* 282. *Actions Tranſitory* may be laid in any County, altho' the Statute 6 *R.* 2. enacted, That Writs of Debt, Account, &c. ſhould be commenced in the County where the Contracts were made; for that Statute was never put in Uſe; and yet generally *Actions* have been laid in the County where the Cauſe of them was ariſing. If the Cauſe of Action ariſe in two Counties, an *Action* may be brought in either County: But if a Nuſance be erected in one County, to the Damage of a Man in another, the Aſſiſe muſt be brought *in Confinio Comitatuum*. *Mich.* 8 *Ann.* *B. R.* *Actions* are ſaid to be perpetual and temporal; perpetual, thoſe which cannot be determined by Time; and all *Actions* may be called perpetual that are not limited to Time for their Proſecution: *Temporary Actions* are thoſe which are expreſly limited: As for Example; the Statute 7 *H.* 8. *c.* 3. gives *Action* within four Years after the Offence committed: The 1 *Ed.* 6 *c.* 1. within three Years: The 31 *Eliz.* *c.* 5. within one Year, &c. Since the Statute of Limitations, all *Actions* ſeem to be temporary; or not ſo perpetual, but they may in Time be preſcribed againſt: A *Real Action* may be preſcribed againſt within five Years, on a Fine levied, or Recovery ſuffered. By Stat. *Hen.* 8. A Writ of Right for Recovery of Lands is to be brought within ſixty Years: By 21 *Jac.* 1. Writs of *Formedon* for any Title to Lands in *Eſſe*, are to be ſued within twenty Years: *Actions* of Debt, on the Caſe, of Account, Detinue, Trover and Treſpaſs, are to be brought within ſix Years; of Aſſault and Battery within four Years; and Slander within two Years: But the Right of *Action* in theſe Caſes is ſaved to Infants, Feme Coverts, Perſons beyond Sea, &c. And on a freſh Promiſe the Time limited may be enlarged; alſo the Taking out and Filing of a Writ, is a good bringing of an *Action* to avoid the Statute of Limitations. 1 *Lill.* 19. *Actions* are joint or ſeveral; joint, where ſeveral Perſons are equally concerned, and the one cannot bring the *Action*, or cannot be ſued, without the other; Several, in Caſe of Treſpaſs, &c. done, where Perſons are to be ſeverally charged, and every Treſpaſs committed by many is ſeveral. 2 *Leon.* 77. A Man attainted of Treaſon or Felony, convict of Recuſancy, an Outlaw, excommunicated Perſon, convict of *Præmunire*, an alien Enemy, &c. cannot bring an *Action*, till Pardon, Reverſal, Abſolution, &c. But Executors or Adminiſtrators being outlawed, may ſue in the Right of the Teſtator or Inteſtate; though not in their own Right. A Feme Covert muſt ſue with her Husband: And Infants are to ſue by Guardian, &c. 1 *Inſt.* 128. *Actions* may be brought againſt all Perſons, whether attainted of Treaſon or Felony, a convict Recuſant, outlawed and excommunicate, &c. and a Feme Covert muſt be ſued with her Husband. A *Scire facias*, or any Writ to which the Defendant may plead, or by which a Plaintiff may recover, is an *Action*. 6 *Rep.* 3. *Salk.* 5. But where it appears upon the Record, that an *Action* is brought before the Cauſe of *Action* ariſes, either in the Declaration or Verdict, or otherwiſe by the Plaintiff's own Shewing, he ſhall never recover. 3 *Salk.* A Plaintiff may ſue out a *Latitat* before the Cauſe of *Action*; but he cannot declare 'till after the Cauſe of *Action* doth ariſe. *Mod. Caſ. in L. and E.* 344. Right and Wrong are the Mother of all *Actions*; and therefore no *Action* can be brought without the having of a Right, and the Laying of a Wrong done before the *Action*. *Hob.* 198. In every *Action*, and the Proceeding thereupon, three Things are to be done; firſt the Cauſe or Matter of Fact muſt be ſhewed, and this the Parties muſt do: then the Law is to be ſhewed, and Judgment given according to it, which the Judges are to do; and then their Judgment muſt be executed by the Officers of the Court. *Plowd.* 36. Alſo in all *Actions*, there muſt be a Perſon able to ſue; the Party ſued muſt be one ſuable for the Thing laid; and the Plaintiff is to bring his Right and proper *Action* which the Law gives him for Relief. 1 *Shep. Abr.* 20. There are three Sorts of *Damages* or Wrongs, either of which is a ſufficient Foundation for an *Action*. 1. Where a Man ſuffers Damage in his *Fame* and Credit. 2. Where one has Damage to his Perſon, as by Impriſonment, Battery, &c. which reſpects his *Liberty*. 3. Where a Perſon ſuffers any Damage in his *Property*. *Carth. Rep* 416. If a Thing that is an Injury to a particular Perſon, is prohibited by Act of Parliament, the Party may have his *Action*, and yet 'tis indictable alſo. *Comberb.* 374. And *Injuria & Damnum* are the Foundations of *Actions on the Caſe*.

Action upon the Caſe, (*Actio ſuper Caſum*) Is a general *Action* given for Redreſs of Wrongs and Injuries, done without Force, and by Law not provided againſt, in Order to have Satisfaction for Damages: And in *Actions upon the Caſe*, the like Proceſs is to be had as in *Actions* of Treſpaſs or Debt. 19 *H.* 7. *c.* 9. *Terms de Ley* 17. It is called *Action of the Caſe*, becauſe the whole Cauſe or *Caſe*, ſo much as in the Declaration, (except Time and Place) is ſet down in the Writ; and there is no other Action given in the Caſe, ſave only where the Plaintiff hath his Choice to bring this or other *Action*. If my Fire, by Misfortune, burn the Goods of another Man; for this Wrong, he ſhall have *Action on the Caſe* againſt me: And if my Servant puts a Candle or other Fire in any Place in my Houſe, and this burns all my Houſe and the Houſe of my Neighbour, *Action of the Caſe* lies for him againſt me. 1 *Danv.* 10. But ſee the Stat. 6 *Ann.* and 10 *Ann. c.* 14. If a Perſon delivereth Goods to a common Carrier, to carry them to a certain Place, and he loſeth them, *Action upon the Caſe* lies againſt him; for by the common Cuſtom of the Realm he ought to carry them ſafely: It is the ſame of a common Hoyman or Lighterman, who is a Water-Carrier of Goods; but Goods in this Caſe, may be thrown over-board in a Tempeſt, to preſerve the Paſſengers Lives in the Lighter, &c. and no *Action* lie. 2 *Bulſt.* 280. If a common Carrier is robbed of Good, he is chargeable for them, becauſe he had his Hire, and took upon himſelf the ſafe Delivery of the Goods therefore: And tho' a Perſon doth not acquaint the Carrier with all the Particulars in a Box, as that there is ſuch a Sum of Money, &c. the Carrier ſhall anſwer for the Money, if robbed: Tho' a ſpecial Acceptance may excuſe him. 1 *Danv.* 13. A common Inn-keeper is chargeable for Goods ſtolen in his Houſe: And if the Inn-keeper be not of ſound Memory, it is ſaid *Action* lies againſt him; But if the Inn-keeper be an Infant, no *Action* will lie againſt ſuch Infant. The Perſon robbed muſt be a Traveller, and Gueſt in the Inn; If the Goods are committed to the Hoſt upon another Account, and are ſtolen, no *Action* will lie. So if a Man comes to an Inn, and leaving Goods there, goes away for two or three Days, if in that Time they are ſtolen, no *Action* lies againſt the Inn-keeper; for at the Time of the Stealing he was not his Gueſt: But where a Man comes on Horſeback to an Inn, and leaves his Horſe with the Hoſt, if he goes away from the Inn for ſeveral Days, and in his Abſence the Horſe is ſtole, the Inn-keeper ſhall be charged for it; becauſe he had Benefit by the Continuance of the Horſe with him, he being paid for it, and ſo the Owner was a Gueſt. *Moor* 877. If a Man upon a ſpecial Agreement boards in an Inn for any Time, and is robbed, the Inn-keeper ſhall not anſwer for it. *Latch* 127. An Inn-keeper is liable, tho' the Gueſt doth not acquaint him what Goods or Money he hath. 8 *Rep.* 33. If an Inn-keeper refuſe to entertain his Gueſt, this *Action* may be brought againſt him. *Dyer* 158. If a Mail is robbed, and Bills are loſt; by *Holt* Chief Juſtice, *Action* lies againſt the Poſt-Maſter, as againſt a common Carrier, &c. he being paid a Salary for doing his Duty; but 'twas over-ruled by the other Juſtices. 1 *Salk.* 17. This *Action* lies for Deceits in Contracts, Bargains and Sales: If a Vintner ſells Wine knowing it to be corrupt, as good and not corrupt, tho' without Warranty, *Action* lies. *Danv.* 173. So if a Man ſells a Horſe, and warrants him to be ſound of his Limbs, if he be not, *Action on the Caſe* lies. 11 *Hen.* 6. A Perſon warrants a Horſe Wind and Limb, that hath ſome ſecret Diſeaſe known to the Seller, but not to the Buyer, this *Action* may be brought: Tho' if one ſell a Horſe and warrant him ſound, and he hath at the Time viſible Infirmities, which the Buyer may ſee; *Action on the Caſe* will not lie. *Yelv.* 114. 2 *Cro.* 675. Where one ſells me any Wares or Commodities, and is to deliver that which is good, but delivers what is nought: Or ſells any Thing by falſe or deceitful Weights and Meaſures, with or without Warranty, *Action on the Caſe* lies; and ſo where a Man doth ſell corrupt Victuals, as Bread, Beer, or other Thing for Food, and knows it to be unwholſome. *Dyer* 75. 4 *Rep.* 18. 2 *Cro.* 270. Yet if the Buyer or his Servant ſhall ſee and taſte the Victuals, &c. and like and accept the ſame, no *Action* can be had. 7 *H.* 4. 16. Nor will *Caſe* lie upon a Warranty of what is out of a Man's Power, or of a future Thing; as that a Horſe ſhall carry a Man thirty Miles a Day, or the like. *Finch* 188. If a Man ſells certain Packs of Wool, and warrants that they are good and merchantable, if they are damaged, *Action of the Caſe* lies againſt him. 1 *Danv.* 187. The bare Affirmation by the Seller of a particular Sort of Diamond, without warranting it to be ſuch, will not maintain an *Action*. 2 *Cro.* 4. 196. But where a Man hath the Poſſeſſion of a perſonal Thing, the Affirming it to be his own, is a Warranty that it is ſo: Tho' 'tis otherwiſe in Caſe of Lands, where the Buyer at his Peril is to ſee that he hath Title. 1 *Salk.* 210. If a Perſon ſells to another Cattle or Goods, that are not his own, *Action of the Caſe* lies: So if he warrants Cloth to be of ſuch a Length, that are deficient of it. If a Taylor undertakes to make a Suit of Clothes, and ſpoils them, *Action* lies: And if a Carpenter promiſes to mend my Houſe before a certain Day, and doth not do it, by which my Houſe falls: Or if he undertakes to build a Houſe for me, and doth it ill, *Action on the Caſe* lies. 1 *Danv.* 32. If a Chirurgeon neglects his Patient, or applies unwholſome Medicines, whereby the Patient is injured, this *Action* lieth. And if a Counſel retained to appear on ſuch a Day in Court, doth not come, by which the Cauſe miſcarries, *Action* lies againſt him: So if after Retainer, he become of Counſel to the Adverſary againſt the Plaintiff. 11 *H.* 6. 18. For Stopping up a Water-courſe or Way; Breaking down a Man's Wall, Stopping of antient Lights, and for any private Nuſance to a Man's Water, Light, or Air, whereby a Perſon is damnified, this *Action* lieth. 1 *Cro.* 427. *Yelv.* 159. Where a Smith promiſes to ſhew my Horſe well, if he pricks him, *Action of the Caſe* lies; and ſo when he refuſes to ſhoe him, on which I travel without, and my Horſe is damaged. If a Horſe that is hired, hath been abuſed by the Rider, *Action* lies: So where Goods pawned are not delivered, on offering the Money: Where any one perſonates another, for Cheating at Gaming; where a Surety is not ſaved harmleſs, &c. 2 *Inſt.* 198. If I lend another my Horſe to ride ſo far, and he rides further, or forward and backward, or doth not give him Meat, this *Action* lieth. 1 *Cro.* 14. And where one lends me a Horſe for a Time, if he take him from me within that Time, or diſturb me before I have done what I hired him for; *Action of the Caſe* lies: And though I ride the Horſe out of the Way in my Journey, he may not take him from me. 8 *Rep.* 146. This *Action* lies, for keeping a Dog accuſtomed to bite Sheep; but not for a Man's Dog running at any Sheep, tho' he kills them, if it be without his Conſent. 1 *Danv. Abr.* 19. *Hetl.* 171. *Action of the Caſe* will lie againſt a Gaoler for putting Irons on his Priſoner; or putting him in the Stocks, or not giving ſufficient Suſtenance to him, being committed for Debt. *F. N B.* 83. The Maſter may in many Caſes have this *Action* againſt his Servant, Steward, or Bailiff, for any ſpecial Abuſe done to him; and for Negligence, &c. Alſo it lies for taking or enticing away my Servant, and retaining him; or threatning a Servant, whereby I loſe his Service. *Lane* 68. 1 *Cro.* 777. 1 *Shep. Abr.* 52, 59. A Servant is truſted with Goods and Merchandize conſign'd to him by a Merchant, to pay the Cuſtoms for them, and diſpoſe of them to Profit; if he to deceive the Merchant, and have Allowance for it on his Account, and to defraud the King, lands ſome of the Goods without paying the Cuſtoms, by which they are forfeited, *Action of the Caſe* lieth. *Lane* 65. 2 *Cro.* 266. If I truſt one to buy a Leaſe or other Thing for me, and he buyeth it for himſelf, or doth not buy it, this *Action* lies againſt him; but if he doth his Endeavour it ſufficeth. *Bro.* 117. And where a Man is diſturb'd in the Uſe of a Seat in the Church, which he hath had Time out of Mind: A Steward is hinder'd in the keeping of his Courts; a Keeper of a Foreſt diſturbed in taking the Profits of his Office; a Bailiff in diſtraining for an Amerciament, *&c.* *Action on the Caſe* will lie. *Bendl.* 89. *Lib. Intr.* 5. *Moor* 987. An *Action of the Caſe* lies for him in Reverſion, againſt a Stranger, for Damage to his Inheritance, tho' there be a Term *in Eſſe.* 3 *Lev.* 360. Alſo if a Leſſor comes to the Houſe he has demiſed, to ſee if it be out of Repair, or any Waſte be done, and meets with any Diſturbance therein; or if one diſturbs a Parſon in taking his Tithes, this *Action* lies. 2 *Cro.* 478. 2 *Inſt.* 650. And for ſetting up a new Mill on a River, to the Prejudice of another who hath an antient Mill, likewiſe an *Action* will lie. *Lib. Intr.* 9. The Things for which *Action of the Caſe* may be brought are generally diſtinguiſh'd into *Nonfeaſance*, where a Man omits that which he ought to do, and comprehends an *Aſſumpſit*, expreſſed or implied; *Misfeazance*, the doing of ſomething undertaken, or which the Law requires him to do, otherwiſe than he ought, by which Miſdoing the Plaintiff receives Damage; And *Malefeazance*, a doing of ſomething which ought not to be done at all, *&c.* And *Nonfeazance* may concern a Man's real Eſtate; as where there is a Charge upon any Perſon by reaſon of his Tenure, to repair any Houſe, Bridge, Way, Hedge, *&c.* and he doth it not, whereby the Plaintiff is prejudiced; alſo for refuſing to Grind at the Lord's Mill according to Tenure; or for not paying Toll of a Mill, Market, *&c.* *Misfeazance* may likewiſe regard a Man's Houſe or Lands, as well as his Goods and Cattle. 8 *Rep.* 146. 3 *Cro.* 498. 10 *Rep.* 139. *Co. Entr.* 10. And *Action of the Caſe* on *Aſſumpſit*, lies for not making a good Eſtate of Land ſold, according to Promiſe; not paying Money upon a Bargain and Sale, according to Agreement; not delivering Goods upon Promiſe, on Demand; This is by expreſs *Aſſumpſit*; and implied *Aſſumpſit* is where Goods are ſold, or Work is done, *&c.* without any Price agreed upon; on *Action of the Caſe* by *Quantum meruit*, the Law implies a Promiſe and Satisfaction to the Value. If a Man make a Leaſe for Years, rendring Rent, he cannot have *Action upon the Caſe ſur Aſſumpſit* for this Rent; but is to have *Action* of Debt on the real Contract. 1 *Danv.* 28. So it is upon Promiſe of Payment of Money on a Bond; unleſs there be a Collateral Promiſe: And for Breach of Promiſe made by Deed, Writ of Covenant is to be brought. 1 *Roll. Abr.* 517. *Indebitatus Aſſumpſit* will not lie upon a Bill of Exchange accepted; but *Action* upon the Cuſtom only. 1 *Vent.* 152. The Conſideration is the Ground of the common *Action on the Caſe*: And no *Action on the Caſe* lieth againſt a Man for a Promiſe where there is no Conſideration why he ſhould make the Promiſe. 1 *Danv.* 53. A Conſideration wholly paſt and executed before is not ſufficient to bring *Action of the Caſe. Moor* 820. But it may be good on Promiſe for Service done. 2 *Leon.* 225. A Perſon in Conſideration another hath built a Houſe, or acquitted him of a Treſpaſs, *&c.* promiſes to do ſome other Thing, or to pay ſo much Money; 'tis ſaid this is not a good Conſideration, to ground an Action, there appearing nothing but what is altogether paſt, without any Thing to continue it. *Moor* 220. *Stile* 465. Where a Plaintiff by the Defendant's Appointment paid a little before 20*l.* for a Debt of the Defendant, he promis'd to repay it on Demand; that Conſideration ſhall be held to be paſt, and the Judgment in the *Action* ſtayed. *Cro. Eliz.* 741. If a Man promiſe to do a Thing by ſuch a Day, without any Conſideration or Reward, and doth it not, no *Action* will lie; but if he actually enters upon the Performance of the Thing, and then neglects it to the Deceit of the Plaintiff, *Action on the Caſe* lies. *Trin.* 2 *Ann.* 3. *Salk.* 11. 'Tis ſaid the Folly of a Defendant hath been conſidered in ſome Promiſes, and reaſonable Damages given by the Jury. *Mod. Ca.* 305. The Perſon to whom a Promiſe is made, ſhall have the *Action*; and not thoſe who are Strangers, or for whoſe Benefit it is intended. *Danv.* 64. Nor ſhall *Action* be brought againſt one for what another receives, not at his Requeſt, *&c.* 1 *Salk.* 23. But if a Man delivers Money to *A. B.* to my Uſe, I may have an *Action on the Caſe* againſt him for this Money. If a Man accounts, and upon the Account is found in Arrear to a certain Sum, and preſently in Conſideration thereof aſſumes to pay the Debt at a Day; *Action on the Caſe* lies for this after the Day. *Yelv.* 70. And on a Promiſe to pay a Sum of Money, at ſo much a Month, an *Action of the Caſe* may be brought before the whole is payable; for it is grounded upon the Promiſe, which is broken by every Non-Payment, and Damages may be recovered: 'Tis not like the Caſe of a Bill of Debt, which is founded on the Specialty, and cannot be demanded until the intire Sum is due. 2 *Cro.* 504. If *Action on the Caſe* be upon a Special Promiſe, it is neceſſary to lay a good Conſideration, *&c.* And the Declaration may be laid on five ſeveral Counts or Promiſes, *viz.* *Aſſumpſit* for Promiſe of Payment of ſo much Money on ſuch a Day, *&c.* *Quantum valebat*, where Goods are deliver'd at no certain Price, to be paid ſo much as they are worth, *&c.* *Quantum meruit*, when a Man does work without making any Agreement for it, to be paid as much as he ſhall deſerve: *Indebitatus Aſſumpſit* for Debt in a Sum certain, *&c.* And *inſimul Computaſſet*, where the Parties have reckoned or accounted. Alſo ſometimes a *Mutuo dat & accommodat*, *&c.* is inſerted; and the Cauſe of laying the Declaration ſo many Ways, is, that you may be ſure by the Proofs to hit on one of the Promiſes. *Practiſ. Attorn.* 72, 73. For malicious Proſecutions, where a Suit is without Ground, and one is arreſted, *Action on the Caſe* lies for unjuſt Vexation: So for falſe Impriſonment. And for falſely and maliciouſly arreſting a Perſon for more than is due to the Plaintiff, whereby the Defendant is impriſoned, for Want of Bail; or if it be on Purpoſe to hold him to Bail, *Action on the Caſe* will lie, after the Original *Action* is determined. 1 *Lev.* 275. 1 *Salk.* 15. And *Action* likewiſe lies againſt Sheriffs, for Default in executing Writs; permitting Eſcapes, *&c.*

Action on the Caſe for Words, Is brought where a Perſon is injured and defamed in his Reputation. And for Words ſpoke of a Perſon, which affect his Life, Office, or Trade, or tend to his Loſs of Preferment in Marriage, Service, or to his Diſinheritance, or which occaſion any particular Damage, this *Action* may be had. To ſay of another, that he hath killed a Man, *Action* lies; though he did not deſign any particular Perſon. 1 *Danv.* 150. But not to ſay of a Man he deſerves to be hang'd: Nor to call another Rogue generally, or ſay he will prove him to be a Rogue; though it will lie to ſay a Man is a Rogue of Record. 4 *Rep.* 15. *Danv.* 92. Words which charge a Perſon, with being a Murderer, Highwayman or Thief, in expreſs Terms, are held *actionable.* 1 *Roll. Abr.* 47. Tho' for ſaying ſuch a one would have taken his Purſe on the Highway, or have robbed him, an *Action* lies not; for nothing is ſhewn to be done in order thereto. *Cro. Eliz.* 250. To ſay of another he is a Traitor, *Action* lies. 1 *Bulſt.* 145. If one call another a ſeditious traiterous Knave, no *Action* lieth; becauſe the Words imply an Intention only, and not an unlawful Act. 4 *Rep.* 19. To ſay that he is a Witch, and did bewitch ſuch a Perſon, &c. is *actionable*; but not to call a Perſon Witch, without more Words. 1 *Brownl.* 15. To ſay a Man was in Gaol for ſtealing any Thing, is not *actionable*, for the Words do not affirm the Theft. *Danv.* 104. But to call an honeſt Perſon Thief, or to ſay I will not keep a Thief, as *A. B.* doth; Or that I think *A. B.* committed ſuch a Felony; or I dreamt he ſtole a Horſe, &c. theſe are *actionable*. *Dal.* 144. 1 *Danv.* 105. If one ſay of another, thou art a Buggering Rogue, and I could hang thee, *Action* lies. 1 *Sid.* 373. And if a Man ſay, I know myſelf, and I know you, I never bugger'd a Mare, &c. it is *actionable*. To ſay of a Perſon, he hath perjured himſelf; or that he would prove him perjured; or that he was forſworn in the Court of Chancery, Common Pleas, &c. are *actionable*: But not to call a Perſon forſworn Man, unleſs it be ſaid in a Court of Record. 3 *Inſt.* 163. *Danv.* 87, 89. If a Man ſay he gave another Money for forſwearing himſelf; or call him perjured Knave, *Action* will lie. To ſay a Man hath forged an Obligation, &c. and he will prove it; this is *actionable*. *Danv.* 130. When ſuch Words are ſpoken of another maliciouſly, for which Words, if true, ſuch other might be puniſhed, *Action* lies: As to ſay of a Man, he can prove him perjured, &c. Or if he might have his Will he would do ſuch a Thing, which Thing is *actionable*. 10 *Rep.* 130. If *A.* ſays that *B.* ſaid that *C.* did a certain ſcandalous Thing, *C.* ſhall have *Action* againſt *A.* with Averment that *B.* never ſaid ſo, whereby *A.* is the Author of the Scandal. *Cro. Jac.* 406. See 1 *Roll. Abr.* 64. If one ſay of a Biſhop, that he is a Papiſt, *Action* lies: So of a Member of Parliament, &c. To call any other Papiſt or Heretick, is not *actionable*. 2 *Brownl.* 166. Calling an Officer in the Government, &c. Jacobite, hath been held *actionable*; *aliter* of a private Perſon. *Farreſl. Rep.* 107. To ſay a Miniſter preacheth Lies in the Pulpit, *Action* lies: Not if the Words are, that he is a Preacher of falſe Doctrine. *Danv.* 119. If one ſays of a Parſon that he hath a Baſtard, whereby he receives Injury, it is *actionable*. 1 *Lev.* 248. To ſay a Juſtice of Peace doth not adminiſter Juſtice, is *actionable*. *Cro. Eliz.* 358. And ſo for other Diſgrace in his Office. To call an Attorney Rogue and Knave, in his Profeſſion; or Champertor and common Stirrer up of Suits; or ſay he is not fit to be an Attorney; or to ſay a Man is a cheating Knave; if it be in his Trade and Profeſſion, theſe are *actionable*. *Danv.* 111. *Moor* 261. To call a Clerk in Court corrupt Man, and ſay he deals corruptly, is *actionable*. 4 *Rep.* To ſay of a Counſellor, that he is no Lawyer; that they are Fools who come to him for Law, and that he will get nothing by the Law, *Action* lies. *Danv.* 113. And it is the ſame to ſay he hath diſcloſed Secrets in a Cauſe. To call a Doctor of Phyſick Fool, Aſs, Empirick and Mountebank, or ſay he is no Scholar, are *actionable*. *Cro. Car.* 270. So to ſay of a School-maſter, put not your Son to him, for he will come away as very a Dunce as he went. *Hetl.* 71. Where one ſays of a Midwife, that many have periſh'd for her Want of Skill, an *Action* will lie. *Cro. Car.* 211. If one calls a Merchant Bankrupt, *Action* lies. 1 *Leon.* 336. And to call a Trading Perſon Bankrupt Knave, is *actionable*. 1 *Danv.* 99. Alſo if one ſay of a Merchant, that he is a beggarly Fellow, and not able to pay his Debts: Or ſay of a Perſon that he is a Runnaway, and dares not ſhew his Face, by Reaſon whereof he is diſgraced and injured in his Calling, theſe are *actionable*. *Raym.* 184. To ſay an Alehouſe-keeper keeps a Bawdy-houſe, *Action* lies. *Cro. Eliz.* 582. Tho' to ſay of an Inn-keeper, that he harbours Rogues, &c. is not *actionable*; for his Inn is common to all Gueſts. 2 *Roll. Rep.* 136. To ſay of another he hath the *French* Pox, *Action* will lie. *Cro. Jac.* 430. But 'tis ſaid, if one ſay that he had the Pox, after cured, no *Action* lies; becauſe none will then avoid his Company, &c. *Noy* 151. To call a Man Whore-maſter, or a Woman Whore, no *Action* lies; for theſe are merely Spiritual. *Danv.* But calling a Woman Whore in *London*, is *actionable* by the Cuſtom of the City. And if one calls a Woman Copyholder, while ſhe is Sole, a Whore, an *Action* lies, by Reaſon of the ſpecial Damage that may ariſe thereby. 1 *Sid.* 214. In like Manner calling the Miſtreſs of a School Whore, may be held *actionable*. 1 *Vent.* 21. To ſay that a Woman hath a Baſtard, or is with Child; or that a certain Perſon hath had the Uſe of her Body, whereby ſhe loſes her Marriage, *Action* lies: Tho' not without ſpecial Damage, on *Action* at Common Law. 2 *Salk.* 696. If a Man is in Treaty with a Woman to Marry, and another tells him, She is under a Pre-contract; this doth not imply a Scandal, but yet if falſe, an *Action* will lie. *Mich.* 5 *Ann.* To ſay of a Man that he lay with a certain Woman, &c. by which he loſes his Marriage, is *actionable*; For in theſe Caſes there is a Temporal Damage. 1 *Danv.* 81. If one ſays of another that has Land by Deſcent, that he is a Baſtard; *Action upon the Caſe* lies, as it tends to his Diſinheritance. *Co. Ent.* 28. But to ſay of a Son and Heir apparent, that he is a Baſtard, *Action* lies not until he is diſinherited, or is prejudiced thereby. 1 *Danv.* 83. And though ſcandalous Words are ſpoken before a Man's Face, or behind his Back, by Way of Affirmation, or Report, when drunk, or ſober; and although they are ſpoke in any Language, if they are underſtood by the Hearers, they are *actionable*: Alſo Words may be actionable in one County, which are not ſo in another, by the different Conſtruction, &c. 4 *Rep.* 14. *Hob.* 165, 236. But if the Defendant can make Proof of the Words, he may plead ſpecial Juſtification. *Co. Ent.* 26. Yet where the Plaintiff has a Pardon, after an Offence committed, the Words are ſtill *actionable*. *Moor* 863. If Words may receive a double Interpretation, the one Way that they ſhall be *actionable*, and the other Way not, they ſhall be taken *in mitiori ſenſu*, ſo far as not to be *actionable*. *Cro. Jac.* 438. Therefore to ſay that a Man hath the Pox, when it may be the ordinary Diſeaſe; or that he is a Coiner of Money, when it may be his Trade, and he may do it by Authority, &c. no *Action* will lie: And yet in this Caſe, if the common and violent Senſe of the Words in the Import thereof be the worſe Senſe, they may be taken accordingly, and are liable to *Action*. 4 *Rep.* 20. *Hob.* 126. 3 *Cro.* 352. The Words to maintain this *Action* muſt be direct and certain, that there may be no Intendment againſt them: But as ſome Words ſeparate, without others joined with them, are not *actionable*; ſo ſome Words that are *actionable*, may be qualified by the precedent or ſubſequent Words, and all the Words are to be taken together. 4 *Rep* 17. 1 *Cro.* 127. *Moor Ca.* 174, 331. And ſome Writers make a Difference, where the ſubſequent Words are introduced by the Word *And*; as you are a Thief, and have ſtolen, &c. which are additional, and ſhall not correct; and the Word *For*; as you are a Thief, for you have, &c. *Hob.* 386. *Style* 115. *Godb.* 89. The Words, He is a Maintainer of Thieves, and keeps none but Thieves in his Houſe, will not ſupport an *Action*, unleſs it be averred that he knew them to be Thieves. 1 *Cro.* 746. Likewiſe where one calls a Tradeſman Cheater or Cozener, theſe Words bear no Action, without there be a *Collo-*

quium or Diſcourſe of Trade laid therein. *Hardr.* 8. 5 *Mod.* 398. Where Words ſpoken are ſomewhat uncertain, by the precedent Conference or ſome Circumſtance, with an Averment, they may be many Times made certain and *actionable.* 2 *Bulſt.* 227. So by the Pleadings of the Parties, and Verdict of a Jury for the Plaintiff. 2 *Cro.* 107. The Thing ſaid by the Words, muſt be that which is poſſible to have been done; for if it be of a Thing altogether and apparently impoſſible, no *Action* lies. 4 *Rep.* 16. For Words ſpoken in Purſuit of a Proſecution in an ordinary Courſe of Juſtice; and where a Lawyer in Pleading his Client's Cauſe, ſhall utter Words according to his Inſtructions; and to ſay of one he is a Baſtard, when this is to defend the Party's own Title, where he himſelf doth claim to be Heir of the Land that is in Queſtion; theſe Words will not bear an *Action.* 2 *Cro.* 90. 4 *Rep.* 13. If a Felony be done, and common Fame is that ſuch a Perſon did it, although one may charge or arreſt him on Suſpicion of that Felony; yet a Man may not affirm that he did the ſame, for he may be innocent all the while, and therefore affirming it hath been held *actionable. Hob.* 138, 203, 381. To ſlander the Title of another Perſon to his Lands is *actionable:* But the Words muſt be falſe, and be ſpoken by one that neither hath, nor pretendeth Title to the Land himſelf; and that is not of Counſel to him that pretends Right. 4 *Rep.* 17. If a Man ſhall pretend Title to the Land another hath in Poſſeſſion, and hath no Colour of Title to it; and ſhall ſay he hath ſuch a Deed or Conveyance of it, where in Truth he hath none, or if he hath any it is a Counterfeit and forged Deed, and he knows it to be ſo: In this Caſe the Words may bear an *Action*; but if there be any Colour for what is ſaid, they will not be *actionable.* 2 *Cro.* 339. *Yelv.* 80, 88. And the Party of whom the Words are ſpoken muſt have, or be likely to have ſome ſpecial Damage by the Speaking of them; as that he is hindered in the Sale of his Lands, or in his Preferment in Marriage, &c. without which it is ſaid *Action* doth not lie. 1 *Cro.* 99, 2 *Cro.* 213, 397. *Poph.* 187. 2 *Bulſt.* 90. The affirming that another hath Title to the Land, where *actionable*, ſee 4 *Rep.* 175. As to Words for which an *Action* lies, relating to a Man's Office, they muſt have a plain and direct Meaning, to charge him with ſome Crime that is puniſhable; and be ſpoken of his Office, or otherwiſe they are not *actionable.* 6 *Mod.* 200. In Offices of Profit, for ſuch Words as impute the want either of Underſtanding, Ability or Integrity to execute them, this *Action* lies. 2 *Salk.* 695. Where the Words are diſgracing a Man's Profeſſion, they alſo muſt appear to be ſpoke preciſely of it; for to ſay a Perſon has cozened one in the Sale of certain Goods, is not *actionable*; unleſs you ſhew that the Party lived by ſuch ſelling. 1 *Roll. Abr.* 62. And where Words are of a Carrier, that he is a common Barretor, no *Action* will lie. *Hob.* 140. In this *Action* the Nature of the Words muſt be ſet forth, with the Manner of ſpeaking them, the Time and Place, when and where ſpoken, and before whom, and the Damage thereby to the Plaintiff; what his Credit was, and how impaired, with the aggravating Circumſtances: But it matters not whether the Plaintiff doth in his Declaration ſet forth all the Circumſtantial Words as they are ſpoken; ſo as to ſhew the very Words that are *actionable*, and the Subſtance of them, &c.

Action Prejudicial, (otherwiſe called *Preparatory* or *Principal*) Is an Action which ariſes from ſome Doubt in the Principal; as in Caſe a Man ſues his younger Brother for Lands deſcended from his Father, and it is objected againſt him that he is a Baſtard: Now this Point of Baſtardy is to be pre-tried, *viz.* before the Cauſe can any further proceed: And therefore it is termed *Præjudicialis, quia prius Judicanda.* Bract. l. 3. c. 4.

Action of a Writ, Is a Term uſed when a Man pleads ſome Matter by which is ſhewn that the Plaintiff had no Cauſe to have the *Writ* which he brought: But it may be that he may have another *Writ* for the ſame Matter. It is called a *Plea to the Action of the Writ*, as a Diſtinction from a *Plea to the Action*; which is where the Plaintiff hath no Cauſe to have any *Action* for the Thing demanded. *Terms de Ley* 17.

Actionare, i.e. *In Jus vocare*, Or to proſecute one in a Suit at Law. *Thorn's Chron.*

Acton Burnel, The Stat. 13 *Ed.* 1. ſo called from its being made at a Place called *Acton Burnel*, a Caſtle in *Shropſhire*, anciently of the *Burnels*, and afterwards of the *Lovels:* It ordained the *Statute Merchant* for Recovery of Debts.

Actor, The Proctor or Advocate in Civil Courts or Cauſes: As *Actor Eccleſiæ* has been ſometimes uſed for the Advocate of the Church: *Actor Dominicus*, for the Lord's Attorney: *Actor Villæ*, the Steward or Head Bailiff of a Village.

Acts done, Are diſtinguiſhed into *Acts of God*, the *Acts of the Law*, and *Acts of Men.* The *Act of God* ſhall prejudice no Man: As where the Law preſcribeth a Means to perfect or ſettle any Right or Eſtate; if by the *Act of God* this Means in ſome Circumſtance become impoſſible, no Party ſhall receive any Damage thereby. *Co. Litt.* 123. 1 *Rep.* 97. The *Acts of Law* are eſteemed beyond the *Acts of Men:* And when to the Perfection of a Thing, divers *Acts* are required, the Law hath moſt Regard to the Original *Act.* 8 *Rep.* 78. The Law will conſtrue Things to be lawfully done, when it ſtandeth indifferent whether they ſhould be lawful or not: But whatſoever is contrary to Law, is accounted not done. 1 *Inſt.* 42. 3 *Rep.* 74. Our Law doth favour Subſtantial more than Circumſtantial *Acts*; and regards Deeds and *Acts* more than Words: And the Law doth not require unneceſſary Things. *Plowd.* 10. As to *Acts of Men*; that which a Man doth by another, ſhall be ſaid to be done by himſelf; but perſonal Things cannot be done by another. *Co. Litt.* 158. A Man cannot do an *Act* to himſelf, unleſs it be where he hath a double Capacity: No Perſon ſhall be ſuffered to do any Thing againſt his own *Act*; and every Man's *Acts* ſhall be conſtrued moſt ſtrongly againſt himſelf that doth them. *Plowd.* 140. But if many join in an *Act*, and ſome may not lawfully do it; it ſhall be adjudged the *Act* of him who might lawfully do the ſame. *Dyer* 192. *Acts* that Men are forced by Neceſſity and Compulſion to do, are not regarded: And an *Act* done between Perſons, ſhall not injure a Stranger not Party or Privy thereto. *Plow.* 19. 6 *Rep.* 16.

Acts of Parliament, Are poſitive Laws, conſiſting of two Parts, (*viz.*) the Words of the *Acts*, and the Senſe and Meaning of them, which being joined make the Law. The Words of *Acts of Parliament* ſhall be taken in a lawful Senſe: Caſes of the ſame Nature are within the Remedy, though out of the Letter of the *Act*; and ſome *Acts* extend by Equity to other Things than are mentioned therein, &c. 1 *Inſt.* 24, 381. Vide *Statute.*

Actuary, (*Actuarius*) A Clerk that regiſters the Acts and Conſtitutions of the Convocation.

Adcredulitare, To purge one's ſelf of an Offence by Oath.—— *Qui in Collegio fuerit ubi aliquis occiſus eſt*, Adcredulitet *ſe quod eum non percuſſit.* Leges Inæ, c. 36.

Addition, (*Additio*) Signifieth a Title given to a Man beſides his Chriſtian and Surname, ſetting forth his Eſtate, Degree, Trade, &c. As for Example; *Additions* of Eſtate are Yeoman, Gentleman, Eſquire, &c. *Additions* of Degree, are Knight, Earl, Marqueſs, and Duke: *Additions* of Trade, are Merchant, Clothier, Carpenter, &c. Then there are likewiſe *Additions* of Place of Reſidence, as *London*, *York*,

York, *Briſtol*, &c. And theſe *Additions* were ordain'd that one Man might not be grieved or moleſted for another: And that every Perſon might be certainly known, and bear his own Burden. If one be of the Degree of a Duke, Earl, &c. he ſhall have the *Addition* of the moſt worthy Dignity. 2 *Inſt.* 669. But the Titles of Duke, Marqueſs, and Earl, &c. are not properly *Additions*, but Names of Dignity. *Terms de Ley* 20. And the Title of Knight or Baronet, is Part of the Party's Name, and ought to be rightly uſed; but the Titles of Eſquire, Gentleman, Yeoman, &c. being no Part of the Name, but *Additions* as People pleaſe to call them, may be uſed or not uſed, or if varied is not material. 1 *Lill.* 34. An Earl of *Ireland* is not an *Addition* of Honour here in *England*, but ſuch a Perſon muſt be written by his Chriſtian and Surname, with the *Addition* of Eſquire only: And Sons of *Engliſh* Noblemen, altho' they have given them Titles of Nobility in reſpect to their Families; if you ſue them they muſt be named by their Chriſtian and Surnames, with the *Addition* of Eſquire, as ſuch a one Eſquire, *commonly called Lord* A. &c. 2 *Inſt.* 596, 666. By the Common Law, a Man that had no Name of Dignity, was named by his Chriſtian and Surname in all Writs; which was ſufficient. If he had an inferior Name of Dignity, as Knight, &c. he ought to be named by his Chriſtian and Surname with the Name of Dignity: But a Duke, &c. might be ſued by his Chriſtian Name only, and Name of Dignity, which ſtands for his Surname. 2 *Inſt.* 665, 666. By Stat. 1 *Hen.* 5. *cap.* 5. It is enacted, that in Suits or Actions where Proceſs of Outlawry lies, *Additions* are to be made to the Name of the Defendant, to ſhew his Eſtate, Myſtery, and Place of Dwelling; and that Writs not having ſuch *Additions* ſhall abate, if the Defendant take Exceptions thereto, but not by the Office of the Court. By pleading to Iſſue, the Party paſſes by the Advantage of Exception for Want of *Addition*; for by the Common Law it is good without *Addition*, and the Statute gives Remedy only by Exception. *Cro. Jac.* 610. 1 *Roll.* 780. No *Addition* is neceſſary, where Proceſs of Outlawry doth not lie. 1 *Salk.* 5. If a City be a County of itſelf, wherein are ſeveral Pariſhes, *Addition* thereof as *de London* is ſufficient: But *Addition* of a Pariſh, not in a City, muſt mention the County, or it will not be good. 1 *Danv.* 237. An *Addition* after the *Alias dictus* is ill; and according to *Holt* Chief Juſtice, if a Man of *Wilts* commit Felony at *Weſtminſter*, he ſhall be indicted by his Name, as of *Weſtm.* 3 *Salk.* 20.

Adeling, (from the Saxon *Ædelan*) Signifying Excellent, was a Title of Honour amongſt the *Angles*; properly belonging to the King's Children; it being uſual for the *Saxons* to join the Word *Ling* to the Chriſtian Name, which ſignified a Son, or the Younger: King *Edward the Confeſſor* having no Iſſue, and intending to make *Edgar*, his Nephew, the Heir of the Kingdom, gave him the Stile and Title of *Adeling*. Spelm. Gloſſ.

Ademption, or taking away of a Legacy; this ariſes from a ſuppoſed Alteration of a Teſtator's Intent, by calling in Money due to him on Bond, &c. that he had expreſly Deviſed by Will to another Perſon. *Talbot's Chan. Caſ.* See *Legacy*.

Ad Inquirendum, Is a Judicial Writ, commanding Enquiry to be made of any Thing relating to a Cauſe depending in the King's Courts. It is granted upon many Occaſions for the better Execution of Juſtice. *Reg. Judic.*

Adjournment, (*Adjournamentum*) The ſame with the *French* Word *Adjournement*, and ſignifies a putting off until another Day, or to another Place. As *Adjournment* in Eyre, by Stat. 25 *Ed.* 3. is an Appointment of a Day, when the Juſtices in Eyre will ſit again. A Court, the Parliament, and Writs, &c. may be *adjourn'd*; and the Subſtance of the *Adjournment* of Courts, is to give Licence to all Parties that have any Thing to do in Court to forbear their Attendance 'till ſuch a Time. Every laſt Day of the Term, and every Eve of a Day in Term, which is not *Dies Juridicus*, or a Law-Day, the Court is *Adjourn'd*; and it is uſually done two ſeveral Times, ſitting the Court. 2 *Inſt.* 26. The Terms may be *adjourned* to ſome other Place, and there the *King's Bench* and other Courts at *Weſtminſter* be held: And if the King puts out a Proclamation for the *Adjournment* of the Term, this is a ſufficient Warrant to the Keeper of the Great Seal to make out Writs accordingly; and Proclamation is to be made, appointing all Perſons to keep their Day, at the Time and Place, to which, &c. 1 *And.* 279. 1 *Lev.* 176. In the firſt Year of King *Car.* 1. a Writ of *Adjournment* was delivered to all the Juſtices, to *adjourn* two Returns of *Trinity*-Term: And in the ſame Year *Michaelmas*-Term was *adjourned* until *Craſtino Animarum* to *Reading*; and the King by Proclamation ſignified his Pleaſure, that his Courts ſhould be there held. *Cro. Car.* 13, 27. *Anno* 17 *Car.* 2. the Court of *B. R.* was *adjourned* to *Oxford*, becauſe of the Plague; and from thence to *Windſor*; and afterwards to *Weſtminſter* again. 1 *Lev.* 176, 178. On a foreign Plea pleaded in *Aſſiſe*, &c. the Writ ſhall be *adjourned* into the *Common Pleas* to be tried; and after *Adjournment*, the Tenant may plead a new Plea purſuant to the Firſt: But if he pleads in Abatement a Plea triable by the Aſſiſe, on which it is *adjourned*, he cannot plead in Bar afterwards, &c. 1 *Danv. Abr.* 249. The Juſtices of Aſſiſe have Power to *adjourn* the Parties to *Weſtminſter*, or to any other Place; and by the expreſs Words of *Magna Charta cap.* 12. they may *adjourn*, &c. into *C. B.* before the Judges there. *Dyer* 132. If the Judges of the Court of *King's Bench*, &c. are divided in Opinion, two againſt two, upon a Demurrer or ſpecial Verdict, (not on a Motion) the Cauſe muſt be *adjourned* into the *Exchequer Chamber*, to be determined by all the Judges of *England*. 3 *Mod.* 156. 5 *Mod.* 335. After Diſſolution or Prorogation of Parliament, and after *Adjournment* for above fourteen Days, Actions may be proſecuted againſt Perſons entitled to Privilege, &c. Stat. 12 *W.* 3.

Adiratus, A Price or Value ſet upon Things ſtolen or loſt, as a Recompence to the Owner. —*Poterit enim rem ſuam petere ut* Adiratam *per teſtimonium proborum hominum.* Bract. l. 3. tract. 2. cap. 32.

Adjudication, (*Adjudicatio*) A giving or pronouncing by Judgment, a Sentence or Decree. *Stat.* 16 & 17 *Car.* 2. *c.* 10.

Adjura Regis, A Writ brought by the King's Clerk preſented to a Living, againſt thoſe that endeavour to eject him, to the Prejudice of the King's Title. *Reg. of Writs* 61.

Ad Largum, At large: And there is *Title* at large, *Aſſiſe* at large, *Verdict* at large; to *vouch* at large, &c.

Adlegiare, Or *Aleier* in *French*, is for one to purge himſelf of a Crime by Oath. In the Laws of King *Alfred*, in *Brompt. Chron. cap.* 4. *Si ſe velit* adlegiare, &c. And *cap.* 13. *Si Accuſetur, inde* adlegiet *ſe per ſexaginta hidas*, &c.

Admeaſurement, (*Admenſuratio*) Is a Writ brought for Remedy againſt ſuch Perſons as uſurp more than their Share, to bring them to Reaſon. It lies in two Caſes; one is termed *Admeaſurement of Dower* (*Admenſuratio Dotis*) where a Man's Widow after his Deceaſe holdeth from the Heir more Land, &c. as Dower, than of Right belongs to her: And the other is *Admeaſurement of Paſture* (*Admenſuratio Paſturæ*) which lies between thoſe that have Common of Paſture appendant to their Freehold Eſtates, or Common by Vicinage, where any one or more of them ſurcharge the Common. *Reg. Orig.* 156, 171. In the firſt Caſe, the Heir ſhall have this Writ againſt the Widow, whereby ſhe ſhall be *admeaſured*, and the Heir reſtored to the Overplus;

and in the laſt Caſe, it may be brought againſt all the other Commoners, and him that ſurcharged; for all the Commoners ſhall be *admeaſured. Terms de Ley* 23. The Heir ſhall have a Writ of *Admeaſurement* of Dower, for Dower aſſigned in the Time of his Anceſtor: And if an Heir within Age aſſign unto the Wife more in Dower than ſhe ought to have, *&c.* the Guardian in Right may have a Writ of *Admeaſurement.* But if the Guardian aſſigns Dower more than ſhe ought to have, the Heir, during his Nonage, ſhall not have a Writ of *Admeaſurement* of Dower. 7 *Hen.* 2 4. 7 *E.* 2. *c.* 13. If the Wife after Aſſignment of Dower do improve the Land, and make it better than it was at the Time of the Aſſignment; an *Admeaſurement* doth not lie of that Improvement. *Nat. Brevium* 332. A Perſon who hath Common Appurtenant certain, or Common by certain Grant, ſhall be *admeaſured*, and a Tenant ſhall have *Admeaſurement* againſt him: But he who hath a Common Appurtenant without Number, or Common in Groſs without Number, ſhall not be ſtinted, nor ſhall Writ of *Admeaſurement* of Paſture lie againſt him. If the Lord ſurcharge the Common, his Tenant muſt not have a Writ of *Admeaſurement*; but an Aſſiſe of Common againſt the Lord. 18 *Ed.* 2. *cap.* 20. And ſo if the Lord do make Approvement of the Common. And it is ſaid, that if the Tenant ſurcharge the Common, the Lord ſhall not have a Writ of *Admeaſurement* againſt him; but he may diſtrain the Surpluſage Cattle. On a ſecond Surcharge of a Common, after *Admeaſurement* made, the Plaintiff ſhall recover his Damages againſt him that was Defendant in the firſt Writ; and alſo he ſhall forfeit to the King the Cattle which he put in over and above the due Number after the *Admeaſurement* made. *Stat.* 13 *Ed.* 1. *cap.* 7. The Writ of *Admeaſurement* of Paſture is *vicontiel*, and ſhall be directed to the Sheriff, and not be returnable.

A Writ of *Admeaſurement of Paſture.*

GEORGE *the Second,* &c. *To the Sheriff of* W. *Greeting:* A. B. *hath complained to us, That* C. D. *and* E. F. *have unjuſtly ſurcharged their Common of Paſture in,* &c. *ſo that in it they have more Beaſts and Cattle, than they ought to have, and to them belongeth to have therein: And therefore we command you, that juſtly and without Delay, you cauſe the ſame Paſture to be admeaſured, ſo as the ſaid* C. *and* E. *may not have therein more Beaſts and Cattle than they ought, and to them it belongs to have, according to the Freehold they have in the ſaid Town; and that the ſaid* A. *may have or keep in the ſame Paſture ſo many Beaſts and Cattle as he ought, and to him it belongs to have there; that no more Clamour thereof we may hear,* &c.

Adminicle, (*Adminiculum*) Signifies Aid, Help, or Support; being uſed to this Purpoſe, *Stat.* 1 *Ed.* 4. *cap.* 1.

Adminiſtrator, (*Latin*) Is one that hath the Goods of a Man dying Inteſtate committed to his Charge by the Ordinary, for which he is accountable when thereunto required. The Biſhop of the Dioceſe where the Party dies is regularly to grant *Adminiſtration:* But when the Perſon dying hath Goods in ſeveral Dioceſes, which are *Bona notabilia*, *Adminiſtration* muſt be granted by the Archbiſhop in the Prerogative Court, or it will be void. 1 *Plowd.* 281. An *Adminiſtration* may be granted, during a certain Time, or continually; and be as well upon Condition, as abſolute: And if a Man have Goods in two Provinces, and he make a Will of his Goods in one of them; and die Inteſtate for thoſe in the other, *Adminiſtration* may be granted for the Goods in that Province. *Dyer* 294. *Plowd.* 279. *Hob.* 256. And if one dies in *Ireland*, and has nothing but a Specialty for Money, which lies in *England*; the Ordinary of the Dioceſe within which the Place is that it lieth, ſhall commit the *Adminiſtration*; and not the Ordinary of that Place where the Debt began. 1 *Anderſ.* 23. *Yelv.* 29, 115. *Moor* 13. When one dies without Child or Kindred, *Adminiſtration* may be granted by Letters Patent, by the King; but the *Adminiſtrator* ought to be admitted by the Ordinary. 1 *Salk* 37. At Common Law there was no ſuch Thing as an *Adminiſtrator*; for whoever poſſeſſed himſelf of the Goods of the Inteſtate, was chargeable by the Name of Executor. 5 *Rep.* 82. But by the Stat. 31 *Ed.* 3. *cap.* 11. Authority was given to the Ordinary of every Dioceſe to appoint *Adminiſtrators*, to gather up and diſpoſe of the Goods of the Deceaſed, ſo as they ſhould account for the ſame as Executors. Before this Statute, by the Statute of *Weſtm.* 2. it was ordained that the Goods of Perſons dying Inteſtate, ſhould be committed to the Diſpoſition of the Ordinary, who was bound to anſwer the Debts of the Deceaſed, as far as his Goods would extend. *Adminiſtration* muſt be granted, 1ſt, To the Husband, of the Wife's Goods and Chattels. 2. To the Wife, of the Husband's Goods and Chattels. 3. If there be no Husband or Wife, to the Children, Sons or Daughters. 4. If there be no Children alive, to the Father or Mother. 5. Then to a Brother or Siſter of the whole Blood, or of the half Blood. 6. And if there are none ſuch, to the next of Kin, as Uncle, Aunt, or Couſin. 7. Then to a Creditor of the Deceaſed. 8. And for Want of all theſe, to any other Perſon, at the Diſcretion of the Ordinary: Or the Ordinary may grant to a Stranger Letters *Ad Colligendum bona defuncti*, to gather up the Goods of the Deceaſed; or may take them into his own Hands to pay the Deceaſed's Debts, in ſuch Order as an Executor or *Adminiſtrator* ought to pay them: But 'tis ſaid, he or the Stranger who hath Letters *Ad Colligendum*, cannot ſell them, without making themſelves Executors of their own Wrong, and Action lies only againſt the Ordinary, *&c. Wood's Inſt.* 333. By Stat. 21 *H.* 8. Widows and next of Kin, are to be appointed *Adminiſtrators*; and a Mother is to have *Adminiſtration* of Goods of a Child, before a Brother or Siſter, *&c.* But an *Adminiſtration* may be granted to the Father, before a Widow; and a Reſiduary Legatee ought to be preferred before the Widow in an *Adminiſtration, cum Teſtamento annexo.* 3 Salk. 21. A Grandmother is as near of Kin to a Perſon deceaſed as the Aunt. 1 *Salk.* 38. See *Preced. Canc.* 527. An Ordinary may grant *Adminiſtration* to a Father of a Son, or the Son's Wife, at his Election: And where Perſons are of equal Degree of Kindred to the Inteſtate, it is in the Diſcretion of the Ordinary to grant *Adminiſtration* to which of them he pleaſeth. 3 *Salk.* 22. When there are two next of Kin to the Deceaſed, and one of them the *Adminiſtrator* dies Inteſtate within the Year, before Diſtribution, his next of Kin ſhall have the *Adminiſtration. Show* 25. If an *Adminiſtrator* die, his Executors are not *Adminiſtrators*; but in this Caſe the Ordinary is to grant new *Adminiſtration. Terms de Ley* 24. An Alien may be *Adminiſtrator*, and ſhall have Leaſes for Years of Lands and Perſonal Eſtate in Debts; becauſe he hath them *in auter Droit. Cro. Car.* 8. But a Popiſh Recuſant Convict is diſabled by Statute to be an *Adminiſtrator.* 35 *Eliz. c.* 4. On granting *Adminiſtration*, Bonds with Sureties are to be taken for the *Adminiſtrator* to make and exhibit an Inventory of the Goods of the Deceaſed, render a juſt Account thereof, and make a Diſtribution of the Surpluſage, after Debts paid, according to Law, *&c. Stat.* 22 and 23 *Car.* 2. *cap.* 10. One of half Blood is in equal Degree of Kindred with one of the whole Blood, to take out Letters of *Adminiſtration:* And *Adminiſtrators* are to make Diſtribution of Perſonal Eſtate, equally between the whole Blood and half Blood. 2 *Lev.* 173. And where Perſons die Inteſtate, their

Eſtates are to be diſtributed, one third Part to the Wife, and the other equally amongſt the Children, and their Repreſentatives; If there be no Children, one Moiety of the Perſonal Eſtate, ſhall go to the Wife, and the Reſidue equally to the next of Kin: If there is no Wife, but Children, it ſhall be diſtributed among ſuch Children; and if there be no Wife or Children, it ſhall go to the next of Kin in equal Degree. 22 & 23 *Car.* 2. When Children ſhall die after their Father without Wife or Child, the Mother, and every Brother and Siſter, and their Repreſentatives, ſhall have equal Share in the Eſtate of ſuch Inteſtates. *Stat.* 1 *Jac.* 2. *cap.* 17. But no Repreſentatives are allowed after Brothers and Siſters Children; and Children advanced by the Inteſtate in his Life-time, with any Eſtate equal to the other Shares, are excepted; tho' not the Heir at Law, who is to have equal Share in the Diſtribution, notwithſtanding what he hath by Deſcent. The Stat. 22 & 23 *Car.* 2. is not to extend to the Eſtates of Feme Coverts, who die Inteſtate; but the Husband ſhall have *Adminiſtration* as before the Act; and not be compellable to make Diſtribution of their Eſtates. 29 *Car.* 2. *cap.* 3. A Poſthumous Child ſhall have a Share of the Perſonal Eſtate of the Father, on a Diſtribution equally with the other Children. *Bernardiſt.* 273. And where a Perſon dies, leaving a Wife and one Child, the Wife ſhall have one Third only, and the Child the other two Thirds, of the Perſonal Eſtate; being comprehended under the Word Children. By *Pollexfen* 3 *Mod.* 63. If one die Inteſtate, and there is an Uncle, and Uncle's Son, it is held that ſuch Son of the Deceaſed, ſhall not come in for a Share in the Diſtribution with the living Uncle, by the Statute. *Preced. Canc.* 28. Security may be required from thoſe to whom Diſtribution is made, to refund to the *Adminiſtrator* in caſe Debts appear afterwards. And *Adminiſtrators* have a Property veſted in them of the Goods of the Inteſtate, immediately upon his Death; and the Poſſeſſion is caſt on them by Law. *Godb.* 33. They may ſue for Goods before they have Poſſeſſion as well as Executors. 8 *Rep.* 135. An *Adminiſtrator* hath an Intereſt in all the Chattels Real and Perſonal of the Deceaſed; and in all Goods and Chattels either in Poſſeſſion or Action, in like Manner as an Executor: And all the Goods and Chattels which come to the Hands of the *Adminiſtrator*, ſhall be Aſſets to make him chargeable to the Creditors, as Executors are to Creditors and Legatees. 2 *Inſt.* 398. A Reſiduary Legatee is to have the Care and *Adminiſtration* of the Eſtate, where the Executor of a Will dies Inteſtate, the Reſidue of the Eſtate being deviſed to ſuch Legatee. 1 *Vent.* 217. A Creditor *Adminiſtrator* may retain the Goods of the Inteſtate, to ſatisfy his Debt; and if the Goods are taken away before *Adminiſtration* granted to him, he may have Treſpaſs againſt the Perſon that took them. *Stile* 384. If *Adminiſtration* is granted to an Obligor, this doth not extinguiſh the Debt; but it ſhall be Aſſets in his Hands. 8 *Rep.* 136. Againſt an *Adminiſtrator* and for him, Action will lie, as for and againſt an Executor, and he ſhall be charged to the Value of the Goods, and no further; unleſs it be by his own falſe Plea, or by waſting the Goods of the Inteſtate. An Executor or *Adminiſtrator* ſhall never be charged *de bonis propriis*, but where he doth ſome Wrong; as by ſelling the Teſtator's Goods, and converting the Money to his own Uſe, concealing or waſting them, or by pleading what is falſe. *Dyer* 210. 2 *Roll. Rep.* 295. If an *Adminiſtrator* plead *Plene Adminiſtravit*, and 'tis found againſt him, the Judgment ſhall be *de bonis propriis*, becauſe 'tis a falſe Plea, and that upon his own Knowledge. 2 *Cro.* 191. *Contra* where he pleads ſuch a Plea, and that he hath no more than to ſatisfy ſuch a Judgment, &c. the Recovery ſhall be *de bonis Teſtatoris*, &c. 2 *Roll. Rep.* 400. Upon *Plene Adminiſtravit* pleaded by an *Adminiſtrator*, the Plaintiff muſt prove his Debt, or he ſhall recover but a Penny Damages, though there be Aſſets; becauſe the Plea only admits the Debt, but not the *Quantum.* 1 *Salk* 296. Special Bail is not required of *Adminiſtrators* in any Action brought againſt them for the Debt of the Inteſtate; except where they have waſted the Goods of the Deceaſed: Nor ſhall Coſts be had againſt *Adminiſtrators.* 24 *Hen.* 8. Where an *Adminiſtrator* is Plaintiff, he muſt ſhew by whom *Adminiſtration* was granted; for that only intitles him to the Action: But if an *Adminiſtrator* is Defendant, the Plaintiff need not ſet forth by whom *Adminiſtration* was granted, for it may not be within his Knowledge; tho' he muſt declare that it was granted to the Defendant *debita juris forma*, which is neceſſary to charge him with the Action. *Sid.* 228. 1 *Lutw.* 301. If a Stranger that is not *Adminiſtrator*, take the Goods and Adminiſter in his own Wrong, he ſhall be charged and ſued as an Executor. *Terms de Ley* 24. And generally an *Adminiſtrator* ſhall be charged by others, for any Debt or Duty due from the Deceaſed, as he himſelf might have been charged in his Life-time; ſo far as he hath any of the Inteſtate's Eſtate, to diſcharge the ſame. *Co. Lit.* 219. *Dyer* 14. An *Adminiſtrator*'s Power is given by the *Adminiſtration*, therefore he can do nothing until that be granted; and yet as to Goods taken away before, the *Adminiſtration* ſhall relate ſo as to give the *Adminiſtrator* an Action for them. *Fitzherb.* 2. 6. If a Man have Judgment for Land in a real or mix'd Action, and for Damages, and then dies; his Executor or *Adminiſtrator*, not the Heir, ſhall have Execution for the Damages; but not for the Land. *Fitz. Admin.* 53. *March* 9. The Power of an *Adminiſtrator* is almoſt equal to that of an Executor: But if there are many *Adminiſtrators*, one cannot ſell Goods, releaſe Debts, &c. without the other, for they muſt all join. *Noy Max.* 106. The Office of *Adminiſtrators* is the ſame with that of Executors, in the Burial of the Deceaſed, Payment of Funeral Charges, making Inventories of his Goods and Chattels, Payment of Debts, &c. The Ordinary ought not to repeal Letters of *Adminiſtration* which he hath duly granted; but if they are granted to ſuch Perſons who ought not by Law to have them, he may revoke them. 1 *Lill.* 38. For juſt Cauſe they may be revoked, and where a Perſon is a Lunatick, &c. And if granted where not grantable, they may be repealed by the Delegates. 1 *Lev.* 157, 186. If an *Adminiſtration* is granted, and afterwards a Will is produced and proved, the *Adminiſtration* ſhall be revoked; and all Acts done by the *Adminiſtrator*, are void. 2 *Roll. Abr.* 907. If a Citation is granted againſt a Stranger *Adminiſtrator*, and his *Adminiſtration* is revoked by Sentence, yet all Acts done by him *bona fide* as *Adminiſtrator* are good till the Revocation; the *Adminiſtration* being only voidable. 6 *Rep.* 18. 8 *Rep.* 135. But if there is any Fraud, a Creditor may have Relief upon the Stat. 13 *Eliz. cap.* 5. And when the firſt *Adminiſtration* is meerly void, as granted by a wrong Perſon, &c. it is otherwiſe: So when there is an Appeal from the Grant of the *Adminiſtration*, to ſuſpend the former Decree. 5 *Rep.* 30. *Adminiſtration* was granted to *J. S.* and he releaſed all Actions, and after the *Adminiſtration* was revoked, and declared void; this Releaſe was held good. 1 *Brownl.* 51. If an *Adminiſtrator* gives Goods away, and then *Adminiſtration* is revoked or repealed, 'tis ſaid the Gift is good; except it be by *Covin*, when it ſhall be void only againſt a Creditor by Statute: And where the *Adminiſtrator* after much Goods adminiſtred, had his *Adminiſtration* revoked, and it was committed to B. who ſued the firſt *Adminiſtrator* for Goods unduly adminiſtred; it was held, there was no Remedy but in Chancery. 6 *Rep.* 19. *Clayt.* 44.

4 *Shep. Abr.* 89. See *Hob.* 266. A Stranger to whom *Adminiſtration* was granted, during a Suit for Repeal, ſells the Goods, and afterwards the *Adminiſtration* is repealed and granted to another; in Trover for the Goods, the Defendant is not chargeable, but the Sale ſhall be good. *Moor ca.* 494. But where the firſt *Adminiſtration* is void, the *Adminiſtrator* that takes the Goods is a Treſpaſſor. 2 *Leon.* 155. And Letters of *Adminiſtration* obtained by Fraud, are void. 3 *Rep.* 37. Where an Infant is intitled to *Adminiſtration* of the Goods of an Inteſtate, *Adminiſtration* ſhall be granted to another *Durante minore ætate*, 'till he is of the Age of 21 Years: Tho' where an Infant is made Executor, ſuch *Adminiſtration* granted during his Minority, ceaſes at the Infant's Age of 17 Years. 5 *Rep.* 29. 6 *Rep.* 27. If a Female Infant under 17 Years old is made Executrix, and ſhe afterwards marries with one of that Age, her Husband ſhall have the Execution of the Will, and the *Adminiſtration* ceaſeth. 1 *Salk.* 39. An *Adminiſtrator durante minori ætate* cannot ſell Goods of the Deceaſed; unleſs it be of Neceſſity for Payment of Debts, or *bona peritura*, Goods that are periſhable; for he hath his Office *pro bono & commodo* of the Infant. 5 *Rep.* 29. *Adminiſtration cum Teſtamento annexo*, is where an Executor refuſeth to prove a Teſtament, an *Adminiſtration* with the Will annexed to it is granted to the next of Kin, *&c.* And where an Executor dies before Probate of the Will, *Adminiſtration* is to be granted with the *Will annexed*, and the Teſtator is looked upon in Law to die Inteſtate. 1 *Inſt.* 113. If where a Perſon has made a Will, after his Death the Executor proves it, and then dies Inteſtate, *Adminiſtration* is to be granted by the Ordinary of the Goods of the Teſtator unadminiſtred, to ſome other Perſon; which is called an *Adminiſtration de bonis non*, *&c.* (*viz.*) *Non Adminiſtratis.* 2 *Roll. Abr.* 907. And an *Adminiſtrator de bonis non*, may ſue out a *Scire facias* on a Judgment after a Verdict recovered by an Executor, *&c.* *Stat.* 17 *Car.* 2. Beſides all theſe *Adminiſtrations*, there is *Adminiſtration durante abſentia extra Regnum*, where a Perſon is abſent abroad; and *Adminiſtration pendente lite*, which may be granted by the Ordinary as well as *Durante minori ætate.*

Adminiſtratrix, (*Lat.*) She that hath Goods and Chattels of an Inteſtate committed to her Charge, as an *Adminiſtrator.*

Admiral, (*Admiralius*, *Admirallus*, *Admiralis*, *Capitaneus* or *Cuſtos Maris*) and derived of the *French Amerel*, ſignifies an high Officer or Magiſtrate, that hath the Government of the King's Navy, and the Determining of all Cauſes belonging to the Sea. This Word is alſo ſaid to have its Derivation from the Saxon *Aen Mereal*, over all the Sea: And in ancient Time the Office of the *Admiralty* was called *Cuſtodia Maritimæ Angliæ.* *Co. Lit.* 260. It appears that anciently the *Admirals* of *England* had Juriſdiction of all Cauſes of Merchants and Mariners, happening not only upon the main Sea, but in all Foreign Parts within the King's Dominions, and without them, and were to judge them in a ſummary Way, according to the Laws of *Oleron* and other Sea Laws. 4 *Inſt.* 75. In the Time of K. *Ed.* 1. and K. *John*, all Cauſes of Merchants and Mariners, and Things ariſing upon the main Sea, were tried before the Lord *Admiral:* But the firſt Title of *Admiral* of *England*, expreſly conferred upon a Subject, was given by Patent of K. *Rich.* 2. to the Earl of *Arundel* and *Surrey*. Of late Times this high Office has been generally executed by Commiſſioners; who by Statute are impowered to uſe and execute the like Authorities as Lord *Admiral.* 2 *W. & M.* *cap.* 2. In the Reign of *Ed.* 3. the Court of *Admiralty* was eſtabliſhed, and *Rich.* 2. limited its Juriſdiction. The *Admiralty* hath Cogniſance of the Death or Maim of a Man, committed in any Ship riding in great Rivers, beneath the Bridges thereof, next the Sea: But by the Common Law, if a Man be killed upon any Arm of the Sea, where the Land is ſeen on both Sides, the Coroner is to enquire of it, and not the *Admiral*; for the County may take Cogniſance of it; and where a County may enquire, the Lord *Admiral* has no Juriſdiction. 3 *Rep.* 107. All Ports and Havens are *infra Corpus comitatus*, and the *Admiral* hath no Juriſdiction of any Thing done in them: Between high and low Water Mark, the Common Law and *Admiral* have Juriſdiction by Turns; one upon the Water, and the other upon the Land. 3 *Inſt.* 113. The *Admiral* hath Power to arreſt Ships in great Streams, for the Service of the King, or Commonwealth, and hath Juriſdiction in ſuch Streams, and during the ſame Voyages: Every Commander, Officer, and Soldier of Ships of War, ſhall obſerve the Commands of the *Admiral*, *&c.* on Pain of Death, or other Puniſhment. 13 *Car.* 2. *cap.* 9. The Lord *Admiral* hath Power to grant Commiſſions to inferior Vice-*Admirals*, *&c.* to call Courts Martial, for the Trial of Offences againſt the Articles of War; and theſe Courts determine by Plurality of Voices, *&c.* *Stat Ibid* *Admiralty* Proceſs is made out in the Name of the *Admiral*, who has under him a Judge of the *Admiralty:* And though the Proceedings are according to the Civil Law, and the Maritime Laws of *Rhodes* and *Oleron*, the Sea being without the Common Law; yet by Stat. 28 *Hen.* 8. Murder, Robbery, *&c.* at Sea, may be tried by ſpecial Commiſſion to the Lord *Admiral*, *&c.* according to the Laws of *England:* But ſee the Stat. 11 & 12 *W.* 3. *c.* 7. The *Admiralty* is ſaid to be no Court of Record, by Reaſon it proceeds by the *Civil* Law. 4 *Inſt.* 135. But the *Admiralty* has Juriſdiction where the Common Law can give no Remedy; and all Maritime Cauſes, or Cauſes ariſing wholly upon the Sea, it hath Cogniſance of. 6 *Rep.* The *Admiralty* hath Juriſdiction in Caſes of Freight, Mariners Wages, Breach of Charter-Parties, though made within the Realm; if the Penalty be not demanded: And likewiſe in Caſe of Building, Mending, Saving, and Victualling Ships, *&c.* ſo as the Suit be againſt the Ship, and not only againſt the Parties. 2 *Cro* 216. Mariners Wages are contracted on the Credit of the Ship, and they may all join in Suits in the *Admiralty*; whereas at Common Law they muſt all ſever: The Maſter of a Ship contracts on the Credit of the Owners, and not of the Ship; and therefore he cannot proſecute in the *Admiralty* for his Wages. 1 *Salk.* 33. It is allowed by the Common Lawyers and Civilians, that the Lord *Admiral* hath Cogniſance of Seamens Wages, and Contracts, and Debts for making Ships; alſo of Things done in navigable Rivers, concerning Damage done to Perſons, Ships, Goods, Annoyances of free Paſſage, *&c.* And of Contracts, and other Things done beyond Sea, relating to Navigation and Trade by Sea. *Wood. Inſt.* 818. But if a Contract be made beyond Sea, for doing of an Act or Payment of Money within this Kingdom; or the Contract is upon the Sea, and not for a Marine Cauſe, it ſhall be tried by Jury; for where Part belongs to the Common Law, and Part to the *Admiral*, the Common Law ſhall be preferred. And Contracts made beyond Sea, may be tried in *B. R.* and a Fact be laid to be done in any Place in *England*, and ſo tried here. 2 *Bulſt.* 322. Where a Contract is made in *England*, and there is a Converſion beyond Sea, the Party may ſue in the *Admiralty*, or at Common Law. 4 *Leon.* 257. So where a Bond is made and delivered in *France:* An Obligation made at Sea, it has been held cannot be ſued in the *Admiral*'s Court; becauſe it takes its Courſe, and binds according to the Common Law. *Hob.* 11. The Court of *Admiralty* cannot hold Plea of a Matter ariſing from a Contract made upon the Land, tho' the Contract was concerning Things belonging to the Ship: But the *Admiralty* may hold Plea for the Seamens Wages, &c. becauſe they become due for Labour done on the Sea; and the Contract made upon Land, is only to aſcertain them. 3 *Lev* 60. Though where there is a ſpecial Agreement in Writing, by which Seamen are to receive their Wages, in any other Manner than uſual; or if the Agreement at Land be under Seal, ſo as to be more than a parol Contract, it is otherwiſe. 1 *Salk.* 31. See *Hob.* 79. If the Maſter and Mariners of a Ship, fitted out with Letters of Repriſal, without the Notice or Aſſent of the Owners commit Piracy, the Owners ſhall loſe their Ship by the *Admiral* Law. 1 *Roll. Abr.* 530. And if the Maſter pawns the Ship on the High Sea out of Neceſſity for Tackling or Proviſion, without the Conſent of the Owners, it ſhall bind them; but 'tis otherwiſe where the Ship is pawned for the Maſter's Debt: The Maſter can have no Credit abroad, but upon the Security of the Veſſel; and the *Admiralty* gives Remedy in theſe Caſes. 1 *Salk.* 35. Sale of Goods taken by Piracy in open Market, is not binding by the *Admiral* Law, ſo that the Owner may retake them; but at Common Law the Sale is binding, of which the *Admiralty* muſt take Notice. 1 *Roll. Abr.* If Goods delivered on Shipboard are imbezilled, all the Mariners ought to contribute to the Satisfaction of the Party that loſt his Goods, by the Maritime Law, and the Cauſe is to be tried in the *Admiralty*. 1 *Lill.* 368. By the Cuſtom of the *Admiralty*, Goods may be attached in the Hands of a third Perſon, *in Cauſa Maritima & Civili*, and they ſhall be delivered to the Plaintiff after Defaults, on Caution to reſtore them, if the Debt, &c. be diſproved in a Year and Day; and if the Party refuſe to deliver them, he may be impriſoned *quouſque*, &c. *March Rep* 204. The Court of *Admiralty*, may cauſe a Party to enter into Bond in Nature of Caution or Stipulation, like Bail at Common Law; and if he render his Body, the Sureties are diſcharg'd; and Execution ſhall be of the Goods, or the Body, &c. not of Lands. *Godb.* 260. 1 *Shep. Abr.* 129. See 1 *Salk.* 33. A Perſon in Execution, on Judgment in the *Admiral's* Court, upon a Contract made on the Land in *New England* was diſcharged, being out of the *Admiralty* Juriſdiction. 3 *Cro.* 603. 1 *Cro.* 685. And where Sailors Cloaths were bought in St. *Katherine*'s Pariſh, near the Tower *London*, which were delivered in the Ship; on a Suit in the *Admiralty* for the Money, Prohibition was granted; for this was within the County: So of a Ship lying at *Blackwall*, &c. *Owen* 122. *Hughes Abr.* 113. But the *Admiralty* may proceed againſt a Ship, and the Sails and Tackle, when they are on Shore, altho' alledged to be detained at Land: Yet upon alledging Offer of a Plea, claiming Property therein, and Refuſal of the Plea, on this Suggeſtion a Prohibition ſhall be had. 1 *Show.* 179. The *Admiralty* Court may award Execution upon Land; tho' not hold Plea of any Thing ariſing on Land. 4 *Inſt.* 141. And upon Letters Miſſive or Requeſt, the *Admiralty* here may award Execution on a Judgment given beyond Sea, where an *Engliſhman* flies or comes over hither, by Impriſonment of the Party, who ſhall not be delivered by the Common Law. 1 *Roll. Abr.* 530. When Sentence is given in a Foreign *Admiralty*, the Party may libel for Execution of that Sentence here; becauſe all Courts of *Admiralty* in *Europe* are governed by the Civil Law. *Sid.* 418. Sentences of any *Admiralty* in another Kingdom are to be credited, that ours may be credited there, and ſhall not be examined at Law here: But the King may be petitioned, who may cauſe the Complaint to be examined; and if he finds juſt Cauſe, may ſend to his Embaſſador where the Sentence was given, to demand Redreſs, and upon Failure thereof, will grant Letters of Marque and Repriſal. *Raym.* 473. If one be ſued in the *Admiralty*, contrary to the Statutes 13 & 15 *R.* 2. he may have a *Superſedeas*, to cauſe the Judge to ſtay the Proceedings, and alſo have Action againſt the Party ſuing. 10 *Rep.* 75. A Ship being privately arreſted by *Admiralty* Proceſs only, and no Suit, it was adjudged a Proſecution within the Meaning of the Statutes; and double Damages, &c. ſhall be recovered. 1 *Salk.* 31, 32. And if an erroneous Judgment is given in the *Admiralty*, Appeal may be had to Delegates appointed by Commiſſion out of Chancery, whoſe Sentence ſhall be final. *Stat.* 8 *Eliz. cap.* 5. Appeals may be brought from the inferior *Admiralty* Courts, to the Lord High *Admiral*: But the Lord Warden of the *Cinque-Ports*, hath Juriſdiction of *Admiralty* exempt from the *Admiralty* of *England*.

Admiſſion, (*Admiſſio*) Is when a Patron of a Church having preſented to it, the Biſhop upon Examination admits the Clerk, by ſaying *admitto te habilem*. It is properly the Ordinary's Declaration that he approves of the Preſentee, to ſerve the Cure of the Church to which he is preſented. *Co. Litt.* 344. All Perſons are to have Epiſcopal Ordination before they are admitted to any Parſonage or Benefice; and if any ſhall preſume to be admitted, not having ſuch Ordination, &c. he ſhall forfeit 100 *l.* *Stat.* 14 *Car.* 2. No Perſon is to be admitted into a Benefice with Cure of 30 *l.* *per Ann.* in the King's Books, unleſs he is a Bachelor in Divinity at leaſt, or a Preacher lawfully allowed by ſome Biſhop, &c. Action of the Caſe will not lie againſt the Biſhop, if he refuſe to admit a Clerk to be qualified according to the Canons, (as for any Crime or Impediment, Illiterature, &c.) but the Remedy is by Writ *Quare non admiſit*, or *Admittendum clericum* brought in that County where the Refuſal was. 7 *Rep.* 3.

Admittendo Clerico, A Writ where a Man has recovered his Right of Preſentation againſt the Biſhop. *Reg. Orig.* 33. If a Man do recover his Preſentation in the *Common Pleas* againſt the Biſhop, then he may have a Writ to the ſame Biſhop to *admit* his Clerk, or unto the Metropolitan: A Perſon recovers an Advowſon, and ſix Months paſs; yet if the Church be void, the Patron may have a Writ to the Biſhop; and if the Church is void when the Writ comes to the Biſhop, the Biſhop is bound to *admit* his Clerk. 7 *H.* 8. 14 *H.* 4. Where a Man recovers againſt another than the Biſhop, this Writ ſhall go to the Biſhop; and the Party may have an *Alias* and a *Pluries*, if the Biſhop do not execute the Writ, and an *Attachment* againſt the Biſhop, if need be. *New Nat. Br.* 84. In a *Quare Impedit* betwixt two Strangers, if there appears to the Court a Title for the King, they ſhall award a Writ unto the Biſhop, for the King.

Admittendo in ſocium, A Writ for aſſociating certain Perſons to Juſtices of Aſſize. *Reg. Orig.* 206. Knights and other Gentlemen of the County, are uſually aſſociated with Judges in holding their *Aſſizes* on the Circuits.

Adnichiled, From the Latin *Nihil*, written of old *Nichil*, and ſignifies annulled, cancelled, or made void. *Stat.* 28 *Hen.* 8.

Ad quod Damnum, Is a Writ which ought to be iſſued before the King grants certain Liberties, as a Fair, Market, &c. which may be prejudicial to others: It is directed to the Sheriff to inquire what Damage it may do, for the King to grant a Market, Fair, &c. *Terms de Ley* 25. This Writ is likewiſe uſed to inquire of Lands given in *Mortmain* to any Houſe of Religion, &c. And it is a Damage to the Country, that a Freeholder who hath ſufficient Lands to paſs upon Aſſiſes and Jury, ſhould alien his Lands in Mortmain, by which Alienation his Heir ſhould not have ſufficient Eſtate after the Death of the Father to be ſworn in Aſſiſes and Juries. *F. N. B.* 121. The Writ *Ad quod Damnum* is alſo had for the Turning and Changing of antient

Highways; which may not be done without the King's Licence obtained by this Writ, on Inquiſition found that ſuch Change will not be detrimental to the Publick. *Vaugh. Rep.* 341. Ways turned without this Authority, are not eſteemed Highways ſo as to oblige the Inhabitants of the Hundred to make Amends for Robberies; nor have the Subjects an Intereſt therein to juſtify going there. 3 *Cro.* 267. If any one change an Highway without this Authority, he may ſtop the Way at his Pleaſure. But ſee the Statute 8 & 9 *W.* 3 *c.* 16. for enlarging of Highways by Order of Juſtices of Peace, &c. Where any common Highway ſhall be encloſed after a Writ of *Ad quod damnum* executed, any Perſon aggrieved by ſuch Incloſure, may complain to the Juſtices at the next Quarter-Seſſions; but if no ſuch Complaint or Appeal be made, then the Inquiſition and Return, recorded by the Clerk of the Peace, ſhall be for ever binding. 8 & 9 *W.* 3. It appears by the Writs in the Regiſter, that in antient Times, upon every Grant, Confirmation, &c. or Licence made by the King, firſt a Writ of *Ad quod Damnum* was to be awarded, to inquire of the Truth thereof, and what Damage the King might have by the ſame: But now the Practice is contrary; and in the Patents of common Grants of Licence, are put in the End theſe Words.——*Et hoc abſque aliquo Brevi de* Ad quod Damnum, *ſeu aliquibus aliis brevibus ſive inquiſitionibus aut mandatis ſuperinde habend. fiend. aut proſequend.* &c.

A *Writ* of *Ad quod Damnum.*

GEORGE *the Second,* &c. *To the Sheriff of the County of* W. *Greeting: We command you, that by the Oath of honeſt and lawful Men of your Bailiwick, or of your County, by whom the Truth of the Matter may be better known, diligently you inquire, whether it will be to the Damage or Prejudice of us, or others, if we grant to* C. D. *one Fair at,* &c. *And if it will be to the Damage or Prejudice of us or others, then to what Damage and what Prejudice of us, and to what Damage and Prejudice of others, and of whom, and in what Manner, and how, and where,* &c. *And the Inquiſition thereupon, diſtinctly and openly made, to us in our Chancery, under your Seal, and the Seals of thoſe by whom it was made, do you ſend without Delay, and this Writ.* Witneſs, &c.

Adrectare, *Addreſſare,* i. e. *ad rectum ire, recto Stare,* To do right, ſatisfy or make Amends. *Gerv. Dorobern. Anno* 1170.

Ad terminum qui præteriit, A Writ of Entry, that lies for the Leſſor and his Heirs, where a Leaſe has been made of Lands or Tenements for Term of Life, or Years; and after the Term is expired, the Lands are with-held from the Leſſor by the Tenant, or other Perſon that poſſeſſeth the ſame: And it likewiſe lies for the Heir of the Leſſor. *F. N. B.* 201.

Advent, (*Adventus*) A Time containing about a Month preceding the Feaſt of the Nativity of our Saviour *Chriſt.* It begins from the *Sunday* that falls either upon St. *Andrew*'s Day, being the 30th of *November,* or next to it, and continues to the Feaſt of Chriſt's Nativity commonly called *Chriſtmas.* Our Anceſtors ſhewed great Reverence and Devotion to this Time, in Regard to the Approach of the ſolemn Feſtival: For *in* adventu *Domini nulla aſſiſa debet capi. Int. placita de temp. Regis Johan. Ebor.* 126. But the Statute *Weſt.* 1. *cap.* 48. ordained that notwithſtanding the uſual Solemnity and Times of Reſt, it ſhould be lawful (in Reſpect of Juſtice and Charity, which ought at all Times to be regarded) to take Aſſiſes of Novel Diſſeiſin, *Mort d'Anceſtor,* &c. in the Time of *Advent, Septuageſima,* and *Lent.* This is alſo one of the Seaſons, from the Beginning of which to the End of the Octaves of the *Epiphany,* the Solemnizing of Marriages is forbidden, without ſpecial Licence, as we may find from theſe old Verſes,

Conjugium Adventus *prohibet,* Hilarique *relaxat;*
Septuagena *vetat, ſed* Paſchæ Octava *reducit;*
Rogatio *vetitat, concedit* Trina *poteſtas.*

Ad ventrem Inſpiciendum, A Writ mentioned in the Statute 12 *Ed.* 2. See *Ventre Inſpiciendo,* by which a Woman is to be ſearched, whether ſhe be with Child by a former Husband, on her with holding Lands from the Heir.

Adventure, A Thing ſent to Sea, the *Adventure* whereof the Perſon ſending it, ſtands to Out and Home. *Lex. Mercat.* Vide *Aventure.*

Adultery, (*Adulterium, quaſi ad alterius thorum*) *Anno* 1 *Hen.* 7. *cap.* 4. and in divers old Authors termed *Advowtry,* is the Sin of Incontinence between two married Perſons; and if but one of the Perſons be married, it is nevertheleſs *Adultery:* But in this laſt Caſe, it is called ſingle *Adultery,* to diſtinguiſh it from the other, which is double. This Crime is ſeverely puniſhed by the Laws of God, and the antient Laws of the Land: The *Julian Law,* among the old *Romans,* made it Death; but in moſt Countries at this Time, the Puniſhment is by Fine, and ſometimes Baniſhment: In *England* it is puniſhed by Fine, Penance, &c. King *Edmund* a Saxon, *Leg. ſuar' cap.* 4. Adulterium *affici juſſit inſtar Homicidii.* And *Canutus* the *Dane, Hominem* Adulterum *in exilium relegari juſſit, fœminam naſum & aures præcidi.* Leg. par. 2. c. 6. and cap. 50. Leg. Hen. 1. cap. 12.——*Rex,* &c. *Vic.* South'ton, *Præcipimus tibi quod diligenter inquiri facias per legales homines de Viſn.* Candeur. *ſi* Robertus Pincerna *habens ſuſpectum* Will. Wake *qui cum uxore ſua* Adulterium *committeret, prohibuit ei ingreſſum domus ſuæ, & ſi idem* Will. *poſt prohibitionem illam domus ipſius* Roberti *ingreſſus* Adulterium *prædictum commiſit, inde præfatus* Robertus *mentula eum privavit, & ſi inquiſitio dederit, quod ita ſit, tunc eidem* Roberto *& ſuis qui cum eo erant ad hoc faciend. terr. & Catalla ſua occaſione illa in manum noſtram ſeiſita, in pace eſſe facias, donec aliud inde tibi præcipimus,* &c. Clauſ. 14. Joh. m. 2. Perhaps this might be in ſome Meaſure agreeable to a Law made by *William* the Conqueror, that whoever forced a Woman ſhould loſe his Genitals, the offending Parts. Before the Statute 22 *Car.* 2. which makes malicious maiming Felony, it was a Queſtion, whether cutting off the privy Members of a Man, taken in *Adultery* with another Man's Wife, was Felony or not? For according to Bracton, *ſequitur pœna aliquando Capitalis:* But *Anno* 13 *H.* 3. one *John* a *Monk* being taken by *Henry Hull,* in the Act with his Wife, he cut off the privy Members of the Monk, and was only indicted for a Maihem. 3 *Inſt.* 118. If a Wife elope from her Husband, and live with the *Adulterer,* (without being reconciled to the Husband) ſhe ſhall forfeit her Dower. 1 *Inſt.* 36. 2 *Inſt.* 435. And there is a notable Caſe concerning *Margaret* the Wife of *John de Camois,* who with her Husband's Conſent lived in *Adultery* with Sir *William Pannel,* yet loſt her Dower. 2 *Inſt.* *Adultery* being a Thing Temporal, as well as Spiritual, is againſt the Peace, &c.

Advocate, Is the Patron of a Cauſe, aſſiſting his Client with Advice, and who pleads for him: It is the ſame by the Civil and Eccleſiaſtical Laws, as a Counſellor by the Common Law. The Eccleſiaſtical or Church *Advocate,* was originally of two Sorts; either an *Advocate* of the Cauſes and Intereſt of the Church, retained as a Counſellor and Pleader of its Rights; or an *Advocate,* or Patron of the Preſentation and Advowſon. Both theſe Offices at firſt belonged to the Founders of Churches and Convents, and their Heirs, who were bound to protect and defend their Churches, as well as to nominate or preſent to them.——As *Ailwin* Founder of

Ramſey Abbey, *Proruit in medium, ſe Rameſienſis Eccleſiæ* Advocatum, *ſe poſſeſſionum ejus tutorem allegans. Lib. Rameſ. Sect.* 49. But when the Patrons grew negligent in their Duty, or were not of Ability or Intereſt in the Courts of Juſtice, then the Religious began to retain Law *Advocates*, to ſolicit and proſecute their Cauſes. *Vid.* Spelman.

Advocati, Were thoſe which we now call Patrons of Churches, and reſerved to them, and their Heirs, a Liberty to preſent a Perſon on any Avoidance. *Blount.*

Advocatione Decimarum, A Writ that lies for Tithes, demanding the fourth Part, or upwards, that belong to any Church. *Reg. Orig.* 29.

Advow, (*Advocare*) To juſtify or maintain an Act formerly done. For Example: One takes a Diſtreſs for Rent, and he that is diſtrained ſues a Replevin; now the Diſtrainer, juſtifying or maintaining the Act, is ſaid to *Advow* or *Avow*: And hence comes *Advowant* and *Advowry*. *Old Nat. Br.* 43. The Signification of this Word is alſo to bring forth any Thing: Anciently when ſtolen Goods were bought by one, and ſold to another, it was lawful for the right Owner to take them where-ever they were found; and he in whoſe Poſſeſſion they were found, was bound *advocare, i. e.* to produce the Seller to juſtify the Sale; and ſo on till they found the Thief. Afterwards the Word was taken for any Thing which a Man acknowledged to be his own, or done by him, and in this Senſe it is mentioned in *Fleta, lib.* 1. *cap.* 5. *par.* 4. *Si vir ipſum in domo ſua ſuſceperit, nutrierit &* advocaverit *filium ſuum.*

Advowee, Or *Avowee*, (*Advocatus*) is uſed for him that hath Right to preſent to a Benefice: And by 25 *Ed.* 3. *Stat.* 5. we find *Advowee Paramount* is taken for the King, the higheſt Patron——Advocatus *eſt ad quem pertinet jus* Advocationis *alicujus Eccleſiæ, ut ad Eccleſiam, nomine proprio non alieno, poſſit præſentare.* Fleta lib. 5. c. 14.

Advowſon, (*Advocatio*) Signifies the Right of Preſentation to a Church or Benefice: And he who hath this Right to preſent is ſtiled *Patron*; becauſe they that originally obtained the Right of Preſentation to any Church, were Maintainers of, or Benefactors to the ſame Church. When the Chriſtian Religion was firſt eſtabliſhed in *England*, Kings began to build Cathedral Churches, and to make Biſhops; and afterwards, in Imitation of them, ſeveral Lords of Manors founded particular Churches on ſome Part of their own Lands, and endowed them with Glebe, reſerving to themſelves and their Heirs, a Right to preſent a fit Perſon to the Biſhop, when the ſame ſhould become void: And this is called an *Advowſon*, and he that hath this Right of Preſentation is termed the Patron, it being preſumed that he who founded the Church, will *Avow* and take it into his Protection, and be a Patron to defend it in its juſt Rights. 1 *Nelſ. Abr.* 184. *Advowſons* are of two Kinds; Appendant, and in Groſs: Appendant, is a Right of Preſentation dependant upon a Manor, Lands, *&c.* and paſſes in a Grant of the Manor as incident to the ſame; and when Manors were firſt created, and Lands ſet apart to build a Church on ſome Part thereof, the *Advowſon* or Right to preſent to that Church became appendant to the Manor. *Advowſon* in Groſs, is a Right ſubſiſting by itſelf, belonging to a Perſon, and not a Manor, Lands, *&c.* So that when an *Advowſon* appendant is ſevered by Deed or Grant from the corporeal Inheritance to which it was appendant, then it becomes an *Advowſon* in Groſs. 1 *Inſt.* 121, 122. Alſo *Advowſons* are either Preſentative, Collative, or Donative. *Advowſons* were formerly moſt of them appendant to Manors, and the Patrons Parochial Barons; the Lordſhip of the Manor, and Patronage of the Church were ſeldom in different Hands till *Advowſons* were given to religious Houſes; but of late Times the Lordſhip of the Manor, and the *Advowſon* of the Church have been divided; and now not only Lords of Manors, but mean Perſons have, by Purchaſe, the Dignity of Patrons of Churches, to the great Prejudice thereof. By the Common Law the Right of Patronage is a real Right fixed in the Patrons or Founders, and their Heirs, wherein they have as abſolute a Property as any other Man hath in his Lands and Tenements: For *Advowſons* are a Temporal Inheritance, and Lay Fee; they may be granted by Deed or Will, and are Aſſets in the Hands of Heirs or Executors. 1 *Inſt.* 119. A Recovery may be ſuffered of an *Advowſon*; a Wife may be endowed of it; a Huſband Tenant by the Curteſy; and it may be forfeited by Treaſon or Felony. 1 *Rep.* 56. 10 *Rep.* 55. If an *Advowſon* deſcends to Coparceners, and the Church after the Death of their Anceſtors becomes void, the eldeſt Siſter ſhall firſt preſent. *Stat.* 21 *Ed.* 3. And when Coparceners, Jointenants, *&c.* are ſeiſed of an *Advowſon*, and Partition is made to preſent by Turns, each ſhall be ſeiſed of their ſeparate Eſtate. 7 *Ann.* An Infant may preſent to a Church; and where an *Advowſon* belongs to a Feme Covert, the Preſentation muſt be by Huſband and Wife. 1 *Inſt.* 135. Perſons ſeized of *Advowſons* being Papiſts, are diſabled to make Preſentations, and the Chancellors of the Univerſities ſhall preſent. 1 *W. & M. cap.* 26. And Preſentations to *Advowſons*, *&c.* for Money or other Reward, ſhall be void, *&c. Stat.* 31 *Eliz. c.* 6. Vid. *Preſentation, Simony*, &c.

Advowſon of the Moiety of the Church, (*Advocatio medietatis Eccleſiæ*) Is where there are two ſeveral Patrons, and two ſeveral Incumbents in one and the ſame Church, the one of the one Moiety, the other of the other Moiety thereof. *Co. Litt. Medietas Advocationis*, a Moiety of the *Advowſon*, is where two muſt join in the Preſentation, and there is but one Incumbent; as where there are two Parceners; And though they agree to preſent by Turns, yet each of them hath but the Moiety of the Church. 1 *Inſt.* 17. But *Vide Stat.* 7 *Annæ.*

Advowſon of Religious Houſes, Where any Perſons founded any *Houſe of Religion*, they had thereby the *Advowſon* or Patronage thereof, like unto thoſe who built and endowed Pariſh Churches. And ſometimes theſe Patrons had the ſole Nomination of the Abbot, or Prior, *&c.* either by Inveſtiture or Delivery of a Paſtoral Staff: Or by direct Preſentation to the Dioceſan; or if a free Election were left to the *Religious*, a *Conge d'Eſlire*, or Licence for Election, was firſt to be obtained of the Patron, and the Elect confirmed by him. *Kennet's Paroch. Antiq.* 147, 163.

Aerie, (*Aeria accipitrum*) *Airy* of Goſhawks, is the proper Term for Hawks, for that which of other Birds we call a Neſt. *Stat.* 9 *H.* 3. *cap.* 12. And it is generally ſaid to come from the French Word *Aire*, a Hawk's Neſt. The Liberty of keeping theſe *Aeries* of Hawks was a Privilege, granted to great Perſons: And the preſerving the *Aeries* in the King's Foreſts was one Sort of Tenure of Lands by Service. *Anno* 20 *Ed.* 1. *Simon de Raghton & al' Tenent terras in Raghton, &c. per Serjantiam cuſtodiendi* Aerias *Auſturcorum Domini Regis.*

Æſtimatio Capitis, (*Pretium Hominis*) King *Athelſtane* ordained that Fines ſhould be paid for Offences committed againſt ſeveral Perſons according to their Degrees and Quality, by *Eſtimation* of their *Heads. Creſſ. Ch. Hiſt.* 834. *Leg. Hen.* 1.

Ætate Probanda, A Writ that lay to inquire, Whether the King's Tenant holding in chief by Chivalry, were of full Age to receive his Lands into his own Hands. It was directed to the Eſcheator of the County; but is now diſuſed, ſince Wards and Liveries are taken away by the Statute. *Reg. Orig.* 294.

Afferers, (*Afferatores*) From the *Fr. Affier*, to affirm. They are thoſe that in Courts-Leet upon

Oath ſettle and moderate the Fines and Amercements impoſed on ſuch Perſons as have committed Faults arbitrarily puniſhable, *viz.* that have no expreſs Penalty appointed by Statute: And they are alſo appointed for moderating Amercements in Courts-Baron. The Perſons nominated to this Office, affirm upon their Oaths what Penalty they think in Conſcience ought to be inflicted on the Offenders. This Word is uſed *Stat.* 25 *Ed.* 3. *c.* 7. Where Mention is made, that the Juſtices before their Riſing in every Seſſions, ſhall cauſe the Amerciaments to be *affeered.* And this ſeems to be agreeable to *Magna Charta*, by which it is ordained, that Perſons are to be amerced after the Manner of the Fault; and the Amerciaments ſhall be aſſeſſed by the Oath of honeſt and lawful Men of the Vicinage. 9 *Hen.* 3. *cap.* 14.

The *Oath* of *Affeerers.*

YOU ſhall well and truly affeer *and affirm the ſeveral Amercements here made, and now to you read over; you ſhall ſpare no one out of Love, Fear, or Affection, nor raiſe or inhance any out of Hatred or Malice, but impartially ſhall do your Duties herein.*

So help you God.

Affiance, The Plighting of Troth between a Man and a Woman, upon Agreement of Marriage: It is derived from the *Latin* Word *Affidare*, and ſignifies as much as *fidem ad alium dare.* Lit. Sect. 39.

Affidare, To plight one's Faith, or give, or ſwear Fealty, *i. e.* Fidelity, *MS. Dom. de Farendon* 22.

Affidatio Dominorum, An Oath taken by the Lords in Parliament, *Anno* 3 *H.* 6. *Rot. Parl.*

Affidatus, Signifies a Tenant by Fealty, alſo a Retainer——Affidatio *accipitur pro mutua fidelitatis connexione, tam in ſponſaliis, quam inter Dominum & vaſſallum——Proles de* Affidata *& non maritata, non eſt Hares.* M. S. Arth. Trevor Ar.

Affidari, *Seu* Affidiari *ad Arma*, To be muſtered and inrolled for Soldiers upon an Oath of Fidelity. *Dom. de Farendon, MS.* 55.

Affidavit, Signifies in Law an Oath in Writing; as to make *Affidavit* of a Thing, is to teſtify it upon Oath. An *Affidavit* generally ſpeaking is an Oath in Writing, ſworn before ſome Perſon who hath Authority to take ſuch Oath: And the true Place of Habitation, and true Addition of every Perſon who ſhall make an *Affidavit*, is to be inſerted into his *Affidavit.* 1 *Lill. Abr.* 44, 46. *Affidavits* ought to ſet forth the Matter of Fact only, which the Party intends to prove by his *Affidavit*; and not to declare the Merits of the Cauſe, of which the Court is to judge. 21 *Car.* 1. *B. R.* The Plaintiff or Defendant may make *Affidavit* in a Cauſe depending; but it will not be admitted in Evidence at the Trial, only upon Motions. 1 *Lill.* 44. When an *Affidavit* hath been read in Court, it ought to be filed, that the other Party may ſee it, and take a Copy of it. *Paſch.* 1655. An *Affidavit* taken before a Maſter in Chancery, will not be of any Force in the Court of King's Bench, or other Courts, nor ought to be read there; for it ought to be made before one of the Judges of the Court wherein the Cauſe is depending. *Style's Rep.* 455. But by *Stat.* 29 *Car.* 2. *c.* 5. The Judges of the Courts at *Weſtminſter* by Commiſſion may impower Perſons in the ſeveral Counties of *England* to take *Affidavits* concerning Matters depending in their ſeveral Courts, as Maſters in Chancery extraordinary uſed to do. Where *Affidavits* are taken by Commiſſioners in the Country, according to the Statute 29 *Car.* 2. and 'tis expreſſed to be in a Cauſe depending between two certain Perſons, and there is no ſuch depending, thoſe *Affidavits* cannot be read, becauſe the Commiſſioners have no Authority to take them; (and for that Reaſon the Party cannot be convicted of Perjury upon them); but if there is ſuch a Cauſe in Court, and *Affidavits* taken concerning ſome collateral Matter, they may be read. 2 *Salk.* 461. There being one *Affidavit* againſt another relating to a Judgment, the Matter was referred to a Trial at Law upon a feigned Iſſue, to ſatisfy the Conſcience of the Court as to the Fact alledged. *Comberb.* 399. No dilatory Plea ſhall be received in any Court, unleſs the Truth thereof be made out by *Affidavit*; or ſome probable Matter be ſhewn to believe the Fact. *Stat.* 4 & 5 *Ann. Affidavits* are uſually for certifying the Service of Proceſs, or other Matters touching the Proceedings in a Cauſe.

An *Affidavit* of ſerving a *Subpœna* in Chancery.

In Canc. Between *A. B.* Plaintiff, *C. D.* Defendant.

E. F. of, &c. *Gent. makes Oath, That he this Deponent did on,* &c. *laſt, ſerve the Defendant* C. D. *with a Writ of* Subpœna *out of this Honourable Court, by delivering the ſaid Writ under Seal to the ſaid* C. D. *whereby the ſaid* C. D. *was directed to appear in the ſaid Court on the Morrow of the Holy Trinity then next, at the Suit of* A. B. *Complainant.*

Sworn the Day, *&c.* Before, *&c.*

Affinage, (Fr. *Affinage*) Refining of Metal, *Purgatio metalli*; *inde*, fine and refine.

Affirm, (*Affirmare*) Signifies to ratify or confirm a former Law or Judgment: So is the Subſtantive *Affirmance* uſed, *Anno* 8 *H.* 6. *c.* 12. And the Verb it ſelf by *Weſt. Part* 2. *Symbol.* Tit. *Fines, Sect.* 152. 19 *H.* 7. *cap.* 20.

Affirmation, An Indulgence allowed by Law to the People called *Quakers*, who in Caſes where an Oath is required from others, may make a ſolemn *Affirmation* that what they ſay is true; and if they make a falſe *Affirmation*, they are ſubject to the Penalties of Perjury: But this relates only to Oaths to the Government, and on publick Occaſions; for Quakers may not give Teſtimony in any Criminal Cauſe, *&c. Stat.* 7 & 8 *W.* 3. *c.* 34. See *Quakers.*

Afforare, To ſet a Value or Price on a Thing. *Et quod Americiament. prædictor. tenentium* afforentur *& taxentur per Sacramentum parium. Charta Anno* 1316. *apud Thorn.* Du Cange.

Afforatus, Appraiſed or valued, as Things vendible in a Fair or Market —— *Retinuit Rex poteſtatem pardonandi ei omnimoda Amerciamenta tam* Afforata, *quam non* Afforata, *tam de ſe quam de omnibus hominibus.* Cartular. Glaſton. *MS. f.* 58.

Afforciament, (*Afforciamentum*) A Fortreſs, ſtrong Hold, or other Fortification——*Pro reparatione murorum & aliorum* Afforciamentorum *dictæ Civitatis, &c.* Pryn. Animad. on Coke, *fol.* 184.

Afforciare, To add, increaſe, or make ſtronger —— *Cum Juratores in veritate dicenda ſunt ſibi contrarii de conſilio Curiæ* Afforcietur *aſſiſa ita quod apponantur alii juxta numerum majoris partis quæ diſſenſerit.* Bract. lib. 4. c. 19. *viz.* Let the Witneſſes be increaſed.

Afforest, (*Afforeſtare*) To turn Ground into a Foreſt. *Chart. de Foreſt. c.* 1. When Foreſt Ground is turned from Foreſt to other Uſes, it is called *Diſafforeſted. Vide* Foreſt.

Affray, Is derived from the *Fr.* Word *Effrayer*, to *affright*, and it formerly meant no more; as where Perſons appeared with Armour or Weapons not uſually worn, to the Terror of others. *Stat.* 2 *Ed.* 3. *c.* 3. But now it ſignifies a Skirmiſh or Fighting between two or more, and there muſt be a Stroke given, or offered, or a Weapon drawn, otherwiſe it is not an *Affray.* 3 *Inſt.* 158. It is inquirable in the Court-Leet; and puniſhable by Juſtices of Peace in their Seſſions, by Fine and Impriſonment. And it differs from Aſſault, in that it is a Wrong to the Publick; whereas Aſſault is of a private Nature, *Lamb. lib.* 2. A Juſtice of Peace may commit *Affrayers*, until they find Sureties of the Peace: A Conſtable may require *Affrayers* to depart, and if they reſiſt, he may call others to his Aſſiſtance; who, if thoſe refuſe to aſſiſt him, may be fined and impriſoned: And a private Perſon, or Stander-by, may put a Stop to an *Affray*, and ſeize the Offenders, where Perſons are aſſembled in a tumultuous Manner to break the Peace. 3 *Inſt.* 158. *H. P. C.* 135. In Caſe a Perſon be dangerouſly wounded, any Man may apprehend the Offender, and carry him before a Juſtice, in the ſame Manner as a Conſtable. *Dalt.* 35. In a very dangerous *Affray*, a Conſtable can juſtify Commitment, 'till the Offenders find Sureties for the Peace. *Lamb.* 139. He may likewiſe put the *Affrayers* in the Stocks till he can procure proper Aſſiſtance to convey them to Gaol. *Dalt.* 38. But in Caſes of *Affrays*, the Conſtable muſt apprehend the Perſons offending before the *Affray* is over, or elſe he may not do it without a Warrant from a Juſtice, except it be in an extraordinary Caſe; as where a Perſon is wounded dangerouſly. *Dalt.* 36. In Caſe of a ſudden *Affray*, through Paſſion or exceſs of Drinking, the Conſtable may put the Perſons in Priſon if there be one in the Vill, until the Heat of their Paſſion and Intemperance is over, though he deliver them afterwards; or 'till he can bring them before a Juſtice of Peace, and that to avoid the preſent Danger. 2 *Hale's Hiſt. P. C.* 95. 90. If a Conſtable is hurt in an *Affray*, he may have his Remedy by Action of Treſpaſs, and have good Damages; but the *Affrayers*, if they are hurt, ſhall have no Remedy. *Lamb.* 141. And where any other Perſons receive Harm from the *Affrayers*, they may have Remedy by Action againſt them. *Dalt.* 35.

An *Indictment* for an *Affray*.

THE *Jurors for our Sovereign Lord the King upon their Oath preſent, That* A. B. C. D. *and* E. F. *late of,* &c. *with Force and Arms, that is to ſay, with Swords, Staves, and other Warlike Inſtruments, on the Day,* &c. *in the Year of the Reign,* &c. *at* M. *in the County aforeſaid, being arrayed and unlawfully aſſembled together in a warlike Manner, then and there by turns made an Aſſault and* Affray, *to the Terror and Diſturbance of divers Subjects of our Lord the King then and there being, and to the evil and pernicious Example of the Liege People of the ſaid Lord the King, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity.*

Affreightment, (*Affretamentum*) The Freight of a Ship, from the French *Fret*, which ſignifies the Tons. *Pat.* 11 *Hen.* 4. See *Charter-Party.*

Affri, vel *Affra*, Bullocks, or Horſes or Beaſts of the Plough——*Vicecomes liberet ei omnia catalla debitoris, exceptis Bobus* & Affris *carucæ.* Weſtm. 2. c. 18. *Et communiam Paſturæ ad decem Boves* & *duos* Affros *in prædictis Paſturis* Mon. Angl. par. 2. f. 291. And in the County of *Northumberland*, the People to this Day call a dull or ſlow Horſe, a falſe *Aver* or *Afer.* Spelm Gloſſ.

African Company, The Royal *African Company* of Merchants eſtabliſhed by King *Charles* II. for Trading to *Africa.* And all Perſons may Trade thither, as well as the Company, paying 10 *per Cent.* on Exportation of Goods, for maintaining the Forts, &c. And the like Duty upon Importation; on Payment of which Duties, they ſhall be protected in their Trade. *Stat.* 9 & 10 *W.* 3. Vide *Merchant.*

Agalma, The Impreſſion or Image of any Thing on a Seal: —— *Ego* Dunſtanus *hanc Libertatem crucis* Agalmate *conſignavi* ——— Chart. Edg. Reg. pro Weſtmonaſt. Eccleſ. Anno 968.

Age, (*Ætas*, Fr. *Aage*) In common Acceptation ſignifies a Man's Life from his Birth to any certain Time, or the Day of his Death: It alſo hath Relation to that Part of Time wherein Men live. But in the Law it is particularly uſed for thoſe ſpecial Times which enable Perſons of both Sexes to do certain Acts, which before through Want of Years and Judgment they are prohibited to do. As for Example; a Man at twelve Years of *Age* ought to take the Oath of Allegiance to the King: At Fourteen, which is his *Age* of Diſcretion, he may conſent to Marriage, and chuſe his Guardian; and at Twenty-one he may alien his Lands, Goods and Chattels: A Woman at nine Years of Age is dowable; at Twelve ſhe may conſent to Marriage; at Fourteen ſhe is at Years of Diſcretion, and may chuſe a Guardian; and at Twenty-one ſhe may alienate her Lands, &c. 1 *Inſt.* 78. There are ſeveral other *Ages* mentioned in our antient Books, relating to Aid of the Lord, Wardſhip, &c. now of no Uſe. *Co. Lit.* The *Age* of Twenty-one is the full *Age* of Man or Woman; which enables them to contract and manage for themſelves, in Reſpect to their Eſtates, until which Time they cannot act with Security to thoſe as deal with them; for their Acts are in moſt Caſes either void, or voidable: *Perk.* But a Perſon under Twenty-one, may contract for Neceſſaries ſuitable to his Quality, and it ſhall bind him: Alſo one under *Age* may be Executor of a Will. 1 *Inſt.* 171. And at Fourteen Years of *Age* a Perſon may diſpoſe of Goods and Perſonal Eſtate by Will; tho' not of Lands 'till the *Age* of Twenty-one. It hath been adjudged, that if one be born on the firſt of *February* at Eleven o'Clock at Night, and the laſt of *January* in the One and Twentieth Year at One o'Clock in the Morning, he makes his Will of Lands, &c. and dies; yet ſuch Will is good, for he then was of *Age. Mod. Caſ.* 260. A Perſon under the *Age* of Twenty-one may make a Purchaſe; but at his full *Age* he may agree or diſagree to it. 1 *Inſt.* 2. So where Perſons marry, the Man under the *Age* of Fourteen, or the Woman within Twelve, they may diſagree to the Marriage at thoſe *Ages:* And the Law is the ſame in other Caſes. Perſons under the *Age* of Fourteen, are not generally puniſhable for Crimes: But if they do any Treſpaſs, they muſt anſwer for the Damage. 1 *Inſt.* 247. 2 *Roll. Abr.* 547. Fourteen is the *Age* by Law to be a Witneſs; and in ſome Caſes a Perſon of nine Years of *Age* hath been allow'd to give Evidence. 2 *Hawk.* 434. None may be a Member of Parliament under the *Age* of Twenty-one Years; and no Man can be ordained Prieſt till Twenty-four; nor be a Biſhop 'till thirty Years of *Age.*

Age-Prier, (*Ætatem precari* or *Ætatis precatio*) Is when an Action being brought againſt a Perſon under Age for Lands which he hath by Deſcent, he by Petition or Motion ſhews the Matter to the Court, and prays that the Action may ſtay till his full Age, which the Court generally agrees to. *Terms de Ley* 30. But as a Purchaſor, a Minor ſhall not have *Age Prier:* Nor in a Writ of Aſſiſe, becauſe it is of his own Wrong, and this Writ ſhall not be delay'd; or in a Writ of Dower; or of Partition. *Stat.* 3 *Ed.* 1. 38 *Ed.* 3. *Hob.* 342. In a Writ of Debt againſt an Heir, he ſhall have his Age, for at full Age he may plead *Riens per Deſcent*, or a Releaſe to his Anceſtor, and be diſcharged. *Danv. Abr.* 259. See *Parol Demurrer.*

Agenfrida, The true Lord or Owner of any Thing ——*Si porcus non fuerit ibi ſæpius quam ſemel det* Agenfrida *unum ſolidum.* Leg. Inæ, c. 50. *apud* Brompt. c. 45.

Agenhine, A Gueſt at an Inn after three Nights, when accounted one of the Family. See *Hogbenhine.*

Agent and Patient, Is when a Perſon is the Doer of a Thing, and the Party to whom done: As where a Woman endows herſelf of the beſt Part of her Husband's Poſſeſſions, this being the ſole Act of herſelf to herſelf, makes her *Agent and Patient.* Alſo if a Man be indebted unto another, and afterwards he makes the Creditor his Executor, and dies, the Executor may retain ſo much of the Goods of the Deceaſed as will ſatisfy his Debt; and by this Retainer he is *Agent and Patient*, that is, the Party to whom the Debt is due, and the Perſon that pays the ſame. But a Man ſhall not be Judge in his own Cauſe, *Quia iniquum eſt aliquem ſuæ rei eſſe judicem.* 8 Rep. 138.

Agild, Signifies to be free from Penalties, not ſubject to the cuſtomary Fine or Impoſition. Sax. *a Gild, Sine mulcta.* Leges Aluredi, cap. *6.* *Si utlagata efficiat ut occidatur, pro eo quod contra Dei rectum & Regis imperium Stet* ——— *jaceat* Agild. In Leg. Hen. 1. c. 88. *Agilde* was a Perſon ſo vile, that whoever kill'd him was to pay no Mulct for his Death.

Agiler, From the Sax. *a gile*, an Obſerver or Informer.

Agillarius, A Hey-ward, Herd-ward, or Keeper of Cattle in a common Field. Towns and Villages had their Heywards, to ſuperviſe and guard the greater Cattle, or common Herd of Kine and Oxen, and keep them within due Bounds; and if theſe were ſervile Tenants, they were privileged from all cuſtomary Services to the Lord, becauſe they were preſumed to be always attending their Duty, as a Shepherd on his Flock. And Lords of Manors had likewiſe their Heywards, to take Care of the Tillage, Harveſt-Work, *&c.* and ſee that there were no Incroachments made on their Lordſhips: But this is now the Buſineſs of Bailiffs. *Kennet's Paroch. Antiq.* 534, 576.

Agiſt, (from the Fr. *Giſte*, a Bed or Reſting Place) Signifies to take in and feed the Cattle of Strangers in the King's Foreſt, and to gather up the Money due for the ſame. *Chart. de Foreſta, 9 H. 3. c. 9.* The Officers appointed for this Purpoſe are called *Agiſters*, or *Giſt-takers*, and are made by the King's Letters Patent: There are four of them in every Foreſt wherein the King hath any Pawnage. *Manw. For. Laws* 80. They are alſo called *Agiſtators*, to take Account of the Cattle *agiſted.*

Agiſtment, (*Agiſtamentum*) Is where other Men's Cattle are taken into any Ground, at a certain Rate *per* Week: It is ſo called, becauſe the Cattle are ſuffered *agiſer*, that is to be levant and couchant there; and many great Farms are employed to this Purpoſe. 2 *Inſt.* 643. Our Graziers call Cattle which they thus take in to keep *Giſements*; and to *giſe* or *juice* the Ground, is when the Occupier thereof feeds it not with his own Stock, but takes in the Cattle of others to *agiſt* or paſture it. *Agiſtment* is likewiſe the Profit of ſuch Feeding in a Ground or Field: And extends to the Depaſturing of barren Cattle of the Owner, for which Tithes ſhall be paid to the Parſon. There is *Agiſtment of Sea-Banks*, where Lands are charged with a Tribute to keep out the Sea. *Terræ Agiſtatæ* are Lands whoſe Owners are bound to keep up the Sea Banks. *Spelm. in Romney-Marſh.*

Agitatio Animalium in Foreſta, The Drift of Beaſts in the Foreſt. *Leg. Foreſt.*

Agius, (Gr.) *i. e.* Holy. ——*Ego Triumphalem Trophæum* Agiæ *crucis impreſſi.* Mon. Angl. p. 15, 17.

Agnus Dei, A Piece of white Wax in a flat oval Form, like a ſmall Cake, ſtamp'd with the Figure of the Lamb, and conſecrated by the Pope. *Agnus Dei*, Croſſes, *&c.* are not permitted to be brought into this Kingdom, on Pain of a *Præmunire.* Stat. 13 *Eliz. c.* 2.

Agraria Lex, A Law made by the *Romans* for Diſtribution of Lands among the common People.

Agreement, *Agreamentum* (*aggregatio mentium*) Signifies a joining together of two or more Minds in any Thing done, or to be done. *Plowd.* 17. It is Threefold; 1ſt, An *Agreement* executed already at the Beginning; as where Money is paid for the Thing agreed, or other Satisfaction made. 2dly, An *Agreement* after an Act done by another; as where one doth ſuch a Thing, and another Perſon *agrees* to it afterwards, which is executed alſo: And 3dly, An *Agreement* executory, or to be performed *in futuro.* This laſt Sort of *Agreement* may be divided into two Parts; one certain at the Beginning, and the other when the Certainty not appearing at firſt, the Parties *agree* that the Thing ſhall be perform'd upon the Certainty known. *Terms de Ley* 31. Every *Agreement* ought to be perfect, full and compleat, being the mutual Conſent of the Parties; and ſhould be executed with a Recompence, or be ſo certain as to give an Action or other Remedy thereon. *Plowd.* 5. Any Thing under Hand and Seal, which imports an *Agreement*, will amount to a Covenant: And a *Proviſo*, by Way of *Agreement*, amounts likewiſe to Covenant: and Action may be brought upon them. 1 *Lev.* 155. An *Agreement* being put in Writing only for Remembrance, doth not change its Nature; but if it be put in Writing ſealed and delivered, it is of greater Force. *Hob.* 79. Where an *Agreement* for the Purchaſe of Lands, being in Writing, and ſigned by both the Parties, but not ſealed; it was held good in *Chancery*, and decreed to be executed. Though where a Perſon gives a Guinea, *&c.* Earneſt, without *Agreement* in writing it is otherwiſe. *Preced. Canc.* 16, 560. A Note of an *Agreement* ſign'd by one Party only, will bind both in Equity: So it is of *Agreements* in Part executed, by delivering Poſſeſſion of the Lands, tho' neither Party ſign them. *Abr. Caſ. Eq.* 21. But if any Eſtate in Poſſeſſion or Reverſion be made to me, I muſt *agree* to it, before it will be ſettled; for I may refuſe, and ſo avoid it: A Releaſe, Deed or Bond, is made and delivered to another to my Uſe, this will veſt in me without any *Agreement* of mine; but if I *diſagree* to it, I make the Deed void. *Dyer* 167. And regularly where a Man hath once *diſagreed* to the Party himſelf, he can never after *agree*: An Obligation being made to my Uſe, and tendered to me, if I refuſe it, and after *agree* again and will accept it; now this *Agreement* afterwards, will not make the Obligation good, that was void by the Refuſal. *Co. Litt.* 79. 5 *Rep.* 119. An *Agreement* may be as well in the Party's Abſence, as in his Preſence; but a *Diſagreement* muſt be to the Perſon himſelf to whom made. 2 *Rep.* 69. When an Eſtate is made to a *Feme Covert*, it is good till *Diſagreement* without any *Agreement* of the Husband: Tho' a new Eſtate granted to the Wife where ſhe hath an Eſtate before, as by the taking of a new Leaſe, and making a Surrender in Law, will not veſt till the Husband *agree* to it. *Hob.* 204. A forced *Agreement* of the Party is accounted no *Agreement*, and therefore he that did *agree* to the Thing, ſhall not be compelled to perform it. 1 *Lill.* 48. An *Agreement* made only by Parol, may be diſcharged and made void, at any Time before broken, by Parol only, without Satisfaction: But not after it is broken, when an Injury is done. 22 *Car.* 1. *B. R.* *Agreements* are to be in Writing, by Stat. 29 *Car.* 2. *cap.* 1. *of Frauds and Perjuries*: And by the Common Law, are govern'd by the Intention, or as near it as may be. If an *Agreement* be in the Nature of a *Penalty*, the Courts of Equity will not relieve againſt it; for the Terms ſhall be judged the Meaſure of Satisfaction to the Parties. *Preced. Canc.* 102. See *Contract.*

Articles of Agreement *for Sale of an Eſtate.*

Articles of *Agreement*, indented, made, concluded and agreed upon the Day and Year, &c. Between *A.* B. of, &c. of the one Part, and C. *D.* of, &c. of the other Part, as followeth, *viz.*

FIRST, *The ſaid* A. B. *in Conſideration of the Sum of*, &c. *to be paid as herein after is mentioned, doth covenant and* agree *with the ſaid* C. D. *That he the ſaid* A. B. *ſhall and will, at the Coſts and Charges of the ſaid* C. D. *on or before the Day*, &c. *next coming, by ſuch Conveyances, Ways and Means in the Law, as his Counſel ſhall reaſonably adviſe, well and ſufficiently grant, convey and aſſure to the ſaid* C. D. *and his Heirs, or to whom he or they ſhall appoint, and to ſuch Uſes as he or they ſhall direct, All that Meſſuage or Tenement*, &c. *ſituate*, &c. *with Covenants to be therein contained againſt all Incumbrances done or committed by him the ſaid* A. B. *or any claiming under him. Alſo, The ſaid* C. D. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* A. B. *his Heirs and Aſſigns, That he the ſaid* C. D. *ſhall and will, on executing the ſaid Conveyance, pay unto the ſaid* A. B. *his Heirs or Aſſigns, the ſaid Sum of*, &c. *as and for the Purchaſe-Money for the ſaid Meſſuage, Tenement and Premiſſes abovementioned. Alſo, It is further* agreed *by and between the ſaid Parties to theſe Preſents, That the ſaid* C. D. *his Heirs and Aſſigns, ſhall and may, on the Day*, &c. *enter into and upon the ſaid Premiſſes, and receive the Profits thereof, to his and their own Uſe and Uſes.* In Witneſs, &c.

Agri, In our Law, denotes arable Land in the common Fields. *Forteſcue.*

Aid, (*Auxilium*) Is all one with the French *Aide*, and is generally underſtood to be a Subſidy granted to the Crown. By the antient Law of the Land, the King and any Lord of the Realm, might lay an *Aid* upon their Tenants, for Knighting an eldeſt Son, or Marriage of a Daughter; but this was taken away by the Statute 12 *Car.* 2. This Impoſition, which was often levied in former Times, ſeems to have deſcended to us from *Normandy*, or rather from the feudal Laws. *Grand Cuſtum. c.* 35. It is ſaid to differ from Tax in Signification; for Taxes were antiently levied at the Will of the Lord, upon any Occaſion whatſoever, but *Aids* could not be levied but where it was lawful and cuſtomary ſo to do; as to make the eldeſt Son a Knight, marry the eldeſt Daughter, or to redeem the Lord from Priſon. By Statute 34 *Ed.* 1. It is ordain'd that the King ſhall levy no *Aid* or Tax without his Parliament.

Aid-Prayer, (*Auxilium Petere*) A Word made uſe of in Pleading, for a Petition in Court to call in Help from another Perſon that hath an Intereſt in the Thing conteſted: This gives Strength to the Party praying in *Aid*, and to the other likewiſe, by giving him an Opportunity of avoiding a Prejudice growing towards his own Right. As Tenant for Life, by the Curteſy, for Term of Years, &c. being impleaded, may pray in *Aid* of him in Reverſion; that is, deſire the Court that he may be called by Writ to alledge what he thinks proper for the Maintenance of the Right of the Perſon calling him, and of his own. *F. N. B.* 50. *Aid* ſhall be granted to the Defendant in *Ejectione firmæ*, when the Title of the Land is in Queſtion: Leſſee for Years, ſhall have *Aid* in Treſpaſs; and Tenants at Will: But Tenant in Tail ſhall not have *Aid* of him in Remainder in Fee; for he himſelf hath Inheritance. *Danv. Abr.* 292. In a Writ of Replevin, the Avowry being for a real Service, *Aid* is granted before Iſſue; and in Action of Treſpaſs after Iſſue join'd, if there be Cauſe, it ſhall be had for the Defendant, tho' never for the Plaintiff. *Jenk. Cent.* 64. *Fitz. Abr.* 7. There ought to be Privity between a Perſon that joins in *Aid* and the other to whom he is joined; otherwiſe Joinder in *Aid* ſhall not be ſuffered. *Danv.* 318. There is a Prayer in *Aid* of *Patrons*, by Parſons, Vicars, &c. And between *Coparceners*, where one Coparcener ſhall have *Aid* of the other to recover *pro rata. Co. Litt.* And alſo Servants, having done any Thing lawfully in Right of their *Maſters*, ſhall have *Aid* of them. *Terms de Ley* 34.

Aid of the King, (*Auxilium Regis*) Is where the King's Tenant prays *Aid of the King*, on Account of Rent demanded of him by others. A City or Borough, that hold a Fee-farm of the King, if any Thing be demanded againſt them which belongs thereto, they may pray in *Aid of the King*: And the King's Bailiffs, Collectors, or Accountants ſhall have *Aid of the King*. In theſe Caſes, the Proceedings are ſtopp'd till the King's Counſel are heard to ſay what they think fit, for avoiding the King's Prejudice: And this *Aid*, ſhall not in any Caſe be granted after Iſſue; becauſe the King ought not to rely upon the Defence made by another. *Jenk. Cent.* 64. *Terms de Ley* 35. *Stat.* 4 *Ed.* 1. and 14 *Ed.* 3.

Aile, (of the French *Aieul*, i. e. *Avus*) Signifies a Writ which lies where a Man's Grandfather or Great Grandfather (called *Beſaile*) being ſeiſed of Lands and Tenements in Fee-ſimple, the Day that he died, and a Stranger abateth or entreth the ſame Day, and diſpoſſeſſes the Heir of his Inheritance. *F. N. B.* 222. The Aunt and the Niece ſhall join in a Writ of *Aiel* of the Seiſin of their Grandfather. And the Writ runs thus: *Rex Vic.* &c. *Præc.* A. B. *quod juſte*, &c. *redd.* B. & D. *unum Meſſuagium*, &c. *de quo*, D. Avus *præd.* B. & *proavus Præd.* D. *cujus hæred. ipſi ſunt, fuit ſeiſitus*, &c.

Aiſſamenta, Include any Liberty of Paſſage, open Way, Water-courſe, &c. for the *Eaſe* and Accommodation of Tenants. *Kit. h.*

Al, *Ald*, Words which begin with *Al* or *Ald* in the Names of Places, ſignify Antiquity; as *Alborough*, *Aldworth*, &c.

Alanerarius, A Manager and Keeper of Dogs, for the Sport of Hawking, from *Alanus* a Dog, known to the Antients. *Du Freſne.* But Mr. *Blount* renders it a Faulconer.——Robertus *de* Chedworth *Vice Com.* Linc. *liberavit lvi s. viii d.* Johanni de Bellovento, *pro putura ſeptem Leporariorum & trium Falconum &* Alanerarii & *pro vadiis unius Bracenarii.* 16 *E.* 1.

Alba, The *Alb*, A Surplice or white ſacerdotal Veſt, anciently uſed by officiating Prieſts.

Alba firma, This Word is uſed by my Lord *Coke*, and ſeems to ſignify a Tenure.——*Duplex eſt Tenura in Com.* Weſtmorland, *ſcilicet una per* Albam firmam, & *alia per Cornagium*, &c. 2 Inſt. 10.

Albergellum, The ſame with *Halsberga: Omnis homo*, &c. *habet* Albergellum & *capellum ferreum, Lanceam & Gladium.* It here ſignifies a Defence for the Neck. *Hoveden* 611.

Album, Is a Word made uſe of for white Rent, paid in Silver. *Rot. Parl.* 6 *H.* 3.

Alder, Signifies the Firſt; as *Alder beſt*, is the beſt of all; *Alder liefeſt*, the moſt dear.

Alderman, (Sax. *Ealderman*, Lat. *Aldermannus*) Hath the ſame Signification as Senator, or Senior: But at this Day, and long ſince, thoſe are called *Aldermen* who are Aſſociates to the Civil Magiſtrate of a City or Town Corporate. *Stat.* 24 *H.* 8. *cap.* 13. An *Alderman* ought to be an Inhabitant of the Place, and Reſident where he is choſen; and if he removes, he is incapable of doing his Duty in the Government of the City or Place, for which he may be disfranchis'd. 4 *Mod. Rep.* 36. *Alderman Langham* was a Freeman of the City of *London*, and choſen *Alderman* of ſuch a Ward, and being ſummoned to the Court of *Aldermen* he appeared, and the Oath to ſerve the Office was tendered to him, but he refuſed to take it, in Contempt of the Court, *&c.* whereupon he was committed to *Newgate*, and it was held good. *March Rep.* 179. The *Aldermen* of *London*, *&c.* are exempted from ſerving inferior Offices; nor ſhall they be put upon Aſſiſes, or ſerve on Juries, ſo long as they continue to be *Aldermen.* 2 *Cro.* 585. In *Spelman's Gloſſary* we find that we had anticntly a Title of *Aldermannus totius Angliæ*, Witneſs this Inſcription on a Tomb in *Ramſey Abbey*——*Hic requieſcit* D. Alwinus *inclyti Regis* Eadgari *cognatus totius* Angliæ Aldermannus, *&* *hujus Sacri Cœnobii miraculoſus Fundator.* And this Officer was in the Nature of Lord Chief Juſtice of *England. Spelm. Alderman* was one of the Degrees of Nobility among the *Saxons*, and ſignified an Earl; ſometimes applied to a Place, it was taken for a General, with a Civil Juriſdiction as well as military Power; which Title afterwards was uſed for a Judge, but it literally imports no more than *Elder.*

Alæ Eccleſiæ, The Wings or Side Iſles of the Church, from the French *Les Ailes de l'Egliſe.* ——*Ad baſes pilariorum murus erat tabulis Marmoreis compoſitus, qui Chorum cingens & Presbyterium, corpus Eccleſiæ lateribus quæ* Alæ *vocantur, dividebat.* Gervaſ. Dorobern' *in Deſcript. Eccl.* Cantuar.

Alecenarium, A Sort of Hawk called a *Lanner.* See *Putura.*

Alfet, (Sax. *Alfath*) A Cauldron or Furnace, wherein boiling Water was put for a Criminal to dip his Arm in up to his Elbow, and there hold it for ſome Time. *Du Cange.*

Alehouſes, Are to be licenſed by Juſtices of Peace, who take Recognizances of Alehouſe-keepers not to ſuffer Diſorders in their Houſes, and they have Power to put down *Alehouſes*, *&c.* But the Act is not to reſtrain Selling of *Ale* in Fairs. 5 & 6 *Ed.* 6. *c.* 25. *Alehouſe keepers* are liable to a Penalty of 20*s.* for keeping *Alehouſes* without Licence; not exceeding 40*s.* nor under 10*s.* for ſelling *Ale* in ſhort Meaſure; and 10*s.* for permitting Tippling, *&c.* And Perſons retailing *Ale* or Beer, *Alehouſe keepers*, &c. ſhall ſell their *Ale* by a full Ale Quart or Pint, according to the *Standard* in the *Exchequer*, marked from the ſaid Standard; and Sub-Commiſſioners or Collectors of Exciſe, are to provide ſubſtantial Ale Quarts and Pints in every Town in their Diviſions; and Mayors and Chief Officers to mark Meaſures, or forfeit 5*l.* by Statute 1 *Jac.* 1. *c.* 9. 3 *Car.* 1. *c.* 3. 11 & 12 *W.* 3. *c.* 15. See *Inns.*

Ale-Licences, In *London*, muſt be taken out from Commiſſioners of *Exiſe*, *&c.* on which a Duty is to be paid to the Crown; and not taking out a Licenſe or Permiſſion, incurs a Forfeiture of 20*l.* but this Statute doth not take away the Power of Juſtices of Peace in Licenſing and Regulating Victuallers, *&c.* Stat. 12 *Geo.* 1. *c.* 13. The Duty granted on *Ale-Licences*, by this Statute, is repealed by 16 *Geo.* 2. *cap.* 12.

Aler ſan jour, (*Fr.*) To go without Day, *viz.* To be finally diſmiſſed the Court, becauſe there is no further Day aſſigned for Appearance. *Kitch.* 146.

Ale-Silver, A Rent or Tribute annually paid to the Lord Mayor of *London*, by thoſe that ſell *Ale* within the Liberty of the City. *Antiq. Purvey.* 183.

Aleſtake, A May-Pole called *Aleſtake*, becauſe the Country People drew much *Ale* there: But it is not the common May-Pole, but rather a long Stake drove into the Ground, with a Sign on it, that *Ale* was to be ſold.

Ale-taſter, Is an Officer appointed in every Court-Leet, ſworn to look to the Aſſize and Goodneſs of *Ale* and Beer, *&c.* within the Precincts of the Lordſhip. *Kitch.* 46. In *London* there are *Ale-Conners*, who are Officers appointed to *taſte Ale* and Beer, *&c.* in the Limits of the City.

Alias, A ſecond or further Writ, iſſued from the Courts at *Weſtminſter*, after a *Capias*, *&c.* ſued out without Effect. *Pract. Attorn. Edit.* 1.

Alias dictus, Is the Manner of Deſcription of a Defendant, when ſued on any Specialty, as a Bond, *&c.* where after his *Name*, and common Addition; then comes the *Alias dict.* and deſcribes him again by the very Name and Addition, whereby he is bound in the Writing. *Dyer* 50. But the *Alias dict.* is ſaid to be only Reputation, and not the Truth. *Jenk. Cent.* 119. See *Miſnomer.*

Alien, (*Alienus*, *Alienigena*) One born in a ſtrange Country, out of the Allegiance of the King: It is taken for the contrary to a Denizen or natural Subject. But a Man born out of the Land, ſo as it be within the Limits of the King's Obedience beyond Sea; or born of *Engliſh* Parents out of the Obedience of the King, if the Parents at the Time of the Birth were of ſuch Obedience, is no *Alien.* Stat. 25 *Ed.* 3. *c.* 2. And if one born out of the King's Obedience, come and reſide in *England*, his Children begotten and born here are not *Aliens* but Denizens. 7 *Rep.* All Perſons being the King's Natural-born Subjects, may inherit, as Heirs to their Anceſtors, though their Anceſtors were *Aliens*, by Statute 11 & 12 *W.* 3. *c.* 6. Children of an Ambaſſador in a Foreign Country, by a Wife being an *Engliſh* Woman, by the Common Law, are natural-born Subjects, and not *Aliens.* 7 *Rep.* 11. And if an *Engliſh* Merchant living beyond Sea marries a Wife there, and hath a Child by her, and dies, this Child is born a Denizen, and ſhall be Heir to him, notwithſtanding the Wife be an *Alien. Cro. Car.* 605 *March* 91. Thoſe which are born in the *Engliſh* Plantations, are Subjects born. *Danv. Abr.* 324. There are two Incidents regularly that are neceſſary to make a Subject born; Firſt, That his Parents, at the Time of his Birth, be under the actual Obedience of the King; Secondly, That the Place of his Birth, be within the King's Dominions. 7 *Rep.* 18. And it is the Place of Birth that makes the Diſability of an *Alien* to have Lands, *&c.* The Blood is not the Diſability, but the Place where born. *Cro. Jac.* 539. An *Alien* can hold no Land by Deſcent or Purchaſe, or be Tenant by the Curteſy, or in Dower. 5 *Rep.* 502. An *Alien* may purchaſe a Houſe for Years, for Habitation during his Reſidency, as neceſſary for Trade; tho' not Lands. If an *Alien*, being a Merchant, leaves the Realm, the King ſhall have the Leaſe; and if he dies here poſſeſſed thereof, his Executors or Adminiſtrators ſhall not have it, but the King; he having it only as an Habitation for his Trade. If an *Alien* is no Merchant, the King ſhall have his Leaſe for Years, tho' it were for his Habitation. 7 *Rep.* 18. 1 *Inſt.* 2. 129. 2 *Inſt.* 741. In Caſe an *Alien* purchaſe Land, the King upon Office found, ſhall have it. 1 *Inſt.* 2. *Aliens* are prohibited to purchaſe Benefices, without the King's Licence, *&c. Stat.* 7 *R.* 2. *c.* 12. A Deviſe of Lands to an *Alien* is void. 4 *Leon.* 82. And if a Man be bound to an *Alien* Enemy in an Obligation, the Bond is void to him; but the King will have it. 1 *Lev.* 59. *Danv. Abr.* 322. *Aliens* may obtain Goods and perſonal Eſtate, by Trade, *&c.* And may maintain Actions for the ſame; they may alſo have Actions of Aſſault and Battery, and for Support of their Credit. 1 *Bulſt.* 134. But they cannot bring any Real Action, unleſs it be for an Houſe for neceſſary Habitation, being for the Benefit of Trade. 7 *Rep.* And an *Alien* Enemy cannot maintain any Action whatſoever, nor get any Thing lawfully within this Realm. *Terms de Ley* 36. An *Alien* Enemy coming into this Kingdom, and taken in War, ſhall ſuffer Death by the Martial Law; and not be indicted at Common Law, for the Indictment muſt conclude *contra Ligeantiam ſuam*, *&c.* And ſuch was never in the Protection of the King. *Molloy de jur. Marit.* 417. *Aliens* living under the

Protection of the King, may have the Benefit of a General Pardon. *Hob.* 271. No *Alien* ſhall be returned on any Jury, nor be ſworn for Trial of Iſſues between Subject and Subject, *&c.* but where an *Alien* is Party in a Cauſe depending, the Inqueſt of Jurors are to be half Denizens, and half *Aliens:* But in Caſes of High Treaſon, this is not allowed. 2 *Inſt.* 17. An *Alien* ſhall not have any Vote in the Choice of Knights of the Shire, or Burgeſſes to Parliament. *Hob.* 270. And Perſons that are *Aliens*, or born out of the Realm, are incapable to be Members of Parliament, enjoy Offices, *&c.* *Stat.* 12 *W.* 3. *cap.* 2. *Aliens* are to take an Oath to be true to the King, and obedient to his Laws: They ſhall not take Apprentices, but ſuch as are born in the King's Allegiance. Strangers not being Denizens and Houſholders are reſtrained from keeping any Shop, *&c.* to exerciſe their Handicrafts: And the Goods and Wares of *Aliens* are to be examined and marked, by Wardens of Handicrafts, *&c.* 14 *H.* 8. 21 *H.* 8. *cap.* 16. 32 *H.* 8. *c.* 16. No *Alien* ſhall be a Factor abroad, in the *Engliſh* Plantations, under Penalties. *Stat.* 12 *Car.* 2. *cap.* 18. See *Artificers.*

Alienation, (from *Alienare* to alien A Transferring the Property of a Thing to another: It chiefly relates to Lands and Tenements; As to *alien* Land in Fee, is to ſell the Fee-ſimple thereof, *&c.* And to *alien* in Mortmain, is to make over Lands or Tenements to a Religious Houſe or Body Politick; for which the King's Licence is to be obtained. *Stat.* 15 *R.* 2. *c.* 5. Fines for *Alienations* are taken away by Statute; except Fines due by particular Cuſtoms of Manors. 12 *Car.* 2. *Danv. Abr.* 327. All Perſons who have a Right to Lands, may generally *alien* them to others: But ſome *Alienations* are forbidden; as an *Alienation* by a particular Tenant, ſuch as Tenant for Life, *&c.* which incurs a Forfeiture of the Eſtate. 1 *Inſt.* 118. For if Leſſee for Life, by Livery *alieneth* in Fee, or make a Leaſe for the Life of another, or Gift in Tail, it is a Forfeiture of his Eſtate: So if Tenant in Dower, Tenant for another's Life; Tenant for Years, *&c.* do *alien* for a greater Eſtate than they lawfully may make. 1 *Inſt.* 233, 251. Conditions in Feoffments, *&c.* that the Feoffee ſhall not *alien*, are void. 1 *Inſt.* 206. *Hob.* 261. And it is the ſame where a Man poſſeſs'd of a Leaſe for Years, or other Thing, gives and ſells his whole Property therein, upon ſuch Condition: But one may grant an Eſtate in Fee, on Condition that the Grantee ſhall not *alien* to a particular Perſon, *&c.* And where a Reverſion is in the Donor of an Eſtate, he may reſtrain an *Alienation* by Condition. *Lit.* 361. *Wood's Inſt.* 141. Eſtates in Tail, for Life, or Years, where the whole Intereſt is not parted with, may be made with Condition not to *alien* to others, for the Preſervation of the Lands granted in the Hands of the firſt Grantee.

Alimony, (*Alimonia*) Signifies Nouriſhment or Maintenance: And in a legal Senſe, it is taken for that Allowance which a married Woman ſues for and is entitled to, upon any occaſional Separation from her Husband. *Terms de Ley* 38. Where a Woman is divorced a *Menſa & Thoro*, ſhe may ſue her Husband in her own Name for *Alimony* or Maintenance out of the Husband's Eſtate, during the Separation, either in the Chancery or Spiritual Court; and it will be allowed, except it be in Caſes of Elopement and Adultery. 1 *Inſt.* 235. But the Spiritual Court is the proper Court to ſue in for *Alimony:* And the not Allowing a Wife Maintenance, is not an Offence within the Statute 1 *Eliz.* but a Neglect of the Husband's Duty, and a Breach of his Vow. 12 *Rep.* 30. A Man may be ſued in the Spiritual Court for Beating his Wife, and he may be ordered to pay her ſo much *per* Week *Alimony:* But a Prohibition hath been granted by *B. R.* in ſuch Caſe; and the Wife may have Sureties of the Peace for unreaſonable Beating her. *Trin.* 11 *Jac.* 1. *Moor* 874. *Alimony* was anciently expreſſed by *Rationabile Eſtoverium*, Reaſonable Maintenance.—— *Rex Vic.* Bucks *ſalutem. Præcipimus tibi quod de Maritagio* Emmæ de Pinckney *uxoris* Laurentii Penire, *qui Excommunicatus eſt, eo quod prædictam* Emmam *affectione Maritali non tractat, eidem Emmæ* Rationabile Eſtoverium *ſuum invenias, donec idem* Laurentius *Vir ſuus eam tanquam uxorem ſuam tractaverit, ne iteratus clamor ad nos inde perveniat.*——Rot. 7 Hen. 3.

Allaunds, *Ab Alanis, Scythiæ Gente*, Hare-Hounds.

Allay, (Fr. in Lat. *Allaya*) A Word uſed for the Tempering and Mixture af other Metals with Silver or Gold. *Stat.* 9 *Hen.* 5. This *Allay* is to augment the Weight of the Silver or Gold, ſo as it may defray the Charge of Coinage, and to make it the more fuſile. A Pound Weight of Standard Gold, by the preſent Standard in the Mint, is Twenty-two Carats fine, and two Carats *Allay:* And a Pound Weight of right Standard Silver conſiſts of eleven Ounces two Penny Weight of fine Silver, and eighteen Penny Weight of *Allay.* *Lownd's Eſſay, upon Coins, pag.* 19. One Penny Weight of Angel Gold, is worth four Shillings and Two-pence; of Crown-Gold, three Shillings and Ten-pence: And one Ounce of pure Silver, is worth five Shillings and Four-pence; and with *Allay*, five Shillings. *Mod. Juſt. tit. Coin, pag.* 120.

Allegiance, *Allegiantia* (formerly called *Ligeance*, from the Latin *Alligare & Ligare*, i. e. *Ligamen Fidei*) is the ſworn *Allegiance*, or Faith and Obedience, which every Subject owes to his Prince. It is either perpetual, where one is a Subject born; or where one hath the Right of a Subject by Naturalization, *&c.* or it is Temporary, by Reaſon of Reſidence in the King's Dominions. To Subjects born, it is an Incident inſeparable; and as ſoon as born they owe by Birth-right Obedience to their Sovereign: And it cannot be confined to any Kingdom, but follows the Subject whereſoever he goes. The Subjects are hence called *Liege People*, and are bound by this *Allegiance* to go with the King in his Wars, as well within as without the Kingdom. 1 *Inſt.* 2, 329. 2 *Inſt.* 741. All Perſons above the Age of Twelve Years are to be required to take the Oath of *Allegiance* in Courts-Leet. And there are ſeveral Statutes requiring the Oath of *Allegiance* and Supremacy, *&c.* to be taken, under Penalties: Juſtices of Peace may ſummon Perſons above the Age of Eighteen Years, to take theſe Oaths. *Stat.* 1 *Eliz.* 1 *W. & M.* &c. Abſolving any Perſons from their *Allegiance*, is High Treaſon, by 1 & 21 *Eliz.*

Allegiare, To defend or juſtify by due Courſe of Law.———— *Si quis ſe velit* allegiare *ſecundum Regis Weregilidum hoc faciat.* Leges Alvred. cap. 4. Spelm.

Aller Good. The Word *Aller* is uſed to make what is added to ſignify ſuperlatively; as *Allergood* is the greateſt Good.

Alleviare, Signifies to levy or pay an accuſtomed Fine. Some of our ancient Hiſtories mention ſuch Fines paid by Perſons to their Lords for Redemption of their Daughters, or for a Licence to marry them. *Brady's Pref. to Engl. Hiſt.* 64.

Allocation, (*Allocatio*) In a legal Senſe is an Allowance made upon an Account in the *Exchequer*; or more properly a Placing or Adding to a Thing.

Allocatione Facienda, A Writ for allowing to an Accountant ſuch Sums of Money as he hath lawfully expended in his Office; directed to the Lord Treaſurer, and Barons of the *Exchequer*, upon Complaint made. *Reg. Orig.* 206

Allocato Comitatu, Is a new Writ of *Exigent* allowed, before any other *County-Court* holden, on the former not being fully ſerved, or complied with, *&c.* *Fitz. Exig.* 14.

Allodial: This is where an Inheritance is held without any Acknowledgment to any Lord or Superior; and therefore is of another Nature from that which is feodal. *Allodian Lands* are free Lands, which a Man enjoys without paying any Fine, Rent, or Service to any other. See *Alodium.*

Alluminor, (from the Fr. *Allümer,* to lighten) Is uſed for one who coloureth or painteth upon Paper or Parchment; and the Reaſon is, becauſe he gives Light and Ornament by his Colours to the Letters or other Figures. The Word is uſed Stat. 1 *R.* 3. *c.* 9. But we now call ſuch a one a *Limner.*

Almanack, Is Part of the Law of *England,* of which the Courts muſt take Notice, in the Returns of Writs, *&c.* but the *Almanack* to go by, is that annex'd to the *Book of Common Prayer.* Mod. Caſ. 41, 81.

Almaria, for *Armaria:* The Archives of a Church, a Library.— ——*Omnia etiam Eccleſiæ* Almaria *confregit, Chartas & Privilegia quædam igne cremavit.* Gervaſ. Dorob. in R. 2.

Almner, or **Almoner,** (*Eleemoſynarius*) An Officer of the King's Houſe, whoſe Buſineſs it is to diſtribute the King's *Alms* every Day. He ought to admoniſh the King to beſtow his Alms, eſpecially upon Saints Days and Holydays; and he is likewiſe to viſit the Sick, Widows that are poor, Priſoners and other neceſſitous People, and to relieve them under their Wants; for which Purpoſe, he hath the Forfeitures of Deodands, and the Goods of *Felo's de ſe,* allowed him by the King. *Fleta, lib.* 2. *cap.* 22. The Lord *Almoner* has the Diſpoſition of the King's Diſh of Meat, after it comes from the Table, which he may give to whom he pleaſes; and he diſtributes Four-pence in Money, a Two penny Loaf of Bread, and a Gallon of Beer; or inſtead thereof Three-pence daily at the Court-gate to Twenty-four poor Perſons of the King's Pariſh, to each of them that Allowance. This Officer is uſually ſome Biſhop.

Almsfeoh, or *Aelmesfeoh,* Saxon for *Alms-Money:* It has been taken for what we call *Peter Pence,* firſt given by *Ina* King of the *Weſt-Saxons,* and anciently paid in *England* on the firſt of *Auguſt.* It was likewiſe called *Romefeoh, Romeſcot,* and *Heorthpening.* Selden's Hiſt. Tithes 217.

Almutium, A Garment which covered the Head and Shoulders of Prieſts. *Quæſivit Epiſcopus in quali habitu eſſet? Reſponſum eſt, quod in tunica de Burneto &* Almutio *ſine cuculla.* W. Thorn. 1330.

Alnage, (French *Aulnage)* Signifies a Meaſure, particularly the Meaſuring with an Ell. *Stat.* 17 *Ed.* 4. *cap.* 5.

Alnager, or *Aulnager,* (French *Alner,* Latin *Ulniger*) Is properly a Meaſurer by the Ell; and the Word *Aulne* in *French* ſignifieth *an Ell.* An *Aulnager* with us is a publick ſworn Officer of the King's, whoſe Place it is to examine into the Aſſiſe of all Cloths, made throughout the Land, and to fix Seals upon them; and another Branch of his Office is to collect a Subſidy or *Aulnage* Duty granted to the King. He hath his Power by Stat. 25 *Ed.* 3. and ſeveral other antient Statutes; which appoint his Fees, and inflict a Puniſhment for putting his Seal to deceitful Cloth, *&c. viz.* a Forfeiture of his Office, and the Value. 27 *Ed.* 3. 3 *R.* 2. But there are now three Officers belonging to the Regulation of Clothing, who bear the diſtinct Names of *Searcher, Meaſurer,* and *Aulnager;* all which were formerly compriſed in one Perſon. 4 *Inſt.* 31. And becauſe the Subjects of this Kingdom ſhould not be abuſed, an Office of *Searching* is eſtabliſhed by Act of Parliament.

Alnetum, A Place where *Alders* grow; or a Grove of *Alder-trees.* ——— Alnetum *eſt ubi Alni arbores creſcunt.*———Domeſday-Book.

Alodium, In *Domeſday* ſignifies a free Manor: And *Alodarii* Lords of Manors, or Lords Paramount. *Quandò moritur* Alodarius, *Rex inde habet Relevationem terræ, &c.* Domeſday, Tit. Kent. 1 Inſt. 1, 5.

Aloberium, *A Purſe.* This Word is mentioned in *Fleta, lib.* 2. *c.* 82. *par.* 2.

Altarage, (*Altaragium*) The Offerings made upon the *Altar,* and alſo the Profit that ariſes to the Prieſt by Reaſon of the *Altar, obventio Altaris. Mich.* 21 *Eliz.* It was declared that by *Altarage* is meant Tithes of Wool, Lambs, Colts, Calves, Pigs, Chickens, Butter, Cheeſe, Fruits, Herbs, and other ſmall Tithes with the Offerings due: The Caſe of the Vicar of *Weſt-Haddon* in *Northamptonſhire.* But the Word *Altarage* at firſt is thought to ſignify no more than the caſual Profits ariſing to the Prieſt, from the Peoples voluntary Oblations at the *Altar;* out of which a Portion was aſſigned by the Parſon to the Vicar: Since that, our Parſons have generally contented themſelves with the greater Profits of Glebe, and Tenths of Corn and Hay; and have left the ſmall Tithes to the officiating Prieſts: And hence it is that Vicarages are endowed with them. *Terms de Ley* 39. 2 *Cro.* 516.—*Vicarius de* Tickill *ad ſuſtentationem ſui habeat totum* Altaragium, *ita quod Nomine* Altaragii *contineantur omnes obventiones, Decimæ & proventus ipſius Eccleſiæ de* Tickill, *Exceptis Decimis Bladi Leguminis & fœni, & terris ad dictam Eccleſiam pertinentibus, &c. Ordinatio* Walter. *Archiep.* Ebor. *An. Dom.* 1249. *Vicaria in Eccleſia Sanct. Martini de* Stampford *conſiſtit in toto* Altaragio *dictæ Eccleſiæ.* Monaſticon, 2 Tom. 881. 3 Tom. 139.

Alteration, (*Alteratio,*) Is a Changing of a Thing: And when Witneſſes are examined upon Exhibits, *&c.* they ought to remain in the Office, and not be taken back into private Hands, by whom they may be altered. *Hob.* 254.

Alto & Baſſo. By this is meant the abſolute Submiſſion of all Differences. *Pateat Univerſis per præſentes quod* Willielmus T. *de* Y. *&* Thomas G. *de* A. *poſuerunt ſe in* Alto & Baſſo *in Arbitrio quatuor hominum, viz.* ——— *de quadam Querela pendente, &c. Et prædicti quatuor homines Judicaverunt, &c.* Dat. Anno 2 Hen. 5.

Amabyr, vel **Ambabyr,** (*Br.*) A Cuſtom in the Honour of *Clun,* belonging to the Earls of *Arundel: Pretium Virginitatis Domino Solvendum.* LL. *Eccl. Gul.* Howeli Dha, *Regis* Walliæ. *Puella dicitur eſſe Deſertum Regis, & ob hoc Regis eſt de ea* Amvabyr *habere.* This Cuſtom *Henry* Earl of *Arundel* releaſed to his Tenants, *Anno* 3 & 4 *P.* & *M.*

Ambactus, A Servant or Client. *Cowel.*

Ambaſſador, (*Legatus*) Is a Servant of the State, repreſenting the King in a Foreign Country, to take Care of the Publick Affairs. And *Ambaſſadors* are either Ordinary, or Extraordinary; the Ordinary *Ambaſſadors* are thoſe who reſide in the Place whither ſent; and the Time of their Return being indefinite, ſo is their Buſineſs uncertain, ariſing from emergent Occaſions; and commonly the Protection and Affairs of the Merchants is their greateſt Care: The Extraordinary *Ambaſſadors* are made *pro tempore,* and employed upon ſome particular great Affairs, as Condolements, Congratulations, or for Overtures of Marriage, *&c.* Their Equipage is generally very magnificent; and they may return without requeſting of Leave, unleſs there be a reſtraining Clauſe in their Commiſſion. *Molloy* 144. An Agent repreſents the Affairs only of his Maſter; but an *Ambaſſador* ought to repreſent the Greatneſs of his Maſter, and his Affairs. *Ibid.* By the Laws of Nations, none under the Quality of a Sovereign Prince can ſend any *Ambaſſador:* A King that is deprived of his Kingdom and Royalty, hath loſt his Right of Legation. No Subject, though ever ſo great, can ſend or receive an *Ambaſſador;* and if a Viceroy does it, he will be guilty of High Treaſon: The Electors and Princes of *Germany,* have the Privelege of ſending and Reception of

Ambaſſadors; but it is limited only to Matters touching their own Territories, and not the State of the Empire. It is ſaid there can be no *Ambaſſador*, without Letters of Credence from his Sovereign, to another that hath ſovereign Authority: And if a Perſon be ſent from a King or abſolute Potentate, though in his Letters of Credence he is termed an Agent, yet he is an *Ambaſſador*, he being for the Publick. 4 *Inſt.* 153. *Ambaſſadors* may by a Precaution be warned not to come to the Place where ſent; and if they then do it, they ſhall be taken for Enemies: But being once admitted, even with Enemies in Arms, they ſhall have the Protection of the Laws of Nations, and be preſerved as Princes. *Moll.* 146. If a baniſhed Man be ſent as an *Ambaſſador* to the Place from whence he is baniſhed, he may not be detained or moleſted there. 4 *Inſt.* 153. The Killing of an *Ambaſſador*, has been adjudged High Treaſon. 3 *Inſt.* Some *Ambaſſadors* are allowed by Conceſſion, to have Juriſdiction over their own Families; and their Houſes permitted to be Sanctuaries: But where Perſons who have greatly offended fly to their Houſes, after Demand and Refuſal to deliver them up, they may be taken from thence. *Ambaſſadors* cannot be defended when they commit any Thing againſt the State, or the Perſon of the King, with whom they reſide. 4 *Inſt.* 152. An *Ambaſſador* guilty of Treaſon againſt the King's Life, may be condemned and executed: But for other Treaſons, he ſhall be ſent home, with Demand to puniſh him, or to ſend him back to be puniſhed. 4 *Inſt.* 152. 1 *Roll. Rep.* 185. If a Foreign *Ambaſſador* commits any Crime here, which is *contra jus Gentium*, as Treaſon, Felony, &c. or any other Crime againſt the Law of Nations, he loſeth the Privilege of an *Ambaſſador*, and is ſubject to Puniſhment as a private Alien; and he need not be remanded to his Sovereign, but of Curteſy. *Danv. Abr.* 327. But if a Thing be only *Malum Probibitum* by any Act of Parliament, Private Law, or Cuſtom of the Realm, and it is not *contra jus Gentium*, an *Ambaſſador* ſhall not be bound by them. 4 *Inſt.* 153. And it is ſaid *Ambaſſadors* may be excuſed of Practices againſt the State where they reſide, (except it be in Point of Conſpiracy, which is againſt the Law of Nations) becauſe it doth not appear whether they have it *in Mandatis*; and then they are excuſed by Neceſſity of Obedience. *Bac. Max.* 26. By the Civil Law, the Perſon of an *Ambaſſador* may not be arreſted: and the moveable Goods of *Ambaſſadors* which are accounted an Acceſſion to their Perſons, cannot be ſeiſed on, as a Pledge; nor for Payment of Debt, tho' by Leave of the King or State where they are Reſident; but on Refuſal of Payment, Letters of Requeſt are to go to his Maſter, &c. *Molloy* 157. *Danv.* 328. By our Statute Law, an *Ambaſſador*, or Publick Miniſter, or his Domeſtick Servants, regiſtred in the Secretary's Office, &c. are not to be arreſted; if they are, the Proceſs ſhall be void, and the Perſons ſuing out and executing it, ſhall ſuffer ſuch Penalties and Corporal Puniſhment as the Lord Chancellor or either of the Chief Juſtices ſhall think fit. *Stat.* 7 *Ann. cap.* 12. Alſo the Goods of an *Ambaſſador*, or of his Servants, ſhall not be diſtrained. *Stat. ibid.*

Ambidexter, (*Lat.*) One that can uſe his left Hand as well as his right; or that plays on both Sides. But in a legal Senſe, it is taken for a Juror or Embraceor, who takes Money of both Parties for giving his Verdict; and ſuch a one ſhall be impriſoned, never more be of a Jury, and further puniſhed at the King's Pleaſure. 5 *Ed.* 3. *c.* 10. *Crompt. Juſt.* 156. See *Decies tantum.*

Ambra, (Sax. *Amber*, Lat. *Amphora*) A Veſſel among the *Saxons:* It contained a Meaſure of Salt, Butter, Meal, Beer, &c. *Leg. Inæ Weſt. Sax.*

Ambry, The Place where the Arms, Plate, Veſſels, and every Thing which belong'd to Houſekeeping were kept; and probably the *Ambry* at *Weſtminſter* is ſo called, becauſe formerly ſet apart for that Uſe: Or rather the *Aumonery*, from the Latin *Eleemoſynaria*, an Houſe adjoining to an Abbey, in which the Charities were laid up for the Poor.

Amenable, (Fr. *Amener*) To bring or lead unto: Or *Amainable* (from the Fr. *Main* a Hand) ſignifies tractable, that may be led or governed: And in our Books it is commonly applied to a Woman, that is governable by her Husband. *Cow. Interp.*

Amendment, (*Emendatio*) The Correction of an Error committed in any Proceſs, which may be *amended* after Judgment; but if there be any Error in giving the Judgment, the Party is driven to his Writ of Error: Though where the Fault appears to be in the Clerk who writ the Record, it may be *amended. Terms de Ley* 39. A Plaintiff may *amend* his Bill on the File at any Time before Plea pleaded; but not afterwards without Motion and Leave of the Court. 1 *Lill. Abr.* 58. Original Writs are not *amendable* at Common Law; for if the Writ be not good, the Party may have another: Judicial Writs may and have been often *amended.* 8 *Rep.* 157. And by the Statutes 8 *H.* 6. and 18 *Eliz.* the Miſpriſion of the Clerk, &c. is *amendable* in Original Writs; but it muſt not be in another Term, when the Roll is a Record. 8 *Rep.* 88. The Faults and Miſtakes of Clerks are in many Caſes *amendable:* The Miſpriſion of a Clerk in Matter of Fact is *amendable*; tho' not in Matter of Law. *Palm.* 258. If there be a Miſtake in the legal Form of the Writ, it is not *amendable:* There is a Diverſity between the Negligence and Ignorance of the Clerk that makes out Writs; for his Negligence (as if he have the Copy of a Bond, and do not purſue it) this ſhall be *amended*; but his Ignorance in the legal Courſe of Original Writs is not *amendable.* 8 *Rep.* 159. A Party's Name was miſtaken in an original Writ; and it appearing to the Court that the Curſitors Inſtructions were right, the Writ was *amended* in Court; and they *amended* all the Proceedings after. 2 *Vent.* 152. *Cro. Car.* 74. If a Thing which the Plaintiff ought to have entered himſelf, being a Matter of Subſtance, be totally omitted, this ſhall not be *amended*; but otherwiſe it is if omitted only in Part and miſentered. *Danv. Abr.* 346. By the Common Law a Writ of Error returned and filed, could not be amended; becauſe it would alter the Record: But now by Stat. 5 *Geo.* 1. *cap.* 13. Writs of Error wherein there ſhall be any Variance from the original Record or other Defect, may be *amended* by the Court where returnable. When the Award of a Writ of Inquiry on the Roll is good, the Writ ſhall be *amended* by the Roll. *Carth.* 70. The Court cannot *amend* to make a new Writ; or to alter a good Writ, and adapt it to another Purpoſe, &c. only when the Writ is bad and vicious in the Face of it. *Mod. Caſ.* 263, 310. A Declaration grounded on an original Writ, may not be *amended*, if the Writ be erroneous: Tho' if it be on a Bill of *Middleſex* or a *Latitat*, it is *amendable.* 1 *Lill. Abr.* 67. Declarations upon any penal Statutes, *Qui tam*, &c. may not be *amended* after Iſſue joined. 2 *Mod.* 144. And Indictments of Treaſon, and Felony, Writs of Appeal, &c. are excepted out of the Statutes of *Amendments*; tho' ſome Things in them are *amendable* at Common Law. *Mod. Caſ.* 269. A Plaintiff may *amend* his Declaration in Matter of Form after a general Iſſue pleaded, before Entry thereof, without Payment of Coſts: If he *amend* in Subſtance, he is to pay Coſts, or give Imparlance; and if he *amend* after a ſpecial Plea, though he would give Imparlance, he muſt pay Coſts. 1 *Lill.* 58. A Declaration in Ejectment, laid the Demiſe before the Time; this was not *amendable*; for it would alter the Iſſue, and make a new Title in the Plaintiff.

1 *Salk* 48. The Plaintiff declared on the Statute of *Winton* for a Robbery done to himſelf, when it ſhould have been of his Servants; he had Leave to *amend.* 3 *Lev.* 347. If a Defendant pleads a Plea to the Right, or in Abatement, the Plaintiff may *amend* his Declaration; but not where he demurs, for this Fault may be the Cauſe of the Demurrer. 1 *Salk* 50. A Plea when only on Paper, upon Notice and Payment of Coſts may be *amended*; but if the Plea be entered on Parchment it is not *amendable*, being a Plea of Record: After Demurrer, and after Iſſue joined, a Plea may not be *amended.* A Demurrer may be *amended*, after the Parties have joined in Demurrer, if it be only in Paper. *Style* 48. Where a Plea ſhall be *amended*, when in Paper, or on Records, *&c.* See the Statute 4 *Geo.* 2. *c.* 26. An Iſſue entered upon Record, with Leave of the Court may be *amended*; but not in a material Thing, or in that which will deface the Record. 1 *Lill. Abr.* 61. A Record may be *amended* by the Court in a ſmall Matter, after Iſſue joined, ſo as the Plea be not altered. *Danv. Abr.* 338. If on a Writ of Error a Record is *amended* in another Court in Affirmance of the Judgment, it muſt be *amended* in the Court where Judgment was given. *Hardr.* 505. Where the Record of *Niſi prius* does not agree with the original Record, it may be *amended* after Verdict, provided it do not change the Iſſue: But a Record ſhall not be *amended* to attaint the Jury, or prejudice the Authority of the Judge. *Mich.* 8 *W.* A General or Special Verdict may be *amended* by the Notes of the Clerk of Aſſiſe in Civil Cauſes; but not in Criminal Actions. 1 *Salk.* 47. The Iſſue Roll ſhall be *amended* by the Imparlance Roll, which is precedent: But a Roll may not be *amended* after Verdict, when there is nothing to *amend* it by; tho' Surpluſage may be rejected, and ſo make it good. *Cro. Car.* 92. 1 *Sid.* 135. A Miſtake of the Clerk in entering a Judgment; as where it was that the Defendant recovered, inſtead of the Plaintiff, *&c.* was ordered to be *amended. Cro. Jac.* 631. *Hutt.* 41. A Judgment may be *amended* by the Paper-book ſigned by the Maſter. 1 *Salk.* 50. At Common Law, the Judges may *amend* their Judgments of the ſame Term; and by Statute of another Term. 8 *Rep.* 156. 14 *E.* 3. If Judgments are not well entered, on Payment of Coſts they will be ordered to be ſo: When Judgments are entered, 'tis ſaid the Defects therein being the Act of the Court, and not the Miſpriſion of the Clerk, are not *amendable. Golsb.* 104. Miſtakes in Returns of Writs, Fines and Recoveries, made by mutual Aſſent of Parties may be *amended.* 5 *Rep.* 45. Judgment ſhall not be ſtayed after Verdict, for that an Original wants Form, or varies from the Record in Point of Form, which are *amendable.* 4 *Rep.* 45. After Verdict given in any Court of Record, there ſhall be no Stay of Judgment for Want of Form in any Writ, or inſufficient Returns of Sheriffs, Variance in Form between the Original Writ and Declaration, *&c.* Stat. 32 *H.* 8. 18 *Eliz. Vide* 5 *Geo.* 1. Where Judgment ſhall not be reverſed for Defects in Form or Subſtance. It is ſaid, there are only two Statutes of *Amendments*; the 14 *Ed.* 3. *c.* 6. and 8 *H.* 6. *c.* 12. The reſt being Statutes of Jeofails; and the Statute of *H.* 6. is but to enlarge that of *Ed.* 3. which extends only to Proceſs out of the Roll or Record, and not to Proceedings in the Roll itſelf: But neither of theſe Statutes extend to the Crown. *Mod. Caſ.* 268, 285. Imperfections and Defects are aided after Verdict, by the Statutes of Jeofails: And by 4 & 5 *Ann.* all the Statutes of Jeofails ſhall be extended to Judgments upon Confeſſion, *Nihil dicit, &c.* Alſo upon Demurrer, the Judges ſhall give Judgment without regarding Imperfections in any Writ, *&c.* except the ſame be ſet down as Cauſe of Demurrer. *Stat.* 4 & 5 *Annæ, cap.* 16. *Amendments* are uſually made in Affirmance of Judgments; and ſeldom or never to deſtroy them: And where *Amendments* were at Common Law, the Party was to pay a Fine for Leave to *amend.* 3 *Salk* 29.

Amerciament, *Amerciamentum*, (from the Fr. *Merci*) ſignifies the pecuniary Puniſhment of an Offender againſt the King, or other Lord in his Court, that is found to be in *Miſericordia*, i. e. to have offended, and to ſtand at the *Mercy* of the King or Lord. The Author of *Terms de Ley* ſaith, that *Amerciament* is properly a Penalty aſſeſſed by the Peers or Equals of the Party *amerced*, for the Offence done; for which he putteth himſelf at the Mercy of the Lord. *Terms de Ley* 40. And by the Statute of *Magna Charta*, a Freeman is not to be *amerced* for a ſmall Fault, but proportionable to the Offence, and that by his Peers. 9 *H.* 3. *c.* 4. *Amerciaments* are a more merciful Penalty than a Fine; for which if they are too grievous, a Releaſe may be ſued by an ancient Writ called *Moderata Miſericordia.* The Difference between *Amerciaments* and Fines, is this; Fines are ſaid to be Puniſhments certain, and grow expreſly from ſome Statute; but *Amerciaments* are ſuch as are arbitrarily impoſed. *Kitch.* 78. Alſo Fines are impoſed and aſſeſſed by the Court: *Amerciaments* by the Country: And no Court can impoſe a Fine, but a Court of Record; other Courts can only *amerce.* 8 *Rep.* 39, 41. A Court Leet can *amerce* for publick Nuſances only. 1 *Saund.* 135. For a Fine and all *Amerciaments* in a Court-Leet, a Diſtreſs is incident of common Right: But for *Amerciament* in a Court-Baron, Diſtreſs may not be taken but by Preſcription. 11 *Rep.* 45. When an *Amerciament* is agreed on, the Lord may have an Action of Debt, or diſtrain for it, and impound the Diſtreſs, or ſell it at his Pleaſure: But he cannot impriſon for it. 8 *Rep.* 41, 45. In Courts-Baron, the *Amerciaments* ought to be affeered; but 'tis otherwiſe of Fines impoſed by a Court of Record. 2 *Inſt.* 27. In the Court-Baron, Tenants not doing Suit of Court, Perſons making any Incroachments, not performing what is ordered, or for other Miſdemeanors there puniſhable, are to be *amerced*: Theſe *Amercements* are made upon Preſentment of the Jury; and if they are grounded upon a void Preſentment, the *Amercements* are alſo void. 1 *Lill. Abr.* 72. There is alſo *Amercement* in Pleas in the Courts of Record, when a Defendant delays to tender the Thing demanded by the King's Writ, on the firſt Day. 1 *Inſt.* 116. And in all Perſonal Actions without Force, as in Debt, Detinue, *&c.* if the Plaintiff be nonſuited, barred, or his Writ abate for Matter or Form, he ſhall be *amerced*: But if on judicial Proceſs, founded on a Judgment and Record, the Plaintiff be nonſuit, barred, *&c.* he ſhall not be *amerced.* 1 *Nelſ. Abr.* 206. And an Infant if nonſuited, is not to be *amerced*: 'Tis otherwiſe when at Age. *Jenk. Cent.* 258. Sheriffs are to be *amerced* for the Faults of their Officers; and Clerks of the Peace are *amerceable* in *B. R.* for groſs Faults in Indictments removed thither. *Hill.* 21 *Car.* The *Amercement* of the Sheriff, or other Officer of the King, is called *Amercement* Royal. *Terms de Ley.* A Town ſhall be *amerced* for the Eſcape of a Murderer, in the Day-Time: And if the Town be walled, 'tis ſaid, it ſhall be ſubject to *Amercement*, whether by Day or Night. 3 *Inſt.* 53. *Amerciaments* are likewiſe in ſeveral other Caſes.

Ameſſe, (from the Lat. *Amictus*) Is taken for a prieſtly Garment.

Amicia, (the ſame with *Almutium*) A Cap made with Goats or Lambs Skins; that Part whereof which covered the Head was ſquare, and one Part of it hung behind, and covered the Neck. *Monaſticon* 3 *Tom. p.* 36.

Amictus, Was the uppermoſt of the ſix Garments worn by Prieſts, tied round the Neck, and it covered the Breaſt and Heart.——*Ne inde ad Linguam tranſeat mendacium, ne vanitates cogitet.*——Amictus, *Alba, Cingulum, Stola, Manipulus & Planeta.*—Theſe were the ſix Garments of Prieſts.

Amicus Curiæ, If a Judge is doubtful or miſtaken in Matter of Law, a Stander-by may inform the Court, as *Amicus Curiæ.* 2 *Co. Inſt.* 178. In ſome Caſes, a Thing is to be made appear by Suggeſtion on the Roll by Motion; ſometimes by Pleading, and ſometimes as *Amicus Curiæ.* 2 *Keb.* 548. Any one as *Amicus Curiæ* may move to quaſh a vicious Indictment; for if there were a Trial and Verdict, Judgment muſt be arreſted. *Comberb.* 13. A Counſel urg'd, that he might as *Amicus Curiæ*, inform the Court of an Error in Proceedings, to prevent giving falſe Judgment; but it was denied, unleſs the Party was preſent. 2 *Show. Rep.* 297.

Amittere Legem Terræ, To loſe and be deprived of the Liberty of Swearing in any Court: As to become infamous, renders a Perſon incapable of being an Evidence. *Vide Glanvil, lib.* 2. And ſee the Statute 5 *Eliz. cap.* 9. againſt Perjury.

Ammobragium, A Service—*Terræ in Com.* Flint. *tenentur de Domino Rege per certa ſervitia, & per* Ammobragium *quod ad quinque Solidos extenditur cum acciderit.* Pat. 7 Ed. 2.

Amneſty, (*Amneſtia, Oblivio*) An Act of Pardon or *Oblivion*, ſuch as was granted at the Reſtoration by King *Charles* II.

Amnitum Inſulæ, Iſles upon the Weſt Coaſt of *Britain.* Blount.

Amortization, (*Amortizatio*, Fr. *Amortiſſement*) Is an Alienation of Lands or Tenements in Mortmain, *viz.* to any Corporation or Fraternity, and their Succeſſors, *&c.* And the Right of *Amortization* is a Privilege or Licence of taking in Mortmain. *Jus* Amortizationis *eſt privilegium ſeu Licentia capiendi in Manum Mortuam.* In the Statute *De Libertatibus perquirendis Anno* 27 Ed. 1. the Word *Amortiſement* is uſed.

Amortize, (*Fr. Amortir*) Is to alien Lands in Mortmain. See *Mortmain*, and the Stat. 7 *Ed.* 1. of *amortizing* Lands.

Ampliation, (*Ampliatio*) An Enlargement, but in Senſe of Law it is a Referring of Judgment, till the Cauſe is further examined.

Amy, (*Amicus*) In Law *Prochein Amy* is the next Friend to be truſted for an Infant. *Alien Amy* is a Foreigner here ſubject to ſome Prince in Friendſhip with us.

An Jour & Waſte, (Fr.) Year, Day and Waſte; a Forfeiture of Lands to the King by Tenants committing Felony, and afterwards the Land falls to the Lord.

Anceſtor, (*Anteceſſor*) Signifies as much as a *Predeceſſor*, or one that has gone before in a Family: But the Law makes a Difference between what we commonly call an Anceſtor and a Predeceſſor; the one being applied to a natural Perſon and his Anceſtors, and the other to a Body Politick and their Predeceſſors. *Co. Litt.* A Prepoſſeſſor of an Eſtate hath been called *Anceſtor.*

Anceſtrel, What relates to or hath been done by one's Anceſtors; as *Homage Anceſtrel*, &c.

Anchor, Is a Meaſure of Brandy, *&c.* containing ten Gallons. *Lex Mercat.*

Anchorage, (*Ancoragium*) A Duty taken of Ships for the Uſe of the Haven where they caſt Anchor. *MS. Arth. Trevor, Ar.* The Ground in Ports and Havens belonging to the King, no Perſon can let any Anchor fall thereon, without paying therefore to the King's Officers.

Ancients, Gentlemen of the *Inns* of *Court.* In *Gray's Inn*, the Society conſiſts of *Benchers*, *Ancients*, *Barriſters*, and *Students* under the Bar; and here the *Ancients* are of the oldeſt Barriſters. In the *Middle Temple*, ſuch as have gone through or are paſt their Readings are termed *Ancients:* The Inns of *Chancery* conſiſt of *Ancients* and Students or Clerks; and from the *Ancients* one is yearly choſen the Principal or Treaſurer.

Ancient Demeſne, or *Demain* (*Vetus Patrimonium Domini*) Is a Tenure whereby all the Manors belonging to the Crown in the Days of St. *Edward*, and *William*, called the *Conqueror*, were held. The Number and Names of all Manors, after a Survey made of them, were written in the Book of *Domeſday*; and thoſe which by that Book appear to have at that Time belong'd to the Crown, and are contained under the Title *Terra Regis*, are called *Ancient Demeſne. Kitch.* 98. *Fitzherbert* tells us, That Tenants in *Ancient Demeſne* had their Tenures from ploughing the King's Lands, and other Works towards the Maintenance of the King's Freehold, on which Account they had Liberties granted them. F. *N. B.* 14, 228. And there were two Sorts of theſe Tenures and Tenants; one that held their Lands freely by Charter; the other by Copy of Court-Roll, according to the Cuſtom of the Manor. *Brit. c.* 66. The Tenants holding by Charter cannot be impleaded out of their Manor; for if they are, they may abate the Writ by pleading their Tenure: They are free from Toll, for all Things bought and ſold concerning their Subſtance and Husbandry. And they may not be impanelled upon any Inqueſt. *F. N. B.* 14. If Tenants in *Ancient Demeſne* are returned on Juries, they may have a Writ *de non ponendis in Aſſiſis, &c.* And Attachment againſt the Sheriff. 1 *Rep.* 105. And if they are diſturbed by taking Duties of Toll, *&c.* they may have Writs of *Monſtraverunt*, to be diſcharged. Theſe Tenants are free as to their Perſons; and their Privileges are ſuppoſed to commence by Act of Parliament; for they cannot be created by Grant at this Day. 1 *Salk.* 57. Lands in *Antient Demeſne* are extendible upon a Statute Merchant, Staple, or Elegit. 4 *Inſt.* 270. No Lands ought to be accounted *Ancient Demeſne* but ſuch as are held in Socage; and whether it be *Ancient Demeſne* or not, ſhall be tried by the Book of *Domeſday.* A Leſſee for Years, cannot plead in *Ancient Demeſne:* Nor can a Lord in Action againſt him plead *Ancient Demeſne*, for the Land is Frank-fee in his Hands. *Danv. Abr.* 660. In real Actions, Ejectment, Replevin, *&c. Ancient Demeſne* is a good Plea; but not in Actions merely Perſonal. *Danv.* 658. If in *Ancient Demeſne* a Writ of Right Cloſe be brought, and proſecuted in Nature of a *Formedon*; a Fine levied there by the Cuſtom, is a Bar: And if this Judgment be reverſed in *C. B.* that Court ſhall only judge, that the Plaintiff be reſtored to his Action in the *Court of Ancient Demeſne*; unleſs there is ſome other Cauſe, which takes away its Juriſdiction. *Jenk. Cent.* 87. *Dyer* 373. A Fine in the King's Courts, will change *Ancient Demeſne* to Frank-fee at Common Law: So if the Lord enfeoffs another of the Tenancy; or if the Land comes to the King, *&c.* 4 *Inſt.* 270. See *Fine.*

Ancienty, (Fr. *Anciennete*, Lat. *Antiquitas*) Eldership or Seniority. This Word is uſed in the Statute of *Ireland.* 14 Hen. 3.

Andena, A Swath in Mowing: It likewiſe ſignifies as much Ground as a Man could ſtride over at once.

Anelacius, A ſhort Knife or Dagger.——*Lorica erat indutus, geſtans* Anelacium *ad Lumbare.* Mat. Pariſ. 277.

Anfeldtyhde, or *Anfealtbile*, A ſimple Accuſation; for the *Saxons* had two Sorts of Accuſations, *viz.* *Simplex* and *Triplex*; That was called Single, when the Oath of the Criminal and two more was ſufficient to diſcharge him; but his own Oath, and the Oaths of five more were required to free him *a triplici Accuſatione. Sommer.* In the Laws of *Adelſtan* we read —— *Et ſi* Anfeldtyhde *ſit, immergatur manus peſt Lapidem, vel examen uſque ad Wriſle.* Leg. Adelſtani, cap. 19. apud Brompton.

Angaria, (from the Fr. *Angarie*, i. e. Perſonal Service) Is a troubleſome vexatious Duty or Service which Tenants were obliged to pay their Lords; and they performed it in their own Perſons. —— *Terram liberam ab omnibus* Angariis *&* *Exactionibus*, *&c. MS.* Eliam Aſhmole *Arm.* —— *Præſtationes* Angariarum *&* *Perangariarum*, *Plauſtrorum* *&* *Navium.* —— Impreſſing of Ships. *Blount.*

Angelica Veſtis, A monkiſh Garment which Laymen put on a little before their Deaths, that they might have the Benefit of the Prayers of the Monks. It was from them called *Angelicus*, becauſe they were called *Angeli*, who by theſe Prayers *animæ ſaluti ſuccurrebant.* And the Word *Succurrendum* in our old Books is underſtood of one who had put on the Habit, and was near Death: *Siquis ad ſuccurrendum metu mortis ſe loco prænominato dederit, illic recipietur.* Monaſticon, 1 Tom. p. 632.

Angel, Signifies, in the Computation of Money, ten Shillings of *Engliſh* Coin.

Angild, (*Angildum*) The bare ſingle Valuation or Compenſation of a Criminal; From the Sax. *An* One, and *Gild*, Payment, Mulct or Fine. *Una Solutio, Si Villanus furatus fuerit, &c. Et habeas plegium, admoneas eum de* Angildo——*Twigild* was the double Mulct or Fine; and *Trigild* the Treble, according to the rated Ability of the Perſon. Law of *Ina*, *c.* 20. *Spelm.*

Anhlote, A ſingle Tribute or Tax. The Words *Anhlote* and *Anſcot* are mentioned in the Laws of *William the Conqueror:* And their Senſe is, that every one ſhould pay according to the Cuſtom of the Country, his Part and Share as Scot and Lot, *&c.* *Leg. W.* 1. *c.* 64.

Aniens, (Fr.) void, being of no Force. *F. N. B.* 214.

Annales, Yearlings, or young Cattle of the firſt Year.——*Vituli primo Anno poſtquam nati ſunt, Vituli Vocantur; ſecundo compoto* Annales *vocantur; tertio Boviculi; quarto Bovetti.*——Regulæ compoti Domus de Farendon *MS.*

Annats, (*Annates*) This Word has the ſame Meaning with Firſt-fruits, *Anno* 25 *H.* 8. *c.* 20. The Reaſon of the Name is, becauſe the Rate of the Firſt-fruits paid for ſpiritual Livings, is after the Value of one *Year*'s Profit. Annates *more ſuo appellant primos fructus unius anni ſacerdotii vacantis, aut dimidiam eorum partem.* Pol. Virgil de Invent. rer. lib. 8. cap. 2.

Annealing of Tile, (*Anno* 17 *Ed.* 4.) From the Sax. *Onælan, accendere*, ſignifies the Burning or Hardening of Title.

Annienteд, (from the Fr. *Anneantir*) Abrogated, fruſtrated, or brought to nothing. *Lit.* 3. *cap. Sect.* 741.

Anniverſary Days, (*Dies Anniverſarii*) Solemn Days appointed to be celebrated yearly in Commemoration of the Deaths or Martyrdoms of Saints; or the Days whereon, at the Return of every Year, Men were wont to pray for the Souls of their deceaſed Friends, according to the Cuſtom of the *Roman Catholicks*, mentioned in the Statute of 1 *Ed.* 6. *cap.* 14. and 12 *Car.* 2. *cap.* 13. This was in Uſe among our ancient *Saxons*, as you may ſee in *Lib. Rameſ. Sect.* 134.——Anniverſaria dies *ideo repetitur defunctis, quoniam neſcimus qualiter eorum cauſa habeatur in alia vita.* Alcuinus's Divine Offices. The *Anniverſary* or yearly Return of the Day of the Death of any Perſon, which the Religious regiſter'd in their *Obitual* or *Martyrology*, and annually obſerv'd in Gratitude to their Founders and Benefactors, was by our Forefathers called a *Year-day* and a *Mind-day*, i. e. a Memorial Day: And tho' this proceeded from one of the trading Arts of the Prieſts, who got many a Legacy for thus continuing the Memorial of their Friends; yet abating the Superſtition of it, we muſt confeſs this Practice of theirs has been a great Advantage to the Hiſtory of Men and Times, by fixing the *Obits* of great and good Men.

Anni Nubiles, (*Lat.*) When a Woman is under 12 Years of Age, her Age to marry, ſhe is ſaid to be *infra annos nubiles*, and unmarriageable; ſo that it ſignifies the marriageable Age of a Woman. 2 *Co. Inſt.* 434.

Anno Domini, The Computation of Time from the Incarnation of our Saviour; which is generally inſerted in the Dates of all publick Writings, with an Addition of the Year of the King's Reign, *&c.* The *Romans* began their *Æra* of Time from the Building of *Rome:* The *Grecians* computed by *Olympiads*; and the *Chriſtians* reckon from the Birth of *Jeſus Chriſt.*

Annoiſance, Annoyance, or *Noiſance*, Is a Word uſed for any Hurt done to a publick Place, as a Highway, Bridge, River, *&c.* or to any private Place, by laying any Thing therein that may breed Infection, by Incroachments, or ſuch like Means; and it is alſo taken for the Writ brought upon ſuch a Tranſgreſſion. This Word is mentioned *Anno* 22 *H.* 8. *c.* 5. Vide *Nuſance.*

Annua Penſione, An ancient Writ for providing the King's Chaplain unpreferred with a Penſion. It was brought where the King having due to him an *annual Penſion* from an Abbot or Prior, for any of his Chaplains whom he ſhould nominate, (being unprovided of Livings) to demand the ſame of ſuch Abbot or Prior. *Reg. Orig.* 165, 307.

Annuale, A Word ſignifying the yearly Rent or Income of a Prebendary.

Annualia, A yearly Stipend aſſigned to a Prieſt for celebrating an Anniverſary, or for ſaying continued Maſſes one Year, for the Soul of a deceaſed Perſon.——*Inhibemus quoque diſtrictius ne aliquis Rector Eccleſiæ faciat hujuſmodi pactum cum ſuo ſacerdote, videlicet quod ipſe Sacerdos præter cætera ſtipendia poterit recipere* Annualia *&* *Triennalia.* Conſt. Rob. Groſteſt Epiſcopi Lincoln. in Append. ad Faſcic. pag. 411.

Annuity, (*Annuus Redditus*) Is a yearly Rent, payable for Term of Years, Life, or in Fee; and it is uſed for a Writ that lies againſt a Perſon for Recovery of ſuch Rent. *Reg. Orig.* 158. *Annuity* hath alſo been defined to be a yearly Payment of a certain Sum of Money, granted to another for Life, *&c.* to be received of the Grantor or his Heirs, ſo that no Freehold be charged therewith; whereof a Man ſhall never have Aſſiſe or other Action, but a Writ of *Annuity.* *Terms de Ley* 44. The Treatiſe called *Doctor and Student*, *Dial.* 1. *cap.* 3. ſhews ſeveral Differences between a Rent and an *Annuity*, *viz.* that every Rent is iſſuing out of Land; but an *Annuity* chargeth the Perſon only, as the Grantor and his Heirs, who have Aſſets by Diſcent: For the Recovery of an *Annuity*, no Action lies, but only the Writ of *Annuity*; but of a Rent the ſame Remedy lies as for Lands; and an *Annuity* is never taken for Aſſets, becauſe it is no Freehold in Law; nor ſhall it be put in Execution upon a Statute Merchant, Staple, or *Elegit*, as a Rent iſſuing out of Land may. *Dyer* 345. 2 *Rep.* 144. If no Lands are bound for the Payment of an *Annuity*, a Diſtreſs may not be taken for it. *Dyer* 65. But if an *Annuity* iſſue out of Land, (which of late it often doth) the Grantee may bring a Writ of *Annuity*, and make it Perſonal, or an Aſſiſe, or Diſtrain, *&c.* ſo as to make it real. 1 *Inſt.* 144. And if the Grantee take a Diſtreſs; yet he may afterwards have Writ of *Annuity*, and diſcharge the Land, if he do not avow the Taking, which is in Nature of an Action. 1 *Inſt.* 145. But if the Grantee of a Rent bring an Aſſiſe for it, he ſhall never after have Writ of *Annuity*; he having elected this to be a Rent; ſo if the Grantee of an *Annuity* avow the Taking of a Diſtreſs, in a Court of Record. *Danv. Abr.* 486. And if the Grantee purchaſe Part of the Land out of which an *Annuity* is iſſuing, he ſhall never after have a Writ of *Annuity*, *Co. Litt.* 148. Where a Rent-charge iſſuing out of Lands, granted by Tenant for Life, *&c.* determines by the Act of God; as an Intereſt was veſted in the Grantee, it is in his Election to make it a Rent-charge, and ſo charge the Lands therewith, or a Perſonal Thing to charge the Perſon of the Grantor in *Annuity*. 2 *Rep.* 36. *A.* ſeiſed of Lands in Fee, he and B. grant an *Annuity* or Rent-charge to another; this *prima facie* is the Grant of *A.* and Confirmation of B. But the Grantee may have a Writ of *Annuity* againſt both. If two Men grant an *Annuity* of 20*l.* *per Ann.* altho' the Perſons be ſeveral, if the Deed of Grant be not for them ſeverally, yet the Grantee ſhall have but one *Annuity* againſt them. 1 *Inſt.* 144. When a Man recovers in a Writ of *Annuity*, he ſhall not have a new Writ of *Annuity* for the Arrears due after the Recovery, but a *Scire facias* upon the Judgment, the Judgment being always executory. 2 *Rep.* 37. No Writ of *Annuity* lieth for Arrearages only when an *Annuity* is determined, but for the *Annuity* and Arrearages. 1 *Inſt.* 285. Though if a Rent-charge be granted out of a Leaſe for Years, it hath been adjudged that the Grantee may bring *Annuity* when the Leaſe is ended. *Moor, cap.* 450. Where an *Annuity* is granted to one for Life, during the Term he ſhall have a Writ of *Annuity*: And when that is determined, his Executors may have Action of Debt; for the Realty is then reſolved into the Perſonalty. 4 *Rep.* 49. *New Nat. Br.* 278. Upon a Rent created by Way of Reſervation, no Writ of *Annuity* lies. *Danv.* 483. If a Man grants a Rent out of his Manor, or Lands, or to be received of his Tenants, and he hath no Manor, Lands, or Tenants, yet it may be a good *Annuity*, though void as to a Rent. *Danv. Abr.* 485. A Perſon grants to me 10*l.* every Year, that I ſhall be Reſident in ſuch a Pariſh; an *Annuity* lies for this, it being annual at my Will; and it is the ſame if a Rent be granted payable at the End of a certain Number of Years, though it be not annual. *Ibid.* 452. A Grant is made by a Perſon of an *Annuity* to another and his Heirs, without the Grantor's ſaying for him and his Heirs, this is determinable by the Death of the Grantor. *Danv. Abr.* 482. Writ of *Annuity* may not be had againſt the Grantor's Heir, unleſs the Grant be for him and his Heirs; and there muſt be Aſſets to bind the Heir, by Grant of an *Annuity* by his Anceſtor, when he is named. 1 *Inſt.* 144. 1 *Roll. Abr.* 226. An *Annuity* granted by a Biſhop with Confirmation of Dean and Chapter, ſhall bind the Succeſſor of the Biſhop. *New Nat. Br.* 340. If the King grant an *Annuity*, it muſt be expreſſed by whoſe Hands the Grantee ſhall receive it, as the King's Bailiff, *&c.* or the Grant will be void; for the King may not be ſued, and no Perſon is bound to pay it if not expreſſed in the Patent. 9 *H.* 6. *New Nat. Br.* 341. If where an *Annuity* is granted *pro Decimis*, the Grantor is diſturbed of his Tithes, the *Annuity* ceaſeth; and ſo it is where any *Annuity* is granted to a Perſon *pro Conſilio*, and the Grantee refuſeth to give Counſel: For where the Cauſe and Conſideration of the Grant amounts to a Condition, and the one ceaſes, the other ſhall determine. 1 *Inſt.* 204.

A Writ of Annuity.

GEORGE *the Second*, &c. *To the Sheriff of* W: *greeting: We command you, that you Juſtice* A. B. *that juſtly*, &c. *he render unto* C. D. *ten Pounds*, &c. *which to him are in arrear of an* Annuity *or yearly Rent of*, &c. *which he oweth to him, as he ſaith, and as he can reaſonably ſhew that he ought to render him, that no more Clamour*, &c. *and unleſs*, &c.

Grant of an *Annuity*, ſee *Grant.*

Anſel, or *Anſul*, ſee *Aunſel* Weight—— *De pede, pollice, cubito, & Palma, de* Anſul *Balancibus & Menſuris.* Thorn. Chron.

Antejuramentum, and *Præjuramentum*, By our Anceſtors called *Juramentum Calumniæ*; in which both the Accuſer and the Accuſed were to make this Oath before any Trial or Purgation, *viz.* The Accuſer was to ſwear that he would proſecute the Criminal; and the Accuſed was to make Oath on the very Day that he was to undergo the Ordeal, that he was innocent of the Crime of which he was charged. *Leg. Athelſtan. apud Lambard* 23. If the Accuſer failed to take his Oath, the Criminal was diſcharged; and if the Accuſed did not take his, he was intended to be guilty, and not admitted to purge himſelf. *Leg. Hen.* 1. *c.* 66.

Antiſtitium, A Word uſed for Monaſtery in our old Hiſtories. *Blount.*

Antithetarius, Signifies where a Man endeavours to diſcharge himſelf of the Fact of which he is accuſed, by recriminating and charging the Accuſer with the ſame Fact. This Word is mentioned in the Title of a Chapter in the Laws of *Canutus*, *capite* 47.

Apatiſatio, An Agreement or Compact made with another. *Upton, lib.* 2. *c.* 12.—— *De officio Militari, viz. Concedimus per præſentes bonum & ſalvum conductum, ac ſalvam guardiam ſive ſecuritatem* Apatiſationis.

Aporiare, To be brought to Poverty.—— *Permiſit ſuos ſpoliare patriam*, Aporiare *vulgus. Walſingham in R.* 2. It hath been uſed ſometimes to ſignify, ſhun or avoid.

Apoſtare, To violate: *Apoſtare Leges*, and *Apoſtatare Leges*, wilfully to break or tranſgreſs the Laws. —— *Qui Leges* Apoſtabit *terræ ſuæ, reus ſit apud Regem.* Leg. Edw. Confeſſoris, c. 35.

Apoſtata Capiendo, A Writ that formerly lay againſt one who having entered and profeſſed ſome Order of Religion, broke out again, and wandered up and down the Country, contrary to the Rules of his Order: It was directed to the Sheriff for the Apprehenſion of the Offender, and Delivery of him again to his Abbot or Prior. *Reg. Orig.* 71, 267.

Apothecaries, Are exempted from ſerving Offices, *&c.* Their Medicines are to be ſearched and examined by the Phyſicians choſen by the College of Phyſicians, and if faulty ſhall be burnt, *&c.* 32 *Hen.* 8. 1 *M.* And *Apothecaries* to the Army, are to make up their Cheſts of Medicines at *Apothecaries Hall*, there to be openly viewed, *&c.* under the Penalty of 40*l.* *Stat.* 10 *Ann. cap.* 14. 10 *Geo.* 1. See *Phyſicians.*

Apparator, or **Apparitor**, A Meſſenger that ſerves the Proceſs of the Spiritual Court. His Duty is to cite the Offenders to appear; to arreſt them; and to execute the Sentence or Decree of the Judges, *&c.* *Anno* 21 *Hen.* 8. *cap.* 5. In the Year 1316, *Walter* Archbiſhop of *Canterbury* granted the following Commiſſion to an *Apparitor* of his Conſiſtory Court.——Walterus *Dei Gratia* Cant. *Archiep. totius Angliæ Primas, Dilecto filio* Willielmo de Graftone *in* Apparitoris *Officio, in Curia noſtra* Cantuar. *videlicet, in Conſiſtorio ac Decanatu noſtro Eccleſiæ Beatæ* Mariæ *de Arcubus* London, *miniſtranti Salutem, Gratiam & Benedictionem. Perſonam tuam eo quod de fidelitate in dicto Officio per laudabile Teſtimonium apud nos multipliciter commendaris volentes proſequi cum favore, dictum* Apparatoris *Officium in Curia Conſiſtorio & Decanatu prædictis perpetuo poſſidendum tibi conferimus per Præſentes: Ita tamen quod te fideliter geras in Officio prædicto memorato. Volentes & tibi ſpecialiter concedentes, ut cum in miniſterio dicti Officii per teipſum perſonaliter vacare non poteris, vel abſens fueris a Curia Conſiſtorio & Decanatu prædictis, nihilominus per aliam idoneam perſonam, quem ad hoc aſſignandum omnia & ſingula quæ dicto incumbent Officio* —— *facere valeas, & jugiter exercere* ——Dat. apud Lambith. 8 Id. Mart. 1316.

Apparator Comitatus, An Officer formerly called by this Name; for which the Sheriffs of *Buckinghamſhire* had a conſiderable yearly Allowance; and in the Reign of Queen *Elizabeth*, there was an Order of Court for making that Allowance: But the Cuſtom and Reaſon of it are now altered. *Hale's Sher. Acco.* 104.

Apparlement, (from the Fr. *Pareilment*, i. e. in like Manner) Signifies a Reſemblance or Likelihood; as *Apparlement* of War. 2 *R.* 2. *Stat.* 1. *c.* 6.

Apparura, Furniture and Implements; *Appertinen. Dominus clamat habere omnes Carrectas ferro non ligatas, & omnes Carrucas cum tota* Apparura. Placit. in Itin. apud Ceſtriam 14 *Hen.* 7. *Carrucarum Apparura*, is Plough-Tackle, or all the Implements belonging to a Plough.

Appeal, *Appellum*, (from the Fr. *Appel* or *Appeller* to accuſe) Is a Word uſed in our Law for the Removal of a Cauſe from an inferior Court or Judge to a Superior: But more commonly for the Accuſation of a Murderer, by a Party who had Intereſt in the Perſon kill'd; or of a Felon by one of his Accomplices. 1 *Inſt.* 287. It ſignifies as much as *Accuſatio* with the Civilians; for as in the Civil Law, Cognizance of Criminal Cauſes is taken either upon Inquiſition, Denunciation or Accuſation; ſo in the Common Law, it is upon Indictment, or *Appeal*, Indictments comprehending both Inquiſition and Denunciation. And Accuſation or *Appeal* is a lawful Declaration of another Man's Crime (being Felony at leaſt) before a competent Judge, by one that ſets his Name to the Declaration, and undertakes to prove it, upon the Penalty that may enſue of the contrary. *Bract. lib.* 3. *Brit. c.* 22, 25. *Staundf. lib.* 2. *cap.* 6. An *Appeal* is proſecuted two Ways; either by Writ, or Bill: *Appeal* by Writ is when a Writ is purchaſed out of Chancery by one for another, to the Intent he *appeal* a third Perſon of ſome Felony committed by him, finding Pledges that he ſhall do it: *Appeal* by Bill, is where a Man of himſelf gives up his Accuſation in Writing, offering to undergo the Burden of *appealing* the Perſon therein named. *Bracton.* By Stat. 3 *Hen.* 7. the Wife or Heir of a Perſon killed, are to bring their *Appeal* of Murder; which differs from Indictment, being the Suit of the Subject, and the Party's private Action; who proſecutes alſo for the Crown in Reſpect of the Felony. *Litt.* 116. And this is the Reaſon that in *Appeal* of Death, &c. the King cannot pardon the Defendant. 3 *Inſt.* 237. This *Appeal* may be brought by Bill before the Juſtices in the King's Bench; before Juſtices of Gaol-Delivery, and Commiſſioners of *Oyer* and *Terminer*, &c. or before the Sheriff and Coroner, in the County-Court: But the Sheriff and Coroner have only Power to take and enter the *Appeal* and Count; for it muſt be removed by *Certiorari* into *B. R. Appeals* may be likewiſe brought before the Conſtable and Marſhal, of Felony done out of the Realm. *Wood's Inſt.* 628. At Common Law, *Appeals* lay for High Treaſon, and were uſually in Parliament. 3 *Inſt.* 132. But this was ouſted by Stat. 1 *Hen.* 4. *cap.* 14. By the Common Law, a Man could not maintain an *Appeal* of Death, unleſs he had made freſh Suit. 2 *Inſt.* 319. A Female might have an *Appeal* at Common Law, as Heir to any Anceſtor, as well as the Male; but by *Magna Charta, nullus capiatur vel Impriſonetur propter* Appellum *fœminæ de Morte alterius quam viri ſui*, &c. 3 *Salk.* 37. The Heir Male is to bring the *Appeal* for the Death of his Anceſtor; and the Wife for the Death of her Huſband, &c. 2 *Inſt.* 318. But the Huſband ſhall not have an *Appeal* for the Death of his Wife; but the Heir only. *Danv. Abr.* 488. An Heir ſhall not have *Appeal* for the Death of a Man married, except the Wife kill the Huſband; in which Caſe the Heir may proſecute the *Appeal.* 1 *Leon.* 326. 1 *Inſt.* 33. The Wife is to be a Wife *de facto* to be entitled to *Appeal*; and if ſhe marries again, before the *Appeal* is brought, or whilſt the ſame is depending, her *Appeal* will be gone. 2 *Inſt.* 68, 317. If a Wife dies within the Year, the Heir ſhall have no *Appeal. Kelw.* 120. And if after the Death of the Anceſtor, the Heir Male dies, 'tis ſaid another Heir ſhall not have *Appeal. H. P. C.* 182. For a Perſon that proſecutes an *Appeal* muſt be immediate Heir to the Anceſtor killed, or his Suit ſhall not be received. *Staundf.* 59. But where an *Appeal* lies againſt an Heir, the next Heir ſhall bring it. *H. P. C.* 182. An Infant may proſecute an *Appeal:* And it is to be brought where the Felony is done, and the Party wounded ſhall die. *Staundf.* 63. The *Appellant* is to commence his *Appeal* in Perſon; but he may proceed by Attorney, having a ſpecial Warrant of Attorney filed. 1 *Salk.* 60. The *Appeal* muſt be brought in a Year and Day after the Death of the Perſon murdered: And the Count muſt ſet forth the Fact, and the Length and Depth of the Wound, the Year, Day, Hour, Place where done, and with what Weapon, &c. And that the Party died in a Year and Day. 2 *Inſt.* 665. Principal and Acceſſaries before and after are to be joined in *Appeal. Danv. Abr.* 493. And this is to be obſerved, though the Acceſſary is guilty in another County. 3 *H.* 7. *c.* 1. In *Appeal* by Original, Principals and Acceſſaries are generally charged alike, without Diſtinction, till the Plaintiff counts: But 'tis otherwiſe in *Appeals* by Bill. *Danv.* 494. There is to be but one *Appeal* againſt the Principal and Acceſſary: If the Principal is acquitted, it ſhall acquit the Acceſſary; and both ſhall have Damages againſt the Appellant on a falſe *Appeal*, or the Acceſſary may bring a Writ of Conſpiracy. 33 *Hen.* 6. *cap.* 2. 2 *Inſt.* 383. Tho' where a Perſon is acquitted on a juſt *Appeal*, he may be arraigned upon Indictment at the King's Suit: And if a Murderer be acquitted upon Indictment, or found guilty and pardoned by the King, the Wife or Heir may bring *Appeal. Wood* 629. If the Defendant in *Appeal* is attaint, or acquit; or the Plaintiff Nonſuit after Appearance, which is peremptory, no other *Appeal* lies. *H. P. C.* 188. But if the *Appeal* is good and well taken, and afterwards fails, the Defendant ſhall be arraigned at the Suit of the King: 'Tis otherwiſe if the Appeal was never good, or well taken; as if it *abates* for Miſnomer, &c. *Staundf.* 147, 148. If there be an Indictment and *Appeal* depending at the ſame Time againſt the ſame Perſon, the *Appeal* ſhall be tried firſt, if the Appellant be ready. *Kel.* 107. Where the Appellant doth not proſecute his *Appeal*; or in Caſe he releaſe to the Defendant; the *Appellee* may be arraigned at the King's Suit. If the Defendant on an Indictment is convicted of Manſlaughter, and allowed his Clergy, it will bar an *Appeal:* Though ſome of our Books tell us the Heir may lodge an *Appeal* immediately before Clergy had: And others ſay Clergy ought to be granted, and that it is unreaſonable an *Appeal* ſhould interpoſe preſently to prevent Judgment. 3 *Inſt.* 131. If a Perſon immediately after the Verdict of Manſlaughter, put in an *Appeal* of Murder, and before the *Appeal* is arraigned, the Defendant demands his Benefit of Clergy; this is a good Bar to *Appeal*, and praying of Clergy, is having of Clergy, though the Court delay calling the Party to Judgment, &c. 1 *Salk.* 60, 62. *Kel.* 93. But formerly it was held, that the Court might delay the Calling a Convict to Judgment, and thereby hinder him from his Clergy, and make him liable to an *Appeal*, eſpecially if the *Appeal* were depending: And where the Record of a Conviction of Manſlaughter is erroneous, or inſufficient, &c. the Offender cannot plead the Conviction and Clergy had therein, in Bar of an *Appeal* or ſecond Indictment, &c. 2 *Hawk. P. C.* 378, 379. A Charter of

Pardon, is no Bar of an *Appeal:* And if the Party be outlawed, *&c.* in *Appeal*, and the King pardon him, a *Scire facias* ſhall iſſue againſt the Appellant, who may pray Execution, notwithſtanding ſuch Pardon; but if returned *Sci. fec.* and he appears not, then the *Appellee* ſhall upon the Pardon be diſcharged. *H. P. C.* 251. When a Perſon is indicted for Murder, and acquitted thereupon, he is to be bailed till the Year and Day is paſt, allowed for bringing the *Appeal*, if an *Appeal* be intended. 3 *Hen.* 7. *cap.* 1. A Peer in *Appeal* of Murder, ſhall not be tried by his Peers, but by a common Jury; though he ſhall upon an Indictment for Murder. 3 *Hen.* 7. In Writ of *Appeal*, the Omiſſion of any Word that is material will deſtroy it. *H. P. C.* 200. No Eſſoin is allowed the *Appellant*, in *Appeal* of Death. *Stat.* 13 *Ed.* 1. In *Appeal* the Court can grant no Imparlance, but it may be adjourned. 1 *Sid.* 325. And where *Appeal* of Death is brought, the Defendant cannot juſtify *ſe Defendendo*; but muſt plead Not guilty, and the Jury are to find the ſpecial Matter. *Bro. App.* 122. 3 *Salk.* 37. *Appeal* is the niceſt Suit in Law, for any ſmall Matter will abate it; the Proceſs muſt bear Date the ſame Day with the Return of the Writ, if it be a Day afterwards, it is a Diſcontinuance; and it varies from all other Proceedings, for there can be no Amendment of the Writ, nor is the Diſcontinuance of it helped by any Statute. *Nelſ. Abr.* 215. Where a Woman has Judgment in *Appeal*, of the Death of her Husband, ſhe cannot have Execution if ſhe do not perſonally pray it: A Judge went to a Woman great with Child, to know if ſhe would have Execution? She ſaid Yes, and the *Appellee* was hanged. *Jenk. Cent.* 137. By Statute an *Appellant* bringing a falſe *Appeal*, ſhall ſuffer a Year's Impriſonment, yield Damages to the Party grieved, and pay a Fine to the King; and being not able, thoſe that abetted him, ſhall be puniſhed in like Manner. *Stat.* 13 *Ed.* 1. *cap.* 12. There are not only *Appeals* of Murder, but of *Maihem*, *Rape*, *Robbery*, &c.

The *Form* of an *Appeal of Murder.*

Wilts. BE it remember'd, *That at the General Delivery of the Gaol of the Lord the King, in the County of* W. *held for the ſaid County at*, &c. *in the County aforeſaid, the Day*, &c. *in the Sixth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God*, of Great Britain, France *and* Ireland, *Defender of the Faith*, &c. *before Sir* F. P. *and* A. D. *Eſq*; &c. *Juſtices of our ſaid Lord the King aſſigned to hold Pleas*, &c. *and Juſtices of the ſaid Lord the King, his Gaol there of the Priſoners in the ſame being to deliver aſſigned*, &c. J. B. *Son and Heir of* T. B. *deceaſed, in his proper Perſon, by Bill earneſtly* appealed, R. D. *late of*, &c. *and* T. E. &c. *in the Cuſtody of* W. C. *Eſq; Sheriff of the County aforeſaid, to the Bar there brought in their proper Perſons, of the Death of the ſaid* T. B. *his Father; and there are Pledges of proſecuting his ſaid Bill, that is to ſay,* John Doe *and* Richard Roe; *which ſaid Bill follows in theſe Words:* Wilts. ſſ. J. B. *Son and Heir of* T. B. *late of*, &c. *in the County of* W. *Eſq; in his proper Perſon, earneſtly* appeals R. D. *late of*, &c. *Gentleman, and* T. E. *late of*, &c. *in Cuſtody of* W. C. *Eſq; Sheriff of the County of* W. *aforeſaid, being to the Bar brought in their proper Perſons, of the Death of the ſaid* T. B. *his ſaid Father; for that, that the ſaid* R. D. *not having God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the Day*, &c. *in the Year of the Reign*, &c. *with Force and Arms*, &c. *at the Pariſh of*, &c. *in the County of* W. *aforeſaid, that is to ſay, in a certain Place called*, &c. *in the King's Highway there, upon the ſaid* T. B. *in the Peace of God and of our ſaid Lord the King then and there being, feloniouſly, wilfully, and of his Malice forethought, made an Aſſault, and the ſaid* R. D. *a certain Piſtol of the Value of Ten Shillings, then and there charged with Gunpowder and a leaden Bullet, which Piſtol the ſaid* R. D. *in his Right Hand then and there had feloniouſly, wilfully, and of his forethought Malice, directed againſt the ſaid* T. B. *he ſhot off and diſcharged, and with the ſaid leaden Bullet, by Force of the ſaid Gunpowder out of the Piſtol aforeſaid, ſo as aforeſaid directed, ſhot and diſcharged, the ſaid* T. B. *in and upon the Right Side of the Breaſt of him the ſaid* T. B. *near his Right Shoulder, then and there feloniouſly, wilfully, and of his Malice forethought, ſtruck, pierced and wounded, and then and there the ſaid* R. D. *with the ſaid Bullet, ſo ſhot and diſcharged from the ſaid Piſtol as aforeſaid, in and upon the ſaid Right Side of the Breaſt of him the ſaid* T. B. *near his ſaid Right Shoulder, feloniouſly, wilfully, and of Malice forethought, gave to the ſame* T. B. *one mortal Wound, of the Length and Depth*, &c. *of which ſaid mortal Wound the ſaid* T. B. *then and there inſtantly died. And the ſaid* T. E. *the ſaid Day*, &c. *in the ſame Year, at*, &c. *aforeſaid, in the Place aforeſaid, and in the King's Highway aforeſaid, there feloniouſly, wilfully, and of his Malice forethought, was preſent, abetting, aiding, comforting and maintaining the ſaid* R. D. *the Felony and Murder aforeſaid, in Manner and Form aforeſaid, to do and commit: And ſo the ſaid* R. D. *and* T. E. *the ſaid* T. B. *in Manner and Form aforeſaid, feloniouſly, wilfully, and of their Malice forethought, killed and murdered, againſt the Peace of our ſaid Lord the King, his Crown and Dignity*, &c. *And as ſoon as the ſaid Felons the ſaid Felony and Murder had committed, they fled; And the ſaid* J. B. *Son and Heir of the ſaid* T. B. *made freſh Purſuit after the ſaid Felons*, &c. *And if the ſaid* R. D. *and* T. E. *the Felony and Murder aforeſaid ſo as aforeſaid done, are willing to avow and affirm, then the ſaid* J. B. *is ready the ſaid Felony and Murder againſt them the ſaid* R. D. *and* T. E. *to prove, according as the Court of our ſaid Lord the now King here ſhall conſider thereof, and hath found Pledges to proſecute his* Appeal, *&c.*

Appeal of Maihem, Is the Accuſing one that hath *maimed* another: But this being generally no Felony, it is in a Manner but Action of Treſpaſs; and nothing is recovered by it but Damages. In Action of Aſſault and *Maiming*, the Court may increaſe Damages, on View of the *Maihem*, *&c.* And though *Maihem* is not Felony, in *Appeals* and Indictments of *Maihem*, the Words *Felonice Maihemavit* are neceſſary. 3 *Inſt.* 63. *Bracton* calls *Appeal of Maihem Appellam de Plagiis & Mahemio*, and writes a whole Chapter of it. *Lib.* 3. *Tract.* 2. *cap.* 24. In an *Appeal of Maihem*, the Defendant pleads that the Plaintiff had brought an Action of Treſpaſs againſt him, for the ſame Wounding, and had recovered, and Damages given, *&c.* And this was a good Plea in Bar of the *Appeal*; becauſe in both Actions Damages only are to be recovered. 4 *Rep.* 43. And where there is a Recovery in Aſſault and Battery, *&c.* the Jury give Damages according to the Hurt, which was done, and it ſhall be intended a *Maihem* at that Time; and therefore *Appeal of Maihem* doth not lie. *Hob.* 94. 1 *Leon.* 318. In *Appeal of Maihem*, the Appellant may not plead in Abatement of the Writ, and likewiſe over to the *Maihem*; if he doth, he will loſe the Benefit of his Plea to the Writ. *Moor* 457.

Appeal of Rape, Lies where a *Rape* is committed on the Body of a Woman. 3 *Inſt.* 30. A Feme Covert, without her Husband, may bring *Appeal of Rape:* And the Stat. 11 *Hen.* 4. *cap.* 13 gives Power where a Woman is raviſhed, and afterwards conſents to it, for a Husband, or a Father, or next of Kin, there being no Husband, to bring *Appeal of Rape*; alſo the Criminal in ſuch Caſe, may be attainted at the Suit of the King. 3 *Inſt.* 131. 6 *R.* 2. *cap.* 6. And if a Woman conſent after, ſhe is diſabled to challenge any Inheritance, Dower, *&c.* by Stat. 6 *R.* 2. The Statute of *Weſtm.* 1 *cap.* 13.

enacts that *Appeal of Rape* ſhall be brought within forty Days: But by Stat. *Weſtm.* 2. *c.* 34. relating to this Offence, no Time is limited for the Proſecution; ſo that it may be brought in any reaſonable Time. *H. P. C.* 186. *Appeal of Rape* is to be commenced in the County where committed: And if a Woman be aſſaulted in one County, and raviſhed in another, the *Appeal of Rape* lies in that County where ſhe was raviſhed. *H. P. C.* 186. An *Appeal of Rape* was brought, and the Defendant found guilty; and being in Priſon, ſome Exceptions were taken to the Plaintiff's Declaration, for that it did not ſay *Felonice & carnaliter cognovit, &c.* And it was not averred that ſhe did not conſent, before nor after the Fact: But theſe Points were not reſolved; however it was held, that though formerly the Defendant might have his Clergy, 'tis taken away by the Stat. 18 *Eliz. cap.* 17. *Dyer* 201.

Form of an *Appeal of Rape.*

A. B. *of*, &c. *in his proper Perſon earneſtly* appeals C. D. *late of*, &c. *in the Priſon*, &c. *according to the Form of the Statute, made in the Parliament of the Lord* Richard *the Second*, *King of* England, *in the Sixth Year of his Reign held*, &c. *for that, that is to ſay, That the ſaid* C. D. *the Day and Year*, &c. *at, &c. in the County aforeſaid*, M. B. *Wife of the ſaid* A. B. *feloniouſly raviſhed, and her carnally knew, againſt the Form of the Statute aforeſaid*, &c. *And as ſoon as*, &c. *And this (the Felony and Rape aforeſaid) the ſaid* A. B. *is ready to prove againſt him the ſaid* C. D. *as the Court*, &c.

Appeal of Robbery, A Remedy given by the Common Law, where a Perſon is *robbed* of his Goods, *&c.* to have Reſtitution of the Goods ſtolen: As they could not be reſtored on Indictment at the King's Suit, this *Appeal* was judged neceſſary. 3 *Inſt.* 242. If a Man *robbed* make *freſh Purſuit* after, and apprehend and proſecute the Felon, he may bring *Appeal of Robbery* at any Time afterwards. *Staundf.* 62. Adjudged, that an *Appeal of Robbery* may be brought by the Party *robbed* twenty Years after the Offence committed, and that he ſhall not be bound to bring it within a Year and a Day, as he muſt do in *Appeal* of Murder. 4 *Leon.* 16. And if one Man *robs* ſeveral Perſons, every one of them may have *Aypeal:* Likewiſe if the *Robber* be attainted at the Suit of one, he ſhall be tried at the Suit of the Reſt, ſo as their *Appeals* were commenced before the Attainder. *Danv. Abr.* 494. In *Appeal of Robbery*, the Plaintiff muſt declare of all Things whereof he is *robbed*, or they ſhall be forfeited to the King; for the *Appellant* can have Reſtitution for no more than is mentioned in his *Appeal.* 3 *Inſt.* 227. By the Year-Book 21 *Ed.* 1. 16. Reſtitution of Goods was granted upon an Outlawry, in *Appeal of Robbery*; but a Perſon having preferred an Indictment againſt a *Robber*, and afterwards an *Appeal*, on which he was outlawed, the Plaintiff moved to have Reſtitution of his Goods, and it was denied. 2 *Leon* 108. If the Count or Declaration in *Appeal of Burglary* be ſufficient, and the Defendant is convicted at the Suit of the Party upon the *Appeal*; he ſhall not be again impeached for the ſame Offence at the King's Suit. 4 *Rep.* 39. By Stat. 21 *Hen.* 8. *cap.* 11. The like Reſtitution of ſtolen Goods may be had on *Indictments* after Attainder, as on *Appeals:* And *Appeals* of *Rape* and *Robbery* are now much out of Uſe; but the *Appeal* of *Murder* ſtill continues, and is often brought.

Appeal to Rome. This was ever eſteemed ſo great an Interruption to National Juſtice, that even at the Time the *Roman* Catholick Religion took Place in this Kingdom it was prohibited. By the Stat. 24 *Hen.* 8. *Appealing to Rome* incurs the Penalty of a *Præmunire:* And it is made Treaſon by 13 *Eliz. cap.* 2. Where an *Appeal* in an *Eccleſiaſtical Cauſe*, is made before the Biſhop, or his Commiſſary, it may be removed to the Archbiſhop; and if before an Archdeacon, to the Court of Arches, and from the Arches to the Archbiſhop; and when the Cauſe concerns the King, *Appeal* may be brought in fifteen Days from any of the ſaid Courts to the Prelates in Convocation. 24 *Hen.* 8. *c.* 12. And the Stat. 25 *Hen.* 8. *cap.* 19. gives *Appeals* from the Archbiſhop's Courts to the *King* in *Chancery*, who thereupon appoints Commiſſioners finally to determine the Cauſe; and this is called the Court of Delegates: There is alſo a Court of Commiſſioners of Review; which Commiſſion the King may grant as ſupreme Head, to review the definitive Sentence given on *Appeal* in the Court of Delegates. On taking away the Supremacy of the *Pope* in this Kingdom, this Power was lodged in the Crown, as originally belonging to it. 4 *Inſt.* 340. The Dean of *Wells* was deprived of his Deanery, by the Commiſſary of the Biſhop of *Bath* and *Wells*, from which Sentence the Dean *appealed* to the Archbiſhop, who affirmed it; and thereupon he exhibited an *Appeal* to the King in *Chancery*, but found no Relief, for the King granted the Deanery to one *Turner:* But *Anno* 1 *Mar.* the deprived Dean obtained another Commiſſion to the Delegates, and by their Sentence was reſtored to his Deanery; and after the Death of Queen *Mary*, 1 *Eliz. Turner* had a Commiſſion of Review, and he was reſtored, though it was inſiſted there ought to be no farther *Appeal. Dyer* 273. In the 39th Year of Queen *Eliz.* Sentence being given in an Eccleſiaſtical Cauſe, the Party againſt whom had, *appealed* to the Archbiſhop, *&c.* who affirmed the Sentence; then he *appealed* to the Delegates, and they repealed both the former Sentences: On which the Queen granted a Commiſſion *ad revidendum* the Sentence of the Delegates, and it was held lawful. *Cro. Eliz.* 571. The Biſhop of *Wincheſter* is made Viſitor of *Magdalen* College in *Oxford*; by whom the Preſident of the ſaid College was deprived, who *appealed* to the Queen in *Chancery:* Reſolved that the *Appeal* doth not lie, for 'tis out of the Statutes 24 & 25 *H.* 8. *Dyer* 209. See 4 *Mod.* 106.

Appearance, In the Law ſignifieth the Defendant's Filing Common or Special Bail, when he is arreſted on any Proceſs out of the Courts at *Weſtminſter:* And there can be no *Appearance* in the Court of *B. R.* but by Special or Common Bail. There are four Ways for Defendants to *appear* to Actions; in Perſon, or by Attorney; by Perſons of full Age; and by Guardians, or next Friend, by Infants. *Show.* 165. In all Caſes where Proceſs iſſues forth to take the Perſon's Body, if a common *Appearance* only, and not Special Bail is required, there every ſuch Perſon may *appear* in Court in his proper Perſon, and file common Bail. 1 *Lill. Abr.* 85. *Hill.* 22 *Car. B. R.* Perſons outlawed in any Caſe, except for Treaſon or Felony, may *appear* by Attorney to reverſe the ſame without Bail; except where Special Bail ſhall be ordered by the Court. *Stat.* 4 & 5 *W. & M. cap.* 18. If a Man is bound to *appear* in Court on the Firſt Day of the Term, it ſhall be intended the Firſt Day in common Underſtanding, *viz.* the Firſt Day in full Term: And where the Defendant *appears* upon any Proceſs, tho' the Day of *Appearance* be not lawful; yet 'tis ſaid he ſhall be put to Anſwer. 1 *Lill.* 83. 2 *Leon.* 4. In Caſe the Defendant's Attorney doth receive a Declaration againſt his Client from the Plaintiff's Attorney; this obliges the Attorney to appear to it: And if an Attorney has a Warrant from the Defendant to be his Attorney in a Suit depending in *B. R.* and he files common Bail accordingly; it has been held, that he muſt *appear* by that Warrant in all Suits againſt the Defendant in the ſame Term; provided Declarations are filed in the Office, and Copies delivered to the Defendant, or his

Attorney, who filed the Bail, before the End of the Term his Bail is filed. For the Defendant being, after *Appearance* and Bail put in, ſuppoſed to be in *Cuſtody of the Marſhal*, the Attorney that *appears* for him is bound to receive any Declaration that is brought againſt him during that Term. *Comp. Attorn.* Attornies ſubſcribing Warrants to *appear*, are liable to a Penalty of 5 *l.* and Attachment, upon *Non-appearance.* And where an Attorney promiſes to *appear* for his Client, the Court will compel him to *appear* and put in Common Bail, in ſuch Time as is uſual by the Courſe of the Court; and that although the Attorney ſay he hath no Warrant for *Appearance:* Nor ſhall Repealing a Warrant of Attorney to delay Proceedings, excuſe the Attorney for his not *appearing*, who may be compelled by the Court. 1 *Lill.* 83, 84. The Defendant's Attorney is to file his Warrant the ſame Term he *appears*, and the Plaintiff the Term he declares, under Penalties by Stat. 4 & 5 *Ann. cap.* 16. In Actions by Original, *Appearances* muſt be entered with the Filazer of the County; and if by Bill, they ſhall be entered with the Prothonotary: And *Appearances* and Common Bail are to be entered and filed by the Defendant within eight Days after the Return of the Proceſs on which he was arreſted, &c. on Pain of forfeiting 5 *l.* to the Plaintiff, for which the Court ſhall forthwith award Judgment and Execution. 5 & 6 *W. & M. c.* 21. If the Defendant does not *appear* and find Bail, the Plaintiff's Attorney is to call upon the Sheriff for the Return of the Writ, whether the Defendant be arreſted, or not; and proceed accordingly. On two *Nihils* returned upon a *Scire & Alias Scire facias*, they amount to a *Scire feci*, and the Plaintiff giving Rule, the Defendant is to *appear*, or Judgment ſhall be had againſt him by Default: And where a Defendant doth not plead after *Appearance*, Judgment may be had againſt him. *Style* 208. Upon a Party's *Appearing*, Errors in Writs are in many Caſes ſalved, and the Party may be obliged to anſwer as if there had been no ſuch Errors. 2 *Hawk.* 302. Where the firſt Proceſs in an inferior Court is a *Capias* which ought not to be, it is ſalved and made good by *Appearance*; for the Defendant hath by his *appearing* admitted the Writ to be legal. *Lutw.* 954. And upon *Appearance*, a Writ hath had its End, and the Plaintiff ſhall declare: Alſo an *Appearance* takes away all Diſcontinuance, and bad Proceſs before it. *Jenk. Cent.* 57. If Judgment is given by Default, where the Defendant doth not *appear*, the Writ ought to be according to Law; but if he *appears* and pleads, he ſlips his Advantage of excepting thereto. *Ibid.* 341. By late Statutes, where a Defendant is ſerved with a *Copy of Proceſs*, in Actions of Debt, &c. under 10 *l.* a common *Appearance* ſhall be entered, or common Bail filed by the Plaintiff, if the Defendant doth not *appear* within eight Days after the Return of the Writ; on Affidavit made of the Service of the Proceſs. *Stat.* 12 *Geo.* 1. *c.* 26. And a *Notice* ſhall be indorſed on the Copy of the Proceſs, of the Intent and Meaning of the Service, for the Defendant to *appear*, &c. by 5 *Geo.* 2. *c.* 17.

Form of a *Notice* upon Proceſs to *appear.*

A. B. *You are ſerved with this Proceſs, to the Intent that you may by your Attorney* appear *in his Majeſty's Court of* King's Bench, *at the Return thereof, being the twenty-eighth Day of* November *next, in Order to your Defence in this Action.*

Appearance by Guardian and next Friend, Vide *Infants*, &c.

Appendant, (*Appendens*) Is a Thing of Inheritance, belonging to another Inheritance that is more worthy. As an Advowſon, Common, Court, &c. may be *Appendant* to a Manor: Common of Fiſhing, *Appendant* to a Freehold: Land *Appendant* to an Office: A Seat in a Church to a Houſe, &c. But Land is not *Appendant* to Land, both being Corporeal, and one Thing Corporeal may not be *Appendant* to another that is Corporeal; but an incorporeal Thing may be *Appendant* to it. 1 *Inſt.* 121. 4 *Rep.* 86. *Danv. Abr.* 500. A Foreſt may be *Appendant* to an Honour; and Waifs and Eſtrays to a Leet. 1 *Co. Inſt.* 367. And Incorporeal Things, Advowſons, Ways, Courts, Commons, and the like, are properly Parcel of and *Appendant* to Corporeal Things; as Houſes, Lands, Manors, &c. *Plowd.* 170. 4 *Rep.* 38. If Tenant in Tail of a Manor whereunto an Advowſon is *Appendant* is diſſeiſed, and the Diſſeiſor ſuffers an Uſurpation; by the Diſſeiſee's entering into the Manor, he is reſtored to the Advowſon. 1 *Inſt.* 49. But if one Diſſeiſe me of Common *Appendant* belonging to my Manor, and during the Diſſeiſin I ſell the Manor; by this the Common is extinct for ever. 4 *E.* 3. 21. 11 *Rep.* 47. Common of Eſtovers cannot be *Appendant* to Land; but to a Houſe to be ſpent there. 1 *Inſt.* 120. By the Grant of a Meſſuage, the Orchard and Garden will paſs as *Appendant*. *Appendants* are ever by Preſcription.

Appenditia, The *Appendages* or Pertinences of an Eſtate ——*Simon* Earl of *Northampton* gave to the Knights Templars his Manor of *Merton in Com. Oxon. cum omnibus* Appenditiis *ſuis* —— Kennet's Paroch. Antiq. 110. Hence our Pentices, or Pent-Houſes are called *Appenditia Domus*, &c.

Appennage, or *Apennage*, (*Fr.*) Is derived from *Appendendo*; or the *German* Word *Apanage*, ſignifying a Portion. It is uſed for a Child's Part or Portion; and is properly the Portion of the King's younger Children in *France*, where by a Fundamental Law, called the *Law of Apennages*, the King's younger Sons have Dutchies, Counties, or Baronies granted to them and their Heirs, &c. the Reverſion being reſerved to the Crown, and all Matters of Regality as to Coinage, and Levying Taxes in ſuch Territories. *Spelman's Gloſſ.*

Appenſura, The Payment of Money at the Scale, or by Weight.——*Dedit Regi præfato* Appenſuram, *novem Librarum puriſſimi auri juxta magnum pondus Normannorum.* Hiſt. Elien. Edit. Gale, l. 2. c. 19.

Apples, A Duty is granted on all *Apples* imported into *Great Britain*, to be paid before Landing thereof, by Stat. 10 *Geo.* 2. *c.* 27.

Appodiare, Is a Word uſed in old Hiſtorians, and ſignifies to lean on, or prop up any Thing, &c. *Walſingham ann.* 1271. *Mat. Pariſ. Chron. Aulæ Regiæ ann.* 1321.

Apponere, To pledge or pawn——*Acceptâ à fratre Gulielmo ſummâ non Modicâ Normanniam illi* appoſuit. *Neubrigenſis, Lib.* 1. *c.* 2.

Apportionment, (*Apportionamentum*) Is a Dividing of a Rent, &c. into Parts, according as the Land out of which it iſſues is divided among two or more: As if a Man have a Rent-Service iſſuing out of Land, and he purchaſeth Part of the Land, the Rent ſhall be *apportioned* with Reſpect to the Value of the Land. *Terms de Ley* 47. And if a Stranger recovers Part of the Lands, a Leſſee ſhall pay, having Regard to that recovered, and what remains in his Hands. Where the Leſſor recovers Part of the Land: Or enters for a Forfeiture into Part thereof; the Rent ſhall be *apportioned.* 1 *Inſt.* 148. If a Man leaſes three Acres rendring Rent, and afterwards grants away one Acre, the Rent ſhall be *apportioned.* 1 *Inſt.* 144. Leſſee for Years leaſes for Years, rendring Rent, and after Deviſes this Rent to three Perſons, this Rent may be *apportioned. Danv. Abr.* 505. If a Leſſee for Life or Years under Rent, ſurrenders Part of the Land, the Rent ſhall be *apportioned:* But where the Grantee of a Rent-charge purchaſes Part of the Land, there all is extinct. *Moor, c.* 231. A Rent-charge iſſuing out of Land, may not be *apportioned:* Nor ſhall Things entire, as if one holds Lands by Service to pay yearly to the Lord, at ſuch a Feaſt, a Horſe, &c. 1 *Inſt.* 149. But if Part of the Land out of which a Rent-charge iſſues deſcends to the Grantee of the Rent, this ſhall be *apportioned. Danv.* 507. A Grantee of a Rent releaſes Part of the Rent to the Grantor, this doth not extinguiſh the Reſidue, but it ſhall be *apportioned*; for here the Grantee dealeth not with the Land, only the Rent. *Co. Lit.* 148. On Partition of Lands out of which a Rent is iſſuing, the Rent ſhall be *apportioned. Danv. Abr.* 507. And where Lands held by Leaſe rendring Rent are extended upon *Elgit*, one Moiety of the Rent ſhall be *apportioned* to the Leſſor. *Ibid.* 509. If Part of Lands leaſed is ſurrounded by freſh Water, there ſhall be no *Appointment* of Rent: But if it be ſurrounded with the Sea, there ſhall be an *Apportionment* of the Rent. *Dyer* 56. A Man purchaſes Part of the Land where he hath Common appendant, the Common ſhall be *apportioned:* Of Common appurtenant it is otherwiſe, and if by the Act of the Party, the Common is extinct. 8 *Rep.* 79. Common appendant and appurtenant may be *apportioned* on Alienation of Part of the Land to which it is appendant or appurtenant. *Wood's Inſt.* 199. If where a Perſon has Common of Paſture *Sans Number*, Part of the Lands deſcends to him, this being intire and uncertain cannot be *apportioned:* But if it had been Common certain, it ſhould have been *apportioned.* 1 *Inſt.* 149. Conditions generally are entire, and cannot be *apportioned* by the Act of the Party. 1 *Nelſ. Abr.* 227. A Contract may not be divided or *apportioned*, ſo as to ſubject a Man to two Actions. 1 *Salk.* 65.

Apportum, (from the Fr. *Apport*) Signifies properly the Revenue or Profit which a Thing brings in to the Owner: And it was commonly uſed for a Corody or Penſion. It hath alſo been applied to an Augmentation given to an Abbot out of the Profits of a Manor for his better Support. —— *Ita quod Proficua Manerii prædicti nomine* Apporti, *quolibet anno præfato* A. *in ſubventionem ſuſtentationis ſuæ ſolverentur*, &c. Anno 22 Ed. 3.

Appoſal of Sheriffs. The Charging them with Money received upon their Accounts in the Exchequer. *Stat.* 22 & 23 *Car.* 2.

Appraiſers of Goods are to be ſworn to make true *Appraiſement*; and valuing the Goods too high, ſhall be obliged to take them at the Price *appraiſed.* Stat. 13 Ed. 1.

Apprendre, (*Fr.*) A Fee or Profit *Apprendre*, is Fee or Profit to be taken or received. *Anno* 2 & 3 *Ed.* 6. *cap.* 8.

Apprentice, (*Apprenticius*, Fr. *Apprenti*, from *Apprender* to learn) ſignifies a young Perſon bound by Indentures to a Tradeſmen or Artificer, who upon certain Covenants is to teach him his Myſtery or Trade: Theſe *Apprentices* are a Kind of Bond-Men, differing only in that they are Servants by Covenant, and for a certain Term, uſually ſeven Years, and they live for the moſt part more reputably. *Smith's Rep. Angl. lib.* 3. *cap.* 8. Seven Years *Apprenticeſhip* is required to intitle a Man to uſe any Trade; but this relates only to ſuch *Apprenticeſhip* to Crafts or Myſteries, and does not extend to getting of a Livelihood by mere Labour, where there is no Craft or Myſtery. 1 *Roll. Rep.* 10. A Brewer, and Baker are publick Trades; and therefore the Law provides, that they ſhall ſerve *Apprenticeſhips* to them for ſeven Years; otherwiſe they will be within the Statute 5 *Eliz.* Though it is not ſo, of a private Brewer, in private Houſes. *Jenk. Cent.* 284. 8 *Rep.* 129. By the Statutes 2 *P.* & *M. c.* 11. 5 *Eliz. c.* 4. Aliens and Denizens are reſtrained to uſe any Handicraft or Trade therein mentioned, unleſs they have ſerved ſeven Years *Apprenticeſhip* within the Realm, under the Penalty of 40*s. per* Month. *Hutt.* 132. But it hath been adjudged, that if an *Apprentice* ſerve ſeven Years beyond Sea, he ſhall be excuſed from the Penalties of the Stat. 5 *Eliz.* And ſo if he ſerve ſeven Years, though he was never bound. 1 *Salk.* 76. And *Apprentices* going into the Army in the laſt Wars, might ſet up their Trades in the County where born, though they did not ſerve out their Times. *Stat* 10 & 11 *W.* 3. An Infant above the Age of fourteen Years may bind himſelf with Covenants to ſerve as an *Apprentice* by the Cuſtom of *London:* Infants voluntarily binding themſelves *Apprentice*, and continuing ſeven Years, ſhall have the Benefit of their Trades; but a Bond for their Service ſhall not bind them. *Cro. Car.* 179. By the Cuſtom of the City of *London*, an *Apprentice* may be turned over from one Maſter to another: And if the Maſter refuſe to make the *Apprentice* Free at the End of the Term, the Chamberlain may make him Free: In other Corporations, there muſt be a *Mandamus* to the Mayor, &c. to make him Free in ſuch Caſe. *Danv. Abr.* 421. *Wood's Inſt.* 51. A Freeman's Widow may take a Maid *Apprentice* for ſeven Years, and inrol her as a Youth; if ſhe be above fourteen Years old: And if an Exchange Woman, that hath a Husband Free of *London* take ſuch *Apprentice*, ſhe ſhall be bound to the Husband; and may be made Free, at the End of the *Apprenticeſhip*, if ſhe be then unmarried. *Lex Londinen.* 48. No *Apprentice* or Journeyman ſhall be reſtrained by Bond or Oath from keeping of a Shop. 1 *Lill. Abr.* 89. Whatever an *Apprentice* gains is for the Uſe of his Maſter; and whether he was legally bound or no, is not material, if he was an *Apprentice de facto. Salk.* 68. But the Stat. 12 *Ann.* relating to Servants ſtealing and purloining the Goods of their Maſters of the Value of 40*s.* which is Felony, extends not to *Apprentices* under fifteen Years old. Though an *Apprentice* or Servant may be indicted of Felony for ſtealing his Maſter's Goods at Common Law, notwithſtanding the Statute 21 *H.* 8. 1 *Hale's Hiſt. P. C.* 666. For inticing an *Apprentice* to leave his Service, Action of the Caſe may be brought: And for inticing him to imbezil Goods, Indictment will lie. 1 *Salk.* 380. A Maſter may be indicted for not providing for, or turning away an *Apprentice.* If a Maſter give his *Apprentice* Licence to leave him, it cannot be afterwards recalled. *Mod. Ca.* 70. An *Apprentice* marries, without the Maſter's Privity, that will not juſtify his turning him away, but he muſt ſue his Covenant. 2 *Vern.* 492. By the Cuſtom of the City of *London*, a Freeman may turn away his *Apprentice* for Gaming. *Ibid.* 241. Tho' if a Maſter turns an *Apprentice* away on Account of Negligence, &c. Equity may Decree him to refund Part of the Money given with him. 1 *Vern. Rep.* 460. As no *Apprentice* can be made without Writing; ſo none may be diſcharged by his Maſter, but by Writing under his Hand, and with the Allowance of a Juſtice of Peace, by Statute. *Dalt.* 121. Juſtices of Peace in their Seſſions may cauſe diſorderly *Apprentices* to be corrected and puniſhed; or upon Complaint of the *Apprentice* of ill Uſage from his Maſter, they may diſcharge him. *Stat.* 5 *Eliz.* If an *Apprentice* doth not his Duty, the Maſter may complain to a Juſtice, whoſe Buſineſs it is to reconcile the Difference if he can; but if he cannot do it, the Juſtice may commit the *Apprentice* to the Houſe of Correction, or bind him over to the Seſſions, &c. 1 *Mod.* 286. It it ſaid, that the Juſtices of Peace have the ſame Power of diſcharging the *Apprentice* upon Complaint of the Maſter, as upon the *Apprentice's* Complaint. *Ibid.* 287. But it hath been held, that the Statute never intended to give the Juſtices Power to meddle with *Apprentices* in all Trades, only in ſuch as are therein mentioned, and which were then uſed in *England*, &c. And they cannot diſcharge any voluntary Agreements or Covenants made between the Parties. 5 *Mod. Rep.* 140. When a Maſter dies, the *Apprentice* is to go to the Executor or Adminiſtrator to be maintained, if there be Aſſets; and the Executor,

cutor, &c. may bind him to ſome other Maſter for the Remainder of the Time. Serving an *Apprenticeſhip* gains a Settlement by Statute in a Place: But a Covenant between a Maſter and a third Perſon, the Servant not being Party, makes no *Apprenticeſhip* to gain a Settlement. *Salk.* 479., By Statute 42 *Eliz. c.* 2. Churchwardens and Overſeers of the Poor may bind out poor *Apprentices*, by Aſſent of two Juſtices of Peace: And Perſons receiving Money with poor *Apprentices*, where Money is given for placing ſuch out, are to give Security for Re-payment in ſeven Years, for the Binding out others, &c. 7 *Jac.* 1. *c.* 3. And if any Perſon refuſe to accept a poor *Apprentice*, he ſhall forfeit 10*l.* *Stat.* 8 & 9 *W.* 3. Alſo Juſtices of Peace and Church-wardens, &c. may put out poor Boys *Apprentice* to the Sea-Service. 2 *Ann. c.* 6. A Duty of 6*d.* in the Pound under 50*l.* and 12*d.* in the Pound for Sums exceeding it, given with *Apprentices* (except poor *Apprentices*) is granted by Statute; to be paid in a Month, within the weekly Bills of Mortality, and in any other Part of *Great Britain* within two Months after Indentures executed, &c. And if the full Sum agreed be not inſerted, or the Duty not paid, Indentures ſhall be void, and *Apprentices* not capable of following Trades; alſo the Maſters are liable to Penalties. 8 *Ann. c.* 9. But there are ſeveral Statutes allowing further Time to pay the Duties, and ſtamp Indentures, thro' Neglect omitted, &c. *Stat.* 6 & 7 *Geo.* 1. & 2, 3 *Geo.* 2, &c.

An *Indenture of* Apprenticeſhip.

THIS Indenture *made the Day and Year*, &c. Witneſſeth, *that* A. B. *Son of*, &c. Hath *of his own free and voluntary Will placed and bound himſelf* Apprentice *unto* C. D. *of*, &c. *to be taught in the Trade, Science, or Occupation of*, &c. *which he the ſaid* C. D. *now uſeth, and with him as an* Apprentice *to dwell, continue, and ſerve him from the Day of the Date hereof, unto the full End and Term of ſeven Years from thence next enſuing, and fully to be compleat and ended; during all which Term of ſeven Years, the ſaid* Apprentice *his ſaid Maſter well and faithfully ſhall ſerve, his Secrets keep, his lawful Commands every where gladly do, Hurt to his ſaid Maſter he ſhall not do, nor wilfully ſuffer to be done by others, but of the ſame to his Power ſhall forthwith give Notice to his ſaid Maſter; the Goods of his ſaid Maſter he ſhall not Imbezil or Waſte, nor them lend without his Conſent to any; at Cards, Dice, or any other unlawful Games, he ſhall not play; Taverns, or Alehouſes he ſhall not frequent: Fornication he ſhall not commit, Matrimony he ſhall not Contract; from the Service of his ſaid Maſter he ſhall not at any Time depart or abſent himſelf, without his ſaid Maſter's Leave; but in all Things as a good and faithful* Apprentice *ſhall and will demean and behave himſelf towards his ſaid Maſter, and all his, during the ſaid Term.* And *the ſaid Maſter his ſaid* Apprentice *the ſaid Trade, Science, or Occupation, of*, &c. *which he now uſeth, with all Things thereunto belonging, ſhall and will teach and inſtruct, or cauſe to be well and ſufficiently taught and inſtructed, after the beſt Way and Manner that he can; and ſhall and will alſo find and allow unto his ſaid* Apprentice, *Meat, Drink, Waſhing, Lodging and Apparel, both Linen and Woollen, and all other Neceſſaries fit and convenient for ſuch an* Apprentice, *during the Term aforeſaid; and at the End of the ſaid Term ſhall and will give to the ſaid* Apprentice *one new Suit of Apparel*, &c. In Witneſs, &c.

Appropriation, (*Appropriatio*, from the Fr. *Approprier*) Is the Annexing of a Benefice, originally *Juris Divini & in Patrimonio nullius*, to the proper and perpetual Uſe of ſome religious Houſe, Biſhoprick, College, or Spiritual Perſon, to enjoy for ever. And when *Appropriation* is made, the Patron is perpetual Parſon, and hath perpetual Inſtitution and Induction; for the *Appropriation* alone is a ſufficient Admiſſion, &c. *Plowd.* 499. To make an *Appropriation*, the King's Licence is to be obtained in Chancery, the Conſent of the Ordinary, Patron and Incumbent, where the Church is full; and of the Dioceſan, and Patron, if the Benefice is void. *Plowd.* 496. 15 *R.* 2. *c.* 6. *Appropriation* made during the Vacancy of the Benefice, is executed immediately; and when the Church is full, by apt Words, the Patron is conſtituted Parſon, after it becomes void. 11 *Rep.* 11. An *Appropriation* may be by the King alone, where he himſelf is Patron; as when by Letters Patent he grants the Advowſon which he is ſeiſed of in Right of his Crown to a Dean and Chapter, &c. *Plowd.* 499. No *Appropriation* can be made without Licence of the King. 8 *Rep.* 11. Nor may it be properly unleſs to a Spiritual Perſon capable of the Cure: It may be to a Biſhop, &c. and his Succeſſors. *Danv. Abr.* 511. Where *Appropriations* are made, a Vicar is to be endowed to ſerve the Cure: And formerly in Licences of *Appropriation*, it was expreſſed that the Dioceſan ſhould alſo provide a convenient Sum of Money to be yearly paid out of the Fruits, towards the Suſtentation of the Poor of the Pariſh. *Stat.* 15 *R.* 2. *c.* 6. A Vicarage endowed may not be *appropriated*; but it may be united to another Church, or to a Dean and Chapter, or College, with the King's Conſent. *Hob.* 307. An *Appropriation* cannot be aſſigned over, or ſurrendered to any; nor can it indure longer than the Body Spiritual to which it is at firſt *appropriated:* But thoſe to whom granted may make Leaſes of the Profits. *Plowd.* 499. If after an *Appropriation*, a Clerk is preſented to the Biſhop, and inſtituted and inducted, the Benefice returns to its former Nature, and the *Appropriation* is diſſolved. 7 *Rep.* 13. But if Leſſee for Years of an *Appropriation*, preſents thereto, this *Diſappropriation* ſhall not bind him in the Reverſion. *Danv.* 513. If a Feme endowed of an Advowſon *appropriate* preſents to it, the *Appropriation* is diſſolved. 1 *Inſt.* 46. If a Man recovers the Advowſon in Writ of Right, this *diſappropriates* the Church: And Diſſolution of the Spiritual Corporation *diſappropriates* an *Appropriation.* Tho' *Appropriation* cannot properly be made, except to Spiritual Perſons, and their Succeſſors; yet by the Statute 31 *H.* 8. the King's Patentees (altho' Laymen) are rendered capable of Parſonages *appropriate* of diſſolved Monaſteries; but theſe are generally called *Impropriations.* *Appropriations* have been judged an Abuſe and Robbery of the Church and Pariſh Prieſts, &c. *Kennet's Paroch. Antiq.* 433.

The *Form of a Grant of Appropriation.*

SCiatis quod nos Dedimus, &c. Decano & Capitulo Eccleſiæ Cathedralis, &c. Advocation' Rectoriæ Eccleſiæ Parochialis de, &c. Habend. & Tenend. &c. iiſdem Decano & Capitulo & ſucceſſoribus ſuis in perpetuum. Et ulterius Sciatis per Præſentes quod nos de Gratia noſtra ſpeciali ac Authoritate noſtr. Regia ſuprema & Eccleſiaſtica, qua nunc fungimur, pro nobis Hæredibus & Succeſſoribus noſtris Concedimus & Licentiam Damus prædict. Decano & Capitulo & ſucceſſoribus ſuis Rectoriam & Eccleſiam prædict. quando per Mortem, Reſignationem, vel Deprivationem, aut per aliquem alium modum quemcunque vacare contigerit, immediate in ſuos proprios uſus Tenere ſibi & ſucceſſoribus ſuis in perpetuum poſſint & valeant abſque Moleſtatione & Impedimento noſtro Hæredum aut ſucceſſorum noſtrorum ac hoc abſque aliqua Præſentatione inductione ſive Admiſſione alicujus Incumbentis ad eandem Rectoriam extunc in poſterum fiend. ac ulterius.

An *Appropriation* by the Patron or firſt Founder, is thus: *Ego* A. B. *de, &c. Conceſſi Eccleſiam & Advocationem meam de* H. *cum Terris & Decimis omnibus ad eam pertinentibus, Decano de, &c.*

Appropriare Communam, To diſcommon, and incloſe any Parcel of Land, that was before open Common——*Anno D.* 1299. The Prior and Convent

vent of *Burceſter*, granted to the Rector of *Aſherugge* and the *Bon hommes* of that Place, *quod ſibi poſſint*, Appropriare, & *includere pro voluntate ſua tres Acras de* Communi *Paſtura in Blakethorn*, &c. Paroch. Antiq. 336.

Approve, (*Approbare*) To augment a Thing to the utmoſt: To *approve* Land is to make the beſt Benefit of it, by increaſing the Rent, &c. 2 *Inſt.* 474.

Approvement, Is where a Man hath Common in the Lord's Waſte, and the Lord makes an Incloſure of Part of the Waſte for himſelf, leaving ſufficient Common with Egreſs and Regreſs for the Commoners. *Reg. Jud.* 8, 9. If there be not ſufficient Common left for the Tenant, he may have a Writ of Aſſiſe, and ſhall recover treble Damages. *Stat.* 3 & 4 *Ed.* 6. *c.* 3. And a Commoner may break down an Incloſure, if the Lord doth incloſe Part of the Common, and not leave ſufficient Room in the Reſidue. But if any, upon juſt Title of *Approvement*, do make a Hedge or Ditch for that Purpoſe, which afterwards is thrown down in the Night by Perſons unknown, the Towns adjoining may be diſtrained to make ſuch Hedge, &c. for which there is a *Noctanter* Writ. *Stat.* 13 *Ed.* 1. *c.* 46. 2 *Inſt.* 474. *Approvement* is to be only by Incloſure; and the Lord may not by the Statutes of *Approvement* dig Pits for Gravel, or Coal, &c. 1 *Roll. Abr.* 90, 405. 9 *Rep.* 112. *Approvement* may be made between Neighbour and Neighbour, tho' one of them dwell in another Town, if the Commons join together; and if the Lord hath Common in the Tenant's Ground, the Tenant may *approve*. 2 *Inſt.* 475. The Common is to be Common appendant or appurtenant, to be ſubject to *Approvement*, and not Common in groſs to a certain Number. The Word *Approvement* is alſo uſed for the Profits of Lands themſelves. *Cromp. Juriſd.* 152. And the Statute of *Merton*, 2 H. 3. makes mention of Land newly *approved*. *F. N. B.* 71. *Approvement ann.* 43 *Eliz. c.* 11. Is the ſame with *Improvement* — *Idem* Approveamentum —— *Cum omnibus* Approveamentis & *aliis Pertinentiis ſuis*. Mon. Angl. 607.

Approvers, *Anno* 9 *H.* 6. Bailiffs of Lords in their Franchiſes are called their *Approvers*: And *Approvers* in the Marches of *Wales* were ſuch as had Licence *De vendre* & *achater* Beaſts, &c. But by the Statute 2 *Ed.* 3. *c.* 12. *Approvers* are ſuch as are ſent into Counties to increaſe the Farms of Hundreds, &c. held by Sheriffs. Such Perſons as have the Letting of the King's Demeſnes in ſmall Manors, are called *Approvers* of the King (*Approbatores Regis*) *Anno* 51 H. 3. And in the Stat. 1 *Ed.* 3. *c.* 8. Sheriffs are called the King's *Approvers*.

Approver, or **Prover**, (*Approbator*) Is one that confeſſing Felony committed by himſelf, appealeth or accuſeth others to be guilty of the ſame Crime. He is called *Approver* in this Senſe, becauſe he muſt *prove* what he hath alledged; and that Proof was by Battle, or the Country, at the Election of him appealed: And the Form of this Accuſation you may find in *Crompt. Juſt.* 250. See alſo *Bracton lib.* 3. *Staundf. pl. Cor.* 52. If a Perſon indicted of Treaſon or Felony, not diſabled to accuſe, upon his Arraignment, before any Plea pleaded, and before competent Judges, confeſſeth the Indictment, and takes an Oath to reveal all Treaſons and Felonies that he knoweth of; and therefore prays a Coroner to enter his Appeal, or Accuſation againſt thoſe that are Partners in the Crime contained in the Indictment, ſuch a one is an *Approver*. 3 *Inſt.* 129. *H. P. C.* 192. Though the *Approver* is ſworn to diſcover all Treaſons and Felonies, he is not to be an *Approver*, but of the Offence whereof he is indicted: And this Accuſation of himſelf, and Oath, makes his Accuſation of another of the ſame Crime to amount to an Indictment; and if his Partners are convicted, the King is to pardon him, as to his Life: But he ought not to be ſuffered to continue in the Kingdom. Coroners may award Proceſs to the Sheriff againſt Appellees in the ſame County, on the Diſcovery of the *Approver*: And the Juſtices of Gaol-Delivery, &c. have Power to award Proceſs in any County to apprehend and try them. 2 *Hawk. Pl. Cor.* 208. A Man may be an *Approver* againſt any Perſon within the Realm, if there be ſuch a Perſon, and he be named of the County wherein he dwells; but if there be no ſuch Perſon, the *Approver* ſhall be hanged for his falſe Appeal. *Ibid.* 206. When a Perſon hath once pleaded Not guilty, he cannot be an *Approver*. 3 *Inſt.* 129. And Perſons attainted of Treaſon or Felony, ſhall not be *Approvers*; their Accuſation will not then be of ſuch Credit as to put a Man upon his Trial. 2 *Hawk.* 205. Infants under Age of Diſcretion may not be *Approvers*: And it being in the Diſcretion of the Court to ſuffer one to be an *Approver*, this Method of late hath ſeldom been practiſed. But we have, in Caſes of Burglary and Robbery on the Highway, what ſeems to amount to the ſame, by Statute; it being ordained, that where Perſons charged with ſuch Crimes, out of Priſon, diſcover two others concerned in the Crime, they ſhall have a Pardon, &c. Stat. 5 *Ann. c.* 31.

Appruare, To take to his own Uſe or Profit, *viz. Domini vaſtorum & Boſcorum*, &c. Appruare *ſe poſſunt de vaſtis*, &c. W. 2. c. 20.

Appurtenances, (*Pertinentia*) Derived from the French *Appertenir*, to belong to, ſignify Things both Corporeal and Incorporeal appertaining unto another Thing as Principal: As Hamlets to a Chief Manor; and Common of Paſture, Piſcary, &c. Alſo Liberties and Services of Tenants. *Brit. cap.* 39. If a Man grant Common of Eſtovers to be burnt in his Manor, theſe are *appurtenant* to the Manor; for Things *appurtenant* may be granted at this Day. *Co. Lit.* 121. Common *appurtenant* may be to a Houſe, Paſture, &c. Outhouſes, Yards, Orchards, and Gardens are *appurtenant* to a Meſſuage; but Lands cannot properly be ſaid to be *appurtenant* to a Meſſuage. 1 *Lill. Abr.* 91. And one Meſſuage cannot be *appurtenant* to another. *Ibid.* Lands cannot, as to the Right of the Words *cum Pertinentiis*, be *appurtenant* to the Houſe; but the Word *Pertinens* may be taken in the Senſe of uſually letten or occupied with the Houſe. *Plowd.* 170. Lands ſhall paſs in a Leaſe or Deviſe of a Houſe with the *Appurtenances*, as pertaining to the ſame, when it hath been uſed and occupied with it ten Years or more; which is judg'd a ſufficient Time to make it *appertaining* to the Houſe. *Cro. El.* 704. Lands, a Common, &c. may be *appurtenant* to a Houſe; though not a Way. 3 *Salk.* 40. Grant of a Manor, without the Words *cum pertinentiis*, 'tis ſaid will paſs all Things belonging to the Manor. *Owen*'s *Rep.* 31. Where a Perſon hath a Meſſuage, &c. to which Eſtovers are *appurtenant*, and it is blown down or burnt by the Act of God; if the Owner re-edify it, in the ſame Place and Manner as before, he ſhall have the ancient *Appurtenances*. 4 *Rep.* 86. A Turbary may be *appurtenant* to a Houſe; ſo a Seat in a Church, &c. but not to Land; for the Things muſt agree in Nature and Quality. 3 *Salk.* 40.

Aquage, (Aquagium, *quaſi Aquæ Agium*, *i. e. Aquæductus* & Aquægangium) A Water-courſe.—— *Non liceat alicui de cætero facere Dammas vel Fordas aut alia Impedimenta in aliquibus landeis, Watergangiis, Foſſatis ſive* Aquagiis *communibus in Mariſco prædicto.* Ordin. Mariſ. de Romney fact. temp. Hen. 3. & Ed. 1. p. 72.

Arabant, *Ad Curiam Domini*, Was intended of thoſe who held by the Tenure of Ploughing and Tilling the Lord's Lands within the Manor. *Spelm. Gloſſ.*

Arace, (*Angl.*) To raſe, from the French *Arracher*, *Evellere.*

Araho, *In Arabo conjurare*, *i. e.* To make Oath in the Church, or ſome other Holy Place; for according to the *Ripuarian* Laws, all Oaths were made in the Church upon the Relicks of Saints.

Aratrum Terræ, As much as can be tilled with one Plough.——*Hoc manerium eſt* 30 Aratrorum. *Thorn. Anno* 616. *Aratura Terræ* is the Service which the Tenant is to do for his Lord in Ploughing his Land.

Arbitrator, (*Lat.*) Is a private extraordinary Judge between Party and Party, choſen by their mutual Conſents, to determine Controverſies between them. *Weſt. Symb. Sect.* 21. And *Arbitrators* are ſo called, becauſe they have an *Arbitrary* Power; for if they obſerve the Submiſſion, and keep within due Bounds, their Sentences are definitive, from which there lies no Appeal. 1 *Roll. Abr.* 251. The Award of *Arbitrators* is definitive, and being choſen by the Parties, they are not tied to ſuch Formalities of Law as Judges in other Caſes are; and yet they have as great Power as other Judges to determine the Matters in Variance; but their Determination muſt be certain, and it is to be according to the expreſs Condition of the Bond by which the Parties ſubmit themſelves to their Judgment. 1 *Nelſ. Abr.* 234. *Dyer* 356. The *Chancery* will not give Relief againſt the Award of the *Arbitrators*, except it be for Corruption, &c. And where their Award is not ſtrictly binding by the Rules of Law, the Court of Equity can decree a Performance. *Chanc. Rep.* 279. 1 *Vern.* 24. But when *Arbitrators* make their Award upon one Day, they cannot make another Award between the Parties on any other Day: Nor can they do it Part at one Time, and Part on another, altho' all the Times are within the Submiſſion. 26 *Hen.* 6. 52. 39 *Hen.* 6. 12. Yet the *Arbitrators* may agree upon a Thing one Day, and of another Thing another Time, and at laſt make an Award of the whole. 47 *Ed.* 3. 21. 2 *Mod. Entr. Engl.* 262. *Arbitrators* are to award what is equal between the Parties, and not on one Side only; and the Performance of it muſt be lawful and poſſible; alſo the Award muſt be final. 1 *Inſt.* 206. 1 *Roll. Abr.* 242, &c. If the *Arbitrators* make an Award of Money to be paid to a Stranger, &c. unleſs the Parties have Benefit by it, it will be void. 2 *Saund.* 122. 1 *Lill.* 169. And a Party is not to be made a Judge in his own Cauſe by Award. 1 *Salk.* 71. Where a Thing is to be done on Payment of Money, a Tender of the Money is as much as an actual Payment. *Mod. Caſ.* 33. Action of Debt may be brought for Money adjudged to be paid by *Arbitrators*, declaring on the Award; and alſo Action of Debt upon the Bond for not performing the Award. *Brownl* 55. Sometimes Matters are referred by the Judges at the Aſſiſes to the three Foremen of the Jury, in the Nature of *Arbitrators*; and after their Award is made, the Plaintiff may have Attachment, &c. to oblige Performance. 1 *Salk.* 84. When there is but one *Arbitrator*, which happens where the Matter is referred to two, and they cannot agree, but leave it to be determined by a third Perſon, it is called an *Umpirage.* 8 *Rep.* 98. But the *Arbitrators* are to refuſe, and declare they will make no Award, before the Umpire ſhall proceed: Tho' an Umpire's Award ſhall be good where the *Arbitrators* make a void Award, which is no Award. 1 *Lill. Abr.* 170. It is ſaid an Umpirage cannot be made till the *Arbitrators* Time is out; and if any other Power be given to the Umpire it is not good, for two Perſons cannot have a ſeveral Juriſdiction at one Time. 1 *Mod. Rep.* 15. *Arbitrators* are generally where the Parties think it more ſafe to refer the Matters in Variance, to the Determination of Friends, than to venture a Trial at Law. And the Civilians make a Difference between *Arbiter* and *Arbitrator*: An *Arbiter* is tied to proceed and judge according to Law mingled with Equity; but an *Arbitrator* is wholly at his own Diſcretion, without Solemnity of Proceſs or Courſe of Judgment, to hear and determine the Controverſy referred to him; ſo as it be *Juxta* Arbitrium *boni viri.* Cowel.

Arbitrament, (*Arbitrium*) Is the Sentence or Determination pronounced by *Arbitrators*, and publiſhed when they have heard all Parties. And *Arbitrament* is either General, of all Actions, Demands, Quarrels, &c. or Special, of ſome certain Matters in Controverſy: It may be alſo Abſolute, or Conditional. 8 *Rep.* 98. To every *Arbitrament* five Things are incident, 1. Matter of Controverſy. 2. Submiſſion. 3. Parties to the Submiſſion. 4. *Arbitrators.* 5. Giving up the *Arbitrament. Hardr.* 44. *Arbitrators* can't refer *Arbitraments* to others, if the Submiſſion be not ſo: But an *Arbitrament* that one ſhall Releaſe to another, by Advice of a certain Perſon, this is good: becauſe 'tis a Reference only for the Execution of it. *Jenk. Cent.* 129. Submiſſions to *Arbitrament*, are uſually by Bond; and the Parties who bind themſelves are obliged to take Notice of the Award, at their Peril: But Things relating to a Freehold; Debts due on Bond; or on certain Contract; Criminal Offences, &c. are not *arbitrable. Danv. Abr.* 513. 9 *Rep.* 78. 1 *Roll. Abr.* 342, 244. See *Award.*

Arca Cyrographica, *Sive Cyrographorum Judæorum*, This was a common Cheſt with three Locks and Keys, kept by certain Chriſtians and Jews, wherein all the Contracts, Mortgages, and Obligations belonging to the Jews were kept, to prevent Fraud; and this by Order of K. *Rich.* 1. Hoveden's Annals, p. 745.

Archery, A Service of keeping a Bow, for the Uſe of the Lord to defend his Caſtle.——Johannes *de, &c. qui tenet de Dom. Reg. in capite per Serjantiam* Archeriæ. *Co. Litt. Sect.* 157.

Archbiſhop, (*Archiepiſcopus*) Is the Chief of the Clergy in his Province, and is that Spiritual Secular Perſon, who hath ſupreme Power under the King in all Eccleſiaſtical Cauſes: And the Manner of his Creation and Conſecration, by an *Archbiſhop* and two other Biſhops, &c. You may find in the Stat. 25 *Hen.* 8. *c.* 20. An *Archbiſhop* is ſaid to be inthroned, when a Biſhop is ſaid to be inſtalled; and there are four Things to compleat a Biſhop or *Archbiſhop*, as well as a Parſon: Firſt, Election, which reſembles Preſentation; the next is Confirmation, and this reſembles Admiſſion; next Conſecration, which reſembles Inſtitution; and the laſt is Inſtallation, reſembled to Induction. 3 *Salk.* 72. In ancient Times the *Archbiſhop*, was Biſhop over all *England*, as *Auſtin* was, who is ſaid to be the firſt *Archbiſhop* here; but before the *Saxon* Conqueſt, the *Britains* had only one Biſhop, and not any *Archbiſhop.* 1 *Roll. Rep.* 328. 2 *Roll.* 449. The *Archbiſhop* of *Canterbury* is now ſtiled *Metropolitanus & Primas totius Angliæ*; and the *Archbiſhop* of *York* ſtiled *Primas & Metropolitanus Angliæ.* They are called *Archbiſhops* in Reſpect of the Biſhops under them; and Metropolitans, becauſe they were conſecrated at firſt in the Metropolis of the Province. 1 *Inſt.* 94. Both the *Archbiſhops* have diſtinct Provinces, wherein they have Suffragan Biſhops of ſeveral Dioceſes, with Juriſdiction under them. And each hath two concurrent Juriſdictions, one as Ordinary, or the Biſhop himſelf within his Dioceſe; the other as Superintendant throughout his whole Province of all Eccleſiaſtical Matters, to correct and ſupply the Defects of other Biſhops. The *Archbiſhop* of *Canterbury* hath the Privilege to crown all the Kings of *England*; and to have Prelates to be his Officers; as for Inſtance; the Biſhop of *London* is his Provincial Dean, the Biſhop of *Wincheſter* his Chancellor, the Biſhop of *Lincoln* his Vice-Chancellor, the Biſhop of *Saliſbury* his Precentor, the Biſhop of *Worceſter* his Chaplain, &c. It is the Right of the *Archbiſhop* to call the Biſhops and Clergy of his Province to Convocation, upon the King's Writ: He hath a Juriſdiction in Caſes of Appeal, where there is a ſuppoſed Default of Juſtice in the Ordinary; and has a ſtanding Juriſdiction over his Suffragans: He confirms the Election of Biſhops, and afterwards conſecrates them, *&c.* And he may appoint Co-adjutors to a Biſhop that is grown infirm. He may confer Degrees of all Kinds; and cenſure and excommunicate, ſuſpend or depoſe, for any juſt Cauſe, *&c.* 2 *Roll. Abr.* 223. And he hath Power to grant Diſpenſations in any Caſe, formerly granted by the See of *Rome*, not contrary to the Law of God: But if the Caſe is new and extraordinary, the King and his Counſel are to be conſulted. *Stat.* 25 *H.* 8. He may retain eight Chaplains: And during the Vacancy of any See, he is Guardian of the Spiritualties. *Stat. Ibid.* and 21 *H.* 8.

Archdeacon, (*Archidiaconus*) Is one that hath Eccleſiaſtical Dignity, and Juriſdiction over the Clergy and Laity next after the Biſhop throughout the Dioceſe, or in ſome Part of it only. *Archdeacons* had anciently a ſuperintendant Power over all the Parochial Clergy in every Deanery in their Precincts; they being the Chiefs of the Deacons; Tho' they have no original Juriſdiction, but what they have got is from the Biſhop, either by Preſcription or Compoſition; and Sir *Simon Degg* tells us, that it appears an *Archdeacon* is a meer Subſtitute to the Biſhop; and what Authority he hath is derived from him, his chief Office being to viſit and enquire, and *Epiſcopo Nunciare*, *&c.* In ancient Times, *Archdeacons* were employ'd in ſervile Duties of collecting and diſtributing Alms and Offerings; but at length by a perſonal Attendance on the Biſhops, and a Delegation to examine and report ſome Cauſes, and Commiſſions to viſit the remoter Part of the Dioceſes, they became as it were Overſeers of the Church; and by Degrees advanced into conſiderable Dignity and Power. *Lanfranc*, Archbiſhop of *Canterbury*, was the firſt Prelate in *England* who inſtituted an *Archdeacon* in his Dioceſe, which was about the Year 1075. And an *Archdeacon* is now allowed to be an Ordinary, as he hath a Part of the Epiſcopal Power lodged with him. He viſits his Juriſdiction once every Year: And he hath a Court, where he may inflict Penance, ſuſpend, or excommunicate Perſons, prove Wills, grant Adminiſtrations, and hear Cauſes Eccleſiaſtical, *&c.* ſubject to Appeal to the Biſhop of the Dioceſe. It is one Part of the Office of an *Archdeacon* to examine Candidates for Holy Orders; and to induct Clerks within his Juriſdiction, upon Receipt of the Biſhop's Mandate. 2 *Cro.* 556. 1 *Lev.* 193. *Wood's Inſt.* 30.

Arches Court, (*Curia de Arcubus*) The chief and moſt antient Conſiſtory Court belonging to the Archbiſhop of *Canterbury* for the Debating of Spiritual Cauſes. It is ſo called from the Church in *London*, commonly called *St. Mary le Bow*, (where it was formerly held) which Church is named *Bow Church* from the Steeple which is raiſed by Pillars, built *archwiſe*, like ſo many bent Bows. *Cowel.* The Judge of this Court is ſtiled the Dean of the *Arches*, or Official of the *Arches* Court: He hath extraordinary Juriſdiction in all Eccleſiaſtical Cauſes, except what belongs to the Prerogative Court; alſo all Manner of Appeals from Biſhops or their Chancellors or Commiſſaries, Deans and Chapters, Archdeacons, *&c.* firſt or laſt are directed hither: He hath ordinary Juriſdiction throughout the whole Province of *Canterbury*, in Caſe of Appeals; ſo that upon any Appeal made, he, without any farther Examination of the Cauſe, ſends out his Citation to the Appellee, and his Inhibition to the Judge from whom the Appeal was made. Of this ſee more 4 *Inſt.* 337. But he cannot cite any Perſon out of the Dioceſe of another, unleſs it be on Appeal, *&c.* 23 *H.* 8. *c.* 9. In another Senſe the Dean of the *Arches* has a peculiar Juriſdiction of thirteen Pariſhes in *London*, called a Deanery, (being exempt from the Authority of the Biſhop of *London*) of which the Pariſh of *Bow* is the Principal. The Perſons concerned in this Court, are the Judge, Advocates, Regiſters, Proctors, *&c.* And the Foundation of a Suit in theſe Courts, is a Citation for the Defendant to appear; then the Libel is exhibited, which contains the Action, to which the Defendant muſt anſwer; whereupon the Suit is conteſted, Proofs are produced, and the Cauſe determined by the Judge, upon Hearing the Advocates on the Law and Fact; when follows the Sentence or Decree thereupon.

Archives, (*Archiva*, from *Arca*, a Cheſt) The *Rolls*, or any Place where antient Records, Charters and Evidences, belonging to the Crown and Kingdom, are kept; alſo the *Chancery*, *Exchequer-Office*, *&c.* And it hath been ſometimes uſed for Repoſitories in Libraries.

Arerieſment, Surpriſe, Affrightment.——To the great *Arerieſment* and *Eſtenyſement* of the Common Law. *Rot. Parl.* 21 *Edw.* 3.

Arierban, The Edict of the King, commanding all his Tenants to come into the Army: If they refuſe, then to be deprived of their Eſtates.

Arentare, To Rent out, or let at a certain Rent.————Richardus de Armeſtone *Ballivus Manerii de* Kingsford, *malitioſe & per violentiam dictos Religioſos de eadem piſcaria ejecit, & ipſum Domino ſuo* Arentari *fecit in* 12 *ſol. quos idem Dominus per* 6 *annos recepit.* Conſuetud. Domus de Farendon, MS. fol. 53.

Argentum Album, Silver Coin, or Pieces of Bullion that anciently paſſed for Money. By *Domeſday Tenure*, ſome Rents to the King were paid in *Argento Albo*, common Silver Pieces of Money; other Rents in *Libris Urſis & Penſatis*, in Metal of full Weight and Purity: In the next Age, that Rent which was paid in Money, was called *Blanch fearm*; and afterwards *White Rent*; and what was paid in Proviſion, was termed *Black Mail.* Spelm. Gloſſ.

Argentum Dei, God's Money, *i. e.* Money given in Earneſt upon the Making of any Bargain; Hence comes *Arles*, Earneſt.———Adam de Holt *vendidit quintam partem Manerii de* Berterton Henrico Scot, *& cepit de prædicto* Henrico *tres Denarios de* Argento Dei *præ manibus.* Placit. apud. Caſt. 2 Ed. 3.

Argil, or **Argoil,** Clay, Lime, and ſometimes Gravel; alſo the Lees of Wine, gathered to a certain Hardneſs. *Law Fr. Dict.*

Argumentoſus, A Word which ſignifies *Ingenious*, mentioned by our Hiſtorian *Neubrigenſis. In Picturis quoque opera* Argumentoſa *vocamus.* Lib. 1. c. 14.

Arietum Levatio, An old ſportive Exerciſe, ſuppoſed to be the ſame with running at the *Quintal.*

Arma dare, To dub or make a Knight. *Anno Dom.* 1144. 10 *Steph. Ego* Brientius *filius Comitis, quem bonus Rex* Henricus *nutrivit, & cui* Arma *dedit & honorem.* A. D. 1278. 31 Ed. 3. Arma *capere* is to be made a Knight. *Kennet's Paroch. Antiq. pag.* 288. And in *Walſingham, pag.* 507. *Die Dominica in Vigilia Purificationis* Edwardus *juvenis ſuſcepit* Arma *Militaria.* The Word *Arma* in theſe Places ſignifies only a Sword; but ſometimes a Knight was made by giving him the whole Armour.————Lanfrancus Dorobernenſis *Epiſcopus eum lorica induit, & galeam capiti impoſuit, eique & Regis filio Militiæ cingulum in nomine Dei cinxit.* Ordericus Vitalis, lib. 8. de Henrico, *&c.*

Arma Libera, A Sword and a Lance which were uſually given to a Servant when he was made free. *Leg. Will. cap.* 65.

Arma moluta, Sharp Weapons that cut, oppos'd to ſuch as are blunt, which only break or bruiſe. *Bract. lib.* 3. Arma moluta *plagam faciunt, ſicut gladiis & hujuſmodi: Ligna vero & lapides, bruſuras, Orbes & ictus, qui judicari non poſſunt ad plagam, ad hoc ut* *inde venire poſſit ad Duellum.* They are called *Arma emolita* by *Fleta, lib.* 1. *c.* 33. *par.* 6.

Arma Reverſata: This was when a Man was convicted of Treaſon or Felony: Thus our Hiſtorian *Knighton*, ſpeaking of *Hugh Spenſer*, tells us, *Primo veſtierunt eum uno veſtimento cum* Armis *ſuis* reverſatis. *Lib.* 3. *p.* 2546.

Armiſcare, Is a Sort of Puniſhment decreed or impoſed on an Offender by the Judge. *Malmsb. lib.* 3. *p.* 97. *Walſingham, p.* 430. At firſt it was to carry a Saddle at his Back in Token of Subjection. *viz. Nudis veſtigiis equeſtrem ſellam ad ſatisfaciendum humeris ferret. Brompton* ſays, that in the Year 1176, the King of *Scots* promiſed K. *Hen.* 2. at *York, Lanceam & ſellam ſuam ſuper Altare Sancti* Petri *ad perpetuam hujus ſubjectionis memoriam offerre.*

Armigeri, A Title of Dignity, belonging to ſuch Gentlemen that bear Arms: And theſe are either by *Curteſy*, as Sons of Noblemen, eldeſt Sons of Knights, *&c.* Or by *Creation*, ſuch as the King's Servants, *&c.* The Word *Armigeri* has alſo been applied to the higher Servants in Convents. *Paroch. Antiq.* 576. See *Eſquire.*

Armour and **Arms**, In the Underſtanding of Law, are extended to any Thing that a Man wears for his Defence, or takes into his Hands, or uſeth in Anger to ſtrike or caſt at another. *Crompt. Juſt.* 65. *Arms* are alſo what we call in Latin *Inſignia*, Enſigns of Honour; as to the Original of which, it was to diſtinguiſh Commanders in War; for the ancient defenſive *Armour* being a Coat of Mail, *&c.* which covered the Perſons, they could not be diſtinguiſhed, and therefore a certain Badge was painted on their Shields, which was called *Arms*; but not made hereditary in Families till the Time of King *Rich.* 1. on his Expedition to regain *Jeruſalem* from the *Turks*: And beſides Shields with *Arms*, they had a Silk Coat drawn over their *Armour*, and afterwards a ſtiff Coat, on which their *Arms* were painted all over, now the Herald's Coat of *Arms. Sid Rep.* 352. By the Common Law it is an Offence for Perſons to go or ride *armed* with dangerous and unuſual Weapons: But Gentlemen may wear common *Armour* according to their Quality, *&c.* 3 *Inſt.* The King may prohibit Force of *Arms*, and puniſh Offenders according to Law; and herein every Subject is bound to be aiding. *Stat.* 7 *Ed.* 1. None ſhall come with *Force* and *Arms* before the King's Juſtices, nor ride *armed* in Affray of the Peace, on Pain to forfeit their *Armour*, and ſuffer Impriſonment, *&c.* 2 *Ed.* 3. *c.* 3.

Arnalia, *Arable Grounds.* This Word is mentioned in *Domeſday.* Tit. *Eſſex.*

Arnaldia, *Arnoldia*; A Sort of Diſeaſe that makes the Hair fall off, like the *Alopecia*, or like unto a Diſtemper in Foxes.——*Deinde uterque Rex incidit in ægritudinem quam* Arnaldiam *vocant, in qua ipſi ad mortem uſque laborantes capillos ſuos depoſuerunt.* Rog. Hoveden, p. 693.

Aromatarius, (Lat) A Word often uſed for a *Grocer*, but held not good in Law Proceedings. 1 *Vent.* 142.

Arpen, or *Arpent*, Signifies an Acre, or Furlong of Ground: And according to the old *French* Account in Domeſday-Book, 100 Perches make an *Arpent.* The moſt ordinary Acre, called *l'Arpent de France*, is One hundred Perches ſquare: But ſome account it but half an Acre.——*Septem acras terræ & unum* Arpentum *quæ me contingebant per Eſchaietam.* Ex Reg. Priorat. de Wormſley, fol. 7. Where *Arpen* ſeems to be ſome Quantity leſs than an Acre. *Arpentator*, a Meaſurer or Surveyor of Land.

Arquebuſs, (Fr. *Arquebuſe*) A ſhort Hand-Gun, a Caliver or Piſtol; mentioned in ſome of our ancient Statutes. *Law Fr Dict.*

Arrack. The ſame Duty and Exciſe payable for Brandy and Foreign Spirits, and no more, ſhall be paid for *Arrack* imported from the *Eaſt-Indies*; and the like Allowance to be made on Exportation, *&c. Stat* 7 *Geo.* 2. *c.* 14.

Arraiatio Peditum, Is uſed in *Pat.* 1 *Ed.* 2. for the *Arraying* of Foot Soldiers.

Arraiers, (*Arraiatores*) Such Officers as had the Care of the Soldiers *Armour*, and whoſe Buſineſs it was to ſee them duly accoutred. *Stat.* 12 *R.* 2. *c.* 6. In ſeveral Reigns Commiſſioners have been appointed for this Purpoſe.

Arraign, (from the French *Arranger*, to ſet a Thing in Order) Hath the ſame Signification in Law: But the true Derivation is from the French *Arraiſonner*, i. e. *Ad rationem ponere*, to call a Man to anſwer in Form of Law. A Priſoner is *arraigned*, when he is indicted and brought to Trial: And to *arraign* a Writ of Aſſiſe, is to cauſe the Demandant to be called to make the Plaint, in ſuch Manner as the Tenant may be obliged to anſwer. 1 *Inſt.* 262. But no Man is properly *arraigned* but at the Suit of the King, upon an Indictment found againſt him, or other Record, wherewith he is to be charged: And this *Arraignment* is to take Care that the Priſoner do appear to be tried, and hold up his Hand at the Bar, for the Certainty of the Perſon, and plead a ſufficient Plea to the Indictment. 1 *Inſt.* 262, 263. The Priſoner is to hold up his Hand only in Treaſon and Felony; but this is only a Ceremony: If he owns that he is the Perſon, it is ſufficient without it; and then upon his *Arraignment* his Fetters are to be taken off; and he is to be treated with all the Humanity imaginable. 2 *Inſt.* 315. 3 *Inſt.* 35. If in Action of Slander for calling one Thief, the Defendant juſtifies that he ſtole Goods, and Iſſue is thereon taken; if it be found for the Defendant in *B. R.* and for Felony in the ſame County where the Court ſits, or before Juſtices of Aſſiſe, *&c.* he ſhall be forthwith *arraigned* upon this Verdict of twelve Men, as on an Indictment. 2 *Hale's Hiſt. P. C.* 151. The Pleas upon *Arraignment* are either the General Iſſue, Not guilty; Plea in Abatement, or in Bar; and the Priſoner may demur to the Indictment; alſo he may confeſs the Fact, but then the Court has nothing more to do than to proceed to Judgment againſt him. If he ſtands mute, and doth not put himſelf upon Trial, he ſhall ſuffer the Penance *Pain fort & dure*, in Caſes of Felony, *&c.* 3 *Inſt.* 217. By the Common Law, if a Principal is acquitted or is pardoned, or dies, the Acceſſary ſhall not be *arraigned.* But *vide Stat.* 1 *Ann. cap.* 9. and Word *Acceſſary.* For the Solemnity of the *Arraignment* and Trial of a Priſoner, ſee *Dalt. chap.* 185, *p.* 515.

Array, (*Arraya*, ſive *Arraiamentum*) An old *Fr.* Word ſignifying the Ranking or ſetting forth of a Jury of Men impanelled upon a Cauſe. 18 *H.* 6. *c.* 14. And when we ſay to *array* a Panel, That is, to ſet forth the Men empanelled one by another. *F. N. B.* 157. To *challenge the Array* of the Panel, is at once to except againſt all the Perſons *arrayed* or empanelled, in Reſpect of Partiality, *&c.* 1 *Inſt.* 156. If the Sheriff be of Affinity to either of the Parties; or if any one or more of the Jurors are returned at the Nomination of either Party; or for any other Partiality; the *Array* ſhall be *quaſhed.* The Word *Array* alſo relates in a particular Manner to military Order, as to conduct Perſons armed, *&c. Stat.* 14 *Car.* 2. *cap.* 5.

Arrearages, (*Arreragia*) From the French *Arriere retro*, behind, is taken for Money unpaid at the due Time, as Rent behind; the Remainder due on an Account, or a Sum of Money remaining in the Hands of an Accountant. When *Arrears* of Rent are preſumed in Law to be ſatisfied, *vide* Acceptance.

Arrectatus, One ſuſpected of any Crime.——*Si autem aliquis* arrectatus *fuerit de morte alicujus periclitantis capietur & impriſonetur.*——Offic. Coronat Spelm. Gloſſ.

Arrenatus, *Arraigned*, accuſed.——*Stephanus Rabaz, Vic. Leiceſt* arrenatus & *ad rationem poſitus de bo quod*, &c. Rot. Parl. 21 Ed. 1.

Arrentation, (from the Spaniſh *Arrendare*) Is as much as *Ad certum redditum dimittere*; and it ſignifies the Licenſing an Owner of Lands in the Foreſt, to encloſe them with a low Hedge and ſmall Ditch, according to the Aſſiſe of the Foreſt, under a yearly Rent: *Saving the Arrentations* is a ſaving Power to give ſuch Licences. *Ordin. Foreſtæ*, 34 *Ed.* 1.

Arreſt, (*Arreſtum*) Cometh of the *French* Word *Arreſter*, to ſtop, or ſtay. It is a Reſtraint of a Man's Perſon, obliging him to be obedient to the Law: And it is defined to be the Execution of the Command of ſome Court of Record, or Officer of Juſtice. An *Arreſt* is the Beginning of Impriſonment, where a Man is firſt taken, and reſtrained of his Liberty, by Power or Colour of a lawful Warrant: Alſo it ſignifies the Decree of a Court, by which a Perſon is *arreſted*. 2 *Shep. Abr.* 299. None ſhall be *arreſted* for Debt, Treſpaſs, &c. or other Cauſe of Action, but by Virtue of a Precept or Commandment out of ſome Court: But for Treaſon, Felony, or Breach of the Peace, any Man may *arreſt* without Warrant or Precept. *Terms de Ley* 54. Perſons preſent at the Committing of a Felony, muſt uſe their Endeavours to apprehend the Offender, under Penalty of Fine and Impriſonment. 3 *Inſt.* 117. 4 *Inſt.* 177. The King cannot command any one by Word of Mouth to be *arreſted*; but he muſt do it by Writ, or Order of his Courts, according to Law: Nor may the King *arreſt* any Man for Suſpicion of Treaſon, or Felony, as his Subjects may; becauſe if he doth wrong, the Party cannot have Action againſt him. 2 *Inſt.* 186. After Preſentment or Indictment found in Felony, &c. the firſt Proceſs is a *Capias*, to *arreſt* and impriſon the Offender: And if the Offender cannot be taken, an Exigent is awarded in order to Outlawry. *H. P. C.* 209. When a Perſon is apprehended for Debt, &c. he is ſaid to be *arreſted*: And Writs expreſs *Arreſt* by two ſeveral Words *Capias* and *Attachias*, to take and catch hold of a Man; for an Officer muſt actually lay hold of a Perſon, beſides ſaying he *arreſts* him, or it will be no lawful *Arreſt*. 1 *Lill. Abr.* 96. If a Bailiff be kept off from making an *Arreſt*, he ſhall have an Action of Aſſault: And where the Perſon *arreſted* makes Reſiſtance, or aſſaults the Bailiff, he may juſtify Beating of him. If a Bailiff touches a Man, which is an *Arreſt*, and he makes his Eſcape, it is a Reſcous, and Attachment may be had againſt him. 1 *Salk.* 79. If a Bailiff lays hold of one by the Hand (whom he had a Warrant to *arreſt*) as he holds it out at the Window, this is ſuch a Taking of him, that the Bailiff may juſtify the Breaking open of the Houſe to carry him away. 1 *Vent.* 306. When a Perſon has committed Treaſon or Felony, &c. Doors may be broke open to *arreſt* the Offender; but not in Civil Caſes, except it be in Purſuit of one *arreſted*; or where a Houſe is recovered by Real Action, to deliver Poſſeſſion to the Perſon recovering. *Plowd.* 5 *Rep.* 91. Action of Treſpaſs, &c. lies for breaking up a Houſe to make *Arreſt* in a Civil Action. *Mod. Caſ.* 105. But if it appears, a Bailiff found on outer Door, &c. open, 'tis ſaid he may open the inner Door to make an *Arreſt*. *Comber.* 327. An *Arreſt* in the Night, as well as the Day, is lawful. 9 *Rep.* 66. And every one is bound by the Common Law to aſſiſt not only the Sheriff in the Execution of Writs, and making *Arreſts*, &c. but alſo his Bailiff that hath his Warrant to do it. 2 *Inſt.* 193. A Bailiff upon an *Arreſt* ought to ſhew at whoſe Suit, out of what Court the Writ iſſues, and for what Cauſe, &c. but this is when the Party *arreſted*, ſubmits himſelf to the *Arreſt*: A Bailiff ſworn and known, need not ſhew his Warrant, tho' the Party demands it; nor is any other ſpecial Bailiff bound to ſhew his Warrant, unleſs it be demanded. 9 *Rep.* 68, 69. An *Arreſt* without ſhewing the Warrant, and without telling at whoſe Suit, until the other demanded it, was held legal; and that this need not be done until the Party obeyed and demanded the ſame. *Cro. Jac.* 485. Sheriffs are not to grant Warrants for *Arreſts*, before the Receipt of the Writs; if they do, they ſhall forfeit 10*l.* and Damages, and pay a Fine to the King. *Stat* 43 *Eliz. c.* 5. And every Warrant to iſſue upon any Writ to *arreſt* any Perſon, ſhall have the ſame Day and Year ſet down thereon as on the Writ, under the like Penalty of 10*l.* *Stat.* 6 *Geo.* 1. *c.* 21. If an Action is entered in one of the *Compters* of *London*, a City Serjeant may *arreſt* the Party without the Sheriff's Warrant. 1 *Lill. Abr.* 94. And by the Cuſtom of *London*, a Debtor may be *arreſted* before the Money is due, to make him find Sureties; but not by the Common Law. 1 *Nelſ. Abr.* 258. By Stat. 29 *Car.* 2. *c.* 7. No Writ, Proceſs, Warrant, &c. (except in Caſes of Treaſon, Felony, or for Breach of the Peace) ſhall be ſerved on a *Sunday*; on Pain that the Perſon ſerving them ſhall be liable to the Suit of the Party grieved, and anſwer Damages, as if the ſame had been done without Writ: An Action of Falſe Impriſonment lies for *Arreſt* on a *Sunday*, and the *Arreſt* is void. 1 *Salk.* 78. A Defendant was *arreſted* on a *Sunday* by a Writ out of the *Marſhalſea*; and the Court of *B. R.* being moved to diſcharge him, it was denied; and he was directed to bring Action of Falſe Impriſonment. 5 *Mod. Rep.* 95. The Defendant being taken upon a *Sunday*, without any Warrant, and locked up all that Day, on *Monday* Morning a Writ was got againſt him, by which he was *arreſted*; it was ruled, that he might have an Action of Falſe Impriſonment, and that an Attachment ſhould go againſt thoſe who took him on the *Sunday*. *Mod. Caſ.* 96. Attachments have been often granted againſt Bailiffs for making *Arreſts* on *Sunday*: But Affidavit is uſually made, that the Party might be taken upon another Day. 1 *Mod.* 56. A Perſon may be retaken on a *Sunday*, where *arreſted* the Day before, &c. *Mod. Caſ.* 231. And a Man may be taken on a *Sunday* on an Eſcape Warrant; when he goes at Large out of the Rules of the *King's Bench* or *Fleet* Priſon, &c. *Stat.* 5 *Ann. c.* 9. Alſo Bail may take the Principal on a *Sunday*, and confine him till *Monday*, and then render him; tho' a Plaintiff may not *arreſt* the Defendant on a *Sunday*. 1 *Nelſ.* 258. If a wrong Perſon is *arreſted*; or one for Felony, where no Felony is done, &c. it will be Falſe Impriſonment, liable to Damages. Attornies, &c. for Vexation, maliciouſly cauſing any Perſon to be *arreſted*, where there is no Cauſe of Suit, &c. ſhall ſuffer ſix Months Impriſonment, and before diſcharged pay treble Damages, and forfeit 10*l.* *Stat.* 8 *Eliz. c.* 2. A Bailiff having a Writ to *arreſt A. B.* comes up to another Perſon, and asks him if his Name be *A. B.* and he anſwers that it is, whereupon the Bailiff *arreſts* him, it will be a Falſe *Arreſt*, for which Action lies. *Lane* 49. And if a Warrant be to take *A.* the Son of *B.* and the Bailiff makes an *Arreſt* on the Son of *D.* who indeed is the right Perſon intended, but not the Party within his Warrant, it will be falſe Impriſonment. *Ibid.* The Bailiff's Fee for an *Arreſt*, by an antient Statute, is but Four Pence; and the Sheriff's Twenty Pence: And Bailiffs cannot legally take any Thing but what is allowed by this Statute, and other ſubſequent Acts. For taking Fees not warranted by Law, they ſhall render treble Damages to the Party grieved, and incur a Forfeiture of 40*l.* *Stat.* 23 *Hen.* 6. *cap* 10. No Bailiff, or other Officer, ſhall carry any Perſon under *Arreſt*, to any Tavern, Alehouſe, &c. without his Conſent; ſo as to charge him with any Beer, Ale, Wine, &c. but what he ſhall freely call for: Nor ſhall demand or receive more from him for the *Arreſt* or Waiting, than by Law ought to be, until an Appearance procured, Bail found, *&c.* Nor take or exact any more for keeping ſuch Perſon out of Priſon, than what he ſhall of his own voluntary Accord truly give; nor take more for Lodging than what is reaſonable, or ſhall be adjudged ſo by the next Juſtice of Peace. *Stat.* 22 *&* 23 *Car.* 2. *cap.* 2. And by a late Act, Bailiffs, *&c.* are not to carry any Perſon *arreſted* to a Tavern, Alehouſe, *&c.* or the private Houſe of ſuch Officers, without the free and voluntary Conſent of the Party; nor carry ſuch Perſon to Priſon within twenty-four Hours from the Time of the *Arreſt*: or take any Reward for keeping him out of Gaol, *&c. Stat.* 2 *Geo.* 2. *cap.* 22. But if a Perſon *arreſted* refuſe to be carried to ſome convenient Houſe of his own Nomination, *&c.* to be kept in ſafe Cuſtody during the twenty-four Hours before carried to Priſon, then the Sheriff's Officer, *&c.* may immediately convey him to Gaol, to prevent an Eſcape. 3 *Geo.* 2. *c.* 27. Peers of the Realm, Members of Parliament, *&c.* may not be *arreſted*, unleſs it be in Criminal Caſes; but the Proceſs againſt them is to be Summons, Diſtreſs infinite, *&c.* 12 *W.* 3. *c.* 3. Alſo Corporations and Companies muſt be made to appear by *Diſtringas*, and cannot be *arreſted. Finch* 353. 3 *Salk.* 46. Perſons attending upon any Courts of Record, on Buſineſs there, are to be free from *Arreſts.* 3 *Inſt.* 141. A Clerk of the Court ought not to be *arreſted* for any Thing which is not Criminal, becauſe he is ſuppoſed to be always preſent in Court to anſwer the Plaintiff. 1 *Lill.* 94. *Arreſts* are not to be made within the Liberty of the King's Palace: Nor may the King's Servants be *arreſted* in any Place, without Notice firſt given to the Lord Chamberlain, that he remove them, or make them pay their Debts. Embaſſadors Servants, *&c.* freed from *Arreſts*; vide *Ambaſſador.* No *Arreſts* are to be generally in *Wales*, the Counties Palatine, *&c.* by Writs iſſuing from *Weſtminſter Hall.* If a Debt be under 10*l.* on Proceſs out of a ſuperior Court, or 40*s.* in an inferior Court, the Defendant ſhall not be *arreſted*, but be ſerved perſonally with a Copy of the Proceſs; and if he do not appear at the Return thereof, the Plaintiff may enter an Appearance for him, and proceed, *&c. Stat.* 12 *Geo.* 1. *c.* 29. The Fee for making and ſerving the Copy of Proceſs, taken by Attornies, Bailiffs, *&c.* ſhall be 5*s.* out of the Superior Courts, and 1*s.* the inferior Courts: And no ſpecial Writ ſhall be ſued out, unleſs the Cauſe of Action be 10*l.* or above, on Pain of 10*l.* and the Proceedings thereon to be void, by Stat. 5 *Geo.* 2. *c.* 27. A Bill was lately brought into Parliament, for the more eaſy Recovery of ſmall Debts in a ſummary Way, the Determination to be by the Judges of Aſſiſe, *&c.* without any Writ of *Arreſt*, or Trial by Juries, in like Manner as on the *Engliſh Bill* for recovering Debts under 10*l.* in *Ireland*; but there were many Petitions againſt this Bill, from Corporations for preſerving their ancient Trials, and from Officers of Courts, *&c.* whereupon it ſtopp'd in the Houſe of Lords, and did not then paſs. *Anno* 3 *Geo.* 2.

Arreſt of Judgment, To move in *Arreſt of Judgment*, is to ſhew Cauſe why Judgment ſhould be ſtaid, notwithſtanding Verdict given; for in many Caſes, though there be a Verdict, no Judgment can be had. And the Cauſes of *Arreſt of Judgment*, are Want of Notice of Trial; where the Plaintiff before Trial treats the Jury; the Record differs from the Deed pleaded; for material Defect in Pleading; where Perſons are miſnamed; more is given and found by the Verdict, than laid in the Declaration; or the Declaration doth not lay the Thing with Certainty, *&c.* And here all Matters of Fact are to be made out by proper Affidavits. *Comp. Attorn.* 329, *&c.* Judgment may be arreſted for good Cauſe in Criminal Caſes, as well as Civil; if the Indictment be inſufficient, *&c.* 3 *Inſt.* 210. Four Days are allowed to move in *Arreſt of Judgment*; and the Defendant hath all the Term wherein the Verdict was given to ſpeak any Thing to arreſt it, if the Plaintiff hath not given his four Days Rule, and ſigned his Judgment; after which he is put to his Writ of Error. 2 *Lill.* 93. On Motion in *Arreſt of Judgment*, if the Court be divided two Judges againſt two, the Plaintiff muſt have his Judgment; unleſs a Rule be made at firſt to ſtay all Proceedings, until the Court otherwiſe order, *&c.* 2 *Lill. Abr.* 118. See *Jeofails* and *Judgment. Arreſt of Enqueſt* is to plead in Arreſt of taking the Enqueſt, upon the former Iſſue, and to ſhew Cauſe why an Enqueſt ſhould not be taken. *Bro.* Tit. *Replead.*

Arreſtandis bonis ne diſſipentur, A Writ which lies for a Man whoſe Cattle or Goods are taken by another, who during the Conteſt doth or is like to make them away, not being of Ability to render Satisfaction. *Reg. Orig.* 126.

Arreſtando ipſum qui Pecuniam Recepit, &c. Is a Writ that lieth for apprehending a Perſon who hath taken the King's Preſt-Money to ſerve in Wars, and hides himſelf when he ſhould go. *Reg. Orig.* 24.

Arreſto facto ſuper bonis Mercatorum Alienigenorum, A Writ which lies for a Denizen againſt the Goods of *Aliens* found within this Kingdom, in Recompence of Goods taken from him in a Foreign Country, after Denial of Reſtitution. *Reg. Orig.* 129. This the ancient Civilians called *Clarigatio*; but by the Moderns it is term'd *Repriſalia.*

Arretted, *Arrectatus, quaſi, ad rectum vocatus*, Is where a Man is conven'd before a Judge, and charged with a Crime. *Staundf. Pl. Co.* 45. And it is ſometimes uſed for Imputed or laid unto; as no Folly may be *arretted* to one under Age. *Littleton*, cap. *Remitter. Chaucer* uſeth the Verb *Arreteth*, that is, lays Blame, as it is interpreted. *Bracton* ſays, *Ad rectum habere Malefactorem, i. e.* To have the Malefactor forth-coming, ſo as he may be charged, and put to his Trial. *Bract. lib.* 3. *tract.* 2. *cap.* 10. And in another Place, *Rectatus de morte hominis*, charged with the Death of a Man. From hence it may with ſome Reaſon ſeem, that the Word is the ſame with *Rectum.*

Arrows. By an ancient Statute, all Heads for *Arrows* ſhall be well brazed, and hardened at the Point with Steel, on Pain of Forfeiture and Impriſonment: And to be marked with the Mark of the Maker. Stat. 7 *H.* 4. *c.* 7.

Arrura,——In the black Book of *Hereford*, *De operationibus* Arruræ, ſignifies Days Works of Ploughing; for anciently Cuſtomary Tenants were bound to plough certain Days for their Lord. *Una Arura*, one Day's Work at the Plough: And in *Wiltſhire*, Earing is a Day's Ploughing. *Paroch. Antiq. p.* 401.

Arſon, (from *Ardeo* to burn) Is Houſe-burning, which is Felony at Common Law. 3 *Inſt.* 66. It muſt be maliciouſly and voluntarily, and an actual Burning; not putting Fire only into a Houſe, or any Part of it, without Burning: But if Part of the Houſe is burn'd; or if the Fire doth burn, and then goeth out of itſelf, it is Felony. 2 *Inſt.* 188. *H. P. C.* 85. The Burning of a Frame of a Houſe, is not accounted Houſe-burning, becauſe the Frame of a Houſe cannot come under the Word *Domus*, which is neceſſary in every Indictment for *Arſon*: And it muſt be the Houſe of another; for if a Man burns his own Houſe only, tho' with Intention to burn other's, it is not Felony, but a great Miſdemeanour, puniſhable with Fine, Pillory, *&c.* If a Houſe is fired by Negligence or Miſchance, it cannot amount to *Arſon.* 3 *Inſt.* 67. *H. P. C.* 85. Where one burns the Houſe of another, if it be not wilful and malicious, 'tis no Felony, but only Treſpaſs: Therefore if *A.* ſhoot unlawfully in a Gun, at the Cattle or Poultry of B. and by Means thereof ſets another's Houſe on Fire, this is not *Arſon*; for though the Act he was doing was unlawful, yet he had no Intent to burn the Houſe. 1 *Hale's Hiſt. P. C.* 569. By Stat. 23 *H.* 8. *c.* 11. Burning of Houſes, or Barns wherein any Corn is, is Felony without Benefit of Clergy. And the Stat. 22 & 23 *Car.* 2. *c.* 7. makes it Felony to ſet Barns, Stables, Stacks of Corn, Hay, *&c.* on Fire in the Night-time, or any Outhouſes, or Buildings: But the Offender may be tranſported for ſeven Years. By 6 *Annæ, c.* 31. Servants through Negligence or Careleſſneſs, ſetting on Fire any Dwelling-houſe, or Out-houſe, ſhall forfeit 100 *l.* to be levied by Warrant of two Juſtices, and paid to the Church-wardens of the Pariſh, to be diſtributed to the Sufferers by the Fire; or on Default ſhall be ſent to the Houſe of Correction, and there kept to hard Labour eighteen Months, *&c.*

Form of an *Indictment* for *Arſon* or Houſe-burning.

THE *Jurors,* &c. *upon their Oath preſent, that* A. B. *late of,* &c. *on the Day,* &c. *in the Year,* &c. *with Force and Arms, between the Hours,* &c. *came unto the Houſe of* C. D. *of,* &c. *aforeſaid, in the ſaid County, Gentleman, (the ſaid Houſe being in the ſame County) and with a lighted Candle, which the ſaid* A. B. *then and there held in his Hand,* &c. *of his Malice forethought, did feloniouſly ſet on Fire the ſaid Houſe, by which Means it was then and there entirely burnt down; and ſo the ſaid* A. B. *on the ſaid Day of,* &c. *in the ſame Year above-mentioned, at,* &c. *aforeſaid, in the ſaid County, voluntarily and of his forethought Malice, feloniouſly did ſet on Fire and burn down the Houſe aforeſaid, in the Manner and Form above mentioned, againſt the Peace of our ſaid Lord the King,* &c.

Arſer in le maine, Burning in the Hand, is the Puniſhment of Criminals that have the Benefit of Clergy. *Terms de Ley.*

Arſura, The Trial of Money by Fire, after it was coined. In *Domeſday* we read, *Reddit.* 50 *l. ad* Arſuram, which is meant of lawful and approved Money, whoſe Allay was tried by Fire.

Art and Part, Is a Term uſed in *Scotland* and the North of *England*; when one charged with a Crime, in committing the ſame was both a Contriver of, and acted his Part in it.

Arthel, A *Britiſh* Word, and more truly written *Arddel,* ſignifying to avouch; as if a Man were taken with ſtolen Goods in his Hands, he was to be allowed a lawful *Arthel* (or Vouchee) to clear him of the Felony: It was Part of the Law of *Howel Dda*; according to whoſe Laws every Tenant holding of any other than of the Prince or Lord of the Fee, paid a Fine *pro defenſione Regia,* which was called *Arian Ardhel.* The Privilege of *Arthel* occaſioning a Delay and Exemption of Criminals from Juſtice, Proviſion was made againſt it by Statute 26 *H.* 8. *c.* 6.

Articuli Cleri, *Articles of the Clergy,* are Statutes containing certain *Articles* relating to the Church and Clergy, and Cauſes Eccleſiaſtical. 19 *E.* 2. and 14 *E.* 3.

Articulus, An *Article,* or Complaint, exhibited by Way of Libel, in a Court Chriſtian. Sometimes the Religious bound themſelves to obey the Ordinary, without ſuch formal Proceſs: As *An. Dom.* 1300. The Prior and Convent of *Burceſter* ſubmitted themſelves to the Official of *Lincoln, &c.*——— *Quod poſſint eos et eorum Succeſſores per omnem cenſuram Eccleſiaſticam ad omnium & ſingulorum præmiſſorum obſervationem abſque* Articuli, *ſeu Libelli, petitione, & quocunque ſtrepitu judiciali compellere.* Paroch. Antiq. p. 344.

Artificers, Are taken for ſuch that are Maſters of their Arts, or whoſe Calling and Imployment doth conſiſt chiefly of bodily Labour. And if *Artificers* or Workmen conſpire not to do any Work but at certain Prices, *&c.* they are liable to Penalties by the Statute 2 & 3 *Ed.* 6. *c.* 15. A Stranger *Artificer* in *London, &c.* ſhall not keep above two Strangers Servants; but he may have as many *Engliſh* Servants and Apprentices as he can get. *Stat.* 21 *H.* 8. *Artificers* in Wool, Iron, Steel, Braſs or other Metal, *&c.* Perſons contracting with them to go out of this Kingdom into a Foreign Country, ſhall be fined not exceeding 100 *l.* and be impriſoned three Months: And *Engliſh Artificers* going abroad, not returning in ſix Months after Warning given by our Embaſſadors, *&c.* ſhall be diſabled to hold Lands by Deſcent or Deviſe, be incapable to take any Legacy, *&c.* and deem'd Aliens. *Stat.* 5 *Geo.* 1. *c.* 27.

Arundinetum, A Ground or Place where Reeds grow. 1 *Inſt.* 4. And it is mentioned in the Book of *Domeſday.*

Arvil-Supper, A Feaſt or Entertainment made at Funerals, in the North Part of *England*: *Arvil-Bread* is the Bread delivered to the Poor at Funeral Solemnities. *Cowel.* And *Arvil, Arval, Arſal,* are uſed for the Burial or Funeral Rites; as,

Come bring my Jerkin Tibb, I'll to the Arvil,
Yon Man's dea Seuy Seoun, it makes me Marvil.
Yorkſhire Dial, p. 58.

Aſceſterium, *Archiſterium, Arciſterium, Aciſterium, Alcyſterium, Architrium)* Is a *Greek* Word and ſignifies a Monaſtery. It often occurs in our old Hiſtories. *Du Cange.*

Aſſach, or *Aſſath,* Was a Cuſtom of Purgation, uſed of old in *Wales,* by which the Party accuſed did clear himſelf by the Oaths of 300 Men. It is mentioned in ancient *MSS.* and prevailed till the Time of *Hen.* 5. when it was abrogated. 1 *H.* 5. *c.* 6.

Aſſart, (*Aſſartum*) Fr. *Aſſartir,* to make plain. Aſſartum *eſt quod redactum eſt ad Culturam.* Fleta, lib. 4. cap. 21. And the Word *Aſſartum* is by *Spelman* derived from *Exertum,* to pull up by the Roots; for ſometimes 'tis wrote *Eſſart.* Others derive it from *Exaratum,* or *Exartum,* which ſignifies to plough or cut up. *Manwood,* in his *Foreſt Laws,* ſays it is an Offence committed in the Foreſt, by pulling up the Woods by the Roots, that are Thickets and Coverts for the Deer, and making the Ground plain as arable Land: This is eſteemed the greateſt Treſpaſs that can be done in the Foreſt to Vert or Veniſon, as it contains in it Waſte and more; for whereas Waſte of the Foreſt is but the Felling down the Coverts which may grow up again, *Aſſart* is a Plucking them up by the Roots, and utterly deſtroying them, ſo that they can never afterwards ſpring up again. And this is confirmed out of the Red Book in the *Exchequer,* in theſe Words. — -——— Aſſarta *vero dicuntur quæ apud Iſidorum occiſiones nuncupantur, quando Foreſtæ nemora vel Dumeta, paſcuis & latibulis ferarum opportuna, ſucciduntur: Quibus ſucciſis & radicitus avulſis, terra ſubvertitur & excolitur.* ——But this is no Offence if done with Licence; and a Man may by Writ of *Ad quod damnum* ſue out a Licence to *aſſart* Ground in the Foreſt, and make it ſeveral for Tillage. *Reg. Orig.* 257. Hence Lands are called *aſſarted:* And formerly *Aſſart Rents* were paid to the Crown for Foreſt Lands *aſſarted. Stat.* 22 *Car.* 2. *c.* 6 *Aſſartments* ſeems to be uſed in the ſame Senſe in *Rot. Parl.* Of *Aſſart* you may read more in *Cromp. Juriſ. p.* 203. And *Charta de Foreſta, Anno* 9 *H.* 3. *c.* 4. *Manwood, part* 1. *p.* 171.

Aſſault, (*Aſſultus*) From the *Fr.* Verb *Aſſayler,* Signifies a violent Injury offered to a Man's Perſon, of a more extenſive Nature than Battery; for it may be committed by offering a Blow, or by a terrifying Speech. *Lamb. Eiren. lib.* 1. *cap.* 3. The Feudiſts define *Aſſault* thus: Aſſultus *eſt impetus in Perſonam aut locum, ſive hoc pedibus fiat, vel equo aut machinis aut quacunque alia re aſſiliatur. Zaſius de Feud. pag.* 10. *num.* 38. And *Aſſilire eſt vim adferre. Lib. Feud.* 1. *tit.* 5. *Sect.* 1. Alſo the Lat. *Aſſultus* is uſed in this Senſe in the Laws of *Edw. Conf. cap.* 12. To ſtrike a Man, though he be not hurt with the Blow, is an *Aſſault:* And to ſtrike at a Perſon, notwithſtanding he be neither hit nor hurt, hath been ſo adjudged. 22 *Lib. Aſſ. pl.* 60. For *Aſſault* doth not always neceſſarily imply a Hitting, or Blow; becauſe in Treſpaſs for *Aſſault* and Battery, a Man may be found Guilty of the *Aſſault*, and excuſed of the Battery. 25 *Ed.* 3. *c.* 24. If a Perſon in Anger lift up or ſtretch forth his Arm, and offer to ſtrike another; or menace any one with any Staff or Weapon, it is Treſpaſs and *Aſſault* in Law: And if a Man threaten to beat another Perſon, or lie in Wait to do it, if the other is hindered in his Buſineſs, and receives Loſs thereby, Action lies for the Injury. *Lamb. lib.* 1. 22 *Aſſ. pl.* 60. Where a Man *aſſaults* any Perſon, beats, or doth him any Manner of Violence, either with Hand, Foot, or Weapon; or throws any Thing at him, Drink in his Face, *&c.* whereby he is hurt; it is ſuch an *Aſſault* for which Action may be brought, and Damages recovered. *Comp. Attorn.* 133. But to lay Hands gently upon another, not in Anger, is no Foundation of an Action of Treſpaſs and *Aſſault:* The Defendant may juſtify *Molliter manus impoſuit.* And a Man may juſtify an *Aſſault* in Defence of his Perſon, or Goods; or of his Wife, Father, Mother, or Maſter; or for the Maintenance of Juſtice. *Bract.* 9 *E.* 4. 35 *Hen.* 6. *c.* 51. Alſo in Caſes of *Aſſault*, for the *Aſſault* of the Wife, Child, or Servant, the Husband, Father, and Maſter, may have Action of Treſpaſs. Where a Man is *aſſaulted*, and he hath no Witneſſes to prove the ſame, or in other Caſes, the Party *aſſaulted* may bring an Information in the Crown-Office; and not have common Action of Treſpaſs. *Vide Stat.* 4 *&* 5 *W. & M. c.* 18. which requires Recognizances to be taken to proſecute with Effect, *&c.* When any *Aſſault* is made on a Member of Parliament, Proclamation ſhall be made, that the Party offending ſurrender himſelf into *B. R. &c.* 11 *H.* 6. If any Perſon *aſſault* a Privy Counſellor, in the Execution of his Office, it is Felony. *Stat.* 9 *Ann c.* 16. *Aſſaulting* Perſons in a forcible Manner, with Intent to commit Robbery, is made Felony and Tranſportation, by *Stat.* 7 *Geo.* 2. *c.* 21. And *Aſſaulting* or Threatning a Counſellor at Law, or Attorney employed in a Cauſe againſt a Man; or a Juror giving Verdict againſt him; his Adverſary for ſuing him, *&c.* is puniſhable on an Indictment, by Fine and Impriſonment, for the Contempt. 1 *Hawk.* 58.

An *Indictment* for an *Aſſault.*

Wilts, ſſ. THE *Jurors*, &c. *preſent, that* C. D. *of the Pariſh of*, &c. *in the ſaid County, Blackſmith, on the Day*, &c. *in the Seventh Year of the Reign*, &c. *at the Pariſh aforeſaid in the ſaid County, with Force and Arms, made an* Aſſault *in and upon* A. B. *then and there being in the Peace of God, and of our ſaid Sovereign Lord the King*; *and then and there beat, wounded, and evilly treated the ſaid* A. B. *ſo that his Life was deſpaired of, and other Injuries then and there did to him, to the great Damage of him the ſaid* A. B. *and againſt the Peace of our ſaid Lord the now King, his Crown and Dignity.*

Aſſay *of Weights and Meaſures*, (from the Fr. *Eſſay, i. e.* a Proof or Trial) Is the Examination of Weights and Meaſures, by Clerks of Markets, *&c* *Reg. Orig.* 279. — *Ac Aſſiſam &* Aſſaiam *Panis, Vini, & Cerviſiæ.* Paten. 37 H. 8. Tho. Marrow.

Aſſayer of the King, (*Aſſayator Regis*) An Officer of the King's Mint, for the Trial of Silver; he is indifferently appointed between the Maſter of the Mint and the Merchants that bring Silver thither for Exchange. *Anno* 2 *H.* 6. *cap.* 12. Veſſels of Gold ſhall be *aſſayed.* 28 *Ed.* 1. *c.* 20. and 18 *Car.* 2. *c.* 5.——*Mandatum eſt* Will. Hardel *Clerico, quod convocatis in præſentia ſua omnibus Monetariis* Aſſayatoribus, *Cuſtodibus, Operariis & aliis Miniſtris de Cambiis Regis* London *&* Cantuar. *per viſum & Teſtimonium illorum provideat, quod tot & tales Operarii ſint in prædictis Cambiis, qui ſufficiant ad Operationes Regias faciendas, ne Rex pro defectu hujuſmodi miniſtrorum Dampnum incurrat.* Clauſ. 17 Hen. 3. m. 8.

Aſſayers, of Plate made by *Goldſmiths, &c.* Theſe are for *Aſſaying* and Marking thereof, of whom with their Fees, and how the *Aſſay-Offices* are regulated by Statute, ſee 12 *Geo.* 2. *c.* 26. and *Goldſmiths.*

Aſſayſiare, A Word uſed in old Charters for to take Fellow-Judges. —— Henricus *Dei Gratia Rex* Angl. *&c. Dilecto & fideli ſuo* Nicholao de la Tour *ſalutem. Sciatis quod conſtituimus vos Juſticiarium noſtrum una cum hiis quos vobis duxeritis* Aſſayſiandos *ad Aſſiſam novæ Diſſeſinæ capiendam.* —— Cartular. Abbat. Glaſton. MS. f. 57.

Aſſecurare, (*Abſecurare*) To make ſecure by Pledges, or any ſolemn Interpoſition of Faith. In the Charter of Peace between *Hen.* 2. and his Sons, this Word is mentioned. *Hoveden, Anno* 1174.

Aſſembly unlawful, From the Fr. *Aſſembler*, i. e. *Aggregare*, to flock together. It is the Meeting of Three or more Perſons to do an unlawful Act, altho' they do it not: As to Aſſault, or beat any Perſon; enter into Houſes, or Lands, *&c. Weſt. Symb. Part.* 2. *Sect.* 65. Their Meeting and Abiding together makes the Crime, where they do not execute their Intentions: If the Intention be to redreſs publick Grievances, and be executed, it is adjudged Treaſon. 3 *Inſt.* 9. In the Reign of K. *Ed.* 6. a Law was made declaring it Treaſon for twelve Perſons, or more, to *aſſemble* together to attempt to kill any of the King's Council, or to alter the Laws, *&c.* And that it ſhould be Felony to attempt to deſtroy Parks, pull down Houſes, Incloſures, *&c.* if they continued together an Hour after Proclamation made by a Juſtice of Peace, Mayor, or Sheriff: But this Law was ſoon repealed. Tho' it ſeems to have given Riſe to the late Riot-Act; which ordains, that where twelve Perſons, or more, *unlawfully aſſembled*, continue together an Hour after Proclamation to depart, they ſhall be guilty of Felony. *Stat.* 1 *Geo.* 1. *c.* 6. See *Rebellious Aſſembly* and *Riot.*

Aſſent, or Conſent. To a Legacy of Goods, the *Aſſent* of the Executor is neceſſary, before the Legatee may take the ſame; but to a Deviſe of Lands that are Freehold, it is not required. *Co. Lit.* 111. The *Aſſent* of an Executor to a Deviſe of a Legacy, or of any perſonal Thing, is ſo neceſſary, that if the Legatee or Deviſee take the Thing without the Delivery and *Aſſent* of the Executor, he may have an Action of Treſpaſs againſt them. *Keilw.* 128. 1 *Nelſ. Abr.* 260. The Common Law takes Notice of the *Aſſent* of the Eecutor to the Legacy, and doth give him Time to conſider of the Value of the Goods, and State of the Debts of the Teſtator, that he may pay a Legacy with Safety; the Executor being to pay Debts before Legacies. *Perk.* 570. No Property can be transferred to the Legatee without the *Aſſent* of the Executor: But if the Executor doth once *aſſent* to the Legacy, the Legatee hath ſuch a Property veſted in him that he may take it, tho' the Executor revokes his *Aſſent* afterwards. And there may be an *Aſſent* implied, as well as expreſs; as if the Executor offers the Legatee Money for what is bequeathed him; or directs others to the Legatee to buy it, *&c. Plowd.* 543. 4 *Rep.* 28. When there are many Executors, the *Aſſent* of one to a Legacy is ſufficient: And one Executor may take a Legacy without the *Aſſent* of his Co Executors. *Perk.* 572. *Aſſent* may be before or after Probate of the Will. An Infant Executor, at the Age of ſeventeen Years, may *aſſent* to a Legacy: But it has been doubted, whether an *Adminiſtrator durante minori*

Ætate can *aſſent. Cro. Eliz.* 719. A Husband is to give *Aſſent* where his Wife is Executrix. A Court of Equity, or the Spiritual Court, may compel an Executor to *aſſent* to a Legacy. *March* 97. But an *Aſſent* to a void Deviſe, will be alſo void. *Plowd* 525. *Aſſent* of *Dean* and *Chapter* in making Leaſes of Church Lands; *vide* Leaſes. Of the major Part of *Corporations*, in making By Laws, *vide* By Laws.

Aſſeſſors, Thoſe that *aſſeſs* publick Taxes; as two Inhabitants in every Pariſh were *Aſſeſſors* for the Royal Aid, to rate every Perſon according to the Value of his Eſtate, *Anno* 16 & 17 *Car.* 2. There are *Aſſeſſments* of Pariſh-Duties, for raiſing Money for the Poor, Repairing of High-ways, &c. made and levied by Rate on the Inhabitants; as well as *Aſſeſſments* of Publick Taxes, &c. See *Aſſiſors*.

Aſſets, (Fr. *Aſſez*, i. e. *Satis*) Signifies Goods enough to diſcharge that Burden which is caſt upon the Executor or Heir, in ſatisfying the Debts and Legacies of the Teſtator or Anceſtor. *Bro*. Tit. *Aſſets*. *Aſſets* are Real, or Perſonal; where a Man hath Lands in Fee-ſimple, and dies ſeiſed thereof, the Lands which come to his Heir, are *Aſſets* Real: And where he dies poſſeſſed of any Perſonal Eſtate, the Goods which come to the Executors, are *Aſſets* Perſonal: *Aſſets* are alſo divided into *Aſſets per Deſcent*, and *Aſſets inter maines*; *Aſſets* by Deſcent is where a Perſon is bound in an Obligation, and dies ſeiſed of Lands which deſcend to the Heir, the Land ſhall be *Aſſets*, and the Heir ſhall be charged as far as the Land to him deſcended will extend: *Aſſets inter maines* is when a Man indebted made Executors, and leaves them ſufficient to pay his Debts and Legacies; or where ſome Commodity or Profit ariſeth to them in Right of the Teſtator, which are called *Aſſets* in their Hands. *Terms de Ley* 56, 77. By the Common Law, if an Heir had ſold or aliened the Lands which were *Aſſets*, before the Obligation of his Anceſtor was put in Suit, he was to be diſcharged, and the Debt was loſt: But by Statute, the Heir is made liable to the Value of the Land by him ſold, in Action of Debt brought againſt him by the Obligee, who ſhall recover to the Value of the ſaid Land, as if the Debt was the proper Debt of the Heir; but the Land which is ſold or aliened *bona fide* before the Action brought, ſhall not be liable to Execution upon a Judgment recovered againſt the Heir in any ſuch Action. *Stat.* 3 & 4 *W.* & *M. cap.* 14. Where a Man binds himſelf and his Heirs in a Bond; and dies, leaving Iſſue two Sons, if the eldeſt Son enters on the Lands by Deſcent as Heir to the Father, and die without Iſſue; and then the youngeſt Son enters, he ſhall be charged with *Aſſets* as Heir to his Father. *Dyer* 368. Lands which come to the Heir by Purchaſe, ſhall not be *Aſſets*; for 'tis only Lands by Deſcent that are *Aſſets*. 1 *Danv. Abr.* 577. A Reverſion in Fee depending upon an Eſtate-tail, is not *Aſſets*; becauſe it lies in the Will of the Tenant in Tail to dock and bar it by Fine, &c. 6 *Rep.* 56. But after the Tail is ſpent, it is *Aſſets*. 3 *Mod.* 257. And a Reverſion on an Eſtate for Life or Years ſhall be *Aſſets*. A Reverſion expectant upon the Determination of an Eſtate for Life is *Aſſets*, and ought to be pleaded ſpecially by the Heir; and the Plaintiff in ſuch Caſe may take Judgment of it *cum acciderit*. Dyer 371. Carthew's Rep. 129. An Advowſon is *Aſſets*; but not a Preſentation to a Church actually void, which may not be ſold. *Co. Lit.* 374. Lands of *Ceſtuy que Truſt* ſhall be *Aſſets* by Deſcent. *Stat.* 29 *Car.* 2. And Lands by Deſcent in ancient Demeſne, will be *Aſſets* in Debt. But a Copyhold Eſtate deſcending to an Heir, is not *Aſſets*: Nor is any Right to an Eſtate *Aſſets*, without Poſſeſſion, &c. till recovered and reduced into Poſſeſſion. *Danv.* 577. Leaſes are *Aſſets* to pay Debts, notwithſtanding the Aſſent of the Executor to the Deviſe of them. 1 *Lill. Abr.* 99. Where an Executor of Leſſee for Years receives the Profits of the Land, they are appropriated to the Uſe of the Leſſor; but what is over and above the Rent ſhall be *Aſſets*. 1 *Salk.* 79. If an Executor ſurrenders a Term of Years which he had as Executor, to him in Reverſion; or if he purchaſes the Reverſion, 'tis not extinct as to him, but ſhall ſtill remain *Aſſets* in the Executor to ſatisfy Debts and Legacies. 1 *Rep.* 87. Equity of Redemption of an Eſtate mortgaged, and a Term for Years to attend the Inheritance are *Aſſets*. 3 *Leon* 32. Money decreed in a Court of Equity by Reaſon of Executorſhip, or ariſing by Sale of Lands by Executors; and Damages recovered by Executors; alſo Intereſt of the Teſtator's Money lent by Executors, ſhall be *Aſſets*. 2 *Chan. Rep.* 152. Thoſe Goods and Chattels which belonged to the Teſtator at his Death, and which do come to the Hands of the Executor are *Aſſets*, to make the Executor chargeable to Creditors, &c. 6 *Rep.* 47. But ſuch Things as are not valuable, ſhall not be *Aſſets*: And Debts, &c. when recovered by the Executor after the Death of the Teſtator, ſhall be accounted *Aſſets*; and not before recovered, for the Executor ſhall not be charged for a Debt, if he cannot recover it. *Wood's Inſt.* 323. A Releaſe of a certain Debt due to the Teſtator, makes it *Aſſets* in the Executor's Hands; becauſe it ſhall be intended he would not have made the Releaſe, unleſs the Money had been paid to him. 1 *Nelſ. Abr.* 262. *Aſſets* in the Hands of one Executor, is *Aſſets* in the Hands of others; and if an Executor hath Goods of the Teſtator in any Part of the World, he ſhall be charged in Reſpect of them. 6 *Rep.* 47. In Actions againſt Executors, the Jury muſt find *Aſſets* of what Value; for the Plaintiff ſhall recover only according to the Value of the *Aſſets* found. 1 *Roll. Rep.* 58. An Heir may plead *Reins per Deſcent*, but the Plaintiff may reply that he had Lands from his Anceſtor; and ſpecial Matter may be given in Evidence, &c. *Co. Lit.* 5 *Rep.* 60. A ſpecial Judgment againſt *Aſſets* only, ſhall have Relation to and bind the Lands from the Time of the filing the original Writ or Bill. *Carth. Rep.* 245.

Aſſewiare, To draw or drain Water from Marſh Grounds. —— *Quod ipſi Mariſcum prædictum* aſſewiare, & *ſecundum Legem Mariſci, Walliis includere & in culturam redigere.*——*Et Mariſcum illum ſic* aſſewiatum, *incluſum & in culturam redactum tenere.* Mon. Ang. 2 Vol. f. 334.

Aſſidere, or *Aſſedare*, To tax equally. *Proviſum eſt generaliter quod præd. quadrageſima hoc modo* aſſideatur *& colligatur. Mat. Pariſ. Anno* 1232. Sometimes it hath been uſed to aſſign an Annual Rent, to be paid out of a particular Farm, &c. As, *Manerium Rex* Stephanus *dedit &* aſſedit *eis pro centum Marcis.*

Aſſign, (*Aſſignare*) Hath two Significations; one General, as to ſet over a Right to another, or appoint a Deputy, &c. And the other Special, to ſet forth or point at, as we ſay to *aſſign* Error, *aſſign* falſe Judgment, Waſte, &c. And in *aſſigning* of Error, it muſt be ſhewed where the Error is committed; in falſe Judgment, wherein the Judgment is unjuſt; in Waſte, wherein eſpecially the Waſte is done. *F. N. B.* 19, 112. *Reg. Orig.* 72. Alſo Juſtices are ſaid to be *aſſigned* to take *Aſſiſes*. *Stat.* 11 *H.* 6. *cap.* 2.

Aſſignee, (*Aſſignatus*) Is he that is deputed or appointed by another to do any Act, perform any Buſineſs, or enjoy any Commodity. And *Aſſignees* may be by Deed, or in Law: *Aſſignee* by Deed is when a Leſſee of a Term, &c. ſells and aſſigns the ſame to another, that other is his *Aſſignee* by Deed: *Aſſignee* in Law, is he whom the Law ſo makes, without any Appointment of the Perſon; as an Executor is *Aſſignee* in Law to the Teſtator. *Dyer* 6. But if there be *Aſſignee* in Deed, *Aſſignee* in Law is not allowed: If one covenant to do a Thing to *J. S.* or his *Aſſigns* by a Day, and before that Day he dies; if before the Day he name any *Aſſignee*, the Thing muſt be done to his *Aſſignee* named: Otherwiſe to his Executor or Adminiſtrator, who is *Aſſignee* in Law. 27 *H.* 8. 2. *A.* leaſed Lands to *B.* for nine Years, the Remainder after his Death to the Executors or *Aſſigns* of the ſaid *B.* for forty Years, then *B.* dies inteſtate, and his Wife adminiſters to him; in this Caſe the Adminiſtrators are not *Aſſignees. Owen* 125. He is called *Aſſignee,* who hath the whole Eſtate of the *Aſſignor:* And an *Aſſignee,* though not named in a Condition, may pay the Money to ſave the Land; but he ſhall not receive any Money, unleſs he be named. 1 *Inſt.* 215. *Aſſignees* may take Advantage of Forfeitures on Conditions, when they are incident to the Reverſion, as for Rent, *&c.* 1 *And.* 82. And regularly every *Aſſignee* of the Land may take Advantage of inherent Covenants; alſo *Aſſignees* are bound by ſuch Covenants, as a Covenant to repair, *&c.* But if it concerns a Thing not in Being at the Time of the Demiſe, as to make a new Edifice, *&c.* the *Aſſignee* is not bound, except he be named in expreſs Words; nor is he when named, if the Thing to be done does not concern the Thing demiſed, but is collateral to it; or in Contracts merely Perſonal. 1 *Cro.* 552. 1 *Roll. Abr.* 915. *Plowd.* 284. An *Aſſignee* is he that poſſeſſes or enjoys a Thing in his own Right; and *Deputy* is he that does it in the Right of another. *Perkins.*

Aſſignment, (*Aſſignatio*) Is the Setting over or Transferring the Intereſt a Man hath in any Thing to another. And *Aſſignments* may be made of Lands in Fee, for Life, or Years; of an Annuity, Rent-Charge, Judgment, Statute, *&c.* but as to Lands they are uſually of Leaſes and Eſtates for Years, *&c.* And no Eſtate of Freehold, or Term for Years, ſhall be *aſſigned* but by Deed in Writing ſigned by the Parties; except by Operation of Law. *Stat.* 29 *Car.* 2. *c.* 3. A Poſſibility, Right of Entry, Title for Condition broken, a Truſt, or Thing in Action, cannot be granted or *aſſigned* over. 1 *Inſt.* 214. A Leſſee out of Poſſeſſion cannot make any *Aſſignment* of his Term off from the Land; but muſt firſt enter, and recontinue his Poſſeſſion; or ſeal and deliver the Deed upon the Land, which puts the *Aſſignee* into actual Poſſeſſion. *Daliſ.* 81. If Leſſee for Years *aſſigns* all his Term in his Leaſe to another, he cannot reſerve a Rent in the *Aſſignment*; for he hath no Intereſt in the Thing by Reaſon of which the Rent reſerved ſhould be paid; and where there is no Reverſion there can be no Diſtreſs: But Debt may lie upon it, as on a Contract. 1 *Lill. Abr.* 99. Leſſee for Term of Years *aſſigns* over his Term and dies, his Executors ſhall not be charged for Rent due after his Deceaſe. *Noy's Max.* 71. Where the Executor of a Leſſee *aſſigns* the Term, Debt will not lie againſt him for Rent incurred after the *Aſſignment*; becauſe there is neither Privity of Contract, nor Eſtate between the Leſſor and Executor: But if the Leſſee himſelf *aſſigns* his Leaſe, the Privity of Contract remains between him and the Leſſor, although the Privity of Eſtate is gone by the *Aſſignment,* and he ſhall be chargeable during his Life; but after his Death, the Privity of Contract is likewiſe determined. 3 *Rep.* 14. 1 *Nelſ. Abr.* 271. Although a Leſſee make an *Aſſignment* over of his Term, yet Debt lies againſt him by the Leſſor or his Heir, (not having *accepted* Rent from the *Aſſignee:*) But where a Leſſee *aſſigns* his Term, and the Leſſor his Reverſion, the Privity is determined, and Debt doth not lie for the Reverſioner againſt the firſt Leſſee. *Moor, cap.* 472. And as the Rent iſſues out of the Land, the *Aſſignee* generally who has the Land, and is privy in Eſtate, is Debtor in Reſpect thereof. 3 *Rep.* 32. If an *Aſſignment* is made by an *Aſſignee,* the firſt *Aſſignee* is not ſuable for the Rent; for if he be accepted by the Leſſor, the Admiſſion of one *Aſſignee* is the Admiſſion of Twenty. *Comp. Attorn.* 491. *Aſſignment* by an *Aſſignee* diſchargeth him, becauſe he was only chargeable as having the Land; and there is no Occaſion for giving Notice to the Leſſor of his *Aſſignment* over *Comberb.* 192. In Caſe of Action of Debt for Rent by the *Aſſignee* of a Reverſion, the Defendant a Leſſee may plead that, before any Rent became due, he *aſſigned* the Term to another; but he muſt ſet forth in his Plea that he gave Notice to the Plaintiff of the *Aſſignment* made. *Raym.* 163. A Man made a Leaſe, provided that the Leſſee or his *Aſſigns,* ſhould dot alien the Premiſſes without Licence of the Leſſor, *&c.* who after gave Licence to the Leſſee to alien; by this the Leſſee or his *Aſſigns* may alien *in infinitum.* 4 *Rep.* 119. The Leſſor demiſed Land, and covenanted with the Leſſee, his Executors and *Aſſigns,* that if he were diſturb'd or forced to pay any Charge, *&c.* he ſhould retain ſo much of the Rent; afterwards the Leſſee made an *Aſſignment* of his Term: And it was held, that his *Aſſignee* might have Remedy upon the Covenant by Way of Retainer againſt the *Aſſignee* of the Reverſion. *Plowd.* 72. If the Remainder of a Term of Years be *aſſigned* to another, the *Aſſignee* ſhall have the Benefit of a Leſſee; and of Re-entry upon a Leaſe made by the Grantor for fewer Years, *&c.* by the Stat. 32 *Hen.* 8. *cap.* 34. And the *Aſſignee* of a Reverſion of a Term, ſhall take Advantage of a Covenant againſt the Leſſee of a ſhorter Term; as where Leſſee for twenty Years, makes a Leaſe for four Years. *Moor, Ca.* 694, 695. The Word *Heir,* is ſufficient to make an *Aſſignee*; and the Grantee of a common Perſon is *Aſſignee* to have Benefit of a Covenant, Grant, *&c. Plowd.* 173. A Leaſe was made for Years of Lands, excepting the Woods; the Leſſor grants the Trees to the Leſſee, and he *aſſigns* the Land over to another: The Trees do not paſs by this *Aſſignment* to the *Aſſignee. Goldſb.* 188. Leſſee for Years rendring Rent, covenants to build a Houſe on the Land in ten Years; within which Time he *aſſigns* his Term, Action lies on the Covenant againſt the *Aſſignee. Godb.* 60. But where a Leſſee covenanted for himſelf and his *Aſſigns* to rebuild a Houſe before ſuch a Time, which he did not do, but after the Time expired he *aſſigned* the Term; adjudged that this Covenant will not bind the *Aſſignee,* becauſe it was broken before the *Aſſignment.* 1 *Salk.* 199. Where Tenant for Years *aſſigns* his Eſtate, no Conſideration is neceſſary; for the Tenure being ſubject to Payment of Rent, *&c.* is ſufficient to veſt an Eſtate in the *Aſſignee:* In other Caſes ſome Conſideration muſt be paid. 1 *Mod.* 263. The Words required in *Aſſignments,* are *grant, aſſign, and ſet over*; which may amount to a Grant, Feoffment, Leaſe, Releaſe, Confirmation, *&c.* 1 *Inſt.* 301. In theſe Deeds, the *Aſſignor* is to covenant to ſave harmleſs from former Grants, *&c.* That he is Owner of the Land, and hath Power to *aſſign*; that the *Aſſignee* ſhall quietly enjoy, and to make further Aſſurance; and the *Aſſignee* may covenant to pay the Rent, and perform the Covenants, *&c.* Bonds, *&c.* are *aſſigned* by Power of Attorney to receive and ſue in the *Aſſignor's* Name: But Bills of Exchange are *aſſignable* by Indorſement, and the *Aſſignees* may recover in their own Names by Stat. 3 *&* 4 *Ann. c.* 9.

An *Aſſignment of Chambers* in an Inn of Court.

THIS Indenture *made the Day,* &c. *in the Year of our Lord,* &c. Between A. B. *of,* &c. *Eſq; of the one Part, and* C. D. *of,* &c. *Gent. of the other Part:* Whereas *in and by a certain Writing made and dated,* &c. *at* Lincoln's Inn, *the Benchers of the ſaid Inn did order that the ſaid* A. B. *ſhould have a Leaſe of* All *that Chamber up one Pair of Stairs, Number,* &c. *belonging to* Lincoln's Inn *aforeſaid, for the Term of Twenty-one Years, to commence at,* &c. *under the yearly Rent of,* &c. *as by the ſaid recited Writing or Order may more fully appear.* And whereas *in Purſuance of the ſaid*

Order, a Leaſe of the ſaid Chamber hath been ſince made and granted to the ſaid A. B. *for the ſaid Term of Twenty-one Years,* &c. Now this Indenture witneſſeth, *That the ſaid* A. B. *for and in Conſideration of the Sum of Two hundred Pounds of lawful Money of* Great Britain, *to him in Hand paid by the ſaid* C. D. *at and before the Sealing and Delivery hereof, the Receipt whereof he doth hereby acknowledge,* Hath *granted, bargained, ſold, aſſigned and ſet over; and by theſe Preſents doth grant, bargain, ſell, aſſign and ſet over unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns,* All *that the Chamber aforeſaid with the Appurtenances, and all the Eſtate, Right, Title, Intereſt, Property, Claim and Demand whatſoever of him the ſaid* A. B. *of, in and to the ſame, or any Part thereof:* To have and to hold *the ſaid Chamber, with the Appurtenances, to the ſaid* C. D. *his Executors, Adminiſtrators, and Aſſigns, from henceforth, for and during all the Reſt and Reſidue of the ſaid Term of Twenty-one Years, therein to come and unexpired.* And *the ſaid* A. B. *doth by theſe Preſents, for himſelf, his Executors and Adminiſtrators, covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, in Manner following; (that is to ſay) that he the ſaid* A. B. *hath good Right, full Power and lawful Authority, to grant and aſſign the ſaid Chamber and Premiſſes above mentioned, in Manner and Form aforeſaid:* And *that the ſame is free and clear of all former Grants, Aſſignments, Incumbrances, Arrears of Rent, and all other Duties payable to the ſaid Society of* Lincoln's Inn, *or any the Officers or Miniſters thereof, or otherwiſe howſoever:* And alſo *that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, ſhall and lawfully may at all Times hereafter, during the Reſt and Reſidue now to come and unexpired of the ſaid Term of Twenty-one Years, peaceably and quietly have, hold, occupy, poſſeſs and enjoy the ſaid Chamber and Premiſſes above mentioned, and hereby granted and aſſigned, without any Let, Suit, Trouble, Eviction, Ejection, Claim or Demand, of or by the ſaid* A. B *his Executors, Adminiſtrators or Aſſigns, or any other Perſon or Perſons whatſoever:* And further, *that he the ſaid* A. B. *his Executors and Adminiſtrators ſhall and will from Time to Time, and at all Times hereafter, upon the reaſonable Requeſt, and at the Coſts and Charges of the ſaid* C. D. *make, do, and execute, or cauſe to be made, done and executed, all and every ſuch further Acts and Aſſurances, for the better Aſſigning and Aſſuring of the ſaid Chamber and Premiſſes to the ſaid* C. D. *as by him the ſaid* C. D. *or his Counſel learned in the Law, ſhall be reaſonably deviſed, adviſed or required.* In Witneſs *whereof the Parties above named have hereunto put their Hands and Seals, the Day and Year above written.*

Form of an *Aſſignment of a Bond.*

TO all People *to whom theſe Preſents ſhall come, Greeting:* Whereas A. B. *of,* &c. *in and by one Bond or Obligation, bearing Date,* &c. *became bound to* C. D. *of,* &c. *in the penal Sum of,* &c. *conditioned for the Payment of,* &c. *and Intereſt at a Day long ſince paſt, as by the ſaid Bond and Condition thereof may appear:* And whereas *there now remains due to the ſaid* C. D. *for Principal and Intereſt on the ſaid Bond, the Sum of,* &c. Now know ye, *That the ſaid* C. D. *for and in Conſideration of the ſaid Sum of,* &c. *of lawful* Britiſh *Money to him in Hand paid by* E. F. *of,* &c. *the Receipt whereof the ſaid* C. D. *doth hereby acknowledge; he the ſaid* C. D. Hath *aſſigned and ſet over, and by theſe Preſents doth aſſign and ſet over unto the ſaid* E. F. *the ſaid recited Bond or Obligation, and the Money thereupon due and owing, and all his Right and Intereſt of, in and to the ſame.* And *the ſaid* C. D. for *the Conſideration aforeſaid,* Hath *made, conſtituted and appointed; and by theſe Preſents doth make, conſtitute and appoint the ſaid* E F. *his Executors and Adminiſtrators, his true and lawful Attorney and Attornies irrevocable, for him and in his Name, and in the Name and Names of his Executors and Adminiſtrators, but for the ſole and proper Uſe and Benefit of the ſaid* E. F. *his Executors, Adminiſtrators and Aſſigns, to ask, require, demand and receive of the ſaid* A. B. *his Heirs, Executors and Adminiſtrators, the Money due on the ſaid Bond; and on Non-payment thereof, he the ſaid* A. B. *his Heirs, Executors and Adminiſtrators, to ſue for, and recover the ſame; and on Payment thereof to deliver up and cancel the ſaid Bond, and give ſufficient Releaſes and Diſcharges therefore, and one or more Attorney or Attornies under him to conſtitute; and whatſoever the ſaid* E. F. *or his Attorney or Attornies, ſhall lawfully do in the Premiſſes, the ſaid* C. D. *doth hereby allow and affirm.* And *the ſaid* C. D. *doth covenant with the ſaid* E. F. *that he the ſaid* C. D. *hath not received, nor will receive the ſaid Money due on the ſaid Bond, or any Part thereof; neither ſhall or will releaſe or diſcharge the ſame, or any Part thereof; but will own and allow of all lawful Proceedings for Recovery thereof; he the ſaid* E. F. *ſaving the ſaid* C. D. *harmleſs, of and from any Coſts that may happen to him thereby.* In Witneſs, *&c.*

Aſſimulare. To put Highways together: 'Tis mentioned *in Leg. H.* 1. *c.* 8.

Aſſiſa Cadere. This Word ſignifies to be nonſuited; as when there is ſuch a plain and legal Inſufficiency in a Suit, that the Complainant can proceed no further on it. *Fleta, lib. cap.* 15. *Bracton, lib.* 2. *cap.* 7.

Aſſiſa cadit in Juratam, Is where the Thing in Controverſy is ſo doubtful, that it muſt neceſſarily be tried by a Jury. *Fleta, lib.* 4. *c.* 15.

Aſſiſa continuanda. A Writ directed to the Juſtices of *Aſſiſe* for the Continuation of a Cauſe, when certain Records alledged cannot be produced in Time by the Party that has Occaſion to uſe them. *Reg. Orig.* 217.

Aſſiſa Proroganda, Is a Writ directed to the Juſtices aſſigned to take *Aſſizes*, for the Stay of Proceedings, by Reaſon of the Party's being employed in the King's Buſineſs. *Reg. Orig.* 208.

Aſſiſe, (Fr. *Aſſis*) According to our ancient Books is defined to be an Aſſembly of Knights, and other ſubſtantial Men, with the Juſtice, in a certain Place, and at a certain Time appointed. *Cuſtum. Normand. cap.* 24. This Word is properly derived from the *Latin* Verb *Aſſideo*, to ſit together; and is alſo taken for the Court, Place or Time, when and where the Writs and Proceſſes of *Aſſiſe* are handled or taken. And in this Signification *Aſſiſe* is General; as when the Juſtices go their ſeveral Circuits with Commiſſion to take all *Aſſiſes:* Or Special where a ſpecial Commiſſion is granted to certain Perſons, (formerly oftentimes done) for taking an *Aſſiſe* upon one or two Diſſeiſins only. *Bract. lib.* 3. Concerning the General *Aſſiſe*, all the Counties of *England* are divided into ſix Circuits, and two Judges are aſſigned by the King's Commiſſion to every Circuit, who hold their *Aſſiſes* twice a Year in every County, (exept *Middleſex*, where the King's Courts of Records do ſit, and where his Courts for his Counties Palatine are held) and have five ſeveral Commiſſions. 1. *Of Oyer and Terminer*, directed to them and many other Gentlemen of the County, by which they are empowered to try Treaſons, Felonies, *&c.* and this is the largeſt Commiſſion they have. 2. *Of Gaol-Delivery*, directed to the Judges and the Clerk of *Aſſiſe* Aſſociate, which gives them Power to try every Priſoner in the Gaol committed for any Offence whatſoever, but none but Priſoners in the Gaol; ſo that one Way or other they rid the Gaol of all the Priſoners in it. 3. Of *Aſſiſe*, directed to themſelves only and the Clerk of *Aſſiſe*, to take *Aſſiſes*, and do Right upon Writs of *Aſſiſe* brought before them by ſuch as are wrongfully thruſt out of their Lands and Poſſeſſions: Which Writs were heretofore frequent, but now Men's

Poſſeſſions are ſooner recovered by Ejectments, *&c.* 4. *Of Niſi prius*, directed to the Judges and Clerk of *Aſſiſe*, by which Civil Cauſes grown to Iſſue in the Courts above, are try'd in the Vacation by a Jury of twelve Men of the County where the Cauſe of Action ariſes; and on Return of the Verdict of the Jury to the Court above, the Judges there give Judgment. 5, *A Commiſſion of the Peace*, in every County of the Circuits; and all Juſtices of the Peace of the County are bound to be preſent at the *Aſſiſes*; and Sheriffs are alſo to give their Attendance on the Judges, or they ſhall be fined. *Bacon's Elem.* 15, 16, *&c.* There is a Commiſſion of the Peace, *Oyer and Terminer* and Gaol Delivery of *Newgate*, held ſeveral Times in a Year, for the City of *London* and County of *Middleſex*, at *Juſtice-Hall* in the *Old-Baily*, where the Lord Mayor is the Chief Judge. In *Wales* there are but two Circuits, *North* and *South Wales*; for each of which the King appoints two Perſons learned in the Laws to be Judges. *Stat.* 18 *Eliz. c.* 8. If Juſtices ſit by Force of a Commiſſion, and do not adjourn the Commiſſion, it is determined. 4 *Inſt.* 265. The Conſtitution of the Juſtices of *Aſſiſe*, was begun by *Hen.* 2. tho' ſomewhat different from what they now are: And by *Magna Charta* Juſtices ſhall be ſent through every County once a Year, who with the Knights of the reſpective Shires, ſhall take *Aſſiſes* of Novel Diſſeiſin, *&c.* in their proper Shires, and what cannot be determined there, ſhall be ended by them in ſome other Place in their Circuit; and if it be too difficult for them, it ſhall be referred to the Juſtices of the Bench, there to be ended. 9 *Hen.* 3. *cap.* 12. Juſtices of *Aſſiſe*, *&c.* are to hold their Seſſions in the chief Towns of the County; and their Records to be ſent into the Exchequer. 6 *R.* 2. 9 *Ed.* 3. *Aſſiſe* is likewiſe uſed for a *Jury*, where *Aſſiſes* of Novel Diſſeiſin are tried: The Panels of *Aſſiſes* ſhall be arrayed, and a Copy indented delivered by the Sheriff, *&c.* to the Plaintiffs and Defendants ſix Days before the Seſſions, *&c.* if demanded, on Pain of 40*l.* by Stat. 6 *H.* 6. *cap.* 2. And *Aſſiſe* is taken for a *Writ* for Recovery of Poſſeſſion of Things immovable, whereof any one and his Anceſtors have been diſſeiſed. Likewiſe in another Senſe, it ſignifies an *Ordinance* or Statute. *Reg. Orig.* 279. The Writs of *Aſſiſe* are the four Sorts following.

Aſſiſe of Novel Diſſeiſin, (*Aſſiſa Novæ Diſſeiſinæ*) Lies where Tenant in Fee ſimple, Fee-tail, or for Term of Life, is put out and diſſeiſed of his Lands, or Tenements, Rents, Common of Paſture, Common Way, or of an Office, Toll, *&c. Glanv. lib.* 10. *Reg. Orig.* 197. *Aſſiſe* muſt be of an actual Freehold in Lands, *&c.* and not a Freehold in Law: It lieth of Common of Paſture, where the Commoner hath a Freehold in it, and the Lord or other Perſons feed it ſo hard, that all the Graſs is eat up; but then the Plaintiff muſt count and ſet forth how long the Land was fed, and alledge *per quod Proficuum ſuum ibidem amiſit*, *&c.* 9 *Rep.* 113. One may have an *Aſſiſe* of Land and Rent, or of ſeveral Rents, and Offices and Profits in his Soil, all in one Writ: And if it be of a Rent-Charge, or Rent-Seck; it ſhall be general *de libero Tenemento* in ſuch a Place, and all the Lands and Tenants of the Tenements charged ought to be named in the Writ; but in *Aſſiſe* for Rent-Service it is otherwiſe. *Dyer* 31. An *Aſſiſe* may be brought for an Office held for Life; but then it muſt be an Office of Profit, not of Charge only: Of the Toll of a Mill, or Market, *Aſſiſe* lieth; tho' it may not be brought of Suit to a Mill. 8 *Rep.* 46, 47. By *Magna Charta*, 9 *Hen.* 3. *cap.* 12. *Aſſiſes of Novel Diſſeiſin*, &c. ſhall be taken in the proper Counties, by the King's Juſtices: And for Eſtovers of Wood, Profit taken in Woods, Corn to be received yearly in a certain Place; and for Toll, Tonnage, *&c.* and of Offices in Fee, an *Aſſiſe* ſhall be; alſo for Common of Turbary, and of Fiſhing, appendant to Freehold, *&c.* And in this Suit, if the Defendant fail to make good the Exception which he pleads, he ſhall be adjudged a Diſſeiſor, without taking the *Aſſiſe*; and ſhall pay the Plaintiff double Damages, and be impriſoned a Year. *Stat.* 13 *Ed.* 1. *cap.* 25. If in an *Aſſiſe* no Tenant of the Freehold be mentioned, the Defendant may plead it; and where one Defendant pleads, no Tenant of the Freehold named in the Writ, if this is found, the Writ ſhall abate *quoad* all. *Dyer* 207. On ſuch a Plea of the Defendant, the Plaintiff ſays that he hath made a Feoffment to Perſons unknown, and he himſelf hath continually taken the Profits; if then they are at Iſſue upon the Taking of the Profits, and it be found againſt the Defendant, it ſhall not be inquired of the Points of the *Aſſiſe*, for the Diſſeiſin is acknowledg'd. 1 *Danv Abr.* 584. And if the Deed of the Anceſtor of the Plaintiff be pleaded in Bar, and this is denied, and found for the Plaintiff; the *Aſſiſe* ſhall not inquire of the Points of the Writ, but only of the Damages. *Ibid.* 585. In *Aſſiſe* the Tenant pleads in Bar, and the Plaintiff makes Title, but the Tenant doth neither anſwer nor traverſe the Title; in this Caſe the *Aſſiſe* ſhall be awarded at large. *Cro. Eliz.* 559. And if any other Title is found for the Plaintiff, he ſhall recover. *Bro. Aſſi.* 281. A Tenant pleads in Abatement in an *Aſſiſe*, he muſt at the ſame Time plead over in Bar; and no Imparlance ſhall be allowed, without good Cauſe: And where there are ſeveral Defendants, and any of them do not appear the firſt Day, the *Aſſiſe* ſhall be taken againſt them by Default. *Paſch.* 5 *W.* 3. If *Aſſiſe* be brought againſt a Leſſee, he may not plead *Aſſiſa non*; for that is the Form of the Plea in Bar for Tenant of the Freehold: He ought to plead the ſpecial Matter, *viz.* his Leaſe, the Reverſion in the Plaintiff, and that he is poſſeſſed, and ſo in without Wrong. *Jenk. Cent.* 142. An *Aſſiſe* is to be firſt arraigned, and the Plaintiff's Counſel prays the Court that the Defendant may be called; whereupon he is called; and if the Defendant appears, then his Counſel demand *Oyer* of the Writ of *Aſſiſe*, and the Return of it; which is granted; and then he prays Leave to imparl to a ſhort Time after, and the Jury is adjourn'd to that Day: At the Day given by the Court, the Defendant is again called, and upon his Appearance, he pleads to the *Aſſiſe*; and upon this an Iſſue is joined between the Parties, and the Jurors are ſworn to try the Iſſue, the Counſel proceeding to give them their Evidence: After the Trial the Court gives Judgment, and the Plaintiff recovering is to have Writ of *Seiſin*, *&c.* 1 *Lill. Abr.* 105, 106. The Trial on *Aſſiſe* is *Feſtinum Remedium*; and in this Action, the Land, Damages and Coſts are recovered. The Jurors that are to try the *Aſſiſe*, are called *Recognitors* of the *Aſſiſe*; and they are to view the Thing in Demand: By Writ of *Aſſiſe*, the Sheriff is commanded, *Quod faciat duodecim liberos & legales homines de vicineto, &c. Videre tenementum illud, & nomina eorum imbreviari, & quod ſummoneat eos per bonas ſummonitiones, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c.* In an *Aſſiſe*, the Plaintiff muſt prove his Title, then his *Seiſin* and *Diſſeiſin*: But *Seiſin* of Part of a Rent, is ſufficient to have *Aſſiſe* of the whole; and if a Man who hath Title to enter, ſet his Foot upon the Land and is ouſted, that is a ſufficient *Seiſin Comp. Attorn.* 267. *Seiſin* of an Office may be alledged by taking Money for the Buſineſs done, and the Place where the Officer ſat be put in View. *Dyer* 114. In *Aſſiſe*, the Defendant ſhall not eſſoin, nor caſt a Protection, or pray in Aid of any but the King, vouch any Stranger, or Party to the Writ, unleſs he enter preſently into the Warranty. 8 *Rep.* 50. The Plaint need not be ſo certain in *Aſſiſe* as in other Writs; the Judgment be ing to recover *per Viſum Recognitorum*; and if the Plaint be but ſo certain as the Recognitors may put the Demandant into Poſſeſſion, it is ſufficient. *Dyer* 84. The Demandant in an *Aſſiſe* may abridge his Plaint at any Time after the Jury are charged, before Verdict. 1 *Danv.* 580. For Proceedings in Writ of *Aſſiſe of Novel Diſſeiſin*; ſee *Plowd.* 411, 412. If Leſſee for Years, or Tenant at Will, be ouſted, the Leſſor, or he in Remainder, may have *Aſſiſe*, becauſe the Freehold was in him at the Time of the *Diſſeiſin. Kel.* 109. *Aſſiſe* lies for Tithes, by Stat. 32 *Hen.* 8. *cap.* 7. *Cro. Eliz.* 559. But not for an Annuity, Penſion, &c. In ſome Caſes an *Aſſiſe* will lie, where Ejectment will not; for Inſtance, *de uno Crofto*, becauſe it may be put in View to the Jury. 2 *Bulſt.* 214. Ejectment will not lie *de Piſcaria*, by Reaſon the Sheriff cannot deliver Poſſeſſion of it; but an *Aſſiſe* will lie for it, as it may be viewed by the Recognitors. *Cro. Car.* 534. *Aſſiſe* will lie ſometimes where Treſpaſs *Vi & Armis* doth not; as where a Lord enters and diſtrains his Tenant ſo often, when nothing is due, that the Tenant is diſturbed in manuring his Lands; in ſuch Caſe, he may have *Aſſiſe de ſovent foits Diſtreſs*, but he cannot have Treſpaſs *Vi & armis* againſt his Lord. 8 *Rep.* 47. 1 *Nelſ. Abr.* 276. Where an *Aſſiſe* concerns the King and his Prerogative, the Judges may be prohibited to proceed therein, by Writ *De non ulterius Proſequendo Rege inconſulto. Ibid.* 277. The Court of *Common Pleas* or *King's Bench* may hold Plea of *Aſſiſes* of Land in the County of *Middleſex*, by Writ out of Chancery. 1 *Lill. Abr.* 105. And in Cities and Corporations an *Aſſiſe of freſh Force* lies for Recovery of Poſſeſſion of Lands, within forty Days after the *Diſſeiſin*, as the ordinary *Aſſiſe* in the County. *F. N. B.* 7.

Form of a *Writ of Aſſiſe of Novel Diſſeiſin.*

GEORGE *the Second*, &c. *To the Sheriff of* W. *Greeting.* A. B. *hath complained to us, that* C. D. *unjuſtly and without Judgment hath diſſeiſed him of his Free-Tenement or Freehold in*, &c. *within thirty Years now laſt paſt; and therefore we command you, that if the ſaid* A. *makes you ſecure in proſecuting his Claim, then that you cauſe the ſaid Tenement to be re-ſeiſed of the Chattels which in it were taken, and the ſame Tenement with its Chattels to be in Peace, until the next* Aſſiſes *when our Juſtices into thoſe Parts ſhall come; and in the mean Time do you cauſe Twelve free and lawful Men of that Venue or Neighbourhood to view the ſaid Tenement, and their Names to be impanelled, and ſummon them by good Summoners, that they be before our ſaid Juſtices at the ſaid* Aſſiſes, *ready to make Recognizance thereof; and put by Sureties and ſafe Pledges the ſaid* C. *or his Bailiff, if he ſhall not be found, that he then be there to hear that Recogniſance; and have you there the Summoners, the Names of the Pledges, and this Writ.* Witneſs, &c.

A *Count* or *Declaration*, with a Plea, Iſſue, and Judgment in an *Aſſiſe*.

Wilts, ſſ. THE Aſſiſe *come to Recognize, whether* C. D. *unjuſtly and without Judgment did diſſeiſe* A. B. *of his Freehold in*, &c. *within thirty Years now laſt paſt*, &c. *And whereupon the ſaid* A. *by* T. E. *his Attorney complains, that he the ſaid* C. *diſſeiſed him of one Meſſuage, twenty Acres of Lands, and*, &c. *with the Appurtenances, in*, &c. *And for his Title to the Tenements and* Aſſiſe *aforeſaid, the ſaid* A. *ſaith, that* T. B. *Father of him the ſaid* A. *long before the obtaining of the ſaid Original Writ of* Aſſiſe, *was ſeiſed of the Tenements aforeſaid with the Appurtenances, in his Demeſne as of Fee; and being ſo ſeiſed thereof, the Day and Year*, &c. *at*, &c. *aforeſaid, by his Indenture, made between him the ſaid* T. *of the one Part, and*, &c. *of the other Part, which other Part thereof with the Seal of the ſaid* T. *affixed thereto and by him ſigned, the ſaid* A. *here brings into this Court, the Date whereof is the ſame Day and Year above, he for himſelf his Heirs and Aſſigns did covenant, grant*, &c. (*here reciting a Deed of Covenants to levy a Fine of the Tenements, among other Things, and the Fine levied accordingly*) *to the Uſe of* A. *and his Heirs*, &c. *By Virtue of which Fine ſo levied, the ſaid* A. *into the ſaid Tenements with the Appurtenances entered, and was thereof ſeiſed in his Demeſne as of Fee, until the aforeſaid* C. D. *him the ſaid* A. *thereof unjuſtly, and without Judgment did diſſeiſe as aforeſaid; and this he is ready to verify; whereupon he prays the* Aſſiſe, &c. *And the ſaid* C. *by*, &c. *his Attorney comes*, &c. *and ſaith, that he has nothing in the ſaid Tenements with the Appurtenances, to put in View of the Recognitors of the ſaid* Aſſiſe, *and in the Plaint or Declaration aforeſaid ſpecified, nor had at the Day of bringing the original Writ of* Aſſiſe *aforeſaid, or ever after, nor any Injury or Diſſeiſin did to the ſaid* A. *And of this he puts himſelf upon the* Aſſiſe; *and the ſaid* C. *does likewiſe: Therefore let the* Aſſiſe *thereof between them be taken*, &c. (*here follows the* Verdict *of the Recognitors or Jury, for the Plaintiff* A.) Therefore *it is conſidered, that the ſaid* A. *do recover againſt the ſaid* C. *his Seiſin of the Tenements aforeſaid, with the Appurtenances, and alſo*, &c. *And the ſaid* C. *is in Mercy*, &c. *And hereupon the ſaid* A. *prays the Writ of the Lord the King, to be directed to the Sheriff of the County aforeſaid, to cauſe to be delivered to him full Seiſin of the Tenements aforeſaid with the Appurtenances; and it is granted to him, returnable here*, &c.

Aſſiſe of Mort d'Anceſtor, (*Aſſiſa Mortis Anteceſſoris*) Is a Writ that lieth where a Man's Father, Mother, Brother, Siſter, Uncle, Aunt, &c. died ſeiſed of Lands, Tenements, Rents, &c. that were held in Fee, and after their Deaths a Stranger abateth. *Reg. Orig.* 223. It is good as well againſt the Abator, as any other in Poſſeſſion of the Land: But it lies not againſt Brothers or Siſters, &c. where there is Privity of Blood between the Perſon proſecuting and them. *Co. Litt.* 242. And it muſt be brought within the Time limited by the Statute of Limitations, or the Right may be loſt by Negligence. If the Anceſtor were ſeiſed the Day that he died, of any Lands, or other Eſtate in Fee-ſimple, although a Stranger entereth and diſſeiſeth him of that Land the Day that he dieth, ſo that he dieth not ſeiſed of the ſaid Land; yet the Perſon who is his Heir ſhall have the *Aſſiſe of Mort d'Anceſtor*, becauſe the Writ doth not ſuppoſe that the *Anceſtor* died ſeiſed; but ſaith *Parati Sacramento recogn. Si* W. B. *Pater*, &c. *fuit ſeiſitus die quo obiit*, &c. And the ſame is ſufficient, although he dieth not ſeiſed. *Fitz. Nat. Br.* 433. If a Man go beyond Sea in Pilgrimage, and dieth there; or if he enter into Religion, &c. his Heir ſhall have a Writ of *Aſſiſe of Mort d'Anceſtor*, and it ſufficeth that the *Anceſtor* was ſeiſed the Day he went out of the Land, although it was not the Day of his Death. *Ibid.* 434, 435. By the Statute of *Glouceſter*, if Tenant by the Curteſy alien his Wife's Inheritance, and dieth, the Heir of the Wife ſhall have an *Aſſiſe of Mort d'Anceſtor*, if he have not Aſſets by Deſcent from the Tenant by the Curteſy; and the ſame ſhall be as well where the Wife was not ſeiſed of Land the Day of her Death, as where ſhe was ſeiſed thereof. 6 *Ed.* 1. *New Nat. Br.* 489. A Warden of a College, &c. ſhall have *Aſſiſe of Mort d'Anceſtor*, of Rent where his Predeceſſor was ſeiſed. And a Man may have *Aſſiſe of Mort d'Anceſtor* of Rents, againſt ſeveral Perſons in ſeveral Counties; having in the End of the Writ ſeveral Summons againſt the Tenants: And the Proceſs in this Writ, is Summons againſt the Party; and if he makes Default at the Day of the *Aſſiſe* returned, then the Plaintiff ought to ſue out a Reſummons; and if he makes Default again, the *Aſſiſe* ſhall be taken, &c. *Bro Aſſiſ.* 88. In a *Mort d'Anceſtor*, if the Tenant ſays, the Plaintiff is not next Heir, and this is found againſt him, the Points of the Writ ſhall be inquired of: And in this Caſe, the *Aſſiſe* may find, that tho' the Plaintiff be the next Heir, yet he is not next Heir as to this Land; for this is in regard of their Inquiry at large. *Br. Mort d'An.* 47. 1 *Danv. Abr* 584. Damages ſhall be recovered in the *Aſſiſe of Mort d'Anceſtor*; but it lieth not of an Eſtate-tail, only where the *Anceſtor* was ſeiſed in Demeſne as of Fee. *Bro. Aſſiſ.* If a Man be barred in *Aſſiſe* of *Novel Diſſeiſin*, upon ſhewing a Diſcent, or other ſpecial Matter, he may have *Mort d'Anceſtor*, or Writ of *Entry ſur Diſſeiſin*, &c. 4 *Rep.* 43.

Form of a *Writ of Aſſiſe of Mort d'Anceſtor.*

GEORGE *the Second,* &c. *To the Sheriff of* W. *Greeting: If* A. B. *ſhall make you ſecure, that he will proſecute his Claim, then ſummon,* &c. *Twelve free and lawful Men of the Neighbourhood of,* &c. *that they be before our Juſtices at the firſt* Aſſiſes, *when into thoſe Parts they ſhall come; or before our Juſtices at* Weſtminſter *on the Day,* &c. *or before our truſty and beloved,* &c. *and thoſe whom to them we ſhall aſſociate, at a certain Day and Place, which the ſaid Juſtices ſhall cauſe you to know (or to be known to you) ready upon Oath to recognize, if* W. B. *Father of the ſaid* A. &c. *was ſeiſed in his Demeſne as of Fee, of one Meſſuage, and one Yard-Land with the Appurtenances in* D. *the Day which he dy'd; and whether he dy'd,* &c. *And if the ſaid* A. *be his next Heir; and in the mean Time, let them ſee the ſaid Meſſuage and Land, and do you cauſe their Names to be impanell'd; and ſummons by good Summoners* C. D. *who now holdeth the ſaid Meſſuage and Lands, that he be there to hear the Recognition: And have you there the Summoners, and this Writ.* Witneſs, *&c.*

Aſſiſe of Darrein Preſentment, (*Aſſiſa ultimæ Præſentationis*) A Writ lying where a Man and his Anceſtors have preſented a Clerk to a Church, and after, the Church being void, a Stranger preſents his Clerk to the ſame Church, whereby the Perſon having Right is diſturb'd. *Reg. Orig.* 30. And a Man ſhall have *Aſſiſe of Darrein Preſentment*, altho' he nor his Anceſtors did preſent to the laſt Avoidance: As if Tenant for Life or Years, or in Dower, or by the Curteſy, ſuffer an Uſurpation into a Church, *&c.* and die; he in Reverſion, who is Heir unto the Anceſtor who laſt preſented, ſhall have *Aſſiſe of Darrein Preſentment*, if he be diſturbed: But if a Man preſent; and then grant the Advowſon unto another for Life, and he ſuffer one Uſurpation, or two, or three Uſurpations; now at the next Avoidance, he in the Reverſion ſhall not have an *Aſſiſe of Darrein Preſentment*, if he be diſturbed to preſent. 10 *Ed.* 3. In this Caſe he is put to his *Writ of Right.* If a Diſturber preſent to an Advowſon, and the Patron bring an *Aſſiſe of Darrein Preſentment*, and pendent the Writ, the Incumbent dieth, if the Diſturber preſenteth again and dies, yet the Patron ſhall have an *Aſſiſe of Darrein Preſentment* upon the firſt Diſturbance againſt the Heir of the Diſturber, by Journeys Accounts. *New Nat. Br.* 71. *Aſſiſe of Darrein Preſentment* doth not lie for one Coparcener againſt the other: The Church is never litigious between Parceners; for if they cannot agree, the Ordinary ought to admit the Preſentee of the Eldeſt: *Contra* of Jointenants. *Mich.* 15 *Ed.* 3. If a Man preſent to a Church, and afterwards the Parſon doth reſign, *&c.* and the Patron preſents again and is diſturb'd, he ſhall have this Writ, altho' the former Preſentee be living; and the Writ ſhall ſuppoſe, that the Defendant doth deforce him of the Advowſon; and yet the Plaintiff by his Declaration counteth that he or his Anceſtors laſt preſented, by which he ſuppoſeth that he is in Poſſeſſion, *&c. New Nat. Br.* 74. A Perſon preſents to an Advowſon, and after the Incumbent dies, and the Ordinary doth preſent another by Lapſe, on that Incumbent's Death the right Patron ſhall preſent; and if he be diſturbed, he ſhall have an *Aſſiſe of Darrein Preſentment*, notwithſtanding the mean Preſentments: But one cannot make Title to a Preſentment in Time of War. *Ibid.* A Tenant in Tail of an Advowſon may have this Writ, as well as Tenant in Fee thereof, and is not put to a *Quare Impedit*: And 'tis ſaid a Leſſee for Years may bring it, if he hath preſented before, altho' he hath no Freehold; for this *Aſſiſe* is not like an *Aſſiſe* of *Novel Diſſeiſin.* 46 *Aſſ.* 4. *F. N. B.* 31. Though he who will generally bring the *Aſſiſe of Darrein Preſentment*, ought to have the ſame Eſtate or Part thereof, which he had at the Time of the firſt Preſentment: Therefore if ſuch Leſſee for Years of an Advowſon preſents, and after his Eſtate is enlarged for Life, or in Fee; and then the Church becomes void, he ſhall not have this Writ, becauſe he hath a new Eſtate by Enlargement, and no Part of his former Eſtate. *Kelw.* 118. *Mallor. Qu Imped.* 162. By *Magna Charta* 9 *H.* 3. *c.* 13. Theſe *Aſſiſes of Darrein Preſentment* are to be always taken before the Juſtices of the Bench, and there ſhall be determined. In *Aſſiſe of Darrein Preſentment*, the Proceſs is Summons and Reſummons, *Habeas Corpus, &c.* And if the Writ be brought in *Middleſex*, at the Return the *Aſſiſe* ſhall be there arraigned at the Bar, and the Tenant demanded; if the Tenant doth not appear, a Reſummons ſhall be awarded; and if upon that he appeareth not, the *Aſſiſe* is to be taken againſt him by Default, *&c.* In this *Aſſiſe*, ſix of the Jury ought to have the View of the Church, to the Intent that they may put the Plaintiff in Poſſeſſion, if he recovers: And the Judgment is to recover the Preſentation and Damages, and the Value of the Church for Half a Year; and if Six Months be paſt, Two Years Value of the Church ſhall be recovered, by Stat. *Weſt.* 2. 13 *Ed.* 1. *cap.* 5.

Form of a *Writ of Aſſiſe of Darrein Preſentment.*

GEORGE *the Second,* &c. *To the Sheriff of* W. *Greeting: If* A. B. *ſhall ſecure you,* &c. *then do you ſummon by good Summoners Twelve free and lawful Men of the Venue or Neighbourhood of* D. *that they be before our Juſtices,* &c. *ready to recognize upon their Oaths, what Patron in the Time of Peace preſented the laſt Parſon, or Incumbent, who is dead, to the Church of,* &c. *which is vacant, as 'tis ſaid, and the Advowſon whereof, the ſaid* A. *ſaith belongs to him; and in the mean Time the Church let them view, and do you cauſe their Names to be return'd, and ſummon* C. D. *who deforced him of that Advowſon, that he be there to hear,* &c. *And have you then there the Summoners and this Writ.* Witneſs, *&c.*

Aſſiſe de utrum, (*Aſſiſa utrum*) Lieth for a Parſon againſt a Layman, or a Layman againſt a Parſon, for Lands or Tenements doubtful, whether they be Lay fee, or Free Alms belonging to the Church. *Bract. lib.* 4. It is a Writ of the higheſt Nature that a Parſon can have: And if a Parſon, Prebendary, *&c.* loſe by Default in a real Action, he may have this Writ; for it is his Writ of Right. 6 *Rep.* 8. Theſe are the four Kinds of *Writs of Aſſiſe*, uſed in Actions poſſeſſory; and are called *Petit Aſſiſes*, in reſpect of the Grand *Aſſiſe*: For the Law of Fees is grounded upon two Rights, one of *Poſſeſſion*, the other of *Property*; and as the *Grand Aſſiſe* ſerves for the Right of Property, ſo the Petit *Aſſiſe* ſerveth to ſettle the Right of Poſſeſſion. *Horn's Mirr* At the Common Law there are but two Forms of Writs of *Aſſiſe*, viz. *Aſſiſe de Libero Tenemento*, and *Aſſiſe de Communia Paſturæ.* 8 *Rep.* 45. The *Aſſiſes* of *Novel Diſſeiſin*, &c. and *De Communia Paſturæ*, were inſtituted by *H.* 2. in the Place of Duels: And therefore *Glanvile* tells us, That *Magna Aſſiſa eſt Regale*

beneficium, clementia principis de Conſilio procerum populis indultum, a quo vitæ hominum & Status integritati tam ſalubriter conſulitur, ut in jure, quod quis in Libero Soli tenemento poſſidet, retinendo, Duelli caſum homines declinare poſſunt ambiguum, &c. Glanv lib. 2. cap. 7.

Aſſiſe of the Foreſt, (*Aſſiſa de Foreſta*) Is a Statute touching Orders to be obſerv'd in the King's *Foreſt. Manwood* 35. The Statute of View of Frank-Pledge, *Anno* 18 *Ed.* 1. is alſo called the *Aſſiſe of the King*: And the Statute of Bread and Ale 51 *Hen.* 3. is termed the *Aſſiſe of Bread and Ale.* And theſe are ſo called, becauſe they ſet down and appoint a certain Meaſure, or Order, in the Things they contain. There is further an *Aſſiſe* of Nuſance, *Aſſiſa Nocumenti*, where a Man maketh a Nuſance to the Freehold of another, to redreſs the ſame. And beſides *Littleton*'s Diviſion of *Aſſiſes*, there are others mentioned by other Writers, *viz. Aſſiſe at large*, brought by an Infant to enquire of a Diſſeiſin, and whether his *Anceſtor* were of full Age, good Memory, &c. when he made the Deed pleaded, whereby he claims his Right. *Aſſiſe in Point of Aſſiſe*, (*Aſſiſa in modum Aſſiſæ*) which is when the Tenant as it were ſetting Foot to Foot with the Demandant, without any Thing further, pleads directly to the Writ, no Wrong, no Diſſeiſin. *Aſſiſe out of the Point of Aſſiſe*, is when the Tenant pleadeth ſomething by Exception; as a Foreign Releaſe, or Foreign Matter triable in a Foreign County; which muſt be tried by a Jury, before the principal Cauſe can proceed. *Aſſiſe of Right of Damages* is where the Tenant confeſſeth an Ouſter, and referring it to a Demurrer in Law, whether it were rightly done or not, is adjudged to have done Wrong; whereupon the Demandant ſhall have a Writ of *Aſſiſe* to recover Damages. *Bract. lib.* 4. *F. N. B.* 105. *Aſſiſes* are likewiſe awarded *by Default* of Tenants, &c.

Aſſiſors, (*Aſſiſores*) *Sunt qui Aſſiſas condunt, aut Taxationes imponunt.*——In *Scotland*, (according to *Skene*) they are the ſame with our Jurors; and their Oath is this:

We ſhall leil ſuith ſay,
And na ſuith conceal, for nathing we may,
So far as we are charg'd upon this Aſſiſe,
Be God himſelf, and be our Part of Paradiſe,
And as we will anſwer to God, upon
The dreadful Day of Dome.

Aſſiſus, Rented or farmed out for ſuch an *Aſſiſe*, or certain aſſeſſed Rent in Money or Proviſions. *Terra aſſiſæ* was commonly oppoſed to *Terra Dominica*; this laſt being held in Demain, and occupied by the Lord, the other let out to inferior Tenants. So among the Lands of the Knights Templars, belonging to their Preceptory of *Sandford. Com.* Oxon. *Apud Covele de dono Matildis Reginæ habentur quatuor hidæ, quarum duæ ſunt in Dominico, & duæ* Aſſiſæ *ab hominibus apud, &c.*——*Kennet's Paroch. Antiq.* 141. And hence comes the Word to *aſſeſs* or allot the Proportion and Rates in Taxes and Payments by *Aſſeſſors.*

Aſſithment, A Wiregeld, or Compenſation, by a pecuniary Mulct: From the Prepoſition *Ad*, and the Sax. *Sithe*, *Vice*: *Quod vice ſupplicii ad expiandum delictum ſolvitur.*

Aſſociation, (*Aſſociatio*) Is a Writ or Patent ſent by the King, either at his own Motion, or at the Suit of a Party Plaintiff, to the Juſtices appointed to take Aſſiſes, or of *Oyer* and *Terminer*, &c. to have others *aſſociated* unto them. And this is uſual where a Juſtice of Aſſiſe dies; and a Writ is iſſued to the Juſtices alive to admit the Perſon *aſſociated*: Alſo where a Juſtice is diſabled, this is practiſed. *F. N. B.* 185. *Reg. Orig.* 201, 206, 223. The Clerk of the Aſſiſe is uſually *Aſſociate* of Courſe; in other Caſes, ſome learned Serjeants at Law are appointed. It has been holden, that an *Aſſociation* after another *Aſſociation* allowed and admitted, doth not lie; nor are the Juſtices then to admit other *Aſſociation* in that Writ afterwards, ſo long as that Writ and Commiſſion ſtand in Force. *Br. Aſſiſe* 386. *Mich.* 32 *H.* 6. The King may make an *Aſſociation* unto the Sheriff upon a Writ of *Rediſſeiſin*, as well as upon Aſſiſe of *Novel Diſſeiſin*, &c. *New Nat. Br.* 416, 417.

Aſſociation of Parliament, In the Reign of King *William* III. the Parliament entered into a ſolemn *Aſſociation* to defend his Majeſty's Perſon and Government againſt all Plots and Conſpiracies: And all Perſons bearing Offices Civil or Military, were injoined to ſubſcribe the *Aſſociation*, to ſtand by King *William*, on Pain of Forfeitures and Penalties, &c. By *Stat.* 7 & 8 *W.* 3. *cap.* 27.

Aſſoile, (*Abſolvere*) To deliver from Excommunication. *Staundf. Pl. Cr.* 72.——The Defendant ſhall remain in Priſon till the Plaintiff is *aſſoiled*; that is, delivered from his Excommunication: And in *Stat.* 1 *Hen.* 4. *c.* 10. Mention being made of K. *Edw.* 3. it is added, whom God *aſſoil.*

Aſſumpſit, (from the Lat. *Aſſumo*) Is taken for a voluntary Promiſe, by which a Man aſſumes or takes upon him to perform or pay any Thing to another: It comprehends any verbal Promiſe, made upon Conſideration; and the Civilians expreſs it diverſly, according to the Nature of the Promiſe, calling it ſometimes *Pactum*, ſometimes *Promiſſionem*, or *Conſtitutum*, &c. *Terms de Ley* 60. When one becomes legally indebted to another for Goods ſold, the Law implies a Promiſe that he will pay this Debt; and if it be not paid, *Indebitatus Aſſumpſit* lies. 1 *Danv Abr.* 26. And *Indebitatus Aſſumpſit* lies for Goods ſold and delivered to a Stranger *ad requiſitionem* of the Defendant. *Ibid.* 27. But on *Aſſumpſit* for Goods ſold, you muſt prove a Price agreed on, otherwiſe the Action will not lie; though this is helped by laying a *Quantum Meruit* with the *Indebit. Aſſumpſit*, wherein if you fail in Proof of the Price agreed, you may recover the Value. *Wood's Inſt.* 536. Where Action is brought upon a Contract, if the Plaintiff miſtakes the Sum agreed upon, he fails in his Action; but if he brings it upon the Promiſe in Law, ariſing from the Debt, there though he miſtakes the Sum he ſhall recover. *Alleyn* 29. Every Contract made between Parties, implies a mutual Promiſe for Performance: And yet an Action may be brought on a reciprocal Promiſe by one againſt the other, altho' he who brings it hath not performed on his Side. *Dyer* 30, 75. When an *Aſſumpſit* or Promiſe is the Ground of the Action, it muſt be preciſely ſet forth; but in Actions upon mutual Promiſe, it is ſufficient to ſay generally that the Defendant hath not performed his Part, without aſſigning of a Breach. 3 *Lev.* 319. He for whoſe Benefit a Promiſe is made, it is ſaid, may have an Action for the Breach of this Promiſe, although the Promiſe was not made to him. 2 *Lev.* 210. If a Promiſe be made without Limitation of Time for its Performance, reaſonable Time ſhall be allowed, if there be an immediate Conſideration for it; and not Time during Life. 1 *Lill. Abr.* 112. On Promiſe to deliver a Thing ſuch a Day, the Party is bound to do it without Requeſt. 1 *Lev.* 284. But if a Promiſe be to do any Thing upon Requeſt, the Requeſt is neceſſary to entitle the Action, on which it ſhall ariſe. 1 *Lev.* 48. In every Action upon *Aſſumpſit*, there ought to be a Conſideration, Promiſe, and Breach of Promiſe. 1 *Leon. c.* 405. A Conſideration upon which a Promiſe begins, cannot be diſcharged without ſome other Conſideration: And Conſideration that if a Perſon will forbear to ſue another upon a Bond, &c. may be a good Conſideration to pay the Debt, on Promiſe to do it. *Cro. Jac.* 620, 683. Two Perſons go to an Inn-keeper, one hires an Horſe, and the other Promiſes that if the Inn-keeper will deliver the Horſe, he will ſee it forth-coming, this Promiſe for another, is not good without Note in Writing: But the Perſon is chargeable upon the ſpecial Bailment, and ſo good without a Note. 1 *Lill.* 118. An Infant having bought Goods and Wares died, and made his Wiſe Executrix; She being asked for the Money ſays, Forbear me till ſuch a Time, and I will pay it you; this was held no good *Aſſumpſit*, for it wanted a Conſideration. 1 *Leon. Ca.* 156. But where an Executrix, in Conſideration the Plaintiff would not moleſt her, but give her a Day, promiſed to pay Money due from the Teſtator, Action lay without ſhewing that ſhe had Aſſets; for that ſhall be intended, and her Promiſe, and the Plaintiff's Forbearance of the Suit, was good Cauſe of Action. 2 *Cro.* 273. An Adminiſtratrix promiſed to pay the Plaintiff Money, if he would forbear Suit till ſhe had taken out Letters of Adminiſtration; this was not a good *Aſſumpſit*, for the Defendant was not liable to the Suit as Adminiſtratrix till Adminiſtration had, ſo there was no Conſideration. *Style* 248, 395. If a Plaintiff promiſes to forbear to ſue a Stranger, on the Defendant's promiſing to pay the Debt, and the Time of Forbearance is uncertain, it will be ill; but with an Averment of a certain Time, it may be a good *Aſſumpſit.* So where a Man is under an Arreſt, and the Plaintiff diſcharges him, upon another's Promiſe to pay, &c. *Moor Caſ.* 1167. 1 *Cro.* 19, 456. The Father was indebted to divers Merchants upon ſimple Contract, and died ſeiſed of Lands that deſcended to his Son and Heir; the Creditors demand their Debts of him, who ſaith, If it be ſo my Father owed it to you, I will pay it; adjudg'd actionable. *Moor Ca.* 505, 357. An Executor or Adminiſtrator regularly may take the ſame Advantage upon *Aſſumpſits* made to the Teſtator, and on Contracts, &c. as the Teſtator might have done. *Plowd.* 82. 2 *Cro.* 299. Every Executory Contract, and Debt that is not upon Record, or on a Specialty, which may be turned into Damage, imports in it an *Aſſumpſit* in Law, and one may have Debt or Action on the Caſe upon it at his Election; for when a Man doth agree to pay Money, or to deliver any Thing, he thereby promiſeth to pay or deliver it. *Plowd.* 128. 1 *Cro.* 94. If one, in Conſideration I will be bound for him, or for his Friend, promiſe to ſave me harmleſs; this is a good Conſideration and Promiſe: But if one promiſe to another to ſave harmleſs, and ſay not for what, or againſt whom, theſe *Aſſumpſits* are incertain and inſenſible, and therefore void; though if any Certainty can be made of them, they may be good. 10 *Rep.* 102. *Dyer* 356. In caſe a Promiſe be, that he who hath the Fee ſimple of Land, ſhall not alien it; or that a Man ſhall not take the Profit of his Lands, or uſe the Thing he hath bought; or if it be to ſave a Man harmleſs whatſoever he ſhall do, &c. the Promiſes ſo made will not bind or bear an Action. 10 *Rep.* 101. *Co. Litt.* 206. *Dyer* 304. *Plowd.* 64. If *J. S.* owes me Money, and another ſays he will be my Pay-maſter, or if the Party do not pay me ſuch a Day, he will; Or where one has built me a Houſe, if after I promiſe him 20*l.* theſe are not good Conſiderations in Actions of *Aſſumpſit.* 44 *E.* 3. 21. 1 *Shep. Abr.* 78. Tho' if where a Man in Conſideration that he hath ſealed a Releaſe of a Debt due to him from *J. S.* at the Requeſt of me, I promiſe to pay it if the other do not, this is a good *Aſſumpſit*, altho' the Conſideration be paſt: As where one doth promiſe to another, becauſe he became Bail for his Servant, that he will ſave him harmleſs; and here the Conſideration is continuing. *Dyer* 272. 1 *Cro.* 296. In Conſideration that I will lend one 10*l.* and accept of ſuch a Bond, &c. and releaſe to him all Actions and Demands; he *aſſumes* that if I cannot receive the Money on the Bond, he will pay it me, it is good: But if I proſecute upon it, I muſt ſet forth all this to be executed. 2 *Cro.* 623. So where a Man promiſes me, that if I will travel with him to *London* to help him to ſearch for the Will of *J. S.* he will pay me 5*l.* for my Pains; if I ſue for the Money, I muſt ſhew that I did travel with him to *London*, and help him to ſearch for the Will, &c. 2 *Cro.* 620. The *Aſſumpſit* in an Agreement that will be binding and give Action, muſt be compleat and perfect, and duly purſued and obſerved: And if the Party that makes the *Aſſumpſit*, and he to whom it is made agree together, and a Bond is given and taken for what is promiſed; by this the *Aſſumpſit* is diſcharged. Alſo where an *Aſſumpſit* is to ſtand to an Award, if the Award made be void; it will make the *Aſſumpſit* void. *Yelv.* 87. 2 *Leon. ca.* 223. 1 *Leon.* 170. The Intent of the Parties by and to whom the Promiſe or *Aſſumpſit* is made, is more to be regarded than the Form of Words, and this Intent and Meaning is to be followed, not in the Letter, but the Subſtance of it: If a Promiſe be to provide Wedding Clothes for a Woman, this ſhall be taken for ſuch Clothes to be worn the Wedding or Feaſt Day according to the Dignity of the Perſon. *Popb.* 182. *Yelv.* 87. 3 *Cro.* 53. There may be Action without an *Aſſumpſit*, when the Law obliges a Perſon to agree or act; as againſt a Victualler for refuſing to entertain his Gueſts. 1 *Vent.* 72, 333. An *Aſſumpſit* may be upon a general Conſideration; but it doth not lie where the Plaintiff has an Obligation to pay the Money, which is a ſtronger *Lien* than *Aſſumpſit*; nor when the Party has a Recognizance for the Duty, &c. *Jenk. Cent.* 293. *Aſſumpſit* lies not for Rent uſually reſerved on Leaſes; but if a Man promiſe to pay, without a Leaſe, ſo much a Week as long as *A. B.* &c. permits him to enjoy a Warehouſe, &c. which is a ſpecial Cauſe of Promiſe, this Action may lie. 2 *Cro.* 592. And if one receive any Rent on Pretence of Title, *Aſſumpſit* lies; as it does alſo for the Receipt of Profits of an Office, &c. 2 *Mod.* 260. Where a Perſon pays Money upon a Miſtake; or if he receive more from another in a Reckoning than he ought, or Fees than ſhould be taken, an *Aſſumpſit* lies. 1 *Salk.* 22. *Comb.* 447. If a Man receives Money for the Uſe of another Perſon, *Aſſumpſit* may be had againſt him as Bailiff or Receiver, which ſupplies the Place of Action of Account: And where Money was depoſited on a Wager, an *Indebitatus* lay for Money received to a Man's Uſe. *Show.* 117. Special *Indebitatus Aſſumpſit*, as when one having promiſed to pay if he loſt, the other promiſed to pay in like Manner, lay for Money won at Gaming, before the Statute 9 *Ann.* which prohibits Gaming, &c. 1 *Danv.* 28. If where a Promiſe is made, one Part of it is againſt Law, and another Part of it lawful, that is Ground ſufficient for *Aſſumpſit.* 4 *Rep.* 94. Vide *Action upon the Caſe.*

Aſſumption, The Day of the Death of a Saint, ſo called, *Quia ejus anima in cœlum* aſſumitur. Du Cange.

Tandem clara dies, Reginæ aſſumptio *cœlis,*
Regi parentis adeſt.———

Aſſurance of Lands, is where Lands or Tenements are conveyed by Deed: And there is an *Aſſurance* of Ships, Goods and Merchandize, &c. Stat. 6 *Geo.* 1. See *Inſurance.*

Aſter, And *Homo Aſter*, a Man that is Reſident. *Britton* 151.

Aſtrarius Hæres, (from *Aſtre*, the Hearth of a Chimney) Is where the Anceſtor by Conveyance hath ſet his Heir apparent and his Family in a Houſe in his Life-time,——*Dicitur ille cui Anteceſſor in vita ſua per Chartam Hæreditatem reſtituit.* 1 Inſt. 8

Aſtrum, A Houſe or Place of Habitation, alſo from *Aſtre.*——*Præceptum fuit vicecom. quod replegiet corpus* Willielmi J. *quod* Richardo S. Valentio *cepit & captum tenuit, Qui* Richardus *venit & advocat captionem ut de Villano ſuo, & quod cepit ipſum in* Aſtro *ſuo in quo Natus fuit,* &c. Placit. Hillar. 18 Ed. 1.

Ategar, A Weapon among the *Saxons*, which ſeems to have been a Hand-dart, from the Sax. *Aeton* to fling or throw, and *Gar* a Weapon. *Spelm.*

Athe, (*Adda*) A Privilege of Adminiſtring an Oath, in ſome Caſes of Right and Property; from the Sax. *Ath*, *Othe*, *Juramentum.* It is mentioned among the Privileges granted by King *Hen.* 2. to the Monks of *Glaſtenbury*. Cartular. Abbat. Glaſton. MS. fol. 14, 37.

Atia, See *Odio* & *Atia*, a Writ of Enquiry whether a Perſon be committed to Priſon on juſt Cauſe of Suſpicion.

Atilia, Utenſils or Country Implements: *Remaneant duo equi carectarii cum carecta & triginta ſex boves cum quatuor caru is &* atiliis. *Blount.*

Atrium, Is taken for a Court before the Houſe, and ſometimes a Church-yard.

Attach, (*Attachiare*, from the Fr. *Attacher*) Signifies to take or apprehend by Commandment of a Writ or Precept. *Lamb. Eiren. lib.* 1. *cap.* 16. It differs from Arreſt, in that he which arreſteth a Man carrieth him to a Perſon of higher Power to be forthwith diſpoſed of; but he that *attacheth* keepeth the Party *attached*, and preſents him in Court at the Day aſſigned; as appears by theſe Words of the Writ, *Præcipimus tibi quod* Attachias *talem & habeas eum coram nobis*, &c. Another Difference there is, that Arreſt is only upon the Body of a Man: whereas an *Attachment* is oftentimes upon his Goods. *Kitch.* 279. A *Capias* taketh hold of immoveable Things, as Lands or Tenements, and properly belongs to Real Actions: But *Attachment* hath Place rather in Perſonal Actions. *Bract. lib.* 4. *Attachiamentum eſt Diſtrictio Perſonalis, & Cape Magnum Diſtrictio Realis. Fleta, lib.* 5. *cap.* 24. *Attachment* in the moſt common Uſe of the Word, is an Apprehenſion of a Man by his Body, to bring him to anſwer the Action of the Plaintiff: And *Attachment* out of *Chancery* may be had of Courſe upon Affidavit made that the Defendant was ſerved with a *Subpœna*, and appeared not; or upon Non performance of any Order or Decree; alſo after the Return of this *Attachment*, that the Defendant *Non eſt Inventus*, &c. *Attachment* with Proclamation iſſues againſt him, &c. *Weſt. Symb.* And for Contempts, when a Party appears, he muſt upon his Oath anſwer Interrogatories exhibited againſt him; and if he be found Guilty ſhall be fined. Generally an *Attachment* doth lie for any Contempt done againſt the Courts at *Weſtminſter:* But the Court of *B. R.* will not grant *Attachment* againſt one for diſobeying an Order made by Juſtices of Aſſiſe, or a Judge at his Chamber, except it be entered and made a Rule of Court; for it is no Contempt to the Court, but to the Judge that made the Order. 1 *Lill. Abr.* 121. *Attachment* lies againſt Attornies for Injuſtice, and baſe Dealing by their Clients, in delaying Suits, &c. as well as for Contempts to the Court. 2 *Hawk.* 144. If Affidavits to ground an *Attachment* are full as to the Charge; yet if the Party being an Attorney, &c. deny ſuch Charge by as plain and poſitive Affidavits, he ſhall be diſcharged; but if he takes a falſe Oath, he may be indicted of Perjury. *Mod. Caſ. in L. & E.* 81. Againſt Sheriffs making falſe Returns of Writs, and againſt Bailiffs for Frauds in Arreſts, and exceeding their Power, &c. *Attachment* may be had. For Contempts againſt the King's Writs; uſing them in a vexatious Manner; altering the Teſte, or filling them up after ſealed, &c. *Attachment* lies. And for Contempts of an enormous kind, in not obeying Writs, &c. *Attachment* may be iſſued againſt Peers. 2 *Hawk.* 152, 153. But in ſome Caſes the Court doth not generally grant *Attachments* againſt Perſons for Miſdemeanours, but will ſend a Tipſtaff for them, if they live near the Town. 21 *Car. B. R.* For perſuading Jurors not to appear on a Trial, *Attachment* lies againſt the Party; for obſtructing the Proceeding of the Court. 1 *Lill.* 121. The Court of *B. R.* may award *Attachments* againſt any inferior Courts uſurping a Juriſdiction, or acting contrary to Juſtice. *Salk.* 207. Though 'tis uſual firſt to ſend out a Prohibition. *Attachment* lies for Proceedings in an inferior Court, after a *Haleas Corpus* iſſued, and a *Superſedeas* to ſtay Proceedings. 21 *Car. B. R.* And *Attachment* may be granted againſt Juſtices of Peace, for proceeding on an Indictment after a *Certiorari* delivered to them to remove the Indictment. 1 *Lill.* 121. But it doth not lie againſt a Corporation. *Attachment* lies againſt a Lord that refuſes to hold his Court, after a Writ iſſued to him for that Purpoſe, ſo that his Tenant cannot have Right done him. *New Nat. Br.* 6, 27. *Attachment* of *Privilege* is where a Man by Virtue of his Privilege calls another to that Court whereto he himſelf belongs, and in reſpect thereof is privileged, there to anſwer ſome Action: Or it is a Power to apprehend a Man in a Place privileged. *Book Entr.* 431. Corporation Courts have ſometimes Power by Charter to iſſue *Attachments*, and ſome Courts-Baron grant *Attachments* of Debt. *Kitch.* 79. Foreign *Attachment* is an *Attachment* of the Goods of Foreigners, found in ſome Liberty, to ſatisfy their Creditors within ſuch Liberty. *Calth. Rep.* 66. And by the Cuſtom of ſome Places, as *London*, &c. a Man may *attach* Money or Goods in the Hands of a Stranger. But a Foreign *Attachment* cannot be had when a Suit is depending in any of the Courts at *Weſtminſter*; which makes the Matter not to be meddled with by any other Court. *Cro. Eliz.* 691. And nothing is *attachiable* but for a certain and due Debt: Though by the Cuſtom of *London* Money may be *attached* before due, as a Debt; but not levied before due. *Sid.* 327. 1 *Nelſ. Abr.* 282, 283. Beſides theſe *Attachments*, there is *Attachment* of the Foreſt, iſſuing out of the Courts of the Foreſt, againſt Offenders againſt the Vert and Veniſon; and this *Attachment* is either by the Body, or Goods, Pledges and Mainpriſe, &c. *Manwood* 90, 93.

Foreign Attachments in *London*, upon Plaints of Debt, are made after this Manner: A. *oweth* B. 100*l.* *and* C. *is indebted to* A. 100*l.* B. *enters an Action againſt* A. *of* 200*l.* *and by Virtue of that Action a Serjeant* attacheth 100*l.* *in the Hands of* C. *as the Money of* A. *to the Uſe of* B. *which is returned upon that Action.* The *Attachment* being made and returned by the Serjeant, the Plaintiff is immediately to fee an Attorney before the next Court holden for the *Compter*; or the Defendant may then put in Bail to the *Attachment*, and nonſuit the Plaintiff: Four Court-Days muſt paſs before the Plaintiff can cauſe C. the *Garniſhee*, in whoſe Hands the Money was *attached*, to ſhew Cauſe why *B.* ſhould not condemn the 100*l.* *attached* in the Hands of *C.* as the Money of *A.* the Defendant in the Action (though not in the *Attachment*) to the Uſe of *B.* the Plaintiff: And the Garniſhee *C.* may appear in Court by his Attorney, wage his Law, and plead that he hath no Money in his Hands of the Defendant's, or other ſpecial Matter; but the Plaintiff may hinder his Waging of Law, by producing two ſufficient Citizens to ſwear that the Garniſhee had either Money or Goods in his Hands of *A.* at the Time of the *Attachment*, of which Affidavit is to be made before the Lord Mayor, and being filed may be pleaded by Way of Eſtoppel: Then the Plaintiff muſt put in Bail, that if the Defendant come within a Year and a Day into Court, and he can diſcharge himſelf of the Money condemned in Court, and that he owed nothing to the Plaintiff at the Time in the Plaint mentioned, the ſaid Money ſhall be forth-coming, &c. If the Garniſhee fail to appear by his Attorney, being warned by the Officer to come into Court to ſhew Cauſe as aforeſaid, he is taken by Default for Want of Appearing, and Judgment given againſt him for the Goods and Money *at-*

tached in his Hands, and he is without Remedy either at Common Law or in Equity; for if taken in Execution, he muſt pay the Money condemned, though he hath not one Penny, or go to Priſon; but the Garniſhee appearing to ſhew Cauſe why the Money or Goods *attached* in his Hands ought not to be condemned to the Uſe of the Plaintiff, having fee'd an Attorney, may plead as aforeſaid, that he hath no Money or Goods in his Hands of the Party's againſt whom the *Attachment* is made, and it will then be tried by a Jury, and Judgment awarded, *&c.* But after Trial, Bail may be put in, whereby the *Attachment* ſhall be diſſolved, but the Garniſhee, *&c.* and his Security will then be liable to what Debt the Plaintiff ſhall make out to be due, upon the Action: And an *Attachment* is never thoroughly perfected, till there is a Bail and Satiſfaction upon Record.

Attachiamenta Bonorum, A Diſtreſs taken upon Goods or Chattels, where a Man is ſued for Perſonal Eſtate or Debt, by the legal *Attachiators* or Bailiffs, as Security to anſwer an Action. There is likewiſe *Attachiamenta de Spinis & Boſco*, a Privilege granted to the Officers of a Foreſt, to take to their own Uſe, Thorns, Bruſh, and Wind-fall, within their Precincts.——*John Fitz-Nygel* Forreſter of *Bernwood, A. D.* 1230. *Debet habere Feodum in Boſco Domini Regis; videlicet* Attachiamentum *de Spinis de Boſco ſuo, & de Boſco qui vento proſtituitur.* Kennet's Paroch. Antiq. pag. 209.

Attaint, (*Attincta,*) Is a Writ that lieth after Judgment againſt a Jury that have given falſe Verdict in any Court of Record, in an Action Real or Perſonal, where the Debt or Damages amount to above 40*s.* *Stat.* 5 & 34 *Ed.* 3. *cap.* 7. It is called *Attaint*, becauſe the Party that obtains it, endeavours thereby to ſtain or *taint* the Credit of the Jury with Perjury, by whoſe Verdict he is grieved: And if the Verdict be found falſe, then the Puniſhment by the Common Law was, that the Jurors Meadows ſhould be plough'd up, their Houſes broke down, Woods grubbed up, and all their Lands and Tenements be forfeited to the Crown: But if it paſſed againſt him that brought the *Attaint*, then he was to be impriſoned and ranſomed at the King's Will. *Glanv. lib.* 2. By the Statute 23 *H.* 8. *c.* 3. the Severity of the Common Law is mitigated, where a Petty Jury is *attainted:* And now there is a pecuniary Penalty appointed; and alſo Fine, *&c.* to be impoſed by the Court. *Co. Lit.* 294. The Party grieved may have Writ of *Attaint* againſt the other Party, (whether Plaintiff or Defendant) and againſt the Jurors, or ſuch of them as ſhall be then living: It is ſaid any one that is hurt by the falſe Verdict, may bring this Writ; and if the Verdict be for Matter of Land, the Remedy commonly runs with the Land, ſo that any Party or Privy, as an Heir or Executor may have it. *F. N. B.* 109. *Co. Lit.* 294. This Action muſt be brought againſt the Jurors, and the Parties to the firſt Suit; or if the Parties be dead, their Heirs, or Executors, or any other for the moſt part that recovered by the firſt Judgment. *Dyer* 201. And *Attaint* may be brought where any material Falſhood is found, though ſome Truth be found with it; as where a Jury ſhall find a Man guilty of many Treſpaſſes, who is guilty but of one Treſpaſs. So if a Jury find any Thing againſt the Common or Statute Law, that all Men are to take Notice of, this may make them chargeable in *Attaint.* *Bro. ca.* 44. *Hob.* 227. In an *Attaint* the Plaintiff ſhall recover againſt all the Jurors, Tenants, and Defendants, the Coſts and Damages, which he ſhall ſuſtain by Delay or otherwiſe in that Suit: And if the Defendant's Plea in Bar be found againſt him, the Plaintiff will have Judgment to be reſtored to what he loſt, with Damages, by *Stat.* 11 *H.* 6. *c.* 4. and 15 *H.* 6. In the Court of King's Bench and Common Pleas, and the Court of Huſtings of *London*, *Attaint* may be brought; and the Plaintiff ſetting aſide the Verdict, ſhall have Reſtitution, *&c.* But if the firſt Verdict be affirmed, the Plaintiff ſhall be impriſoned and fined. 11 *H.* 7. *cap.* 21. Reverſioners may have an *Attaint* upon a falſe Verdict, *&c.* againſt a particular Tenant, who ſhall be reſtored to his Poſſeſſion, and the Reverſioner to his Arrearages. *Stat.* 9 *R.* 2. *c.* 3. The *Stat.* 23 *H.* 8. enacts, That upon untrue Verdicts before Judges of Record, the Thing in Demand extending to 40*l* Value, *Attaints* ſhall be granted againſt the Petty Jury; the Proceſs to be Summons, Reſummons and Diſtreſs infinite, *&c.* but the Defendants may plead, they gave a true Verdict, *&c.* to bar the *Attaint:* And the Grand Jury is to try the Verdict of the Petty Jury on the *Attaint*; and if ſuch Petty Jury be found to have given an untrue Verdict, they ſhall each forfeit 20*l.* to be divided between the King and Plaintiff, and incur ſeveral Fines at the Diſcretion of the Juſtices, and be diſabled to give Teſtimony in any Court. Alſo an *Attaint* ſhall lie for a Perſonal Thing under the Value of 40*l.* in Manner as aforeſaid; but here the Forfeiture of each petty Juror ſhall be but 5*l.* *&c.* *Stat. ibid.* The Plaintiff in *Attaint*, may not produce more Witneſſes, nor give farther Matter in Evidence, than what was depoſed in the firſt Action; but the Defendant in *Attaint*, may give new Matter in Evidence to inforce the firſt Verdict, and the Plaintiff ſhall have Time to diſprove it. *Dyer* 59. 1 *Nelſ. Abr.* 288. *Attaint* lies where a Jury gives Verdict contrary to Evidence; and where a Judge declares the Law erroneouſly, Judgment may be reverſed, but in this Caſe the Jury ſhall be excuſed. *Vaugh.* 145. *Attaint* lies not for that which is not given in Evidence; nor upon an Inqueſt of Office, *&c.* or when the Thing found is impertinent to the Iſſue. *Hob.* 53. *Co. Lit.* 355. And no *Attaint* lieth where the King is ſole Party, and the Jury find for him. 4 *Leon.* 46. A Nonſuit in *Attaint* is peremptory: And no *Superſedeas* is grantable upon *Attaint.* *Co. Lit.* 227. Alſo if all the Jurors but one are dead, the Action is gone, and no *Attaint* can be brought; and where any one dies depending the Suit, it is gone; but not by the Death of the Defendant that recovered in the firſt Action. *Dyer* 139. *Hob.* 227. This Writ to *attaint* ſo many Men of ſuch a foul Crime is ſeldom uſed, unleſs the Corruption be very groſs and apparent: And inſtead of *Attaint*, where the Verdict is ſuppoſed to be given againſt Evidence, it is now uſual to have new Trials granted: But an Iſſue found by Verdict ſhall be always intended true, until reverſed by *Attaint*, according to our old Books. *Co. Lit.* 227. The *Writ* of *Attaint*, is generally to ſummon a Jury to inquire if the former Jurors made a falſe Oath, and who were the Jury of the firſt Inqueſt, *&c.* and to have them before the Lord the King, or before the Juſtices, *&c.* *F. N. B.* 252, 253.

Form of a Count in *Attaint.*

Bedford, ſſ. A *Jury of twenty four,* &c. *of the Neighbourhood of* C. *come to recognize whether the Jurors, by whom a certain Inquiſition was, lately ſummoned before the Lord the King at* Weſtminſter, *by Bill without the Writ of our ſaid Lord the King, between* A. B. *and* C. D. *of a certain Treſpaſs,* &c. *to the ſaid* A. *by the ſaid* C. *done, and afterwards before the beloved and faithful of our ſaid Lord the King,* &c. *Juſtices aſſigned to take the Aſſiſes,* &c. *in the County aforeſaid taken, have made a falſe Oath therein, as the ſaid* C. *grievouſly complaining to our ſaid Lord the King ſheweth, or not,* &c.

Attainted, (*Attinctus*) Is uſed particularly for ſuch as are found guilty of ſome Crime, and eſpecially of Treaſon or Felony. A Man is *attainted* by

Appearance, or by Proceſs: *Attainder* on Appearance is by Confeſſion, or Verdict, *&c.* Confeſſion, when the Priſoner upon his Indictment being asked whether Guilty or Not Guilty, anſwers Guilty, without putting himſelf upon his Country; (and formerly Confeſſion was allowed before the Coroner in Sanctuary; whereupon the Offender was to abjure the Realm, and this was called *Attainder* by Abjuration.) *Attainder* by Verdict is when the Priſoner at the Bar pleadeth Not guilty, and is found guilty by the Verdict of the Jury of Life and Death. And *Attainder* by Proceſs, (otherwiſe termed *Attainder* by Default or Outlawry) is when the Party flieth, and is not found, until he have been five Times publickly called or proclaimed in the County, on the laſt whereof he is outlawed upon this Default. *Staundf. Pl. Co.* 44. 122, 182. Alſo Perſons may be *attainted* by Act of Parliament. *Attainder* of a Criminal is larger than Conviction; a Man is convicted when he is found guilty by Verdict, or confeſſes the Crime, before Judgment had; but not *attainted* 'till Judgment is alſo paſſed upon him. 1 *Inſt.* 390. A Perſon *attainted* of High Treaſon forfeits all his Lands, Tenements and Hereditaments; his Blood is corrupted, and he and his Poſterity are rendered baſe; and this Corruption of Blood cannot be taken off but by Act of Parliament. *Co. Lit.* 391. But if one commits Treaſon, and dies before *Attainder*, he forfeits nothing: And one ſlain in open Rebellion, ſhall forfeit nothing, if he be not *attainted* by Parliament. 3 *Inſt.* 12. And collateral Blood may inherit on an *Attainder*; tho' the lineal Blood is barred. If an *attainted* Perſon marries an Heireſs, and has Iſſue by her; tis ſaid that Iſſue ſhall inherit, for he claims only from the Mother. *Jenk. Cent.* 3. In the Caſe of Felony, where Land is given in Tail to *A.* and the Heirs Males of his Body, under the Statute of *Weſtm.* 2. and he commits Murder, or any Felony, his Heir ſhall have the Land, and the Blood is not corrupted: Though in Caſe of Treaſon, where the Father hath Lands, and is *attainted*, it is otherwiſe by the 26 *H.* 8. *Ibid.* 82. In Treaſon for counterfeiting the Coin, although by a late Statute Corruption of Blood is ſaved; yet the Lands of the Offender are forfeited immediately to the King on *Attainder*, it being a diſtinct Penalty from Corruption of Blood: For the Corruption may be ſaved, and the Forfeiture remain, *&c.* And accordingly ſo it is provided by ſome Statutes. 1 *Salk.* 85. *Attainders* may be reverſed or falſified, (*i. e.* proved to be falſe) by Writ of Error, or by Plea; if by Writ of Error, it muſt be by the King's Leave, *&c.* And when by Plea, it may be by Denying the Treaſon, Pleading a Pardon by Act of Parliament, *&c.* 3 *Inſt.* 232. By a King's Taking the Crown upon him, all *Attainders* of his Perſon are *ipſo facto* purged, without any Reverſal. 1 *Inſt.* 43. *Wood* 17. Lands coming to the King by *Attainder* of Treaſon, afterwards granted to another, ſhall be holden as if there were no *Attainder.* 7 *E.* 4. *c.* 5.

Attainder, (*Attincta* and *Attinctura*) Is when a Man hath committed Treaſon, *&c.* and after Conviction Sentence is paſſed on him: Or where a Perſon is *attainted* of Treaſon, and condemned by Parliament. Acts of *Attainder* of Criminals have been paſſed in ſeveral Reigns, on the Diſcovery of Plots and Rebellions, from the Reign of King *Charles* II. when an Act was made for the *Attainder* of ſeveral Perſons guilty of the Murder of King *Charles* I. to this Time; among which, that for *attainting* Sir *John Fenwick*, for conſpiring againſt King *William*, is the moſt remarkable; it being made to *attaint* and convict him of High Treaſon on the Oath of one Witneſs, juſt after a Law had been enacted, That no Perſon ſhould be tried or *attainted* of High Treaſon where Corruption of Blood is incurred, but by the Oath of two lawful Witneſſes, unleſs the Party confeſs, ſtand mute, *&c.* *Stat.* 7 *&* 8 *W.* 3. *cap.* 3. But in the Caſe of Sir *John Fenwick*, there was ſomething extraordinary; for he was indicted of Treaſon, on the Oaths of two Witneſſes; though but one only could be produced againſt him on his Trial. The 8 *W.* 3. *c.* 5. requires Sir *George Barclay*, Major General *Holmes*, and other Perſons, to ſurrender themſelves to the Lord Chief Juſtice, or Secretaries of State; or to be *attainted.* By the 13 *W.* 3. the pretended *Prince of Wales* is under *Attainder* of Treaſon, *&c.* And by 1 *Geo.* 1. *c.* 16. the late *Duke of Ormond* and others are *attainted.* And beſides theſe Acts of *Attainder*, we have lately had *Bills for inflicting Pains and Penalties*, as thoſe againſt the late *Biſhop of Rocheſter*, *&c.* *Stat.* 10 *Geo.* 1. In paſſing Bills of *Attainder*, no Evidence is neceſſary. See *Evidence.*

Attal Sariſſin, The Inhabitants and Miners of *Cornwal*, called an old deſerted Mine, that is given over, by this Name of *Attal Sariſin*, *i. e.* the Leavings of the *Saraſins*, *Saſſins*, or *Saxons.* Cowel.

Attegia, (from the Lat. *Adtegendo*) A little Houſe. 'Tis mentioned in *Ethelwerd*, *lib.* 4. *Hiſt. Angl. cap.* 3. ——*Pellunt ingenuos paſſim*, Attegias *figunt in oppido.*

Attendant, (*Attendens*) Signifies one that owes a Duty or Service to another, or in ſome Sort depends on him. Where a Wife is endowed of Lands by a Guardian, *&c.* ſhe ſhall be *attendant* on the Guardian, and on the Heir at his full Age. *Terms de Ley* 63.

Attermining, (from the Fr. *Attermine*) Is uſed for a Time or Term granted for Payment of a Debt *Ordinatio de Libertatibus perquirendis, Ann.* 27 *Ed.* 1. And in the Stat. *Weſtmin.* 2. it ſeems to ſignify the Purchaſing or Gaining a longer Time for Payment of Debts.——Atterminent *querentes uſque in proximum Parliamentum.* Weſt. 2. c. 4.

Attile, (*Attilium*, *Attilamentum*) The Rigging or Furniture of a Ship. This Word is mentioned in *Fleta*, *lib.* 1. *c.* 25. *Batellus*, (*i. e.* the Boat) *cum omni onere &* Attillamento.

Attornare Rem, To *atturn* or turn over Money and Goods, *viz.* to aſſign or appropriate them to ſome particular Uſe and Service. *Kennet*'s *Paroch. Antiq. p.* 283.

Attornato faciendo vel recipiendo, A Writ to command a Sheriff or Steward of a County-Court, or Hundred-Court, to receive and admit an *Attorney*, to appear for the Perſon that owes Suit of Court. F. *N.* B. 156. Every Perſon that owes Suit to the County-Court, Court-Baron, *&c.* may make an *Attorney* to do his Suit. *Stat.* 20 *H.* 3. *c.* 10.

Attorney, (*Atturnatus*) Is he that is appointed by another Man to do any Thing in his Abſence. *Weſtm. Symb. Crompt. Juriſd.* 105. An *Attorney* is either Publick, in the Courts of Record, the *King's Bench* and *Common Pleas*, *&c.* and made by Warrant from his Client: Or private, upon Occaſion for any particular Buſineſs, who is commonly made by Letter of *Attorney.* In antient Times thoſe of Authority in Courts had it in their Power whether they would ſuffer Men to appear or ſue by any other but themſelves; and the King's Writs were to be obtained for the Admiſſion of *Attornies:* But ſince that, *Attornies* have been allowed by ſeveral Statutes. As by 27 *Ed.* 1. *&c.* *Attornies* may be made in ſuch Pleas whereon Appeal lieth not: In Criminal Caſes, there will be no *Attornies* admitted. *Stat.* 6 *Ed.* 1. An Infant ought not to appear by *Attorney*, but by Guardian; for he cannot make an *Attorney*, but the Court may aſſign him a Guardian. 1 *Lill. Abr.* 138. Infants, after they come to full Age, may ſue by *Attorney*, tho' admitted before by Guardian, *&c.* In Action againſt Baron and Feme, the Feme being within Age, ſhe muſt appear by Guardian: But if they bring an Action, the Husband ſhall make *Attorney* for both. 1 *Danv. Abr.* 602. And it is ſaid, that where Baron and Feme are ſued, though the Wife cannot make *Attorney*, the Husband may do it for both of them. 2 *Sand.* 213. One *non Compos Mentis* being within Age is to appear by Guardian; but after he is of Age, he muſt do it by *Attorney.* 1 *Inſt.* 135. An Ideot is not to appear by *Attorney*, but in proper Perſon. A Corporation cannot appear otherwiſe than by *Attorney*, who is made by Deed under the Seal of the Coporation. *Plowd.* 91. Perſons that owe Suit to County-Courts, &c. making *Attornies.* See *Stat.* 20 *H.* 3.

Attornies at Law, Are thoſe Perſons as take upon them the Buſineſs of other Men, by whom they are retained. In reſpect of the ſeveral Courts, there are *Attornies* at large; and *Attornies* ſpecial, belonging to this or that Court only. An *Attorney* may be a Solicitor in other Courts, by a ſpecial Retainer: One may be *Attorney* on Record, and another do the Buſineſs; and there are *Attornies* who manage Buſineſs out of the Courts, &c. *Anno* 4 *H.* 4. it was enacted that the Juſtices ſhould examine *Attornies*, and remove the unskilful; and *Attornies* ſhall ſwear to execute their Offices truly, &c. The Stat. 33 *Hen.* 6. 7. was made to reſtrain the Number of *Attornies.* And by 3 *Jac.* 1. *cap.* 7. *Attornies*, &c. ſhall not be allowed any Fees laid ont for Counſel, or otherwiſe, unleſs they have Tickets thereof ſigned by them that receive ſuch Fees; and they ſhall give in true Bills to their Clients of all the Charges of Suits, under their Hands, before the Clients ſhall be charged with the Payment thereof; if they delay their Clients Suits for Gain; or demand more than their due Fees and Disburſements, the Clients ſhall recover Coſts and treble Damages; and they ſhall be for ever after diſabled to be *Attornies:* None ſhall be admitted *Attornies* in Courts of Record, but ſuch as have been brought up in the ſaid Courts, or are well practiſed and skilled, and of an honeſt Diſpoſition; and no *Attorney* ſhall ſuffer any other to follow a Suit in his Name, on Pain of forfeiting 20 *l.* to be divided between the King and the Party grieved. This Statute as to Fees to Counſel, doth not extend to Matters tranſacted in inferior Courts, but only to Suits in the Courts of *Weſtminſter-Hall.* Carth. 147. *Attornies*, &c. are to take the Oaths to the Government, under Penalties and Diſability to Practice. 13 *W.* 3. *cap.* 6. By a late Order of all the Judges, *Attornies* are to be admitted of ſome Inn of Court or Chancery, except Houſe-keepers in *London* and *Weſtminſter*, &c. And none ſhall be ſworn an *Attorney* until he is thus admitted: No *Attorney* ſhall put himſelf out of the Society he is admitted of, till he is admitted of ſome other Society, and deliver a Certificate thereof: And all *Attornies* are to be in Commons the Times ordered by the Society to which they belong; and offending therein, ſhall be put out of the Roll of *Attornies. Ordin. Mich.* 3 *Ann.* Attachments have been granted againſt thoſe who have diſobeyed this Order, in not being admitted of ſome Inn, &c. after Service of the Order. And *Attornies*, &c. may be committed for doing any Thing againſt the expreſs Rules of the Court, having Notice of ſuch Rules: As they may alſo for any ill Practices. The Act 2 *Geo.* 2. *c.* 23. ordains, That all *Attornies* ſhall be ſworn, admitted and inrolled, before allow'd to ſue out Writs in the Courts at *Weſtminſter*; and after the Firſt of *December* 1730, none ſhall be permitted to Practice, but ſuch as have ſerved a Clerkſhip of Five Years to an *Attorney*, and they ſhall be examined, ſworn and admitted in open Court; and *Attornies* ſhall not have more than two Clerks at one Time, &c. every Writ and Copy of any Proceſs ſerved on a Defendant, and alſo every Warrant made out thereon, ſhall be indorſed with the Name of the *Attorney* by whom ſued forth; and no *Attornies* or Solicitors ſhall commence any Action for Fees till a Month after the Delivery of their Bills ſubſcribed with their Hands: Alſo the Parties chargeable may in the mean Time get ſuch Bills taxed, and upon the Taxation the Sum remaining due is to be paid in full of the ſaid Bills, or in Default the Parties ſhall be liable to Attachment, &c. And the *Attorney* is to pay the Coſts of Taxation, if the Bill be reduced a ſixth Part. There is a Penalty of 50 *l.* inflicted, and Diſability to Practice, for acting contrary to this Statute. By the 6 *Geo.* 2. *cap.* 27. Perſons having ſerved Five Years as Clerks to *Attornies*, though not bound by Contract; or who had been bound, but not ſerved Five Years; and Sons of *Attornies* that ſerved that Time with their Fathers, &c. were to be ſworn and admitted. By 12 *Geo.* 2. *c.* 13. *Attornies*, &c. that Act in any County-Court, without being admitted according to the Statute 2 *Geo.* 2. ſhall forfeit 20 *l.* recoverable in the Courts of Record: And no *Attorney* who is a Priſoner in any Priſon, ſhall ſue out any Writ, or proſecute Suits; if he doth, the Proceedings ſhall be void, and ſuch *Attorney*, &c. is to be ſtruck off the Roll. But Suits commenced before by them, may be carried on. A *Quaker* ſerving a Clerkſhip, and taking his ſolemn Affirmation inſtead of an Oath, ſhall be admitted an *Attorney.* By the Stat. 12 *Geo.* 1. *cap.* 29. If any who hath been convicted of Forgery, Perjury, &c. ſhall practice as an *Attorney* or Solicitor in any Suit or Action in any Court, the Judge where ſuch Action ſhall be brought, hath Power to tranſport the Offender for ſeven Years, by ſuch Ways, and under ſuch Penalties as Felons. *Attornies* of Courts, &c ſhall not receive or procure any Blank Warrant for Arreſts from any Sheriff, without Writ firſt delivered, on Pain of ſevere Puniſhment, Expulſion, &c. And no *Attorney* ſhall make out a Writ with a Clauſe *Ac etiam Bille*, &c. where ſpecial Bail is not required by Law. *Paſch.* 15 *Car.* 2. *Attornies* are to enter and file Warrants of *Attorney* in every Suit on Pain of 10 *l.* and Impriſonment. *Stat.* 32 *Hen.* 8. And the Plaintiff's *Attorney* is to file his Warrant the Term he declares, and the Defendant his the Term he appears. 4 & 5 *Ann.* Action upon the Caſe lies for a Client againſt his *Attorney*, if he appear for him without a Warrant; or if he plead a Plea for him, for which he hath not his Warrant. 1 *Lill. Abr.* 140. But if an *Attorney* appear without Warrant, and Judgment is had againſt his Client, the Judgment ſhall ſtand, if the *Attorney* be reſponſible: *Contra*, if the *Attorney* be not reſponſible. 1 *Salk.* 88. Action lies againſt an *Attorney* for ſuffering Judgment againſt his Client by *Nil dicit*, when he had given him a Warrant to plead the General Iſſue: This is underſtood where it is done by Covin. 1 *Danv. Abr.* 185. If an *Attorney* makes Default in a Plea of Land, by which the Party loſes his Land, he may have a Writ of Deceit againſt the *Attorney*, and recover all in Damages. *Ibid.* An *Attorney* owes to his Client Secrecy and Diligence, as well as Fidelity; and if he take Reward on the other Side, or cauſe any *Attorney* to appear and confeſs the Action, &c. he may be puniſhed. *Hob.* 9. But Action lies not againſt an *Attorney* retained in a Suit, tho' he knows the Plaintiff hath no Cauſe of Action; he only acting as a Servant in Way of his Profeſſion. 4 *Inſt.* 117. 1 *Mod.* 209. Tho' where an *Attorney* or Solicitor is found guilty of a groſs Neglect; the Court of Chancery has in ſome Caſes ordered him to pay the Coſts. 1 *P. Williams* 593. He who is *Attorney* at one Time, is *Attorney* at all Times, pending the Plea. 1 *Danv.* 609. And the Plaintiff or Defendant may not change his *Attorney*, while the Suit is depending, without Leave of the Court, which would reflect on the Credit of *Attornies*; nor until his Fees are paid. *Mich.* 14 *Car.* A Cauſe is to proceed notwithſtanding the Death of an *Attorney* therein; and not be delayed on that Account: For if an *Attorney* dieth, the Plaintiff or Defendant may be required to make a new *Attorney.* 2 *Keb.* 275. An *Attorney*, Solicitor, &c. having

Fees due to him, may detain Writings until his juſt Fees are paid: But if there be no Fees due to him, the Court on Motion will compel the Delivery of them. 1 *Lill.* 148. Any Papers may be detained by an *Attorney* till the Money is paid for drawing them; but he cannot detain Writings which are delivered to him on a Special Truſt, for the Money due to him in that very Buſineſs, &c. if he doth, a Rule may be obtained that he ſhall deliver them by ſuch a Day, or an Attachment ſhall iſſue againſt him. *Mod. Caſ. in Law and Equity* 306. The Court will make a Rule for Delivery of Writings when they come to the *Attorney*'s Hands by Way of his Buſineſs; and when they come to him in any other Manner, the Party muſt bring his Action. 1 *Salk.* 87. *Attornies* have the Privilege to ſue and be ſued only in the Courts at *Weſtminſter*, where they Practiſe: They are not obliged to put in Special Bail, when Defendants; but when they are Plaintiffs, they may inſiſt upon Special Bail in all Caſes. 1 *Vent.* 299. *Wood*'s *Inſt.* 450. And they ſhall not be choſen into Offices, againſt their Wills. See *Privilege.*

Attorney of the Dutchy Court of Lancaſter, (*Atturnatus Curiæ Ducatus Lancaſtriæ*) Is the ſecond Officer in that Court; and ſeems for his Skill in Law to be there placed as *Aſſeſſor* to the Chancellor, and choſen for ſome ſpecial Truſt repoſed in him, to deal between the King and his Tenants. *Cowel.*

Attorney General, Is a Great Officer under the King, made by Letters Patent. It is his Place to exhibit Informations, and proſecute for the Crown, in Matters Criminal; and to file Bills in the Exchequer, for any Thing concerning the King in Inheritance or Profits; and others may bring Bills againſt the King's *Attorney*. His proper Place in Court, upon any ſpecial Matters of a Criminal Nature, wherein his Attendance is required, is under the Judges, on the Left Hand of the Clerk of the Crown: But this is only upon ſolemn and extraordinary Occaſions; for uſually he does not ſit there, but within the Bar in the Face of the Court. *Mich.* 22 *Car. B. R.*

Attornment, (*Attornamentum*, from the Fr. *Tourner*) Signifies the Tenant's Acknowledgment of a new Lord, on the Sale of Lands, &c. As where there is Tenant for Life, and he in Reverſion grants his Right to another; it is neceſſary the Tenant for Life agree thereto, which is called *Attornment*. It gives no Intereſt, but only perfects the Grant of another: And Tenant in Tail is not compellable to *attorn*, on the Reverſion being granted; he having an Eſtate of Inheritance. 1 *Inſt.* 316, 319. This *Attornment* is in Deed, or in Law; voluntary and compulſory; and may be made, as ſet down by *Littleton*, in theſe Words, *viz. I attorn to you by Force of the Grant, or I agree to the Grant, or I become your Tenant*, &c. Or by any Words or Act which import an Aſſent to the Grant. *Litt.* 551. 1 *Danv* 623. It may be made by Payment of a Penny Rent, &c. to the Grantee. 1 *Inſt.* 309. Where an Eſtate is granted to one for Life, Remainder to another in Fee, *Attornment* to the Tenant for Life is good to him in Remainder. 1 *Inſt.* 312. By Feoffment of a Manor, the Services do not paſs without *Attornment.* 1 *Danv. Abr.* 612. But if a Perſon comes to an Eſtate by Recovery; or where a Fine is levied of Lands; or by Deed of Bargain and Sale inrolled, according to the Statute, there needs no *Attornment*, they being in by the Stat. 27 *Hen.* 8. *cap.* 10. And if a Reverſion be deviſed by Will to another, the Eſtate paſſeth without *Attornment.* 8 *Hen.* 6. This was a large Head in our Common Law; but now much of this Learning is out of Uſe: And by a late Statute, it is enacted, That all Grants and Conveyances of Manors, Lands, Rents, Reverſions, &c. by Fine, or otherwiſe, ſhall be good without the *Attornment* of the Tenants of ſuch Lands, or of the particular Tenant upon whoſe Eſtate any ſuch Reverſion, &c. ſhall be expectant or depending: But Notice muſt be given of the Grant, to the Tenant; before which he ſhall not be prejudiced by Payment of any Rent to the Grantor, or for Breach of the Condition for Non-payment. *Stat.* 4 & 5 *Annæ.* And *Attornments* of Lands, &c. made by Tenants to Strangers ſhall be void, and their Landlord's Poſſeſſion not affected thereby: Though this ſhall not extend to vacate any *Attornment* made purſuant to a Judgment at Law, or with Conſent of the Landlord; or on a forfeited Mortgage, &c. by 11 *Geo.* 2. *c.* 19.

Attrapper, (*Fr.*) Taken, or ſeized. *Law French Dict.*

Avage, or *Aviſage*, A Rent or Payment by Tenants of the Manor of *Writtel* in *Eſſex*, upon *St. Leonard*'s Day, 6 *November*, for the Privilege of Pawnage in the Lord's Woods, *viz.* For every Pig under a Year old, an Half-penny; for every yearling Pig, one Penny; and for every Hog above a Year old Two pence.

Avantagium, Profit and Advantage. ——Walterus *Cantuar. Archiep. ad feodi firmam tradidit* Johanni *de B. terras in*, &c. *cum omnibus ſuis utilitatibus ac* Avantagiis *inde provenientibus.* Regiſt. Eccl. Chriſti Cantuar. MS. Anno 11 Ed. 2.

Auctionarii, *Auxionarii*, Sellers, Regrators, or Retailers. *Placit. Parl.* 18 *Ed.* 1. But more properly Brokers.

Audience Court, (*Curia Audienciæ Cantuarienſis*) Is a *Court* belonging to the Archbiſhop of *Canterbury*, having the ſame Authority with the *Court* of Arches, though inferior to it in Dignity and Antiquity. It is held in the Archbiſhop's Palace; and in former Times the Archbiſhops were wont to try and determine a great many Eccleſiaſtical Cauſes in their own Palaces, but before they pronounced their definitive Sentence, they committed the Matter to be argued by Men learned in the Law, whom they named their Auditors; and ſo in Time it grew to one ſpecial Man, who at this Day is called *Cauſarum negotiorumque* Audientiæ *Cantuarienſis Auditor Officialis.* And to the Office of Auditor was formerly joined the Chancery of the Archbiſhop, which meddleth not with any Point of contentious Juriſdiction; that is Deciding of Cauſes between Party and Party, but only ſuch as are of Office, and eſpecially as are *voluntariæ Juriſdictionis*, as the Granting the Cuſtody of Spiritualties, during the Vacancy of Biſhopricks, Inſtitutions to Benefices, Diſpenſations, &c. but this is now diſtinguiſhed from the *Audience.* The Auditor of this *Court* antiently by ſpecial Commiſſion was *Vicar General* to the Archbiſhop, in which Capacity he executed Eccleſiaſtical Juriſdiction of every Dioceſe becoming vacant within the Province of *Canterbury.* 4 *Inſt.* 337.

Audiendo & terminando, A Writ, or rather a Commiſſion to certain Perſons, when any Inſurrection or Great Riot is committed in any Place, for the Appeaſing and Puniſhment thereof. *F. N. B.* 110. See *Oyer* and *Terminer.*

Audita Querela, Is a Writ that lies where a Man hath any Thing to plead, but hath not a Day in Court to plead it: And it is uſually brought where one is bound in a Statute-Merchant, Statute-Staple, or Recognizance, or Judgment is given againſt him for Debt, and his Body in Execution thereupon, at the Complaint of the Party, upon Suggeſtion of ſome juſt Cauſe why Execution ſhould not be granted, as a Releaſe, or other Exception. This Writ is granted, by the Lord Chancellor to the Juſtices of either Bench, willing them to grant Summons to the County where the Creditor lives, for his Appearance before them at a certain Day. *F. N. B.* 102. To Writs of Execution the Defendant cannot plead; ſo that if there be any

Matter ſince the Judgment, to diſcharge him of the Execution, he is to have *Audita Querela*; upon which, the Juſtices ſhall hear the Complaint, and do Right: And *Audita Querela* cannot be brought on a Releaſe, until Judgment is entered of Record. 1 *Mod.* 111. On a Statute, the Conuſor or his Heir may bring *Audita Querela*, before Execution is ſued out; but this may not be done by a Stranger to the Statute, or a Purchaſer of the Land. 1 *Danv. Abr* 630 3 *Rep.* 13. An *Audita Querela* is in Nature of a Suit in Equity, where a Perſon is charged with a Debt that is paid, or being releaſed, &c. 2 *Cro.* 29. And there muſt be a Charge and Burthen come, or coming upon the Party that is to have it, of which he ought by Law to be diſcharged; and then it is to be in ſuch a Caſe wherein he hath no other Way to relieve himſelf. 2 *Cro.* 29. 1 *Cro.* 44. And it may be brought againſt the Proſecutor himſelf, and ſometimes againſt him and others that ought to bear Part of the Burthen with him. *Kelw.* 25. If a Leſſee covenants for him and his Aſſigns to repair, and the Leſſee aſſign over, and the Covenant is broken; if the Leſſor ſues one of them and recovers Damages, and then ſues the other, he may bring *Audita Querela* for his Relief. *Bro. cap.* 74. And where a Man hath Goods from me by my Delivery, and another takes them from him, ſo that he is liable to both our Suits; and one of us ſue and recover againſt him, and then the other ſues him, his Remedy is this Writ. *Dyer* 232 One binds himſelf and his Heirs in an Obligation, if the Obligee recover of the Heir, and after ſue the Executors for the ſame Cauſe, &c. they may have the Writ *Audita Querela*. *Plowd.* 439. If two joint and ſeveral Obligors are ſued jointly, and both taken in Execution, the Death or Eſcape of one will not diſcharge the other, ſo as to give him this Action; but if ſuch Obligors be proſecuted ſeverally, and a Satisfaction is once had againſt one of them, or againſt the Sheriff upon the Eſcape of one, the other may have it. *Hob.* 58. 5 *Rep.* 87. Judgment is had againſt a Sheriff on an Eſcape of a Perſon in Execution, and after the firſt Judgment is reverſed for Error, the Sheriff ſhall have Relief by *Audita Querela*. 8 *Rep.* 142. If the Plaintiff hath had Satisfaction againſt one Treſpaſſer, and he proceed to require it againſt the other; he ſhall have this Writ. *Hob.* 66. And where there is Judgment againſt three, and one of them taken in Execution, they may all join in *Audita Querela*, when they have Cauſe to have the ſame. 3 *Cro.* 443. A Plaintiff that ſues an Adminiſtrator, has his Letters of Adminiſtration revoked; the Defendant muſt be relieved by *Audita Querela*, for he cannot plead it. *Stiles* 417. If one accepts of a leſſer Sum of Money for a greater Due, and after the Day, and yet ſues the Bond; this Writ will not lie, becauſe it lieth only where a Diſcharge is in Law. *Trin.* 18 *Jac.* 1 *B. R.* It may be brought by an Infant in the King's Bench or Common Pleas, to avoid a Statute acknowledg'd by him whilſt he was within Age. 1 *Cro.* 208. The Writ *Audita Querela* may be had, where a Recogniſance or Statute entered into is defective, and not good; or being upon an uſurious Contract, by Dureſs or Impriſonment, where there is a Defeaſance upon it, &c. *Moor, Ca.* 1097. 1 *Brownl.* 39. 2 *Bulſt.* 320. So upon ſhewing an Acquittance of the Cogniſee, on a Suggeſtion that he had agreed to deliver up the Statute. 1 *Roll.* 309. Where one enters into a Statute, and after ſells his Lands to divers Purchaſors; or Judgment is had againſt a Man, who leaves his Land to ſeveral Heirs, &c. and one of the Purchaſors, or one Heir alone is charged, he may have this Writ againſt the Reſt to contribute to him. 3 *Rep.* 44. 2 *Bulſt.* 15. Upon *Audita Querela* brought, a *Superſedeas* ſhall go to ſtay Execution: And the Judgment in this Action is to be diſcharged of Execution. *Hob.* 2. If an *Audita Querela* be unduly gotten, upon a falſe Surmiſe, it may be quaſhed. 1 *Bulſt.* 140. This Writ lies not after Judgment upon a Matter which the Party might have pleaded before. *Cro. Eliz.* 35. A bare Surmiſe is not ſufficient to avoid a Judgment: But generally ſome Specialty muſt be ſhewn. *Cro. Jac.* 579. Upon a Releaſe or other Deed pleaded, no *Superſedeas* will be granted till the Plaintiff in the *Audita Querela* hath brought his Witneſſes into Court to prove the Deed: And if Execution be executed before, Bail is to be put in by Allowance of the Court. 1 *Lill. Abr.* 151. On Allowance of *Audita Querela*, Bail muſt be given in Court; unleſs in Caſes of Neceſſity, when it may be put in before two Judges. *Palm.* 422. And by Bail the Party is in Cuſtody of the Law, and if he make not out his *Audita Querela*, he muſt render his Body in Execution again, or pay the Debt for which he is in Execution, or elſe his Bail muſt pay it. If after Judgment againſt Bail, the Judgment againſt the Principal is reverſed, or the Money paid by the Principal; the Bail may have *Audita Querela*. *Cro. Jac.* 645. 8 *Rep.* 143. And it may be brought by the Bail to avoid an Execution againſt them, where no Proceſs is ſued forth againſt the Principal in his Life time, &c. *Goldſb.* 174. If one taken in Execution be ſet at Liberty by the Plaintiff, and afterwards taken again and detained in Priſon upon the ſame Execution, he may bring *Audita Querela* to be enlarged; for by the firſt Enlargement by the Plaintiff the Execution is diſcharged, and an Execution once diſcharged is ever diſcharged, and ſuppoſeth a Satisfaction. 1 *Lill.* 151. Where a Plaintiff in *Audita Querela* gets Judgment, he ſhall have Reſtitution of his Goods, though taken in Execution before the Writ brought. *Sid.* 74. If an *Audita Querela* is founded on a Record, or the Perſon bringing it is in Cuſtody, the Proceſs upon it is a *Scire facias*; but if founded on Matter of Fact, or the Party is at large, then the Proceſs is a *Venire*. 1 *Salk.* 92. A Man nonſuited in an *Audita Querela*, may have a new Writ. *F. N. B.* 104. When Lands are extended on any Statute, &c. before the Time, *Audita Querela* lieth. 22, 46 *E.* 3. A Writ in the Nature of an *Audita Querela*, has been made out returnable in *B. R.* on a ſpecial Pardon, ſetting forth the whole Matter. *Jenk. Cent.* 109. And in ſome Caſes after a Judgment, the Court will relieve the Party on Motion, without *Audita Querela*. 1 *Salk.* 93.

A Writ of *Audita Querela*.

GEORGE *the Second*, &c. *To our Juſtices aſſign'd to hold Pleas before us, Greeting. We having received Information, by the grievous Complaint of* A. B. *That whereas* C. D. *in* Eaſter-*Term*, &c. *and now hath to the Damage of the ſaid* A. &c. *wherefore the ſaid* A. *hath beſought us to provide him Relief, and being unwilling that the ſaid* A. *ſhould be any Ways injured, and deſirous that what is right and juſt ſhould be done in this Caſe: We command you, that in Order to hear the Complaint of the ſaid* A. *you call before you the aforeſaid Parties, and ſuch others as it ſhall ſeem meet to you to convene; and having heard the aforeſaid Parties, and their ſeveral Reaſons, you cauſe to be done full and ſpeedy Juſtice to the ſaid Parties, which of Right, and according to the Laws and Cuſtoms of our Kingdom, you ſhall ſee ought to be done.* Witneſs, &c.

Auditor, (*Lat.*) Is an Officer of the King, or ſome other great Perſon, who examines yearly the Accounts of all Under-Officers, and makes up a General Book, which ſhews the Difference between their Receipts and Charge, and their ſeveral Allowances, commonly called *Allocations*: As the *Auditors* of the *Exchequer*, take the Accounts of thoſe Receivers who collect the Revenues. 4 *Inſt.* 106.

Receivers General of Fee-Farm Rents, &c. are alſo termed *Auditors*, and hold their *Audits* for adjuſting the Accounts of the ſaid Rents at certain Times and Places appointed. And there are *Auditors* aſſigned by the Court to *audit* and ſettle Accounts in Actions of Account, and other Caſes, who are proper Judges of the Cauſe, and Pleas are made before them, &c. 1 *Brownl.* 24.

Auditor of the Receipts, An Officer of the *Exchequer*, that files the Tellers Bills, and having made an Entry of them, gives the Lord Treaſurer, &c. weekly a Certificate of the Money received: He makes Debentures to the Tellers, before they pay any Money; and takes their Accounts: He alſo keeps the *Black Book* of Receipts, and the Treaſurer's Key of the Treaſury, and ſeeth every Teller's Money locked up in the Treaſury. 4 *Inſt.* 167.

Auditors of the Impreſt, Are Officers in the *Exchequer* who have the Charge of *auditing* the great Accounts of the King's Cuſtoms, Naval and Military Expences, of the *Mint*, &c. and any Money *impreſted* to Men for his Majeſty's Service. *Pract. Excheq.* 83.

Auditores, Is the ſame with *Audientes*, *i. e.* the Catechumens, or thoſe who were newly inſtructed in the Myſteries of the Chriſtian Religion before they were admitted to Baptiſm; and *Auditorium* is that Place in the Church where they ſtood to hear, and be inſtructed. 'Tis what we now call *Navis Eccleſiæ:* And in the Primitive Times, the Church was ſo ſtrict in keeping the People together in that Place, that the Perſon who went from thence in Sermon Time was excommunicated. *Blount.*

Avenage, (from the Lat. *Avena*) A certain Quantity of Oats paid by a Tenant to his Landlord as a Rent, or in Lieu of ſome other Duties.

Avenor, (*Avenarius*, from the Fr. *Avoine*, *i. e.* Oats) Is an Officer belonging to the King's Stables, that provides Oats for his Horſes: He is mentioned 13 *Car.* 2. *cap.* 8.

Aventuræ, *Adventures* or Trials of Skill at Arms, and ſignifies Military Exerciſes on Horſeback. —— *Aſſiſa de Armis* 36 *Hen.* 3. *Brady's Append. Hiſt. Eng.* 250. And 'tis mentioned in *Addit. Mat. Pariſ. p.* 149. *Quod nulli conveniant ad turniandum, vel burbandum nec ad alias quaſcunque* Aventuras.

Aventure, (properly *Adventure*) A *Miſchance* cauſing the Death of a Man: As where a Perſon is ſuddenly drowned, or killed by any Accident, without Felony. 1 *Inſt.* 391.

Avera, (*quaſi Overa*, from the Fr. *Ouvre* and *ouvrage*, *velut* Operagium) ſignifies a Day's Work of a Ploughman, formerly valued at 8 *d.* It is found in *Domeſday*. 4 Inſt. 269.

Average, (*Averagium*) Is ſaid to ſignify Service which the Tenant owes to his Lord by Horſe or Carriage: But it is more commonly uſed for a Contribution that Merchants and others make towards their Loſſes, who have their Goods caſt into the Sea for the Safeguard of the Ship, or of the other Goods and Lives of thoſe Perſons that are in the Ship, during a Tempeſt. It is in this Senſe called *Average*, becauſe it is proportioned and allotted after the Rate of every Man's Goods carried. *Stat.* 32 *Hen.* 1. 14 *Car.* 2. By the Laws of the Sea, in a Storm, when there is an extreme Neceſſity, the Goods, Wares, Guns, or whatſoever elſe is on Board the Ship, may (by conſulting the Mariners) be thrown over Board by the Maſter, for the Preſervation of the Ship; and it ſhall be made good by *Average* and Contribution. *Stat.* 49 *E.* 3. But if the Maſter takes in more Goods than he ought, without Leave of the Owners and Freighters, and a Storm ariſeth at Sea, and Part of the Freightors Goods are thrown over board, the remaining Goods are not ſubject to *Average*; but the Maſter is to make good the Loſs out of his own Eſtate: And if the Ship's Gear or Apparel be loſt by Storm, the ſame is not within the *Average*. *Leg. Rhod.* If Goods are caſt over board before half the Voyage is performed, they are to be eſtimated at the Price they coſt: But if they are ejected afterwards, then at the Price as the reſt are ſold at the Port of Arrival. *Leg. Oleron.* Where Goods are given to Pirates by Way of Compoſition to ſave the reſt, there ſhall be *Average*, by the Civil Law. *Moor* 297. —— *Average* is likewiſe a ſmall Duty, paid to Maſters of Ships when Goods are ſent in another Man's Ship, for their Care of the Goods, over and above the Freight. ——*Paying ſo much Freight for the ſaid Goods, with Primage and* Average *accuſtomed.* Words in Bills of Lading.

Average of Corn Fields, The Stubble or Remainder of Straw and Graſs left in Corn Fields after the Harveſt is carried away. In *Kent* called the *Gratten*, and in other Parts the *Roughings*, &c.

Aver Corn, Is a reſerved Rent in *Corn*, paid by Farmers and Tenants to Religious Houſes: And ſignifies by *Somner* Corn drawn to the Lord's Granary, by the working Cattle of the Tenant. 'Tis ſuppoſed that this Cuſtom was owing to the Saxon *Cyriac Sceat*, Church Seed, a Meaſure of *Corn* brought to the Prieſt annually on St. *Martin*'s Day, as an Oblation for the Firſt-fruits of the Earth: Under which Title the Religious had Corn Rent paid yearly; as appears by an Inquiſition of the Eſtate of the Abbey of *Glaſtenbury*, *A. D.* 1201.

Aver Land, Seems to have been ſuch Lands as the Tenants did plough and manure, *cum* Averiis *ſuis*, for the proper Uſe of a Monaſtery, or the Lords of the Soil. *Mon. Angl.*

Aver Peny, (or *Average Peny*) Money paid towards the King's *Averages* or Carriages, or to be freed thereof.——Aver Peny *hoc eſt, quietum eſſe de diverſis Denariis pro* Averagiis *Domini Regis.* Raſtal.

Aver Silver, A Cuſtom or Rent formerly ſo called. *Cowel.*

Averia, Cattle: *Spelman* deduces the Word from the Fr. *Ovre*, Work, as if chiefly working Cattle: Though it ſeems to be more probably from *Avoir* to have or poſſeſs; the Word ſometimes including all Perſonal Eſtate, as *Catalla* did all Goods and Chattels. This Word is uſed for Oxen or Horſes of the Plough; and in a general Senſe any Cattle. —— *Homines per* Averia *ſua, viz. Equos & Boves, & affros graviter diſtrinxit. W. Thorn. in Ed* 2. 'Tis uſed in the ſame Senſe in *W.* 2. *c.* 18. Averia *Elongata*; ſee *Elongata*.

Averiis Captis in Withernam, A Writ for the taking of Cattle to his Uſe, who hath Cattle unlawfully diſtrained by another, and driven out of the County where they were taken, ſo that they cannot be replevied by the Sheriff. *Reg. Orig.* 82. If the Cattle are put into any ſtrong Place in the ſame County, the Sheriff may take the *Poſſe Comitatus*, and break into it, to make the Replevin. 1 *P. & M.* But when they are driven out of the County, he hath no Authority to purſue them.

Averment, (*Verificatio*, from the Fr. *Averer*, *i. e. Verificare, Teſtari*) Is an Offer of the Defendant to make good or juſtify an Exception pleaded in Abatement or Bar of the Plaintiff's Action: And it ſignifies the Act, as well as the Offer of juſtifying the Exception; and not only the Form, but the Matter thereof. *Co. Lit.* 362. *Averment* is either General, or Particular; General, which concludes every Plea, &c. or is in Bar of a Replication, or other Pleadings, containing Matter Affirmative, and ought to be with theſe Words, *Et hoc paratus eſt verificare, &c.* Particular *Averment* is when the Life of Tenant for Life, or of Tenant in Tail, &c. is *averred*. *Ibid.* Where one Thing is to be done in Conſideration of another, on Contracts, &c. there muſt be an *Averment* of Performance: But where there is Promiſe againſt Promiſe, there needs no *Averment*; for each Party hath his Action. 1 *Lev.* 87. The Uſe of *Averment* being to aſcertain what is alledged doubtfully, Deeds may ſometimes be made good by *Averment*, where a Perſon is not certainly named; but when the Deed it ſelf is void for Incertainty, it cannot be made good by *Averment.* 5 *Rep.* 155. *Averment* cannot be made againſt a Record, which imports in its ſelf an uncontrolable Verity. 1 *Inſt.* 26. Nor ſhall it be admitted againſt a Will concerning Lands. 5 *Rep.* 68. And an *Averment* ſhall not be allowed where the Intent of the Teſtator cannot be collected out of the Words of the Will. 4 *Rep.* 44. One may not *aver* a Thing contrary to the Condition of an Obligation, which is ſuppoſed to be made upon good Deliberation, and before Witneſſes, and therefore not to be contradicted by a bare *Averment.* 1 *Lill. Abr.* 156. If an Heir is ſued on the Bond of his Anceſtor, it muſt be *averred* that the Heirs of the Obligor were expreſly bound. 2 *Saund.* 136. Another Conſideration than mentioned in a Deed, may be *averred*, where it is not repugnant or contrary to the Deed. *Dyer* 146. But a Conſideration may not be *averred*, that is againſt a particular expreſs Conſideration; nor may *Averment* be againſt a Conſideration mentioned in the Deed, that there was no Conſideration given. 1 *Rep.* 176. 8 *Rep.* 155. No *Averment* will lie upon a Deed of another Uſe, againſt the Uſes expreſſed in the Deed; but where no Uſe is expreſſed, or but incertainly, an *Averment* ſhall be admitted, and may ſerve for Addition or Explication. 2 *Rep.* 75. *Averment* may be of a Uſe upon any Fine, or common Recovery; tho' not of any other Uſe than what is expreſſed in it: It may be received to reconcile a Fine, and the Indenture to lead the Uſes. *Dyer* 311. 2 *Bulſt.* 235. 1 *And.* 312. If an Eſtate is made to a Woman that hath a Husband by Fine or Deed, for her Life; in this Caſe it may be *averred* to be made to her for her Jointure, altho' there be another Uſe or Conſideration expreſſed. 4 *Rep.* 4. If a Piece of Ground was anciently called by one Name, and of late is called by another, and it is granted to me by this new Name; an *Averment* may be taken that it is all one Thing, and it will make it good. *Dyer* 37, 44. No *Averment* lies againſt any Returns of Writs, that are definitive to the Trial of the Thing return'd; as the Return of a Sheriff upon his Writs, &c. But it may be where ſuch are not definitive; and againſt Certificates upon Commiſſions out of any Court: Alſo againſt the Returns of Bailiffs of Franchiſes, ſo that the Lords be not prejudiced by it. *Dyer* 348. 8 *Rep.* 121. 2 *Cro.* 13. When Certainty is expreſſed by Argument and Implication in Pleading, there it need not be *averred.* 2 *Bulſt.* 95, 142. A ſpecial *Averment* muſt be made upon the Pleading of a general Pardon, for the Party to bring himſelf within the Pardon. *Hob.* 67. A Perſon may *aver* he is not the ſame Perſon on Appeal of Death in Favour of Life. 1 *Nelſ. Abr.* 305. But Pleas merely in the Negative, ſhall not be *averred*, becauſe they cannot be proved: Nor ſhall what is againſt Preſumption of Law, or any Thing apparent to the Court. 1 *Inſt.* 362, 373. The Statute of *Weſtm.* 2. 13 *Ed.* 1. gives the *Averment*, not ſummoned according to Law, &c. on a Bond given to the Sheriff or Gaoler, contrary to the 23 *H.* 6. there may be *Averment* by that Statute: Upon Bonds for Uſury, the Uſury may be *averred* by Virtue of 13 *Eliz.* And ſo in Caſe of Simony. *Stat.* 31 *Eliz.* But there is no *Averment* of Maintenance. *Jenk. Cent.* 94, 108, 121. By Statute, no Exception or Advantage ſhall be taken upon a Demurrer, for Want of *Averment* of *hoc paratus eſt*, &c. except the ſame be ſpecially ſet down for Cauſe of Demurrer. 4 & 5 *Ann.*

Averrare, To carry Goods in a Waggon, or upon loaded Horſes, a Duty required of ſome cuſtomary Tenants.——*Debent fruges Domini metere, prata falcare, & carriare &* Averrare. Cartular. Glaſton. MS. f. 4.

Augea, A Ciſtern for Water.——*Epiſcopus* B. *concedit Civibus* W. *unum caput pro conductu aquatico cum* Augeis *ſuſpiralibus, & cæteris Machinis, ſub & ſuper terraneis.* A. D. 1451. Reg. Eccl. Well. MS.

Augmentation, (*Augmentatio*) The Name of a Court erected 27 *H.* 8. for determining Suits and Controverſies relating to Monaſteries and Abbey Lands. The Intent of this Court was, that the King might be juſtly dealt with touching the Profits of ſuch Religious Houſes, as were given to him by Act of Parliament. It took its Name from the *Augmentation* of the Revenues of the Crown, by the Suppreſſion of Religious Houſes: And the Office of *Augmentation*, which hath many curious Records, remains to this Day, though the Court hath been long ſince diſſolved. *Terms de Ley* 68.

Aviſamentum, Advice, or Counſel——*De* Aviſamento & *conſenſu Concilii noſtri Conceſſimus*, &c. was the common Form of our Kings Grants.

Aula, *i. e.* A Court Baron, *Aula ibidem tent die*, &c. Aula *Eccleſiæ* is that which is now termed *Navis Eccleſiæ* Eadm. lib. 6. p. 141.

Aumone, (Fr. *Aumoſne*, Alms) Tenure in *Aumone* is where Lands are given in Alms to ſome Church, or Religious Houſe, upon Condition that a Service or Prayers ſhall be offered at certain Times for the Repoſe of the Donor's Soul. *Brit.* 164. Vide *Frankalmoign.*

Auncel-Weight, (*quaſi Hand Sale Weight*, or from *Anſa*, the Handle of the Ballance) An ancient manner of *Weighing*, by the hanging of Scales or Hooks at each End of a Beam or Staff, which by lifting up in the Middle with one's Finger or Hand, diſcovered the Equality or Difference between the *Weight* at one End and the Thing *weighed* at the other. This *Weighing* being ſubject to great Deceit, was prohibited by ſeveral Statutes, and the even Ballance commanded in its Stead. 34 *Ed.* 3. 8 *Hen.* 6. 22 *Car.* 2, &c. But notwithſtanding it is ſtill uſed in ſome Parts of *England*: And what we now call the *Stilliards*, a Sort of Hand-weighing among Butchers, being a ſmall Beam with a *Weight* at one End, (which ſhews the Pounds by certain Notches) ſeems to be near the ſame with the *Auncel-Weight.*

Aunciatus, A Word ſignifying Antiquated—— *Sicut Charta eorum* aunciata *eſt & Libertas anterior.* Brompton, lib. 2. cap. 24. par. 6.

Avoidance, In the general Signification is when a Benefice is void of an Incumbent; in which Senſe it is oppoſed to Plenarty. *Avoidances* are either in Fact, as by Death of the Incumbent; or in Law: And may be by Ceſſion, Deprivation, Reſignation, &c. In the firſt Caſe, the Patron muſt take Notice of the *Avoidance* at his Peril, ſo as to preſent within ſix Months to prevent Lapſe to the Biſhop; but in the laſt Caſe of *Avoidances* by Law, the Ordinary muſt give Notice to the Patron before he can have Title to preſent by Lapſe. *Dyer* 347. There are *Avoidances* by Act of Parliament, wherein there muſt be a judicial Sentence pronounced to make the Living void: If a Man hath one Benefice with Cure, &c. and take another with Cure, without any Diſpenſation to hold two Benefices, in ſuch Caſe the firſt is void by the Act 21 *Hen.* 8. *c.* 13. if it was above the Value of 8 *l.* During an *Avoidance*, it is ſaid that the Houſe and Glebe of the Benefice are in Abeyance: But by the Stat. 28 *Hen.* 8. *cap.* 11. The Profits ariſing during the *Avoidance* are given to the next Incumbent, towards Payment of the Firſt-fruits; Though the Ordinary may receive the Profits to provide for the Service of the

Church, and ſhall be allowed the Charges of ſupplying the Cure, &c. for which Purpoſe the Church-wardens of the Pariſh are uſually appointed. The next *Avoidance* of a Church may be granted by Deed, where the Church is full: If a Grant be made of the next *Avoidance* when it ſhall happen, and the Church is void at that Time, this will make the Grant void as to that very *Avoidance*, but it may be good for the next Turn after that. A Grant of the next *Avoidance* is no more than a Chattel, and goes to Executors. *Right Clerg.* 68.

Avoirdupois, or *Averdupois*, (Fr. *Avoir du Poids*, i. e. *Habere pondus, aut juſti eſſe ponderis*) Signifies a Weight different from that which is called Troy-Weight, which contains but twelve Ounces in the Pound, whereas this hath ſixteen Ounces: And in this Reſpect it is probably ſo called, becauſe it is of greater Weight than the other. It alſo ſignifieth ſuch Merchandizes as are weighed by this Weight; and is mentioned in divers Statutes, as 9 *Ed.* 3. 27 *Edw.* 3. *c.* 10. 2 *R.* 2. *c.* 1. *Averium Ponderis*, full Weight, or *Averdupois*. Cart. 3 Ed. 2.

Avowee, Of a Church Benefice. *Britt. c.* 29. See *Advowee.*

Avowry, (Fr. *Advouerie*) Is where a Man takes a Diſtreſs for Rent or other Thing, and the Party on whom taken ſues forth a *Replevin*, then the Taker ſhall juſtify his Plea for what Cauſe he took it; and if in his own Right, he muſt ſhew the ſame, and *avow* the Taking; but if he took it in Right of another, when he hath ſhewed the Cauſe, he muſt make Cognizance of the Taking, as Bailiff or Servant to the Perſon in whoſe Right he took the ſame. *Terms de Ley* 70. If in a Replevin a Man juſtifies the Taking of Cattle in his own Right, he muſt ſay *bene advocat captionem averiorum*, &c. which is called an *Avowry:* And where he juſtifies in the Right of another Perſon, then he ſays *bene cognovit captionem*, &c. which is called a Cogniſance. 2 *Lill.* 454. The *Avowry* muſt contain ſufficient Matter for Judgment to have Return: But ſo much Certainty is not required in an *Avowry*, as in a Declaration; and the *Avowant* is not obliged to alledge Seiſin within the Statute of Limitations. Nor ſhall a Lord be required to *avow* on any Perſon in certain; but he muſt alledge Seiſin by the Hands of ſome Tenant within forty Years. 21 *Hen.* 8. *c.* 19. 1 *Inſt.* 268. In *Avowry* Seiſin in Law is ſufficient, ſo that where a Tenant hath done Homage or Fealty, it is a good Seiſin of all other Services to make an *Avowry*, tho' the Lord, &c. had not Seiſin of them within ſixty Years. 32 *H.* 8. *cap.* 2. 4 *Rep.* 9. A Man may diſtrain and *avow* for Rent due from a Copyholder to a Lord of a Manor; and alſo for Heriots, Homage, Fealty, Amercements, &c. 1 *Nelſ. Abr.* 315 If a Perſon makes an *Avowry* for two Cauſes, and can maintain his *Avowry* but for one of them, it is a good *Avowry:* And if an *Avowry* be made for Rent, and it appears that Part of it is not due, yet the *Avowry* is good for the Reſt. An *Avowry* may be made upon two ſeveral Titles of Land, tho' it be but for one Rent; for one Rent may depend upon ſeveral Titles. 1 *Lill. Abr.* 157. *Saund.* 285. If a Man takes a Diſtreſs for Rent reſerved upon a Leaſe for Years, and afterwards accepts a Surrender of the Lands, he may nevertheleſs *avow*, becauſe he is to have the Rent due notwithſtanding the Surrender. 1 *Danv. Abr.* 652. Where Tenant in Tail aliens in Fee, the Donor may *avow* upon him, the Reverſion being in the Donor, whereunto the Rent is incident. *Ibid.* 650. If there be Tenant for Life, Remainder in Fee, the Tenant for Life may compel the Lord to *avow* upon him: But where there is Tenant in Tail, with ſuch Remainder, and the Tenant in Tail makes a Feoffment, the Feoffee may not compel the Lord to avow upon him. 1 *Danv. Abr.* 648. 1 *Inſt.* 268. If the Tenant enfeoffs another, the Lord ought to *avow* upon the Feoffor for the Arrearages before the Feoffment; and not upon the Feoffee. 1 *Danv.* 650. The Lord may *avow* upon a Diſſeiſor. 20 *Hen.* 6. And if a Man's Tenant is diſſeiſed, he may be compelled to *avow*, by ſuch Tenant or his Heir. A Defendant in Replevin may *avow*, or juſtify; but if he juſtifies he cannot have a Return. 3 *Lev.* 204. The Defendant need not *aver* his *Avowry* with an *hoc paratus eſt*, &c. And the *Avowant* ſhall recover his Damages and Coſts, by 21 *Hen.* 8. By which Statute it is enacted, That if in any *Replegiare* for Rents, &c. the *Avowry*, Cogniſance or Juſtification be found for the Defendant, or the Plaintiff be Nonſuit, &c. the Defendant ſhall recover ſuch Damages and Coſts as the Plaintiff ſhould have had, if he had recovered. And by 17 *Car.* 2. *c.* 7. When a Plaintiff ſhall be Nonſuit before Iſſue in any Suit of Replevin, &c. removed or depending in any of the Courts at *Weſtminſter*, the Defendant making Suggeſtion in the Nature of an *Avowry* for Rent, the Court on Prayer ſhall award a Writ to inquire of the Sum in Arrear, and the Value of the Diſtreſs, &c. Upon Return whereof the Defendant ſhall recover the Arrears, if the Diſtreſs amounts to that Value, or elſe the Value of the Diſtreſs with Coſts; and where the Diſtreſs is not found to the Value of the Arrears, the Party may diſtrain for the Reſidue. The Learning of *Avowries* is abridged by the Stat. 21 *H* 8. and the Intricacies of Proceſs in *Replevin*, &c. much remedied in Caſes of Diſtreſſes for Rents, by the 17 *Car.* 2. and 4 & 5 *Ann.*

Aures, A Puniſhment by the *Saxon* Laws of cutting off the Ears, inflicted on thoſe who robbed Churches, or were guilty of any other Theft. *Fleta, lib.* 1. *c.* 38. *par.* 10. And this Puniſhment alſo extended to many other Crimes as well as Theft. *Upton de Militari Officio, pag.* 140.

Auricularius, A Secretary—*Quem ſibi* Amicularium & Auricularium *conſtituerat.* Mon. Angl. p. 120.

Aurum Reginæ, The Queen's Gold. *Rot. Parl. Ann.* 52 *H.* 3.

Auſcultare. Formerly Perſons were appointed in Monaſteries to hear the Monks read, and direct them how, and in what Manner they ſhould do it with a graceful Tone or Accent, to make an Impreſſion on their Hearers, which was required before they were admitted to read publickly in the Church, and this was called *Auſcultare, viz.* to read or recite a Leſſon.—*Quicunque Lecturus vel cantaturus eſt aliquid in Monaſterio, ſi neceſſe habeat ab eo, (viz. Cantore) priuſquam incipiat, debet* Auſcultare. *Lanfrancus in Decretis pro ordine Benedict. c.* 5.

Auſturcus and *Oſturcus*, A Goſhawk; from whence we uſually call a Faulkoner, who keeps that Kind of Hawks, an *Oſtringer*. In ancient Deeds there has been reſerved, as a Rent to the Lord, *unum Auſturcum.*

Auter Droit, Is where Perſons ſue or are ſued in another's Right; as Executors, Adminiſtrators, &c.

Auterfoits acquit, Is a Plea by a Criminal, that he was heretofore *acquitted* of the ſame Treaſon, or Felony: For one ſhall not be brought into Danger of his Life, for the ſame Offence, more than once. 3 *Inſt.* 213. There is alſo Plea of *Auterfoits convict*, and *Auterfoits attaint*; that he was heretofore convicted, or attainted, of the ſame Felony. In Appeal of Death, *Auterfoits acquit*, or *Auterfoits attaint*, upon Indictment of the ſame Death, is no Plea. *H. P. C.* 244. But in other Caſes where a Perſon is attainted, it is to no Purpoſe that he ſhould be attainted a ſecond Time. And Conviction of Manſlaughter, where Clergy is admitted thereon, will bar any ſubſequent Proſecution for the ſame Death. 2 *Hawk. P. C.* 377.

Authority, Is nothing but a Power to do ſomething: It is ſomtimes given by *Word*, and ſometimes by *Writing*; Alſo it is by Writ, Warrant, Commiſſion, Letter of Attorney, &c. and ſometimes by

Law: 11 *Rep.* The *Authority* that is given, muſt be to do a Thing lawful; for if it be for the doing any Thing againſt Law, as to beat a Man, take away his Goods, or diſſeiſe him of his Lands, this will not be a good *Authority*, to juſtify him that doth it. *Dyer* 102. *Kelw.* 89. An *Authority* given to another Perſon, to do that which a Man himſelf cannot do, is void: And where an *Authority* is lawful, the Party to whom given muſt do the Act in the Name of him who gave the *Authority*. 11 *Rep.* 87. It is a Rule that every *Authority* ſhall be countermandable, and determine by the Death of him that gives it, &c. But where an Intereſt is coupled with an *Authority*, there it cannot be countermanded or determined. And 1 *Dyer* 190. The King may not give any one *Authority* or Licence to do any Thing that is *Malum in ſe.* 11 *Rep.* 86. See *Licence.*

Autumn, Is the Decline of the Summer. Some computed the Years by *Autumns*; but the *Engliſh Saxons* by Winters: *Tacitus* ſays, that the ancient *Germans* knew the other Diviſions of the Year, but did not know what was meant by *Autumn*. *Lindewood* tells us, when the ſeveral Seaſons of the Year begin, in theſe Lines,

Dat Clemens Hiemem, *dat* Petrus *ver* Cathedratus,
Æſtuat Urbanus, Autumnat *Bartholomæus.*

Autumnalia, Thoſe Fruits of the Earth which are ripe in *Autumn* or Harveſt.

Auxilium ad filium Militem faciendum & filiam Maritandum, A Writ formerly directed to the Sheriff of every County where the King or other Lord had any Tenants, to levy of them an Aid towards the Knighting of a Son, and the Marrying of a Daughter. *F. N. B.* 82. See *Aid.*

Auxilium Curiæ, A Precept or Order of Court for the Citing or Convening of one Party, at the Suit and Requeſt of another, to warrant ſome Thing.——*Vocat inde ad Warrantiam* Johannem Sutton *de* Dudley *Chevaler* & Iſabellam *Uxorem, ut habet eos hic in* Octabis S. Michaelis, *per* Auxilium Curiæ. *Kennet's Paroch. Antiq.* 477.

Auxilium facere alicui in Curia Regis. To be another's Friend and Solicitor in the King's Court; an Office undertaken by ſome Courtiers for their Dependants in the Country——*Sciant præſentes & futuri, quod Ego* Bernardus *de* S. Walerico *conceſſi* Rogero de Berkley & *hæredibus ſuis* Auxilium & *Conſilium meum in Curia Domini mei Regis Angliæ.* Paroch. Antiq. 126.

Auxilium Regis, The King's Aid, or Money levied for the King's Uſe, and the Publick Service; as where Taxes are granted by Parliament.

Auxilium Vicecomiti, A Cuſtomary Aid or Duty anciently payable to Sheriffs, out of certain Manors, for the better Support of their Offices. *Prior de* Kime *Com.* Linc. *tenet duas carucatas terræ in* Thorpe *per ſervitium xl. denariorum per annum, ad* Auxilium Vicecomitis. *Mon. Angl. Tom. p.* 245. An Exemption from this Duty was ſometimes granted by the King: And the Manor of *Stretton* in *Warwickſhire* was freed from it by Charter. 14 *H.* 3. *M.* 4

Await, Seems to ſignify what we now call *Waylaying*, or lying in *Wait* to execute ſome Miſchief. *Stat.* 13 *R.* 2. *c.* 1. It is ordained that no Charter of Pardon ſhall be allowed before any Juſtice for the Death of a Man ſlain by *Await*, or Malice prepenſed, &c.

Award, (from the Fr. *Agard*) Is the Judgment and Arbitration of one or more Perſons, at the Requeſt of two Parties who are at Variance, for ending the Matter in Diſpute without publick Authority: And may be called an *Award*, becauſe it is impoſed on both Parties to be obſerved by them. *Dictum, quod ad cuſtodiendum ſeu obſervandum partibus imponitur. Spelm.* An *Award* may be by Word, or in Writing; but is uſually in Writing; and muſt be exactly according to the Submiſſion. If an *Award* be according to the Submiſſion by Bond, though it is void in Law, if it be not obſerved, the Obligation will be forfeited. 1 *Danv. Abr.* 515. Where Arbitrators *award* a Thing againſt Law, it is void: If more is *awarded* than ſubmitted, the *Award* will be void; But when an *Award* ſeems to extend to more than in the Submiſſion, the Words *de & ſuper præmiſſis* reſtrain it to the Thing ſubmitted. *Cro. Eliz.* 861. An *Award* may be void in ſome Part, and good in another Part, if it makes an End of all the Differences ſubmitted: And if an *Award* be good in Part, and void in Part, the good ſhall be performed. 10 *Rep.* 31. 2 *Saund.* 293.* An *Award* without a Deed of Submiſſion, will be a good Bar of a Treſpaſs. *Danv.* 548. But the Delivery of the *Award* in Writing, under Hand and Seal, &c. muſt be pleaded, and be exactly replied to by the Plaintiff, in Action of Debt on an *Award*, or it will be ill on Demurrer. *Dyer* 243. 2 *Mod.* 77, 78, 269. Debt on Obligation to perform an *Award*; which was, that the Defendant ſhould enjoy a Houſe of which the Plaintiff was Leſſee for Years during the Term, paying to the Plaintiff 20*s.* yearly, and for Non-payment of this the Action was brought; and it was held to lie. 1 *Cro.* 211. The Submiſſion to an *Award* may be by Bond, Covenant, or by an *Aſſumpſit* or Promiſe; or without all this, by a bare Agreement to refer the Matter to ſuch a Perſon or Perſons. 10 *Rep.* 131. *Dyer* 270. A Husband may ſubmit to *Award* for himſelf and his Wife, for her Goods and Chattels, to bind her. But an Infant may not make any Submiſſion to an *Award*, or any other for him; for it will be void. *Plowd.* 189. If ſeveral Perſons do a Wrong to a Man, and one of theſe, and he to whom the Wrong is done ſubmit to an *Award*; the other Perſons, who were no Parties to the Submiſſion, may take Advantage of it to extinguiſh the Wrong. 7 *H.* 4. 31. And where the *Award* of Recompence for a Wrong done is performed, that Wrong is altogether determined: Alſo the *Award* of a Perſonal Chattel, doth alter the Property of it, and give it ſo to the Party to whom awarded, that he may have Detinue for it. *Dyer* 183. A Submiſſion is of all Actions and Demands, &c. though there be but one Cauſe or Matter between them, an *Award* may be made for this: And where two Things are ſubmitted, and the *Award* but of one, it is good, if the Arbitrators have no further Notice of the other; Tho' if it be of three Things, or ſome Particulars, with a general Clauſe of all other Matters, in that Caſe they muſt make the *Award* for the Things particularly named, without any other Notice given. *Dyer* 216. 2 *Cro.* 130. *Godb.* 164. If the Submiſſion be by divers Perſons, and the Arbitrators *Award* between ſome of them only, this is good: But if a Submiſſion is of certain Things in Special, with a *Proviſo* in the Condition, that the *Award* be made of the Premiſſes, &c. by ſuch a Day, there the *Award* muſt be made of all, or it will be void. 8 *Rep.* 79. *Hob.* 49. An *Award* of all Actions Real, when the Submiſſion is of Actions perſonal, is not good. *Plowd.* 306. 10 *Rep.* 132. Yet if the Submiſſion be of Things perſonal, and the *Award* is, that one of the Parties ſhall do an Act real, in Satisfaction of a perſonal Injury, &c. or a Submiſſion be of one Thing, and the *Award* made of ſomething incident to, or neceſſarily depending upon it; or if the Submiſſion is of all Actions Real and Perſonal, and the *Award* only of Matters Perſonal, &c. it will be good in theſe Caſes; if nothing elſe is notified to the Arbitrators. *Dyer* 216. An *Award* made only on one Side, without any Thing on the other, is void in Law: As that one ſhall pay or give Bond for Money to the other Party, and he do nothing for it; but if it be to give Bond to pay, or to pay a Debt, and that the other ſhall be diſcharged of the Debt, &c. this is good: So where it is, that one Party ſhall pay Money to the other, and then the other ſhall releaſe all Actions to him. 8 *Rep.* 72, 98. If divers Treſpaſſes be referred to Arbitrament, and the *Award* is, that one of the Parties ſhall make the other Party Amends, or give a Releaſe, and ſay not what Amends, or what Releaſe, *&c.* it is void for Incertainty. 5 *Rep. March* 18. *Award* was, that each Party ſhould give to the other a general Releaſe of all Demands; provided, that if either of them diſlike the *Award* within twenty Days after made, and within that Time pay 10*s.* the Arbitrament to be void: It was held that the firſt Part of the *Award* was good, and the Proviſo repugnant and void. 1 *Cro.* 688. Arbitrators are to make their *Award ſecundum allegata & probata*, but they may not injoin any Oath to the Witneſſes: The *Award* ought to be publiſhed; and no one is bound to perform till he can know what the *Award* is. 4 *Rep.* 82. *Brownl.* 311. A Submiſſion to *Award* may be revoked and countermanded, before the *Award* made; where there is no Specialty to abide the *Award* of *J. S. &c.* 8 *Rep.* 81. 78. By Stat. 9 & 10 *W.* 3. *cap.* 13. Submiſſions to *Awards*, by Agreement of the Parties, may be made a Rule of any of his Majeſty's Courts of Record; and on a Rule of Court thereupon, the Parties ſhall be finally concluded by ſuch Arbitrament: And in Caſe of Diſobedience thereto, the Party refuſing to perform the ſame, ſhall be ſubject to the Penalties of contemning a Rule of Court, *&c.* unleſs it appears on Oath that ſuch *Award* was unduly procured, when it ſhall be ſet aſide: But this Statute extends only to perſonal Matters, for which there is no other Remedy but by perſonal Action, or by Suit in Equity. Attachment lies for Non-performance of an *Award* made a Rule of Court; after perſonal Demand of Performance. 1 *Salk.* 83. In making a Submiſſion to an *Award* a Rule of the Court of Chancery, which the Parties may agree to, it muſt be done purſuant to the Act of Parliament; and the Method is to move that Court, to confirm the *Award*, upon the Maſter's Report: Tho' if there be ſuch Submiſſion to a Reference, and the *Award* made is to be confirmed by Decree, without Appeal; yet Exceptions may be taken thereto. 2 *Vern.* 109. See 1 *Mod.* 21. And *vide Arbitrator.*

Form of an Award on a Submiſſion.

TO all People *to whom this preſent Writing indented of* Award *ſhall come Greeting:* Whereas *there are ſeveral Accounts depending, and divers Controverſies and Diſputes have lately ariſen between* A. B. *of,* &c. *Gent. and* C. D. *of,* &c. *all which Controverſies and Diſputes are chiefly touching and concerning,* &c. And whereas *for the putting an End to the ſaid Differences and Diſputes, they the ſaid* A. B. *and* C. D. *by their ſeveral Bonds or Obligations bearing Date,* &c. *are become bound each to the other of them in the penal Sum of,* &c. *to ſtand to, and abide the* Award *and final Determination of us* E. F. G. H. &c. *ſo as the ſaid* Award *be made in Writing, and ready to be deliver'd to the Parties in Difference on or before,* &c. *next, as by the ſaid Obligations, and the Conditions thereof may appear.* Now know ye, *That we the ſaid Arbitrators, whoſe Names are hereunto ſubſcribed, and Seals affixed, taking upon us the Burthen of the ſaid* Award, *and having fully examined and duly conſidered the Proofs and Allegations of both the ſaid Parties, do for the ſettling Amity and Friendſhip between them, make and publiſh this our* Award, *by and between the ſaid Parties in Manner following, that is to ſay;* Imprimis, *We do* Award *and Order, that all Actions, Suits, Quarrels, and Controverſies whatſoever had, moved, ariſen or depending between the ſaid Parties in Law or Equity for any manner of Cauſe whatſoever, touching the ſaid,* &c. *to the Day of the Date hereof, ſhall ceaſe and be no further proſecuted, and that each of the ſaid Parties ſhall pay and bear his own Coſts and Charges, in any wiſe relating to, or concerning the ſaid Premiſſes.* And *we do alſo* Award *and Order that the ſaid* A. B. *ſhall pay or cauſe to be paid to the ſaid* C. D. *the Sum of,* &c. *within the Space of,* &c. *And alſo at his own Coſts and Charges do,* &c. *And further we do* Award *and Order that the ſaid* C. D. *ſhall pay, or cauſe to be paid, to the ſaid* A. B. *the Sum of,* &c. *on or before,* &c. *or give ſufficient Security for the ſame to the ſaid* A. B. *&c.* And *we do* Award *and order that,* &c. And laſtly, *we do* Award *and Order that the ſaid* A. B. *and* C. D. *on the Receipt of the ſeveral Sums,* &c. *abovementioned, ſhall in due Form of Law execute each to the other of them general Releaſes ſufficient for the Releaſing by each to the other of them, his Executors and Adminiſtrators, of all Actions, Suits, Arreſts, Quarrels, Controverſies and Demands whatſoever touching or concerning the Premiſſes aforeſaid, or any Matter or Thing thereunto relating, from the Beginning of the World until the Day of,* &c. *laſt.* In Witneſs, *&c.*

Awm, or *Aume*, (Teut. *Ohm, i. e. cadus vel menſura*) A Meaſure of Rheniſh Wine, containing forty Gallons; mentioned in the Statute 1 *Jac.* 1. *cap.* 33. and 12 *Car.* 2. *cap.* 4. This Word is otherwiſe called *Awame*, as you may read in a very old printed Book —— The Rood of Rheniſh Wine of *Dordreight* is ten *Awames*, and every *Awame* fifty Gallons. The Rood of *Antwerp* is fourteen *Awames*, and every *Awame* thirty-five Gallons. And by this Account it contains different Quantities, in ſeveral Countries.

Axe and **Axen**, Comes from the *Saxon* Verb *Axian*, to demand, and from hence we have our *Engliſh* Word *Ask.* In *Somerſetſhire* and ſome other Counties of *England*, in the Country Dialect the Word *Axe* is made uſe of for *Ask.*

Ayel, and *Beſaiel*, A Writ that lies for an Heir dipoſſeſſed of his Inheritance left by his Grandfather, or Great Grandfather, *&c.* See *Aile.*

Azaldus, Signifies a poor Horſe or Jade —— *Affri,* Azaldi, *& alii Equi valoris, &c.* Clauſ. 4 Ed. 3.

B.

Baca, A Hook or Link of Iron, or Staple.—— *In axibus emptis & carrectis exandis novem denarios in colariis,* bacis *& ſellis ad idem emptis xiii. den.* —— Conſuetudin. domus de Farendon, MS. penes Wh. Kennet, f. 20.

Baccinium, or *Bacina*, a Baſon or Veſſel to hold Water to waſh the Hands.——*Non topeta, non mountergia, non* Baccinia, *& nil omnino per violentiam exigatur.* Simeon Dunelm. *Anno* 1126. Mon. Angl. Tom. 3. p. 191. —— Petrus *filius* Petri Picot *tenet medietatem Heydenæ per Serjantiam ſerviendi de* Bacinis. —— This was a Service of Holding the *Baſon*, or Waiting at the *Baſon*, on the Day of the King's Coronation. *Lib. Rub. Scaccar. f.* 137.

Bacheleria, The Commonalty as diſtinguiſhed from Baronage.——*Feſtivitate* S. Edmundi *Regis & Confeſſoris, in quindenam* S. Michaelis *apud* Weſtmonaſterium, *per Dominum Regem regaliter celebrata Communitas* Bacheleriæ *Angliæ ſignificavit Domino* Edwardo *filio Regis, &c.* Annal. Burton. p. 426. ſub. an. 1259.

Bachelor, (*Baccalaureus*, from the Fr. *Bachelier*, viz. *Tyro*, a Learner:) In the Univerſities there are *Bachelors of Arts*, &c. which is the firſt Degree taken by Students, before they come to greater Dignity. And thoſe that are called *Bachelors* of the Companies of *London*, are ſuch of each Company, as are ſpringing towards the Eſtate of thoſe that are employed in Council, but as yet are inferiors; for every of the twelve Companies conſiſts of a *Maſter*, two *Wardens*, the *Livery*, (which are Aſſiſtants in Matters of Council, or ſuch as the Aſſiſtants are choſen out of) and the *Bachelors.* The Word *Bachelor* is uſed 13 *R.* 2. and ſignifies the ſame with *Knight-*

Bachelor. By 3 *E.* 4. *c.* 5. it is a ſimple Knight, and not Knight Bannerer, or *Knight of the Bath.* *Anno* 28 *E.* 3. a Petition was recorded in the *Tower*, beginning thus: *A noſtre Seigneur le Roy monſtrent votre* ſimple Bachelor, *Johan de Bures, &c.* *Bachelor* was anciently attributed to the Admiral of *England*, if he were under a Baron. In *Pat.* 8. *R.* 2. we read of a *Baccalarius Regis.* And touching the further Etymology of this Word, *Baccalaurei* (*teſte Renano*) *a* Bacillo *nominati ſunt, quia primi ſtudii Authoritatem quæ per exhibitionem* Baculi *concedebatur jam conſecuti fuiſſent, &c.*

Backberinde, (*Sax.*) Signifieth bearing upon the Back, or about a Man. *Bracton* uſeth it for a Sign or Circumſtance of Theft apparent, which the Civilians call *Furtum manifeſtum*; for, dividing *Furtum* into *Manifeſtum & non Manifeſtum*, he defineth the former thus; *Furtum vero Manifeſtum eſt, ubi latro deprehenſus eſt ſeiſitus de aliquo latrocinio ſcil.* Handhabend & Backberind, *& inſecutus fuerit per aliquem cujus res illa fuerit.* Bract. lib. 3. tract. 2. cap. 32. *Manwood* remarks it as one of the four Circumſtances or Caſes, wherein a Foreſter may arreſt the Body of an Offender againſt Vert or Veniſon in the Foreſt: By the Aſſiſe of the Foreſt of *Lancaſter*, (ſays he) *taken with the Manner*, is when one is found in the King's Foreſt in any of theſe four Degrees, *Stable-ſtand*, *Dog-draw*, *Backbear*, and *Bloody-hand.* Manw. 2 part, Foreſt-Laws.

Baco, Is a Bacon Hog, as often uſed in old Charters. *Blount.*

Bactile, A Candleſtick properly ſo called, when formerly made *ex Baculo* of Wood, or a Stick. Hugo *Epiſcopus* Dunelmenſis *fecit in Eccleſia coram Altari tria ex argento* Bactilia, *in quibus lumina die Noctuque perpetuo ardentia lucerent.* Clodingham Hiſt. Dunelm. apud Wartoni Ang. Sac. p. 1, 723.

Badger, (from the Fr. *Bagage*, a Bundle, and thence is derived *Bagagier*, a Carrier of Goods) Signifies with us one that buys Corn or Victuals in one Place, and carries them to another to ſell and make Profit by them: And ſuch a one is exempted in the Stat. 5 & 6 *Ed.* 6. *c.* 14. from the Puniſhment of an Ingroſſer within that Statute. But by 5 *Eliz. c.* 12. *Badgers* are to be licenſed by the Juſtices of Peace in the Seſſions; whoſe Licenſes will be in Force for one Year, and no longer, and the Perſons to whom granted muſt enter into a Recognizance that they will not by Colour of their Licenſes foreſtal, or do any Thing contrary to the Statutes made againſt Foreſtallers, Ingroſſers and Regrators. If any Perſon ſhall act as a *Badger* without Licence, he is to forfeit 5*l.* one Moiety to the King, and the other to the Proſecutor, leviable by Warrant from Juſtices of Peace, *&c.*

Bag, An uncertain Quantity of Goods and Merchandize, from three to four Hundred. *Lex Mercat'.*

Baga, A Bag or Purſe.——*Carta Decani Eccleſiæ* Litchfield, *in Mon. Angl. Tom.* 3. *pag.* 237. *Ducentas Marcas pecuniæ in quadam* Baga *de Whalley.*——

Bagavel, The Citizens of *Exeter* had granted to them by Charter from King *Ed.* 1. a Collection of a certain Tribute or Toll upon all Manner of Wares brought to that City to be ſold, towards the Paving of the Streets, Repairing of the Walls, and Maintenance of the City, which was commonly called in Old Engliſh *Begavel*, *Bethugavel*, and *Chipping-gavel.* Antiq. of Exeter.

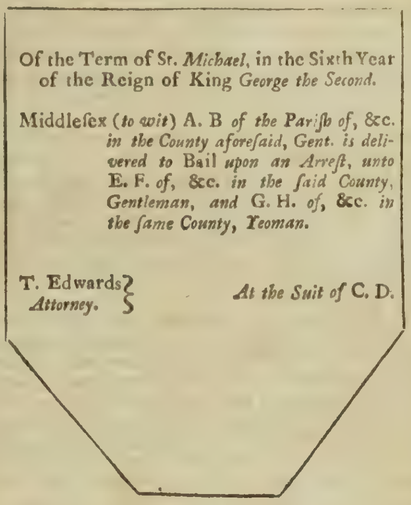
Bahadum, A Cheſt or Coffer; it is mentioned in *Fleta, lib.* 2. *c.* 21.

Bajardour, (Lat. *Bajulator*) A Bearer of any Weight or Burden. ——*Offerebant duos Inciſores in ſua lapicidina, & cariagium petræ uſque ad Navim, & de Navi uſque duos* Bajardours *Servituros ad Eccleſiam.* Petr. Bleſ. Contin. Hiſt. Croyland. p. 120.

Bail, *Ballium*, (from the Fr. *Bailler*, which comes of the *Greek* Βάλλειν, and ſignifies to deliver into Hands) Is uſed in our Common Law for the Freeing or Setting at Liberty of one arreſted or impriſoned upon any Action, either Civil or Criminal, on Surety taken for his Appearance at a Day and Place certain. *Bract. lib.* 3. *tract.* 2. *cap.* 8. The Reaſon why it is called *Bail*, is becauſe by this Means the Party reſtrained is delivered into the Hands of thoſe that bind themſelves for his forthcoming, in order to a Safe Keeping or Protection from Priſon: And the End of *Bail* is to ſatisfy the Condemnation and Coſts, or render the Defendant to Priſon. There is both *Common* and *Special Bail:* Common Bail is in Actions of ſmall Concernment, being called Common, becauſe any Sureties in that Caſe are taken; whereas in Cauſes of greater Weight, as Actions upon Bonds, or Specialty, *&c.* where the Debt amounts to 10*l.* Special *Bail* or Surety muſt be taken, ſuch as Subſidy-Men at leaſt, and they according to the Value. 4 *Inſt.* 179. By a late Statute, none ſhall be held to Special *Bail* on Proceſs out of any Superior Court, where the Cauſe of Action doth not amount to 10*l.* or upwards; nor out of any Inferior Court where it doth not amount to 40*s.* Affidavit is to be made of the Cauſe of Action, and filed before ſome Judge, or Commiſſioner of the Court whence the Writ iſſues, or before the Officer iſſuing it, and the Sum ſpecified in the Affidavit indorſed on the Back of the Writ; for which Sum *Bail* ſhall be taken, and no more: And if there be no ſuch Affidavit and Indorſement, the Defendant ſhall not be arreſted by his Body, *&c. Stat.* 12 *Geo.* 1. *c.* 29. To make out Common *Bail* Pieces; in the Margin you put the County, as *Midd. ſſ.* Then you write the Name of the Defendant, and underneath of his *Bail*, *viz.* A. B. *de Paroch.* &c. *in Com. præd. Gen. Traditur in Ballium ſuper Cep. Corp.* Johan. Doe *de* Lond. *Yeom. &* Richardo Roe *de eod. Yeom.* And in the Margin, at the Bottom, you put the Name of the Attorney, as *Edwards Attorn.* and on the Right-hand at Bottom, *Ad ſectam* C. D. Herein you are to obſerve, that the Sureties *John Doe* and *Richard Roe* are taken of Courſe: And in Special *Bail*, the *Bail* and their Additions are to be inſerted inſtead of *John Doe, &c.* which is all the Difference from Common *Bail. Practiſ. Attorn. Edit.* 1. Theſe *Bail*-Pieces are written on a ſmall ſquare Piece of Parchment, with the Corners cut off at Bottom; and if Common, they are to be filed in the Office with the Clerk of the Common *Bails*, within ſix Days after the End of the Term the Attorney appears: And Special *Bail*, which is taken before a Judge, or by Commiſſioners in the Country, when accepted, is to be filed; after Twenty Days Notice given of putting in Special *Bail* before a Judge, on a *Cepi Corpus*, if there be no Exception, the *Bail* ſhall be filed in four Days. 1 *Lill. Abr.* 174. Upon a *Cepi Corpus* Twenty Days are allowed to except againſt the *Bail:* So on a Writ of Error; and you need not give Notice; but you cannot take out Execution without giving a Four Days Rule to put in better *Bail:* In all other Caſes, Notice muſt be given. Upon a *Habeas Corpus*, Eight and twenty Days are appointed to except againſt the *Bail*, and after that, if it be not excepted againſt, it ſhall be filed in Four Days. 1 *Salk.* 98. The Exception to *Bail* put in before a Judge, muſt be entered in the *Bail*-Book at the Judge's Chamber, at the Side of the *Bail* there put in, after this Manner: *I do except againſt this Bail*, A. B. *Attorn. pro Quer.* And if there be no ſuch Exception, the Defendant's Attorney may take the *Bail*-Piece away from the Judge's Chamber, and file it. After the Roll is mark'd to have Special *Bail*, Common *Bail* may not be filed; but where the Roll is not thus marked, or where the Cauſe of Action is not expreſſed in the Writ, Common *Bail* is to be entered. *Bail* is not properly ſuch until it is filed, when it is of Record: But it ſhall be accounted good, till the ſame is queſtioned and diſallowed. When Cogniſors of *Bail* are queſtioned, they are to juſtify themſelves in open Court, by Oath of their Abilities; or before one of the Judges of the Court; or by Affidavit before Commiſſioners as took the *Bail:* And the Court may adjudge *Bail* ſufficient, when the Plaintiff will not accept of it. Alſo the Court on Motion, or a Judge at his Chamber, will order a common Appearance to be taken, when Special *Bail* is not required, on Affidavit made by the Defendant of the Debt due, &c. The Putting in of a Declaration, and the Acceptance of it by the Defendant's Attorney with the Privity of the Plaintiff's Attorney, is an Acceptance of the *Bail*. If a Plaintiff accept of an Aſſignment of the *Bail*-Bond, and the Defendant put in the ſame *Bail* that were put in to the Sheriff at the Return of the Writ, the Plaintiff cannot except againſt them; but 'tis otherwiſe where he hath not taken an Aſſignment. *Farreſl. Mod. Caſ.* 62. When a Sheriff hath taken good *Bail* of the Defendant, he will on a Rule return a *Cepi*, and aſſign the *Bail*-Bond to the Plaintiff, which may be done by Indorſement without Stamp; ſo as it be ſtampt before Action brought thereupon; and then the Defendant and *Bail* may be arreſted on the Bond, by the Plaintiff in his own Name. *Stat.* 4 & 5 *Ann.* But if the Plaintiff take an Aſſignment of the *Bail*-Bond, tho' the *Bail* is inſufficient, the Court will not amerce the Sheriff. 1 *Salk.* 99. By the ancient Practice, a *Bail*-Bond could not be put in Suit till a Rule was had to amerce the Sheriff, for not having the Body at the Return of the Writ; and the Courſe now is, to ſtay Proceedings on the *Bail*-Bond, if there is no Return of a *Cepi Corpus. Mo. Ca.* 229. 3 *Salk.* 57. In Caſe the Defendant doth not find Common or Special *Bail*, the Attorney for the Plaintiff is to call on the Sheriff for his Return of the Writ; on Default whereof, a Rule being made upon it, the Sheriff ſhall be amerced, or ſummoned before a Judge to ſhew Cauſe, &c. And if on a *Cepi Corpus* no *Bail* is returned, a Rule will be made out to bring in the Defendant's Body. Though a Defendant, with Leave of the Court, may depoſit Money in Court inſtead of *Bail*; and in ſuch Caſe the Plaintiff ſhall be ordered to waive other *Bail. Lill. Abr. Trin.* 23 *Car. B. R.* *Bail* to the Action is to be taken before none but a Judge of the Court; but for Appearance may be before any Officer, and if it be illegally taken, it will not oblige one as *Bail*. 2 *Cro.* 94. Sheriffs, &c. are to let to *Bail* Perſons by them arreſted by Force of any Writ, in any Perſonal Action, &c. upon reaſonable Sureties, having ſufficient within the County to keep their Days in ſuch Place, &c. as the Writs require. *Stat.* 23 *Hen.* 6. *c.* 10. And the Stat. 2 *W.* & *M.* provides againſt exceſſive *Bail*. No Defendant arreſted by Proceſs, ſhall be compelled to put in *Bail* for a greater Sum than contain'd in the Writ or Proceſs; and if any Plaintiff ſhall declare againſt a Defendant upon any *Bail* by him put in, for a greater Sum than is expreſſed in the Proceſs upon which the Defendant was arreſted, then that *Bail* ſhall not be liable to the Action. 1 *Lill.* 181. But it is ſaid *Bail* are liable to all Actions of the Plaintiff the ſame Term wherein he ſhall declare againſt the Defendant: Yet where an Attorney appeared for one in the *King's Bench*, and *Special Bail* was entered for his Client to that Action; it was agreed, that the *Bail* is not bound to ſtand *Bail* to all other Actions that ſhall be declared in againſt the Party in the By: But the Attorney is obliged to appear for him in all ſuch Actions, and to put in Common *Bail*. *Stile* 464. If more Damages, &c. are recovered than mentioned in the Plaint, or than the Sum wherein the *Bail* is bound, the *Bail* will not be liable. 1 *Salk.* 102. So where a Declaration is laid in another County, when the Original is ſued out in *London*, and *Bail* put in there upon it. 3 *Lev.* 235. An Order of Court was made *Anno* 22 *Car.* 2. That in Caſe of *Bail*, if the Recovery be for a larger Sum than in the *Ac etiam*, the *Bail* ſhall not be chargeable at all: But by a late Order, *Bail* is anſwerable for any leſs Sum, which the Plaintiff ſhall recover. *Ord. Paſch.* 5 *Geo.* 2. In Actions of Battery, Treſpaſs, Slander, &c. though the Plaintiff is like to recover large Damages, Special *Bail* is not to be had, unleſs by Order of Court, and the Proceſs is marked for Special *Bail:* Nor is it required in Actions of Account, or of Covenant, except it be to pay Money; nor againſt Heirs or Executors, &c. for the Debt of the Teſtator, unleſs they have waſted the Teſtator's Goods. 1 *Danv. Abr.* 681. And in all Actions brought in *B. R.* upon any penal Law, the Defendant is to put in but Common *Bail. Yelv.* 53. In Actions where Damages are uncertain, *Bail* is to be at the Diſcretion of the Court: On a dangerous Aſſault and Battery, upon Affidavit of Special Damages, a Judge's Hand may be procured for Allowance of an *Ac etiam* in the Writ: And in Action of *Scandalum Magnatum* the Court on Motion hath order'd Special *Bail. Raym.* 74. Special *Bail* is ordered, by Rule of Court, in all Cauſes of Removal, whether by *Habeas Corpus*, Writ of Privilege, *Certiorari*, &c. except where the Defendant is ſued as Executor or Adminiſtrator: And a Caveat is to be entered with the Judges for good Bail. And when *Bail* is taken by the Chief Juſtice, or other Judge on a *Habeas Corpus*, the *Bail* taken in the inferior Court is diſmiſſed; though the laſt *Bail* be not filed preſently, nor till the next Term. *Yelv.* 120, 121. Yet it has been held, where a Cauſe is removed out of an Inferior Court by *Habeas Corpus*, if the *Bail* below offer themſelves to be *Bail* above, they ſhall be taken, not being excepted againſt below; unleſs the Cauſe comes out of *London*. 1 *Salk.* 97. If a Cauſe removed from an Inferior Court, be remanded back by *Procedendo* the ſame Term, the Original *Bail* in the Inferior Court are chargeable, but not if remanded in another Term. 2 *Cro.* 363. One in Execution in Cuſtody of the Marſhal of *B. R.* is not compellable to find *Bail*, if another Action be brought againſt him: But if he be in the Priſon of the *Fleet* in Execution, on Action brought in *B. R.* he muſt be removed into the Cuſtody of the Marſhal of that Court, or put in *Bail* to the Action. *Trin.* 24 *Car. B. R.* One taken on a Writ of Execution is not *bailable* by Law; except an *Audita Querela* be brought: But where a Writ of Error is brought and allowed, if the Defendant be not in Execution, there ſhall not be Execution awarded againſt him, at the Requeſt of the *Bail*, tho' he be preſent in Court. 1 *Nelſ. Abr.* 331. The *Bail* ought not to join with the Principal nor the Principal with the *Bail*, in a Writ of Error to reverſe the Judgment againſt either. 2 *Cro.* 295. The *Bail* upon a Writ of Error cannot render the Party in their Diſcharge; becauſe they are bound in a Recognizance that the Party ſhall proſecute the Writ of Error with Effect, and pay the Money if Judgment be affirmed. 1 *Lill. Abr.* 173. Before a *Scire facias* taken out againſt *Bail*, the Principal may render his Body in Diſcharge of the *Bail:* And if the *Bail* bring in the Principal before the Return of the ſecond *Sci. fac.* againſt them; they ſhall be diſcharged. 1 *Roll. Abr.* 250. 1 *Lill.* 471. Anciently the *Bail* were to bring in the Principal upon the firſt *Scire fac.* or it would not be allowed. 3 *Bulſt.* 182. If *Bail* ſurrender the Principal at or before the Return of the ſecond *Scire facias*, it is good, although there be not immediate Notice of it to the Plaintiff; and if through Want of Notice, he is at further Charge againſt the *Bail*, that ſhall not vitiate the Surrender, but the *Bail* ſhall not be delivered till they pay ſuch Charges: If at any Time after the Return of the *Capias*, the

Bail ſurrender the Principal at a Judge's Chamber, and he thereupon is committed to the Tipſtaff, from whom he eſcapes, *&c.* this will not be a good Surrender; but if it be before or on a *Capias* returned, it is otherwiſe, the one being an Indulgence, and the other Matter of Right. *Mod. Caſ.* 238. When a Perſon makes his Eſcape out of Priſon, and is retaken and *bailed*; the *Bail* ſhall be diſcharged on a Writ to the Sheriff commanding him to keep the Priſoner in Diſcharge of the *Bail. Stat.* 1 *Ann. c.* 6. On *Capias ad ſatisfaciendam* againſt the Defendant returned *Non eſt Inventus*, *Scire facias* is to iſſue againſt the *Bail.* Where a Defendant renders his Body in Diſcharge of the *Bail*, the Plaintiff is by the Rules of the Court to make his Choice of Proceeding in Execution, whether he will charge Body, Goods, or Lands. 1 *Lill.* 183. And if the Principal after Judgment renders not himſelf in Diſcharge of his *Bail*; it is at the Election of the Plaintiff to take out Execution either againſt him or his *Bail:* But if he takes the *Bail* in Execution, though he hath not full Satisfaction, he ſhall never after take the Principal; and if the Principal be taken, he may not after meddle with the *Bail.* Though where two are *Bail*, although one be in Execution, the Plaintiff may take the other. 2 *Cro.* 320. 2 *Bulſt.* 68. If a Principal render himſelf, and there is none to require his Commitment, the Court is *ex officio* to commit him: And if the Plaintiff refuſe him, he ſhall be diſcharged, and an entry made of it upon the Record. *Moor. Caſ.* 1249. A Defendant having rendered himſelf to diſcharge the *Bail*, and prayed Entry of it; the Court asked the Plaintiff if he would have Execution of his Body, and he ſaid no: The *Bail* was diſcharged; 1 *Leon.* 59. See *Hob.* 210. There muſt be an *Exoneretur* entered, to diſcharge the *Bail.* If the Defendant dies before a *Capias ad ſatisfac.* againſt him returned and filed, the *Bail* will be diſcharged. 1 *Lill.* 177. On the Death of the Principal, 'tis impoſſible for the *Bail* to bring in his Body: And the *Bail* ſtand engaged that the Principal ſhall render himſelf, which muſt be intended upon Proceſs awarded againſt him in his Life-time.. 1 *Nelſ.* 328. A *Bail* cannot be a Witneſs for the Defendant at the Trial; but the Court, on Motion, will diſcharge the *Bail*, upon giving other ſufficient *Bail. Wood*'s *Inſt.* 582. In the Court of *Common Pleas*, when the Plaintiff hath obtained Judgment where Special *Bail* is given, the Plaintiff may take the Defendant in Execution, or proſecute the *Bail:* And Part of the Debt may be levied on the Defendant's Goods, and the Remainder on the *Bail*; but if the Plaintiff take the Defendant's Body in Execution, he may not then meddle with the *Bail. Inſt. Leg.* 91, 229. Execution may be had againſt the *Bail*, if the Defendant does not plead: And ſome of our Books ſay, that Lands of *Bail* are bound from the Time of the Recognizance, *&c.* entered into; and others that they are not but from the Time of the Recovery of the Judgment againſt the Principal. *Cro.* 272, 449. If a Defendant puts in *Bail* by a wrong Name, the Proceedings ſhall nevertheleſs be good; for otherwiſe every Man impleaded, may give a falſe Name to his Attorney by which he will be *bailed*, and then plead it in Arreſt of Judgment. *Golds.* 138. But it hath been held, that if the *Bail* be entered in one Name, and the Declaration and all the Proceedings are by a contrary Name, it will be erroneous. 1 *Cro.* 223. So if there is *Bail*, and the *Bail* be taken off the File, the Plaintiff is without Remedy: Though a *Habeas Corpus* and *Bail-Piece* being loſt in B. *R.* new were ordered to be made out. *Style* 261. There is not only *Bail* to appear, *&c.* and on Writs of Error; but alſo in *Audita Querela*, a Recognizance of *Bail* muſt be acknowledged; and upon a Writ of *Attaint*, to proſecute, *&c. Jenk. Cent.* 129. In *London* 'tis ſaid, Special *Bail* is to be given in Action of Account, *&c.* But on Removal by *Hab. Corp.* into *B. R.* that Court will accept common *Bail.* 2 *Keb.* 404. The Judges of the Courts at *Weſtminſter* have Power by Statute to appoint Commiſſioners in every County to take Recognizances of *Bail*, in Cauſes depending in their Courts; and to make ſuch Rules for juſtifying the *Bail* as they ſhall think fit, *&c. Stat.* 4 *&* 5 *W. & M.* Writs which hold the Defendant to *Bail*, ought to have the Cauſe of Action expreſſed: And where the Cauſe of Action is not expreſſed in the Writs, *&c. Bail* are to enter into Bond for the Defendant's Appearance in a Sum not above 40 *l.* And on Appearance by Attorney, the *Bail* ſhall be acquitted. 13 *Car.* 2. *cap.* 2.

Form of a Special *Bail-Piece* in *Engliſh.*



Of the Term of St. *Michael*, in the Sixth Year of the Reign of King *George the Second.*

Middleſex (*to wit*) A. B *of the Pariſh of*, &c. *in the County aforeſaid, Gent. is delivered to* Bail *upon an Arreſt, unto* E. F. *of*, &c. *in the ſaid County, Gentleman, and* G. H. *of*, &c. *in the ſame County, Yeoman.*

T. Edwards }
Attorney. }

At the Suit of C. D.

As to **Bail** *for Crimes*, at Common Law *Bail* was allowed for all Offences except Murder. 2 *Inſt.* 190. And if the Party accuſed could find ſufficient Sureties, he was not to be committed to Priſon; for all Perſons might be *bailed* 'till convicted of the Offence. 2 *Inſt.* 186. But by Statute it was after enacted, that in Caſe of Homicide the Offender ſhould not be *bailed:* And by our Statutes, Murderers, Outlaws, Houſe-burners, Thieves openly defamed, *&c.* are not *bailable*; but where Perſons are guilty of Larceny, are Acceſſaries to Felony, or guilty of light Suſpicion, they may be admitted to *Bail. Stat.* 3 *Ed.* 1. *cap* 15. This Statute doth not extend to the Judges of *B. R. &c.* only to Sheriffs and other Inferior Officers. *H. P. C.* 98, 99. By the Common Law the Sheriff might *bail* Perſons arreſted on Suſpicion of Felony, or for other Offence *bailable*; but he hath loſt this Power by the Stat. 1 *Ed.* 4. *c.* 2. Juſtices of the Peace may let to *Bail* Perſons ſuſpected of Felony, or others *bailable*, until the next Seſſions: Though where Perſons are arreſted for Manſlaughter or Felony, being *bailable* by Law, they are not to be let to *Bail* by Juſtices of Peace but in open Seſſions, or where two Juſtices (*Quorum unus*) are preſent; and the ſame is to be certified with the Examination of the Offender, and the Accuſers bound over to proſecute, *&c.* 3 *H.* 7. 1 *&* 2 *P. & M.* If a Perſon be dangerouſly wounded, the Offender may be *bailed* till the Perſon is dead; but 'tis uſual to have Aſſurance from ſome ſkilful Surgeon, that the Party is like to do well. 2 *Inſt.* 186. A Man arreſted and impriſoned for Felony, being *bailable*, ſhall be *bailed* before it appears whether he is guilty or not; but when convicted, or if on Examination he confeſſeth the Felony, he cannot be *bailed*. 4 *Inſt*. 178. For where in Manſlaughter, Felony, *&c.* it is certainly known that the Party did it, he ought not to be *bailed*. To refuſe *Bail* when any one is *bailable*; or to admit any to *Bail* who ought not by Law to be admitted, or to take ſlender *Bail*, is puniſhable by Fine, *&c.* 2 *Inſt*. 191. *H. P. C.* 97. If where a Felony is committed, one is brought before a Juſtice on Suſpicion, the Perſon ſuſpected is to be *bailed*, or committed to Priſon; but if there is no Felony done, he may be diſcharged. *H. P. C.* 98, 106. The Court of *B. R.* *bails* in all Caſes, and may *bail* Murder, *&c.* If a Man is found guilty of Murder by the Coroner's Inqueſt, yet *B. R.* may *bail* him; for they may examine into the Depoſitions taken by the Coroner. 1 *Salk*. 104. But if a Criminal be indicted of Murder, the Court will not *bail* him, though upon Affidavits of Evidence which might diſcharge the Proſecution: Nor when a Perſon is found guilty of any Crime by the Grand Jury, becauſe they cannot have Notice of what Evidence was before the Jury, which by their Oath they are obliged to conceal. 1 *Salk*. 104. The Courts of King's Bench, Common Pleas and Exchequer, in Term-time, and the Chancery in the Term or Vacation, may *bail* Perſons by the *Habeas Corpus* Act; but not ſuch as are committed for Treaſon, or Felony ſpecially expreſſed in the Warrant of Commitment; unleſs it be where a Seſſions is paſt from the Time of Commitment of the Priſoner, without any Proſecution, when he may be *bailed*. And *B. R.* will not admit a Perſon to *bail* on the *Habeas Corpus* Statute, on Commitment for Treaſon or Felony, without four Sureties. The Court of *B. R.* may *bail* Perſons committed by the King's Special Command, or by the Privy Council, on the like Circumſtances upon which it will grant *Bail* on other Commitments: This is where the Crime is ſpecified in the Warrant of Commitment; and wherever any Commitment by the Privy Council hath not expreſſed with ſome Certainty the Crime alledged againſt the Party, it has been uſual to admit him to *Bail* on his *Habeas Corpus*. 2 *Hawk. P. C.* 107, 109. See Stat. 16 *Car.* 1. *cap.* 10. Formerly Perſons committed for Treaſon, by the King's Command, or Order of Council, were not to be delivered without Trial, *&c.* Upon a Commitment of either Houſe of Parliament, when it ſtands indifferent on the Return of the *Habeas Corpus*, whether it be legal, or not, the Court of *B. R.* ought not to *bail* a Priſoner; but when it appears to be illegal, they may do it, as well as on an unwarrantable Commitment of the King and Council. 2 *Hawk*. 110. And a Perſon committed for a Contempt, by Order of either Houſe of Parliament, may be diſcharged by *B. R.* after a Diſſolution or Prorogation, which determine all Orders of Parliament: Alſo 'tis ſaid on an Impeachment, when the Parliament is not Sitting, and the Party has been long in Priſon, *B. R.* may *bail* him. The Court of *B. R.* hath *bailed* Perſons committed to the *Fleet Priſon* by the Lord Chancellor; when the Crime of Commitment was not mentioned, or only in general Terms, *&c.* 2 *Hawk. P. C.* 111. And *B. R.* having the Control of all inferior Courts, may at their Diſcretion *bail* any Perſon unjuſtly committed by any of thoſe Courts. In admitting a Perſon to *Bail* in the Court of *R. R.* for Felony, *&c.* a ſeveral Recognizance is entered into to the King in a certain Sum from each of the *Bail*, that the Priſoner ſhall appear at a certain Day, *&c.* And alſo that the *Bail* ſhall be liable for the Default of ſuch Appearance, Body for Body. And it is at the Diſcretion of Juſtices of Peace, in admitting any Perſon to *Bail* for Felony, to take the Recognizance in a certain Sum, or Body for Body: But where a Perſon is *bailed* by any Court, *&c.* for a Crime of an inferior Nature, the Recognizance ought to be only in a certain Sum of Money, and not Body for Body. 2 *Hawk*. 115. And the *Bail* are to be bound in double the Sum of the Criminal. Where Perſons are bound Body for Body, if the Offender doth not appear, whereby the Recognizance is forfeited, the *Bail* are not liable to ſuch Puniſhment to which the Principal would be adjudged if found guilty, but only to be fined, *&c.* *Wood's Inſt*. 618. If *Bail* ſuſpect the Priſoner will fly, they may carry him before a Juſtice to find new Sureties; or to be committed in their Diſcharge. 1 *Rep*. 99.

Bailiff, (*Ballivus*) From the *French* Word *Bayliff*, that is *Præfectus Provinciæ*, and as the Name, ſo the Office itſelf was anſwerable to that of *France*; where there are eight Parliaments, which are high Courts from whence there lies no Appeal, and within the Precincts of the ſeveral Parts of that Kingdom which belong to each Parliament there are ſeveral Provinces to which Juſtice is miniſtred by certain Officers called *Bailiffs*: And in *England* we have ſeveral Counties in which Juſtice hath been adminiſtred to the Inhabitants by the Officer whom we now call *Sheriff* or *Viſcount*, (one of which Names deſcends from the *Saxons*, the other from the *Normans*;) and tho' the Sheriff is not called *Bailiff*, yet 'tis probable that was one of his Names alſo, becauſe the County is often called *Balliva*: As in the Return of a Writ, where the Perſon is not arreſted, the Sheriff ſaith, *Infranominatus* A. B. *non eſt Inventus in* Balliva *mea*, *&c.* *Kitch. Ret. Brev. fol.* 285. And in the Statute of *Magna Charta*, *cap.* 28. and 14 *Ed.* 3. *cap.* 9. the Word *Bailiff* ſeems to compriſe as well Sheriffs, as *Bailiffs* of Hundreds. As the Realm is divided into Counties, ſo every County is divided into Hundreds; within which in ancient Times the People had Juſtice miniſtred to them by the ſeveral Officers of every Hundred, which were the *Bailiffs*, as thoſe Officers do in *France* and *Normandy*, being chief Officers of Juſtice within their Precincts. *Cuſtum. of Normand. cap.* 1. And it appears by *Bracton*, (*lib.* 3. *tract.* 2. *cap.* 34.) that *Bailiffs* of Hundreds might anciently hold Plea of Appeal and Approvers: But ſince that Time the Hundred Courts, except certain Franchiſes, are by the Stat. 14 *Ed.* 3. ſwallowed in the County-Courts; and now the *Bailiff*'s Name and Office is grown into Contempt, they being generally Officers to ſerve Writs, *&c.* within their Liberties. Though in other Reſpects, the Name is ſtill in good Eſteem; for the Chief Magiſtrates in divers Towns, are called *Bailiffs*: And ſometimes the Perſons to whom the King's Caſtles are committed are termed *Bailiffs*, as the *Bailiff* of *Dover Caſtle*, *&c.* Of the ordinary *Bailiffs* there are ſeveral Sorts, *viz.* *Bailiffs* of Liberties; Sheriffs *Bailiffs*; *Bailiffs* of Lords of Manors; *Bailiffs* of Husbandry, *&c.* *Bailiffs of Liberties* are thoſe *Bailiffs* who are appointed by every Lord within his Liberty, to execute Proceſs and do ſuch Offices therein, as the *Bailiff Errant* doth at large in the County; but *Bailiffs* errant or itinerant, to go up and down the County to ſerve Proceſs, are out of Uſe. *Bailiffs* of Liberties and Franchiſes, are to be ſworn to take Diſtreſſes, truly impanel Jurors, make Returns by Indenture between them and Sheriffs, *&c.* and ſhall be puniſhed for malicious Diſtreſſes, by Fine and treble Damages, by antient Statutes. 13 *Ed.* 1. 12 *Ed.* 2, *&c.* The *Bailiff* of a *Liberty*, may make an Inquiſition and Extent upon an *Elegit*: The Sheriff returned on a Writ of *Elegit*, that the Party had not any Lands but within the Liberty of *St. Edmunds Bury*, and that *J. S. Bailiff* there had the Execution and Return of all Writs, and that he inquired and returned an Extent by Inquiſition, and the *Bailiff* delivered the Moiety of the Lands extended to the Plaintiff, who by Virtue thereof entered, *&c.* and it was held a good Return. 3 *Cro. Rep.* 319. Theſe *Bailiffs* of Liberties cannot arreſt a Man without a Warrant from the Sheriff of the County: And yet the Sheriff may not enter the Liberty himſelf, at the Suit of a Subject, (unleſs it be on a *Quo minus*, or *Capias utlagatum*) without Clauſe in his Writ, *Non omittas propter aliquam Libertatem, &c.* If the Sheriff, *&c.* enters the Liberty without ſuch Power, the Lord of the Liberty may have an Action againſt him; tho' the Execution of the Writ may ſtand good. 1 *Vent.* 406. 2 *Inſt.* 453. *Sheriffs Bailiffs* are ſuch who are Servants to Sheriffs of Counties to execute Writs, Warrants, *&c.* Formerly *Bailiffs* of Hundreds were the Officers to execute Writs; but now it is done by ſpecial *Bailiffs*, put in with them by the Sheriff. A *Bailiff* of a Liberty is an Officer which the Court takes Notice of; though a Sheriff's *Bailiff* is not an Officer of the Court, but only the Sheriff himſelf. *Paſch.* 23 *Car.* 1. *B. R.* The Arreſt of the Sheriff's *Bailiff* is the Arreſt of the Sheriff; and if any Reſcous be made of any Perſon arreſted, it ſhall be adjudged done to the Sheriff: Alſo if the *Bailiff* permit a Priſoner to eſcape, Action may be brought againſt the Sheriff. 1 *Inſt.* 61, 168. Sheriffs are anſwerable for Miſdemeanors of their *Bailiffs*; and are to have Remedy over againſt them. 2 *Inſt.* 19. And the Court of *B. R.* will puniſh *Bailiffs* that misbehave themſelves in executing Proceſs, *&c.* *Bailiffs of Lords* of Manors are thoſe that collect their Rents, and levy their Fines and Amercements: But ſuch a *Bailiff* cannot diſtrain for an Amercement without a Special Warrant from the Lord or his Steward. *Cro. Eliz.* 698. He cannot give Licence to commit a Treſpaſs, as to cut down Trees, *&c.* though he may licence one to go over Land, being a Treſpaſs to the Poſſeſſion only, the Profits whereof are at his Diſpoſal. *Cro. Jac.* 337, 377. A *Bailiff* may himſelf, or command another to take Cattle Damage-feaſant upon the Land. 1 *Danv. Abr.* 685. Yet Amends cannot be tendered to the *Bailiff*, for he may not accept of Amends, nor deliver the Diſtreſs when once taken. 5 *Rep.* 76. Theſe *Bailiffs* may do any Thing for the Benefit of their Maſters, and it ſhall ſtand good till the Maſter diſagrees; but they can do nothing to the Prejudice of their Maſters. *Litt. Rep.* 70. *Bailiffs of Courts-Baron* ſummon thoſe Courts, and execute the Proceſs thereof; they preſent all Pound-breaches, Cattle ſtrayed, *&c.* *Bailiffs of Husbandry* are belonging to private Men of good Eſtates, and have the Diſpoſal of the Under-Servants, every Man to his Labour; they alſo fell Trees, repair Houſes, Hedges, *&c.* and gather up the Profits of the Land for their Lord and Maſter, for which they render Accounts yearly, *&c.* Beſides theſe there are alſo *Bailiffs of the Foreſt*, of which you may read *Manwood, Part* 1. *pag.* 113.

An Appointment of a *Bailiff* of a Manor.

KNow all Men *by theſe Preſents, That I* W. B *of,* &c. *Eſq; Lord of the Manor of* D. *in the County of* G. *Have made, ordained, deputed and appointed* J. G. *of,* &c. *my* Bailiff, *for me and in my Name, and to my Uſe, to collect and gather, and to ask, require, demand and receive of all and every my Tenants, that have held, enjoyed, or now do, or hereafter ſhall hold or enjoy any Meſſuages, Lands, or Tenements, from, by or under me, within my ſaid Manor of* D. *all Rents, and Arrears of Rent, Heriots, and other Profits, that now are, or hereafter ſhall become payable, due, owing or belonging to me, within the ſaid Manor; and in Default of Payment thereof, to diſtrain for the ſame from Time to Time, and ſuch Diſtreſs or Diſtreſſes to impound, detain and keep, until Payment be made of the ſaid Rents and Profits, and the Arrears thereof. And I do alſo further impower and authorize the ſaid* J. G. *to take Care of and inſpect into all and every my Meſſuages, Lands and Woods, within the ſaid Manor, and to take an Account of all Defects, Decays, Waſtes, Spoils, Treſpaſſes, or other Miſdemeanors, committed or permitted within my ſaid Manor, or in any Meſſuages, Lands or Woods there; and from Time to Time, to give me a juſt and true Account in Writing thereof: And further to act and do all other Things that to the Office of a* Bailiff *of the ſaid Manor belongs and appertains during my Will and Pleaſure.* In Witneſs, *&c.*

Bailiwick, (*Balliva*) Is not only taken for the County; but ſignifies generally that Liberty which is exempted from the Sheriff of the County, over which the Lord of the Liberty appointeth a *Bailiff* with ſuch Powers within his Precinct, as an Under-Sheriff exerciſeth under the Sheriff of the County; ſuch as the *Bailiff* of *Weſtminſter, &c.* *Stat.* 27 *Eliz. cap.* 12. *Wood's Inſt.* 206.

Bailment, (from *Bailler*, to deliver) Is a Delivery of Things to another, ſometimes to be delivered back to the *Bailor* that delivered them, ſometimes to the Uſe of the *Bailee* to whom delivered, and ſometimes to a third Perſon. This Delivery is called a *Bailment*; which may be ſimple, as to keep for my Uſe; or conditional, to be redelivered when Money is paid, *&c.* Upon *Bailment* or Delivery of Goods, theſe Things are to be obſerved: If they are delivered to a Man to be ſafely kept, and after theſe Goods are ſtolen from him; as he undertook to keep them ſafely, this ſhall not excuſe him; but if he undertook to keep them as his own, he ſhall be excuſed. 2 *Inſt* 89. 4 *Rep.* 83. 1 *Rol. Abr.* 338. If where Goods are delivered to one as a pledge, they are ſtolen from him, Action lieth not againſt him; becauſe he hath a Property in them, and therefore ought to keep them no otherwiſe than as his own. *Co. Lit.* 89. A Man leaves a Cheſt locked up with another to be kept, and doth not make known to him what is therein; if the Cheſt and Goods in it are ſtolen, the Perſon who received them ſhall not be charged for the ſame, for he was not truſted with them. *Ibid.* And what is ſaid as to Stealing is to be underſtood of all other inevitable Accidents: But it is neceſſary for a Man that receives Goods to be kept, to receive them in a ſpecial Manner, *viz.* To be kept as his own, or at the Peril of the Owner. 1 *Lill. Abr.* 193, 194. The Caſe of a Carrier, Inn-keeper, *&c.* is different; for as they have their Hire, and thereby implicitly undertake the ſafe Delivery of the Goods intruſted with them, they ſhall anſwer the Value if they are ſtolen from them. 1 *Roll. Abr.* 338. If one deliver his Goods to another Perſon, to deliver over to a Stranger; the Deliverer may countermand his Power, and require the Goods again, and if the *Bailee* refuſe to deliver them, he may have an Action of Account for them. *Co. Lit.* 286. And where a Man delivers Goods to another to be redelivered to the Deliverer at ſuch a Day, and before the *Bailee* doth ſell the Goods in Market-Overt; the *Bailor* may at the Day ſeiſe and take his Goods, for the Property is not altered. *Godb.* 160. One delivers a Ring to another to keep, and he breaks and converts the ſame to his own Uſe: If I deliver my Sheep to another to be kept, and he ſuffers them to be drowned by his Negligence; or if the *Bailee* of a Horſe, or Goods, *&c.* kill or ſpoil them, in theſe Caſes Action will lie. *F. N. B.* 5 *Rep.* 13. If a Man *Bail* Goods to one, to *Bail* over to another, and the *Bailee*, contrary to the Truſt in him, doth not deliver but convert them to his own Uſe; he ſhall be chargeable both to the *Bailor*, and him to whom the Goods ought to have been *bailed* 1 *Bulſt.* 68, 69.

Bairman, A poor inſolvent Debtor left bare and naked. —— Bairman *qui debet fieri, jurabit in Curia quod nihil habet ultra* 5 *ſolidos &* 5 *denarios.* Stat. Will. Reg. Scot. cap. 17.

Bakers, Making Bread under Weight, deficient in Goodneſs, &c. the ſame may be ſeiſed by Juſtices of Peace, &c. and Penalties are inflicted by Stat. 1 *Geo.* 1. So for Selling their large Bread at higher Price than ſet. 3 *Geo.* 2. See *Mayors.*

Balcanifer, or *Baldakinifer*, *i. e.* A Standard-Bearer; 'tis mentioned in *Matt. Pariſ. Anno* 1237. —— *Ea die* Balcanifer, *qui ut alii, qui ceciderunt, cruentiſſimam de ſe reliquit hoſtibus victoriam*, &c.

Balconies, Or open Galleries for People to ſtand and behold Things, to be to Houſes in the chief Streets of *London* four Foot wide, &c. *Stat.* 19 *Car.* 2. *c.* 23

Bale, (*Fr.*) A Pack, or certain Quantity of Goods or Merchandize; as a *Bale* of Silk, Cloth, &c. This Word is uſed in the Statute 16 *R* 2. and is ſtill in Uſe.

Balenger, By the Stat. 28 *H.* 6. *cap.* 5. ſeems to have been a Kind of *Barge*, or Water Veſſel. But elſewhere it rather ſignifies a Man of War, —— *Tandem pene ſolus fugiens in* Balengario. *Walſing. in R.* 2. *Hoſtes armaverunt quinque vaſa bellica qualia* Balingarias *appellamur.* Ibid.

Baleuga, A Territory or Precinct. *Charta Hen.* 2. See *Bannum & Banleuga.*

Baliſtarius, A *Baliſter* or Croſs-bow Man. *Gerrard de la Warr* is recorded to have been Baliſtarius *Domini Regis* &c. 28 & 29 Hen. 3.

Baliva, Is expounded to ſignify Juriſdiction. *Co. Lit* 105.

Balivo amovendo, A Writ to remove a *Bailiff* from his Office, for Want of ſufficient Land in the Bailiwick. *Reg. Orig.* 78. For if a Sheriff chuſe one to be *Bailiff* of a Hundred; or if the Lord of a Liberty elect one to be *Bailiff* of the Liberty, who hath not Land ſufficient in the County to anſwer the King and his People, according to the Statute of *Weſtmin.* 2. then this Writ ſhall be ſent to the Sheriff to diſcharge ſuch *Bailiff*, and chuſe another in his Place.

Balkers, Are derived from the Word *Balk*, becauſe they ſtand higher, as it were on a Balk or Ridge of Ground, to give Notice of ſomething to others. *Shep. Epitom.* vide *Conders.*

Ballance of Trade, A Computation of the Value of all Commodities which we buy from Foreigners, and on the other Side the Value of our own native Products, which we export into neighbouring Kingdoms; and the Difference or Exceſs between the one Side and the other of ſuch Account or Computation, is called the *Ballance of Trade:* Which Exceſs can be anſwered by us in nothing but our Coin or Bullion. The Overplus of Goods brought from our Colonies in *America*, and other Foreign Parts, with which we ſupply our Neighbours, is computed in Time of Peace at leaſt to *Ballance our Trade.*

Ballare, Signifies *Scopis expurgare.* 'Tis mentioned in *Fleta*, *lib.* 2. *cap.* 87.

Ballaſt, Is Gravel or Sand to poiſe Ships, and make them go upright: And Ships and Veſſels taking in *Ballaſt* in the River *Thames*, are to pay ſo much a Tun to *Trinity* Houſe *Deptford*; who ſhall employ *Ballaſtmen*, and regulate them, and their Lighters to be marked, &c. on Pain of 10*l.* *Stat.* 6 *Geo* 2. *c.* 29.

Ballium, A Sort of Fortreſs or Bullwark —— *Eam Civitatem cum exteriori* Ballio *caſtri Bellatorum ſuorum inſultibus occupavit.* Matt. Weſtm. Anno 1265.

Ban, or *Bans*, (from the Brit. *Ban*, i. e. *Clamor*) Is a Proclamation, or publick Notice; any publick Summons or Edict, whereby a Thing is commanded or forbidden. It is a Word Ordinary among the Feudiſts; and there is both *Bannus* and *Bannum* which ſignify two ſeveral Things. This Word *Bans* we uſe here in *England*, eſpecially in publiſhing Matrimonial Contracts, which is done in the Church before Marriage, to the End that if any Man can ſpeak againſt the Intention of the Parties, either in Reſpect of Kindred, Precontract, or for other juſt Cauſe, they may take their Exception in Time, before the Marriage is conſummated: And in the Canon Law, Bannæ *ſunt Proclamationes ſponſi & ſponſæ in Eccleſiis fieri ſolitæ.* But there may be a Faculty or Licence for the Marriage, and then this Ceremony is omitted; and Miniſters are not to celebrate Matrimony between any Perſons without a Licence, except the *Bans* have been firſt publiſhed three ſeveral Times, upon Pain of Suſpenſion, &c. *Can.* 62. See the Stat. 7 & 8 *W.* 3. *c.* 35.

Bancale, A Covering of Eaſe and Ornament for a Bench, or other Seat; mentioned in the *Monaſticon, Tom.* 1. *pag.* 222.

Bane, (from the Sax. *Bana*, a Murderer) Signifies Deſtruction or Overthrow: As, I will be the *Bane* of ſuch a Man, is a common Saying; ſo when a Perſon receives a mortal Injury by any Thing, we ſay, it was his *Bane:* And he who is the Cauſe of another Man's Death, is ſaid to be *Le Bane, i. e.* a Malefactor. *Bract. lib.* 2. *tract.* 8. *cap.* 1.

Baneret, (Banerettus, *Miles Vexillarius*) Sir *Tho. Smith*, in his *Repub. Angl. cap.* 18. ſays, is a Knight made in the Field, with the Ceremony of cutting off the Point of his Standard, and making it as it were a *Banner*; and accounted ſo honourable, that they are allowed to diſplay their Arms in the King's Army as Barons do, and may bear Arms with Supporters. *Camden*, in his *Britan. fol.* 109. hath theſe Words, Baneretti, *cum Vaſſalorum nomen jam deſierat, a* Baronibus *ſecundi erant; quibus inditum nomen a Vexillo; Conceſſum illis erat Militaris Virtutis ergo quadrato Vexillo (perinde ac* Barones) *uti, unde &* Equites Vexillarii *a nonnullis vocantur*, &c. 'Tis ſaid that they were antiently called by Summons to Parliament: And that they are next to the Barons in Dignity, appears by the Statute 14 *R.* 2. *c.* 11. and 5 *R.* 2. *Stat.* 2. *cap.* 4. *William de la Pole* was created *Baneret* by K. *Edward* the Third, by Letters Patent, *Anno Regni ſui* 13. And thoſe *Banerets* who are created *ſub vexillis Regiis, in exercitu Regali, in aperto Bello, & ipſo Rege perſonaliter præſente, explicatis*, take Place of all *Baronets*; as we may learn by the Letters Patent for Creation of Baronets. 4 *Inſt.* 6. Some maintain that Knights *Banerets* ought to be made in a Civil War: But *Hen.* 7. made divers *Banerets* upon the *Corniſh* Commotion, in the Year 1495. See *Selden's Titles of Honours, f* 799.

Baniſhment, (Fr. *Banniſſement*) *Exilium, Abjuratio*, is a Forſaking or Quitting of the Realm; and a Kind of Civil Death, inflicted on an Offender: There are two Kinds of it, one voluntary and upon Oath, whereof you may read *Abjuration*; and the other upon Compulſion, for ſome Offence. *Staundf. Pl. Cr. f.* 117. By *Magna Charta*, None ſhall be outlawed or baniſhed his Country, but by lawful Judgment of his Peers, or according to the Law of the Land. 9 *Hen.* 3. *c.* 29. And by the Common Law no Perſon ſhall be baniſh'd, but by Authority of Parliament; or in Caſe of Abjuration for Felony, &c. but this is taken away by Statute. 3 *Inſt.* 115. *Stat.* 21 *Jac.* 1. *c.* 28. See *Abjuration.*

Bank, (Lat. *Bancus*, Fr. *Banque*) In our Common Law, is uſually taken for a Seat or Bench of Judgment; as *Bank le Roy*, the King's Bench, *Bank le Common Pleas*, the Bench of Common Pleas, or the Common Bench; called alſo in Latin *Bancus Regis*, and *Bancus Communium Placitorum* Cromp. Juſt. 67, 91. *Jus Banci*, or the Privilege of the Bench, was antiently allowed only to the King's Judges, *qui ſummam adminiſtrant juſtitiam*; for inferior Courts were not allowed that Privilege. There is another Sort of *Bank*, which ſignifies a Place where a great Sum of Money is let out to Uſe, returned by Exchange, or otherwiſe diſpoſed of to Profit: And a *Bank of England* managed by a Governor and Directors, eſtabliſhed by Parliament, with Funds for maintaining thereof, appropriated to ſuch Perſons as were Subſcribers; and the Capital Stock, which is enlarged by divers Statutes, is exempted from Taxes, accounted a Perſonal Eſtate aſſignable over, not ſubject to Forfeiture; and the Company make Dividends of the Profits Half-yearly, &c. The Funds are redeemable by the Parliament, on paying the Money borrowed: And the Company of the *Bank*, is to continue a Corporation, and enjoy Annuities 'till redeemed, &c. During the Continuance of the *Bank* no Body Politick, &c. other than the Company, ſhall borrow any Sums on Bills payable at Demand; and Forging or Altering *Bank Notes*, or tendering ſuch forged Notes in Payment, demanding to have them exchanged for Money, &c. is Felony. And Officers or Servants of the Company, that imbezil any *Bank* Note, &c. wherewith they are intruſted, being duly convicted ſhall ſuffer Death as Felons. *Vide* the Statutes 5 & 6, and 8 & 9 *W.* 3. and 7. *Annæ*, &c. See alſo 1 *Geo.* 1. *c.* 12. and 3 and 11 *Geo.* 1. *c.* 8. and 15 *Geo.* 2. *c.* 13.

Bankers, The money'd Goldſmiths firſt got the Name of *Bankers* in the Reign of K. *Charles* the Second, as by the Words of an Act of Parliament, *Anno* 22 & 23 *Car.* 2. appears, —— *Whereas ſeveral Perſons, being Goldſmiths, and others, by taking up or borrowing great Sums of Money, and lending out the ſame again for extraordinary Hire and Profit, have gain'd and acquired to themſelves the Reputation and Name of Bankers*, &c. thus runs the Statute: But *Bankers* of late are thoſe Goldſmiths and private Perſons in whoſe Hands Money is lodged and depoſited for Safety, to be drawn out again as the Owners have Occaſion for it; and the *Bankers*, inſtead of lending abroad the Money thus depoſited, uſually traffick with it in *Exchange-Alley* on the Stocks, &c. oftentimes to their great Advantage, they being generally Men of great Eſtates.

Bankrupt, (*Bankus ruptus*) Is ſo called, becauſe when the Bank or Stock is broken or exhauſted, the Owner is ſaid to be a *Bankrupt*. And this Word *Bankrupt* is derived from the Fr. *Banqueroute*, which ſignifies a Breaking or Failing in the World: *Banque* in *French* is as much as *Menſa* in *Latin*, and *route* is the ſame as *Veſtigium*; and this Term is ſaid to be taken originally from the Roman *Menſarii*, which were ſet in publick Places, and when a Tradeſman ſlipp'd away, with an Intention to deceive his Creditors, he left only ſome *Veſtigia* or Signs of his Table or Shop behind him. *Cowel.* But a *Bankrupt* with us ſignifieth generally either Man or Woman, that Living by Buying and Selling hath gotten other Mens Goods into his or her Hands, and hideth himſelf in Places unknown, or in his own Houſe, in order to deceive and defraud his Creditors. 4 *Inſt.* 277. And by Stat. 1 *Jac.* 1. *c.* 15. a *Bankrupt* is thus deſcribed, *viz.* All and every Perſon who ſhall uſe the Trade of Merchandiſe, by Way of Bargaining, Exchange, Bartering or otherwiſe in Groſs, or by ſeeking his or her Living by Buying and Selling, who ſhall depart his Houſe, or abſent himſelf, or ſuffer himſelf to be arreſted for any Debt, or other Thing not grown due, for Money delivered, Wares ſold, or other good Conſideration; or ſhall ſuffer himſelf to be outlawed, or go to Priſon, or fraudulently procure himſelf to be arreſted, or his Money or Goods attached; or make any fraudulent Conveyance of his Lands, Goods, or Chattels, whereby his Creditors may be defeated in the Recovery of their juſt Debts; or being arreſted for Debt ſhall lie in Priſon ſix Months, or more, upon ſuch Arreſt or Detention, ſhall be adjudged a *Bankrupt*. The 21 *Jac.* 1. *cap.* 19. hath other Deſcriptions of a *Bankrupt*; but they are declared void by a late Statute. It is not buying and Selling of Land, but of perſonal Things, that will make a Man liable to be a *Bankrupt*; nor is it Buying only, or Selling only, but both buying and Selling. Every one that gets his Living by Buying and Selling in Trade and Merchandize, may come under the Denomination of a *Bankrupt*, upon his Failing therein. But Adventurers in the *Eaſt-India* Company, Members of the *Bank of England*, of the *South-Sea* Company, and other Societies, ſhall not be adjudged *Bankrupts*, in Reſpect of their Stock, &c. Alſo no Perſon concerned as Receiver General of Taxes, &c. ſhall be a *Bankrupt*: And Farmers, Graziers, &c. are excepted out of the Statutes; as Buying and Selling is not their only or principal Means of Livelihood. 14 *Car.* 2. 9 & 10 *W.* 3. 7 *Annæ*, &c. An Inn-keeper is not within the Statutes, for tho' he buys Proviſion to be ſpent in his Houſe, yet he doth not properly ſell it, but utters it to his Gueſts at no certain Price. *Cro. Car.* 395. And a Taylor is not within the Statute of *Bankrupts*, becauſe he lives by Making of Garments, and not by Buying and Selling. A Shoemaker hath been adjudged within the Statutes, as he lives by his Credit in buying Leather, and ſelling it again in Shoes, &c. And Carpenters in *London*, Weavers, Dyers, Tanners, Bakers, Brewers. Vintners, &c. may be *Bankrupts*: But Handicraftmen, Husbandmen, Labourers, &c. are not within the Statutes. *Cro. Car.* 21. *Cro. Jac.* 585. 3 *Mod.* 330. A Feme ſole Merchant in *London* may be a *Bankrupt*. If a Merchant gives over his Trade, and ſome Years after becomes nonſolvent for Money he owed while a Merchant, he is a *Bankrupt*: But if it be for new Debts, or old Debts continued on new Security, it is otherwiſe. 1 *Vent.* 5. 29. A Banker who hath many Peoples Money in his Hands refuſes Payment, yet keeps his Shop open, and as often as he is arreſted gives Bail; by this Means he may give Preference of Payment to his Friends; and if when he hath done he runs away, ſuch Payment ſhall ſtand againſt a Commiſſion of *Bankruptcy*. *Fareſt. Rep.* 139. If after a plain Act of *Bankrupty*, one goes abroad and is a great Dealer, yet this will not purge the firſt Act of *Bankruptcy*: though if he pays off or compounds with his Creditors, he is become a new Man. *Trin.* 2 *Ann.* 1 *Salk.* 110. A Man born in *England* goes over to *Ireland*, and there trades and buys Goods in *England*, and ſells them in *Ireland*, and being indebted in *England* becomes *Bankrupt*, adjudged a *Bankrupt* in *England*. *Raym.* 375. A Gentleman of the *Temple* went to *Lisbon*, and traded to *England* and broke; it was adjudged he was a *Bankprupt* by Reaſon of his Trading hither and back again, which gain'd him Credit here, though he was out of the Realm. *Salk.* 110. Where there are two Partners in Trade, and one breaks, you ſhall not charge the other with the Whole; but the Eſtate belonging to the joint Trade ought to be divided, &c. *Mod. Rep.* 45. And if one of them becomes a *Bankrupt*, it will not affect his Companion. 3 *Salk.* 61. Acts diſcharging *Bankrupts*, ſhall not diſcharge any Partner in Trade, or one jointly bound with the *Bankrupt*. 1 *Danv. Abr.* 686. A Merchant Trader indebted, keeps in another Man's Houſe, or on Ship-board, adjudged a Keeping in his Houſe: But a Withdrawing muſt be on Purpoſe to defraud Creditors; and if a Man goes ſometimes at large, ſo as he may be met with one Time or other, it will excuſe him. The Commiſſioners of *Bankrupts* have the Power to adjudge a Man a *Bankrupt*; yet in an Action the Jury muſt find whether he was ſo, or not. 1 *Danv.* 687 He that is a *Bankrupt* to one Creditor, is accounted in Law a *Bankrupt* to all the Creditors; and being once adjudged ſo, is always ſo to the reſt of the Creditors. 22 *Car.* 1. *B. R.* Commiſſioners may commit a *Bankrupt* refuſing to be examined, &c. till he ſubmit himſelf to be examined. 1 *Salk.* 151. But the Commiſſioners are not to commit a *Bankrupt* for not diſcovering his Eſtate, without examining him on Interrogatories. 1 *Lill Abr.* 202. They are to examine the *Bankrupt* upon Interrogatories; and they have Power to examine others, as to what they know of any Perſon's carrying away any Part of the *Bank* *rupt*'s Eſtate. 5 *Mod.* 309. Commiſſioners of *Bankrupt* have Power to ſell, grant and aſſign, but they cannot bring an Action; for their Aſſignees muſt generally bring all Actions. 1 *Mod* 30. The Creditors have a Right to the *Bankrupt*'s Goods, by the Act of *Bankruptcy*, and thereby they are bound: Though until Aſſignment by the Commiſſioners, the Property is not transferred out of the *Bankrupt.* 1 *Salk.* 108. The Commiſſioners are to ſell all the *Bankrupt*'s Lands in Fee, for Life, or Years, *&c.* and it will be binding againſt the *Bankrupt* and his Iſſue, *&c.* 1 *Lill. Abr.* 204. They may ſell all entailed Lands in Poſſeſſion, Reverſion, or Remainder, except entailed in the Crown, of the Gift of the King; and this ſhall bind the Iſſue in Tail, and all others, which a Common Recovery might cut off. *Ibid.* 205. But Sales of the *Bankrupt*'s Land by Commiſſioners, are to be by Deed inrolled. If a *Bankrupt* grant his Lands or Goods in the Names of other Perſons, the Commiſſioners notwithſtanding may make Sale of them: But not Lands, *&c.* conveyed *Bona fide* before the Party became a *Bankrupt. Wood*'s *Inſt.* 310. And no Purchaſe of Lands ſhall be impeached, unleſs the Commiſſion of *Bankrupt* be ſued out within five Years after a Man becomes *Bankrupt.* Lands held by a *Bankrupt* in Jointenancy, may be ſold as to the Moiety: Alſo Lands which a Perſon hath in Right of his Wife, (but not her Dower) Lands deviſed to a *Bankrupt*, the Commiſſioners may ſell. The Commiſſioners have Power to ſell Lands mortgaged, on Tender and Payment of the Mortgage-Money. 2 *Rep.* 25. And Aſſignees of the Commiſſioners, have the Benefit of Covenants of Re-entry, *&c.* on Lands. If a *Bankrupt* commits Felony, it is ſaid his Lands ſhall not eſcheat, but the Commiſſioners may ſell it: And his Creditors ſhall have his Goods, not the King. *Stone* 126, 130. All the Goods and Chattels of the *Bankrupt*, which he was poſſeſs'd of at the Time of his becoming *Bankrupt*, may be ſold by the Commiſſioners; and notwithſtanding the *Bankrupt* ſell them in Market overt. Sale of Goods by a *Bankrupt*, after an Act of *Bankruptcy*, may be avoided by the Commiſſioners of *Bankrupt*; and they may in this Caſe bring Trover for the Goods, or Debt, or *Aſſumpſit* for the Value, *&c.* 3 *Salk.* 60. Offices of Inheritance may be ſold; but not Offices of Truſt, annexed to the Perſon for Life. Aſſignees may bring Actions for Debts due to the *Bankrupt* in their own Names, *&c.* But if the Commiſſion be not taken out within ſix Years, directed by Law for Suing of Debts, and the Aſſignment made within that Time, a Defendant in an Action may plead the Statute of Limitations: If the Commiſſion be taken out in ſix Years, the Statute preſerves the Debt, being to relieve the Creditors againſt Fraud, *&c.* 1 *Saund.* 37. When Money is obtained by Judgment in Action of Debt, and the Plaintiff becomes *Bankrupt*, and a Commiſſion of *Bankrupt* is taken out againſt him, tho' the Sheriff may bring the Money into Court, it ſhall be delivered to the Plaintiff, and not the Aſſignee of the Commiſſion, unleſs he take out a *Scire facias* againſt the Defendant, in order to try the *Bankruptcy.* 1 *Vent.* 193. A Plaintiff that hath a Defendant's Body in Execution, who becomes *Bankrupt*, ſhall not come in to be relieved by the Statutes: But if the Plaintiff recovers Damages, *&c.* againſt the Defendant, and hath Judgment, and then the Defendant becomes *Bankrupt*, the Plaintiff is a Creditor; for it is a Debt due to him, and Action of Debt lies on the Judgment. 1 *Cro.* 166. If a Debtor to a *Bankrupt* pays him his Debt voluntarily, he muſt pay it over again; but 'tis otherwiſe in Caſe of Payment by Compulſion of Law. 2 *Vent.* 258. Where one truſts a *Bankrupt* after he becomes ſuch, he ſhall not be relieved as a Creditor. Sureties or Bail, when they have paid the Debt, may come in as Creditors: But Mortgagees, or Perſons that have a Pledge of the *Bankrupt*'s Goods, having Security for their Debts in their Hands, are not Creditors within the Statutes. Thoſe that attach Goods of the *Bankrupt*, are to come in as Creditors. If an Executor becomes *Bankrupt*, a Legatee is to be Creditor. And Aliens as well as Denizens may come in as Creditors; for all Statutes concerning *Bankrupts* extend to Aliens, who ſhall be ſubject to the Laws againſt *Bankrupts*, *&c. Hob.* 287. *Stat.* 21 *Jac.* 1. The Commiſſioners, after Sale of the *Bankrupt*'s Eſtate, are to make Diſtribution among the Creditors contributing to the Commiſſion, firſt making the *Bankrupt* his Allowance, *&c.* And in the Diſtribution of the *Bankrupt*'s Eſtate, no Reſpect is to be had to Debts upon Judgment, Recognizances, or Specialties, beyond other Debts. After four Months, and Diſtribution made, no Creditor can come in to diſturb it; but he may come in for the Reſidue, of which no Diſtribution is made. 1 *Danv.* 693. And the Court of Chancery hath ſometimes allowed Creditors to come in after Diſtribution, upon particular Circumſtances which have happened; and the Lord Chancellor ordered the Execution of the Commiſſion to be ſuſpended. *Chan. Rep.* 307. If Commiſſioners refuſe to pay a Creditor his proportionable Part, he may bring Action of Debt, or be more properly relieved in Chancery: Where the Commiſſioners do not purſue the Acts of their Commiſſion, the Party injured muſt bring his Action, and ſet forth the Finding of the Commiſſioners, that the Debtor is a *Bankrupt.* But if a Commiſſion is not duly obtained againſt a Perſon, he may traverſe, by Saying he is not a *Bankrupt.* 8 *Rep.* 121. By 1 *Jac.* 1. *c.* 15. In Actions againſt Commiſſioners, or others under them, executing any Matter by Force of the 13 *Eliz.* or that Statute, the Defendants may plead Not guilty, or juſtify that it was done by the Authority of thoſe Acts, *&c.* without ſhewing forth the Commiſſion; to which the Plaintiff may reply, that the Defendant did the Fact of his Wrong, *&c.* 1 *Danv.* 694. The Statutes concerning *Bankrupts* are 34 *H.* 8. 13 *Eliz.* 1 *Jac.* 1. 21 *Jac.* 1. 4 *&* 5 *Annæ.* 5, 6 *&* 7 *Geo.* 1. 3 *&* 5 *Geo.* 2. By the 34 *Hen.* 8. *cap.* 4. The Lord Chancellor, Treaſurer, *&c.* is to take Order with the *Bankrupt*'s Body, Lands and Goods. The 13 *Eliz. c.* 7. gives Power to the Lord Chancellor, upon Complaint in Writing againſt a *Bankrupt*, to appoint Commiſſioners to ſell the *Bankrupt*'s Lands, as well Copyhold as Free, Annuities, Goods, Chattels, Debts, *&c.* By 1 *Jac.* 1. *cap.* 15. Commiſſioners may aſſign Debts, *&c.* to the Creditors, and proceed to Execution, tho' the *Bankrupt* dies; Perſons ſuſpected to detain any of the *Bankrupt*'s Goods or Eſtate may be arreſted, and ſtill refuſing to deliver them, ſhall be committed; Creditors will be received if they come within four Months: And the Commiſſioners are to render the *Bankrupt* an Account, *&c.* The 21 *Jac.* 1. *c.* 19. inflicts a Puniſhment of Pillory on *Bankrupts* fraudulently concealing their Effects; and gives the Commiſſioners Power to break open the *Bankrupt*'s Houſe, Cheſts, *&c.* for Diſcovery of Goods; and another Perſon's Goods in the *Bankrupt*'s Poſſeſſion, as his own to ſell, *&c.* ſhall be diſpoſed of by the Commiſſioners. The 4 *&* 5 *Ann.* enacts, That *Bankrupts*, are to ſurrender themſelves to be examined in thirty Days, and diſcover and deliver up to the Commiſſioners all their Goods, Papers and Eſtate, or ſuffer as Felons; but the Lord Chancellor may enlarge the Time to ſixty Days. Upon the Certificate of the Commiſſioners, the *Bankrupt* is to be apprehended: And the Commiſſioners are to aſſign the *Bankrupt*'s Effects to ſuch Perſons as ſhall be choſen by a major Part of the Creditors; who may compound with Debtors, *&c.* By the 5 *Geo.* 1. *c.* 24. it is ordained, that *Bankrupts* within thirty Days after Notice, (which is to be given in the *Gazette*) ſhall ſurrender themſelves to the Commiſſioners, and conform to the Acts, or they will be guilty of Felony: Alſo their Concealing Goods to the Value of 20*l.* is made Felony. The Commiſſioners are to call before them Perſons as can give an Account of Acts of *Bankruptcy:* And Truſtees for the *Bankrupt*, and others concealing his Eſtate, ſhall diſcover Truſts, &c. or forfeit 100*l.* and double the Value. But Perſons diſcovering the *Bankrupt*'s Eſtate are allow'd 3*l. per Cent.* for ſuch Diſcovery. There ſhall be three ſeveral Meetings appointed by the Commiſſioners; and the Commiſſioners are to certify to the Lord Chancellor, that the *Bankrupt* hath conform'd, and four Parts in Five, in Number and Value, of the Creditors muſt ſign the *Bankrupt*'s Certificate. None are to vote for the Choice of Aſſignees, whoſe Debt doth not amount to 10*l.* and no Commiſſion ſhall iſſue, except the Debt of one Creditor petitioning amounts to 100*l.* of two Creditors 150*l.* or of three Creditors to 200*l.* And Bond is to be given of 200*l.* Penalty for proving the Party a *Bankrupt*. *Bankrupts* conforming are to have an Allowance of 5*l. per Cent.* not exceeding 200*l.* where their Eſtates pay 8*s.* in the Pound, &c. The 6 *Geo.* 1. *c.* 21. empowers any Judge of the Court wherein Judgment has been obtained againſt a *Bankrupt*, for any Debt owing before he became *Bankrupt*, the *Bankrupt* being in Priſon in Execution on ſuch Judgment, to diſcharge ſuch *Bankrupt* on producing his Certificate. And by 7 *Geo.* 1. *cap.* 31. Perſons having Bills, Notes, &c. upon *Bankrupts*, payable at a Day to come, ſhall be admitted to prove them as if due preſently, and be entitled to a Dividend of the *Bankrupt*'s Eſtate, allowing a Diſcount of 5*l. per Cent.* and *Bankrupts* ſhall be diſcharged from ſuch Notes: But no Creditor in Reſpect of ſuch Debt ſhall join in any Petition for ſuing forth any Commiſſion of *Bankruptcy*, till the Debt is actually due. By the 3 *Geo.* 2. *c.* 22. the Act 5 *Geo.* 1. was *revived*; and Perſons declared *Bankrupts* before the Expiration of this Statute, were entitled to Relief and Diſcharge from Debts, and the Lord Chancellor to proceed, and allow of Certificates, &c. as if that Act was in Force; ſo as they obtained their Certificates before the 25th of *March* 1732. The 5 *Geo.* 2. *c.* 30. ordains, that if *Bankrupts* do not, after Notice in the *Gazette*, ſurrender to the Commiſſioners in forty-two Days, to be examined, and diſcover and deliver up all their Eſtates Real and Perſonal, they ſhall be adjudg'd guilty of Felony; but the Lord Chancellor may enlarge the Time for Surrendering, not exceeding fifty Days further: They are to deliver all Books of Account, Writings, &c. on Oath to the Aſſignees; and ſhall be allowed 5*l. per Cent.* ſo as not to exceed 200*l.* if they pay 10*s.* in the Pound, 7*l.* 10*s. per Cent.* not above 250*l.* if pay 12*s.* 6*d. per* Pound, and 10*l. per Cent.* not exceeding 300*l.* if they pay 15*s.* in the Pound; but no Advantage is given to any *Bankrupt*, who hath loſt 5*l.* a Day, or 100*l.* in a Year at Gaming, or 100*l.* by Stockjobbing, &c. And the Body of the *Bankrupt* only, not his future Eſtate, to be diſcharged, except he pay 15*s. per* Pound. Four Parts in five in Number and Value of Creditors, not for leſs than 20*l.* are to ſign Certificates, and conſent to the *Bankrupt's* Diſcharge, &c. of which Oath is to be made, and other Creditors may be heard againſt it: Bonds or Notes given to any Creditor to conſent to a Certificate, ſhall be void; and if the Perſon iſſuing any Commiſſion have privately more than the other Creditors, the Commiſſion may be ſuperſeded, and he ſhall loſe his Debt. No Commiſſion of *Bankrupt* ſhall be granted, unleſs the Debt of one Creditor amount to 100*l.* or of two Creditors to 150*l.* or of three to 200*l.* And Affidavit muſt be made thereof, &c. *Bankrupts* are to be apprehended, on a Commiſſion iſſued and certified, by Virtue of a Juſtice's Warrant, and refuſing to be examined, the Commiſſioners may commit them: Notice ſhall be given to Creditors to meet and chuſe Aſſignees, and prove Debts, &c. which they may do without paying Contribution. Perſons diſcovering a *Bankrupt*'s Eſtate, to be allowed 5*l. per Cent.* Concealing Truſts, to forfeit 100*l.* and double Value. New Aſſignees may be choſen by the Creditors; and the old ones ſhall deliver up Effects to them, under the Penalty of 200*l.* Aſſignees may compound for Debts due to the *Bankrupt*, &c. And after the End of four Months within twelve Months are to account, and then a Dividend ſhall be made; and there may be a ſecond Dividend in eighteen Months, if the Eſtate be not wholly divided on the firſt, which ſhall be final, unleſs any Law-Suit is depending, or the Effects are not diſpoſed of, &c. On Petition to the Lord Chancellor, Proceedings may be entered on Record, and Copies given in Evidence. The Commiſſioners to take an Oath for faithful Execution of their Truſts; to be allowed 20*s.* a Day, and nothing for Expences; and Attornies and Solicitors Bills, are to be adjuſted by a Maſter in Chancery. Bankers, Brokers, and Factors are ſubject to the Statutes of *Bankrupt*; but no Receiver General of Taxes, &c. ſhall have any Benefit by this Act. In Order to the Taking out a Commiſſion of *Bankrupt*, it is uſual firſt for a Creditor to make Affidavit before a Maſter in Chancery, that the Party is indebted in a Sum ſufficient to make him a *Bankrupt*; then to petition the Lord Chancellor for the Commiſſion; give Bond to prove the Perſon a *Bankrupt*, &c. within ſome or one of the Statutes: And next follows the Commiſſion, directed to five Commiſſioners, (whereof two are to be Eſquires of the *Quorum*:) And when the Commiſſion is executed, and the Party hath conformed to the Statutes, his Certificate is granted and allowed, &c.

Affidavit of a Debt to make the *Party a Bankrupt*.

A. B. *of* &c. *maketh Oath that* C. D. *of*, &c. *is truly and juſtly indebted to him this Deponent* (*one of the Creditors*) *in the Sum of* 100*l. and upwards*; *and that he is become a* Bankrupt *within the Meaning of one or ſome of the Statutes made againſt* Bankrupts, *as this Deponent believes.*

Jurat' die, &c. coram, &c.   A. B.

A *Petition* to the Lord Chancellor *for a Commiſſion.*

HUmbly complaining, *Sheweth unto your Lordſhip, your Orator,* A. B. *of*, &c. *as well for himſelf, as all other the Creditors of* C. D. *of*, &c. *That whereas the ſaid* C. D. *uſing and exerciſing the Trade of*, &c. *by Way of Bargaining, Selling, Exchanging and Bartering*, &c. *and ſeeking his Living by Buying and Selling, upon juſt and good Cauſes, for Wares and Merchandizes to him ſold and delivered, and alſo for ready Money to him lent*, &c. *being indebted to your Orator in the Sum of* 100l. *and upwards, of late, that is to ſay, on or about*, &c. *laſt paſt, to the Intent to defraud and hinder your ſaid Orator, and other his Creditors of their juſt Debts and Duties to them due and owing, did become* Bankrupt *within the ſeveral Statutes made againſt* Bankrupts, viz. *within the Statute made in the Parliament begun and holden at* Weſtminſter, *the Day*, &c. *in the thirteenth Year of the Reign of Queen* Elizabeth *concerning* Bankrupts; *and within the Statute made in the Parliament, begun and holden*, &c. (*here ſet forth all the Statutes of* Bankrupts) *or within ſome or one of them:* In tender Conſideration *whereof, may it pleaſe your Lordſhip to grant unto your Orator his Majeſty's moſt gracious Commiſſion, to be directed to ſuch and ſo many honeſt and diſcreet Perſons, as to your Lordſhip ſhall ſeem meet, authorizing them thereby not only concerning the ſaid* Bankrupt, *his Body, Lands and Tenements, Goods and Chattels,* *Debts and other Things whatſoever, but alſo concerning all other Perſons, who by Concealment, Claim, or otherwiſe, do or ſhall offend touching the Premiſſes, or any Part thereof, contrary to the true Intent and Meaning of the ſaid Statutes, or any of them: And alſo to do and execute all and every Thing and Things whatſoever, as well for and towards Satisfaction and Payment of the ſaid Creditors, as towards and for all other Intents and Purpoſes, according to the Direction and Proviſion of the ſaid Statutes.*

And your Orator ſhall ever pray, &c.

A *Bond to the Lord Chancellor* on granting the Commiſſion.

KNow all Men *by theſe Preſents, That I* A. B. *of,* &c. *am held and firmly bound to the Right Honourable* Charles *Lord* Talbot, *Baron of,* &c. *Lord Chancellor of* Great Britain, *in two hundred Pounds of good and lawful Money of this Kingdom, to be paid to the ſaid Lord Chancellor or to his certain Attorney, his Executors, Adminiſtrators or Aſſigns; for which Payment well and truly to be made, I bind myſelf, my Heirs, Executors and Adminiſtrators, firmly by theſe Preſents ſealed with my Seal. Dated this Day of,* &c. *in the Year of the Reign of the Lord* George *the Second,* &c. *and in the Year of our Lord,* &c.

The **Condition** of this Obligation is ſuch, That if the above bound *A.* B. do and ſhall before the major Part of the Commiſſioners to be appointed in a Commiſſion of *Bankrupt* againſt *C. D.* of, &c. prove that the ſaid *C. D.* is juſtly indebted unto the ſaid *A. B.* in the Sum of 100*l.* And in like Manner prove that the ſaid *C. D.* is become a *Bankrupt* within ſome or one of the Statutes made againſt *Bankrupts*; then this Obligation to be void, or elſe to remain, &c.

Form of a *Commiſſion of Bankrupt.*

GEORGE *the Second, by the Grace of God, King of* Great Britain, &c. *To our Truſty and well beloved* R. C. H. S. H. B. J. T. J. C. &c. *Greeting:* Whereas *we are informed that* C. D. *of,* &c. *uſing and exerciſing the Trade of,* &c. *by Way of Bargaining, Exchange, Bartery,* &c. *ſeeking his Living by Buying and Selling, did about ſix Months ſince become* Bankrupt *within the Several Statutes made againſt* Bankrupts, *to the Intent to defraud and hinder* A. B. *of,* &c. *and other his Creditors of their juſt Debts and Duties to them due and owing:* We therefore *minding the due Execution as well of the Statute touching Orders for* Bankrupts *made in the Parliament, begun and holden at* Weſtminſter, *the Day,* &c. *in the thirteenth Year of the Reign of* Elizabeth *Queen of* England *made and provided, as of the Statute made in the Parliament, begun and holden at* Weſtminſter, *the Day,* &c. *in the firſt Year of King* James *of* England, &c. *intitled,* An *Act,* &c. *And alſo of the Statute made in the Parliament, begun and holden,* &c. *in the twenty-firſt Year of the ſaid King* James *of* England, &c. *And alſo of the Statute made in the Parliament, holden,* &c. *in the fourth Year of the Reign of her late Majeſty Queen* Anne, *intitled,* &c. *And alſo of the Statute made,* &c. *in the fifth Year of our Reign,* &c. *Upon Truſt of and in the Wiſdom and Fidelity which we have conceived in you, do by theſe Preſents aſſign, appoint, conſtitute and ordain you our ſpecial Commiſſioners for the Purpoſe aforeſaid, giving full Power and Authority unto you, or four or three of you, to proceed according to the ſaid Statutes, and every or any of them not only concerning the ſaid* Bankrupt, *his Body, Lands and Tenements, Goods, Chattels, Debts, and other Things whatſoever; but alſo concerning all other Perſons, who by Concealment, Claim or otherwiſe do or ſhall offend touching the Premiſſes, or any Part thereof, contrary to the Intent and Meaning of the ſaid Statutes, or any of them: And to do and execute all and every Thing and Things whatſoever, as well for and towards Satisfaction and Payment of the ſaid Creditors, as towards and for all other Intents and Purpoſes, according to the Ordinances and Proviſions of the ſame Statutes; willing and commanding you, four or three of you, to proceed to the Execution of this our Commiſſion, according to the true Intent and Meaning of the ſaid Statutes, with all Diligence and Effect.* Witneſs *our ſelf at* Weſtminſter, *the Day,* &c. *in the,* &c. *Year of our Reign.*

Form of a *Bankrupt's Certificate.*

To the Right Honourable *Charles* Lord *Talbot,*
Baron of *Henſoll,* Lord High Chancellor of
Great Britain.

WE R. C. H. S. H. B. &c. *the major Part of the Commiſſioners aſſigned and authorized in and by a Commiſſion of* Bankrupt *awarded againſt* C. D. *of,* &c. *bearing Date at* Weſtminſter, *the Day of,* &c. *laſt paſt, having begun to execute the ſaid Commiſſion, and found that the ſaid* C. D. *became a* Bankrupt *before the Date and Suing out of the ſaid Commiſſion, within the true Intent and Meaning of one or ſome of the Statutes made againſt* Bankrupts, *do humbly certify to your Lordſhip that the ſaid* C. D. *did on,* &c. *ſurrender himſelf to us, and ſubmit himſelf to be examined on Oath before us, from Time to Time, and in all Things to conform himſelf to an Act made in the fourth and fifth Years of her late Majeſty Queen* Anne, *intitled,* An Act to prevent Frauds frequently committed by *Bankrupts,* &c. *And to the ſeveral other Statutes made againſt* Bankrupts: *Whereupon and for the better Diſcovery of the ſaid* Bankrupt's *Eſtate, and putting in Execution the ſaid Acts, We the ſaid* R. C. H. S. H. B. &c. *have had ſeveral Meetings for the Examination of the ſaid* C. D. *and cauſed due Notice to be publiſhed in the* Gazette *of the Time and Place when and where we intended to finiſh his ſaid Examination, to the Intent that the Creditors of the ſaid* C. D. *might be heard againſt the Making of this preſent Certificate, and alſo admitted to prove their Debts: And ſeveral Creditors having proved their Debts, and none ſhewn any Cauſe againſt the Making of this Certificate:* We do therefore *further certify to your Lordſhip, that the ſaid* C. D. *hath upon ſuch Examination made a Diſcovery of his Eſtate and Effects, and in all Things conformed himſelf according to the Direction of the ſaid late Acts; and that there doth not appear to us any Reaſon to doubt the Truth of ſuch Diſcovery, or that the ſame is not a full Diſcovery of all the Eſtate and Effects of the ſaid* C. D. *And the rather, for that the Perſons who have ſigned this Certificate, teſtifying their Conſents to the ſame, are full four Parts in five, in Number and Value, of the Creditors of the ſaid* C. D. *who have duly proved their ſaid Debts.* Witneſs *our Hands and Seals,* &c.

Banks, No Town or Freeman ſhall be diſtrained to make *Banks* or Bridges, but ſuch as of old Time have been uſed to make them. *Stat. 9 Hen.* 3. *c.* 15. In *Norfolk* Perſons ſhall be diſcharged towards the Repair of *Sea-Banks,* as they are chargeable to the Highways, by 27 *Eliz. c.* 24.

Bannimus, The Form of Expulſion of any Member from the Univerſity of *Oxford,* by affixing the Sentence in ſome publick Places, as a Denunciation or Promulgation of it. And the Word *Banning* is taken for an Exclamation againſt, or Curſing of another.

Bannitus, An Outlaw, or baniſhed Man.—— *Vobis Præcipimus quod eidem Cancellario ad inſequendum, arreſtandum & capiendum dictos Malefactores &* Bannitos, &c. Pat. 15 Ed. 2.

Banniatus fortis, Is uſed in the ſame Senſe as *Bannitus,* ſignifying one outlawed or judicially baniſhed,

niſhed. *Pat.* 25 *Hen.* 3. *Brady's Hiſt. Ang. Append. p.* 196.

Bannum vel Banleuga, The utmoſt Bounds of a Manor, or Town, ſo uſed 47 *Hen.* 3. *Rot.* 44, *&c.* ——*Notum facio, me eleemoſynam noſtram Chriſto conceſſiſſe & omnibus Sanctis ſuis, &c. viz. primo Terram illam a* Twiwella *uſque* Thorney *ubi* Bannum *noſtrum ceſſat.* Carta Canuti Regis Cœnobio Thorneiæ. *Banleuga de Arundel* is taken for all that is comprehended within the Limits or Lands adjoining, and ſo belonging to the Caſtle or Town. *Seld. Hiſt. of Tithes, p.* 75.

Barbers, Are incorporated with the *Surgeons* of *London*; but not to practice Surgery, except drawing of Teeth, *&c.* 32 *H.* 8. See *Surgeon.*

Barbican, (*Barbicanum*) A Watch-Tower, or Bulwark. *Mandatum eſt* Johanni de Kilmynton *Cuſtodi Caſtri Regis & Honoris de* Pickering, *quoddam* Barbicanum *ante portam Caſtri Regis prædicti muro lapideo, & in eodem* Barbicano *quandam Portam cum ponte verſatili, &c. de novo facere, &c.* T. Rege 10 Aug. Clauſ. 17 Ed. 2. m. 39.

Barbicanage, (*Barbicanagium*) Money given for the Maintenance of a *Barbican*, or Watch-Tower; or a Tribute towards the Repairing or Building a Bulwark. *Carta* 17 *Ed.* 3 *Monaſticon Tom.* 1. *p.* 976.

Barca, A Barque: *Navis mercatorum & quæ merces exportat.* Gloſſ. Sax. *Ælfrici*, a Flotſhip.

Barcarium, (*Barcaria*) A Sheep-cote, and ſometimes uſed for a Sheep-walk. *MS. de Placit. Ed.* 3. See *Bercaria.*

Bargain and Sale, Is an Inſtrument whereby the Property of Lands and Tenements is for valuable Conſideration granted and transferred from one Perſon to another: It is called a Real Contract upon a valuable Conſideration, for paſſing of Lands, Tenements and Hereditaments, by Deed indented and inrolled. 2 *Inſt.* 612. *Accomp. Conv.* 1 *Vol.* 62. And it is alſo where a Recompence is given by both the Parties to the *Bargain*; as if one *bargains and ſells* his Land to another for Money; here the Land is a Recompence to him for the Money, and the Money a Recompence to the other for the Land. 1 *Lill. Abr.* 206. *Bargains and Sales of* Lands are to be in Writing indented, and inrolled in one of the Courts at *Weſtminſter*, or in the County where the Lands lie, before the *Cuſtos Rotulorum*, Juſtices of the Peace, *&c.* And the Inrolment ſhall be made within Six Months after the Date of the Deeds. *Stat.* 27 *H.* 8. *cap.* 16. But this Statute extends to *Bargains and Sales* of Inheritance and Freehold only; and not to *Bargains and Sales* for Terms of Years, *&c.* for they are good tho' not inrolled, nor by Deed indented. 2 *Rep.* 36. Houſes and Lands in *London*, and any City, *&c.* are exempted out of the Statute of Inrolments. 2 *Inſt.* 676. 1 *Nelſ. Abr.* 342. If two *Bargains and Sales* are made of the ſame Land to two ſeveral Perſons, and the laſt Deed is firſt inrolled; if afterwards the firſt Deed is alſo inrolled within ſix Months, the firſt Buyer ſhall have the Land; for when the Deed is inrolled, the Bargainee is ſeiſed of the Land from the Delivery of the Deed, and the Inrolment ſhall relate to it. *Hob.* 165. *Wood's Inſt.* 259. Neither the Death of the Bargainor or Bargainee, before the Inrolment of the Deed of *Bargain and Sale*, will hinder the Paſſing of the Eſtate to the Bargainee: But the Eſtate of Freehold is in the Bargainor, until the Deed is inrolled; ſo that the Bargainee cannot bring any Action of Treſpaſs before Entry had; though 'tis ſaid he may ſurrender, aſſign, *&c.* 2 *Cro.* 52. 1 *Inſt.* 147. A Bargainee ſhall have Rent which incurs after the *Bargain and Sale*, and before the Inrollment. *Sid.* 310. Upon the Inrollment of the Deed, the Eſtate ſettles *ab initio*, by the Stat. 27 *H.* 8. And the Statute of Inrollment ſays, that it ſhall not veſt, except the Deed be inrolled; and when it is inrolled, the Eſtate veſts preſently, by the Statute of Uſes. 1 *Danv. Abr.* 696. Every Deed may be inrolled at Common Law, for its Security. If ſeveral ſeal a Deed of *Bargain and Sale*, and but one acknowledge it, and thereupon the Deed is inrolled; this is a good Inrolment within the Statute. *Style* 462. None can make a *Bargain and Sale* of Lands that hath not the actual Poſſeſſion thereof at the Time of the *Sale*; if he hath not the Poſſeſſion, the Deed muſt be ſealed upon the Land, to make it good. 2 *Inſt.* 672. 1 *Lill.* 209. *Bargain and Sale* of Lands, paſſes the Freehold, and likewiſe Reverſions and Remainders, without Livery and Seiſin. 8 *Rep.* 93. But a *Bargain and Sale* of Lands for Money, may not be made to one Man, to the Uſe of another, but only to the Bargainee. A Man *bargains and ſells* his Land for Money by Deed inrolled to another, to hold to the Bargainee in Fee, to the Uſe of the Bargainor for Life, *&c.* or to the Uſe of any other, this Limitation of the Uſes is void, and it ſhall be to the Uſe of the Bargainee in Fee, becauſe the Conſideration and Sale implies the Uſe to be to him only. *Benl. Rep.* 61. There muſt be a good Conſideration given, or at leaſt ſaid to be given for Lands in theſe Deeds; and for a competent Sum of Money, is a good Conſideration; but not the general Words for divers Conſiderations, *&c. Mod. Ca.* 777. Where Money is mentioned to be paid in a *Bargain and Sale*, and in Truth no Money is paid, ſome of our Books tell us this may be a good *Bargain and Sale*; becauſe no Averment will lie againſt that which is expreſly affirmed by the Deed, except it comes to be queſtioned whether fraudulent or no, upon the Statute againſt fraudulent Deeds. *Dyer* 90. If no Conſideration of Money is expreſſed in a Deed of *Bargain* and *Sale*, it may be ſupplied by an Averment that it was made for Money: And after a Verdict on a Trial, it ſhall be intended that Evidence was given at the Trial of Money paid. 1 *Ventr.* 108. If Lands are *bargained and ſold* for Money only, the Deed is to be inrolled according to the Statute; but if it be in Conſideration of Money, and natural Affection, *&c.* the Eſtate will paſs without it. 2 *Inſt.* 672. 1 *Lev.* 56. All Things, for the moſt part, that are grantable by Deed in any other Way, are grantable by *Bargain and Sale*; and Lands, Rents, Advowſons, Tithes, *&c.* may be granted by it, in Fee-ſimple, Fee-tail, for Life, *&c.* 1 *Rep.* 176. 11 *Rep.* 25. But if Tenant for Life *bargains and ſells* his Land by Deed inrolled, it will be a Forfeiture of his Eſtate. 4 *Leon.* 251. A *Bargain and Sale* of the Profits of Land, is a *Bargain and Sale* of the Land it ſelf; for the Profits and the Lands are the ſame Thing in Subſtance. *Dyer* 71. One *bargains and ſells* all his Woods, and Underwoods, that have been accuſtomably uſed to be felled, growing and being in the Manor of *D.* to hold for Life; it was held, that the Vendee ſhall cut but once by this, and not again. *Bro. Abr.* 55. If the Deed of *Bargain and Sale* be not inrolled within the Six Months (which are to be reckoned after Twenty-eight Days to the Month, the Day of the Date taken excluſive) it is of no Force; ſo that if a Man *bargains and ſells* his Land to me, and the Trees upon it, altho' the Trees might be ſold by Deed without Inrolment, yet in this Caſe if the Deed be not inrolled, it will be good neither for the Trees nor the Land. *Dyer* 90. 7 *Rep.* 40. 2 *Bulſt.* 8. A *Bargain and Sale* of a Manor to which an Advowſon is appendant by Indenture not inrolled, will not paſs the Advowſon or the Manor, for it was to go as appendant. *Bro. Caſ.* 240. And if two Jointenants are of Land, and one of them *bargains* and *ſells* it all by ſuch a Deed indented, and then the other Jointenant dieth, and the Deed is inrolled; here but a Moiety of the Land ſhall paſs by this Deed. 2 *Cro.* 53. *A. bargains* his Lands to B. and his Heirs, by Indenture inrolled, but before the Inrolment *B. bargains and ſells* all his Eſtate to *C.* and the Deed was after inrolled; adjudged, that nothing did paſs by the Deed from B. to C. 2 *Cro.* 52. But in ſome Caſes, where a Deed will not enure by Way of *Bargain and Sale*, by Reaſon of ſome Defect therein, it may be good to another Purpoſe. *Dyer* 90. The very Words *Bargain and Sell* are not of abſolute Neceſſity in this Deed, for other Words equivalent will ſuffice; as if a Man ſeiſed of Land in Fee by the Words *Alien* or *Grant*, ſell the ſame to another, the Deed being made in Conſideration of Money, and indented and inrolled, will be an effectual *Bargain and Sale.* 9 *Rep.* 94. 7 *Rep.* 40. And the Words *Demiſe and Grant*, in Conſideration of Money paid, amount to a *Bargain and Sale.* Warranty and Covenants may be inſerted in a *Bargain and Sale*; but the Deed is good without any ſuch Addition. In pleading theſe Deeds, the Deed itſelf muſt be ſhewn under Seal. 1 *Inſt.* 225. And it muſt be ſet forth that the Inrolment was within Six Months, or *ſecundum formam Statuti*, &c.

Form of a *Bargain and Sale* of Lands.

THIS Indenture *made the Day and Year*, &c. Between A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *That the ſaid* A. B. *for and in Conſideration of the Sum of*, &c. *to him in Hand paid by the ſaid* C. D. *the Receipt whereof the ſaid* A. B. *doth hereby acknowledge*, He *the ſaid* A. B. Hath *granted, bargained and ſold, aliened and confirmed, and by theſe Preſents doth grant, bargain and ſell, alien and confirm unto the ſaid* C. D. *his Heirs and Aſſigns for ever*, All *that Meſſuage or Tenement, ſituate*, &c. *and alſo all Lands, Trees, Woods, Underwoods, Tithes, Commons, Common of Paſture, Profits, Commodities, Advantages, Hereditaments, Ways, Waters, and Appurtenances whatſoever to the ſaid Meſſuage or Tenement, Lands and Tenements abovementioned, belonging or any wiſe appertaining; And alſo the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Premiſſes, and of every Part thereof; And all the Eſtate, Right, Title, Intereſt, Claim and Demand whatſoever of him the ſaid* A. B. *of, in and to the ſaid Meſſuage, Tenement, and Premiſſes, and every Part thereof*; To have and to hold *the ſaid Meſſuage or Tenement, and all and ſingular the ſaid Premiſſes above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever:* And *the ſaid* A. B. *for him and his Heirs, the ſaid Meſſuage or Tenement, and Premiſſes, and every Part thereof againſt him and his Heirs, and againſt all and every other Perſon and Perſons whatſoever, to the ſaid* C. D. *his Heirs and Aſſigns, ſhall and will warrant, and for ever defend by theſe Preſents.* In Witneſs, &c.

The Manner of *Inrolling* a *Bargain and Sale.*

IT is to be remembered, *That the Day*, &c. *thither in the ſame Term before the Lord the King at* Weſtminſter, *came* A. B. *of*, &c. *in the County of* M. *Gentleman in his proper Perſon, and brought here into the Court of the ſaid Lord the now King, before the King himſelf at* Weſtminſter, *a certain Indenture, which he hath acknowledged to be his Deed: And he deſired that that Indenture in the Court of the Lord the now King before the ſaid Lord the King at* Weſtminſter, *might be of Record inrolled: And it is inrolled in Form following, that is to ſay*, This Indenture *made*, &c. (*And ſo inrol it* verbatim.)

Afterwards is *indorſed* on the Back of the *Deed*,

Inrolled *in the Court of the Lord the King, before the King himſelf at* Weſtminſter, *of the Term of the* Holy Trinity, &c. *in the Sixth Year of the Reign of the Lord* George *the Second now King of* Great Britain, &c.

Roll——

There is a *Bargain and Sale of Goods*, for which vide *Contract*, &c.

Barkary, (*Barkaria*, *corticulus*) A Tan houſe or Place to keep *Bark* in for the Uſe of Tanners. *New Book Ent.* Tit. *Aſſiſe, Corp. Polit.* 2.

Baron, (*Baro*) Is a *French* Word, and hath divers Significations here in *England*. Firſt it is taken for a Degree of Nobility next to a Viſcount. *Bracton, lib.* 1. *cap.* 8. ſays, they are called *Barones, quaſi robur Belli.* In which Signification it agrees with other Nations, where *Baroniæ* are as much as *Provinciæ:* So that *Barons* are ſuch as have the Government of Provinces, as their Fee holden of the King; ſome having greater, and others leſs Authority within their Territories. It is probable, that formerly in this Kingdom, all thoſe were called *Barons* that had ſuch Seigniories as we now call *Courts-Baron*; as they are at this Day called *Seigneurs* in *France*, who have any Manor or Lordſhip: And ſoon after the Conqueſt, all ſuch came to Parliament, and ſat as Peers in the Lords Houſe. But when by Experience it appeared that the Parliament was too much thronged by theſe *Barons*, who were very numerous, it was in the Reign of King *John* ordained that none but the *Barones Majores* ſhould come to Parliament, who for their extraordinary Wiſdom, Intereſt, or Quality, ſhould be ſummoned by Writ. After this, Men obſerving the Eſtate of Nobility to be but caſual, and depending merely upon the King's Will, they obtained of the King Letters Patent of this Dignity to them and their Heirs Male, who were called *Barons by Letters Patent*, or by Creation, whoſe Poſterity are now by Inheritance thoſe *Barons* that are called Lords of the Parliament; of which Kind the King may create at his Pleaſure. Nevertheleſs there are ſtill *Barons* by Writ, as well as *Barons* by Letters Patent: And thoſe *Barons* who were firſt by Writ, may now juſtly alſo be called *Barons by Preſcription*, for that they and their Anceſtors have continued *Barons* beyond the Memory of Man. The Calling up by Writ is at this Day ſeldom practiſed unleſs it be to ſummon the Son of ſome Lord to Parliament, in the Life-time of his Anceſtor; for Creation by Letters Patent is almoſt altogether in Uſe. 2 *Inſt.* 48. The Original of *Barons* by Writ, *Camden* refers to King *Hen.* 3. and *Barons* by Letters Patent, or Creation, commenced 11 *R.* 2. *Camb. Brit. pag.* 109. To theſe are added a third Kind of *Baron*, called *Barons by Tenure*, which are ſome of our ancient *Barons*; and likewiſe the Biſhops, who by Virtue of *Baronies* annexed to their Biſhopricks, always had Place in the Lord's Houſe of Parliament, as *Barons* by Succeſſion. *Seager of Honour, lib.* 4. *cap.* 13. There are alſo *Barons* by Office; as the *Barons of the Exchequer*, *Barons* of the *Cinque Ports*, &c. of which you may read under their proper Heads. In ancient Records, the Word *Baron* included all the Nobility of *England*, becauſe regularly all Noblemen were *Barons*, though they had a higher Dignity; and therefore the Charter of King *Ed.* 1. which is an Expoſition of what relates to *Barons* in *Magna Charta*, concludes *Teſtibus Archiepiſcopis, Epiſcopis, Baronibus, &c.* And the Great Council of the Nobility, when they conſiſted of, beſides Earls and *Barons*, Dukes, Marqueſſes, &c. were all comprehended under the Name *De la Councell de Baronage. Glanv. cap.* 4. Theſe *Barons* have given them two Enſigns to remind them of their Duties; firſt a long Robe of Scarlet, in Reſpect whereof they are accounted *De Magno Concilio Regis*; and ſecondly, they are girt with a Sword, that they ſhould ever be ready to defend their King and Country. 2 *Inſt.* 5 A *Baron* is *Vir Notabilis & Principalis:* And the Chief Burgeſſes of *London* were in former Times *Barons*; before there was a Lord Mayor, as appears by the City Seal, and their ancient Charters——*Henricus* 3. *Rex. Sciatis nos conceſſiſſe*

ceſſiſſe & hac præſenti Charta noſtra confirmaſſe Baronibus *noſtris de Civitate noſtra* London *quod Eligant ſibi Mayor de ſeipſis ſingulis annis*, &c. *Spelm. Gloſſ.* The Earl Palatines and Marches of *England*, had anciently their *Barons* under them; but no *Barons* but thoſe as held immediately of the King, were Peers of the Realm. 'Tis certain the King's Tenants were called *Barons*; as we may find in *Mat. Pariſ.* and other Writers: And in Days of old, all Men were ſtiled *Barons*; but this, I take it, was only a Term in the Law, not a Title of Nobility.

Barony, (*Baronia*) Is that Honour and Territory which gives Title to a *Baron*; comprehending not only the Fees and Lands of Temporal *Barons*, but of Biſhops alſo who have two Eſtates; one as they are ſpiritual Perſons, by Reaſon of their ſpiritual Revenues and Promotions; the other grew from the Bounty of our *Engliſh* Kings, whereby they have *Baronies* and Lands added to their ſpiritual Livings and Preferments. The *Baronies* belonging to Biſhops are by ſome called *Regalia*, becauſe *ex ſola liberalitate Regum eis olim conceſſa & a Regibus in feudum tenentur.* Blount. *Barony*, *Bracton* ſays, (*lib.* 2. *cap.* 34.) is a Right indiviſible; and therefore, if an Inheritance be to be divided among Coparceners, tho' ſome capital Meſſuages may be divided, yet *ſi capitale Meſſuagium ſit Caput Comitatus vel caput* Baroniæ, they may not be parcelled. In ſome Caſes a *Barony* may be aliened, or entailed, and the Honour paſs accordingly. In antient Times thirteen Knights-Fees and a Quarter made a Tenure *per Baroniam*, which amounted to 400 Marks *per Annum*.

Baronet, (*Baronettus*) Is a Dignity or Degree of Honour, which hath Precedency before all Knights, as Knights of the Bath, Knights-Bachelors, &c. except *Bannerets*, made *Sub vexillis Regiis in exercitu Regali in aperto Bello, & ipſo Rege perſonaliter præſente.* This Order of *Baronets* was inſtituted by King *James* 1. in the Year 1611. with ſuch Precedency as aforeſaid, and other Privileges, &c. Their Number at firſt was but two Hundred; but now they are without Limitation: They are created by Patent, with an *Habendum ſibi & Hæredibus maſculis*, &c. And their Dignity, on its firſt Inſtitution, was a Kind of purchaſed Honour, by Men of great Eſtates qualified for Titles.

Baron and Feme, Are Husband and Wife, by our Law; and they are adjudged but one Perſon, *Bracton* ſaith, *Vir & Uxor ſunt quaſi unica perſona, quia caro una & ſanguis unus. Bract. lib.* 5. *fol.* 416. A Wife cannot be a Witneſs againſt or for her Husband, nor he againſt or for her, (except in Caſe of High Treaſon) becauſe they are *duæ animæ in una Carne.* 1 *Nelſ. Abr.* 349. At Common Law a Man could neither in Poſſeſſion, Reverſion or Remainder, limit an Eſtate to his Wife; but by *Stat.* 27 *H.* 8. A Man may covenant with other Perſons to ſtand ſeiſed to the Uſe of his Wife; or may make any other Conveyance to her Uſe; but he may not covenant with his Wife to ſtand ſeiſed to her Uſe, for they are one Perſon in Law. A Man may deviſe Lands by Will to his Wife, becauſe the Deviſe doth not take Effect till after his Death. *Co. Litt.* 112. Agreements between *Baron and Feme* before Marriage, are by the Marriage generally extinguiſhed: But if a Perſon, in Conſideration of Marriage, promiſe to leave his Wife worth ſo much at his Death, this being no Duty in the Life-time of the Husband, is not extinguiſhed by the Marriage. *Cro. Jac.* 571, 623. A Wife cannot deviſe Lands to her Husband: For a *Feme Covert* cannot make a Will, as ſhe is ſo entirely under the Power of her Husband, that what ſhe doth cannot be called her Will. *Nelſ. Abr.* 347. The Will of the Wife is ſubject to that of the Husband; ſo that if they commit a Felony together, ſhe ſhall be neither Principal nor Acceſſary: And if a Wife doth Damage to another, ſhe can make no Satisfaction during the Coverture, but the Husband muſt do it. *F. N. B.* 188. Every Gift, Grant, or Diſpoſition of Goods, Lands, or other Thing whatſoever, and all Obligations and Feoffments made by a *Feme Covert*, without her Husband's Conſent, are void 1 *H.* 5. 126. *Fitz. Covert*, 18. Where a Statute or Obligation is made to a *Baron and Feme*, or to her during Coverture; the Husband only can make a Defeazance of it, and conclude the Wife. 1 *Inſt.* 351. In Caſe Money be due to the Husband by Bill or Bond, or for Rent on a Leaſe, and it is paid to the Wife; this ſhall not prejudice him, if after Payment he publickly diſagrees to it. 19 *Jac.* 1. *B. R.* 2 *Shep. Abr.* 426. A Wife is *ſub Poteſtate viri*, and therefore her Acts ſhall not bind her, unleſs ſhe levy a Fine, &c. when ſhe is examined in Private whether ſhe doth it freely or by Compulſion of the Husband: If *Baron and Feme* levy a Fine, this will bar the *Feme*: And where the *Feme* is examined by Writ, ſhe ſhall be bound; elſe not. 1 *Danv. Abr.* 708. Therefore where *Baron and Feme* acknowledge a Deed to be inrolled, or a Statute, &c. this will not bind the *Feme*, becauſe ſhe is not examined by Writ. A Wife is diſabled to make Contracts, &c. 3 *Inſt.* 110. And if a Married Woman enters into Bond as *Feme ſole*, if ſhe is ſued as *Feme ſole*, ſhe may plead *Non eſt factum*, and the Coverture will avoid her Bond. 1 *Lill. Abr.* 217. A Feme Covert may plead *Non Aſſumpſit*, and give Coverture in Evidence, which makes it no Promiſe, &c. *Raym.* 395. By Marriage the Husband hath Power over his Wife's Perſon; and he may correct his Wife. *Dalt.* 284. But if he threaten to kill her, &c. ſhe may make him find Surety of the Peace. *F. N. B.* 80. He hath likewiſe Power over the Wife's Eſtate; and if ſhe have Fee, he gaineth a Freehold in her Right; he alſo gaineth her Chattels Real, as Terms for Years, &c. and all Chattels Perſonal, in Poſſeſſion of the Wife, are the Husband's: But where the Wife is out of Poſſeſſion, or is poſſeſſed only as Executrix, or the Chattels are Debts and Things in Action, if they are not recovered by him and his Wife, the Husband ſhall not have them. 1 *Inſt.* 299, 351. Though Money charged on Lands, is not in Nature of a *Choſe in Action*, but of Rent, and is given to the Husband by the Intermarriage. 1 *Chan. Rep.* 189. If Lands be given to a Man, and ſuch a Woman who ſhall be his Wife, the Man ſhall have the Whole: But if a Feoffment be made to the Uſe of the Feoffee, and his Wife that ſhall be, the Wife he afterwards marries ſhall take jointly with him. 1 *Rep.* 101. If *Baron and Feme* are Jointenants for Years, the *Baron* may diſpoſe of the Whole: And if the *Baron* hath a Term in the Right of his *Feme*, he may grant over the Whole. 1 *Danv.* 702. But he cannot diſpoſe of it by Will, if he doth not ſurvive her. 1 *Inſt.* 46, 184. And as the Husband ſurviving the Wife ſhall enjoy her Term, againſt her Executors; So if the Wife ſurvive her Husband, ſhe ſhall have her Term for Years, or other Chattels Real again, if the Husband hath not altered the Property. 1 *Inſt.* 351. And if the Husband charges the Chattel Real of his Wife with a Rent, &c. if ſhe ſurvives him, it will not bind her; for ſhe ſhall hold it diſcharged, as ſhe comes in Paramount the Charge. A Husband poſſeſſed of a Term in his Wife's Right, may make a Leaſe for Years of the Land, rendring Rent to his Executors or Aſſigns, to commence after his Death. 1 *Nelſ. Abr.* 344. But if a Leaſe be conveyed by a *Feme ſole*, in Truſt for the Uſe of herſelf, if ſhe afterwards marries, it cannot be diſpoſed of by the Husband: If ſhe dies, he ſhall not have it, but the Executors of the Wife. *March* 44. See 2 *Vern.* 270. A Legacy is given to a *Feme ſole* to be paid preſently, or at a Day to come, if ſhe marry and die, before any Releaſe or Diſpoſal thereof by her Husband; in that Caſe, her Executor or adminiſtrator, it has been held, ſhall have it: And if a

Promiſe, or Bond be to a *Feme*, or the *Baron and Feme*, and the Husband dies before he recovers, or releaſes the ſame, the Wife, and not his Executors ſhall be entitled to it. *F. N. B.* 121. 7 *Hen.* 6. 2. *Mich.* 17 *Jac.* 1. A Man and his Wife covenanted by Indenture, but the Wife did not ſeal it; and it was held, that if the *Baron* ſealed and delivered it in the Name of the *Feme*, it would be the Deed of the Wife, during the Life of the Husband: But if Land is given to Husband and Wife, and the Heirs of their two Bodies, and the Husband alone ſuffer a common Recovery; this will not bind the Eſtate Tail, although the Husband ſurvive his Wife. 1 *Cro.* 769. 3 *Rep.* 5, 34. The Wife ſhall be received to defend her Right, on the Default of the Husband, and he cannot prejudice his Wife, as to her Freehold and Inheritance. *Jenk. Cent.* 79. A Husband cannot alien the Wife's Lands but by Fine wherein ſhe joins; if he doth, ſhe may recover them after his Debt by *Cui in vita.* And by Statute, where a Husband makes Leaſes of his Wife's Lands, for twenty-one Years, *&c.* ſhe is to be made a Party, and the Rent reſerved to Huſband and Wife, and the Heirs of the Wife, *&c.* This is of Leaſes of Lands of the Wife's Inheritance. *Stat.* 32 *H.* 8. *cap.* 28. If a *Feme* having a Rent for Life takes Husband, the *Baron* ſhall have Action of Debt for the Rent incurred during the Coverture, after the Death of the *Feme.* 1 *Danv.* 719. And Arrears due in the Life-time of the Husband, after his Death, ſhall ſurvive to the Wife, if ſhe outlives him, and her Adminiſtrators after her Death. 2 *Lut.* 1151. A *Feme* Leſſee for Life, rendring Rent, takes Husband and dies, the *Baron* ſhall be charged in Action of Debt for the Rent which was grown due during the Coverture, becauſe he took the Profits out of which the Rent ought to iſſue. *Keilw.* 125. *Raym.* 6. But if ſuch a *Feme* Leſſee takes *Baron* and dies, 'tis ſaid the *Baron* ſhall not be charged for Waſte during the Coverture; for he was never Leſſee. 1 *Danv.* 718. If a Leaſe is made to *Baron and Feme*, and the Husband dies, and the Wife accepts of the Land, tho' ſhe may be obliged to pay the Rent, or to perform a Condition on the Part of the Leſſor; yet ſhe is not bound to perform Collateral Covenants, as to do no Waſte, or to repair Houſes, *&c.* 1 *Brownl.* 31. The *Baron* may have an Action alone upon the Stat. 5 *R.* 2. for Entering into the Land of the *Feme*; Treſpaſs and taking Charters of the Inheritance of the *Feme*; *Quare Impedit*, *&c.* But for Perſonal Torts, they muſt join, though the *Baron* is to have the Damages. 1 *Danv.* 709. 1 *Roll. Rep.* 360. The Husband is to join in Actions for Battery to the Wife: And a Wife may not bring any Action for Wrong to her, without her Husband; though when they join in any Action, Damage is to be laid only to the Huſband. 1 *Inſt.* 326, 132. For an Injury done to the Wife alone, Action cannot be maintained by the Husband alone, without her; but for Aſſault and Debauching or Lying with the Wife, or for a Loſs and Injury done to the Husband in depriving him of the Converſation and Service of his Wife, he alone may bring an Action; and theſe laſt Actions are laid for Aſſault, and detaining the Wife, *Per quod Conſortium amiſit*, *&c.* 2 *Cro.* 538. For taking any Thing from the Wife, the Husband only is to bring the Action, who has the Property; for the Wife hath not the Property. In all Caſes where the *Feme* ſhall not have the Thing recovered but the Husband only, he alone is to bring the Action. 1 *Roll. Rep.* 360. For a Perſonal Duty to the Wife, the *Baron* only may bring the Action: And the Husband is entitled to the Fruits of his Wife's Labour, for which he may bring *Quantum Meruit.* 1 *Lill. Abr.* 227. 1 *Salk* 114. *Baron and Feme* ought to join in Actions for Debt due to the *Feme* before Coverture: And where an Action will ſurvive to the Wife, and ſhe may recover Damages, ſhe muſt join with the Husband in the Action. 2 *Mod.* 269. By the Cuſtom of *London*, a *Feme Covert* trading there, may ſue and be ſued as a *Feme ſole Merchant.* 2 *Inſt.* 236. And if an Husband is an Alien Enemy, the Wife may be charged as a *Feme Sole.* 1 *Salk.* 116. In Caſe, before Marriage a *Feme* enters into Articles concerning her Eſtate, ſhe is as a ſeparate Perſon; and the Husband may be Plaintiff in Equity againſt the Wife. *Preced. Canc.* 24. A Man muſt anſwer for the Treſpaſſes of his Wife: If a *Feme Covert* ſlander any Perſon, *&c.* the Husband and Wife muſt be ſued for it, and Execution is to be awarded againſt him. 11 *Rep.* 62. But where a *Feme Covert* commits a Treſpaſs *Vi & Armis*, and Action is brought againſt *Baron and Feme*, if the Jury find the Wife guilty, and the Husband not; here the Wife ſhall be impriſoned, until the Husband pays the Fine. *Jenk. Cent.* 23. If Husband and Wife commit Treaſon or Murder, they ſhall be both found guilty; and the Wife not be diſcharged, on Preſumption it was by Coercion of the Husband. 1 *Hale's Hiſt. P. C.* 47. And a Wife for her own Crimes, may be indicted without her Husband; and ſhe may ſue and be ſued without her Husband, in the Spiritual Court. 9 *Rep.* 72. 2 *Roll. Abr.* 298. A *Feme ſole* indebted takes Husband; it is then the Debt of the Husband and Wife, and both are to be ſued for it; but the Husband is not liable after the Death of the Wife, unleſs there be a Judgment againſt both during the Coverture. 1 *Roll. Abr.* 351. Where there is Judgment againſt a *Feme ſole*, who marries and dies, the *Baron* ſhall not be charged therewith: Though if the Judgment be had upon *Scire facias* againſt *Baron and Feme*, and then the *Feme* dies, he ſhall be charged. 3 *Mod.* 186. In Action brought againſt a *Feme ſole*, if pending the Action ſhe marries, this ſhall not abate the Action; but the Plaintiff may proceed to Judgment and Execution againſt her, according as the Action was commenced. 1 *Lill.* 217. *Trin* 12 *W.* 3. And if a *Habeas Corpus* be brought to remove the Cauſe, the Plaintiff is to move for a *Procedendo* on the Return of the *Habeas Corpus:* Alſo the Court of *B. R.* may refuſe it, where brought to abate a juſt Action. 1 *Salk.* 8. But if a *Feme ſole* gives a Warrant of Attorney to confeſs Judgment, and before entered ſhe marries, it is a Countermand of the Warrant, and Judgment ſhall not be had againſt Husband and Wife, to charge him. 1 *Salk.* 399. When *Baron and Feme* are ſued, the Husband muſt make an Attorney for himſelf and his Wife. 2 *Saund.* If a Wife be arreſted, ſhe ſhall be diſcharged on Common Bail, let the Cauſe of Action be what it will: But if *Baron and Feme* be arreſted, the Huſband ſhall not be diſcharged, unleſs he give Bail for his Wife as well as himſelf. *Mod. Caſ.* 17. Both Husband and Wife, 'tis ſaid, may be taken in Execution. 1 *Nelſ. Abr.* 365. Though if it be a Contrivance to charge the Wife, ſhe ſhall be diſcharged upon Motion. 1 *Lev.* 51. The *Baron* in an Account ſhall not be charged by the Receipt of his Wife, except it came to his Uſe. 1 *Danv.* 707. Yet if ſhe uſually receives and pays Money, it will bind him in Equity. *Abr. Caſ. Eq.* 61. For Goods ſold to a Wife, to the Uſe of the Husband, the Husband ſhall be charged, and be obliged to pay for the ſame. *Sid.* 425. If a Woman buys Things for her neceſſary Apparel, tho' without the Conſent of the Husband, yet her Husband ſhall be bound to pay for it. *Brownl.* 47. And if the Wife buys any Thing for herſelf, Children, or Family, and the *Baron* does any Act precedent or ſubſequent whereby he ſhews his Conſent, he may be charged thereupon. 1 *Sid.* 120. The Husband is obliged to maintain his Wife in Neceſſaries: But they muſt be according to his Degree and Eſtate, to charge the Husband; and Neceſſaries may be ſuitable to a Husband's Degree of Quality, but not to his Eſtate; alſo they may be Neceſſaries, but not *ex Neceſſitate* to charge her Husband. 1 *Mod.* 129. 1 *Nelſ. Abr.* 354. Tho' a Wife is very lewd, if ſhe cohabits with her Huſband, he is chargeable for all Neceſſaries for her, becauſe he took her for better for worſe; and ſo he is if he runs away from her, or turns her away: But if ſhe goes away from her Husband, then as ſoon as ſuch Separation is notorious, whoever gives her Credit doth it at his Peril, and the Husband is not liable, unleſs he take her again. 1 *Salk.* 119. Although a Husband be bound to pay his Wife's Debts for her reaſonable Proviſion, yet if ſhe parts from him, eſpecially by Reaſon of any Misbehaviour, and he allows her a Maintenance, he ſhall never after be charged with her Debts, 'till a new Cohabitation: But if the Husband receive her, or come after her, and lie with her but for a Night, that may make him liable to the Debts. *Paſch.* 3 *Ann. Mod. Caſ.* 147, 171. And if there be an Agreement in Writing between Husband and Wife to live ſeparate, and that ſhe ſhall have a ſeparate Maintenance, it ſhall bind them both 'till they both agree to cohabit again; and if the Wife is willing to return to her Husband, ſhe may, but it has been adjudged that the Husband hath no coercive Power over the Wife to force her, though he may viſit her, and uſe all lawful Means, in order to a Reconciliation. *Mich. Geo.* 1. *Mod. Caſ. in L. & E.* 22. Where there is a Separation by Conſent, and the Wife hath a ſeparate Allowance, thoſe who truſt her do it upon her own Credit. 1 *Salk.* 116. If a Husband makes his Wife an Allowance for Clothes, *&c.* which is conſtantly paid her, 'tis ſaid he ſhall not be charged. 1 *Sid.* 109. And if he forbids particular Perſons to truſt her, he will not be chargeable: But a Prohibition in general, by putting her in the News-Papers, is no legal Notice not to truſt her. 1 *Vent.* 42. A Wife may uſe the Goods of her Husband, but ſhe may not diſpoſe of them: And if ſhe takes them away, it is not Felony, for ſhe cannot by our Law ſteal the Goods of her Husband; but if ſhe delivers them to an Adulterer, and he receives them, it will be Felony in him. 3 *Inſt.* 308. 310. If *Baron and Feme* are divorced *Cauſa Adulterii*, which is a Divorce *a Menſa & Thoro*, they continue *Baron and Feme:* It is otherwiſe in Divorce *a Vinculo Matrimonii*, which diſſolves the Marriage. A Man within the Age of Fourteen (his Age of Conſent to marry) takes a Woman to Wife, they are *Baron and Feme*, ſo that he may have Treſpaſs *de muliere abducta cum bonis viri*, *&c.*

Bar, or **Barr**, (Lat. *Barra*, and in Fr. *Barre*) In a legal Senſe is a Plea or peremptory Exception of a Defendant ſufficient to deſtroy the Plaintiff's Action. And it is divided into *Bar* to common Intendment, and *Bar* Special; *Bar* Temporary, and Perpetual: *Bar* to a common Intendment is an Ordinary or General *Bar*, which uſually diſableth the Declaration of the Plaintiff: *Bar* Special is that which is more than ordinary, and falls out upon ſome ſpecial Circumſtance of the Fact, as to the Caſe in Hand. *Terms de Ley* 77. *Bar* Temporary is ſuch a *Bar* that is good for the Preſent, but may afterwards fail: And *Bar* Perpetual is that which overthrows the Action of the Plaintiff for ever. *Plowd.* 26. But a Plea in *Bar*, not giving a full Anſwer to all the Matter contained in the Plaintiff's Declaration, is not good. 1 *Lil. Abr.* 211. If one be *barred* by Plea to the Writ, or to the Action of the Writ, he may have the ſame Writ again, or his right Action: But if the Plea in *Bar* be to the Action itſelf, and the Plaintiff is *barred* by Judgment, *&c.* it is a *Bar* for ever in perſonal Actions. 6 *Rep.* 7. And a Recovery in Debt is a good *Bar* to Action on the Caſe for the ſame Thing: Alſo a Recovery on *Aſſumpſit* in Caſe, is a good *Bar* in Debt, *&c. Cro. Jac.* 110. 4 *Rep.* 94. In all Actions Perſonal, as Debt, Account, *&c.* a *Bar* is perpetual, and in ſuch Caſe the Party hath no Remedy, but by Writ of Error or Attaint; but if a Man is *barred* in a Real Action by Judgment, yet he may have an Action of as high a Nature, becauſe it concerns his Inheritance; as for Inſtance, if he is *barred* in a Formedon in Deſcender, yet he may have a Formedon in the Remainder, *&c.* 6 *Rep.* 7. It has been reſolved, That a *Bar* in any Action Real or Perſonal by Judgment upon Demurrer, Verdict, or Confeſſion, is a *Bar* to that Action, or any Action of like Nature for ever: But according to *Pemberton* Chief Juſtice, this is to be underſtood, when it doth appear that the Evidence in one Action would maintain the other; for otherwiſe the Court ſhall intend that the Party hath miſtaken his Action. *Skin.* 57, 58. *Bar* to a common Intent is good: And if an Executor be ſued for his Teſtator's Debt, and he pleadeth that he had no Goods left in his Hands, at the Day the Writ was taken out againſt him, this is a good *Bar* to a common Intendment, 'till it is ſhewn that there are Goods: But if the Plaintiff can ſhew by Way of Replication that more Goods have fallen into his Hands ſince that Time, then except the Defendant alledge a better *Bar*, he ſhall be condemned in the Action. *Plowd.* 26. *Kitch.* 215. *Bro.* Tit. *Barre.* There is a *Bar* Material, and *Bar* at Large: *Bar* Material may be alſo called Special *Bar*; as when one in Stay of the Plaintiff's Action, pleadeth ſome particular Matter, *viz.* a Deſcent from him that was Owner of the Land, *&c.* a Feoffment made by the Anceſtor of the Plaintiff, or the like: A *Bar* at Large is, when the Defendant by Way of Exception, doth not traverſe the Plaintiff's Title, by Pleading, nor confeſs, or avoid it, but only makes to himſelf a Title in his *Bar. Kitch.* 68. 5 *H.* 7. 29. This Word *Bar* is likewiſe uſed for the Place where Serjeants and Counſellors at Law ſtand to plead the Cauſes in Court; and Priſoners are brought to anſwer their Indictments, *&c.* whence our Lawyers, that are called to the *Bar*, are termed Barriſters. 24 *H.* 8. *c.* 24.

Barraſter, **Barriſter**, (*Barraſterius*) Is a Counſellor learned in the Law, admitted to plead at the *Bar*, and there to take upon him the Protection and Defence of Clients. They are termed *Juriſconſulti*; and in other Countries called *Licentiati in Jure:* And antiently *Barriſters* at Law were called *Apprentices* of the Law, in Lat. *Apprenticii Juris Nobiliores. Forteſc.* The Time before they ought to be called to the Bar, by the antient Orders, was eight Years, now reduced to ſeven; and the Exerciſes done by them (if they were not called *Ex gratia*) were twelve Grand Moots performed in the Inns of Chancery in the Time of the Grand Readings, and twenty-four Petty Moots in the Term-Times, before the Readers of the reſpective Inns: And a *Barraſter* newly called is to attend the ſix next long Vacations the Exerciſe of the Houſe, *viz.* in Lent and Summer, and is thereupon for thoſe three Years ſtiled a Vacation *Barriſter.* Alſo they are called *Utter Barriſters, i. e.* Pleaders *Ouſter* the Bar, to diſtinguiſh them from Benchers, or thoſe that have been Readers, who are ſometimes admitted to plead within the Bar, as the King, Queen, or Prince's Counſel are. *Barriſters* who conſtantly attend the King's Bench, *&c.* are to have the Privilege of being ſued in Tranſitory Actions in the County of *Middleſex.* But it hath been queſtioned, whether an Action of Debt doth lie for their Fees, unleſs it be upon ſpecial Retainer; for a Counſellor's Fee is *Honorarium quiddam*, not *Mercenarium*, as that of an Attorney or Solicitor. 2 *Inſt.* 213, 214. *&c. Wood's Inſt.* 448

Barrator, or **Barretor**, (Lat. *Barractator*, Fr. *Barrateur*) A common Mover of Suits and Quarrels, either in Courts, or elſewhere in the Country, that is himſelf never quiet, but at Variance with one or other. *Lambert* derives the Word *Barretor* from the

Lat. *Balatro*, a vile Knave; but the proper Derivation is from the Fr. *Barrateur*, *i. e.* a Deceiver, and this agrees with the Deſcription of a common *Barretor* in my Lord *Coke*'s Reports, *viz.* That he is a common Mover and Maintainer of Suits in Diſturbance of the Peace, and in taking and detaining the Poſſeſſion of Houſes and Lands, or Goods by falſe Inventions, *&c.* And therefore it was adjudged, that the Indictment againſt him ought to be in theſe Words, *viz.* That he is *Communis Malefactor, calumniator & ſeminator litium & Diſcordiarum inter vicinos ſuos, & pacis Regis perturbator, &c.* And there it is ſaid that a common *Barreter* is the moſt dangerous Oppreſſor in the Law; for he oppreſſeth the Innocent by Colour of Law, which was made to protect them from Oppreſſion. 8 *Rep.* 37. No one can be a *Barretor* in reſpect of one Act only; for every Indictment for ſuch Crime muſt charge the Defendant with being *Communis Barractator*, and conclude *Contra Pacem*, *&c.* And it hath been holden, that a Man ſhall not be adjudged a *Barretor* for bringing any Number of Suits in his own Right, tho' they are vexatious; eſpecially if there be any Colour for them; for if they prove falſe, he ſhall pay the Defendant Coſts. 1 *Rol. Abr.* 355. 3 *Mod.* 98. A *Barriſter* at Law entertaining a Perſon in his Houſe, and bringing ſeveral Actions in his Name, where nothing was due, was found guilty of *Barretry.* 3 *Mod.* 97. An Attorney is in no Danger of being convicted of *Barretry*, in Reſpect of his maintaining another in a groundleſs Action, to the Commencing whereof he was no Way privy. *Ibid.* A common Solicitor who ſolicits Suits, is a common *Barretor*, and may be indicted thereof, becauſe it is no Profeſſion in Law. 1 *Danv Abr* 725. *Barretors* are puniſhed by Fine and Impriſonment, bound to the good Behaviour, *&c.* And belonging to the Profeſſion of the Law, they ought to be further puniſhed by Diſability to practice. 34 *Ed.* 3. *c.* 1. *Hawk. P. C.* 244.

An *Indictment* for Barretry.

South'ton, ſſ. T*HE Jurors for our Sovereign Lord the King upon their Oath preſent, that* A. B. *of*, &c. *in the ſaid County, Yeoman, on the* Day, &c. *in the Year of the Reign*, &c. *at* H. *in the ſaid County, was and yet is a Common* Barretor, *and continual Diſturber of the Peace of our ſaid Lord the King; and alſo on the Day and Year, and at the Place above mentioned, was and ſtill is a common and troubleſome Slanderer, Railer, and Sower of Diſcord among his Neighbours, and that he hath procured and cauſed divers Suits and Quarrels then and there and elſewhere in the County aforeſaid, amongſt divers Subjects of our Lord the King, to the great Contempt of our Sovereign Lord the King, and the bad Example of other Offenders, and againſt the Peace of our ſaid Lord the King*, &c.

Barrel, (*Barillum*) Is a Meaſure of Wine, Ale, Oil, *&c.* Of Wine it contains the eighth Part of a Tun, the fourth Part of a Pipe, and the Moiety of a Hogſhead, that is thirty-one Gallons and a Half. 1 *R.* 3. *c.* 13. Of Beer it contains thirty-ſix Gallons; and of Ale, thirty-two Gallons. *Anno* 23 *H.* 8. *c.* 4. and 12 *Car.* 2. *c.* 23. It is declared that the Aſſiſe of Herring *Barrels* is thirty-two Gallons Wine Meaſure, containing in every *Barrel* uſually a Thouſand full Herrings. *Anno* 13 *El. c.* 11. The Eel *Barrel* contains thirty Gallons. 2 *H.* 6. *c.* 13.

Barriers, (Fr. *Barrieres*) Signifies that which the *French* call *Jeu de Barres, i. e. Palæſtra*, a Martial Exerciſe of Men armed and fighting together with ſhort Swords, within certain *Bars* or Rails, which ſeparated them from the Spectators: It is now diſuſed here in *England.* There are likewiſe *Barrier Towns*, or Places of Defence on the Frontiers of Kingdoms.

Barrow, (from the Sax. *Boerg*, a Heap of Earth) A large Hillock or Mount, raiſed or caſt up in many Parts of *England*, which ſeem to have been a Mark of the Roman *Tumuli*, or Sepulchres of the Dead. The Sax. *Beora*, was commonly taken for a Grove of Trees on the Top of a Hill. *Kennet's Gloſſ.*

Barter, (from the Fr. *Baretre*, *Circumvenire*) Signifieth in our Books to exchange one Commodity for another, or truck Wares for Wares. *Anno* 1 *R.* 3. *c.* 9. And the Reaſon may be, becauſe they that exchange in this Manner, do endeavour for the moſt part one to over-reach and circumvent the other.

Barton, Is a Word uſed in *Devonſhire*, for the Demeſne Lands of a Manor; ſometimes for the Manor-Houſe itſelf; and in ſome Places for Outhouſes, and Fold Yards. In the Stat. 2 & 3 *Ed.* 6. *c.* 12 *Barton* Lands, and Demeſne Lands, are uſed as *Synonyma's*. See *Berton.*

Bas Chevaliers, Low or inferior Knights by Tenure of a bare Military Fee, as diſtinguiſhed from Bancrets the Chief or Superior Knights: Hence we call our ſimple Knights, *viz.* Knights-Bachelors, *Bas Chevaliers.* Kennet's Gloſſ. *to Paroch. Antiq.*

Baſe Court, (Fr. *Cour Baſſe*) Is any inferior Court, that is not of Record, as the Court-Baron, *&c.* *Kitch. fol* 95, 96.

Baſe Eſtate, (Fr. *Bas Eſtat*) Is that *Eſtate* which *Baſe* Tenants have in their Lands. And *Baſe* Tenants according to *Lambert*, are thoſe who perform villainous Services to their Lords; *Kitchen fol.* 41. makes *Baſe* Tenure and Frank Tenure to be Contraries, and puts Copyholders in the Number of *Baſe* Tenants; where it may be gathered that every *Baſe* Tenant holds at the Will of the Lord: But there is a Difference between a *Baſe Eſtate* and Villenage; for to hold in pure Villenage is to do all that the Lord will command him; and if a Copyholder have but a *Baſe Eſtate*, he not holding by the Performance of every Commandment of his Lord, cannot be ſaid to hold in Villenage: And Copyholders are by the Cuſtoms of Manors, and Continuance of Time grown out of that extreme Servitude wherein they were firſt Created.

Baſe Fee, is a Tenure in *Fee* at the will of the Lord, diſtinguiſhed from Socage free Tenure: But the Lord *Coke* ſays, that *Baſe Fee* is what may be defeated by Limitation, or on Entry, *&c. Co. Lit* 1. 18. *Baſſa Tenura* or *Baſe* Tenure, was a holding by Villenage, or other cuſtomary Service, oppoſed to *Alta Tenura*, the higher Tenure in *Capite*, or by Military Service, *&c.* ——— *Manerium de* Cheping Farendon *cum pertinentiis eſt de antiquo Dominico coronæ Domini Regis, unde omnia prædicta tenementa ſunt parcella, & de* Baſſa Tenura *ejuſdem manerii.* Conſuetud. Domus de Farendon, MS. 44.

Bas Ville, The Suburbs or inferior Town, as uſed in *France.*

Baſels, (*Baſſelli*) A Kind of Coin aboliſhed by King *Hen.* 2. *Anno* 1158. *Hollingſhed's Chron. p.* 67.

Baſelard, or **Baſilard**, In the Stat. 12 *Rich.* 2. *c.* 6 Signifies a Weapon, which Mr. *Speight* in his Expoſition upon *Chaucer*, calls *Pugionem vel ſicam*, a Poinard; *Arrepto* Baſillardo *tranſfixit, &c. Cum alio* Baſilardo *penetravit latera ejus, &c.* Knighton, lib. 5. pag. 2731.

Baſileus, A Word mentioned in ſeveral of our Hiſtorians ſignifying King, and ſeems peculiar to the Kings of *England.* *Monaſticon, Tom.* 1. *pag.* 65. *Ego* Edgar *totius Angliæ* Baſileus *Confirmavi* ——In many Places of the *Monaſticon* this Word occurs; and alſo in *Ingulphus, Malmesbury, Mat. Paris, Hoveden, &c.*

Baſket-Tenure of Lands. See *Caneſtellus.*

Baſnetum, A *Baſnet*, or Helmet. By *Inqu.* 22 *Ed.* 4. After the Death of *Laurence de Haſtings* Earl of *Pembroke* it was found thus —— *Quod quidem Ma-*

nerium, (*i. e. de* Aſton Cantlore) *per ſe tenetur de Domino Rege in Capite, per ſervitium inveniendi unum Hominem peditem, cum Arcu ſine chorda, cum uno* Balneio, *ſive Cappa, per xl. dies ſumptibus ſuis propriis quotiens fuerit guerra in* Wallia.

Baſſinet, A Skin with which the Soldiers covered themſelves. *Blount*.

Baſtard, (*Baſtardus*) From the Brit. *Baſtaerd*, *i. e. Nothus* or *Spurius*, is one that is born of any Woman not married, ſo that his Father is not known by the Order of Law; and therefore is called *Filius Populi*, the Child of the People:

Cui Pater eſt Populus, Pater eſt ſibi nullus & omnis:
Cui Pater eſt Populus, non habet ipſe Patrem.

The learned *Spelman* derives the opprobrious Name of *Baſtard* from the Norman *Bas*, and Saxon *Steort*, Riſe or Original; as a Perſon of a baſe and vile Birth: Such *Baſtard* cannot inherit Land as Heir to his Father; nor can any Perſon inherit Lands as Heir to him, but one that is Heir of his Body. *Lit. Sect.* 401. A *Baſtard* by the Common Law is made incapable of any Eccleſiaſtical Benefice; for the Sacraments ought not be committed to infamous Perſons: And it is the Law of Nature, that a *Baſtard* who is born out of lawful Marriage, (unleſs there be ſome particular Law to the contrary) has not any Relation to his Father, who begot him, but ſhall rely on his Mother, that bore him. *Forteſcue* 88, 89. *Baſtard* is *Terminus a quo*, he is the firſt of his Family; for he hath no Relation of which our Law takes any Notice; yet this muſt be underſtood as to Civil Purpoſes, there being a Relation as to Moral Purpoſes; for he cannot marry his own Mother, or *Baſtard* Siſter. 3 *Salk.* 66, 67. If a Woman be with Child by a Man, who afterwards marries her, and then the Child is born, this Child is no *Baſtard:* But if a Man hath Iſſue by a Woman before Marriage, and after they marry, the Iſſue is a *Baſtard* by our Law; but Legitimate by the Civil Law. 2 *Inſt.* 96, 97. If a Man marries a Woman groſly big with Child by another, and within three Days after ſhe is delivered, in our Law the Iſſue is no *Baſtard.* 1 *Danv. Abr.* 729. And where a Child is born within a Day after Marriage between Parties of full Age, if there be no apparent Impoſſibility that the Husband ſhould be the Father of it, the Child is no *Baſtard*, but ſuppoſed to be the Child of the Husband. 1 *Rol. Abr.* 358. But if the Husband be but eight or nine Years of Age, or if he be within the Age of fourteen, the Iſſue is a *Baſtard:* So where a Husband is Gelt, or hath loſt his Genitals, &c. which ſhews an Impoſſibility to get a Child, the Iſſue of his Wife tho' born within Marriage, is a *Baſtard.* 1 *Inſt.* 244. 1 *Danv.* 278. By the Law of the Land, a Perſon cannot be a *Baſtard* who is born after Eſpouſals, unleſs it be by Special Matter. If a Woman elope from her Husband, ſo as he be within the four Seas, her Iſſue ſhall not be a *Baſtard* by our Law; though by the Spiritual Law he ſhall: And if the Wife continues in Adultery and hath Iſſue, this is a *Baſtard* in our Law. 1 *Danv.* 730. By the Common Law, if the Husband be *infra quatuor maria*, ſo that by Intendment he may converſe with his Wife, and the Wife hath Iſſue, the Child will not be a *Baſtard:* But he is a *Baſtard* who is born of a Woman when her Husband, at and from the Time of the Begetting to the Birth, is *extra quatuor maria.* 1 *Inſt.* 244. 2 *Salk.* 483. If a Woman hath Iſſue, the Husband being over Sea ſo long before the Birth of the Iſſue, which his Wife hath in his Abſence, that the Iſſue cannot be his, this is a *Baſtard.* 1 *Danv.* 729. If the Husband be only over in *Ireland*, it is otherwiſe. A Divorce *cauſa Præcontractus*, *cauſa Affinitatis*, *cauſa Frigiditatis*, &c. *baſtardizes* the Iſſue; not for Cauſe ſubſequent to the Marriage: But if the Man and Woman continue Husband and Wife for all their Lives, the Iſſue cannot be a *Baſtard* by Divorce after their Death. 1 *Danv.* Where a Woman, on Divorce *a Menſa & Thora*, lives in Adultery with another, her Children by ſuch other are *Baſtards*; for Children born in Adultery, are born out of the Limits of Matrimony. Though if Husband and Wife conſent to live ſeparate, the Children born after ſuch Separation ſhall be taken to be Legitimate, becauſe the Acceſs of the Husband ſhall be preſumed; but if it be found there was no Acceſs, then they are *Baſtards.* 1 *Salk.* 122. If a Woman hath a Child forty Weeks and eight Days after the Death of her Husband, it ſhall be Legitimate; the Law having appointed no exact certain Time for Birth of Legitimate Iſſues. 1 *Danv.* 726. 2 *Lill Abr.* 236. If a Man or Woman marry a ſecond Wife or Husband, the firſt being Living, and have Iſſue by ſuch ſecond Wife or Husband, the Iſſue is a *Baſtard.* 39 *Ed.* 3. *cap.* 14, &c. Before the Statute 2 & 3 *Ed.* 6. *c.* 21. One was adjudged a *Baſtard*, *Quia filius ſacerdotis.* He that gets a *Baſtard* in the Hundred of *Middleton*, in the County of *Kent*, forfeits all his Goods and Chattels to the King. *MS. de Temp. Ed.* 3. By Statute, a Woman with Child of a *Baſtard*, muſt be firſt examined by a Juſtice of Peace, and the Fact of her being with Child proved by her Oath, and then the Juſtice is to ſend his Warrant for the reputed Father; when the Party is brought before the Juſtice, he muſt enter into a Recognizance with ſufficient Sureties for his Appearance at the next Seſſions, &c. and he may be continued on the Recogninance 'till the Woman is delivered of the Child: After the Child is born, two Juſtices (*Quorum unus*) reſiding neareſt the Place, are to examine the Matter by Witneſſes, &c. and make their Order for Relief of the Pariſh from the *Baſtard:* And if the two Juſtices cannot agree, they may refer it to the Seſſions; alſo the putative Father may appeal from the Order of the two Juſtices; or may give Security to the Pariſh, &c. *Stat.* 18 *Eliz. c.* 3. 3 *Car.* 1. The two next Juſtices of Peace (one being of the *Quorum*) may make Orders for puniſhing the Mother and Father of a *Baſtard* Child: And by Order of the Juſtices, the Church-wardens and Overſeers of the Poor may ſeize Goods, &c. of the Father and Mother to diſcharge the Pariſh: And Juſtices of the Peace have Power to commit lewd Women having *Baſtards* to the Houſe of Correction, for one Year, &c. But Perſons able to keep them, are not within the Statute. It is adjudged Murder to conceal the Death of a *Baſtard* Child when born, unleſs there be Proof to the contrary that it was ſtill born. 18 *Eliz. c.* 3. 13 & 14 *Car.* 2. 7 & 21 *Jac* 1. By a late Satute, If a Woman declares herſelf to be with Child of a *Baſtard*, and on Oath before a Juſtice charge any Perſon with getting it; he may grant his Warrant to apprehend the Perſon charged, and for bringing him before any Juſtice, &c who may commit him to Gaol or the Houſe of Correction, unleſs he give Security to indemnify the Pariſh, or enter into Recognizance with Sureties to appear at the next Quarter-Seſſions, and perform ſuch Order as ſhall be made, purſuant to the Statute 18 *Eliz.* But in Caſe the Woman ſhall die, or be married, or miſcarry, &c. or if no Order is made in due Time, the Man ſhall be diſcharged: And no Juſtice may ſend for, or compel any Woman before ſhe is delivered, and one Month after, to anſwer Queſtions, &c. *Stat.* 6 *Geo.* 2 *c.* 31 If any one conſpire to charge another to be the Father of a *Baſtard* Child, he may be indicted and puniſhed with publick Whipping, &c. It is only in the Power of the King and Parliament to make a *Baſtard* Legitimate. *Dav. Rep.* 37. See 13 *Geo.* 2 *c.* 29.

Baſtardy, (*Baſtardia*) Signifies a Defect of Birth, objected to one born out of Wedlock. *Bract. lib.* 5 *c.* 19. And as to Pleading of *Baſtardy*, ſee *Raſtal's Entr.* The Stat. 9 *H.* 6. *cap.* 11. and *Kitch fol.* 64. mention *Baſtardy* General and Special; the Difference whereof is, that *Baſtardy General* is a Certificate from the Biſhop of the Dioceſe to the King's Juſtices, after Inquiry made, that the Party enquired of is a *Baſtard*, or not a *Baſtard*, upon ſome Queſtion of Inheritance: *Baſtardy Special* is a Suit commenced in the King's Court, againſt him that calls another *Baſtard*, ſo termed, becauſe *Baſtardy* is the Principal Caſe in Trial, and no Inheritance contended for. And by this it appears that in both theſe Significations, *Baſtardy* is an Examination or Trial, whether a Man's Birth be defective or legitimate. *Baſtardy* is of Eccleſiaſtical Juriſdiction; but it muſt be intended General *Baſtardy*, as whether he that is charged with *Baſtardy* were born in lawful Matrimony, and his Father and Mother were ever joined in lawful Marriage, which is triable by the Biſhop's Certificate: Special *Baſtardy*, as whether the Defendant was born before Marriage, *&c.* where the Matrimony is confeſſed; and where an Action is brought for calling a Man *Baſtard*, *&c.* is triable in the Temporal Courts, by the Country. 1 *Inſt.* 134. 1 *Nelſ. Abr.* 367. *Hob.* 117. The Queſtion of *Baſtardy* ought to be firſt moved in the Temporal Courts; and after Iſſue joined thereupon, the ſame is tranſmitted by Writ to the Eccleſiaſtical Court, to be examined and certified. *Dav. Rep.* 52. But the Judges ſhall not award a Writ to the Ordinary to certify whether a Perſon be a *Baſtard* or not, till Proclamation is iſſued for all Perſons having Intereſt therein to make their Objections before the Ordinary againſt the Party; and any Certificate of the Ordinary concerning *Baſtardy* without ſuch Proclamation ſhall be void. *Stat.* 9 *H.* 6. A Certificate by the Biſhop duly made, the Law gives entire Credit to: And if a Man be certified a *Baſtard* by the Ordinary, he ſhall be perpetually bound, becauſe it is the higheſt Trial thereof. *Doctor and Student* 68. But if a Perſon be certified to be a *Baſtard*, this doth not bind before Judgment in the Action between him and the other Party; neither doth it bind if the Plaintiff be after nonſuited. 18 *E.* 3. 34. 1 *Danv. Abr.* 733. A *Baſtard* is a good Name of Purchaſe; for *Baſtards* having gotten Names by Reputation, may purchaſe by ſuch Names to them and their Heirs: And a Limitation to them when *in eſſe*, and known, is good; but not before they are born. Likewiſe a Remainder may be made to ſuch, by the Name of Son of the reputed Father; though not by the Name of Iſſue, which muſt be lawful, nor may a Uſe be raiſed to ſuch a reputed Son; but a Man may deviſe all his Eſtate by Will to a *Baſtard*, by his reputed Name. 1 *Inſt.* 3. 6 *Rep* 65. *Dyer* 374. A Man deviſed Lands to the Uſe of *J.* his Daughter, who was a *Baſtard*, and this was reſolved to be good. *Jenk. Cent.* 239.

Baſtardeigne, (*Fr.*) Is where the eldeſt Child of a Perſon is a *Baſtard*, who is ſo called. *Law Fr. Dict.*

Baſton, (*Fr.*) A Staff, or Club; and by our Statutes it ſignifies one of the Warden of the *Fleet's* Servants or Officers who attends the King's Courts with a red Staff for taking ſuch into Cuſtody who are committed by the Court. 1 *R.* 2. *c.* 12. 5 *Eliz. c.* 23. See *Tipſtaff.*

Baſus, *Per* Baſum *tolnetum capere*, To take Toll by Strike, and not by Heap; *per baſum*, being oppoſed to *in cumulo vel cantello*——*Tolnetus ad molendinum ſit ſecundum conſuetudinem regni*; *menſuræ per quas tolnetus capi debet ſint concordantes menſuris Domini Regis, & capiatur tolnetus per* Baſum, *& nichil in cumulo vel cantello.* Conſuetud. Domus de Farendon, MS. f. 42.

Batable Ground, Is taken for the Land that lay between *England* and *Scotland*, heretofore in Queſtion, when they were diſtinct Kingdoms, to which it belong'd. *Anno* 23 *H.* 8. *c.* 6. and 32 *H.* 8. *cap.* 6. It ſeems to mean, as if we ſhould ſay, litigious or *Debatable Ground, i. e.* Land about which there is Debate; and by that Name *Skene* calls *Ground* that is in Controverſy. *Camb. Britan.* Tit. *Cumberland.*

Bath, (Lat. *Bathon*, called by the Britons *Badiza*) Has been termed the City of Sickmen: It is a Place of Reſort in *Somerſetſhire* famous for its Medicinal Waters. The Chairmen are there to be licenſed by the Mayor and Aldermen, for carrying Perſons to and from the hot *Baths*, *&c.* under the Penalty of 10*s.* by Statute 7 *Geo.* 1. *cap.* 19. And a publick *Hoſpital* or Infirmary for Poor is eſtabliſhed in the City of *Bath*, the Governors whereof, have Power to hold all Charities, *&c.* and appoint Phyſicians, Surgeons and other Officers: Any Perſons not able to have the Benefit of the *Bath Waters*, may be admitted into this Hoſpital, their Caſe being atteſted by ſome Phyſician, and the Poverty of the Patients certified by the Miniſter and Churchwardens of the Place where they live, *&c.* Every Perſon ſo admitted, ſhall have the Uſe of the Old Hot-*Bath*, and be entertained and relieved in the Hoſpital; and when cured or diſcharged, ſuch Perſons ſhall be ſupplied with 3 *l.* each, to defray the Expence of removing them back to their Pariſhes, *&c.* *Stat.* 12 *Geo.* 2. *c.* 31.

Batitoria, A Fulling-Mill. 'Tis mentioned in the *Monaſticon*, *Tom.* 2. *pag.* 832. *Uſque ad ſtagnum Molendini ipſius* Willielmi *cum* Batitoria *& agardino ſuo ubique*, *&c.*

Battel, (Fr. *Battaile*) Signifies a Trial by Combat, which was anciently allowed of in our Laws, where the Defendant in Appeal of Murder or Felony may fight with the Appellant, and make Proof thereby whether he be culpable or innocent of the Crime. *Glanv. Lib.* 14. *c.* 1. When an Appellee of Felony wages *Battel*, he pleads that he is *Not guilty*, and that he is ready to defend the ſame by his Body, and then flings down his Glove; and if the Appellant will join *Battel*, he replies, That he is ready to make good his Appeal by his Body upon the Body of the Appellee, and takes up the Glove: And then the Appellee lays his right Hand on the Book, and with his left Hand takes the Appellant by the Right, and ſwears thus: *Hear this thou who calleſt thyſelf* John *by the Name of Baptiſm, that I who call myſelf* Thomas *by the Name of Baptiſm, did not feloniouſly murder thy Father* W. *by Name, on the Day and Year of*, &c. *at* B. *as you ſurmiſe, nor am any Way guilty of the ſaid Felony*; *ſo help me God.* And then he ſhall kiſs the Book, and ſay; *And this I will defend againſt thee by my Body, as this Court ſhall award.* Then the Appellant lays his right Hand on the Book, and with his left Hand takes the Appellee by the Right, and ſwears to this Effect: *Hear this thou who calleſt thyſelf* Thomas *by the Name of Baptiſm, that thou didſt feloniouſly on the Day, and in the Year,* &c. *at* B. *murder my Father* W. *by Name*; *ſo help me God.* And then he ſhall kiſs the Book, and ſay; *And this I will prove againſt thee by my Body, as this Court ſhall award.* This being done, the Court ſhall appoint a Day and Place for the *Battel*, and in the mean while the Appellee ſhall be kept in Cuſtody of the Marſhal, and the Appellant find Sureties to be ready to fight at the Time and Place, unleſs he be an Approver, in which Caſe he ſhall alſo be kept by the Marſhal: And the Night before the Day of *Battel*, both Parties ſhall be arraigned by the Marſhal, and ſhall be brought into the Field before the Juſtices of the Court where the Appeal is depending at the Riſing of the Sun, bare headed, and bare legg'd from the Knee downwards, and bare in the Arms to the Elbows, armed only with Baſtons an Ell long, and four corner'd Targets; and before they engage, they ſhall both make Oath, *That they have neither eat nor drunk, nor done any Thing elſe by which the Law of God may be depreſſed,* *and the Law of the Devil exalted:* And then, after Proclamation for Silence under Pain of Impriſonment, they ſhall begin the Combat, wherein if the Appellee be ſo far vanquiſhed that he cannot or will not fight any longer, he may be adjudged to be hanged immediately; but if he can maintain the Fight till the Stars appear, he ſhall have Judgment to be quit of the Appeal: And if the Appellant becomes a crying Coward, the Appellee ſhall recover his Damages, and may plead his Acquittal in Bar of a ſubſequent Indictment or Appeal; and the Appellant ſhall for his Perjury loſe his *Liberam legem.* If an Appellant becomes blind by the Act of God after he has waged *Battel*, the Court will diſcharge him of the *Battel*; and in ſuch Caſe it is ſaid that the Appellee ſhall go free. This Trial by *Battel* is at the Defendant's Choice; but if the Plaintiff be under an apparent Diſability of fighting, as under Age, maimed, *&c.* he may counterplead the Wager of *Battel*, and compel the Defendant to put himſelf upon his Country: Alſo any Plaintiff may counterplead a Wager of *Battel*, by alledging ſuch Matters againſt the Defendant as induce a violent Preſumption of Guilt; as in Appeal of Death, that he was found lying upon the Deceaſed with a bloody Knife in his Hand, *&c.* for here the Law will not oblige the Plaintiff to make good his Accuſation in ſo extraordinary a Manner, when in all Appearance he may prove it in the ordinary Way. It is a good Counterplea of *Battel* that the Defendant hath been indicted for the ſame Fact; when if Appeal be brought, the Defendant ſhall not wage *Battel.* And if a Peer of the Realm bring an Appeal, the Defendant ſhall not be admitted to wage *Battel*, by Reaſon of the Dignity of the Appellant. 2 *Hawk. P. C.* 426, 427. This Trial by *Battel* is before the Conſtable and Marſhal; but with all its Ceremonies is now diſuſed. See *Glanv. lib.* 14. *Bracton lib.* 3 *Britton c.* 22. *Smith de Rep. Angl. lib.* 2. *Co. Lit.* 294, *&c.* Vide *Combat.*

Battery, (from the Fr. *Batre* to ſtrike, or Sax. *Batte*, a Club) Is an Injury done to another in a violent Manner; as by ſtriking or beating of a Man, puſhing, jolting, filiping upon the Noſe, *&c.* And it is alſo defined by our Law to be a Treſpaſs committed by one Man upon another *Vi & armis, & contra Pacem, &c.* This Offence is puniſhable by Action and Indictment; on Action for the Injury at the Suit of the Party, the Offender ſhall render Damages, *&c.* And on Indictment at the Suit of the King, for a Breach of the Peace, he ſhall be fined according to the Heinouſneſs of the Offence. *Dalt.* 282. 1 *Hawk. P. C.* 134. For here the Perſon offending is ſubject to a twofold Puniſhment, *viz.* a Fine to the King, and Damages to the Party; though it is uſual only to bring an Action for Damages, which in *Battery* and Maihem the Court may increaſe upon View of the Record and the Perſon. 2 *Roll. Abr.* 572. But a Man may beat another who firſt aſſaults him, in his own Defence, and juſtify in an Action by Special Pleading, or that the *Battery* was occaſioned by his own Aſſault; or the Defendant may give that in Evidence upon *Not Guilty* to an Indictment: And the Record of the Conviction of the Offender by Indictment may ſerve afterwards for Evidence in Action of Treſpaſs for the ſame Aſſault and *Battery. Terms de Ley* 81, 82. 2 *Roll. Abr.* 546. By *Holt* Chief Juſt. the leaſt touching of another in Anger, is a *Battery:* If two or more meet in a narrow Paſſage, and without any Violence or Deſign of Harm, the one touches the other gently, it will be no *Battery:* But if any of them uſe Violence to force his Way in a rude Manner, or any Struggle is made about the Paſſage to that Degree as to do Hurt, it will be a *Battery. Mod. Caſ.* 149. The Beating of another, in a moderate Manner, is lawful in ſome Caſes; as the Parent of his Child, a Maſter his Servant, or Apprentice, *&c.* See *Aſſault.*

Batus, (*Lat.* from the Sax. *Bat*) A Boat, and *Batellus* a little Boat.——— *Conceſſit etiam eidem* Hugo Wake *pro ſe & Hæred. ſuis, quod prædictus Abbas & ſucceſſores ſui & Eccleſia ſua de* Croyland *habeant tres* Batellos *in* Harnolt, *&c. Chart. Ed.* 1. 20 *Julii* 18 *Regni.* Hence we have an old Word *Batſwain*, for ſuch as we now call *Boatſwain* of a Ship.

Baubella, (*Baubles*) A Word mentioned in *Hoveden* in *R.* 1. and ſignifies Jewels or precious Stones. ——— *Tres partes Theſauri ſui & omnia* Baubella *ſua diviſit.*

Baudekin, (*Baldicum*, and *Baldekinum*) Cloth of *Baudekin*, or Gold: It is ſaid to be the richeſt Cloth, now called *Brocade*, made with Gold and Silk, or Tiſſue upon which Figures in Silk, *&c.* were imbroidered. *Anno* 4 *Hen.* 8. *c.* 6. *Erat pannus* auro *rigidus, plumatoque opere intertextus:* But ſome Writers account it only Cloth of Silk.

Bawdy-Houſe, (*Lupanar, Fornix*) A Houſe of ill Fame, kept for the Reſort and Commerce of lewd People of both Sexes. The keeping of a *Bawdy-Houſe* comes under the Cognizance of the Temporal Law, as a Common Nuſance, not only in Reſpect of its endangering the publick Peace, by drawing together diſſolute and debauched Perſons, and promoting Quarrels, but alſo in Reſpect of its Tendency to corrupt the Manners of the People, by an open Profeſſion of Lewdneſs. 3 *Inſt.* 205. 1 *Hawk. P. C.* 196. Thoſe who keep *Bawdy-Houſes* are puniſhed with Fine and Impriſonment; and alſo ſuch infamous Puniſhment, as Pillory, *&c.* as the Court in Diſcretion ſhall inflict: And a Lodger who keeps only a ſingle Room for the Uſe of *Bawdry*, is indictable for keeping a *Bawdy-Houſe.* 1 *Salk.* 382. Perſons reſorting to a *Bawdy-Houſe*, are puniſhable, and they may be bound to the good Behaviour, *&c.* But if one be indicted for keeping or frequenting a *Bawdy-Houſe*, it muſt be expreſly alledged to be ſuch a *Houſe*, and that the Party knew it; and not by Suſpicion only. *Poph.* 208. A Conſtable upon Information, that a Man and Woman are gone to a lewd *Houſe*, or about to commit Fornication or Adultery, may if he finds them together, carry them before a Juſtice of Peace without any Warrant, and the Juſtice may bind them over to the Seſſions. *Dalt* 214. Conſtables in theſe Caſes may call others to their Aſſiſtance, enter *Bawdy-Houſes*, and arreſt the Offenders for a Breach of the Peace: In *London* they may carry them to Priſon; and by the Cuſtom of the City, Whores and *Bawds* may be carted. 3 *Inſt.* 206. It was always held infamous to keep a *Bawdy-Houſe*; yet ſome of our Hiſtorians mention *Bawdy-Houſes* publickly allowed here in former Times 'till the Reign of *Hen.* 8. and aſſign the Number to be 18 thus allowed on the Bankſide in *Southwark. Mod. Juſt.* 227. See *Stews* and *Brothel-Houſes.*

Form of an *Indictment* for keeping a *Bawdy-Houſe.*

THE *Jurors*, &c. *That* A. B. *of*, &c. *the Day and Year*, &c. *and at divers Times before and afterwards, at* H. *in the County aforeſaid, held and kept, and often made uſe of, and ſtill holds and keeps*, &c. *in his Houſe there, a common* Bawdy-Houſe, *Entertainments for Lechery and Fornication, and permits Men and other ſuſpected Perſons, and not of Good Behaviour or Fame, carnally to lie with Whores, to the great Detriment of all the People of our Sovereign Lord the King there near dwelling, and to the ill Example of all other Offenders in ſuch Caſes, and againſt the Peace*, &c.

Bay, or *Pen*, Is a Pond Head made up of a great Height, to keep in Water for the Supply of a Mill, *&c.* ſo that the Wheel of the Mill may be driven by the Water coming thence through a Paſſage or Floodgate. A Harbour where Ships ride at Sea near ſome Port, is alſo called a *Bay:* And this Word is mentioned *Anno* 27 *Eliz. c.* 19.

Beacon, (from the Sax. *Beacen, i. e. ſignum*) A Signal well known; being a Fire maintained on ſome Eminence near the Coaſts of the Sea, to prevent Invaſions, *&c.* 4 *Inſt* 148. 8 *Eliz. c.* 13. Hence *Beaconage* (*Beaconagium*) Money paid towards the Maintenance of *Beacons:* And we ſtill uſe the Word *Beckon* to give Notice unto: See Stat. 5 *Hen* 4, *&c.*

Bead, or *Bede* (Sax. *Bead, Oratio*) A Prayer, ſo that to ſay over *Beads*, is to ſay over one's Prayers. They were moſt in Uſe before Printing, when poor Perſons could not go to the Charge of a Manuſcript Book: Though they are ſtill uſed in many Parts of the World, where the *Roman* Catholick Religion prevails. They are not allowed to be brought into *England*, or any ſuperſtitious Things, to be uſed here, under the Penalty of a *Præmunire*, by Stat. 13 *Eliz. c.* 2.

Beam, Is that Part of the Head of a Stag where the Horns grow, from the Sax. *Beam, i. e. Arbor*; becauſe they grow out of the Head as Branches out of a Tree. *Beam* is likewiſe uſed for a common Balance of Weights in Cities and Towns. Stat. 13 *Ed.* 1.

Beams and Ballance, for weighing Goods and Merchandize in the City of *London*. See *Tronage*.

Bearers, Signifies ſuch as bear down or oppreſs others, and is ſaid to be all one with Maintainers. ——Juſtices of Aſſiſe ſhall inquire of, hear, and determine Maintenors, *Bearers*, and Conſpirators, *&c.* Stat. 4 *Ed.* 3. *c.* 11.

Beaſts *of Chaſe* (*Feræ Campeſtres*) Are five, *viz.* The Buck, Doe, Fox, Marten and Roe. *Manw. part* 1. *pag.* 342. *Beaſts of the Foreſt* (*Feræ Silveſtres*) otherwiſe called *Beaſts* of Venary, are the Hart, Hind, Boar and Wolf. *Ibid. par.* 2. *c.* 4. *Beaſts* and *Fowls* of the *Warren*, are the Hare, Coney, Pheaſant, and Partridge. *Ibid. Reg. Orig.* 95, 86, *&c. Co. Litt.* 233.

Beau-pleader, (*Pulchre Placitando*, Fr. *Beauplaider, i. e.* to plead fairly) Is a Writ upon the Statute of *Marlbridge*, 52 *Hen.* 3. *c.* 11. whereby it is enacted, That neither in the Circuit of Juſtices, nor in Counties, Hundreds, or Courts-Baron, any Fines ſhall be taken for *Fair Pleading, viz.* for not pleading fairly or aptly to the Purpoſe; upon which Statute, this Writ was ordained, directed to the Sheriff, Bailiff, or him who ſhall demand ſuch Fine, and it is a Prohibition not to do it; whereupon an *Alias* and *Pluries* and *Attachment* may be had, *&c. New Nat. Br.* 596, 597. And *Beau pleader* is as well in Reſpect of vicious *Pleadings*, as of the *fair Pleading*, by way of Amendment. 2 *Inſt.* 122.

Bedel, (*Bedellus*, Sax. *Bydel*) A Cryer or Meſſenger of a Court, that cites Men to appear and anſwer: And is an inferior Officer of a Pariſh or Liberty, very well known in *London*, and the *Suburbs*. There are likewiſe Univerſity *Bedels*, and Church *Bedels*; now called Summoners and Apparators: And *Manwood* in his *Foreſt Laws*, ſaith there are Foreſt *Beadels*, that make all Manner of Garniſhments for the Courts of the Foreſt, and all Proclamations, and alſo execute the Proceſs of the Foreſt, like unto Bailiffs Errant of a Sheriff in his County. ——— Edgarus *interdicit omnibus Miniſtris, id eſt, vicecomitibus*, Bedellis *&* *Balivis, &c. Ne introeant fines & limites dicti Mariſci.* Ingulph. Hiſt. Croyl.

Bedelary, (*Bedelaria*) Is the ſame to a *Bedel*, as Bailiwick to a Bailiff. *Lit. lib.* 3. *cap.* 5. —— Will. *filius* Adæ *tenet* Bedelarium *Hundredi de* Macclesfield, *&c.* Ex. Rot. Antiq.

Bederepe, alias *Biderepe*, (*Sax.*) Is a Service which certain Tenants were antiently bound to perform, *viz.* To *reap* their Landlord's Corn at Harveſt; as ſome yet are tied to give them one, two, or three Days Work, when commanded. This cuſtomary Service of inferior Tenants was called in the Latin *Præcaria, Bedrepium, &c.* —— *Debent venire in Autumno ad Præcariam quæ vocatur a le* Bederepe. *Plac. in Craſt. Pur.* 10 *H.* 3. *Rot.* 8. *Surrey.* See *Magna Præcaria.*

Bedeweri, Thoſe which we now call *Banditi*, profligate and excommunicated Perſons. The Word is mentioned in *Mat. Pariſ. Anno* 1258.

Beer, It is lawful to export *Beer, &c.* paying a Cuſtom Duty. *Stat.* 22 *&* 23 *Car.* 2.

Beggars, Pretending to be blind, lame, *&c.* found begging in the Streets, are to be removed by the Conſtables; and refuſing to be removed, ſhall be whipped, *&c. Stat.* 12 *Ann.* And our Statutes have been formerly ſo ſtrict for puniſhing of *Beggars*, that in the Reign of King *Hen.* 8. a Law was enacted, That *Sturdy Beggars* convicted of a ſecond Offence, ſhould be executed as Felons: But this Statute was afterwards repealed. See *Rogue.*

Behaviour *of Perſons.* Vide *Good Behaviour.*

Belgæ, The Inhabitants of *Somerſetſhire, Wiltſhire*, and *Hampſhire.* Blount.

Benefice, (*Beneficium*) Is generally taken for any Eccleſiaſtical Living or Promotion; and *Benefices* are divided into elective and donative: So alſo it is uſed in the Canon Law. 3 *Inſt.* 155. *Duarenus de* Beneficiis, *lib.* 2. *c.* 3. All Church Preferments and Dignities, are *Benefices*; but they muſt be given for Life, not for Years, or at Will. Deaneries, Prebendaries, *&c.* are *Benefices* with Cure of Souls, though not comprehended as ſuch within the Stat. 21 *H.* 8. *c.* 13. of Reſidence: But according to a more ſtrict and proper Acceptation, *Benefices* are only Rectories, and Vicarages. *Beneficia* were formerly Portions of Land, *&c.* given by Lords to their Followers for their Maintenance; but afterwards as theſe Tenures became Perpetual and Hereditary, they left their Name of *Beneficia* to the Livings of the Clergy, and retained to themſelves the Name of *Feuds.* And *Beneficium* was an Eſtate in Land at firſt granted for Life only, ſo called, becauſe it was held *ex mero Beneficio* of the Donor; and the Tenants were bound to ſwear Fealty to the Lord, and to ſerve him in the Wars, thoſe Eſtates being commonly given to Military Men: But at Length by the Conſent of the Donor, or his Heirs, they were continued for the Lives of the Sons of the Poſſeſſors, and by Degrees paſt into an Inheritance; and ſometimes ſuch *Benefices* were given to Biſhops, and Abbots, ſubject to the like Services, *viz.* to provide Men to ſerve in the Wars; and when they as well as the Laity had obtained a Property of thoſe Lands, they were called *Regalia* when given by the King; and on the Death of a Biſhop, *&c.* returned to the King 'till another was choſen. *Spelm.* of *Feuds, c.* 2. *Blount, Verb.* Beneficium. Lands were antiently held *in Beneficio*; and then granted *in Alodium perpetuo jure, &c.*

Beneficio primo Eccleſiaſtico habendo, A Writ directed from the King to the Chancellor, to beſtow the *Benefice* that ſhall *firſt* fall in the King's Gift, above or under ſuch a Value, upon ſuch a particular Perſon. *Reg. Orig.* 307.

Benerth, An antient Service which the Tenant rendered to his Lord with his Plough and Cart. *Lamb. Itin. p.* 222. *Co. Lit.* 86.

Benevolence, (*Benevolentia*) Is uſed in the Chronicles and Statutes of this Realm for a voluntary Gratuity given by the Subjects to the King. *Stow's Annals, p.* 701. And *Stow* ſaith, that it grew from *Edward* the Fourth's Days: You may find it alſo *Anno* 11 *Hen.* 7. *c.* 10. yielded to that Prince in Regard of his great Expences in Wars, and otherwiſe. 12 *Rep.* 119. And by Act of Parliament 13 *Car.* 2. *cap.* 4. it was given to his Majeſty K. *Char.* 2. but with a Proviſo that it ſhould not be drawn into future Example: So that all Supplies of this Nature are now by way of Taxes. In other Nations *Benevolences* are given ſometimes to Lords of the Fee, by their Tenants, *&c. Caſſand. de Conſuet. Burg pag.* 134, 136.

Benevolentia Regis habenda, The Form of Purchaſing the King's Pardon and Favour, in antient Fines and Submiſſions, to be reſtored to Eſtate, Title, or Place. ——— Thomas *de* St. Walerico *dat Regi mille marcas, pro habenda* Benevolentia Regis *& pro habendis Terris ſuis unde Diſſeiſitus ſuit.* Paroch. Antiq. p. 172.

Berbiage, (*Berbiagium*) *Nativi Tenentes Maverii de* Caliſtoke *reddunt per Ann. de certo reddit u vocat.* Berbiag. *ad le* Hokeday *xix. s.* MS. Survey of the Dutchy of *Cornwall.*

Berbicaria, A Sheep Down, or Ground to feed Sheep. *Leg. Alfredi, c.* 9. *Et quod de* Berbicaria, *&c. Monaſticon Tom.* 1. *p.* 308.

Bercaria, (*Berchery,* from the Fr. *Bergeria*) A Sheep-Fold, or other Incloſure for the Keeping of Sheep: In *Domeſday* it is written *Berquarium.* 2 *Inſt.* 476. —— *Mandatum eſt* Roberto de Lexinton, *quod Abbati de* Miraval *faciat unam* Bercariam *in Paſtura de* Fairfield *ad oves ſuas Cuſtodiendas.* Clauſ. 9 Hen. 3. m. 12. ——— *Dedi ſexaginta acras terræ ad unam* Bercariam *faciendam.* ——— Mon. Angl. Tom. 2. pag. 599. *Bercarium* is taken for a Shepherd: And *Bercaria* is ſaid to be abbreviated from *Barbicaria,* and *Berbex*; hence comes *Berbicus,* a Ram, *Berbica,* an Ewe, *Caro Berbicina,* Mutton. *Cowel.*

Berefellarii; There were ſeven Churchmen ſo called, antiently belonging to the Church of St. *John* of *Beverley.* —— *Sed quia eorum turpe nomen* Berefellariorum *patens riſui remanebat, dictos ſeptem de cætero non* Berefellarios *ſed Perſonas volumus nuncupari.* Pat. 21 R. 2. par. 3. m. 10. per Inſpex.

Berefreit, Berefreid, A large wooden Tower. *Simeon Dunelm. Anno* 1123.

Berewicha or **Berwica,** Villages or Hamlets belonging to ſome Town or Manor. This Word often occurs in *Domeſday: Iſtæ ſunt* Berewichæ *ejuſdem Manerii* ——

Berghmaſter, (from the Sax. *Berg* a Hill, *Mons, quaſi* Maſter of the Mountains) Is a chief Officer among the *Derbyſhire* Miners, who alſo executes the Office of a Coroner. —— *Juratores dicunt, quod in Principio quando Mineratores veniunt in Campum Mineras quærentes, inventa Minera, veniunt ad Ballivum, qui dicitur* Berghmayſter, *& petunt ab eo duas Metas, &c.* — Eſc. de An. 16 Ed. 1. num. 34. *in Turri London.* The *Germans* call a Mountaineer, or Miner, a *Bergman.*

Berghmoth or **Berghmote,** Comes from the Sax. *Berg,* a Hill, and *Gemote,* an Aſſembly; and is as much as to ſay an Aſſembly or Court upon a Hill, which is held in *Derbyſhire* for deciding Pleas and Controverſies among the Miners. —— *Juratores etiam dicunt quod Placita del* Berghmoth *debent teneri de tribus ſeptimanis in tres ſeptimanas ſuper Mineram de Pecco.* Eſc. 16 Ed. 1. And on this *Court of Berghmote,* Mr. *Manlove* in his Treatiſe of the Cuſtoms of the Miners, hath a Copy of *Verſes,* with *References* to Statutes, *&c.*

3 E. 6. Art. *And Suit for* Oar *muſt be in* Berghmote Court.
9. *Thither for Juſtice* Miners *muſt reſort:*
16 E. 1. c. 2. *And two great Courts of* Berghmote *ought to be,*
3 E. 6. Art. 10. *In every Year upon the* Minery:
3 & 4 P. & M. *To puniſh* Miners *that Tranſgreſs the Law,*
Art. 19. *To curb Offences, and keep all in awe:*
26 Ed. 1. c. 1. *To fine Offenders that do break the Peace,*
&c. *Or ſhed Man's Blood, or any Tumults raiſe:*
To ſwear Berghmaſters *that they faithfully*
Perform their Duty on the Minery:
And make Arreſts, and eke impartially
Impanel Jurors, Cauſes for to try;
And ſee that Right be done from Time to Time
Both to the Lord and Farmers on the Mine.

Beria, *Berie, Berry,* A large open Field; and thoſe Cities and Towns in *England* which end with that Word, are built in plain and open Places, and do not derive their Names from Boroughs, as Sir *Henry Spelman* imagines. Moſt of our Gloſſographers in the Names of Places have confounded the Word *Berie,* with that of *Bury,* and *Borough,* as if the Appellative of antient Towns; whereas the true Senſe of the Word *Berie* is a flat wide Campain, as is proved from ſufficient Authorities by the learned *Du Freſne,* who obſerves that *Beria Sancti Edmundi* mentioned by *Mat. Pariſ. ſub ann.* 1174. is not to be taken for the Town, but for the adjoining Plain. To this may be added, that many flat and wide Meads, and other open Grounds, are called by the Name of *Beries,* and *Beryfields:* The ſpacious Meadow between *Oxford* and *Iſley* was in the Reign of King *Athelſtan* called *Bery. B.* Twine, *MS.* As is now the largeſt Paſture Ground in *Quarendon* in the County of *Buckingham,* known by the Name of *Beryfield.* And though theſe Meads have been interpreted Demeſne or Manor Meadows, yet were they truly any flat open Meadows, that lay adjoining to any Vill or Farm.

Berra, A plain open Heath. *Berras aſſartare,* to grub up ſuch barren Heaths.

Bernet, *Incendium,* comes from the Sax. *Byran,* to burn: It is one of thoſe Crimes which by the Laws of *Hen.* 1. *cap.* 15. *Emendari non poſſunt.* Sometimes it is uſed to ſignify any capital Offence. *Leges Canuti apud Brompt. cap.* 90. *Leg. Hen.* 1. *cap.* 12, 47.

Berſa, (Fr. *Bers*) A Limit or Bound — - *Paſturam duorum Taurorum per totam* Berſam *in foreſta noſtra de* Chipenham, *&c.* Mon. Angl. Tom. 2. pag. 210. A Park Pale.

Berſare, (Germ. *Berſen,* to ſhoot) Berſare *in foreſta mea ad tres Arcus.* Chart. Ranulf. Comit. Ceſtr. ann. 1218. *viz.* To hunt or ſhoot with three Arrows in my Foreſt. *Berſarii* were properly thoſe that hunted the Wolf.

Berſelet, (*Berſeleta*) A Hound. —— *Ad* Berſandum *in foreſta cum novem arcubus & ſex* Berſeletis. *Chart. Rog. de Quincy.*

Berton, or **Barton,** (*Bertona*) Is that Part of a Country Farm where the Barns and other inferior Offices ſtand, and wherein the Cattle are foddered, and other Buſineſs is managed. See *Clauſ.* 32 *Ed.* 1. *m.* 17. It alſo ſignifieth a Farm, diſtinct from a Manor: In ſome Parts of the Weſt of *England,* they call a great Farm a *Berton*; and a ſmall Farm a *Living.* ——— *Bertonarii* were ſuch as we now call Farmers or Tenants of *Bertons*; Husbandmen that held Lands at the Will of the Lord. —— *Cum* Bertona *terris & tenementis, quæ* Bertonarii *modo tenent ad voluntatem.* Chart. Johan. Epiſc. Exon. 24 Dec. Ann. 1337.

Berwick, Merchandize carried into or brought out of *Scotland*, or the Iſles thereof, ſhall be brought firſt to *Berwick*, on Pain of Forfeiture: And the Merchants and Freemen there, ſhall have the Farm of the Waters Royal and Fiſhings within the Seigniory. *Stat.* 22 *Ed.* 4. *cap.* 8. The Liberties of *Berwick* are declared, by the Stat. 1 *Jac.* 1. *c.* 28.

Bery, or **Bury**, The Vill or Seat of Habitation of a Nobleman, a Dwelling or Manſion-Houſe, being the Chief of a Manor; from the Sax. *Beorg*, which ſignifies a Hill or Caſtle; for heretofore Noblemens Seats were Caſtles, ſituate on Hills, of which we have ſtill ſome Remains. As in *Herefordſhire*, there are the *Beries* of *Stockton*, *Hope*, *&c.* It was antiently taken for a Sanctuary.

Beſaile, (Fr. *Biſayeul*, *Proavus*) The Father of the Grandfather: And in the Common Law it ſignifies a Writ that lies where the Great Grandfather was ſeiſed the Day that he died of any Lands or Tenements in Fee-ſimple; and after his Death a Stranger entereth the ſame Day upon him, and keeps out the Heir. *F. N.* B. 222.

Beſcha, (from the Fr. *Beſcher*, *fodere*, to dig) A Spade or Shovel.——*In communi Paſtura turbas, cum una ſola* Beſca, *fodient & nihil dabunt.* Prior. Lew. Cuſtumar. de Hecham, pag. 15. Hence perhaps, *una* Beſcata *terra incluſa* ——— Mon. Angl. Tom. 2 fol. 642. may ſignify a Piece of Land uſually turned up with a Spade, as Gardeners fit and prepare their Grounds; or may be taken for as much Land as one Man can dig with a Spade in a Day.

Beſtials, (Fr. *Beſtiails*) Beaſts or Cattle of any Sort: *Anno* 4 *Ed.* 3. *c.* 3. it is written *Beſtail*; and is generally uſed for all Kinds of Cattle, though it has been reſtrained to thoſe purveyed for the King's Proviſion. 12 *Car.* 2. *cap.* 4.

Betaches, Laymen uſing Glebe Lands. *Parl.* 14 *Ed.* 2.

Beverches, Bed-works, or Cuſtomary Services, done at the Bidding of the Lord by his inferior Tenants — *Inter ſervitia Cuſtumaria Tenentium in* Blebury, *de Domino Abbatis & Conventus* Reading——*prædictus Abbas habebit de eis duas precarias carrucarum per Annum, quæ vocantur* Beverches, *& cum qualibet carruca duos homines qualibet die ad Prandium Abbatis.* Cartular. Rading. MS. f. 223.

Bewared, An old *Saxon* Word ſignifying *Expended*; for before the *Britons* and *Saxons* had Plenty of Money, they traded wholly in Exchange of *Wares.*

Bidall, or **Bidale**, (*Precaria potaria*, from the Sax. *Biddan*, to pray or ſupplicate) Is the Invitation of Friends to drink *Ale* at the Houſe of ſome poor Man, who thereby hopes a charitable Contribution for his Relief: It is ſtill in Uſe in the Weſt of *England*; and is mentioned 26 *Hen.* 8. *c.* 6. And ſomething like this ſeems to be what we commonly call *Houſe warming*, when Perſons are invited and viſited in this Manner on their firſt beginning Houſe-keeping.

Bidding of the Beads, *Bidding* from the Sax. *Biddan*, To pray or deſire; and *Bead* from the Sax. *Bead* a Prayer, was antiently a Charge or Warning given by the Pariſh-Prieſt to his Pariſhioners at ſome ſpecial Times to come to Prayers, either for the Soul of ſome Friend departed, or upon ſome other particular Occaſion. And at this Day our Miniſters, on the *Sunday* preceding any Feſtival or Holiday in the following Week, give Notice of them, and deſire and exhort their Pariſhioners to obſerve them as they ought; which is required by our Canons. See Stat. 27 *Hen.* 8. *c.* 26.

Bidentes, Two Yearlings, or Sheep of the ſecond Year —— *Will. Longſpe A. D.* 1234. granted to the Prior and Canons of *Burceſter*, *Paſturam ad quinquaginta* Bidentes, *cum Dominicis* Bidentibus *meis ibidem paſcendis.* Paroch. Antiq. p. 216.

Biduana, A Faſting for the Space of two Days. *Matt. Weſtm. p.* 135.

Biga, *Bigata*, A Cart, or Chariot drawn with two Horſes, coupled Side to Side; but it is ſaid to be properly a Cart with two Wheels, ſometimes drawn by one Horſe; and in our antient Records it is uſed for any Cart, Wain or Waggon. ——— *Et quod eant cum* Bigis *& Carris cum cæteris phaleris ſuper Tenementum ſuum, &c.* Mon. Angl. Tom. 2. fol. 256.

Bigamus, Is a Perſon that hath married two or more Wives, ſucceſſively after each other, or a Widow; for the Canoniſts account a Man that hath married a Widow, to have been twice married. It is mentioned in the Statutes 18 *Ed.* 3. *c.* 2. 1 *Ed.* 6. *c.* 12 And 2 *Inſt.* 273.

Bigamy, (*Bigamia*) Signifies a double Marriage, or Marriage of two Wives; it is uſed in our Law, for an Impediment to be a Clerk, by Reaſon he hath been twice married. 4 *Ed.* 1. *cap.* 5. Which ſeems to be grounded upon the Words of *St. Paul to Timothy*, *Epiſt.* 1. *cap* 5. *verſ.* 2. *Oportet ergo Epiſcopum irreprehenſibilem eſſe & unius uxoris virum:* Upon which it is ſaid the Canoniſts have founded their Doctrine; that he that hath been twice married, may not be a Clerk; ſo that they do not only exclude ſuch from Holy Orders, but alſo deny them all Privileges that belong to Clerks: But this Law is aboliſhed by 1 *Ed* 6. and ſee the Stat. 18 *Eliz. cap.* 7. The Statute called the *Statute de Bigamis*, is the 4 *Ed.* 1. and the 1 *Jac.* 1. *c.* 11. calls it *Bigamy*, where a Perſon marries the ſecond Wife, *&c.* the firſt being living, which is Felony; but this is properly *Polygamy*, and not *Bigamy*, which laſt is not where a Perſon hath two Wives together, but where he hath two Wives one after another. 2 *Inſt.* 273.

Bigot, Is a Compound of ſeveral old *Engliſh* Words, and ſignifies an obſtinate Perſon; or one that is wedded to an Opinion, in Matters of Religion, *&c.* It is recorded that when *Rollo* the firſt Duke of *Normandy*, refuſed to kiſs the King's Foot, unleſs he held it out to him, it being a Ceremony required in Token of Subjection for that Dukedom, with which the King inveſted him; thoſe who were preſent taking Notice of the Duke's Refuſal, adviſed him to comply with the King's Deſire, who anſwered them *Ne ſe Bigot*; whereupon he was in Deriſion called *Bigot*, and the *Normans* are ſo called to this Day.

Bilagines, (Lat.) Bilaws of Corporations, *&c.* See *By-Laws.*

Bilanciis deferendis, A Writ directed to a Corporation, for the carrying of Weights to ſuch a Haven, there to weigh the Wool that Perſons by our antient Laws were licenſed to tranſport. *Reg. Orig.* 270.

Bilinguis, Signifies generally a double-tongued Man; or one that can ſpeak two Languages: But it is uſed in our Law for a Jury that paſſeth between an *Engliſhman* and a Foreigner, whereof Part ought to be *Engliſh*, and Part Strangers. Though this is properly a Jury *de medietate Linguæ.* 28 Ed. 3. c. 13.

Bill, (*Billa*) Is diverſly uſed: In Law Proceedings, it is a Declaration in Writing, expreſſing either the Wrong the Complainant hath ſuffered by the Party complained of, or elſe ſome Fault committed againſt ſome Law or Statute of the Realm: And this *Bill* is ſometimes addreſſed to the Lord Chancellor of *England*, eſpecially for unconſcionable Wrongs done to the Complainant; and ſometimes to others having Juriſdiction, according as the Law directs. It contains the Fact complained of, the Damage thereby ſuſtained, and Petition of Proceſs againſt the Defendant for Redreſs; and it is made uſe of as well in Criminal as Civil Matters. In Criminal Caſes, when a Grand Jury upon a Preſentment or Indictment find the ſame to be true, they indorſe on it *Billa vera*; and thereupon the Offender is ſaid to ſtand indicted of the Crime, and is bound to make Anſwer unto it: And if the Crime touch the Life of the Perſon indicted, it is then referred to the Jury of Life and Death, *viz.* the Petty Jury, by whom if he be found guilty, then he ſhall ſtand convicted of the Crime, and is by the Judge condemned to Death. *Terms de Ley* 86. 3 *Inſt.* 30. See *Ignoramus* and *Indictment.*

Bill is alſo a common Engagement for Money given by one Man to another; and being ſometimes with a Penalty, called *Penal Bill*, and ſometimes without a Penalty, tho the latter is moſt frequently uſed. By a *Bill* we ordinarily underſtand a ſingle Bond, without a Condition; and it was formerly all one with an Obligation, ſave only it's being called a *Bill* when in *Engliſh*, and an Obligation when in *Latin.* Weſt. Symbol. lib. 2. ſect. 146. A *Bill* has been defined to be a Writing, wherein one Man is bound to another, to pay a Sum of Money on a Day that is Future, or preſently on Demand, according to the Agreement of the Parties at the Times it is entered into, and the Dealings between them: And it is divided into ſeveral Sorts, as a *Bill* that is *ſingle*, a *Bill* that is *Penal*, &c. Where there is a *Bill* of 100 *l.* to be paid on Demand, it is a Duty preſently, and there needs no actual Demand. *Cro. Eliz.* 548. And a ſingle Obligation or *Bill*, upon the Sealing and Delivery, is *Debitum in præſenti*, tho' *Solvendum in futuro.* On a collateral Promiſe to pay Money on Demand, there muſt be a ſpecial Demand; but between the Parties it is a Debt, and ſaid to be ſufficiently demanded by the Action: It is otherwiſe where the Money is to be paid to a third Perſon; or where there is a Penalty. 3 *Keb.* 176. If a Perſon acknowledge himſelf by *Bill* obligatory to be indebted to another in the Sum of 50 *l.* and by the ſame *Bill* binds him and his Heirs in 100 *l.* and ſays not to whom he is bound, it ſhall be intended he is bound to the Perſon to whom the *Bill* is made. *Rol. Abr.* 148. A *Bill* obligatory written in a Book, with the Party's Hand and Seal to it, is good. *Cro. Eliz.* 613. And if a Man makes a *Bill* thus: *I do owe and promiſe to pay to* A. B. 50 l. &c. *for Payment thereof, I bind myſelf to* C. D. &c. another Perſon; it is good by the Words of the firſt Part, and the Words obligatory to another Perſon are void. A Man ſays by his Deed: *Memorandum, That I* A. B. *have received of* C. D. *the Sum of* 20 l. *which I promiſe to pay to* E. F. *In Witneſs whereof I have hereunto ſet my Seal,* &c. Or if the *Bill be, I ſhall pay to* C. D. 20 l. *In Witneſs,* &c. and the ſame be ſealed; Or if it runs as follows, *I owe to* C. D. 20 l. *to be paid at,* &c. Or, *I had of* C. D. 20 l. &c. *to be repaid him again:* Or, *I* A. B. *do bind myſelf to* C. D. *that he ſhall receive* 20 l. &c. All theſe are ſaid to be obligatory. 2 *Rol.* 146. 22 E. 4. *c.* 22.

Form of a *ſingle Bill* for Money.

KNow all Men *by theſe Preſents, That I* A. B. *of,* &c. *do owe and am indebted to* C. D. *of,* &c. *the Sum of Fifty Pounds of lawful Money of* Great Britain, *which I promiſe to pay unto the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, at and upon the firſt Day of* October *next enſuing the Date of theſe Preſents.* In witneſs *whereof I have hereunto ſet my Hand and Seal the* 10*th Day of* Auguſt Anno Domini 1733.

A *Penal Bill* for Payment of Money.

KNow all Men *by theſe Preſents, That I* A. B. *of,* &c. *do owe unto* C. D. *of,* &c. *the Sum of One hundred Pounds of lawful Money of* Great Britain, *to be paid unto the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, on,* &c. *next enſuing the Date hereof; for which Payment well and truly to be made, I bind myſelf, my Heirs, Executors, and Adminiſtrators, to the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns in Two hundred Pounds of like lawful Money firmly by theſe Preſents.* In Witneſs, &c.

Bill of Exchange, Is a Security among Merchants, given for Money, and by the Credit of the Drawer generally paſſeth as Money: Theſe *Bills* are drawn either payable at Sight; or in ſo many Days, Weeks, or Months; or at one or two Uſances, &c. And the Space of one Month from the Date of the *Bill* is called *Uſance*, and two or three Months double or treble Uſance. There is an Inland *Bill of Exchange*, and Foreign *Bill*; an Inland *Bill* has been ſaid to be only in the Nature of a Letter, but an Outland *Bill* is more regarded in the Eye of the Law, becauſe it is for the Advantage of Commerce with other Countries, which makes it of a more publick Concern; And a Foreign *Bill* being refuſed to be accepted, by the Law of Merchants Action lies againſt the Drawer, and if the Perſon to whom directed ſubſcribes the *Bill*, it is *Aſſumpſit* to pay it. 1 *Rol. Abr.* 6. 1 *Ventr.* 152. 2 *Cro.* 307. Every Indorſor of a *Bill* is liable as the firſt Drawer; the Indorſor is anſwerable, becauſe the Indorſement is in Nature of a new *Bill.* 1 *Salk.* 125. But by the *Cuſtom of Merchants*, the Indorſee is to receive the Money of the firſt Drawer if he can; and if he cannot, then the Indorſor is to anſwer. The Indorſor of a *Bill* is not liable to pay it, till Endeavour has been uſed to find the Drawer. *Salk.* 126. But an Indorſor is not diſcharged without actual Payment of the *Bill*; unleſs there be ſome Neglect or Default in the Indorſee, as where he doth not endeavour to receive the Money in convenient Time, and then the firſt Drawer becomes inſolvent. *Ibid.* 132. An Indorſor charges himſelf in the ſame Manner as if he had originally drawn the *Bill:* And a Plaintiff need not prove the Drawer's Hand, as the Indorſor is a new Drawer; but he muſt prove that he demanded the Money of the Drawer or Drawee, or that he ſought and could not find them, in convenient Time, which is three Days after the Indorſement, &c. 1 *Salk.* 127. In Caſe a *Bill* be bought at Diſcount, it is an abſolute Purchaſe; and if the ſame be again Indorſed, the Indorſor warrants the whole Bill. See 2 *Show.* 442. A blank Indorſement doth not transfer the Property of a *Bill of Exchange*; tho' the Perſon to whom indorſed may fill up the Indorſement, ſo as to charge the Indorſor; for where one indorſes his Name on a *Bill*, the Indorſee may make what Uſe of it he pleaſes, by Way of Aſſignment, Acquittance, &c. 1 *Salk.* 126. A *Bill of Exchange* payable to a Perſon, or *Bearer*, is not aſſignable to enable the Indorſee to bring an Action, if the Drawer refuſe Payment: But by *Bill* to a Perſon, or *Order*, an expreſs Power is given to the Party to aſſign, and the Indorſee may maintain an Action: And the firſt is a good *Bill* between Indorſor and Indorſee. *Ibid.* 125. Where a *Bill* is drawn payable to *A. B.* or Bearer, an Aſſignee muſt ſue in the Name of him to whom it made payable, and not in his own Name; otherwiſe a Stranger finding the *Bill*, might recover: If it be made payable to *A. B.* or Order, there an Aſſignee may ſue in his own Name, becauſe the Order muſt be made by Indorſement, &c. Alſo the latter is within the Cuſtom of Merchants, and may be negotiated and aſſigned by Cuſtom; but the former is not. 3 *Salk.* 67. If a Bank *Bill* payable to *A. B.* or Bearer, be loſt, and it is found by a Stranger, Payment to him would indemnify the Bank; yet *A. B.* may have Trover againſt the Finder, tho' not againſt his Aſſignee for valuable Conſideration, which creates a Property. 3 *Salk.* 71. If a Man gives a Note in theſe Words, *viz.* I promiſe *to Account* with *T. S.* or his Order for 50 *l.* Value receiv'd, it ſhall be conſtrued as a Promiſe to pay the Money, and be a good *Bill* indorſable over to another, who may bring an Action for the ſame. *Paſch.* 11 *Geo.* 1. *Mod. Caſ. in L. & E.* 362, 363. The Acceptance of a *Bill* altho' after the Money is payable, is binding to the Party accepting, and Action is maintainable thereon; the Effect of the *Bill* being the Payment of the Money, and not the Day of Payment. *Carthew*'s *Rep.* 460. When a *Bill of Exchange* is accepted, it is a good Ground for a Special Action upon the Caſe; but it doth not make a Debt, *&c.* 2 *Show.* 1. *Indebitatus Aſſumpſit* doth not lie againſt the Acceptor of a *Bill of Exchange*, becauſe his Acceptance is a collateral Engagement; tho' it will lie againſt the Drawer. 1 *Salk.* 23. And a general *Indebitatus Aſſumpſit* will not lie on a *Bill of Exchange*, for want of a Conſideration: and therefore there muſt be a Special Action upon the Cuſtom of Merchants, or an *Indebitatus Aſſumpſit* againſt the Dawer for Money by him received to the Plaintiff's Uſe. *Ibid.* 125. A *Bill* once accepted, may not be revoked by the Party that accepted it, tho' immediately after and before the *Bill* becomes due, he hath Advice that the Drawer is broke. The Servant of a Merchant cannot accept a *Bill of Exchange* for his Maſter, without plain Evidence that he hath Authority to do it; as where the Maſter allows the Payment of *Bills* drawn by his Servant, *&c.* *Lex Mercat.* 265. *Mod. Ca.* 36. But another Perſon may accept the *Bill* for the Honour of the Drawer; and if he pays the Money in Default of the Party, he is to make a Proteſt with Declaration that he hath paid the ſame for the Drawer's Honour. If one Merchant having a right Underſtanding with another ſays, *Leave your* Bill *with me, and I will accept it*, by the Cuſtom of Merchants it obliges him as effectually as if he had ſigned it. If a *Bill* be accepted, and the Perſon who accepted the ſame happens to die before the Time of Payment, there muſt be a Demand made of his Executors or Adminiſtrators; and on Non-payment, a Proteſt is to be made, altho' the Money becomes due before there can be Adminiſtration, *&c.* A *Bill* may be accepted for Part, the Party on whom drawn having no more Effects in his Hands; and there may be a Proteſt for the Reſidue. If a Man be not to be found, or being found, is not to be met with afterwards, it is Cauſe ſufficient for a *Proteſt:* Which is a Sort of Summons to a Perſon to accept or pay a *Bill*, with Proteſtation againſt the Refuſer for Exchange, Intereſt, and all Charges, Damages and Loſſes that may be ſuſtained or occaſioned by ſuch Refuſal. *Lex Mercat.* Where any *Bill* is negotiated, if the ſame be to be paid at a certain Day, and accepted, the Proteſt muſt be on the Day of Payment; but if payable at Sight, it muſt be proteſted the third Day of Grace: And when ſuch *Bill of Exchange* is not paid, the Intereſt thereon commences only from the Time of Demand. 2 *Show.* 164. 6 *Mod.* 138. Before the Stat. of 9 *W.* 3. if a *Bill* was Foreign, one could not reſort to the Drawer to charge him for Non-acceptance or Non-payment, without a Proteſt, and reaſonable Notice thereof; but in Caſe of an Inland *Bill* it was otherwiſe. The Proteſt was ordered for the Benefit of the Drawer, to give Notice that the *Bill* is not accepted, *&c.* tho' it is to ſubject to anſwer. *Mod. Ca.* 80.

Form of a *Proteſt* of a Bill of Exchange.

KNow all Men, *That I* A. B. *on the Day*, &c. *at the uſual Place of Abode of* C. D. *have demanded Payment of the* Bill *of which the above is a Copy, which the ſaid* C. D. *did not pay, wherefore I the ſaid* A. B. *do hereby proteſt the ſaid Bill.* Dated, *&c.*

In Drawing *Bills of Exchange*, the Signing of one Partner in Merchandize for *Self and Company*, obliges the others. A Gentleman travelling for Education, draws a *Bill of Exchange*, this is *negociating* the *Bill*, and makes him a Merchant, *&c. Show.* 127. A *Bill of Exchange* directed to one to pay ſo much for Value received, ſhall be a good Diſcharge of the Debt, if the *Bill* be not returned back to the Drawer in Time, although it be not paid; for Keeping the *Bill* long, is Evidence that he hath agreed to take the Merchant as Debtor. *Ibid.* 126. If a Man pays a *Bill of Exchange* before due, and the Perſon to whom paid fails before the Time of Payment, he ſhall be obliged to pay it again to the Deliverer; becauſe the Drawer might have countermanded the ſame, or ordered the *Bill* to be made payable to another Perſon. A Perſon gives a *Bill of Exchange*, &c. upon a third Perſon to another in Payment, and he takes it abſolutely, if he knew the third Perſon to be breaking or in a failing Condition, and the Receiver of the *Bill* uſes all Diligence to get Payment, but cannot, this is a Fraud and no Payment: Though if a Man takes a Note or *Bill*, and after it is payable makes no Demand, ſo that he might be paid if he had been diligent enough, then if the Party on whom the *Bill* is drawn fails, it is at the Peril of him that took it. *Mod. Caſ.* 147. A Drawer of a *Bill of Exchange* is always anſwerable, by the Value received, though there be no Tender of the *Bill* for Payment, or it be not proteſted, unleſs the Perſon on whom drawn break, and then it is otherwiſe; for in that Caſe, the Party who paid the Money for the *Bill* loſeth it. 2 *Show.* 319. Though it is ſaid the Words *Value received*, are now not abſolutely neceſſary to a *Bill of Exchange:* For when they are mentioned therein, the Drawer muſt anſwer it at Common Law; and if not, then by the Cuſtom of Merchants. 1 *Show.* 5 *Mod. Caſ. L. & E.* 267. If a Poſſeſſor of a *Bill* by any Accident loſes it, he muſt cauſe Intimation to be made by a *Notary Publick* before Witneſſes, that the *Bill* is loſt or miſlaid, requiring that Payment be not made of the ſame to any Perſon without his Privity. And if any *Bill of Exchange* drawn in, or dated at and from any Place of this Kingdom, ſhall be loſt, the Drawer of the *Bill* ſhall give another *Bill* of the ſame Tenor, Security being given to indemnify him in Caſe the *Bill* ſo loſt be found again. 9 & 10 *W.* 3. *c.* 17. A *Bill of Exchange* tho' it be in Writing, is but as a Simple Contract; but it was urged to be equal to a Specialty, by the Law of Merchants: A Perſon may plead the Statute of Limitations to an Action upon a *Bill of Exchange*; and it is no good Replication, that it was on Account between Merchants, where it appears to be for Value received. *Comber.* 392 190. There are not only *Bills of Exchange*, but *Bills of Credit* between Merchants, the Forms whereof are as follow:

Form of a *Bill of Exchange.*

250 l. Sterling. London, 10 Auguſt 1726.

AT *double Uſance pay this my firſt* Bill of Exchange *to Mr.* C. D. *Merchant, or Order, the Sum of Two hundred and fifty Pounds* Sterling, *for the Value here received of the ſaid* C. D. *And place it to Account as by Advice from*

Yours, &c. A. B.

To Mr. E. F. Merchant,
in *Amſterdam.*

Form of a *Bill of Credit.*

THIS preſent Writing *witneſſeth, That I* A. B. *of* London, *Merchant, do undertake, to and with* C. D. *of,* &c. *Merchant, his Executors and Adminiſtrators, that if he the ſaid* C. D. *do deliver, or cauſe to be delivered unto* E. F. *of,* &c. *or to his Uſe, any Sum or Sums of Money amounting to the Sum of,* &c. *of lawful* Britiſh *Money, and ſhall take a Bill under the Hand and Seal of the ſaid* E. F. *confeſſing and ſhewing the Certainty thereof; that then I, my Executors or Adminiſtrators having the ſame* Bill *delivered to me or them, ſhall and will immediately, upon the Receipt of the ſame, pay, or cauſe to be paid, unto the ſaid* C. D. *his Executors or Aſſigns, all ſuch Sums of Money as ſhall be contained in the ſaid* Bill, *at,* &c. *For which Payment in Manner and Form aforeſaid, I bind my ſelf, my Executors, Adminiſtrators and Aſſigns by theſe Preſents.* In Witneſs, *&c.*

By the Statute 9 *&* 10 *W.* 3. *c.* 17. All *Bills of Exchange* dated at, or from any Place in *England,* of the Sum of 5 *l.* or upwards, upon any Perſon in *London,* or other trading City, Town or Place, drawn payable at a certain Time after the Date thereof, and in which *Bills* the *Value* ſhall be expreſſed to be *received,* may, after their Acceptance in Writing, and the Expiration of three Days after the ſame ſhall be due, be proteſted by a Notary Publick; or if there be none ſuch, by any other ſubſtantial Perſon of the Place before two Witneſſes, on a Refuſal or Neglect of Payment; which Proteſt ſhall be made under a Copy of the ſaid *Bill,* and be notified within fourteen Days after to the Party from whom the *Bills* were received, who (upon producing the ſaid Proteſt) is to repay the *Bills* with Intereſt and Charges from the Proteſting: And in Default of ſuch Proteſt, or Notice to be given as aforeſaid, the Perſon failing ſhall be liable to all Coſts, Damages and Intereſt thereupon. And by 3 *&* 4 *Ann. c.* 9. All *Notes* ſigned by any Perſon, *&c.* whereby ſuch Perſon ſhall promiſe to pay to any other Perſon or Order, *&c.* any Sum of Money; the Money mentioned in ſuch Note ſhall be due and payable to the Perſon to whom made, and the Note ſhall be aſſignable over as Inland *Bills of Exchange;* whereupon the Perſon to whom ſuch Note is payable or aſſigned, may maintain an Action for the ſame, againſt the Perſon who ſign'd, or any who indorſed the Note, as in Caſes of Inland *Bills,* and recover Damages and Coſts of Suit, *&c.* If the Party on whom any *Inland Bill of Exchange* ſhall be drawn, refuſes to accept it by Under-writing under his Hand, the Perſon to whom payable is to cauſe ſuch *Bill* to be proteſted, as Foreign *Bills:* But no Acceptance ſhall charge any Perſon unleſs the *Bill* be underwritten or indorſed; and if it be not ſo underwritted or indorſed, no Drawer ſhall be obliged to pay Coſts, Damages, or Intereſt thereon, unleſs Proteſt be made for Non acceptance, and within fourteen Days after the ſame be ſent, or Notice thereof given to the Party from whom the *Bill* is received, or left in Writing at his uſual Place of Reſidence. The *Bill* being accepted, and not paid within three Days after due, Proteſt muſt be made, and Notice given as aforeſaid, to charge the Drawer, *&c.* Tho' no Proteſt ſhall be neceſſary, except the Value ſhall be expreſſed to be received in ſuch *Bill;* and the *Bill* be drawn for 20 *l* at leaſt. There is a Proviſo in the Act, that nothing therein ſhall diſcharge any Remedy any Perſon may have againſt the Drawer, Acceptor or Indorſor of any *Bill.* It has been held, that the Conſideration implied in the Statute is, when a Man promiſes by *Bill* or Note to pay ſo much Money on his own Account, it muſt be preſumed he is indebted: 'Tis otherwiſe where the Promiſe is for another Perſon. *Paſch.* 8 *Ann.* A Paper *Bill* or Note is no Payment where there was an orignal and precedent Debt due, but ſhall be intended to be taken upon Condition that the Money be paid in convenient Time; but the Taking a Note in Writing for Goods ſold, may amount to Payment of the Money, becauſe 'tis Part of the original Contract. *Mich.* 2 *Ann.* 3 *Salk.* 118. Stealing of *Bills of Exchange,* Notes, *&c.* is Felony in the ſame Degree, as if the Offender had robb'd the Owner of ſo much Money, *&c.* And the Forging *Bills of Exchange,* or Notes for Money, Indorſements, *&c.* is Felony, by Stat. 2 *Geo.* 2. *c.* 25. Alſo Forging the Acceptance of any *Bill of Exchange,* or the Number or principal Sum of any accountable Receipt, is made Felony. Stat. 7 *Geo.* 2. *c.* 22.

A common Bill *or Note for Money.*

I *Promiſe to pay to Mr.* C. D. *or Order, the Sum of One hundred Pounds (for Value received) within twenty-one Days after the Date hereof, or on Demand,* &c. Witneſs *my Hand this twentieth Day of* Auguſt 1738.

100 *l.* 0 *s.* 0 *d.* A. B.

Bill of Lading, Is a *Memorandum* ſign'd by Maſters of Ships, acknowledging the Receipt of the Merchant's Goods, *&c.*

Bill of Store, A Kind of Licence granted at the *Cuſtom-houſe* to Merchants, to carry ſuch Stores and Proviſions as are neceſſary for their Voyage, Cuſtom-free. And *Bill of Sufferance* is a Licence granted to a Merchant, to ſuffer him to trade from one *Engliſh* Port to another, without paying Cuſtom. *An.* 14 *Car.* 2. *c.* 11.

Billets of Gold, (Fr. *Billot*) Are Wedges or Ingots of Gold, mentioned in the Statute 27 *E.* 3 *cap.* 27.

Billet Wood, Is ſmall Wood for Fuel, which muſt be three Foot and four Inches long, and ſeven Inches and a Half in Compaſs, *&c.* Juſtices of Peace ſhall inquire by the Oaths of ſix Men of the Aſſiſe of *Billet,* and being under Size, it is to be forfeited to the Poor. *Stat.* 43 *Eliz.* 9 *Ann. c.* 15 See *Fuel.*

Billingſgate Market to be kept every Day, and Toll is appointed by Statute: All Perſons buying *Fiſh* in this Market, may ſell the ſame in any other Market by Retail; but none but Fiſhmongers ſhall ſell them in Shops: If any Perſon ſhall buy any Quantity of Fiſh at *Billingſgate* for others, or any Fiſhmonger ſhall ingroſs the Market, they incur a Penalty of 20 *l.* And Fiſh imported by Foreigners, ſhall be forfeited and the Veſſel, *&c.* 10 *&* 11 *W.* 3 *c.* 24. Vide *Fiſh* and *Fiſhermen.*

Billus, A Stick or Staff, which in former Times was the only Weapon for Servants. —— *Si quis in ſervum tranſeat, in ſignum hujus tranſitionis* Billum *vel Strublum vel deinceps, ad hunc modum Servitutis arma ſuſcipiat, & in manum Domini mittat.* Leg. H. 1. c. 78.

Binnarium, *Binna, Benna,* Stews or Water penned up for Feeding and Preſerving of Fiſh. —— *Expenſæ in Piſce ad inſtaurandum* Binnarium *empto* xii *s.* Conſuetud. Dom. de Farend. MS. f 29. *Vide* Stat. 3 Ed. 1.

Biothanetus, One who deſerves to come to an untimely End. *Ordericus Vitalis,* writing of the Death of *William Rufus,* who was ſhot by *Walter Tyrrel* tell us, that the Biſhops conſidering his wicked Life and bad *Exit,* adjudged him *Eccleſiaſtica veluti* Biothanetum *abſolutione indignum.* Lib. 10. p. 782.

Birrettum, A thin Cap fitted cloſe to the Shape of the Head: And is alſo uſed for the Cap or Coif of a Judge, or Serjeant at Law. *Spelm.*

Births, Burials, and Marriages, &c. By Statute, a Duty was granted on *Births* and *Burials* of

Perſons, from 50*l.* a Duke, *&c.* down to 10*s.* and 2*s.* And the like on *Marriages*; alſo *Bachelors* above twenty five Years of Age, were to pay 1*s.* yearly. *Stat.* 6 & 7 *W.* 3. *c.* 6.

Biſacutus, An iron Weapon double-edged, ſo as to cut on both Sides. *Fecit eidem unam plagam mortalem de quadam* Biſacuta. *Fleta, lib.* 1. *c.* 33.

Biſantium, *Beſantine*, or *Beſant*, An antient Coin firſt coined by the Weſtern Emperors at *Bizantium* or *Conſtantinople.* It was of two Sorts, Gold and Silver; both which were current in *England: Chaucer* repreſents the Gold *Beſantine* to have been equivalent to a Ducket; and the Silver *Beſantine* was computed generally at two Shillings. In ſome old Leaſes of Land, there have been reſerved by Way of Rent, *unum* Biſantium, *vel duos ſolidos.*

Bi-ſcot, At a Seſſion of *Sewers* held at *Wigenhale* in *Norfolk*, 9 *Ed.* 3. it was decreed, That if any one ſhould not repair his Proportion of the Banks, Ditches and Cauſeys by a Day aſſign'd, XII*d.* for every Perch unrepair'd ſhould be levied upon him, which is called a *Bilaw:* And if he ſhould not by a ſecond Day given him, accompliſh the ſame, then he ſhould pay for every Perch 2*s.* which is called *Bi-ſcot.* Hiſt. of Imbanking and Draining, f 254.

Biſhop, (*Epiſcopus*) Is the chief of the Clergy in his Dioceſe, and the Archbiſhop's Suffragan or Aſſiſtant. He is elected by the King's *Conge d'Eſlire*, or Licence to elect the Perſon named by the King, directed to the Dean and Chapter; and if they fail to make Election in twenty Days, they incur the Penalty of a *Præmunire*, and the King may nominate, *&c.* by Letters Patent. *Stat.* 25 *H.* 8. The Dean and Chapter having made their Election, certify it to the King, and the Archbiſhop, *&c.* And then the King gives the Royal Aſſent under the Great Seal directed to the Archbiſhop, commanding him to confirm and conſecrate the *Biſhop* elect: And on Confirmation, a *Biſhop* hath Juriſdiction in his Dioceſe; but he hath not a Right to his Temporalties 'till Conſecration. The Conſecration of *Biſhops*, &c. is confirmed by Act of Parliament. It is held a *Biſhop* hath three Powers; 1ſt, His Power of Ordination, which is gain'd on his Conſecration, and not before; and thereby he may confer Orders, *&c.* in any Place throughout the World. 2. His Power of Juriſdiction, which is limited and confined to his Fee. 3. His Power of Adminiſtration and Government of the Revenues; both which laſt Powers he gains by his Confirmation: And ſome are of Opinion, that the *Biſhops* Juriſdiction as to miniſterial Acts, commences on his Election. *Palm. Rep.* 473, 474, 475. The King may not ſeize into his Hands the Temporalties of *Biſhops* but upon juſt Caſe, and not for a Contempt, which is only finable. *Biſhops* are allow'd four Years for Payment of their firſt Fruits, by a late Statute: And every *Biſhop* may retain four Chaplains. *Stat.* 14 & 25 *Ed.* 3. 21 *Hen.* 8. 8 *Eliz.* 6 *Ann.* A *Biſhop* hath his Conſiſtory Court, to hear Eccleſiaſtical Cauſes; and is to viſit the Clergy, *&c.* He conſecrates Churches, ordains, admits, and inſtitutes Prieſts; confirms, ſuſpends, excommunicates, grants Licences for Marriage, makes Probate of Wills, *&c.* 1 *Inſt.* 96. 2 *Roll. Abr.* 230. He hath his Archdeacon, Dean and Chapter, Chancellor, and Vicar General, to aſſiſt him: May grant Leaſes for three Lives, or 21 Years of Lands uſually letten, reſerving the accuſtomed yearly Rents. *Stat.* 32 *H* 8. And make concurrent Leaſes for twenty-one Years, upon Leaſes for the like Term, with Confirmation of Dean and Chapter. *Biſhops* are Barons and Lords of Parliament.

Biſſa, (Fr. *Biche*) *Cerva Major*, a Hind.—— *Decimam venationis noſtræ, ſcil. de Cervis*, Biſſis, *damis, porcis & laiis.* Mon. Ang. Vol. 1. fol. 648.

Biſſextile, (*Biſſextilis*) Leap-Year, ſo called, becauſe the ſixth Day before the Calends of *March* is twice reckon'd, *viz.* on the 24th and 25th of *February*; ſo that the *Biſſextile* Year hath one Day more than the others, and happens every fourth Year. This Intercalation of a Day was firſt invented by *Julius Cæſar*, to make the Year agree with the Courſe of the Sun. And to prevent all Doubt and Ambiguity that might ariſe thereupon, it is enacted by the Statute *de anno Biſſextili*, 21 *Hen.* 3. That the Day increaſing in the Leap-Year, and the Day next before, ſhall be accounted but one Day. *Brit.* 209. *Dyer* 17.

Biſus, *Biſius*, *Mica* Biſa, *Panis* Biſius, (Fr. *Painbis*) Brown Bread, a brown Loaf. *Cowel.*

Black-Book, Is a Book lying in the *Exchequer.* See *Stat. Annals* 154.

Black-Mail, (Fr. *Maille*, a Link of Mail, or ſmall Piece of Metal or Money) Signifies in the North of *England*, in the Counties of *Cumberland*, *Northumberland*, *&c.* a certain Rent of Money, Corn, or other Thing, antiently paid to Perſons inhabiting upon or near the Borders, being Men of Name and Power, ally'd with certain Robbers within the ſaid Counties; to be freed and protected from the Devaſtations of thoſe Robbers. *Anno* 43 *Eliz. cap.* 13. Theſe Robbers were called *Moſs Troopers*, and ſeveral Statutes have been made againſt them. The 9 *Ed.* 3. *c.* 4. mentions *Black Money:* And *Black Rents* are the ſame with *Black Mail*; being Rents formerly paid in Proviſions and Fleſh.

Blacks of Waltham, A Set of deſperate Deer-ſtealers. See *Waltham Blacks.*

Black-Rod, The Gentleman *Uſher of the Black Rod*, is chief Gentleman Uſher to the King: He belongs to the Garter, and hath his Name from the *Black Rod*, on the Top whereof ſits a Lion in Gold, which he carrieth in his Hand. He is called in the *Black-Book*, fol. 255. *Lator virgæ nigræ*, & *Hoſtiarius*; and in other Places *Virgi bajulus.* His Duty is *Ad portandum Virgam coram Domino Rege ad Feſtum Sancti* Georgii *infra Caſtrum de* Windſore: And he hath the Keeping of the Chapter houſe Door, when a Chapter of the Order of the Garter is ſitting; and in the Time of Parliament, he attends on the Houſe of Peers. His Habit is like to that of the Regiſter of the Order, and Garter King at Arms; but this he wears only at the ſolemn Times of the Feſtival of *St. George*, and on the Holding of Chapters. The *Black Rod* he bears, is inſtead of a Mace, and hath the ſame Authority; and this Officer hath antiently been made by Letters Patent under the Great Seal, he having great Power; for to his Cuſtody all Peers, called in Queſtion for any Crime, are firſt committed.

Blackwell-Hall. The Publick Market of *Blackwell-Hall* is to be kept every *Thurſday*, *Friday*, and *Saturday*, at certain Hours appointed; and the Hall-keepers not to admit any Buying or Selling of *Woollen Cloth* at the ſaid Hall upon any other Days or Hours, on Penalty of 100*l.* Factors ſelling Cloth out of the Market, ſhall forfeit 5*l.* *&c.* Regiſters of all the Cloths bought and ſold are to be Weekly kept: And Buyers of Cloth otherwiſe than for ready Money, ſhall give Notes to the Sellers for the Money payable; and Factors are to tranſmit ſuch Notes to the Owners in twelve Days, or be liable to forfeit double Value, *&c.* *Stat.* 8 & 9 *W.* 3. *cap.* 9.

Bladarius, A Cornmonger, Meal-Man, or Corn-Chandler. It is uſed in our Records for ſuch a Retailer of Corn. *Pat.* 1. *Ed.* 3. *par.* 3. *m.* 13.

Blade, (*Bladum*) In the *Saxon* ſignifies generally Fruit, Corn, Hemp, Flax, Herbs, *&c.* *Will. de Mohun* releaſed to his Brother all the Manor of *T.*—— *Salvo inſtauro ſuo* & Blado, *&c.* excepting his Stock and Corn on the Ground. Hence *Bladier* is taken for an Ingroſſer of Corn or Grain.———*Sciant quod Ego* Willielmus Alreton, *conſenſu & voluntate* Beatricis *Uxoris meæ, Dedi* Agathæ Gille *pro duabus Marcis Argenti & una menſura* Bladi, *duas ſolidatas Redditus in Villa* Leominſtr. &c. Ex libro Chartar. Priorat. Leominſtriæ.

Blanch Firmes, In antient Times the Crown-Rents were many Times reſerved *in Libris Albis*, or *Blanch Firmes:* In which Caſe the Buyer was holden *Dealbare firmam, viz.* his baſe Money or Coin, worſe than Standard, was molten down in the Exchequer, and reduced to the Fineneſs of Standard Silver; or inſtead thereof, he paid to the King 12*d.* in the Pound, by Way of Addition. *Lowndes*'s *Eſſay upon Coin, p.* 5. *Blank Farm, Blount* ſays, was a White Farm; that is where the Rent was paid in Silver, and not in Cattle. *Blanks*, a Kind of White Money coin'd by *Hen.* 5. in thoſe Parts of *France* which were then ſubject to *England*, the Value whereof was 8*d.* *Stow*'s *Annals, p.* 586. Theſe were forbidden to be current in this Realm. 2 *Hen.* 6 *c.* 9.

Blandford. An Act for rebuilding the Town of *Blandford* in the County of *Dorſet*, burnt down by Fire in the Year 1731. and to determine all Differences between Proprietors, Landlords and Tenants of Houſes, and concerning Ground, &c. Stat. 5 *Geo.* 2. *c.* 16.

Blanhornum, A little Bell, or rather *Ticimium.* ——*Pecoris Ticimium, & Canis oppa &* Blanhornum, *horum trium ſingulum eſt unum ſolidum valens.* Leg. Adelſtan. cap. 8.

Blank-Bar, Is uſed for the ſame with what we call a *Common Bar*, and is the Name of a Plea in *Bar*, which in an Action of Treſpaſs is put in to oblige the Plaintiff to aſſign the certain Place where the Treſpaſs was committed: It is moſt in Practice in *C. B.* 2 *Cro. Rep.* 594.

Blaſarius, Is a Word uſed to ſignify an Incendiary. *Blount.*

Blaſphemy, (*Blaſphemia*) Is an Injury offered to God, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his Nature. *Lindw. cap.* 1. And *Blaſphemies* of God, as Denying his Being, or Providence, and all contumelious Reproaches of *Jeſus Chriſt*, &c. are Offences by the Common Law, puniſhed by Fine, Impriſonment, Pillory, &c. 1 *Hawk. P. C.* 87. And by Statute, if any one ſhall by Writing, Speaking, &c. deny any of the Perſons in the *Trinity* to be God; aſſert there are more Gods than one, &c. he ſhall be incapable of any Office; and for the ſecond Offence, be diſabled to ſue any Action, to be Executor, &c. and ſuffer three Years Impriſonment. 9 & 10 *W.* 3. *cap.* 32.

Ble, Signifies Sight, Colour, &c. And *Blee* is taken for Corn: As at *Boughton* under the *Blee*, &c.

Blench, A Sort of Tenure of Land; as to hold Land in *Blench*, is by Payment of a Sugar-Loaf, a Couple of Capons, a Bever-Hat, &c. if the ſame be demanded in the Name of *Blench*, i. e. *Nomine Albæ firmæ.*

Blenheim, A Noble and Princely Houſe erected in Honour to the Duke of *Marlborough* at *Woodſtock* near *Oxford*, which with the Manor of *Woodſtock* is ſettled on the Duke and his Heirs, in Conſideration of the eminent Services by him performed to the Publick; and for Building of which Houſe the Sum of 500,000*l.* was granted by Parliament, &c. Stat. 3 & 5 *Ann.* 12 *Ann. cap.* 11.

Bleta, (Fr. *Bleche*) *Pete*, or combuſtible Earth dug up and dry'd for Burning.——*Miniſter & Fratres de* Knareſborough *petunt quod ipſi & eorum Tenentes fodiant Turbas &* Bletas *in* Foreſta de Knareſborough. *Rot. Parl.* 35 *Ed.* 1.

Blinks, Boughs broken down from Trees, and thrown in a Way where Deer are likely to paſs.

Bliſſom, Corruptly called *Bloſſom*, is when a Ram goes to the Ewe, from the *Teuton. Bletz*, the Bowels; or from *Bletzen*, to accomodate.

Bloated Fiſh or Herring, Are thoſe which are half dried. *Anno* 18 *Car.* 2. *c.* 2.

Blodeus, (Sax. *Blod*) Deep red Colour; from whence comes Bloat and bloated, *viz.* Sanguine and high coloured, which in *Kent* is called a *Blouſing* Colour; and a *Blouſe* is there a red-fac'd Wench. The Prior of *Burceſter*, *A. D.* 1425. gave his Liveries of this Colour. *Paroch. Antiq.* 576.

Blood, (*Sanguis*) Is regarded in Diſcents of Lands; for a Perſon is to be the next and moſt worthy of *Blood* to inherit his Anceſtor's Eſtate. 1 *Inſt.* 13. See *Jenk. Cent.* 203.

Bloodwit, or *Bloudwit*, (compounded of the Sax. *Blod*, i. e. *Sanguis* and *Wyte*, an old *Engliſh* Word ſignifying *Miſericordia*) Is often uſed in antient Charters of Liberties for an Amercement for Bloodſhed. *Skene* writes it *Bloudveit*, and ſays *Veit* in *Engliſh* is *Injuria*; and that *Blondeveit* is an Amerciament or *Unlaw* (as the *Scotch* call it) for Wrong or Injury, as Bloodſhed is: For he that hath *Bloodveit* granted him, hath free Liberty to take all Amerciaments of Courts for Effuſion of Blood. *Fleta* ſaith, *Quod ſignificat quietantiam Miſericordiæ pro Effuſione ſanguinis.* Lib. 1. cap. 47. And according to ſome Writers, *Blodwite* was a cuſtomary Fine paid as a Compoſition and Attonement for ſhedding or drawing of Blood; for which the Place was anſwerable, if the Party were not diſcovered: And therefore a Privilege or Exemption from this Fine or Penalty, was granted by the King, or ſupreme Lord, as a ſpecial Favour. So King *Henry* II. granted to all Tenants within the Honour of *Wallingford*, *Ut quieti ſint de Hidagio*, & Blodewite, &c.———Paroch. Antiq. 114.

Bloody-Hand, Is one of the four Kinds of Circumſtances by which an Offender is ſuppoſed to have killed Deer in the King's Foreſt: And it is where a Treſpaſſer is apprehended in the Foreſt, with his *Hands* or other Parts *Bloody*, tho' he be not found chaſing or hunting of the Deer. *Manwood.* In *Scotland*, in ſuch like Crimes, they ſay taken in the Fact, or with the *Red-hand.* See *Backberind.*

Blubber, Is Whale-Oil, before it is thoroughly boiled and brought to Perfection. It is mentioned Stat. 12 *Car.* 2. *c.* 18.

Bock-hord, or *Book board*, (*Librorum horreum*) A Place where Books, Evidences or Writings are kept.

Bockland, (Sax. *quaſi Bookland*) A Poſſeſſion or Inheritance held by Evidence in Writing. Bockland *vero ea poſſidendi transferendique lege coercebatur, ut nec dari licuit nec vendi, ſed hæredibus relinquenda erat, in ſcriptis aliter permitteretur*; Terra *inde* Hæreditaria *nuncupata.* LL. Aluredi, cap. 36. *Bockland* ſignifies *Deed Land*; and it commonly carried with it the abſolute Property of the *Land*, wherefore it was preſerved in Writing, and poſſeſſed by the *Thanes* or nobler Sort, as *Prædium nobile, liberum & immune a ſervitiis vulgaribus & ſervilibus*, and was the ſame as *Allodium*, deſcendable unto all the Sons, according to the common Courſe of Nations and of Nature, and therefore called *Gavel-kind*; deviſable alſo by Will, and thereupon termed *Terræ Teſtamentales. Spelm. of Feuds.* This was one of the Titles which the *Engliſh Saxons* had to their *Lands*, and was always in Writing: There was but one more, and that was *Folkland*, *i. e. Terra Popularis*, which paſſed from one to another without any Writing. See *Charterland.*

Boia, Chains or Fetters, properly what we call *Bernicles. Quidam a dolore capitis liberatus eſt, adjungens genæ ſuæ* Boias, *quibus S.* Briſtanus *ligatus fuit* Hiſt. Elien. apud Whartoni Angl. Sac. part 1. p. 618.

Bois, (*Fr.*) Wood, and *Sub-bois*, Underwood. See *Boſcus.*

Bolhagium, or *Boldagium*, A little Houſe or Cottage. *Blount.*

Bolt, A *Bolt* of Silk or Stuff, ſeems to have been a long narrow Piece: In the Accounts of the Priory of *Burceſter*, it is mentioned. *Paro.b. Antiq. p.* 574.

Bolting, A Term of Art uſed in our *Inns of Court*, whereby is intended a private Arguing of Caſes. The Manner of it at *Gray's Inn* is thus: An antient and two Barriſters ſit as Judges, three Students bring each a Caſe, out of which the Judges chuſe one to be argued, which done, the Students firſt argue it, and after them the Barriſters. It is inferior to *Mooting*, and may be derived from the Sax. *Bolt*, a Houſe, becauſe done privately in the Houſe for Inſtruction. In *Lincoln's Inn*, *Mondays* and *Wedneſdays* are the *Bolting Days*, in Vacation Time; and *Tueſdays* and *Thurſdays* the *Moot Days*.

Bona fide. That we ſay is done *Bona fide*, which is done really, with a *good Faith*, without any Fraud or Deceit. *Stat.* 13 *Eliz. c.* 5. 12 *Car.* 2. *c.* 18, *&c.*

Bona geſtura, Good Abearing, or good Behaviour——*Et ſi per furorem vel aliquos manutentores renuerit invenire ſufficientem ſecuritatem de ſua* Bona geſtura *erga Balivos & Comburgenſes, &c. a prædicto Burgo ejiciatur.* MS. Codex de LL. Statutis & Conſuetud. Burgi villæ Montgomer. fol. 15.

Bonaght, or *Bonaghty*, was an Exaction in *Ireland*, impoſed on the People at the Will of the Lord, for Relief of the Knights called *Bonaghti*, who ſerved in the Wars. *Antiq. Hibern. p.* 60.

Bona Notabilia. Where a Perſon dies having at the Time of his Death Goods in any other Dioceſe, beſides his Goods in the Dioceſe where he dieth, amounting to the Value of 5*l.* at leaſt, he is ſaid to have *Bona Notabilia*, and then Probate of his Will, or Granting Adminiſtration, belongs to the Archbiſhop of the Province: But this doth not prejudice thoſe Dioceſes where, by Compoſition or Cuſtom, *Bona Notabilia* are rated at a greater Sum. *Can.* 92, 93. *Perkins, Sect.* 489. And in the City of *London Bona Notabilia* are 10*l.* by Compoſition. 4 *Inſt.* 335. One that hath a Debt upon Bond or Specialty, *&c.* in another Dioceſe, hath *Bona Notabilia.* 1 *Roll. Abr.* 908. Tho' if a Perſon happens to die in another Dioceſe, than that wherein he lives, on a Journey, what he hath about him above the Value of 5*l.* *&c.* ſhall not be *Bona Notibilia. Can.* 93. There muſt be ſeveral Adminiſtrations, where a Perſon dies leaving *Bona Notabilia* in each Province of *Canterbury* and *York*; for Adminiſtration granted in one Province doth not extend to Goods in the other, becauſe the Archbiſhops have diſtinct ſupreme Juriſdictions; but then there is to be *Bona Notabilia* in ſeveral Dioceſes in each Province. *Dyer* 305. 2 *Lev.* 86. If a Man dies in one Dioceſe, without any Goods, and leaves to the Value of 5*l.* in another Dioceſe, the Archbiſhop of that Province may grant Adminiſtration, as he hath a general Juriſdiction there; though ſuch Adminiſtration is voidable by Sentence. *Cro. Eliz.* 457. But where a Biſhop grants Adminiſtration, and there are *Bona Notabilia*, ſuch Adminiſtration is merely void, for he had no Juriſdiction out of his Dioceſe. 5 *Rep.* 30. 1 *Nelſ. Abr.* 381.

Bona Patria. An Aſſiſe of Country-men or good Neighbours: It is ſometimes called *Aſſiſa bonæ Patriæ*, when twelve or more Men are choſen out of any Part of the Country to paſs upon an Aſſiſe; otherwiſe called *Juratores*, becauſe they are to ſwear judicially in the Preſence of the Party, *&c.* according to the Practice of *Scotland. Skene.* See *Aſſiſors.*

Bona peritura, Goods that are periſhable. The Stat. 13 *E.* 1. *cap.* 4. which enacts, That where any Thing eſcapes alive out of a Ship caſt away, the Ship ſhall not be adjudged Wreck, but the Cargo ſhall be ſaved and kept by the View of the Sheriff, *&c.* in the Hands of thoſe of the Town where the ſame was found, ſo that if any one within a Year and a Day can make Proof that the Goods are his, they ſhall be reſtored to him, *&c.* Ordains that if the Goods within the Ship be *Bona Peritura*, ſuch Things as will not endure for a Year and a Day, the Sheriff ſhall ſell them, and deliver the Money received to anſwer it.

Boncha, A Bunch, is derived from the old Lat. *Bonna* or *Bunna*, a riſing Bank, for the Bound of Fields: And hence *Bown* is uſed in *Norfolk*, for Swelling or Riſing up in a Bunch or Tumour, *&c.*

Bond, Is a Deed or obligatory Inſtrument in Writing, whereby one doth bind himſelf to another, to pay a Sum of Money, or do ſome other Act; as to make a Releaſe, ſurrender an Eſtate, for quiet Enjoyment to ſtand to an Award, ſave harmleſs, perform a Will, *&c.* It contains an Obligation, with a Penalty: And a Condition, which expreſly mentions what Money is to be paid, or other Thing to be performed, and the limited Time for the Performance thereof; for which the Obligation is peremptorily binding. It may be made upon Parchment or Paper, tho' it is uſually on Paper; and be either in the firſt or third Perſon; and the Condition may be either in the ſame Deed, or in another, and ſometimes it is included within, and ſometimes indorſed upon the Obligation: But it is commonly at the Foot of the Obligation. *Bro. Obl.* 67. A *Memorandum* on the Back of a *Bond* may reſtrain the ſame, by Way of Exception. *Moor* 675. A *Bond* may be made by any Words, in a Writing ſealed and delivered, wherein a Man doth declare himſelf to have another Man's Money, or to be indebted to him; but the beſt Form of making it, is that which is moſt uſed. 2 *Shep. Abr.* 477. If a Bond be thus: Know all Men by theſe Preſents, that I *W. R.* am bound to *J. S.* in the Sum of, *&c.* for Payment of which, I give full Power to him to levy the ſame upon the Profits of ſuch Lands yearly till it be paid; in this Caſe, the Obligee may ſue upon the Obligation, or levy the Money according to the ſaid Clauſe. 3 *Leon. ca.* 299. Where a *Bond* is made, *Obligo me, &c.* leaving out the Words *Hæredes, Executores & Adminiſtratores*, this is good; and the Executors and Adminiſtrators ſhall be bound by it. *Dyer* 13. An Obligation made to one, to the Uſe of *J. S.* will be good for him in Equity. *Bro. Oblig.* 72. The Condition of a *Bond* muſt be to do a Thing lawful; and *Bonds* not to uſe Trades, till or ſow Ground, *&c.* are unlawful, for they are againſt the Good of the Publick, and the Liberty of a Freeman; and therefore void: And a Condition of a *Bond* to do any Act *Malum in ſe*, as to kill a Perſon, *&c.* is void; ſo alſo *Bonds* made by Dureſs, by Infants, Feme Coverts, *&c.* And if a Woman through Threats or Flattery, be prevailed upon to enter into a *Bond*, ſhe may be relieved in Chancery. 11 *Rep.* 53. If an Infant ſeal a *Bond*, and be ſued thereon, he is not to plead *Non eſt factum*, but muſt avoid the *Bond* by ſpecial Pleading; for this *Bond* is only voidable, and not in itſelf void. 5 *Rep.* 119. But if a *Bond* be made by a Feme Covert, ſhe may plead her Coverture, and conclude *Non eſt factum, &c.* her *Bond* being void. 10 *Rep.* 119. If a *Bond* depends upon ſome other Deed, and the Deed becomes void, the *Bond* is alſo void. A *Bond* made with Condition not to give Evidence againſt a Felon, *&c.* is void; but the Defendant muſt plead the Special Matter. 1 *Leon.* Condition of a *Bond* to indemnify a Perſon from any legal Proſecution, is againſt Law, and void. 1 *Lutw.* 667. And if a Sheriff takes a *Bond* as a Reward for doing of a Thing, it is void. 3 *Salk.* 75. Conditions of *Bonds* are to be not only lawful, but poſſible; and when the Matter or Thing to be done, or not to be done by a Condition, is unlawful or impoſſible, or the Condition itſelf repugnant, inſenſible or uncertain, the Condition is void, and in ſome Caſes the Obligation alſo. 10 *Rep.* 120. But ſometimes an Obligation may be ſingle, to pay the Money, where the Condition is impoſſible, repugnant, *&c.* 2 *Mod.* 285. If a Thing be poſſible at the Time of entering into the *Bond*, and afterwards becomes impoſſible by the Act of God, the Act of the Law, or of the Obligee, it is become void; as if a Man be bound to appear next Term, and dies before, the Obligation is ſaved. A Condition of a *Bond* was that *J. S.* ſhould pay ſuch a Sum upon the 25th of *December*, or appear in *Hillary* Term after in the Court of B. *R.* He died after the 25th of *December*, and before *Hillary* Term, and had paid Nothing: In this Caſe, the Condition was not broken for Non-payment, and the other Part is become impoſſible by the Act of God. 1 *Mod. Rep.* 265. And when a Condition is doubtful, it is always taken moſt favourably for the Obligor, and againſt the Obligee; but ſo as a reaſonable Conſtruction be made as near as can be according to the Intention of the Parties. *Dyer* 51. If no Time is limited in a *Bond* for Payment of the Money, it is due preſently, and payable on Demand. 1 *Brownl.* 53. But the Judges have ſometimes appointed a convenient Time for Payment, having Regard to the Diſtance of Place, and the Time wherein the Thing may be performed. And if a Condition be made impoſſible in Reſpect to Time, as to make Payment of Money on the 30th of *February*, *&c.* it ſhall be paid preſently; and here the Obligation ſtands ſingle. *Jones* 140. Tho' if a Man be bound in a *Bond* with Condition to deliver ſo much Corn upon the 29th Day of *February* next following, and that Month hath then but twenty-eight Days; it has been held, that the Obligor is not obliged to perform the Condition till there comes a Leap-Year. 1 *Leon.* 101. If the Condition of a *Bond* be, that the Obligor ſhall make a ſufficient Eſtate of Land by ſuch a Time, by the Advice of others; and they adviſe an Inſufficient Eſtate, which he makes accordingly, this 'tis ſaid is a good Performance of the Condition: But if it is, that the Obligor do make a good and ſure Eſtate, and he by Advice of Counſel makes an Eſtate that is not good; this will be no Performance thereof. *Perk. Sect.* 776. *Kelw.* 95. A *Bond* made to enfeoff two Perſons, if one dies before the Time is paſt, wherein it ſhould be done; the Obligor muſt enfeoff the Survivor of them, or the Condition will be broken: And if it be that B. and others ſhall enjoy Land, and the Obligor and B. the Obligee do diſturb the reſt; by this the Condition is broke. 4 *Hen.* 7. 1. *Co. Lit.* 384. Where one is bound to do an Act to the Obligee himſelf, the doing it to a Stranger by Appointment of the Obligee, will not be a Performance of the Condition. 2 *Bulſt.* 149. If the Act be to be done at a certain Place, where the Obligor is to go to *Rome*, *&c.* And he is to do the ſole Act without Limitation of Time, he hath Term during Life to perform the ſame: If the Concurrence of the Obligor and Obligee is requiſite, it may be haſtened by Requeſt of the Obligee. 6 *Rep.* 30. 1 *Roll. Abr.* 437. Where no Place is mentioned for Performance of a Condition, the Obligor is obliged to find out the Perſon of the Obligee, if he be in *England*, and tender the Money, otherwiſe the *Bond* will be forfeited: But when a Place is appointed, he need ſeek no further. 1 *Inſt.* 210. *Litt.* 340. And if where no Place is limited for Payment of Money due on a *Bond*, the Obligor at or after the Day of Payment meets with the Obligee, and tenders him the Money, but he goes away to prevent it, the Obligor ſhall be excuſed. 8 *E.* 4. The Obligor, or his Servant, *&c.* may tender the Money to ſave the Forfeiture of the *Bond*, and it ſhall be a good Performance of the Condition, if made to the Obligee, though refuſed by him; yet if the Obligor be afterwards ſued, he muſt plead that he is ſtill ready to pay it, and tender the Money in Court. *Co. Litt.* 208. The Condition of a *Bond* being for Payment of Money, it may be performed by giving any other Thing in Satisfaction, becauſe the Value of Money is certain, and therefore may be ſatisfied by a collateral Thing, if the Obligee accepts it; but if the Condition is to do a collateral Thing, there 'tis otherwiſe, and paying Money is no good Satisfaction. 3 *Bulſt.* 148. The Acceptance of a new *Bond* will not diſcharge the old one, as a Judgment may. *Hob.* 68. One *Bond* cannot be given in Satisfaction of another; but this is where given by the Obligor himſelf, for it may by others. 1 *Mod.* 221. If a *Bond* be to pay Money on ſuch a Time, *&c.* It is no Plea for the Obligor to ſay that he did pay it; he muſt ſhew at what Time, or elſe it may be taken that the Performance was after the Time limited. *Noy's Max.* 15. If a *Bond* be of twenty Years ſtanding, and no Demand be proved thereon, or good Cauſe of ſo long Forbearance ſhewn to the Court, upon pleading *Solvit ad Diem*, it ſhall be intended paid. *Mod. Ca.* 22. Payment of Money, without Acquittance, is an ill Plea to Action of Debt upon a ſingle Bill; but 'tis otherwiſe upon a *Bond* with Condition. *Dyer* 25. If ſeveral Days are mentioned for Payment of Money on a *Bond*, the Obligation is not forfeited, nor can be ſued until all the Days are paſt: But in ſome Caſes, the Obligee may proſecute for the Money due by the *Bond* preſently, though it be not forfeit; and by ſpecial wording the Condition, the Obligee may be able to ſue the Penalty on the firſt Default. 1 *Inſt.* 292. In a *Bond* where ſeveral are bound ſeverally, the Obligee is at his Election to ſue all the Obligors together, or all of them apart, and have ſeveral Judgments and Executions; but he ſhall have Satisfaction but once, for if it be of one only, that ſhall diſcharge the Reſt. If an Obligation is joint, and not ſeveral, all the Obligors muſt be ſued that are bound; and if one be proſecuted, he is not obliged to anſwer, unleſs the Reſt are ſued likewiſe. *Dyer* 19, 310. Where two or more are bound in a joint *Bond*, and only one is ſued, he muſt plead in Abatement, that two more ſealed the *Bond*, *&c.* and aver that they are living, and ſo pray Judgment *de Billa*, *&c.* And not demur to the Declaration. *Sid.* 420. If a *Bond* is made to three, to pay Money to one of them, they muſt all join in the Action, becauſe they are but as one Obligee. *Yelv.* 177. If Action be brought upon a *Bond* againſt two joint and ſeveral Obligors jointly, and both are taken by *Capias*, here the Death or Eſcape of one, ſhall not releaſe the other; but the ſame Kind of Execution muſt be taken forth againſt them: 'Tis otherwiſe when they are ſued ſeverally. *Hob.* 59. When the Condition of a *Bond* is to do two Things, or has divers Points, and the Obligee ſuppoſing a Breach of one of them, doth ſue the Obligor; if Iſſue being joined upon that, it is found againſt him, and he is barred, the whole Obligation is diſcharged: And ſo long as that Judgment is in Force, he can never proſecute upon any other Point. *Dyer* 371. 2 *Shep. Abr.* 487. If a drunken Man gives his *Bond*, it binds him; and a *Bond* without Conſideration is obligatory, and no Relief ſhall be had againſt it, for it is voluntary, and as a Gift. *Jenk. Cent.* 109. A Perſon enters voluntarily into a *Bond*, tho' there was not any Conſideration for it, if there be no Fraud uſed in obtaining the ſame, the *Bond* ſhall not be relieved againſt in Equity: But a voluntary *Bond* may not be paid in a courſe of Adminiſtration, ſo as to take Place of real Debts, even by ſimple Contract; yet it ſhall be paid before Legacies. 1 *Chan. Caſ.* 157. An Heir is not bound, unleſs he be named expreſly in the *Bond*; tho' the Executors and Adminiſtrators are. And if an Obligation be made to a Man, his Heirs or Succeſſors, the Executors and Adminiſtrators ſhall have the Advantage of it, and not the Heir or Succeſſor, by Reaſon it is a Chattel. *Dyer* 14, 271. A Declaration need not be according to the Letter of the *Bond*, where there is any Omiſſion, *&c.* but according to the Operation of Law upon it. *Mod. Caſ.* 228. In *Bonds* to ſave harmleſs, the Defendant being proſecuted is to plead *Non Damnificatus*, *&c.* A *Bond* may be from one to one, one to two, three, or more Perſons; or from two or more Perſons to one, two, three, *&c.* And the Name of the Obligor ſubſcribed, 'tis ſaid, is ſufficient, though there is a Blank for his Chriſtian Name in the *Bond*. 2 *Cro.* 261. But where another Chriſtian Name is in the *Bond*, and the *Bond* ſigned by the right Name, though the Jury find it to be his Deed, the Obligee cannot have Judgment; for the Name ſubſcribed is no Part of the Obligation. 2 *Cro.* 558. 1 *Mod.* 107. In theſe Caſes, though there be a Verdict, there ſhall not be Judgment. Where an Obligor's Name is omitted to be inſerted in the *Bond*, and yet he ſigns and ſeals it; the Court of *Chancery* may make good ſuch an *Accident*; and in Caſe a Perſon takes away a *Bond* fraudulently, and cancels it, the Obligee ſhall have as much Benefit thereby, as if not cancelled. 3 *Chan. Rep.* 99, 184. If a *Bond* has no Date, or a falſe Date, if it be ſealed and delivered, it is good. A Plaintiff may ſuggeſt a Date in a *Bond*, where there is none, or it is impoſſible, *&c.* where the Parties and Sum are ſufficiently expreſſed. 5 *Mod.* 282. A *Bond* dated on the ſame Day on which a Releaſe is made of all Things *uſque Diem datus*, *&c.* is not thereby diſcharged. 2 *Roll. Rep.* 255. And where a *Bond* is made to another's Uſe; it muſt be ſo laid in the Obligation, or he cannot releaſe it, *&c.* *Jenk. Cent.* 222. A Perſon ſhall not be charged by a *Bond*, though ſigned and ſealed, without Delivery, or Words, or other Thing, amounting to a Delivery. 1 *Leon.* 140. A *Bond* may be good, though it contains falſe *Latin*, or falſe *Engliſh*, if the Intent appears, for they do not make the *Bond* void. 2 *Roll. Abr.* 146. *Moor* 864. By the Condition of a *Bond*, the Intent of what Sum was in the Obligation, may be more eaſily known, and explained. 2 *Roll.* 146. And the Condition of the *Bond* may be recorded, and then the Plaintiff demur, *&c.* 1 *Lut.* 422. Likewiſe the Conditions of *Bonds* may expound to whom an Obligor is bound to pay Money; as if *A.* binds himſelf to *B.* to be paid to *A.* whereas it ſhould be to *B.* which Obligation is good, and the *Solvendum* void. 1 *Inſt.* 108, 209. Interlineation in a *Bond* in a Place not material, will not make the *Bond* void; but if it be altered in a Part material, it ſhall be void. 1 *Nelſ. Abr.* 391. And a *Bond* may be void by Raſure, *&c.* As where the Date, *&c.* is raſed after Delivery; which goes thro' the Whole. 5 *Rep.* 23. Such Words whereby the Intention of the Parties may appear, are ſufficient to make the Condition of a *Bond* good, tho' they are not proper; and it ſhall not be conſtrued againſt the expreſs Words. 1 *Saund.* 66. If the Words in a *Bond* at the End of the Condition, *That then this Obligation to be void*, are omitted, the Condition will be void; but not the Obligation: But if the Words *or elſe ſhall ſtand in Force* be left out, it has no Effect to hurt either the Condition or the Obligation. The ſtealing of any *Bond* or Bill, *&c.* for Money, being the Property of any one, made Felony as if Offenders had taken other Goods of like Value. See Stat. 2 *Geo.* 2. *c.* 25. See *Penalty*.

Form of a *Bond* for *Payment of Money*.

KNOW all Men *by theſe Preſents*, *That I* A. B. *of the Pariſh*, &c. *in the County* &c. *Gentleman, am held and firmly bound to* C. D. *of*, &c. *in the County aforeſaid, Eſquire, in one hundred Pounds of good and lawful Money of* Great Britain, *to be paid to the ſaid* C. D. *or his certain Attorney, his Executors, Adminiſtrators or Aſſigns; To which Payment well and truly to be made, I bind myſelf, my Heirs, Executors and Adminiſtrators, firmly by theſe Preſents, ſealed with my Seal: Dated the ſixth Day of* May *in the Thirteenth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France *and* Ireland *King, Defender of the Faith,* &c. *and in the Year of our Lord One Thouſand Seven Hundred and Forty.*

The **Condition** of this Obligation is ſuch, That if the above-bound *A. B.* his Heirs, Executors or Adminiſtrators do and ſhall well and truly pay, or cauſe to be paid unto the above-named *C. D.* his Executors, Adminiſtrators or Aſſigns, the full Sum of Fifty-two Pounds and Ten Shillings of lawful Money of *Great Britain*, on or before the ſixth Day of *November* next enſuing the Date hereof; Then this Obligation to be void, or otherwiſe to be and remain in full Force and Virtue. Or it may be thus: That if the ſaid *A. B. &c.* do pay to the ſaid *C. D. &c.* the full Sum of Fifty Pounds, with Intereſt for the ſame after the Rate of Five Pounds *per Centum per Ann.* (or with lawful Intereſt) on the Day; Then, *&c.*

Bondage, Is Slavery; and *Bondmen* in *Domeſday* are called *Servi*, but rendered different from *Villani* ——*Et de toto tenemento, quod de ipſo tenet in* Bondagio *in ſoca de* Nortone *cum pertin.* Mon. Angl. 2 par. fol. 609 *Bonda* is ſaid to be a Maſter of a Family. See *Nativus.*

Bonis non Amovendis, A Writ directed to the Sheriffs of *London*, *&c.* where a Writ of Error is brought, to charge them that the Perſon againſt whom Judgment is obtained, be not ſuffered to remove his Goods, till the Error is tried and determined. *Reg. Orig.* 131.

Book of Rates, A ſmall *Book* declaring the Value of Goods that pay Cuſtom of Poundage. 12 *Car.* 2.

Bookſellers, And Authors of *Books*, *&c.* *Vide Printing.*

Booting or Boting Corn, Rent-*Corn*, anciently ſo called. The Tenants of the Manor of *Haddenham in Com. Bucks*, formerly paid *Booting Corn* to the Prior of *Rocheſter*, *Antiq. of Purveyance*, *fol.* 418. It is thought to be ſo called, as being paid by the Tenants by Way of *Bote*, or *Boot*, *viz.* as a Compenſation to the Lord for his making them Leaſes, *&c.*

Bordagium, The Tenure called *Bordlands.* See *Ordin. Juſt. Itin. in inſula* de Jerſey.

Bordaria, A Cottage, from the Sax. *Bord*, *Domus.*——*Cum* 18 *Servis*, 16 *Villanis*, 10 *Bordis*, *&* 60 *Acris prati*, *&c.*

Bordarii, or **Bordbanni**. Theſe Words often occur in *Domeſday*, and ſome think they mean *Boors*, Huſbandmen, or Cottagers. In the *Domeſday* Inquiſition they were diſtinct from the *Villani*; and ſeemed to be thoſe of a leſs ſervile Condition, who had a *Bord* or Cottage, with a ſmall Parcel of Land allowed to them, on Condition they ſhould ſupply the Lord with Poultry and Eggs, and other ſmall Proviſions for his *Board* or Entertainment. Some derive the Word *Bordarii* from the old *Gall.* *Bords*, the Limits or extreme Parts of any Extent; as the *Borders* of a Country, and the *Borderers* Inhabitants in thoſe Parts.——*Dicuntur* Bordarii, *vel quod in tuguriis* (*quæ Cottagia vocant*) *habitabant*; *ſeu villarum limitibus*, *quaſi* Borderers. *Spelm.*

Bord-halfpeny, Signifies a ſmall Toll, by Cuſtom paid to the Lord of the Town for ſetting up *Boards*, Tables, Booths, *&c.* in Fairs and Markets: It is derived from three *Saxon* Words, *Bred*, *i. e.* *Board*, *helve*, in Behalf of, and *penning*, a Toll; which in the Whole makes a Toll for, or in Behalf of *Boards.*

Bordlands, The Demeſnes which Lords keep in their Hands for the Maintenance of their *Board* or Table. *Et Dominicum quod quis habet ad menſam ſuam & proprie, ſicut ſunt* Bordlands, *i. é. Dominicum ad menſam.* Bract. lib. 4. Tract. 3. c. 9.

Bordlode, Was a Service required of Tenants to carry Timber out of the Woods of the Lord to his Houſe: Or it is ſaid to be the Quantity of Food or Proviſion, which the *Bordary* or *Bordmen* paid for their *Bord-Lands*. The old *Scots* had the Term of *Burd*, and Meet-burd for Victuals, and Proviſions; and *Burden-ſack*, for a Sack full of Provender: From whence it is probable comes our *Burden* at firſt.

Bord-Service, A Tenure of *Bord-lands*; by which ſome Lands in the Manor of *Fulham in Com. Mid.* and elſewhere, are held of the Biſhop of *London*, and the Tenants do now pay Six-pence *per* Acre in lieu of finding Proviſion, anciently for their Lord's *Board* or Table. *Blount.*

Borg-Brigch, *Borg-bryce*, or *Burgh brych*, (*Sax.*) a Breach or Violation of Surety-ſhip, Pledge-breach, or of mutual Fidelity.

Borough, (Fr. *Burg*, Lat. *Burgus*, Sax. *Borhoe*) Signifies a Corporate Town, which is not a City; and alſo ſuch a Town or Place as ſends Burgeſſes to Parliament, the Number whereof you may find in *Cromp. Juriſd. f.* 24. *Verſtegan* ſaith, that *Burg* or *Burgh*, whereof we take our *Borough*, metaphorically ſignifies a Town having a Wall, or ſome Kind of Incloſure about it: And all Places that in old Time had among our Anceſtors the Name of *Borough*, were one Way or other fenced or fortified. *Lit. Sect.* 164. But ſometimes it is uſed for *Villa inſignior*, or a Country-Town of more than ordinary Note, not Walled. *Lindewood* upon the Provincial (*ut ſingula de ſenſibus*) ſays to this Effect, *Aliqui interpretantur* Burgum *eſſe Caſtrum, vel locum ubi ſunt crebra caſtra, vel dicitur* Burgus *ubi ſunt per limites habitacula plura conſtituta:* But he afterwards thus defines it; *Burgus dici poteſt villa quæcunque, alia a Civitate, in qua eſt Univerſitas approbata.* A *Borough* is a Place of Safety, Protection and Privilege, according to *Somner*; and in the Reign of King *Hen.* 2. *Burghs* had ſo great Privileges, that if a Bondman or Servant remained in a *Borough* a Year and a Day, he was by that Reſidence made a Freeman. *Glanville.* And why theſe were called *Free-Burghs*, and the Tradeſmen in them *Free-Burgeſſes*, was from a Freedom to buy and ſell, without Diſturbance, exempt from Toll, &c. granted by Charter: And *Parliament Boroughs* are ſaid to be either by Charter, or Towns holden of the King in *Ancient Demeſne. Brady.* It is conjectured that *Borhoe* or *Borough*, was alſo formerly taken for thoſe Companies conſiſting of ten Families, which were to be Pledges for one another; and we are told by ſome Writers that it is a Street or Row of Houſes cloſe to one another. *Bract. lib.* 3. *Tract.* 2. *cap.* 10. *Lamb. Duty of Conſt. p.* 8.

Borough-holders, or **Burſholders,** *quaſi Borhoe-ealders*, Are the ſame Officers with *Borough-heads*, or *Head Boroughs*; who (according to *Lambert*) were the Head Men, or chief Pledges of *Boroughs*, choſen by the reſt to ſpeak and act in their Names in thoſe Things that concerned them. See *Headborough.*

Borough-Engliſh, (Sax. *Borhoe Engliſe*) Is a cuſtomary Deſcent of Lands, in ſome ancient *Boroughs*, and Copyhold Manors, that Eſtates ſhall deſcend to the youngeſt Son; or if the Owner hath no Iſſue, to his younger Brother, as in *Edmunton, &c. Kitch.* 102. It has been obſerved, that the Original of this old Cuſtom, proceeded from the Lords of certain Lands having the Privilege to lie with their Tenants Wives the firſt Night after Marriage; wherefore in Time the Tenants obtained this Cuſtom, on purpoſe that their eldeſt Sons (who might be their Lord's Baſtards) ſhould be incapable to inherit their Eſtates. *Præf.* 3 *Mod. Rep.* But the Reaſon of the Cuſtom of *Borough Engliſh* (*Littleton* ſays) is becauſe the youngeſt is preſumed in Law to be leaſt able to provide for himſelf. *Litt.* 165. This Cuſtom goes with the Land, and guides the Deſcent to the youngeſt Son, although there be a Deviſe to the contrary. 2 *Lev.* 138. If a Man ſeiſed in Fee of Lands in *Borough Engliſh*, make a Feoffment to the Uſe of himſelf and the Heirs Males of his Body, according to the Courſe of the Common Law; and afterwards die ſeiſed, having Iſſue two Sons, the youngeſt Son ſhall have the Lands by Virtue of the Cuſtom, notwithſtanding the Feoffment. *Dyer* 179. If a Copyhold in *Borough Engliſh* be ſurrendered to the Uſe of a Perſon and his Heirs, the Right will deſcend to the youngeſt Son according to the Cuſtom. 1 *Mod.* 102. And a youngeſt Son ſhall inherit an Eſtate in Tail in *Borough Engliſh. Noy* 106. But an Heir at Common Law ſhall take Advantage of a Condition annexed to *Borough Engliſh Land*; tho' the youngeſt Son ſhall be intitled to all Actions in Right of the Land, &c. 1 *Nelſ. Abr.* 396. And the eldeſt Son ſhall have Tithes ariſing out of Land *Borough Engliſh*; for Tithes of Common Right are not Inheritances deſcendable to an Heir, but come in Succeſſion from one Clergyman to another. *Ibid.* 347. *Borough Engliſh* Land being deſcendable to the youngeſt Son, if a younger Son dies without Iſſue Male leaving a Daughter, ſuch Daughter ſhall inherit *Jure repræſentationis.* 1 *Salk.* 243. It hath been adjudged, where a Man hath ſeveral Brothers, the youngeſt may inherit Lands in *Borough Engliſh:* Yet it is ſaid where the Cuſtom is that Land ſhall go to the youngeſt Son, it doth not give it to the youngeſt Uncle, for Cuſtoms ſhall be taken ſtrictly; and thoſe which fix and order the Deſcents of Inheritances, can be altered only by Parliament. *Dyer* 179. 4 *Leon.* 384. *Jenk. Cent.* 220.

Borough Goods, *deviſable.* As before the Statutes of 32 & 34 *Hen.* 8. no Lands were deviſable at the Common Law, but in ancient Baronies; ſo at the Making of the Statute of *Acton Burnel*, 11 *Ed.* 1. *c.* 1. it was doubted whether *Goods* were deviſable but in ancient *Boroughs:* For by the Writ *De Rationabili parte bonorum*, anciently the *Goods* of a Man were partible between his Wife and Children. By the Common Law Lands could not be deviſed from the Heir; and here it ſeems as if *Goods* were alſo not deviſable from the Wife and Children, before the Statute 11 *Ed.* 1.

Borrel-Folk, *i. e.* Country People, from the Fr. *Boure*, *floccus*, becauſe they covered their Heads with ſuch Stuffs. *Blount.*

Borrowing, A Man *borrows* Money, Corn, or ſuch Thing of another; he may not expect the ſame again, but the like, or ſo much: But if one lend me a Horſe, &c. he muſt have the ſame reſtored. If a Thing be uſed to any other End or Purpoſe, than that for which it was *borrowed*, the Party may have his Action of the Caſe for it, tho' the Thing be never the worſe; and if what is *borrowed* be loſt, altho' it be not by any Negligence of mine, as if I be robbed of it; or where the Thing is impaired or deſtroyed by my Neglect, admitting I put it to no more Service than that for which *borrowed*, I muſt make it good: So where I *borrow* a Horſe, and put him in an old rotten Houſe ready to fall, which falls on and kills him, I muſt anſwer for the Horſe. But if ſuch Goods *borrowed* periſh by the Act of God in the right Uſe of them; as where I put the Horſe, &c. in a ſtrong Houſe, and it fall and kill him, or it dies by Diſeaſe, or by the Default of the Owner, I ſhall not be charged. *Co. Litt.* 89. 29 *Aſſ:* 28. 2 *H.* 7. 11.

Boſcage, (*Boſcagium*) Is that Food which Wood and Trees yield to Cattle, as Maſt, &c. from the Ital. *Boſco, Silva:* But *Manwood* obſerves, to be quit *de Boſcagio*, is to be diſcharged of paying any Duty of Wind-fall Wood in the Foreſt.

Boſcaria, Wood-Houſes from *Boſcus*; or Ox-Houſes from *Bos* —— *Ut ipſi poſſunt Domos & Boſcaria ſatis competentia ædificare.* Mon. Angl. Tom. 2. fol. 302.

Boſcus, An ancient Word uſed in our Law, ſignifying all Manner of Wood: The *Italians* make uſe of *Boſco* in the ſame Senſe; as the French do *Bois*. *Boſcus* is divided into High Wood or Timber, *Haut-bois*, and Coppice or Under-Woods, *Sub-bois:* But the High Wood is properly called *Saltus*; and in *Fleta* we read it *Maeremium.* —— Cum una Carecta de mortuo *Boſco*. Pat. 10 H. 6.

Boſinnus, A certain ruſtical Pipe, mentioned in antient Tenures. By Inquiſition after the Death of *Laurence Haſtings* Earl of *Pembroke*, 22 *E.* 3. The Manor of *Aſton Cantlow in Com. Warw.* is returned to be held of the King *in Capite* by theſe Words; *Quod quidem manerium per ſe tenetur de Domino Rege in Capite per ſervitium inveniendi unum hominem Peditem, cum quodam Arcu ſine Corda, cum uno* Boſinno *ſine cappa, &c.* Ex Record. Tur. Lond.

Boſtar, An Ox-Stall. This Word occurs in *Mat. Pariſ. Anno* 1234. And in *Ingulphus.* —— *Fecit tum horrea*, Boſtaria, *ovilia, &c.*

Bote, (*Sax.*) Signifies a Recompence, Satisfaction or Amends: Hence comes *Manbote*, Compenſation, or Amends for a Man ſlain, *&c.* In King *Ina*'s Laws is declared what Rate was ordained for Expiation of this Offence, according to the Quality of the Perſon ſlain. *Lamb. cap.* 99. From hence likewiſe we have our common Phraſe, *To Boot, i. e. Compenſationis gratia.* There are *Houſe bote, Plough bote, &c.* Privileges to Tenants in cutting of Wood, *&c. Vide* thoſe Words, and *Skene* verbo *Bote.*

Boteleſs, *ſine remedio.* In the Charter of *H.* 1. to *Tho.* Archbiſhop of *York*, it is ſaid, that no Judgment or Sum of Money ſhall *acquit* him that commits Sacrilege; but he is in *Engliſh* called *Boteleſs*, *viz.* without Emendation. *Lib. Albus penes Cap. de Suthnet. Int. Plac. Trin.* 12 *Ed.* 2. *Ebor.* 48. We retain the Word ſtill in common Speech; as it is *Bootleſs* to attempt ſuch a Thing; that is, it is in vain to attempt it.

Botellaria, A Buttery or Cellar, in which the *Butts* and *Bottles* of Wine, and other Liquors are repoſited. —— *Veniet ad Palatium Regis, & ibit in* Botellariam, *& extrahet a quocunque vaſe in dicta* Botellaria *invento, vinum quantum viderit neceſſarium pro factura unius picheri claretti.* Anno 31 Ed. 1.

Botha, A *Booth*, Stall, or Standing in a Fair or Market. —— *Et duas menſuras liberas ad* Bothas *ſuas faciendas.* Mon. Angl. 2. par. fol. 132.

Bothagium, *Boothage*, or cuſtomary Dues paid to the Lord of the Manor or Soil, for the pitching and ſtanding of *Booths* in Fairs or Markets. —— *Picagium, Stallagium*, Bothagium *& Tollagium, &c. de novo Mercato infra villam de* Burceſtor, *Com.* Oxon. *Paroch. Antiq. p* 680.

Bothna, or *Buthna*, ſeems to be a Park where Cattle are incloſed and fed. *Hector Boetius lib.* 7. *cap.* 123. *Bothena*, alſo ſignifies a Barony, Lordſhip, *&c. Skene.*

Botiler of the King, (*Pincerna Regis*) Is an Officer that provides the *King's* Wines, who (according to *Fleta*) may by Virtue of his Office take out of every Ship laden with Sale Wines, *Unum dolium eligere in prora navis ad opus Regis & aliud in puppe, & pro qualibet pecia reddere tantum* 20 *ſolid. Mercatori. Si autem plura inde habere voluerit, bene licebit, dum tamen pretium fide dignorum judicio pro Rege apponatur.* Fleta lib. 2. cap. 21. This Officer ſhall not take more Wine than he is commanded, of which Notice ſhall be given by the *Steward* of the King's Houſe, *&c.* on Pain of forfeiting double Damages to the Party grieved; and alſo to be impriſoned and ranſomed at the Pleaſure of the King. *Stat.* 25 *Ed.* 3. *cap.* 21. 45 *Ed.* 3. *c.* 3.

Bottomry, (*Fœnus Nauticum*) Is when the Maſter of a Ship borrows Money upon the Keel or *Bottom* of his Ship, and binds the Ship itſelf; that if the Money be not paid by the Day aſſigned, the Creditor ſhall have the Ship. But it is generally where a Perſon lends Money to a Merchant, who wants it to Traffick, and is to be paid a greater Sum at the Return of the Ship, ſtanding to the Hazard of the Voyage; in Regard to which, though the Intereſt be greater than five *per Cent.* or what is allowed by Law, it is not Uſury. For Money lent to Sea is allowed a larger Intereſt than Money advanced on Land, by Reaſon 'tis furniſhed at the Hazard of the Lender, and if the Ship periſhes, the Lender ſhares in the Loſs; ſo that there is no real Security, as in Caſe of Lands, *&c.* And the greater the Danger is, the greater may be the Profit reaſonably required for the Money advanced. *Lex Mercat.* 122. Money lent on *Bottomry* is either on the bare Ship, (the uſual Way) or upon the Perſon of the Borrower, and ſometimes upon both: The firſt is where a Man takes up Money, and obliges himſelf, that if ſuch a Ship ſhall arrive at ſuch a Port, then to repay perhaps in long Voyages near double the Sum lent; but if the Ship happens to miſcarry, then nothing. But when Money is lent at Intereſt, it is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the Loan; whereas the Profit of the other, is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon himſelf, and makes the Intereſt lawful. *Sea Laws* 206, 207. Then there is *uſura Marina*, joining the advanced Money, and the Danger of the Sea together; and this is obligatory ſometimes to the Borrower's Ship, Goods and Perſon. Where Bonds or Bills of *Bottomry* are ſealed, and the Money is paid, if the Ship receives Injury by Storm, Fire, *&c.* before the Beginning of the Voyage, then the Perſon borrowing only runs the Hazard, unleſs it be otherwiſe provided; as that if the Ship ſhall not arrive at ſuch a Place, at ſuch a Time, *&c.* there the Contract hath its Beginning from the Time of the Sealing: But if the Condition be, that if ſuch a Ship ſhall ſail from *London* to any Port abroad, and ſhall not arrive there, *&c.* then, *&c.* there the Contingency hath not its Beginning till the Departure. A Maſter of a Ship may not take up Money on *Bottomry*, in Places where his Owners reſide, except he be a Part-Owner, and then he may only take up ſo much as his Part will anſwer in the Ship; for if he exceeds that, his own Eſtate is liable to make Satisfaction; but when a Maſter is in a ſtrange Country, where there are no Owners, nor any Goods of theirs, nor of his own; and for Want of Money he cannot perform his Voyage, there he may take up Money upon *Bottomry*, and all the Owners are chargeable thereto; but this is underſtood where Money cannot be procured by Exchange, or any other Means: And in the firſt Caſe, the Owners are liable by their Veſſel, though not in their Perſons; but they have their Remedy againſt the Maſter of the Ship. *Leg. Oleron. l.* 4. Some Maſters of Ships who had inſured or taken up Money upon *Bottomry* to a greater Value than their Adventure, having made it a Practice to caſt away and deſtroy the Ships under their Charge; by *Stat.* 10 *Car.* 2. *c.* 6. it is made Felony, and the Offenders ſhall ſuffer Death. Vide 1 *Ann.*

Form of a *Bill of* Bottomry.

TO all People *to whom theſe Preſents ſhall come, I* A. B. *of*, &c. *Owner and Maſter of the Ship called*, &c. *of the Burden of two hundred Tons, now riding at*, &c. *and bound for*, &c *in the* Weſt Indies, *ſend Greeting:* Whereas *I the ſaid* A. B. *am at this Time neceſſitated to take up upon the Adventure of the ſaid Ship, called*, &c. *the Sum of* 100 l. *for ſetting forth the ſaid Ship to Sea, and furniſhing her with Proviſions for*

for the ſaid Voyage, which C. D. *of*, &c. *Merchant, hath on Requeſt lent unto me, and ſupplied me with at the Rate of* 20 l. *for the ſaid* 100 l. *during the ſaid Voyage:* Now know ye, *That I the ſaid* A. B. *do by theſe Preſents, for me, my Executors and Adminiſtrators, covenant and grant to and with the ſaid* C. D. *that the ſaid Ship ſhall with the firſt fair Wind after the Day*, &c. *depart from the River of* Thames, *and ſhall, as Wind and Weather ſhall ſerve, proceed in her Voyage to*, &c. *in the* Weſt-Indies; *and having there tarried until*, &c. *and the Opportunity of a Convey, or being ſooner diſpatched (which ſhall firſt happen) ſhall return from thence, and ſhall as Wind and Weather ſhall ſerve, directly ſail back to the River of* Thames *to finiſh her ſaid Voyage:* And *I the ſaid* A. B. *in Conſideration of the ſaid Sum of* 100 l. *to me in Hand paid by the ſaid* C. D. *at and before the Sealing and Delivery of theſe Preſents, do hereby bind myſelf, my Heirs, Executors and Adminiſtrators, my Goods and Chattels, and particularly the ſaid Ship, with the Freight, Tackle, and Apparel of the ſame, to pay unto the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, the Sum of* 120 l. *of lawful* Britiſh *Money, within one and twenty Days next after the Return and ſafe Arrival of the ſaid Ship, in the ſaid River of* Thames, *from the ſaid intended Voyage.* And *I the ſaid* A. B. *do for me, my Executors and Adminiſtrators, covenant and grant, to and with the ſaid* C. D. *his Executors and Adminiſtrators by theſe Preſents, That I the ſaid* A. B. *at the Time of Sealing and Delivery of theſe Preſents, am true and lawful Owner and Maſter of the ſaid Ship, and have Power and Authority to charge and ingage the ſaid Ship as aforeſaid; and that the ſaid Ship ſhall at all Times after the ſaid Voyage, be liable and chargeable for the Payment of the* 120 l. *according to the true Intent and Meaning of theſe Preſents.* And laſtly, *it is hereby declared and agreed, by and between the ſaid Parties to theſe Preſents, that in Caſe the ſaid Ship ſhall be loſt, miſcarry, or be caſt away before her next Arrival in the ſaid River of* Thames, *from the ſaid intended Voyage, that then the ſaid Payment of the ſaid* 120 l. *ſhall not be demanded, or be recoverable by the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns; but ſhall ceaſe and determine, and the Loſs thereby be wholly born and ſuſtained by the ſaid* C. D. *his Executors and Adminiſtrators: And that then and from thenceforth every Act, Matter and Thing herein contained on the Part and Behalf of the ſaid* A. B. *ſhall be void; any Thing herein contained to the contrary notwithſtanding.* In Witneſs, &c.

Bovata Terræ, As much Land as one Ox can plough. —— *Cujus ſingulæ* Bovatæ *ſunt quindecim acræ terræ.* Mon. Angl. par. 3. fol. 91. *See* Oxgang.

Bouche of Court, Commonly called *Budge of Court*, was a certain Allowance of Proviſion from the King, to his Knights and Servants, that attended him in any military Expedition. The French *Avoir bouche a Court* is to have an Allowance at Court, of Meat and Drink: From *Bouche*, a Mouth. But ſometimes it extended only to Bread, Beer, and Wine. And this was antiently in Uſe as well in the Houſes of Noblemen, as in the King's Court, as appears by the following Indenture. —— *Ceſte Endenture fait parentre Lui Nobles Hommes Monſieur* Tho. Beauchamp, *Counte de* Warwick, *d'une part, & Monſieur* Johan. Ruſſel *de* Strengeſham *Chevalier, de autre part, teſmoigne que le dit* Johan. *eſt*, &c. *Et Avera pur la pees*, &c. Bouche au Court *pur lui meſne*, &c. *Donne a noſtre Chaſtel de* Warwich *le* 29 *jour del Moys de March, l'an du regne le Roy* Richard *le Second puis le Conqueſt*, &c.

Boverium, or *Boveria*, An Ox-houſe: —— *Loca ubi Stabulantur* Boves. *Gloſſ. in* 10 *Script.* And in the *Monaſticon, Ad faciendum ibi* Boverias *ſuas & alias Domos uſibus neceſſarias*, &c. Mon. Angl. par. 2. fol. 210.

Bovettus, A young Steer, or caſtrated Bullock. *Unus* Bovettus *mas, quatuor* Boviculæ *fœminæ.* Paroch. Antiq. p. 287.

Bovicula, An Heifer, or young Cow; which in the Eaſt-Riding of *Yorkſhire* is called a *Whee*, or *Whey*.

Bound, or *Boundary*, (*Bunda*) The utmoſt Limits of Lands, whereby the ſame is known and aſcertained. —— *Secundum metas, Meras*, Bundas, *& Marchias Foreſtæ.* 18 Ed. 3. Itin. Pick. fol. 6. *See* 4 Inſt. 318.

Bounty of Q. Anne, for maintaining poor Clergymen. *Stat.* 2 *Ann.* See *Firſt Fruits.*

Bow-bearer, An under Officer of the *Foreſt*, whoſe Office is to overſee, and true Inquiſition make, as well of ſworn Men as unſworn in every Bailiwick of the Foreſt; and of all Manner of Treſpaſſes done, either to Vert or Veniſon, and cauſe them to be preſented, without any Concealment in the next Court of Attachment, &c. *Crompt. Juriſ. fol.* 201.

Bowyers, One of the antient Companies of the City of *London*. A *Bowyer* dwelling in *London*, was to have always ready fifty *Bows* of Elm, Witch-Haſle, or Aſh, well made and wrought, in Pain of 10 *s.* for every *Bow* wanting; and to ſell them at certain Prices, under the Penalty of 40 *s. Stat.* 8 *Eliz. c.* 10. And Parents and Maſters were to provide for their Sons and Servants, a *Bow* and two *Shafts*, and cauſe them to exerciſe Shooting, on Pain of 6 *s.* and 8 *d.* &c. by our antient Statutes. 12 *Ed.* 4. 33 *H.* 8.

Bracelets, Hounds, or rather Beagles of the ſmaller and ſlower Kind. —— *Rex conſtituit* J. L. *Magiſtrum canum ſuorum vocatorum* Bracelets, &c. Pat. 1 Rich. 2. p. 2. m. 1.

Bracenarius, (Fr. *Braconnier*) A Huntſman, or Maſter of the Hounds. —— *Rex mandat Baronibus quod allocent* Rob. de Chadworth *Vicecom.* Lincoln. *lvi s. vii d. quos per præceptum Regis liberavit* Johan. de Bellovento *pro putura ſeptem Leporariorum & trium Falconum & Lanerar. & pro vadiis unius* Bracenarii *a die*, &c. *uſque*, &c. *prox. ſequen. utroque die computato, viz. pro putura cujuſlibet Leporarii & Falconis* 1. *d ob. & pro vadiis prædicti* Bracenarii *per diem* 11 *d.* Anno 26 Ed. 1. Rot. 10. in Dorſo.

Bracetus, A Hound: *Brachetus* is in Fr. *Brachet*, Braco *Canis ſagax, indagator Leporum:* So as *Braco* was properly the large fleet Hound; and *Brachetus*, the ſmaller Hound; and *Brachete* the Bitch in that Kind. —— *Concedo eis duos Leporarios & quatuor* Bracetos *ad Leporem capiendum.* Monaſtic. Ang. Tom. 2. pag. 283.

Bracinum, A Brewing: The whole Quantity of Ale brewed at one Time, for which *Tolſeſtor* was paid in ſome Manors. *Bracina* a Brew-houſe. *MS. penes* Will. Dugdale, &c.

Brandy, A Liquor made chiefly in *France*, and extracted from the Lees of Wine. In the Stat. 20 *Car.* 2. *cap.* 1. upon an Argument in the Exchequer *Anno* 1668. whether *Brandy* were a *Strong water* or *Spirit*, it was reſolved to be a *Spirit:* But in the Year 1669, by a Grand Committee of the whole Houſe of Commons, it was voted to be a *Strong water* perfectly made. See the Stat. 22 *Car.* 2. *cap.* 4. In lieu of Cuſtom Duties, granted by 7 & 8 *W.* 3. on *Brandy* imported from *France*, there ſhall be paid by the Importer for every Gallon of ſingle Proof 1 *s.* and double Proof 2 *s.* &c. by Stat. 6 *Geo.* 2. *c.* 27. See *Cuſtom.*

Braſium, Signifies Malt: In the antient Statutes *Braſiator* is taken for a Brewer, from the Fr. *Braſſeur*; and at this Day is uſed for a Maltſter or Malt-maker. It was reſolved 18 *Ed.* 2. *Quod venditio* Braſii *non eſt venditio victualium, nec debet puniri ſicut venditio Panis, Vini & Cerviſiæ, & hujuſmodi contra formam Statuti.* To make Malt was a Service paid by ſome Tenants to their Lords. —— *In Manerio de* Pidington *quilibet virgatarius præparabit Domino unum quarterium* Braſii *per Annum, ſi Dominus inveniet Boſcum ad ſiccandum.* Paroch. Antiq. p. 496.

Braſs, Is to be ſold in open Fairs and Markets, or in the Owners Houſes, on Pain of 10 *l.* and to be worked according to the Goodneſs of Metal wrought in *London*, or ſhall be forfeited: Alſo Searchers of *Braſs* and Pewter are to be appointed in every City and Borough by Head Officers, and in Counties by Juſtices of Peace, *&c.* and in Default thereof, any other Perſon skilful in that Myſtery, by Overſight of the Head Officer, may take upon him the Search of defective *Braſs*, to be forfeited, *&c. Stat.* 19 *H.* 7. *c.* 6. *Braſs* and Pewter, Bell-metal, *&c.* ſhall not be ſent out of the Kingdom, on Pain of Forfeiting double Value, *&c.* 33 *Hen.* 8. *c.* 7. 2 & 3 *Ed.* 6. *c.* 37.

Breach of Promiſe, (*Violatio Fidei*) A Breaking or Violating a Man's Word. And *Breach* ſignifies where a Perſon commits any *Breach* of the Condition of a Bond, or his Covenant, *&c.* entered into, on Action upon which the *Breach* muſt be aſſigned. In Debt on Bond, conditioned to give Account of Goods, *&c.* a *Breach* muſt be alledged, or the Plaintiff will have no Cauſe of Action. 1 *Saund* 102. And when a *Breach* is aſſigned it muſt not be general, but muſt be particular; as in Action of Covenant for not repairing of Houſes, the *Breach* ought to be aſſigned particularly, what is the Want of Reparation. If one covenants he was ſeiſed, and *Breach* is aſſigned that he was not ſeiſed, it muſt be ſet forth who is ſeiſed, *&c. Cro. Jac.* 369. But on mutual *Promiſe* for one to do an Act, and in Conſideration thereof another to do ſome Act, as to ſell Goods, *&c.* for ſo much Money, a general *Breach* that the Defendant hath not performed his Part, is well aſſigned. 3 *Lev.* 319. If the Condition of a Bond conſiſts of ſeveral Parts, the Defendant in Pleading is to ſhew that he hath performed the ſeveral Matters contained in the Condition: But where a Covenant conſiſts of ſeveral Parts in the Affirmative, Performance generally is a good Plea. *Sid.* 215. In Caſe of a Bond for Performance of an Award, if the Defendant pleads any Matter by which he admits a Non-performance, and excuſes it, the Plaintiff in his Replication muſt ſhew the Award, and aſſign the *Breach*, that the Court may ſee an Award was made, and judge whether it was good or not; for if it ſhould be of a void Part thereof, it need not be performed. 1 *Salk.* 138. *Breaches* aſſigned ought to be according to the very Words of the Condition or Covenant; when they may be well enough though too general. 1 *Lutw.* 326. Where a Thing is to be done by a Perſon or his Aſſigns, the *Breach* is to be that it was done neither by the one or the other. 5 *Mod.* 133. If a Perſon is to tender a Conveyance, *&c.* to another, his Heirs or Aſſigns, *Breach* aſſigned that the Defendant did not tender a Conveyance to the Plaintiff, without the Words his Heirs or Aſſigns, is good: But if the Tender be to be made by another Man, his Heirs, *&c.* and not to him, it is otherwiſe. 1 *Salk.* 139. Where a Leſſee for Years is to leave all the Timber on the Land, which was growing there at the Time of the Leaſe, and he cuts down any Trees, though he leaves the Timber on the Land at the End of his Leaſe, this is a *Breach* of Covenant: For in Contracts the Intention of Parties is chiefly to be conſidered. *Raym.* 464. If Lands are only excepted out of a Leaſe, and a Perſon is diſturbed in enjoying them by the Leſſee, this is no *Breach* of Covenant; though it is ſaid it might be otherwiſe if a Way, Common, *&c.* be excepted. *Moor* 553. A Perſon brings an Action for a Covenant broken, he ought to aſſign the *Breach* of it in ſuch a Manner, that the Defendant may take an Iſſue. 1 *Lill. Abr.* 240. If ſeveral *Breaches* are aſſigned, and the Defendant demurs upon the whole Declaration, the Plaintiff ſhall have Judgment for all that are well aſſigned, for they are as ſeveral Actions. *Cr. Jac.* 557. Where a Declaration aſſigns no particular *Breach* of Covenant, it is cured by Verdict, though ill upon Demurrer. 1 *Vent.* 114, 126. Formerly a Plaintiff could aſſign but one Breach in Action of Debt upon a Bond for Performance of Covenants, tho' ſeveral Things were broken, for one *Breach* being proved, was a Forfeiture of the Bond: But in Action of Covenant, as many *Breaches* might be aſſigned as the Plaintiff would, becauſe the Plaintiff might have a particular Damage upon each Covenant broken; and a ſeveral Iſſue muſt be taken upon every *Breach.* 1 *Nelſ. Abr.* 406. And now by Statute, in Action on Bond for Performance of Covenants, the Plaintiff may aſſign as many *Breaches* as he pleaſes, and the Jury ſhall aſſeſs Damages and Coſts for ſuch Covenants as are proved to be broken. *Stat.* 8 & 9 *W.* 3. *cap.* 10. And where Judgment ſhall be given for the Plaintiff in ſuch Action on a Demurrer, *Nil dicit*, *&c.* he may ſuggeſt on the Roll as many *Breaches* as he thinks fit; upon which a Writ of Enquiry ſhall go, *&c.* And if before Execution executed, the Defendant brings the Coſts and Damages into Court, Execution ſhall be ſtayed; and the Plaintiff ſhall acknowledge Satisfaction, if the Execution be executed: But the Judgment ſhall ſtill ſtand as a Security to anſwer the future *Breach* of any Covenant in the Deed; for which the Plaintiff or his Executors, *&c.* may have a *Scire facias* upon ſuch Judgment againſt the Defendant. *Stat. Ibid.*

Bread and Beer, The Aſſiſe of *Bread*, *Beer* and Ale, *&c.* is granted to the Lord Mayor of *London* and other Corporations: Bakers, *&c.* not obſerving the Aſſiſe, to be ſet in the Pilory. Stat. 51 *H.* 3.

Bread of Treet, or **Trite**, (*Panis Tritici*) Is Bread mentioned in the Statute 51 *Hen.* 3. of Aſſiſe of Bread and Ale; wherein are particularized *Waſtel Bread*, *Cocket Bread*, and *Bread of Treet*, which anſwer to the three Sorts of Bread now in Uſe, called White, Wheaten, and Houſe-hold Bread. In religious Houſes they heretofore diſtinguiſhed Bread by theſe ſeveral Names, *Panis Armigerorum*, *Panis Conventualis*, *Panis Puerorum*, & *Panis Famulorum.* Antiq. Not.

Brecca, (from the Fr. *Breche*) A Breach or Decay. In ſome antient Deeds there have been Covenants for repairing *Muros* & Breccas, *Portas* & *Foſſata*, *&c.* ——*De* Brecca *Aquæ inter* Woolwich & Greenwich *ſupervidend.* Pat. 16 Ric. 2. A Duty of 3 *d. per* Ton on Shipping was granted for amending and Stopping of *Dagenham Breach*, by *Stat.* 12 *Ann. c.* 17.

Brede, A Word uſed by *Bracton* for Broad; as too large and too *Brede*, is proverbially too long and too broad. *Bract. lib.* 3. *tract.* 2. *c.* 15. There is alſo a *Sax.* Word *Brede*, ſignifying Deceit. *Leg. Canut. cap.* 44.

Bredwite, (Sax. *Bread and White*) A Fine or Penalty impoſed for Defaults in the Aſſiſe of Bread: To be exempt from which, was a ſpecial Privilege granted to the Tenants of the Honour of *Wallingford* by King *Hen.* 2. *Paroch. Antiq.* 114.

Brehon. In *Ireland* the Judges and Lawyers were anciently ſtiled *Brehons*; and thereupon the *Iriſh* Law called the *Brehon Law.* 4 Inſt. 358.

Breiſna, Wether-Sheep. —— *Concedo Deo & Monachis* 30 Breiſnas *ſingulis Annis.* Mon. Angl. Tom. 1. cap. 406.

Brenagium, A Payment in Bran, which Tenants antiently made to feed their Lords Hounds. *Blount.*

Bretoyſe, or **Bretois**, The Law of the Marches of *Wales*, in Practice among the antient *Britains.* ——*Ego* Henricus de Penebrugge *dedi omnibus liberis Burgenſibus meis Burgi mei de* Penebrugge *omnes Libertates & liberas conſuetudines ſecundum* Legem de Bretoyſe, *&c. Pat. ſine Dat.* Here *Legem de Bretoyſe* is ſaid to ſignify *Legem Marchiarum*; for *Penebrugge*, now called *Pembridge*, is a Town in *Herefordſhire* which borders upon *Wales.*

Breve, Is any Writ by which a Man is ſummoned or attached to anſwer an Action, or whereby any Thing is commanded to be done in the King's Courts, in order to Juſtice, *&c.* It is called *Breve* from the Brevity of it; and is directed either to the Chancellor, Judges, Sheriffs, or other Officers, whoſe various Forms you may ſee in the Regiſter. ——— Breve, *quia breviter & paucis Verbis intentionem proferentis exponit & explanat, &c. Bract. lib.* 5. *Tract.* 5. *cap.* 17. See *Skene de verb. Breve.* Vide *Writ.*

Breve perquirere, To purchaſe a Writ or Licence of Trial, in the King's Courts, by the Plaintiff, *qui* Breve *perquiſivit:* And hence comes the Uſage of paying 6 *s.* 8 *d.* Fine to the King, where the Debt is 40 *l.* and of 10 *s.* where the Debt is 100 *l. &c.* in Suits and Trials for Money due upon Bond.

Breve de Recto, A Writ of Right, or Licence for a Perſon ejected out of an Eſtate, to ſue for the Poſſeſſion of it when detained from him. Vide *Recto.*

Brevibus & Rotulis liberandis, A Writ or Mandate to a Sheriff to deliver unto his Succeſſor the County, and the Appurtenances, with the Rolls, Briefs, Remembrances, and all other Things belonging to that Office. *Reg. Orig. fol.* 295.

Brewers, Are to put their Drink in Veſſels mark'd by a Cooper, or forfeit 3 *s.* 4 *d.* a Barrel; and not ſelling it at reaſonable Rates, appointed by Juſtices of Peace, incur a Forfeiture of 6 *s.* for every Barrel, Kilderkin 3 *s.* 4 *d. &c.* by *Stat.* 23 *H.* 8. *cap.* 4. And *Brewers* are to make an Entry at the Exciſe-Office once a Week of Liquors brewed, under Penalties, *&c.* 12 & 15 *Car.* 2. 7 & 8 *W.* 3 If *Brewers* mix any Sugar, Moloſſes, *&c.* in brewing Beer or Ale, they ſhall forfeit 20 *l. Stat.* 1 *Ann. cap.* 3. See *Exciſe.*

Bribery, (from the Fr. *Briber*, to devour or eat greedily) Is a high Offence, where a Perſon in a judicial Place takes any Fee, Gift, Reward or Brocage, for doing his Office, but of the King only 3 *Inſt.* 145. But taken largely it ſignifies the Receiving, or Offering, any undue Reward, to or by any Perſon concerned in the Adminiſtration of publick Juſtice, whether Judge, Officer, *&c.* to act contrary to his Duty; and ſometimes it ſignifies the Taking or Giving a Reward for a publick Office. 3 *Inſt.* 149. *Hob.* 9. A *Bribe* of Money tho' ſmall, the Fault is great; and Judges Servants may be puniſhed for receiving *Bribes.* If a Judge refuſes a *Bribe* offered him, the Offerer is puniſhable. *Forteſcue, cap.* 51. *Bribery* in judicial or miniſterial Officers is puniſhed by Fine and Impriſonment. Before the Statute 25 *Ed.* 3. *Bribery* in a Judge was looked upon as ſo heinous an Offence, that it was ſometimes puniſhed as High Treaſon; and it is at this Day puniſhable, with Forfeiture of Office, Fine and Impriſonment. In the Reign of King *James* I. the Earl of *M.* Lord Treaſurer of *England*, being impeached by the Commons, for refuſing to hear Petitions referred to him by the King, 'till he had received great *Bribes, &c.* was by Sentence of the Lords, deprived of all his Offices, and diſabled to hold any for the Future, or to ſit in Parliament; alſo he was fined fifty thouſand Pounds, and impriſoned during the King's Pleaſure. 1 *Hawk. P. C.* 170. In the eleventh Year of King *George* I. the Lord Chancellor *M*——— had a milder Puniſhment: He was impeached by the Commons with great Zeal, for *Bribery*, in ſelling the Places of Maſters in Chancery for exorbitant Sums, and other corrupt Practices, tending to the great Loſs and Ruin of the Suitors of that Court; and the Charge being made good againſt him, being before deveſted of his Office, he was ſentenced by the Lords to pay a Fine of thirty thouſand Pounds, and impriſoned 'till it was paid. *Vide* the *Trial.* By Statute, the Chancellor, Treaſurer, Juſtices of both Benches, Barons of the Exchequer, *&c.* ſhall be ſworn not to ordain or nominate any Perſon in any Office for any Gift, Brocage, *&c.* 12 *R.* 2. *c.* 2. And the Sale of Offices concerning the Adminiſtration of publick Juſtice, *&c.* is prohibited on Pain of Forfeiture and Diſability, *&c.* by 5 & 6 *Ed.* 6. *c.* 16. In the Conſtruction of the laſt mentioned Statute, it has been reſolved that the Offices of the Eccleſiaſtical Courts are within the Meaning of that Act, as well as the Offices in the Courts of Common Law; and been adjudged, that one who contracts for an Office, contrary to the Purport of the ſaid Statute 5 & 6 *E.* 6 is ſo diſabled to hold the ſame, that he cannot be reſtored to a Capacity of holding it by any Grant or Diſpenſation whatſoever. *Cro. Jac.* 269, 386. *Hawk. P. C.* 171. Officers of the Cuſtoms, *&c.* taking any *Bribe* or Reward, whereby the Crown ſhall be defrauded, ſhall forfeit 100 *l.* and be rendered incapable of any Office. *Stat.* 14 *Car.* 2. *c.* 11. But there is a ſaving Clauſe for the firſt Offence, acknowledging it in two Months. No Perſon ſetting up for Member of Parliament, ſhall after the Teſte of the Writ of Election, or after any Place becomes vacant, give any *Bribe* of Money, Meat, Drink, Gift, Reward, *&c.* in order to be elected, on Pain of Diſability to ſerve in Parliament. 7 *W.* 3. *cap.* 4. And Electors taking *Bribes*, are diſabled to vote, and to hold any Office or Franchiſe, and ſhall alſo forfeit 500 *l. &c.* by *Stat.* 2 *Geo.* 2. *c.* 24. If Money is given to a Man to be diſpoſed of in *Bribes*, the Giver may recover it back again in an Action; and where one gave a *Bribe* to a Cuſtom-houſe Officer, for exempting Goods from the Payment of Duties, this being found out, and the Goods ſeized, the Party recovered his Money. 1 *Ld. Ray.* 89.

Bribour, (Fr. *Bribeur*) Seems to ſignify in ſome of our old Statutes, one that pilfers other Men's Goods. 28 *Ed.* 2. *cap.* 1.

Bricolls, An Engine mentioned in *Blount*, by which Walls were beat down.

Bricks, Are to be made between the 1ſt Day of *March* and 29th of *September*, and ſhall be burnt either in Kilns, or diſtinct Clamps, *&c.* Alſo Place-*Bricks* when burnt, muſt not be leſs than nine Inches long, two Inches and a half thick, and four and a quarter wide, on Pain of forfeiting 20 *s.* a Thouſand, *&c.* Searchers of *Bricks* and Tiles ſhall be appointed by Juſtices of Peace in their Quarter-Seſſions, who are to make Preſentments, and may be fined 10 *l.* for Defaults: Combinations to advance the Price of *Bricks*, Ingroſſing them, *&c.* incurs a Penalty of 20 *l.* And mixing Mould, Soil or Mud with *Brick* Earth, is liable to Penalties. *Stat.* 12 *Geo.* 1. *cap.* 33. 2 *Geo.* 2. *cap.* 15. But *Bricks* may be made of *Brick* Earth and Sea-Coal Aſhes ſifted not exceeding a certain Quantity; and Cinders or Breeze may be uſed with Coal in the Burning of *Bricks*, and Stock-Bricks and Place-Bricks burnt in the ſame Clamp, being ſet in diſtant Parcels, *&c.* by 3 *Geo.* 2. *cap.* 22.

Bridge, (*Pons*) A Building of Stone or Wood erected a-croſs a River, for the common Eaſe and Benefit of Travellers. At Common Law thoſe who are bound to repair publick *Bridges*, muſt make them of ſuch Height and Strength, as ſhall be anſwerable to the Courſe of the Water; and they are not Treſpaſſers if they enter on any Land adjoining to repair them, or lay the Materials neceſſary for the Repairs thereon. *Dalt. cap.* 16. Common *Bridges* being built for the common Eaſe of the People, of common Right ought to be repaired by the County; but a particular Perſon, Town, *&c.* may be bound to repair them by Tenure, or Preſcription. 6 *Mod.* 307. And if a Man erects a *Bridge* for his own Uſe, and the People travel over it as a common *Bridge*, he ſhall notwithſtanding repair it: Though a Perſon ſhall not be bound to repair a

Bridge, built by himſelf for the common Good and Publick Convenience, but the County muſt repair it. 2 *Inſt.* 701. 1 *Salk* 359. Where Inhabitants of a County are indicted for not repairing a *Bridge*, they muſt ſet forth who ought to repair the ſame, and traverſe that they ought. 1 *Vent.* 256. A Vill may be indicted for a Neglect in not repairing of a *Bridge*; and the Juſtices of Peace in their Seſſions may impoſe a Fine for Defaults. And any particular Inhabitant of a County, or Tenant of Land charged to Repairs of a *Bridge*, may be made Defendants to an Indictment for not repairing it, and be liable to pay the Fine aſſeſſed by the Court for the Default of the Repairs; who are to have their Remedy at Law for a Contribution from thoſe who are bound to bear a proportionable Share of the Charge. 6 *Mod.* 307. If a Manor is held by Tenure of repairing a *Bridge*, or Highway, which Manor afterwards comes into ſeveral Hands, in ſuch Caſe every Tenant of any Parcel of the Demeſnes and Services, is liable to the whole Charge, but ſhall have Contribution of the Reſt; and this though the Lord may agree with the Purchaſers to diſcharge them of ſuch Repairs, which only binds the Lord, and doth not alter the Remedy which the Publick hath. 1 *Dano. Abr.* 744. 1 *Salk.* 358. Indictments for not repairing of *Bridges*, will not lie but in the Caſe of common *Bridges* on Highways; tho' it hath been adjudged they will lie for a *Bridge* on a common Footway. *Mod. Caſ.* 256. Not keeping up a Ferry, being a common Paſſage for all the King's People, is indictable, as well as not keeping up *Bridges.* 1 *Salk.* 12. All Houſholders dwelling in any County or Town, whether they occupy Lands or not; and all Perſons who have Land in their own Poſſeſſion, whether they dwell in the ſame County or not, are liable to be taxed as Inhabitants, towards the Repairs of a publick *Bridge*, by the Stat. 22 *H.* 8. *cap.* 5. Where it cannot be diſcovered who ought to repair a *Bridge*, it muſt be preſented by the Grand Jury in Quarter-Seſſions; and after their Inquiry, and the Order of Seſſions upon it, the Juſtices may ſend for the Conſtables of every Pariſh, to appear at a fixed Time and Place, to make a Tax upon every Inhabitant, *&c.* But it has been uſual, in the levying of Money for Repairs of *Bridges*, to charge every Hundred with a Sum in Groſs, and to ſend ſuch Charge to the High Conſtables of each Hundred, who ſend their Warrants to the Petty Conſtables, to gather it, by Virtue whereof they aſſeſs the Inhabitants of Pariſhes in particular Sums, according to a fixed Rate, and collect it; and then they pay the ſame to the High Conſtables, who bring it to the Seſſions. This Method of raiſing Money, tho' it be contrary to the Statute 22 *H.* 8. has been obſerved ſome Years paſt; but by the 1 *Ann. cap.* 18. Juſtices in Seſſions, upon Preſentment made of Want of Reparations, are to aſſeſs every Town, Pariſh, *&c.* in Proportion towards the Repairs of a *Bridge*; and the Money aſſeſſed is to be levied by the Conſtables of ſuch Pariſhes, *&c.* and being demanded, and not paid in ten Days, the Inhabitants ſhall be diſtrained; and when the Tax is levied, the Conſtables are to pay it to the High Conſtable of the Hundred; who is to pay the ſame to ſuch Perſons as the Juſtices ſhall appoint, to be employed according to the Order of the Juſtices, towards Repairing of the *Bridge*: And the Juſtices may allow any Perſon concerned in the Execution of the Act 3*d. per* Pound out of the Money collected. All Matters relating to the Repairing and Amending of *Bridges*, are to be determined in the County where they lie, and no Preſentment or Indictment ſhall be removed by *Certiorari.* And by this Statute, the Evidence of the Inhabitants of thoſe Places where the *Bridges* are in Decay, ſhall be admitted at any Trial upon an Information or Indictment, *&c.* By 14 *Geo.* 2. *c.* 33. The Juſtices at their General Seſſions, may purchaſe or agree with Perſons for any Piece of Land, not above one Acre, near to any *County Bridge*, in order to enlarge or more conveniently rebuild it; and the Ground ſhall be paid for out of the Money raiſed by Virtue of the 12 *Geo.* 2. for better aſſeſſing, collecting, and levying of Country Rates, *&c.* No Perſons are compellable to make a new *Bridge* but by Act of Parliament: And the Inhabitants of the whole County cannot of their own Authority change a *Bridge* from one Place to another. If a Man has Toll for Men and Cattle paſſing over a *Bridge*, he is to repair it; and Toll may be paid in theſe Caſes, by Preſcription, or Statute. The Stat. 12 *Geo.* 1. *cap.* 36. for Building a *Bridge* croſs the River *Thames* at *Fulham*, appoints a Toll or Pontage to be paid for Coaches, Horſes, Carts, Foot-Paſſengers, *&c.* and burning or pulling down the *Bridge*, is Felony. And by 9 *Geo.* 2. *c.* 29. A *Bridge* is to be built on the *Thames*, from *New Palace yard*, *Weſtminſter*, to the Shore in *Surrey*, for which Purpoſe Commiſſioners are appointed, *&c.* They are to leave a Paſſage thro' the Arches of 760 Feet, and may remove Shelves of Gravel or Sand, to make the River deeper; this *Bridge* ſhall not be deemed a *County Bridge*, and 100,000 *l.* is ordered for Building it. 10 *&* 11 *Geo.* 2. Another Act ſince made grants 325,000 *l.* and a ſubſequent Statute 275,000 *l.* for finiſhing this *Bridge*, to be raiſed by Way of Lottery; alſo the Commiſſioners are empower'd to lay out new Ways, Streets and Paſſages on each Side of the *Thames* to and from the ſaid *Bridge*, &c. See 13, 14 *&* 15 *Geo.* 2. See alſo *County-Rates.*

Bridgemaſters. There are *Bridgmaſters* of *London Bridge*, choſen by the Citizens, who have certain Fees and Profits belonging to their Office, and the Care of the ſaid *Bridge, &c.* *Lex Londin.* 283.

Brief, (*Brevis*) An Abridgment of the Client's Caſe, made out for the Inſtruction of Counſel, on a Trial at Law; wherein the Caſe of the Plaintiff *&c.* is to be *briefly* but fully ſtated, the Proofs muſt be placed in due Order, and proper Anſwers made to whatever may be objected againſt the Client's Cauſe, by the oppoſite Side; and herein great Care is requiſite, that nothing be omitted to endanger the Cauſe. *Form of a Brief*, ſee *Pract. Solic. pag.* 311.

Brief al Eveſque, A Writ to the Biſhop, which in *Q. Impedit* ſhall go to remove an Incumbent, unleſs he recover or be preſented *pendente lite.* 1 Keb. 386.

Briefs, or Licenſes to make Collection *for Loſs by Fire.* Stat. 4 & 5 Ann cap. 14. *Vide* Churchwardens.

Briga, (Fr. *Brigue*) Debate, or Contention. —— *Et poſuit terram illam in* Brigam *&* *intricavit terram, ſcilicet, per diverſa fraudulenta Feoffamenta*; *Ideo committitur Mareſc. Ebor.* Hill. 18 Ed. 3. Rot. 28.

Brigandine, (Fr. in Lat. *Lorica*) Is a Coat of Mail or ancient Armour, conſiſting of many jointed and ſcale-like Plates, very pliant and eaſy for the Body. This Word is mentioned in 4 *&* 5 *P. & M. cap.* 2. and ſome confound it with *Haubergeon*; and others with *Brigantine*, a long but low-built Veſſel, ſwift in ſailing, uſed at Sea.

Brigantes, A Word uſed for *Yorkſhire*, *Lancaſhire*, Biſhoprick of *Durham*, *Weſtmorland* and *Cumberland. Blount.*

Brigbote, or **Brug-bote,** Signifies to be freed from the Reparation of Bridges. It is compounded of the Sax. *Brig*, a Bridge, and *Bote*, which is a Yielding of Amends, or Supplying a Defect: But this is more properly *Bruk-bote*, from the Germ. *Bruk*, i. e. a Bridge, and *Bote*, a Compenſation; and it is uſed for the Liberty or Exemption of being free from Tribute or Contribution towards the Mending or Re-edifying of

Bridges. *Fleta, lib.* 1. *c.* 47. *Selden's Titles of Honour, fol.* 622.

Briſtol, A great City, famous for Trade: The Mayor, Burgeſſes and Commonalty of the City of *Briſtol*, are Conſervators of the River *Avon* from above the Bridge there to *King-Road*, and ſo down the *Severn* to the two Iſlands called *Holmes*; and the Mayor and Juſtices of the ſaid City, may make Rules and Orders for preſerving the River, and regulating Pilots, Maſters of Ships, *&c.* Alſo for the Government of their Markets: And the Streets are to be kept clean and paved; and Lamps or Lights hung out at Night. Stat. 11 & 12 *W.* 3. *c.* 23. No Perſon ſhall act as a Broker in the City of *Briſtol*, till admitted and licenſed by the Mayor and Aldermen, *&c.* on Pain of forfeiting 500*l.* and thoſe who employ any ſuch, to forfeit 50*l.* *&c.* by Stat. 3 *Geo.* 2. *c.* 31.

Brocage, (*Brocagium*) The Wages or Hire of a Broker; which is alſo termed *Brokerage.* 12 *R.* 2. *c.* 2. and 11 *H.* 4. —— *Ex* Broccagio, *vel alio ſiniſtro pacto.* Rot. Stat 31 Ed. 3.

Brocella. This Word, as interpreted by Dr. *Thoroton*, ſignifieth a Wood; and it is ſaid to be a Thicket or Covert of Buſhes and Bruſh-wood, from the obſolete Lat. *Bruſcia, terra* Bruſcoſa, & Brocia, Fr. *Broce*, *Brocelle*: And hence is our *Brouce* of Wood, and *Brouſing* of Cattle. —— *Dedi unam* Brocellam *vocat.* *&c.* Reg. de Thurgaton, MS.

Brocha, (From the Fr. *Broche*) An Awl, or large Packing Needle, the Uſe whereof is very well known. A Spit in ſome Parts of *England* is called a *Broche*; and from this Word comes to pierce or *broach* a Barrel. That it was an Iron Inſtrument, you may learn from the following Authority. —— Henricus de Havering *tenet Manerium de* Norton *in Com.* Eſſex, *per Serjeantiam inveniendi unum hominem, cum uno equo, &c. & uno ſacco de corio, & una* Brochia *ferréa.* Anno 13 Ed. 1.

Brochia, A great Can or Pitcher. *Bract. lib.* 2. *tract* 1. *cap.* 6. Where it ſeems that he intends *Saccus* to carry dry, and *Brochia* liquid Things.

Brodehalfpeny, or **Broadhalpeny.** See *Bordhalfpeny.*

Brokers, (*Broccatores, Broccarii & Auxionarii*) Are thoſe that contrive, make and conclude Bargains and Contracts between Merchants and Tradeſmen, in Matters of Money and Merchandize, for which they have a Fee or Reward. Theſe are *Exchange Brokers*; and by the Statute 10 *R.* 2. *cap.* 1. they are called *Broggers*; alſo *Broggers of Corn* is uſed in a Proclamation of Queen *Elizabeth* for Badgers. *Baker's Chron. fol.* 411. The Original of the Word is from a Trader broken, and that from the Sax. *Broc*, which ſignifies Misfortune, which is often the true Reaſon of a Man's Breaking; ſo that the *Broker* came from one who was a broken Trader by Miſfortune, and none but ſuch were formerly admitted to that Employment; and they were to be Freemen of the City of *London*, and allowed and approved by the Lord Mayor and Aldermen, for their Ability and Honeſty. By the Stat. 8 & 9 *W* 3. *cap.* 20. they are to be licenſed in *London* by the Lord Mayor, who gives them an Oath, and takes Bond for the faithful Execution of their Offices: If any Perſons ſhall act as *Brokers*, without being thus licenſed and admitted, they ſhall forfeit the Sum of 500*l.* And Perſons employing them 50*l.* And *Brokers* are to regiſter Contracts, *&c.* under the like Penalty: Alſo *Brokers* ſhall not deal for themſelves, on Pain of forfeiting 200*l.* They are to carry about them a Silver Medal, having the King's Arms and the Arms of the City, *&c.* and pay 40*s.* a Year to the Chamber of the City. *Stat* 6 *Ann. c.* 16. A Penalty of 500*l.* is inflicted on lawful *Brokers* ſelling Shares of Stock not authorized by Act of Parliament, by Stat. 6 *Geo.* 1. *cap.* 18. *Brokers* negotiating or tranſacting Contracts, on *Præmiums* to accept or refuſe Stock, or in the Nature of Wagers, *&c.* relating to the Value, incur the like Penalty of 500*l.* And negotiating Agreements knowingly, for the Sale of Stock, where the Seller is not actually poſſeſſed of the ſame, *&c.* ſhall forfeit 100*l.* And *Brokers* ſhall keep a Book called the *Broker's Book*; in which they ſhall enter all Contracts and Agreements, with the Names of the Buyers and Sellers, and Day of making Contracts, *&c* to be produced when required, on Pain of 50*l.* *Stat.* 7 *Geo.* 2. *cap.* 8 There are likewiſe *Pawn-brokers*, who commonly keep Shops, and let out Money to poor neceſſitous People upon Pawns, for the moſt part on Extortion; but theſe are more properly *Pawn-takers*, and are not of that Antiquity or Credit as the former; nor do the Statutes allow them to be *Brokers*, though now commonly ſo called. Theſe *Brokers* often deal in ſtolen Goods, as they buy them cheap, and are a great Nuſance: Notwithſtanding there is a Law declaring that wrongful Sale of Goods ſtolen, *&c.* to and by *Brokers*, ſhall not alter the Property; and if they do not diſcover ſuch Goods at the Requeſt of the Owner, they are to forfeit double Value. 1 *Jac.* 1. *cap.* 21. The Reaſon of exorbitant Intereſt being taken by theſe *Brokers*, is the Want of Witneſſes to prove the Contract, or other Proof of the Money taken but the Party's own Evidence; but they may be puniſhed for their Extortion on an Action, *Qui tam, &c.* See *Pawn.*

Brok, An old Sword or Dagger. ——— *Jurati dicunt ſuper ſacramentum, quod* Johannes de Monemne *Miles per* Robertum *Armigerum ſuum, percuſſit* Adam Gilbert *Capellanum de* Wilton, *in gutture quodam Gladio, qui dicitur* Brok, *per quod propinquior erat Morti, &c.* Rot. Parl. 35 Ed. 1.

Broſſus, Bruiſed or injured with Blows, Wounds, or other Caſualty. *Cowel.*

Brothel-Houſes, Lewd Places, being the common Habitations of Proſtitutes. King *Hen.* 8. by Proclamation, in the 37th Year of his Reign, ſuppreſſed all the Stews or *Brothel-Houſes*, which had long continued on the Bank ſide in *Southwark*, contrary to the Law of God and of the Land. 3 *Inſt.* 205. A *Brothelman* was a looſe idle Fellow; and a *Feme Bordelier* or *Brothelier*, a common Whore. And *Borel-man* is a Contraction of *Brothelman.* *Chaucer.* See *Bawdy Houſe.*

Brucre. This the *Latines* call *Erica*, and ſignifies Heath Ground: And *Brueria*, Briars, Thorns, or Heath, from the Sax. *Brær, Briar.* ——— *Humphry* Duke of *Gloceſter* grants the Foreſter of *Shotore* and *Stowode, tantum de Arboribus &* Brucriis, *quantum pro veſtura indiguerit, habebit.* Paroch. Antiq. 620.

Bruillus, A Wood or Grove; Fr. *Breil, Breuil*, a Thicket or Clump of Trees in a Park or Foreſt. Hence the Abby of *Bruer*, in the Foreſt of *Wichwood* in *Com. Oxon*: And *Bruel, Brehul*, or *Brill*, a Hunting Seat of our antient Kings in the Foreſt of *Bernwood, Com. Bucks.*

Bruilletus, A ſmall Coppice or Wood. —— *Dedimus* Willielmo B. *Licentiam claudendi duos* Bruilletos, *qui ſunt extra regardam Foreſtæ noſtræ quorum unus eſt inter* Swinburn & Eſtorbrig. *Cart. Ric.* 1. *Bruella* ſeems likewiſe to ſignify a little Wood, or Heathy Ground. —— *In Dominicis Boſcis Domini Epiſcopi, ſil. in* Bruellis *ex parte auſtrali Regii itineris.* Reg. Priorat. de Wermley, fol. 24.

Bruſcia, Sometimes ſignifies a Wood: And in *Mon. Angl Charta noſtra confirmavimus centum acras tam de terra quam de* Bruſcia *de Manerio de Riveria.* Monaſt. Tom. 1. pag. 773.

Bruſua and **Bruſula**, Brouſe or Bruſhwood. *Mon. Angl Tom.* 1. *fol.* 773.

Bucklarium. A Buckler. —— *Et quod Malefactores noctanter cum Gladiis &* Bucklariis, *ac aliis Armis, &c.* Clauſ. 26 Ed. 1. m. 8. intus.

Buckſtall. A Toil to take Deer, which by the Stat. 19 *Hen.* 7. is not to be kept by any Perſon that hath not a Park of his own, under *Penalties.* There is a Privilege of being quit of Amerciaments for *Buckſtalls.* —— *Et ſint quieti de Chevagio, Hondpeny,* & Buckſtall, & *de omnibus Miſericordiis,* &c. Privileg. de Semplingham. *See* 4 Inſt. 306.

Buckwheat, Is the ſame with *French* Wheat, uſed in many Counties of this Kingdom: In *Eſſex* it is called *Brank*; and in *Worceſterſhire, Crap.* It is mentioned in the Stat. 15 *Car.* 2. *c.* 5.

Bucinus, A military Weapon for a Footman. —— Petrus de Chetwood *tenet* —— *per Serjantiam inveniend. unum hominem peditem, cum una lancea,* & *uno* Bucino *ferreo,* &c. Tenures, pag. 74.

Buggery, or *Sodomy,* comes from the Italian *Buggerare,* to *bugger*; and is defined to be a carnal Copulation againſt Nature, and this either by the Confuſion of Species; that is to ſay, a Man or a Woman with a brute Beaſt; or of Sexes, as a Man with a Man, or Man unnaturally with a Woman. 12 *Co. Rep.* 36. This Sin againſt God, Nature, and the Law, 'tis ſaid was brought into *England* by the *Lombards. Rot. Parl.* 50 *Ed.* 3. *numb.* 58. Stat. 25 *H.* 8. *cap.* 6. And in antient Times, according to ſome Authors, it was puniſhable with Burning, though others ſay with burying alive: But at this Day it is Felony excluded Clergy, and puniſhed as other Felonies. 25 *Hen.* 8. *cap.* 6. and 5 *Eliz.* 17. And it is Felony both in the Agent and Patient conſenting, except the Perſon on whom committed be a Boy under the Age of Diſcretion; when 'tis Felony only in the Agent: Alſo Perſons preſent, aiding and abetting to this Crime, are all Principals; and the Statutes make it Felony generally: There may be Acceſſaries before and after the Fact; but though none of the principal Offenders ſhall be admitted to Clergy, the Acceſſaries are not excluded it. 1 *Hale's Hiſt. P. C.* 670. For many Years paſt, the Crime of *Buggery* has been greatly practiſed in this Kingdom, without any exemplary Puniſhment of the Committers of it; till *Anno* 12 *Geo.* 1. a great Number of theſe Wretches were convicted of the moſt abominable Practices, and three of them put to Death; which ſeaſonable Juſtice ſeems to have given a Check to the before growing Evil. In every Indictment for this Offence, there muſt be the Words, *Rem habuit veneream* & *carnaliter cognovit,* &c. and of Conſequence ſome Kind of Penetration and Emiſſion muſt be proved; but any the leaſt Degree is ſufficient. 1 *Hawk* 6. The general Words of theſe *Indictments* are, that *A. B.* on ſuch a Day, at, &c. with Force and Arms, made an Aſſault upon *C. D.* and then and there wickedly, deviliſhly, feloniouſly, and againſt the Order of Nature, committed the Venereal Act with the ſaid *C. D.* and carnally knew him, and then and there wickedly, &c. did with him that ſodomitical and deteſtable Sin called *Buggery,* (not to be named among Chriſtians) to the great Diſpleaſure of God, and Diſgrace of all Mankind, &c. This Crime is excepted out of our Acts of General Pardon.

Buildings. If a Houſe new *built* exceeds the ancient Foundation, whereby that is the Cauſe of hindering the Lights or Air of another Houſe, Action lies againſt the *Builder. Hob.* 131. In *London* a Man may place Ladders or Poles upon the Ground, or againſt Houſes adjoining for *building* his own; but he may not break Ground: And *Builders* of Houſes, ought to have Licence from the Mayor and Aldermen, &c. for a *Heurd* in the Streets, which are not to be incumbered. *Cit. Lib.* 30, 146. In new *building* of *London,* it was ordained that the Outſides of the *Buildings* be of Brick or Stone, and the Houſes for the principal Streets to be four Stories high, having in the Front Balconies, &c. by Stat. 19 *Car.* 2. If any Perſon *build* any new Houſe in *London,* he muſt erect a Party-Wall of Brick or Stone between Houſe and Houſe, of the Thickneſs of two Bricks in Length in the Ground Story, &c. or he ſhall forfeit 50 *l.* leviable by Warrant of Juſtices of Peace. And Party-pipes are to be fix'd on the Sides of ſuch Houſes, for conveying Water falling from the Tops thereof into the Channels, &c. Stat. 6 *Ann. c.* 30. 11 *Geo.* 1. *c.* 28.

Bull, (*Bulla*) A Brief or Mandate of the *Pope* or Biſhop of *Rome,* from the Lead, or ſometimes Gold Seal affixed thereto; which *Mat. Paris, Anno* 1237. thus deſcribes: *In* Bulla *Domini Papæ Stat. Imago* Pauli *a dextris Crucis in medio Bullæ figurata,* & Petri *a ſiniſtris.* Theſe Decrees of the Pope are often mentioned in our Statutes, as 25 *Ed.* 3. 28 *H.* 8. *cap.* 16. 1 & 2 *P.* & *M. c.* 8. and 13 *Eliz. cap.* 2. And have been heretofore uſed, and of Force in this Land: But by the Statute 28 *Hen.* 8. it was enacted, That all *Bulls,* Briefs and Diſpenſations had or obtained from the Biſhop of *Rome,* ſhould be void. And by 13 & 23 *Eliz.* If any Perſon ſhall obtain from *Rome* any *Bull* or Writing to abſolve or reconcile ſuch as forſake their due Allegiance, or ſhall give or receive Abſolution by Colour of ſuch *Bull,* or uſe or publiſh ſuch *Bull,* &c. it is High Treaſon.

Bull and Boar, By the Cuſtom of ſome Places, a Parſon may be obliged to keep a *Bull and a Boar* for the Uſe of the Pariſhioners, in Conſideration of his having Tithes of Calves and Pigs, &c. 1 *Roll. Abr.* 559. 4 *Mod.* 241.

Bullio Salis, As much *Salt* as is made at one *Wealing* or *Boiling:* A Meaſure of Salt, ſuppoſed to be twelve Gallons *Mon. Ang. Tom.* 2.

Bullion, (Fr. *Billon*) The Ore or Metal whereof Gold is made; and ſignifies with us Gold or Silver in *Billet,* in the Maſs before it is Coined. *Anno* 9 *Ed.* 3. *cap.* 2.

Bultel, Is the Bran or Refuſe of Meal after dreſſed by the Baker; alſo the Bag wherein it is dreſſed is called a *Bulter* or rather *Boulter.* The Word is mentioned in the Statute *de Aſſiſa panis* & *Cerviſiæ, Anno* 51 *Hen.* 3. Hence comes *Bulted* or *Boulted Bread,* being the coarſeſt Bread.

Bundles, A Sort of Records of the *Chancery* lying in the Office of the *Rolls*; in which are contained, the *Files* of Bills and Anſwers, of *Hab. Corp. cum Cauſa, Certiorari's,* Attachments, &c. *Scire facias's,* Certificates of Statutes-Staple, Extents and Liberates, *Superſedeas's,* Bails on Special Pardons, Bills from the Exchequer of the Names of Sheriffs, Letters Patent ſurrendered and Deeds cancelled, Inquiſitions, Privy Seals for Grants, Bills ſigned by the King, Warrants of Eſcheators, Cuſtomers, &c.

Burcheta, (From the Fr. *Berche*) A kind of Gun uſed in Foreſts.

Burcifer Regis, Purſe-bearer, or Keeper of the King's Privy Purſe. *Pat.* 17 *Hen.* 8.

Burdare, To jeſt or trifle. —— *Quod nulli veniant ad turniadum vel* Burdandum, *nec ad alias quaſcunque Aventuras,* &c. Mat. Paris, Addit. p. 149.

Burgage, (*Burgagium*) An ancient Tenure proper to *Boroughs,* whereby the Inhabitants by Cuſtom hold their Lands or Tenements of the King, or other Lord of the *Borough,* at a certain yearly Rent. *Old Tenures.* It is a Kind of Socage Tenure, and ſignifieth the Service whereby the Borough is holden; and the King hath nothing to do with Heirs of this Land, whether they be under fourteen, or above that Age, and under twenty-one. 1 *Inſt* 109. *Jenk. Cent.* 127. *Swinburn* ranks it *inter ignobiles Tenuras.* And 37 *Hen.* 8. *c.* 20. *Item non Utimur facere fidelitatem vel Servicium forinſecum Dominis Feodorum pro terris* & *Tenementis noſtris, niſi tantummodo redditus noſtros de eiſdem terris exeuntes; quia tenemus terras* & *tenementa noſtra per* Servicium Burgagii, *ita quod non habemus Medium inter nos* & *Dominum Regem.* MS. Codex de LL. Statutis & Conſuetud. Burgi villæ Montgomer.

gomer. à temp. Hen. 2.——Antiently a Dwelling-houſe in a *Borough-Town*, was called a *Burgage.* —— *Sciant Quod Ego Editha, &c. Dedi——In liberam, puram & perpetuam Eleemoſynam totum illud* Burgagium *cum Ædificiis & pertin. ſuis quod jacet in Villa* Leominſtr. *Ex libro Chartarum Priorat. Leom'.*

Burgh, A ſmall walled Town, or Place of Privilege, *&c.* See *Borough.*

Burg-bote, (from *Burg, Caſtellum,* and *Bote, Compenſatio*) Is a Tribute or Contribution towards the Building or Repairing of Caſtles, or Walls of a *Borough* or City: From which divers had Exemption by the antient Charter of the *Saxon* Kings. *Raſtal.* Burg-bote *ſignificat quietantiam Reparationis murorum Civitatis vel* Burgi. *Fleta, lib.* 1. *c.* 47.

Burgeſſes, (*Burgarii & Burgenſes*) Are properly Men of Trade, or the Inhabitants of a *Borough* or walled Town; but we uſually apply this Name to the Magiſtrates of ſuch a Town, as the Bailiff and *Burgeſſes* of *Leominſter,* &c. In *Germany,* and other Countries, they confound *Burgeſs* and *Citizen*; but we diſtinguiſh them as appears by the Stat. 5 *R.* 2. *cap.* 4. where the Claſſes of the Commonwealth are thus enumerated, *Count, Baron, Banneret, Chivaleer de Countee*; *Citizein de Citee*; *Burgeſs de Burgh* See Co. *Lit.* 80. We now alſo call thoſe *Burgeſſes,* who ſerve in Parliament, for any Borough or Corporation: And no Man is qualified to be ſuch a *Burgeſs,* that hath not an Eſtate of 300*l.* a Year, clear of all Incumbrances. *Stat.* 9 *Ann. cap.* 7. Vide *Borough.*

Burgh-breche, A Fine impoſed on the Community of a Town, for the Breach of the Peace, *&c. Angli omnes decemvirali olim fidejuſſione pacem Regiam ſtipulati ſunt, quod autem in hanc Commiſſum eſt,* Burghbrech *dicitur, &c.* Leg. Canuti, cap. 55.

Burgheriſthe, or *Burgheriche,* Is a Word uſed in *Domeſday,* ſignifying *Violatio Pacis in Villa.* Blount.

Burghmote, A Court of a *Borough* —— *Et habeatur in Anno ter* Bergeſmotus, *&c. niſi ſæpius ſit, & interſit Epiſcopus & Aldermannus, & doceant ibi Dei rectum & Seculi.* LL. Canuti, MS. cap. 44.

Burghware, (*quaſi Burgivir*) A Citizen or *Burgeſs.* —— Willielmus *Rex Salut.* Willielmum *Epiſcopum,* & Godfredum Portgrefium, & *omnem* Burghware *infra* London. *Charta Willielmi ſen. Londinenſibus confecta.*

Burglary, (*Burglaria,* from the Sax. *Burgh, Domus,* or *Arx,* & Laron, *furtum*) Is where a Man breaketh and entereth the Houſe of another in the Night-time, to the Intent to commit ſome Felony, whether the Intention be executed or not. 4 *Co.* 39. In the natural Signification, *Burglary* is nothing but the Robbing of a Houſe; but our Law reſtrains it to Robbing a Houſe by Night, or Breaking in with an Intent to rob, or do ſome other Felony: And the like Offence committed by Day is called *Houſe-breaking,* to diſtinguiſh it from *Burglary.* It is an Offence excluded the Benefit of Clergy, and may be committed a great many Ways: And if a Man hath two Houſes, and reſides ſometimes in one of the Houſes, and ſometimes in the other, if the Houſe he doth not inhabit is broken by any Perſon in the Night, it is *Burglary. Poph.* 52. And when ſeveral come with a Deſign to commit *Burglary,* and one does it, while the reſt watch near the Houſe, here his Act is by Interpretation the Act of all of them. *Wood* 377. If Thieves pretend Buſineſs to get into a Houſe by Night, and thereupon the Owner of the Houſe opens his Door, and they enter and rob the Houſe, this is *Burglary. Kel.* 42. Alſo if a Perſon be within the Houſe, and ſteal Goods, and then open the Houſe on the Inſide, and go out with the Goods, this is *Burglary,* though the Thief did not break the Houſe. 3 *Inſt.* 64. If a Thief unlocks a Door, or draws the Latch of a Room, to rob, *&c.* Or if one comes down a Chimney, opens a Window, breaks a Hole in the Wall, *&c.* all theſe are a Breaking: And if the Thief ſet his Foot over the Threſhold of the Door of the Houſe, or put his Hand, Piſtol, *&c.* within the Door or Window, it is an Entry ſufficient to make it *Burglary. H. P. C.* 80, 81. Though the Houſe is to be a Manſion-houſe, and the Out-houſes adjoining to the Manſion-houſe are Part thereof, wherein this Crime may be committed; but not a Barn, Stable, *&c.* at any Diſtance from the Houſe. 4 *Rep.* 40. Part of a Houſe divided from the reſt, having a Door of its own to the Street, this is a Manſion-houſe of him who hires it. *Kel.* 84. A Chamber in an Inn of Court, where one uſually lodges is a Manſion-houſe; for every one hath a ſeveral Property there. But a Chamber where any Perſon doth lodge as an Inmate, cannot be called his Manſion; though if a *Burglary* be committed in his Lodgings, the Indictment may lay the Offence to be in the Manſion-houſe of him that let them. 3 *Inſt.* 65. *Kel.* 83. If the Owner of the Houſe breaks into the Rooms of his Lodgers, and ſteals their Goods, it cannot be *Burglary* to break into his own Houſe; but it is Felony to ſteal their Goods. *Wood's Inſt.* 378. A Lodger in an Inn, hath a ſpecial Intereſt in his Chamber; ſo that if he opens his Chamber Door, and takes Goods in the Houſe, and goes away, it ſeems not to be *Burglary.* And where *A.* enters into the Houſe of B. in the Night, by the Doors open, and breaks open a Cheſt, and ſteals Goods without breaking an inner Door; it is no *Burglary* by the Common Law, becauſe the Cheſt is no Part of the Houſe: Though it is a Felony ouſted of Clergy by Statute; and if one break open a Counter or Cupboard, fixed to a Houſe it is *Burglary.* 1 *Hale's Hiſt. P.C.* 554. See 3 & 4 *W. & M.* The Intention to commit Felony to make *Burglary* muſt be of ſuch a Fact, as was Felony at Common Law; and not of a Felony newly made by Act of Parliament: But the Offences of *Burglary* and Felony may be joined in the ſame Indictment; and where a Man commits *Burglary,* and at the ſame Time ſteals Goods out of the Houſe, if he be acquitted of the *Burglary,* he may notwithſtanding be indicted of the Larceny. 2 *Hale's Hiſt. P. C.* 245. Taking away Goods from a Dwelling-houſe in the Night or Day, where any Perſon is therein; and breaking any Shop, Warehouſe, *&c.* and taking away Goods privately to the Value of 5*s.* though no Perſon be therein, is *Burglary,* by Stat. 3 & 4 *W. & M. c.* 9. 10 & 11 *W.* 3. *cap.* 23. And a Reward of 40*l.* is given by the Statute for apprehending a *Burglar,* and proſecuting him to Conviction. 5 *Ann. cap.* 31. See Stat. 12 *Ann. cap.* 7.

An *Indictment* for *Burglary.*

Dorſet, ſſ. THE *Jurors,* &c. *upon their Oath preſent, that* A. B. *of,* &c. *in the ſaid County, Labourer, on the Day of,* &c. *in the Year of the Reign,* &c. *with Force and Arms, did feloniouſly break and enter the Manſion-houſe of* C. D. *Eſquire, at,* &c. *in the County aforeſaid, in the Night time, that is to ſay, between the Hours of ten and eleven of the Clock in the Evening of the ſame Day,* (*one* E. F. *then being in the ſame Houſe in the Peace of God and of our Sovereign Lord the King*) *and then and there feloniouſly did ſteal, take and carry away Twenty Pounds of lawful Money, and alſo,* &c. *of the Goods and Chattels of the ſaid* C. D. *then and there found in the ſaid Houſe, againſt the Peace of our ſaid Lord the King, his Crown and Dignity.*

Buri, A Word ſignifying Husbandmen.——*In* Upton *ſunt* 18 *Villani,* 11 *Bordarii, & duo* Buri, *&c.* Mon. Angl. Tom. 3. p. 183.

Burials, Perſons dying are to be *buried* in Woollen, on Pain of forfeiting 5*l.* And Affidavit is to be made of ſuch Burying before a Juſtice, *&c.* under the like Penalty. *Stat.* 30 *Car.* 2. *c.* 3.

Burneta, Cloth made of dy'd Wool. A *Burnet* Colour muſt be dy'd; but *Brunus Color* may be made with Wool without Dying, which we call Medleys or Ruſſets. *Differentia inter* Brunum *Colorem & Burnetam*; Brunus *enim color poteſt fieri ex lana abſque tinctura, viz. Ruſſetum*: Burnetum *vero requirit tincturam & artificium hominis quoad colorem* Lyndewood. Thus much is mentioned becauſe this Word is ſometimes wrote *Bruneta*.

Burning of Houſes, Outhouſes, &c. Vide *Arſon*.

Burrochium, A Burrock, or ſmall Wear over a River, where Wheels are laid for the taking of Fiſh, *Cowel*.

Burſa, A Purſe. *Reddendo inde ad* Burſam *Abbatis vi. d. ad Feſtum Sancti* Michaelis, &c. Ex lib. Chart. Priorat. Leominſtr.

Burſaria, The *Burſery*, or Exchequer of Collegiate and Conventual Bodies; or the Place of Receiving and Paying, and accounting by the *Burſarii*, or *Burſers*, *A. D.* 1277. *Computaverunt Patres* Radulphus de Meriton, & Stephanus de Oxon. *de* Burſaria *Domus* Bernceſtre *coram Auditoribus. Paroch. Antiq. pag.* 288. But the Word *Burſarii* did not only ſignify the *Burſars* of a Convent or College; but formerly Stipendiary Scholars were called by the Name of *Burſarii*, as they lived on the *Burſe* or Fund, or publick Stock of the Univerſity. At *Paris*, and among the *Ciſtertian Monks*, they were particularly termed by this Name: And —— *In ea Univerſitate* (*ſcil.* Oxon.) *ſunt claræ Collegia a Regibus, Reginis, Epiſcopis, & Principibus fundata, & ex Stipendiis eorum Scholaſtici plurimi utuntur, quos* Pariſiis Burſarios *vocamus.* Johan. Major, Geſt. Scot. lib. 1. c. 5.

Burſe, (*Burſa*, *Cambium*, *Baſilica*) An Exchange or Place of Meeting of Merchants.

Burſholders. See *Borough-holders.*

Buſones Comitatus: They are mentioned in *Bracton.* ——— *Juſticiarii vocatis ad ſe quatuor vel ſex, vel pluribus de Majoribus comitatus, qui dicuntur* Buſones Comitat. *& ad quorum nutum dependent vota aliorum*, &c. Bract. lib. 3. tract. 2. cap. 1. Mr. *Blount* ſays *Buſones* is uſed for *Barones.*

Buſſa, An old Word ſignifying a great Ship. *Blount's Dict.*

Buſſellus, A Buſhel; from *Buza*, *Butta*, *Buttis*, a ſtanding Meaſure: And hence *Butticella*, *Butticellus*, *Buſſellus*, a leſs Meaſure. Some derive it from the old Fr. *Bouts*, Leather Continents of Wine; whence comes our Leather *Budget* and *Bottles.* Kennet's Gloſſ.

Buſta and **Buſtus**, *Buſca* and *Buſcus*, &c. The ſame with *Bruſcia* and *Bruſula.*

Buſtard, A large Bird of Game, uſually found on Downs and Plains, mention'd in the Stat. 25 *Hen.* 8. *c.* 11.

Butchers, Are to ſell their Meat at reaſonable Prices, or ſhall forfeit double the Value, to be levied by Warrant of two Juſtices of Peace, &c. And conſpiring to ſell their Meat at certain Rates; or ſelling Fleſh of Cattle dying of the Murrain, &c. are liable to divers Penalties by Statute 7 *Ed.* 2. 23 *Ed.* 3. 2 & 3 *Ed.* 6. *Butchers* are not to kill Meat in their Scalding Houſes, or within the Walls of *London*, &c. Nor buy any fat Cattle to ſell again; on Pain of forfeiting the Value; but this ſhall not extend to ſelling Calves, Lambs, or Sheep dead, from one *Butcher* to another. *Stat.* 4 *Hen.* 7. 3 & 4 *Ed.* 6. 5 & 7 *Ann.*

Butt, (*Butticum*) A Meaſure of Wine, &c. well known among Merchants, and containing 126 Gallons of Malmſey Wine, by Stat. 1 *R.* 3. *c.* 13.

Butter and Cheeſe. Juſtices of Peace in Seſſions may reſtrain Retailing *Butter and Cheeſe*; which is to be ſold in open Shop, and not above a Barrel of *Butter* or Wey of *Cheeſe* at one Time, under Penalties: 3 & 4 *Ed.* 6. *cap.* 21. 21 *Jac.* 1. *cap.* 22. Every Kilderkin of *Butter* ſhall contain 112 Pounds, the Firkin 56, and Pot 14 Pounds of good *Butter*, beſides the Casks and Pots; and old bad *Butter* ſhall not be mixed with good, nor ſhall *Butter* be repacked for Sale, which incurs Forfeiture of double Value, &c. And Sellers and Packers of *Butter* ſhall pack it in good Casks, and ſet their Names thereon, with the Weight of the Cask and *Butter*, in Pain of 10*s.* *Stat.* 13 & 14 *Car.* 2. *cap.* 26. *Butter* and *Cheeſe* may be tranſported: Buyers of *Butter* are to put Marks on Casks; and Perſons opening them afterwards, or putting in other *Butter*, &c. ſhall forfeit 20 *s.* 22 *Car.* 2. *cap.* 13. 4 & 5 *W.* & *M.* *c.* 7.

Buttons, Made of Hair or other Foreign *Buttons*, ſhall not be Imported, on Pain of Forfeiture, &c. Alſo *Buttons* are not to be made of Cloth, Stuff, or Wood, under Penalties. *Stat.* 4 & 5 *W.* & *M.* 10 *W.* 3. *c.* 2. 4 *Geo* 1. Vide *Taylors.*

Butts, The Place where Archers meet with their Bows and Arrows to ſhoot at a Mark, which we call Shooting at the *Butts.* Alſo *Butts* are the Ends or ſhort Pieces of Land in arable Ridges and Furrows: *Buttum terræ*, a *Butt* of Land. —— *Dedi decem acras & unum* Buttum *terræ*, &c. Cart. M. de Sibbeford, penes Will. Dugdale, Mil. See *Abbuttals.*

Butlerage of Wines, Signifies that Impoſition upon Wine brought into the Kingdom, which the King's *Butler* may take of every Ship, *viz.* 2*s.* for every Ton of Wine imported by Strangers. *Rot. Parl.* 11 *Hen.* 4. *Anno* 1 *H.* 8. *c.* 5. See *Botiler of the King* and *Priſage.*

Buthſcarle, *Butſecarl*, *Buſcarles*, (Buſcarli & Buthſecarli) *Sunt qui portus nauticos cuſtodiunt*: Mariners or Seamen. *Selden's Mare Clauſum*, *fol.* 184.

Buzonis, Seems to be the Shaft of an Arrow, before it is fledged or feathered. —— Radulphus de Stopham *tenet Maner. de* Brianſtan. *Com.* Dorſet. *per Serjeantiam inveniendi Domino Regi garcionem deferentem unum arcum ſine corda, & unum* Buzonem *ſine pennis.* S. Ed. 1.

Bye. Words ending in *By* or *Bee*, ſignify a Dwelling Place or Habitation, from the Sax. *Bye.*

By-Laws, (*Bilagines*, from the Goth. *By*, *pagus*, and *Lagen*, Lex,) Are Laws made *obiter*, or by the *By*; ſuch as Orders and Conſtitutions of Corporations, for the Governing of their Members; of Courts-Leet, and Court-Baron; Commoners or Inhabitants in Vills, &c. made by Common Aſſent, for the Good of thoſe that made them, in particular Caſes whereunto the publick Law doth not extend; ſo that they bind farther than the Common or Statute Law: Guilds and Fraternities of Trades, by Letters Patent of Incorporation, may likewiſe make *By-Laws*, for the better Regulation of Trade among themſelves, or with others. *Kitch.* 45, 72. 6 *Rep.* 63. In *Scotland* thoſe Laws are called Laws of *Birlaw* or *Burlaw*; which are made by Neighbours elected by common Conſent in the *Birlaw-Courts*, wherein Knowledge is taken of Complaints betwixt Neighbour and Neighbour; which Men ſo choſen are Judges and Arbitrators, and ſtiled *Birlaw-men*. And *Birlaws*, according to *Skene*, are *Leges Ruſticorum*, Laws made by Husbandmen, or Towſhips, concerning Neighbourhood amongſt them. *Skene*, *pag.* 33. The Inhabitants of a Town, without any Cuſtom, may make Ordinances or *By-Laws*, for repairing of a Church, or Highway, or any ſuch Thing, which is for the general Good of the Publick; and in ſuch Caſes, the greater Part ſhall bind all: Though if it be for their own private Profit, as for the well Ordering of their Common, or the like, they cannot make *By-Laws* without a Cuſtom to warrant it; and if there be a Cuſtom, the greateſt Part ſhall not bind the Reſt in theſe Caſes, unleſs it be warranted by the Cuſtom. 5 *Rep.* 63. Every City and Town Corporate hath Power to make *By-Laws*, for the better Government of the Body Politick. *Hob.* 211. 5 *Mod.* 429. But a Corporation cannot make a *By-Law* to bind

Strangers which are not of their Body, or to extend to Places out of the Juriſdiction of the Makers: Nor may *By Laws* be made in the Form of Acts of Parliament. 1 *Nelſ. Abr.* 411. Alſo *By-Laws* may not be made to reſtrain a Perſon from ſetting up his Trade, it being againſt the Common Law to reſtrain Men from Trades: A *By-Law* that no Perſon who is not a Freeman of a Corporation ſhall ſet up a Trade, under a Penalty, hath been adjudged void and againſt Law; as it excludes thoſe who have ſerved Apprenticeſhips in the Corporations, who by Law may uſe Trades. 1 *Lutw.* 562. *By-Laws* ought to be for the common Good and Benefit of all thoſe who live in the Place where made; and reſtraining Men from uſing Trades, cannot be for common Good, ſo that ſuch *By-Laws* have been condemned: But ſuch a *By Law* warranted by particular *Cuſtom*, as that no ſtrange Artificer who is not free of that Place ſhall uſe any Art within the ſame, hath been held good. *Nelſ. Lutw* 175. A Cuſtom that no Foreign Tradeſman ſhall uſe or exerciſe a Trade in a Town, &c. will warrant that which a Grant cannot do; and where Cuſtom has reſtrained, a *By-Law* may be made that upon Compoſition Foreigners may exerciſe a Trade. *Carter* 120. A *By-Law* by a Corporation may inflict a Penalty, recoverable by Diſtreſs, or Action of Debt, and be good. 1 *Danv Abr.* 738. But 'tis ſaid it cannot be made under a certain Penalty to be levied by Diſtreſs, and Sale of the Offender's Goods. 2 *Vent.* 182. For a *By-Law* may not be made on Pain of Forfeiture of Goods: Nor may it inflict Impriſonment, being contrary to *Magna Charta.* 2 *Inſt.* 54. Where *By-Laws* are good, Notice of them is not neceſſary, becauſe they are preſumed for the better Government and Benefit of all Perſons living in thoſe particular Limits where made; and therefore all Perſons therein are bound to take Notice of them. 1 *Lutw.* 404. The Freeholders in a Court-Leet, may make *By-Laws* relating to the Publick Good, which ſhall bind every one within the Leet. 2 *Danv.* 457. And a Court-Baron may make *By-Laws*, by Cuſtom, and add a Penalty for the Non-performance of them. But all *By-Laws* are to be reaſonable; and ought be for the common Benefit, and not private Advantage of any particular Perſons; and muſt be conſonant to the Publick Laws and Statutes, as ſubordinate to them. *Goldsb.* 79. And by Stat. 19 *Hen.* 7. *c.* 7. *By-Laws* made by Corporations are to be approved by the Lord Chancellor, or Chief Juſtices, if againſt the Publick Good, &c. on Pain of 40 *l.* *Vide* the *Statute.*

C

Cabal, (*Cabala*) A *Junto* or private Meeting; from a Doctrine or Science practiſed by the *Jews*, in fetching out Myſteries from the Numbers that Letters of Words make.

Caballa, (from the Lat. *Caballus*) Belonging to a Horſe. *Domeſday.*

Cabliſh, (*Cablicium*) Signifies Bruſhwood, according to the Writers of the Foreſt-Laws: But Sir *Henry Spelman* thinks it more properly Windfall-wood, becauſe it was written of old *Cadibulum*, from *Cadere:* Or if derived from the Fr. *Chablis*, it alſo muſt be Windfall-wood. —— *Item dicunt, quod* Cep-peg & Cablicia *vento proſtrat. valent.* &c. Inq. de an. 47 H. 3.

Cables for Shipping; making them of old Materials, which ſhall contain ſeven Inches in Compaſs when made and tarred, &c. is liable to a Forfeiture of four Times the Value, by Stat. 35 *Eliz. c.* 8.

Cachepolus or **Cacherellus**, An Inferior Bailiff, a *Catchpole.* ———— *In ſtipendiis Ballivi XIII s IV d. in ſtipendiis unius* Cachepoli *IX s. VIII d. per Ann.* &c. ———— *Conſuetud. Domus de* Farendon MS. fol. 23.

——And in *Thorn*, *Cacherellos* are mentioned, *viz Seneſchallus & Cuſtodes noſtri diligenter inquirant de Injuriis per* Cacherellos *Vicecomitis*, &c.

Cade, Of Herrings is 500, of Sprats 1000. *Book of Rates, fol.* 45. But it is ſaid, that anciently 600 made the *Cade* of Herrings, and ſix Score to the Hundred, which is called *Magnum Centum.*

Cadet, The younger Son of a Gentleman; particularly applied to a Voluntier in the Army, waiting for ſome Poſt.

Caep Gildum, The Reſtoring Goods or Cattle. *Blount.* See *Ceapgild.*

Cagia, A Cage or Coop for Birds.——*Mandatum eſt Vicecom.* Wilts. *quod emat in Baliva ſua* 300 *Gallinas*, &c. *cum* Cagiis, *in quibus eædem Gallinæ poni poſſunt.* Ex Rot. Clauſ. 38 H. 3.

Calamus, A Cane, Deed, or Quill; compriſed among Merchandize or Drugs to be garbled. 1 *Jac.* 1. *cap.* 19.

Calangium and **Calangia**, A Challenge, Claim, or Diſpute. ——— *Sciant quod Ego* Godfridus, &c *Dedi*, &c. *Sine aliqua reclamatione ſeu* Calangio, &c. Mon. Angl. Tom. 2 fol. 252.

Calcetum, **Calcea**, A Cauſey or common hard Way, maintained and repaired with Stones and Rubbiſh, from the Lat. *Calx*, Chalk, Fr. *Chaux*, whence their *Chauſſee* and our *Cauſeway*, or Path raiſed with Earth, and paved with Chalk ſtones, or Gravel. *Calcearum operationes* were the Work and Labour done by the adjoining Tenants: And *Calcagium* was the Tax or Contribution paid by the neighbouring Inhabitants towards the Making and Repairing ſuch common Roads; from which ſome Perſons were eſpecially exempted by Royal Charter. *Kennet's Gloſſ.*

Calefagium, A Word ſignifying a Right to take Fuel yearly.—— *Confirmamus panagium, Herbagium* & Calefagium *in Foreſta noſtra.* Blount.

Calends, (*Calendæ*) Among the *Romans* was the firſt Day of every Month, being ſpoken of it by it ſelf, or the very Day of the New Moon, which uſually happen together: And if *Pridie*, the Day before, be added to it, then it is the laſt Day of the foregoing Month; as *Pridie Calend. Septemb.* is the laſt Day of *Auguſt.* If any Number be placed with it, it ſignifies that Day in the former Month, which comes ſo much before the Month named; as the tenth *Calends* of *October* is the 20th Day of *September*; for if one reckons backwards, beginning at *October*, that 20th Day of *September*, makes the 10th Day before *October.* In *March*, *May*, *July*, and *October*, the *Calends* begin at the ſixteenth Day, but in other Months at the Fourteenth; which *Calends* muſt ever bear the Name of the Month following, and be numbered backwards from the firſt Day of the ſaid following Months. *Hopton's Concord. p.* 69. In the Dates of Deeds, the Day of the Month, by *Nones*, *Ides*, or *Calends*, is ſufficient. 2 *Inſt.* 675. See *Ides.*

Caliburne, The famous Sword of the great King *Arthur*: Hoveden and Brompton in Vita R.

Callico. No Perſon ſhall wear in Apparel any Printed or Dy'd *Callico*, on Pain of forfeiting 5 *l.* And Drapers ſelling any ſuch *Callico*, ſhall forfeit 20 *l.* But this doth not extend to *Callicoes* dyed all Blue. Stat. 7 *Geo.* 1. *c.* 7. And Perſons may wear Stuff, made of *Linen Yarn* and *Cotton Wool*, manufactured and printed with any Colours in *Great Britain*; ſo as the Warp be all *Linen Yarn*, without incurring any Penalty, by Stat. 9 *Geo.* 2. *c.* 4.

Callis, The King's Highway, mentioned in ſome of our antient Authors.——*Tantæ autem gratiæ inhabitantibus fuit* Britanniæ, *quod quatuor in ea* Calles *a fine in finem conſtruxerunt Regiæ ſublimitatis auctoritate*, &c. Huntingdon, Lib. 1.

Cambridge. The Statute 14 *Hen.* 8. *cap.* 2. to reſtrain *Alien Artificers*, and requiring more of them than *Denizens*, is not to be extended to Strangers dwelling in *Cambridge.* See Stat. 32 H. 8. *c.* 16.

Camera, From the old Germ. *Cam*, *Cammer*, crooked; whence comes our Engliſh *Kembo*, Arms in Kembo. But *Camera* at firſt ſignified any Winding or crooked Plat of Ground; as *unam* Cameram *terræ*, *i. e.* A Nook of Land. *Du Freſne.* Afterwards the Word was applied to any vaulted or arched Building; and by Degrees more particularly reſtrained to an upper Room or Chamber: And it is now often uſed in the Law, in the Buſineſs of a Judge, where Perſons are to be brought before him *apud* Cameram *ſuam ſituat. in* Serjeants-Inn, &c. The preſent *Iriſh* uſe *Cama* for a Bed. See *Kennet's Gloſſ.*

Camiſia, A Garment belonging to Prieſts, called the *Alb.*——*Indutus* Camiſia *linea quæ communi nomine dicitur* Alb. *Pet. Bleſenſis.*

Camoca, A Word uſed to ſignify a Garment made of Silk, or ſomething better: *Unum Veſtimentum pro ferialibus diebus album de* Camoca. *Mon. Angl. Tom.* 3. *pag.* 81.

Campana bajula, A ſmall Hand-Bell, much in Uſe in the Ceremonies of the *Roman* Church; and retained among us by Sextons, Pariſh-Clerks, and Criers.——*Quatuor eas muneribus Patriarcha donavit, Altari videlicet portatili conſecrata*, Campana bajula, *baculo Inſigni, & tunica ex auro contexta. Reverſi in Patriam ſua quiſque dona miraculoſe percepit*, &c. Girald. Camb. apud Wharton. Angl. Sacr. Par. 2. p. 637.

Campartum, Any Part or Portion of a larger Field or Ground; which would otherwiſe be in Groſs or common.——*Rex cuſtodi Inſularum de* Gernſey, &c. *in perpetuam reddantur decimæ de* Camparto *noſtro in eadem Inſula.* Prinne Hiſtor. Collect. Vol. 3. p. 89.

Campertum, Is uſed for a Corn-Field. *Pet. in Parl.* 30 *Ed.* 1.

Campfight, The Fighting of two Champions or Combatants in the Field. 3 *Inſt.* 221. See *Champion.*

Campus Maii, or *Martii*, Was an Aſſembly of the People every Year upon *May-Day*, where they confederated together to defend the Country againſt all Enemies. *Leges Edw. Confeſſor*, cap. 35. *Denuo in* Campo Martii *convenere, ubi illi qui Sacramentis inter illos pacem confirmavere, Regi omnem culpam impoſuere.* Sim. Dunelm. Anno 1094.

Candles and Chandlers. If any *Chandlers* mix with their Wares any Thing deceitfully, &c. the *Candles* ſhall be forfeited. *Stat.* 23 *Eliz.* And a Tax or Duty is granted on *Candles*, of 4*d.* *per* Pound for thoſe made with *Wax*, and one Half-penny a Pound for all other *Candles*, (beſides a Duty upon Tallow) by 8 *Ann. cap.* 9. The Makers of *Candles* are not to uſe Melting-Houſes without making a true Entry, on Pain of 100*l.* and to give Notice of making *Candles* to the Exciſe Officer for the Duties, and of the Number, &c. or ſhall forfeit 50*l.* *Stat.* 11 *Geo.* 1. *cap.* 30. See *Wax-Chandlers.*

Candlemas-Day, The Feaſt of the *Purification* of the *Bleſſed Virgin Mary*, being the ſecond Day of *February* inſtituted in Memory and Honour of the Purification of the ſaid Virgin in the Temple of *Jeruſalem*, the fortieth Day after her happy Childbirth, according to the Law of *Moſes*, and the Preſentation of our bleſſed Lord. It is called *Candlemas*, or a *Maſs* of *Candles*, becauſe before Maſs was ſaid that Day, the Church conſecrated and ſet apart for ſacred Uſe, *Candles* for the whole Year, and made a Proceſſion with hallowed *Candles* in Remembrance of the Divine Light, wherewith *Chriſt* illuminated the whole Church at his Preſentation in the Temple, when by old *Simeon* ſtiled, *A Light to lighten the* Gentiles, *and to be the Glory of his People* Iſrael, *St. Luke, cap.* 2. *ver.* 32. This Feſtival is no Day in Court, for the Judges ſit not; and it is the Grand Day in that Term of all the Inns of Court, whereon the Judges uſually obſerve many ancient Ceremonies, and the Societies which ſeem to vie with each other, have ſumptuous Entertainments, accommodated with Muſick, and almoſt all Kinds of Diverſions.

Canes opertiæ, Dogs with whole Feet, not lawed.——*Et debent habere* Canes opertias *ex omni genere Canum, & non impediatas.* Antiq. Cuſtumar de Sutton Colfield.

Caneſtellus, A Basket. In the Inquiſition of Serjeancies, and Knights Fees, *Anno* 12 & 13 of King *John*, for *Eſſex* and *Hertford*, it appears that one *John* of *Liſton* held a Manor by the Service of Making the King's Baskets.——Johannes de Liſtone *tenet*, &c. *per Serjeantiam faciendi* Caneſtellos, &c. Ex Libro Rub. Scacc. fol. 137.

Canfara, A Trial by hot Iron, formerly uſed in this Kingdom. *Si inculpatio ſit, & ſe purgare velit, eat ad ferrum calidum, & adlegiet manum ad* canfaram *quod non falſum fecit.* See *Ordeal.*

Canipulus, This Word hath been taken for a ſhort Sword. *Blount.*

Canna, A Rod or Diſtance in the Meaſure of Ground.——*Papa* Clem. *IV. concedit*, &c. *ut nulli ſeculari vel Religioſo*, &c. *infra ſpacium* 300 Cannarun *ab ipſorum Eccleſiis menſurandarum. — Volumus quamlibet ipſarum* cannarum *octo Palmorum longitudinem continere.* Ex Regiſtr. Walt. Giffard Archiepiſc. Ebor. f. 45.

Canon, Is a Law or Ordinance of the Church; and the *Greek* Word *Canon*, from whence is derived the *Canon Law*, ſignifies a Rule, becauſe it leads a Man ſtreight, neither drawing him from one Side or the other, but rather correcting him. The *Canon Law* conſiſts partly of certain Rules taken out of the Scripture; partly of the Writings of the ancient Fathers of the Church; partly of the Ordinances of General and Provincial Councils; and partly of the Decrees of the Popes in former Ages. And it is contained in two principal Parts, the *Decrees* and the *Decretals*: The Decrees are Eccleſiaſtical Conſtitutions made by the Pope and Cardinals, and were firſt gathered by *Ivo* Biſhop of *Carnat*, who lived about the Year 1114 but afterwards perfected by *Gratian*, a *Benedictine* Monk, in the Year 1149, and allowed by Pope *Eugenius* to be read in Schools, and alledged for Law. They are the moſt antient, as having their Beginning from the Time of *Conſtantine* the Great, the firſt Chriſtian Emperor of *Rome*. The Decretals are *Cononical* Epiſtles written by the Pope, or by the Pope and Cardinals, at the Suit of ſome or more Perſons for the Ordering and Determining of ſome Matter of Controverſy, and have the Authority of a Law; and of theſe there are three Volumes, the firſt whereof was compiled by *Raymundus Barcinius*, Chaplain to *Gregory* the Ninth, and at his Command, about the Year 1231. The ſecond Volume is the Work of *Boniface* the Eighth, collected in the Year 1298. And the third Volume, called the *Clementines*, was made by Pope *Clement* the Fifth, and publiſhed by him in the Council of *Vienna*, about the Year 1308. And to theſe may be added ſome *novel* Conſtitutions of *John* the 22d, and ſome other Biſhops of *Rome*. As the Decrees ſet out the Origin of the *Canon* Law, and the Rights, Dignities and Degrees of Eccleſiaſtical Perſons with their Manner of Election, Ordination, &c. So the Decretals contain the Law to be uſed in the Eccleſiaſtical Courts; and the firſt Title in every of them, is the Title of the Bleſſed Trinity, and of the Catholick Faith, which is followed with Conſtitutions and Cuſtoms, Judgments and Determinations in ſuch Matters and Cauſes as are liable to Eccleſiaſtical Cognizance, the Lives and Coverſation of the Clergy, of Matrimony and Divorces, Inquiſition of criminal Matters, Purgation, Penance, Excommunication, &c. But ſome of the Titles of the *Canon* Law are now out of Uſe, and belong to the Common Law: And others are introduced, ſuch as Trials of Wills, Baſtardy, Defamation, &c. Trials of Tithes were antiently in all Caſes had by the Eccleſiaſtical Law; tho' at this Time this Law only takes Place in ſome particular Caſes. Thus much for the *Canon* Law in General; and as to the *Canon* Laws of this

Kingdom, by the Statute 25 *Hen.* 8. *c.* 19. it is declared, that all *Canons* not repugnant to the King's Prerogative, nor to the Laws, Statutes, and Cuſtoms of the Realm, ſhall be uſed and executed. By this Statute, *Canons* made in Convocation are to be confirmed by the King, and have the Royal Aſſent: And it has been adjudged that *Canons* made in Convocation, and confirmed by the King, do bind as firmly in all Eccleſiaſtical Cauſes, as Acts of Parliament do in other Caſes; for by the Common Law, every Biſhop in his Dioceſe, and each Archbiſhop in his Province, and the Convocation may make *Canons*, which ſhall be binding within their Juriſdictions. The Convocation for the Province of *Canterbury* was held at *London*, *Anno* 1603. in the firſt Year of the Reign of King *James* I. by the King's Writ, and they had a Licence under the Great Seal, to conſult and agree to ſuch *Canons* as they ſhould think fit; whereupon they made ſeveral *Canons* concerning the Government of the Church, Religion, the Clergy, &c. which had the Royal Aſſent, and were ratified and confirmed by that King, for him, his Heirs and Succeſſors, purſuant to the Statute 25 *H.* 8. which *Canons* thus warranted by Act of Parliament, are the Laws of the Land to this Day. See my *Treatiſe of Laws*, p. 402, &c. 1 *Nelſ. Abr.* 416. The general *Canon* Law is no farther in Force here than it hath been receiv'd, and is conſiſtent with the Common or Statute Law.

Canon Religioſorum, A Book wherein the *Religious of Convents* had a fair Tranſcript of the Rules of their Order, which were frequently read among them as their local Statutes; and this Book was therefore called *Regula* and *Canon.* The publick Books of the Religious were the four following: 1. *Miſſale*, which contained all their Offices of Devotion. 2. *Martyrologium*, a Regiſter of their peculiar Saints and Martyrs, with the Place and Time of Paſſion. 3. *Canon* or *Regula*, the Inſtitution and Rules of their Order. 4. *Necrologium* or *Obituarium*, in which they entered the Deaths of their Founders and Benefactors, to obſerve the Days of Commemoration of them. *Kennet's Gloſſ.*

Cantel, (*Cantellum*) Seems to ſignify the ſame with what we now call Lump, as to buy by Meaſure, or by the Lump: But according to *Blount* it is that which is added above Meaſure.—— *Nullum genus bladi vendatur per cumulum ſeu* Cantellum, *præter Avenam, Braſium & farinam. Stat. de Piſtor. cap.* 9. Alſo a Piece of any Thing, as a *Cantel* of Bread, and the like.

Cantred, (*Cantredus*) A *Britiſh* Word from *Cant*, or *Cantre*, which in the *Britiſh* Tongue ſignifies *Centum*, and *Tret*, a Town or Village, is in *Wales* an hundred Villages: For the *Welſh* divide their Counties into *Cantreds*, as the *Engliſh* do into Hundreds. This Word is uſed 28 *H.* 8. *c.* 3.

Capacity, (*Capacitas*) An Ability, or Fitneſs to receive: And in Law it is where a Man or Body Politick, is able to give or take Lands, or other Things, or to ſue Actions. Our Law allows the King two Capacities, a Natural and a Politick: In the Firſt, he may purchaſe Lands to him and his Heirs; in the latter, to him and his Succeſſors. An Alien born hath ſufficient *Capacity* to ſue in any Perſonal Actions, and is capable of Perſonal Eſtate; but he is not *capable* of Lands of Inheritance; and in a Real Action, it is a good Plea of the Defendant to ſay, the Plaintiff is an Alien born, and pray if he ſhall be anſwered. *Dyer* 3. Perſons attainted of Treaſon or Felony, Ideots, Lunaticks, Infants, Feme Coverts without their Husbands, &c. are not *capable* to make any Deed of Gift, Grant, or Conveyance, unleſs it be in ſome ſpecial Caſes. But all other Perſons, void of Impediments, are *capable* of making Grants and Conveyances, and to ſue and be ſued, being twenty-one Years of Age; and at fourteen, their Age of Diſcretion, they are *capable* by Law to marry, be a Witneſs, &c. 1 *Inſt.* 171, 172.

Cape, (*Lat.*) Is a Writ judicial, touching Plea of Lands or Tenements; ſo termed, as moſt Writs are, of that Word in it, which carries the chief Intention or End thereof: And this Writ is divided into *Cape Magnum* and *Cape Parvum*, both of which take hold of Things immoveable.

Cape Magnum, or the *Grand Cape*, Is a Writ that lies before Appearance, to ſummon the Tenant to anſwer the Default, and alſo over to the Demandant: And in the *Old Nat. Brev.* it is defined to be, where a Man hath brought a *Præcipe quod reddat* of a Thing touching Plea of Land, and the Tenant makes Default at the Day to him given in the Original Writ, then this Writ ſhall go for the King to take the Land into his Hands; and if the Tenant come not at the Day given him thereby, he loſeth his Land, &c. See *Reg. Jud. fol.* 1. *Bract. lib.* 3. *tract.* 3. *c.* 1.

Cape Parvum, or *Petit Cape*, Is where the Tenant is ſummoned in Plea of Land, and comes on the Summons, and his Appearance is recorded; if at the Day given him he prays the View, and having it granted, makes Default; then ſhall iſſue this Writ for the King, &c. *Old Nat. Brev.* 162. The Difference between the *Grand Cape* and *Petit Cape* is, that the *Grand Cape* is awarded upon the Tenant's not appearing or demanding the View in ſuch Real Actions, where the Original Writ does not mention the Particulars demanded; and the *Petit Cape* is after Appearance or View granted: And whereas the *Grand Cape* ſummons the Tenant to anſwer for the Default, and likewiſe over to the Demandant; *Petit Cape* ſummons the Tenant to anſwer the Default only: And therefore it is called *Petit Cape*; tho' ſome ſay it hath its Name, not becauſe it is of ſmall Force, but by Reaſon it conſiſts of few Words. *Reg. Jud. fol.* 2. *Fleta, lib.* 2. *c.* 44.

Cape ad Valentiam, This is a Species of *Cape Magnum*, and is where I am impleaded of Lands, and vouch to warrant another, againſt whom the *Summons ad Warrantizandum* hath been awarded, and he comes not at the Day given; then if the Demandant recover againſt me, I ſhall have this Writ againſt the Vouchee, and recover ſo much *in Value* of the Lands of the Vouchee, if he hath ſo much; if not, I ſhall have Execution of ſuch Lands and Tenements as ſhall after deſcend to him in Fee; or if he purchaſes afterwards, I ſhall have againſt him a Reſummons, &c. And this Writ lies before Appearance. *Old Nat. Br.* 161.

Capella, Before the Word *Chapel* was reſtrain'd to an Oratory, or depending Place of Divine Worſhip, it was uſed for any Sort of Cheſt, Cabinet, or other Repoſitory of precious Things, eſpecially of Religious Reliques. *Kennet's Paroch. Antiq. p* 580.

Capellus, A Cap, Bonnet, or other Covering for the Head. ——— *Capite diſcooperto, ſine* Capello, *cum una Garlanda de Latitudine*, &c. Tenures, p. 32. ——— *Capellus ferreus*, an Helmet, or Iron Head-piece, *Quicunque laicus habuerit in Catallis ad valentiam decem Mercatorum habeat Halbergellum &* Capellum ferri *& lanceam.* Hoveden, pag. 61.—— *Capellus Militis* is likewiſe an Helmet or military Head-piece. *Conſuetud. Domus de Farendon, MS. fol.* 21.

Capias, Is a Writ or Proceſs of two Sorts; one whereof is called *Capias ad Reſpondendum*, before Judgment, where an Original is ſued out, &c. to take the Defendant and make him anſwer the Plaintiff: And the other a Writ of Execution, after Judgment, being of divers Kinds, as *Capias ad ſatisfaciendum, Capias Utlagatum*, &c. The *Capias ad Reſpondendum* in *C. B.* is drawn from the *Præcipe*, which ſerves both for the *Original* and *Capias*, and the Return of the Original is the Teſte of the *Capias.* If a *Capias* be ſpecial, in Debt, Covenant, &c. the

Cauſe of Action muſt be recited at large, and you are to ſet forth the Subſtance of your intended Declaration, as you are alſo in your Original. The uſual Courſe is to take out the *Capias*, and ſue out the *Original* after, altho' it is ſuppoſed to be ſued out before, becauſe the Original cannot be ſo ſpeedily ſued out at all Times: And where the Cauſe of Action is for Debt, and requires Bail, the beſt Way is to make out an *Ac etiam Capias*, the Original to which is only a bare *Clauſum fregit*; and when you come to Judgment, you may file a new Original to warrant ſuch Judgment. If a *Capias* be ſpecial, by *Præcipe quod reddat, &c.* And there is any Miſtake in the Name, *Alias dictus*, or Sum, it may be pleaded in Abatement, and a new Original afterwards will not cure it; but you are forced to diſcontinue your Action, paying Coſts, and to begin *de novo.* There may be an *Alias* and a *Pluries Capias*, bearing Teſte from the Return of each other, if the Defendant be not taken on the firſt Writ. See *Pract. Solic. p.* 290.

Form *of a Writ of* Capias *in* C. B.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: We command you, that you take* C. D. *late of*, &c. *So that you have his Body before our Juſtices at* Weſtminſter *on the* Octaves *of St.* Hillary, *to anſwer to* A. B. *Gent. of a Plea*, &c. *To the Damage of him* A. 50l. *And have you there then this Writ.* Witneſs, &c.

The Words *Sicut Alias*, and *Sicut Pluries*, diſtinguiſh the *Alias* and *Pluries* from the *Capias.*

Capias ad Satisfaciendum, A judicial Writ which iſſues out of the Record of a Judgment, where there is a Recovery in the Courts at *Weſtminſter*, of Debt, Damages, *&c.* And by this Writ the Sheriff is commanded to take the Body of the Defendant in Execution, and him ſafely to keep, ſo that he hath his Body in Court at the Return of the Writ, to ſatisfy the Plaintiff his Debt and Damages. And it is ſaid the Sheriff cannot upon this Writ take the Money, and diſcharge the Priſoner; becauſe the Writ is *Quod Capias* the Defendant, *& eum ſalvo cuſtod. ita quod Habeas Corpus ejus die, &c. coram Domino Rege apud* Weſtm. *ad ſatisfaciendum* the Plaintiff, *&c.* 1 *Lill. Abr.* 249. It is uſual to take out this Writ, where the Defendant hath no Lands nor Goods, whereof the Debt recovered may be levied: And when the Body is taken upon a *Ca. ſa.* and the Writ is returned and filed, it is an abſolute and perfect Execution againſt the Defendant, and no other Execution can be againſt his Lands and Goods: But this is unleſs the Defendant eſcape, or die in Execution, *&c.* for where a Perſon dies in Execution, his Lands and Goods are liable to ſatisfy the Judgment, by Statute 21 *Jac.* 1. *c.* 24. See *Roll. Abr.* 904. In Caſe two Perſons are bound jointly and ſeverally, and proſecuted in two Courts, whereupon the Plaintiff hath Judgment and Execution by *Cap. ad ſatisfac.* againſt one of them; if he after have an *Elegit* againſt the other, and his Lands and Goods are delivered upon it, then he that is in Priſon ſhall have *Audita Querela. Hob.* 2. 57. Where one taken on a *Cap. ad ſatisfaciendum* eſcapes from the Sheriff, and no Return is made of the Writ, nor any Record of the Award of the *Capias*; the Plaintiff may bring a *Scire fac.* againſt him, and on that what Execution he will. *Roll.* 904. And if the Defendant reſcue himſelf, the Plaintiff ſhall have a new *Capias*, the firſt Writ not being returned. *Ibid.* 901. A Defendant being brought into Court by Virtue of a *Cap. ad ſatisfaciendum*, the Plaintiff was asked, whether he would pray that the Priſoner might be committed? who anſwered he would not; becauſe the Party was not able to pay, and had eſcaped from the Sheriff, againſt whom he intended to bring his Action: Therefore the Defendant was diſcharged. 1 *And. ca.* 166. A *Capias ad ſatisfaciendum* lieth not againſt a Peer; nor againſt Executors or Adminiſtrators, but where a *Devaſtavit* is return'd by the Sheriff, *&c.* 1 *Lill.* 250. If the Defendant cannot be taken upon a *Capias* in the County where the Action is laid, there may iſſue a *Teſtatum Ca. ſa.* into another County; and ſo of the other Writs.

Form *of a* Capias ad Satisfaciendum.

GEORGE *the Second*, &c. *To the Sheriff of* W. *Greeting. We command you, that you take* A. B. *if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us at* Weſtminſter *on this Day*, &c. *to make Satisfaction to* C. D. *of a Debt of thirty Pounds, which the ſaid* C. D. *lately recovered againſt him in our Court, before us; and alſo for Forty Shillings, which in our ſaid Court before us, were awarded to the ſaid* C. D. *for his Damages which he hath ſuſtained, as well by Occaſion of the detaining the ſaid Debt, as for his Expences and Coſts laid out by him in and about his Suit, in that Behalf: Wherefore the ſaid* A. B. *is convicted, as appears to us of Record. And have you then there this Writ.* Witneſs, &c.

Capias Utlagatum, Is a Writ that lies againſt a Perſon who is outlawed in any Action, by which the Sheriff apprehends the Party outlawed, for no appearing upon the *Exigent*, and keeps him in ſafe Cuſtody till the Day of Return, and then preſents him to the Court, there to be ordered for his Contempt; who, in the Common Pleas, was in former Times to be committed to the *Fleet*, there to remain till he had ſued out the King's Pardon, and appeared to the Action. And by a ſpecial *Capias Utlagatum* in the ſame Writ, the Sheriff is commanded, and may ſeize all the Defendant's Lands, Goods and Chattels, for the Contempt to the King; and the Plaintiff, (after an Inquiſition taken thereupon, and return'd into the Exchequer) may have the Lands extended, and a Grant of the Goods, *&c.* whereby to compel the Defendant to appear; which when he ſhall do, if he reverſe the Outlawry, the ſame ſhall be reſtored to him. *Old Nat. B. R.* 154. A Defendant may appear in Perſon, and reverſe an Outlawry: And in *B. R.* one may appear by Attorney, *&c.* Alſo when a Perſon is taken upon a *Capias Utlagatum*, the Sheriff is to take an Attorney's Engagement to appear for him, where Special Bail is not required; and his Bond with Sureties to appear, where 'tis required. *Stat.* 4 *&* 5 *W & M. c.* 18. This Writ is either general, againſt the Body; or, as I have before obſerv'd, it is Special, againſt the Body, Lands and Goods. See *Outlawry.*

Form *of a* Capias Utlagatum.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: We command you, That you omit not, by Reaſon of any Liberty within your County, but that you* take C. D. *late of* &c. Outlawed *in* London *the Day*, &c. *laſt paſt, at the Suit of* A. B. *in a Plea of Treſpaſs on the Caſe, if he ſhall be found in your Bailiwick, and him ſafely keep, ſo that you have his Body before us, on the Day*, &c. *whereſoever we ſhall be then in* England; *to do and receive that which our Court before us ſhall conſider of in this Caſe: And have you there this Writ.* Witneſs, &c.

Capias pro Fine, Is where one, who is fined to the King for ſome Offence committed againſt a Statute, does not diſcharge the Fine according to the Judgment: Whereupon his Body is to be taken by this Writ, and committed to Priſon until he pay the Fine. It is uſed in other Caſes, for not making out ſome Pleas in Civil Actions. 3 *Rep.* 12. By the Stat. 4 & 5 *W.* & *M.* *Capiatur Fines* are taken away in ſeveral Caſes See *Fines for Offences.*

Capias in Withernam, A Writ lying for Cattle in *Withernam*; which is, where a Diſtreſs taken is driven out of the County, ſo that the Sheriff cannot make Deliverance in Replevin, when this Writ iſſues to the Sheriff to take as many Beaſts of the Diſtrainer, &c. *Reg. Orig.* 82, 83. Vide *Withernam*

Capitale, Signifies a Thing which is ſtolen, or the Value of it. *Leg. H.* 1. *cap.* 59.

Capitale vivens, Hath been uſed for live Cattle.—— *Reddam de meo proprio decimas Deo, tam in* Vivente Capitali, *quam in mortuis fructibus terræ.* Leg. Athelſtan.

Capite, (from *Caput, i. e. Rex, unde tenere in* Capite, *eſt Tenere de Rege, omnium terrarum* Capite) An antient Tenure, whereby a Man holds Lands of the King immediately as of his Crown, whether by Knight's Service, or in Socage. This Tenure was likewiſe called, Tenure holding of the Perſon of the King: And a Perſon might hold of the King, and not in *Capite*; that is, not immediately of the Crown, but by Means of ſome Honour, Caſtle, or Manor belonging to it. According to *Kitchen*, one might hold Land of the King by *Knights Service*, and not in *Capite*; becauſe it might be held of ſome Honour in the King's Hands, deſcended to him from his Anceſtors, and not immediately of the King, as of his Crown. *Kitch.* 129. *Dyer* 44. *F. N. B.* 5. The very ancient Tenure in *Capite*, was of two Sorts; the one Principal and *General*, and the other *Special* or Subaltern; the Principal and General was of the King as *Caput Regni, & Caput Generaliſſimum omnium Feodorum*, the Fountain whence all Feuds and Tenures have their main Original: The Special was of a particular Subject, as *Caput Feudi, ſeu terræ illius*, ſo called from his being the firſt that granted the Land in ſuch Manner of Tenure; from whence he was ſtiled *Capitalis Dominus*, &c. But Tenure in *Capite* is now aboliſhed; and by Stat. 12 *Car.* 2. *c.* 24. All Tenures are turned into free and common Socage: So that Tenures hereafter to be created by the King are to be in common Socage only; and not by *Capite*, Knights-Service, &c. *Blount.*

Capitilitium, A Word uſed to ſignify what we now call Poll-Money.

Capititium, A Covering for the Head. 'Tis mentioned in the Statute 1 *Hen.* 4. and other old Statutes, which preſcribe what *Dreſſes* ſhall be wore by all Degrees of Perſons.

Capituli Agri, The Head-lands, Lands that lie at the Head or upper End of the Lands or Furrows.—— *Canonici* (Burceſter) *conceſſerunt hominibus de* Wrechwike *duas acras prati pro* Capitibus *ſuarum croftarum tenus Rivulum verſus Molendinum*, &c. Kennet's Paroch. Antiq. p. 137.

Capitula Ruralia, Aſſemblies or Chapters held by Rural Deans and Parochial Clergy within the Precinct of every diſtinct Deanery; which at firſt were every three Weeks, afterwards once a Month, and more ſolemnly once a Quarter. *Cowel.*

Caption, (*Captio*) Is when a Commiſſion is executed, the Commiſſioners ſubſcribe their Names to a Certificate, declaring when and where the Commiſſion was executed; which in Law is called a *Caption.* And theſe *Captions* relate chiefly to Buſineſs of three Kinds, *i. e.* to Commiſſions to take Fines of Lands, to take Anſwers in Chancery, and Depoſitions of Witneſſes: On the Taking of a Fine it is thus: Capt. & *Cogn. die & anno, &c. apud, &c.* And on the Back, *Executio iſtius Comm. patet in quadam Schedul. eidem Comm. Annex'.* On the Taking of an Anſwer in Chancery, the *Caption* is at Bottom as follows: Capt. *fuit hæc Reſponſ. ſuper ſacram. ſupranominat. Def.* Willielmi B. *die & anno, &c. apud, &c. coram nobis*, &c. And on the Back of the Commiſſion, *Executio iſtius Com'*, &c. On the Taking Depoſitions of Witneſſes, only the Execution on the Back is indorſed, as *Executio iſtius Com. in quad. Schedul.* &c. The *Caption* being included in the Title of the Depoſitions. Sometimes it is uſual to add to the *Caption, Virtut. Commi'con. Dom. Regis nobis & al. direct'*, &c. Theſe Captions and the Executions of the Commiſſions muſt be now in *Engliſh*, by the late Statute. 4 *Geo.* 2.

Captain, (*Capitaneus*) One that leadeth or hath the Command of a Company of *Soldiers*: And is either General, as he that hath the Governance of the whole Army; Or Special, he that leads but one Band.——There is alſo another Sort of *Captains, Qui Urbium præfecti ſunt*, &c. Blount.

Captives. An Act was made for Relief of *Captives* taken by *Turkiſh, Mooriſh*, and other Pirates, and to prevent Taking of others in Time to come. *Stat.* 16 & 17 *Car.* 2. *c.* 24.

Capture, (*Captura*) The Taking of a Prey, an Arreſt, or Seizure: And it particularly relates to *Prizes* taken by Privateers, in Time of War, which are to be divided between the *Captors*, &c. *Stat.* 14. *Car.* 2. *c.* 14. *and* 4 & 5 *W.* & *M. c.* 25.

Caput Baroniæ, Is the Caſtle or chief Seat of a Nobleman; which deſcends to the eldeſt Daughter, if there be no Son, and muſt not be divided among the Daughters like unto Lands, &c.

Caput Anni, New Year's Day, upon which of old was obſerved the *Feſtum Stultorum.*

Caput Jejunii, In our Records is uſed for *Aſh Wedneſday*, being the Head, or firſt Day of the Beginning of the *Lent Faſt.* Paroch. Antiq. p. 132.

Caput loci, The Head or upper End of any Place; *ad.* Caput Villæ, at the End of the Town.

Caputagium, Some think this Word ſignifies Head or Poll Money, or the Payment of it: But it is rather what we otherwiſe call *Chevagium.*

Car and **Char,** The Names of Places beginning with *Car* and *Char* ſignify a City, from the Brit. *Caer, viz. Civitas*, as *Carliſle*, &c.

Caravanna, A *Caravan*, or joint Company of Travellers in the Eaſtern Countries, for mutual Conduct and Defence.—— *Egreſſa* Caravanna *noſtra de* Joppa *verſus exercitum veniebat onuſta victualibus & aliis clitellis neceſſariis.* Gaufrid. Vineſaut. Richardi Regis, Iter Hieroſol. lib. 5. cap. 52.

Carcan, Is ſometimes expounded for a Pillory; As is *Carcannum* for a Priſon. *LL. Canuti Regis.*

Carcatus, Signifies loaden; a Ship with her Freight—— *De Corpore cujuſlibet Magnæ navis* Carcatæ *cum rebus venalibus* 4 *denar.* Pat. 10 R. 2.

Cards and **Dice,** A Duty of 6*d. per* Pack on all Playing *Cards*, and of 5*s.* for every Pair of *Dice*, ſhall be paid to the Crown for Thirty-two Years; the *Cards* and *Dice* to be carried to the Stamp-Office and marked, &c. And uſing them unſtamp'd, is liable to a Penalty of 5*l.* *Stat.* 9 & 10 *Ann. c.* 19.

Caretta & Carettata, A Cart and Cartload.—— *Quinque* Carectatas *Clauſturæ, ad prædictæ terræ clauſturam ſuſtinendam.* Mon. Angl. Tom. 2. f. 340.

Caretarius, or **Carectarius,** A Carter. *Blount.* See *Carreta.*

Cariſtia, Dearth, Scarcity, Dearneſs.—— *Rex Majori & Vic.* London, *Salutem. Querela Archiepiſcoporum, Comitum,*—— *quod de Bobus, Vaccis, multonibus, &c. Magna & quaſi intollerabilis eſt* Cariſtia *hiis diebus ſub*, &c. Pat. 8 Ed. 1.

Caritas, *Ad* Caritatem, *Poculum* Caritatis, A Grace-Cup; or an extraordinary Allowance of Wine, or other Liquor, wherein the Religious at Feſtivals drank in Commemoration of their Founders and Benefactors. *Cartular. Abbat. Glaſton. A. S. f.* 29.

Cark, A Quantity of Wool, whereof Thirty make a Sarpler. *Stat.* 27 *H.* 6. *c.* 2.

Carnarium, A Charnel-houſe, or Repoſitory for the Bones of the Dead.—— *In* Carnario *ſubtus Capellam, &c. Oſſa humana, &c. humata, de Licentia*

Sacriſtæ qui pro tempore fuerit, qui dicti Carnarii *clavem & cuſtodiam habebit ſpecialem, ut uſq. ad Reſurrectionem generalem honeſtius conſerventur, a* Carnibus *integre denudata reponi volumus & obſervari.* —— *Cartular. Fundationis Capellæ Sancti* Johannis *in occid. parte Eccl.* Norwic. *per* Joh. Norwic. *Epiſc.* Dat 4 Oct. 1316.

Carno, This Word hath been uſed for an Immunity or Privilege, as appears in *Cromp. Juriſd. fol.* 191.

Carpmeals, Cloth made in the Northern Parts of *England*, of a courſe Kind, mention'd in 7 *Jac. cap.* 16.

Carr, Is a Kind of Cart with Wheels. *Vide Caruca.*

Carrat, A Weight of four Grains in Diamonds, *&c.* And this Word 'tis ſaid was formerly uſed for any Weight or Burden.

Carreta, Hath been taken for a Carriage, Cart, or Wane-Load; as *Carreta fœni* is uſed in an old Charter for a Load of Hay. *Kennet's Gloſſ.*

Carrels, Cloſets, or Apartments for Privacy and Retirement.————Three Pews or *Carrels*, where every one of the old Monks, after they had dined, did reſort, and there ſtudy.——*Davies Mon. of Durham*, p 31.

Carrick or **Carrack,** (*Carrucha*) A Ship of great Burden, ſo called of the *Italian* Word *Carico* or *Carco*, which ſignifies a Burden or Charge: It is mentioned in the Statutes 2 *R.* 2. *c.* 4. and 1 *Jac. c.* 33. They were not only uſed in Trade, but alſo in War, as *Walſingh. in Hen.* 5. *f.* 394. *viz. Galli conduxerant claſſem magnarum navium* Carricarium, *&c. qua Regnum* Angliæ *moleſtarent.*

Carrier, (*Geſtator*) Is a Perſon that carries Goods for others, for his Hire: And Juſtices of Peace have Power to aſſeſs the Price of Carriage of Goods yearly at their *Eaſter* Seſſions, and if any *Carrier* ſhall take above the Rates and Prices ſo aſſeſs'd, he ſhall forfeit 5*l.* *Stat.* 3 & 4 *W. & M. cap.* 12. A common *Carrier* having the Charge and Carriage of Goods, is to anſwer for the ſame, or the Value to the Owner *Co. Litt.* 78. And where Goods are delivered to a *Carrier*, and he is robbed of them, he ſhall be charged, and anſwer for them, becauſe of the Hire. 1 *Roll. Abr.* 338. One brought a Box to a *Carrier*, in which there was a large Sum of Money, and the *Carrier* demanding of the Owner what was in it, he anſwered, it was filled with Silks, and ſuch like Goods, upon which the *Carrier* took it, and was robbed; and adjudged, that the *Carrier* was liable to make it good: But a ſpecial Acceptance, as provided there is no Charge of Money, would have excuſed the *Carrier* 1 *Vent.* 238. 4 *Rep.* 83. A Perſon delivered to a *Carrier*'s Book-keeper two Bags of Money ſealed up, to be carried from *London* to *Exeter*, and told him that it was 200*l.* and took his Receipt for the ſame, with Promiſe of Delivery for 10*s.* *per Cent.* Carriage and Riſque: Though it be proved that there was 400*l.* in the Bags, if the *Carrier* be robbed he ſhall anſwer only for 200*l.* becauſe there was a particular Undertaking for the Carriage of that Sum and no more, and his Reward which makes him anſwerable, extends no farther. *Carthew*'s *Rep.* 486. If a common *Carrier* loſes Goods he is intruſted to carry, a Special Action on the Caſe lies againſt him, on the Cuſtom of the Realm; and not Trover: And ſo of a common *Carrier* by Boat. 1 *Roll. Abr.* 6. An Action will lie againſt a Porter, *Carrier* or Bargeman, upon his bare Receipt of the Goods, if they are loſt by Negligence. 1 *Sid.* 36. Alſo a Lighterman ſpoiling Goods he is to carry, by letting Water come to them, Action of the Caſe lies againſt him on the common Cuſtom. *Palm.* 528. If one be not a common *Carrier*, and takes Hire, he may be charged on a ſpecial *Aſſumpſit*; for where Hire is taken, a Promiſe is implied. *Cro. Jac.* 262. A common *Carrier* may have Action of Trover or Treſpaſs for Goods taken out of his Poſſeſſion by a Stranger; he having a Special Property in the Goods, and being liable to make Satisfaction for them to the Owner: And where Goods are ſtolen from a *Carrier*, he may bring an Indictment againſt the Felon as for his own Goods, tho' he has only the Poſſeſſory, and not the abſolute Property; and the Owner may likewiſe prefer an Indictment againſt the Felon. *Kel.* 39. If a *Carrier* be robbed of Goods, alſo either he or the Owner may bring an Action againſt the Hundred, to make it good. 2 *Saund.* 380. Where a *Carrier* entruſted with Goods, opens the Pack, and takes away and diſpoſes of Part of the Goods, this ſhewing an Intent of Stealing them, will make him guilty of Felony. *H. P. C.* 61. And it is the ſame if the *Carrier* receives Goods to carry them to a certain Place, and carrieth them to ſome other Place, and not to the Place agreed. 3 *Inſt* 367. If a *Carrier* after he hath brought Goods to the Place appointed, take them away privately, he is guilty of Felony; for the Poſſeſſion which he received from the Owner being determined, his ſecond Taking is in all Reſpects the ſame as if he were a meer Stranger. 1 *Hawk. P. C.* 90. See *Larceny*, *&c.*

Carriages how drawn, *&c.* Vide *Waggon.*

Carts. If any Perſon ſhall ride in a *Cart* or Dray, not having another on Foot to guide it, he ſhall forfeit 10*s.* to the Informer and Poor of the Pariſh: And Wheels of *Carts* in *London* are not to be leſs than ſix Inches in the Felly, and to be without Iron, *&c.* And the *Carts* drawn by two Horſes, after they are up the Hills near the Waterſide, under the Penalty of 40*s.* *Stat.* 1 *Geo.* 1. *c.* 57. In *London* and *Weſtminſter*, *Carts* ſhall not carry more than twelve Sacks of Meal, ſeven hundred and a half of Bricks, one Chalder of Coals, *&c.* on Pain of forfeiting one of the Horſes. 6 *Geo.* 1. *c.* 6. See *Waggons.*

Caruca, (Fr. *Charrue*) A Plough; from the old Gallic *Carr*, which is the preſent *Iriſh* Word for any Sort of wheel'd Carriage: Hence *Charl*, and *Carl*, a Ploughman or Ruſtick. *Vide* Karle.

Carucage, (*Carucagium*) Is a Tribute impoſed on every Plough, for the Publick Service: And as *Hidage* was a Taxation by Hides, ſo *Carucage* was by Carucates of Land. *Mon. Angl. Tom.* 1. *f.* 294.

Carucate, or **Carve of Land,** (*Carucata Terræ*) A Plough-Land; which in a Deed of *Thomas de Arden*, 19 *Edw.* 2. is declared to be One hundred Acres, by which the Subjects have ſometimes been taxed; whereupon the Tribute ſo levied was called *Carvagium*, or *Carucagium*. *Bract. lib.* 2. *cap.* 26. But *Skene* ſays, it is as great a Portion of Land as may be tilled in a Year and a Day by one Plough; which alſo is called *Hilda*, or *Hida terræ*, a Word uſed in the old *Britiſh* Laws. And now by Statute 7 & 8 *W.* 3. a Plough-Land, which may contain Houſes, Mills, Paſture, Meadow, Wood, *&c.* is 50*l.* *per Annum.* *Littleton*, in his Chapter of Tenure in Socage, ſaith, that Soca *idem eſt quod* Carucata, a Soke or Plough Land are all one. *Stow* ſays, King *Hen.* 3. took *Carvage*, that is, two Marks of Silver of every Knight's Fee, towards the Marriage of his Siſter *Iſabella* to the Emperor. *Stow*'s *Annals*, *pag.* 271. And *Raſtal*, in his Expoſition of Words, tells us, *Carvage* is to be quit, if the King ſhall tax all the Lands by *Carves*; that is, a Privilege whereby a Man is exempted from *Carvage*. The Word *Carve* is mentioned in the Stat. 28 *Ed.* 1. of Wards and Reliefs, and in *Magna Charta*, *c.* 5. And *Anno* 1200. *Facta eſt Pax inter* Johannem *Regem* Angliæ & P. *Regem* Franciæ, *&c. Et mutuavit Regi* Franciæ 30 *Millia Marcarum, pro quibus collectum eſt* Carvagium *in* Anglia *ſil.* 111*s.* *pro quolibet aratro* Ex Reg. Priorat. de Dunſtable in Bibl. Cotton. See *Co. Lit.* 69. and *Kennet's Gloſſ.*

Carucatarius, He that held Lands in *Carvage*, or Plough-Tenure. *Paroch. Antiq. p.* 354.

Caſſatum and **Caſſata**, By the *Saxons* called *Hide*; by *Bede*, *Familia*, is a Houſe with Land ſufficient to maintain one Family; *Rex Ang. Ethelred, de* 310. Caſſatis, *unum trierem*, &c. Hoveden Anno 1008. And *Hen. Huntingdon*, mentioning the ſame Thing, inſtead of *Caſſata* writes *Hilda*.

Caſhlite, A *Saxon* Word ſignifying a Mulct. *Blount.*

Caſſidile, Is a little Sack, Purſe, or Pocket.—— *Protulit in* Caſſidili *toxicum mellitum.* Mat. Weſtm.

Caſk, An uncertain Quantity of Goods; and of Sugar contains from eight to eleven hundred Weight. There are alſo *Caſks* for Liquors, of divers Contents; and none ſhall tranſport any Wine *Caſk*, &c. except for victualling Ships under a certain Penalty, by Stat. 35 *Eliz.*

Caſſock, or **Caſſula**, A certain Garment belonging to the Prieſt, *quaſi minor Caſſa.* See *Taſſale.*

Caſtel, or **Caſtle**, (*Caſtellum*) Is well known to be a Fortreſs in a Town; and with us is a Principal Manſion of a Nobleman. In the Time of *H.* 2. there were in *England* 1115 *Caſtles*; and every *Caſtle* contained a Manor: But during the Civil Wars in this Kingdom, theſe *Caſtles* were demoliſhed, ſo that there is generally only the Ruins or Remains of them at this Day. 2 *Inſt.* 31.

Caſtellain, (*Caſtellanus*) The Lord Owner, or Captain of a *Caſtle*, and ſometimes the Conſtable of a fortified Houſe. *Bract. lib.* 5. *tract.* 2. *c.* 16. 3 *Ed.* 1. *cap.* 7. It hath likewiſe been taken for him that hath the Cuſtody of one of the *King's* Manſion-*Houſes*, called by the Lombards *Curtes*, in Engliſh *Courts*; though they are not *Caſtles* or Places of Defence. 2 *Inſt.* 31. And *Manwood* in his *Foreſt-Laws*, ſays there is an Officer of the Foreſt called *Caſtellanus.*

Caſtellarium, **Caſtellarii**, The Precinct or Juriſdiction of a *Caſtle.*——*Et unum Toftum juxta* Caſtellarium. *Mon. Ang. Tom.* 2. *f.* 402.

Caſtellorum Operatio, Caſtle-work, or Service and Labour done by inferior Tenants, for the Building and Upholding of *Caſtles* of Defence; toward which ſome gave their perſonal Aſſiſtance, and others paid their Contribution. This was one of the three neceſſary Charges, to which all Lands among our *Saxon* Anceſtors were expreſly ſubject. —— *Liberi ab omni ſervitio, excepta trinoda neceſſitate; Pontis*, &c. *Arcis conſtructione*, & *expeditione contra hoſtem*——And after the Conqueſt an Immunity from this Burden was ſometimes granted: As King *Hen.* 2. granted to the Tenants within the Honour of *Wallingford*——*Ut ſint quieti de* Operationibus Caſtellorum. *Paroch. Antiq. pag.* 114. It was unlawful to build any Caſtle without Leave of the King, which was called *Caſtellatio: Hæc mittant hominem in Miſericordia Regis, viz. Infractio pacis, Infidelitas & proditio, deſpectus de eo*, Caſtellatio *ſine Licentia.* Du Freſne.

Caſtle-ward, (*Caſtelgardum, vel Wardum Caſtri*) An Impoſition laid upon ſuch Perſons as dwell within a certain Compaſs of any *Caſtle*, towards the Maintenance of ſuch as Watch and Ward the *Caſtle. Magn. Chart. cap.* 20. 32 *Hen.* 8. *cap.* 48. It is ſometimes uſed for the Circuit itſelf, which is inhabited by thoſe that are ſubject to this Service. *Caſtle-guard Rents* were paid by Perſons dwelling within the Liberty of any *Caſtle*, for the Maintaining of Watch and *Ward* in the ſame. *Stat.* 22 & 23 *Car.* 2.

Caſter, and **Cheſter**: The Names of Places ending in theſe Words, are derived from the Lat. *Caſtrum*; for this Termination at the End, was given by the *Romans* to thoſe Places where they built *Caſtles.*

Caſu Conſimili, Is a Writ of Entry, granted where Tenant by the Curteſy, or Tenant for Life, aliens in Fee or in Tail, or for another's Life; And is brought by him in Reverſion againſt the Party to whom ſuch Tenant ſo aliens to his Prejudice, and in the Tenant's Life-time. It takes its Name from this; that the Clerks of the Chancery did, by their common Aſſent, frame it to the *Likeneſs* of the Writ called *In caſu Proviſo*, according to the Authority given them by the Stat. *Weſtm.* 2. *cap.* 24. which Statute, as often as there happens a new Caſe in Chancery ſomething like a former, yet not ſpecially fitted by any Writ, authorizes them to frame a new Form anſwerable to the new Caſe, and as *like* the former as they may. 7 *Rep.* 4. See *Fitz. Nat. Br. fol.* 206.

Caſu Proviſo, A Writ of Entry given by the Statute of *Glouceſter*, *cap.* 7. where a Tenant in Dower aliens in Fee, or for Life, &c. and lies for him in Reverſion againſt the Alienee. *Fitz. N B.* 205. This Writ and the Writ of *Caſu Conſimili* ſuppoſes the Tenant to have aliened in Fee, though it be for Life only: And a *Caſu Proviſo* may be without making any Title in it, where a Leaſe is made by the Demandant himſelf to the Tenant that doth alien; but if an Anceſtor leaſe for Life, and the Tenant alien in Fee, &c. the Heir in Reverſion muſt have this Writ with the Title included therein. *F. N. B.* 206, 207.

Caſus Omiſſus, Is where any particular Thing is omitted out of, and not provided againſt by a Statute, &c.

Catals, *Catalla*, Goods and Chattels. See *Chattels.*

Catallis captis nomine Diſtrictionis, Is a Writ that lies where a Houſe is within a Borough, for Rent going out of the ſame; and warrants the Taking of Doors, Windows, &c. by Way of Diſtreſs for the Rent. *Old. Nat. Br* 66.

Catallis Reddendis, A Writ which lieth where Goods being delivered to any Man to keep 'till a certain Day, are not upon Demand delivered at the Day. It may be otherwiſe called a *Writ of Detinue:* And is anſwerable to *Actio depoſiti* in the Civil Law. See *Reg. Orig.* 139. and *Old Nat. Br.* 63.

Catapulta, A warlike Engine to ſhoot Darts: But 'tis rather taken for a Croſs bow. —— Edmundus Willoughby *tenet unum Meſſuagium & ſex Bovatas terræ in* Carleton *ut de Manerio de* Shelford *per ſervitium unius* Catapultæ *per Annum pro omni ſervitio.* Lib. Schedul. de Term. Mich. 14 H. 4. Notr. fol. 210.

Cataſcopus. This Word ſignifies an Archdeacon: Adulfe Herefordenſis *Eccleſiæ* Cataſcopus. *Du Cange.*

Catchland, In *Norfolk* there are ſome Grounds which it is not known to what Pariſh they certainly belong, ſo that the Miniſter who firſt ſeizes the Tithes, does by that Right of Pre-occupation enjoy them for that Year: And the Land of this dubious Nature, is there called *Catchland*, from this Cuſtom of ſeizing the Tithes. *Cowel.*

Catchpole, (*quaſi* one that *catches* by the *Poll*) See *Cachepollus.*

Cathedral, (*Eccleſia Cathedralis*) Is the Church of the Biſhop, and Head of the Deoceſe: Wherein the Service of the Church is performed with great Ceremony. Statutes uſed in the Government of *Cathedral* and Collegiate Churches ſince the Reſtauration, &c. to be good and valid: But her Majeſty might alter, or make new Statutes for ſettling the Viſitation of them. *Stat.* 6 *Ann. cap.* 21.

Cathedratick, (*Cathedraticum*) Is a Sum of 2 *s.* paid to the Biſhop by the inferior Clergy, *in Argumentum ſubjectionis & ob honorem* Cathedræ. *Hiſt. Procurat. & Synodals, pag.* 82.

Catzurus, A Hunting Horſe———Willielmus Fitz-Alan *dat Regi duos bonos* Catzuros, *pro habendis duabus Feriis apud* Norton. *Tenures, pag.* 68. Vide *Chacurus.*

Cattle, Shall be bought in open Fair or Market, and not ſold again in the ſame Market on Pain of

Forfeiture. 3 & 4 *Ed.* 6. *c.* 19. None may buy any *Cattle*, and ſell them again alive, until he hath fed them five Weeks in his own Ground, or where he hath Common, upon Pain to forfeit double the Value, by Stat. 5 & 6 *Ed.* 6. *c.* 14. Farmers, Graziers, &c. may not have or keep above 2000 Sheep, accounting 120 to the Hundred, on Pain of 3 *s.* 4 *d.* for every Sheep: And he that keeps above 120 Sheep, or 20 Beaſts upon any Paſture Ground, proper for Milch Kine, and not commonable, ſhall yearly for every 60 Sheep or 10 *Cattle* keep one Milch Cow, and bring up one Calf, &c. under the Penalty of 20 *s.* *Stat.* 25 *H.* 8. 2 & 3 *P.* & *M.* *c.* 3. No *Cattle* may be imported, dead or alive, but ſhall be liable to Forfeiture: But Horſes, Cows, Swine, &c. may be tranſported, paying the Duties. 18 *Car.* 2. *cap.* 2. 22 *Car.* 2. *cap.* 13. Factors ſhall not buy *Cattle*, other than Swine or Calves, within 80 Miles of *London*, under Penalties; and Drovers of *Cattle* are to be licenſed by Juſtices of Peace, &c. 22 & 23 *Car.* 2. 1 *Jac.* 2. The Stealing of Sheep, or any other *Cattle*, or wilfully killing them, with Intent to ſteal their Carcaſſes, is Felony by 14 *Geo.* 2. *c.* 6. See 15 *Geo.* 2. *c.* 34.

Cauda terræ, A Land's End, or the Bottom of a Ridge in Arable Land. *Cartul. Abbat. Glaſton. fol.* 117.

Caveat, Is a Kind of Proceſs in the *Spiritual Court* to ſtop the Inſtitution of a Clerk to a Benefice, or Probate of a Will, &c. When a *Caveat* is entered againſt an Inſtitution, if the Biſhop afterwards inſtitutes a Clerk, it is void; the *Caveat* being a *Superſedeas:* But a *Caveat* has been adjudged void when entred in the Life-time of the Incumbent. A *Caveat* entered againſt a Will, ſtands in Force for three Months; and this is for the Caution of the Ordinary, that he do no Wrong: Though 'tis ſaid the Temporal Courts do not regard theſe Sorts of *Caveats*. 1 Roll. Rep. 191. 1 Nelſ. Abr. 416, 417.

Cavers, Offenders relating to the Mines in *Derbyſhire*, who are puniſhable in the *Berghmote* or Miners Court.

Caulceis, *Anno* 6 *H.* 6. *cap.* 5. Ways pitched with Flint, or other Stones. See *Calcetum*.

Caurſines, (*Caurſini*) Were *Italians* that came into *England* about the Year 1235, terming themſelves the *Pope's Merchants*, but driving no other Trade than letting out Money; and having great Banks in *England*, they differed little from *Jews*, ſave (as Hiſtory ſays) that they were rather more mercileſs to their Debtors. Some will have them called *Caurſines*, *quaſi*, *Cauſa urſini*, beariſh and cruel in their Cauſes; others *Caurſini*, or *Corſini*, as coming from the Iſle of *Corſica:* But *Cowel* ſays, they have their Name from *Caorſium*, *Caorſi*, a Town in *Lombardy*, where they firſt practiſed their Ats of Uſury and Extortion; from whence ſpreading themſelves, they carried their curſed Trade through moſt Parts of *Europe*, and were a common Plague to every Nation where they came. The then Biſhop of *London* excommunicated them: And King *Hen.* 3. baniſhed them from this Kingdom in the Year 1240. But being the *Pope's* Solicitors and Money Changers, they were permitted to return in the Year 1250, Tho' in a very ſhort Time after, they were driven out of the Kingdom again for their intollerable Exactions. *Matt. Pariſ. pag.* 403.

Cauſa Matrimonii Prælocuti, Is a Writ which lies where a Woman gives Land to a Man in Fee-ſimple, &c. to the Intent he ſhall marry her, and he refuſeth to do it in any reaſonable Time, being thereunto required. *Reg. Orig.* 66. If a Woman makes a Feoffment to a Stranger of Land in Fee, to the Intent to enfeoff her, and one who ſhall be her Husband; if the Marriage ſhall not take Effect, ſhe ſhall have the Writ of *Cauſa Matrimonii prælocuti* againſt the Stranger, notwithſtanding the Deed of Feoffment be abſolute. *New Nat. Br.* 456. A Woman enfeoffed a Man upon Condition that he ſhould take her to Wife, and he had a Wife at the Time of the Feoffment; and afterwards the Woman for not performing the Condition, entered again into the Land, and her Entry was adjudged lawful, tho' upon a ſecond Feoffee. *Lib. Aſſ. Anno* 40 *Ed.* 3. The Husband and Wife may ſue the Writ *Cauſa Matrimonii prælocuti* againſt another who ought to have married her: But if a Man give Lands to a Woman to the Intent to marry him, altho' the Woman will not marry him, &c. he ſhall not have his Remedy by Writ *Cauſa Matrimonii prælocuti*. New Nat. Br. 455.

Cauſam nobis ſignifices, A Writ directed to a Mayor of a Town, &c. who was by the King's Writ commanded to give Seiſin of Lands to the King's Grantee, on his delaying to do it, requiring him to ſhew Cauſe why he ſo delays the Performance of his Duty. 4 *Rep.*

Cauſes and Effects. In moſt Caſes the Law hath Reſpect to the *Cauſe*, or Beginning of a Thing, as the principal Part on which all other Things are founded: And herein the next, and not the remote *Cauſe* is moſt looked upon, except it be in Covinous and Criminal Things: And therefore that which is not good at firſt, will not be ſo afterwards; for ſuch as is the *Cauſe*, ſuch is the *Effect*. *Plowd.* 208, 268. If an Infant or Feme Covert make a Will, and publiſh it, and after die of full Age, or Sole, the Will is of no Force, by Reaſon of the original *Cauſe* of Infancy and Coverture. *Finch* 12. A Lord diſtrains his Tenant for Rent before due, the Tenant may juſtify to make Reſcous, the Lord having no juſt *Cauſe* to diſtrain. *Co Lit.* 106. And if a Man acknowledge a Statute by *Dureſs*, &c. he may have an *Audita Querela* to avoid it. *Fitz. Abr.* 104. Where the *Cauſe* ceaſeth, the *Effect* or Thing will ceaſe: As Wedlock or Matrimony ceaſing, the Dower ceaſes, &c. 1 *Co. Inſt.* 13.

Cautione admittenda, Is a Writ that lies againſt a Biſhop, who holds an excommunicated Perſon in Priſon for Contempt, notwithſtanding he offers ſufficient Caution or Security to obey the Orders and Commandment of Holy Church for the Future. *Reg. Orig.* 66. And if a Man be excommunicated, and taken by a Writ *Significavit*, and after offers Caution to the Biſhop to obey the Church, and the Biſhop refuſeth it; the Party may ſue out this Writ to the Sheriff to go againſt the Biſhop, and to warn him to take Caution, &c. But if he ſtand in Doubt whether the Sheriff will deliver him by that Writ, the Biſhop may purchaſe another Writ, directed to the Sheriff reciting the Caſe, and in the End thereof; *Tibi præcipimus, quod ipſum* A. B. *a Priſona prædict. niſi in præſentia tua cautionem pignorat. ad minus eidem Epiſc. de ſatisfaciend. obtulerit, nullatenus deliberes abſque mandato noſtro, ſeu ipſius Epiſcopi in hac parte ſpeciali*, &c. When the Biſhop hath taken Caution, he is to certify the ſame into the Chancery, and thereupon the Party ſhall have a Writ unto the Sheriff to deliver him. *New Nat. Br.* 142.

Ceapgilde, A Word derived from the Sax. *Ceap*, Signifying *Pecus*, Cattle; and *Gild*, *i. e. ſolutio*; and hence it is *ſolutio Pecudis:* From this *Saxon* Word *Gild*, 'tis very probable we have our *Engliſh* Word *Yield*; as Yield, or Pay. *Cowel.*

Celer Lecti, is the Top, Head, or Teſter of a Bed.——*Dedit ad Cameram Prioris unum* Lectum *cum celere* & *Curtenis blodei coloris.* Hiſt. Elien. apud Whartoni Angl. Sac. par. 1. p. 673.

Cellerarius, the Butler in a Monaſtery: In the Univerſities they are ſometimes called *Manciple*, and Sometimes *Caterer*, and Steward.

Cendulæ, Small Pieces of Wood laid in Form of Tiles, to cover the Roof of a Houſe. —— *Mandatum ad* Cendulas & *lattas noſtras cariandas de Parco ad Domus reficiendas.* Pat. 4 Hen. 3. p. 1. m. 10.

Cenegild, This is an expiatory Mulct, paid by one who killed another, to the Kindred of the Deceaſed. *Spelm.*

Cenellæ, Acorns, from the Oak, in our old Writings, *Peſſona Cenellarum* is put for the Pannage of Hogs, or running of Swine, to feed on Acorns.

Cenninga, Was Notice given by the Buyer to the Seller, that the Thing ſold was claimed by another, that he might appear and juſtify the Sale: It is mentioned in the Laws of *Athelſtan apud Brompton, cap.* 4.

Cenſaria, A Farm, or Houſe and Land, let *ad Cenſam*, at a ſtanding Rent: It comes from the Fr. *Cenſe*, which ſignifies a Farm.——Henricus Sturmy *tenet Maneria in Com.* Wilts. *per ſervitium cuſtodiendi ballivam totius Foreſtæ de* Savernake *&* cenſariam, *quæ vocatur* la ferme *in Foreſta prædicta.* Temp. Ed. 3. Tenures, p. 88.

Cenſarii, Farmers.—*Ibi ſunt nunc* 14 Cenſarii, *habentes ſeptem Carucatas.* Blount.

Cenſure, A Cuſtom called by this Name (from the Lat. *Cenſus*, which has been expounded to be a Kind of perſonal Money, paid for every Poll) obſerved in divers Manors in *Cornwal* and *Devon*, where all Perſons reſiding therein above the Age of ſixteen are cited to ſwear Fealty to the Lord, and to pay 11 *d. per* Poll, and 1 *d. per Ann.* ever after; and theſe thus ſworn are called *Cenſers.*——*Item erat quædam Cuſtuma quæ vocatur* Cenſure *proveniens de illis qui manent in Burgo de* Leſtreythiel. Survey of the Dutchy of *Cornwal.*

Centenarii, Were petty Judges under Sheriffs of Counties, that had Rule of an *Hundred*, and judged ſmaller Matters among them. 1 *Vent.* 211.

Ceola, A large Ship. The Word is mentioned in *Malmesbury.* Lib. 1. c. 1.

Cepi Corpus, Is a Return made by the Sheriff, upon a *Capias*, or other Proceſs to the like Purpoſe, that he hath taken the Body of the Party. *F. N. B.* 26.

Ceppagium, The Stumps or Roots of Trees which remain in the Ground after the Trees are felled.——*Qui foreſtarii ceperint coopertiones*, Ceppagia *& Eſchaetas quercuum ſive aliarum arborum, &c.* Fleta lib. 2. cap. 41.

Ceragium, Cerage, a Payment to find Candles in the Church. *Matt. Paris.* See *Waxſcot.*

Certainty, Is a plain, clear and diſtinct ſetting down of Things, ſo that they may be underſtood. 5 *Rep.* 121. A convenient *Certainty* is required in Writs, Declarations, Pleadings, *&c.* But if a Writ abate for want of it, the Plaintiff may have another Writ: 'Tis otherwiſe if a Deed become void by Incertainty, the Party may not have a new Deed at his Pleaſure. 11 *Rep.* 25, 121. *Dyer* 84. That has *Certainty* enough, that may be made certain; but not like what is certain of itſelf. 4 *Rep.* 97. See *Incertainty.*

Certificando de recognitione Stapulæ, Is a Writ commanding the Mayor of the *Staple* to certify to the Lord Chancellor a *Statute-Staple* taken before him, where the Party himſelf detains it, and refuſeth to bring in the ſame. *Reg. Orig.* 152. There is the like Writ to certify a *Statute-Merchavt*; and in divers other Caſes. *Ibid.* 148, 151, *&c.*

Certificate, Is a Writing made in any Court to give Notice to another Court of any Thing done therein, which is uſually by way of Tranſcript, *&c.* And ſometimes it is made by an Officer of the ſame Court, where Matters are referred to him, or a Rule of Court is obtained for it; containing the Tenor and Effect of what is done. The Clerks of the Crown, Aſſize and Peace, are to make *Certificates* into *B. R.* of the Tenor of Indictments, Convictions, *&c.* under Penalties, by the Stat. 34 & 35 *Hen.* 8.

Certification of Aſſiſe of Novel Diſſeiſin, (*Certificatio Aſſiſæ Novæ Diſſeiſinæ, &c.*) Is a Writ granted for the Re-examining of a Matter paſſed by *Aſſiſe* before Juſtices: And this is uſed where a Man appearing by his Bailiff to an *Aſſiſe* brought by another hath loſt the Day; and having ſomething more to plead for himſelf, which the Bailiff did not, or might not plead for him, deſires a farther Examination of the Cauſe, either before the ſame Juſtices, or others, and obtains Letters Patent to them to that Effect; whereupon, he brings a Writ to the Sheriff to call both the Party for whom the *Aſſiſe* paſſed, and the Jury that was impannelled on the ſame, before the ſaid Juſtices at a certain Day and Place, when the ſame is to be examined: And it is called a *Certificate*, becauſe therein Mention is made to the Sheriff, that upon the Party's Complaint of the defective Examination, as to the *Aſſiſe* paſſed, the King hath directed his Letters Patent to the Juſtices for the better *Certifying* of themſelves, whether all Points of the ſaid *Aſſiſe* were duly examined. *Reg. Orig.* 200. *F. N. B.* 181. *Bracton, lib.* 4. *c.* 13. *Horn's Mirr. lib.* 3.

Certiorari, A Writ iſſuing out of the *Chancery* to an inferior Court, to call up the Records of a Cauſe there depending, that Juſtice may be done therein, upon Complaint that the Party who ſeeks the ſaid Writ hath received hard Uſage, or is not like to have an indifferent Trial in the ſaid Court. *Fitz. N. B. fol.* 242. This Writ is either returnable in the King's Bench, and then hath theſe Words, *Nobis mittatis*; or in the *Common Bench*, and then has *Juſticiariis noſtris de Banco*; or in the Chancery, and then hath *in Cancellaria noſtra, &c.* A *Certiorari* iſſues ſometimes out of Chancery, and ſometimes out of the King's Bench, and lies where the King would be certified of a Record, in any Court of Record; and the King may ſend ſuch Writ to any of the ſaid Courts, to certify ſuch Record before him *in Banco*, or in the Chancery, or before ſuch other Juſtices, where he pleaſes to have the ſame certified. *F. N. B.* 245. *Certiorari* lies to the Courts of *Wales*; and to the Cinque Ports, Counties Palatines, *&c.* 2 *Hawk. P. C.* 287. Indictments from inferior Courts, and Proceedings of the Quarter-Seſſions of the Peace, *&c.* may be removed into *B. R.* by *Certiorari*: And 'tis ſaid a *Certiorari* to remove an Indictment is good, although it bear Date before the Taking thereof: But on a *Certiorari* the very Record muſt be returned, and not a Tranſcript of it; for if ſo, then the Record will ſtill remain in the inferior Court, 2 *Lill.* 253. In *B. R.* the very Record itſelf of Indictments, is removed by *Certiorari*; but uſually in Chancery, if a *Certiorari* be returnable there, it removes only the Tenor of the Record, and therefore if it be ſent from thence into the King's Bench, they cannot proceed either to Judgment or Execution, becauſe they have but ſuch Tenor of the Record before them. 2 *Hale's Hiſt. P. C.* 215. And altho' on a *Habeas Corpus* to remove a Perſon, the Court may bail or diſcharge the Priſoner; they can give no Judgment upon the Record of the Indictment againſt him, without a *Certiorari* to remove it, but the ſame ſtands in Force as it did, and new Proceſs may iſſue upon it: But 'tis otherwiſe in Civil Cauſes. *Ibid.* 211. If an Indictment be one, but the Offences ſeveral, where four Perſons are indicted together; a *Certiorari* to remove this Indictment againſt two of them, removes it not as to the others, but as to them the Record remains below. 2 *Hale's Hiſt.* 214. Where a *Certiorari* is by Law grantable for an Indictment, at the Suit of the King, the Court is bound to award it, for it is the King's Prerogative to ſue in what Court he pleaſes: But it is at the Diſcretion of the Court to grant it or not, at the Prayer of the Defendant: And the Court will not grant it for the Removal of an Indictment before Juſtices of Gaol-Delivery, without ſome ſpecial Cauſe; or where there is much Difficulty in the Caſe; that the Judge deſire it may be determined in *B. R. &c.* Alſo Indictments of Perjury, Forgery, or for heinous Miſdemeanors, the Court will not grant a *Certiorari* to remove at the Inſtance of the Defendant. 2 *Hawk. P. C.* 287. Where Iſſue is joined in the Court below, it is a good Objection againſt Granting a *Certiorari:* And if a Perſon doth not make uſe of this Writ till the Jury are ſworn, he loſes the Benefit of it. *Mod. Ca.* 16. *Stat.* 43 *Eliz. c.* 5. After Conviction, a *Certiorari* may not be had to remove an Indictment, *&c.* unleſs there be ſpecial Cauſe; as if the Judge below is doubtful what Judgment is proper to be given, when it may: And after Conviction, *&c.* it lies in ſuch Caſes where Writ of Error will not lie. 1 *Salk.* 149. The Court on Motion in an extraordinary Caſe will grant a *Certiorari* to remove a Judgment given in an inferior Court; but this is done where the ordinary Way of taking out Execution is hindred in the inferior Court 1 *Lill. Ab.* 253. In common Caſes a *Certiorari* will not lie to remove a Cauſe out of an inferior Court, after Verdict. It is never ſued out after a Writ of Error, but where Diminution is alledged: And when the Thing in Demand doth not exceed 5 *l.* a *Certiorari* ſhall not be had, but a Writ of Error or Attaint. *Stat.* 21 *Jac.* 1. *cap.* 23. A *Certiorari* is to be granted on Matter of Law only: And in many Caſes there muſt be a Judge's Hand for it. 1 *Lill.* 252. *Certiorari's* to remove Indictments, *&c.* are to be ſigned by a Judge: And to remove Orders, the *Fiat* for making out the Writ, muſt be ſigned by ſome Judge. 1 *Salk.* 150 In Vacation Time, a *Certiorari* may be granted by any of the Judges of *B. R.* and Security is to be found before it is allowed. By Statute no *Certiorari* is to be granted out of *B. R* to remove an Indictment before Juſtices of Peace at the Seſſions, before Trial, unleſs Motion be made in open Court, and the Party indicted find Security by two Perſons in 20 *l.* each to plead to the Indictment in *B. R. &c.* And if the Defendant proſecuting the *Certiorari* be convicted, the Court of *B. R.* ſhall order Coſts to the Proſecutor of the Indictment. *Stat.* 5 *&* 6 *W. & M. cap.* 11. If on a *Certiorari* to remove an Indictment, the Party do not find Manucaptors in the Sum of 20 *l.* to plead to the Indictment, and try it, according to the Statute, it is no *Superſedeas. Mod. Ca.* 33. And a *Procedendo* may be granted where Bail is not put in before a Judge, on a *Certiorari.* It has been ruled that a *Certiorari* ought not to be granted to remove any Order of Juſtices, where an Appeal lies to the Seſſions, before the Matter is determined on the Appeal. 1 *Salk.* 147. Yet *Certiorari* lies to Juſtices of Peace, *&c.* even in Caſes where they are impowered by Statute finally to hear and determine. 1 *Mod.* 44. But Things may not be removed from before Juſtices of Peace, which cannot be proceeded in by the Court where removed; as in Caſe of refuſing to take the Oaths, *&c.* which is to be certified and inquired into, according to the Statute. 1 *Salk.* 145. And where the Court which awards the *Certiorari* cannot hold Plea on the Record, there but a Tenor of the Record ſhall be certified; for otherwiſe if the Record was removed into *B. R.* as it cannot be ſent back, there would be a Failure of Right afterwards. 1 *Danv Abr.* 792. But a Record ſent by *Certiorari* into B. R. may be ſent after by *Mittimus* into *C. B. Ibid.* 789. And a Record into *B. R.* may be certified into Chancery, and from thence be ſent by *Mittimus* to an inferior Court; where an Action of Debt is brought in the inferior Court, and the Defendant pleads that the Plaintiff hath recovered in *B. R.* and the Plaintiff replies *Nul tiel Record, &c.* 1 *Saund.* 97, 99. If a *Certiorari* be prayed to remove an Indictment out of *London*, or *Middleſex*, three Days Notice muſt be given the other Side, or the *Certiorari* ſhall not be granted. *Raym.* 74. The Court of *B. R.* will grant a new *Certiorari* to affirm a Judgment, *&c.* Though generally one Perſon can have but one *Certiorari. Cro. Jac.* 369. Returns of *Certiorari's* are to be under Seal: And the Perſon to whom a *Certiorari* is directed, may make what Return he pleaſes, and the Court will not ſtop the Filing of it, on *Affidavits* of its Falſity, except where the Publick Good requires it: The Remedy for a falſe Return, is Action on the Caſe, at the Suit of the Party injured; and Information, *&c.* at the Suit of the King. 2 *Hawk. P. C.* 295. A *Certiorari* being once delivered, makes all ſubſequent Proceedings on the Record erroneous; whether the Proceedings are before or after its Return. It is ſaid the Lord Chancellor, or any Judge of the Courts of Record *at Weſtminſter*, may bring a Record to one another, without a *Certiorari*; but not a Judge of an inferior Court, *&c.* 1 *Nelſ.* 417, 418. A *Certiorari* may be had to inferior Courts; but not to a Court Superior, or that has equal Juriſdiction, in which Caſe Day is given to bring in the Record, *&c.* And on a *Certiorari* to remove a Record out of an inferior Court, the Stile of their Court, and Power to hold Plea, and before whom, ought to be ſhewn on their Certificate. *Jenk. Cent.* 114, 232. If a Cauſe be removed from an inferior Court by *Certiorari*, the Pledges in the Court below are not diſcharged; becauſe a Defendant may bring a *Certiorari*, and thereby the Plaintiff may loſe his Pledges. *Skin. Rep.* 244, 246.

Form of a *Certiorari* to certify the Record of a Judgment.

GEORGE *the Second,* &c. *to the Mayor and Sheriffs of our City of* E. *and to every of them, in our Court at the Guildhall there, Greeting: Whereas* A. B. *hath lately in our ſaid Court of the ſaid City, according to the Cuſtom of the ſame Court, impleaded* C. D. *late of,* &c. *in an Action of Debt upon Demand of Thirty Pounds; and thereupon in our ſaid Court before you, obtained Judgment againſt the ſaid* C. *for the Recovery of the ſaid Debt: And we being deſirous for certain Reaſons, that the ſaid Record ſhould by you be certified to us, do Command you, that you ſend under your Seals the Record of the ſaid Recovery, with all Things touching the ſame, into our Court before us at* Weſtminſter, *on the Day,* &c. *plainly and diſtinctly, and in as full and ample Manner as it now remains before you, together with this Writ; ſo that We on the Part of the ſaid* A. *may be able to proceed to the Execution of the ſaid Judgment, and do what ſhall appear to us of Right ought to be done. Witneſs,* &c.

Cert-Money, (*quaſi* certain *Money*) Is Head-*Money*, paid yearly by the Reſiants of ſeveral Manors to the Lords thereof, for the *certain* Keeping of the Leet; and ſometimes to the Hundred: As the Manor of *Hook* in *Dorſetſhire*, pays *Cert-Money* to the Hundred of *Egerdon*. In antient Records this is called *Certum Letæ.* See *Common Fine.*

Cerviſarii. The *Saxons* had a Duty called *Drinclean*, that is *retributio Potus*, payable by their Tenants; and ſuch Tenants were in *Domeſday* called *Cerviſarii*, from *Cerviſia*, Ale, their chief Drink: Tho' *Cerviſarius* vulgarly ſignifies a Beer or Ale Brewer.

Cerura, A Mound, Fence, or Incloſure —— Willielmus *de* Lucy *Miles, dedit* Thomæ S. *Miniſtro Domus de* Thelesford, *licentiam Domos & portas levare, ædificare, & cum* Ceruris *& Muris includere, &c.* Cart. priorat. de Thelesford MS.

Ceſſat Executio. In Treſpaſs againſt two Perſons, if it be tried and found againſt one, and the Plaintiff takes his Execution againſt him, the

Writ will abate as to the other; for there ought to be a *Ceſſat Executio* 'till it is tried againſt the other Defendant. 10 *Ed.* 4. 11. See *Execution*, &c.

Ceſſavit, Is a Writ that lies in divers Caſes, upon this general Ground, that he againſt whom it is brought, hath for two Years neglected to perform ſuch Service, or to pay ſuch a Rent, as he is tied to by his Tenure, and hath not upon his Lands or Tenements ſufficient Goods or Chattels to be diſtrained. *F. N. B.* 280. And if a Tenant for Years of Land at certain Rent, ſuffers the Rent to be behind two Years, and there is no ſuch Diſtreſs to be had upon the Land; then the Landlord ſhall recover the Land: But if the Tenant come into Court before Judgment given, and tender the Arrearages and Damages, and find Security that he ſhall ceaſe no more in Payment of the Rent, then the Tenant ſhall not loſe his Land. *Terms de Ley* 107. By Statute, if a Fee-Farmer ceaſe to pay his Rent two Years, the Leſſor may have a *Ceſſavit*, and recover the Land: And in this Caſe, the Heir of the Demandant may maintain a *Ceſſavit* againſt the Heir or Aſſign of the Tenant. 6 *Ed.* 1. *cap.* 4. But in other Caſes, the Heir may not bring this Writ for Ceſſure in the Time of his Anceſtor: And it lies not but for annual Service, Rent, and ſuch like; not for Homage or Fealty. If a Man ceaſe to pay his Rent and Services for two Years, and incloſe the Land, ſo as the Lord cannot diſtrain, if he lay not open the Gates or Hedges of the Land which make the Incloſure, the Lord ſhall have a *Ceſſavit*, although the Tenant hath ſufficient Cattle upon the Land to be diſtrained for the Rent: For the Land ought to be open, and likewiſe there ſhould be ſufficient to diſtrain for the Rent, &c. And where the Tenant ſuffereth the Land to lie freſh, not occupied for two Years together, it is ſaid this Writ will lie. *New Nat. Br.* 463, 464. The Lord ſhall have a Writ of *Ceſſavit* againſt Tenant for Life, where the Remainder is over in Fee to another: But the Donor of an Eſtate-tail ſhall not have a *Ceſſavit* againſt the Tenant in Tail: Tho' if a Man make a Gift in Tail, the Remainder over in Fee to another, or to the Heirs of the Tenant in Tail, there the Lord of whom the Lands are holden *immediate*, ſhall have a *Ceſſavit* againſt the Tenant in Tail, becauſe that he is Tenant to him, &c. *Ibid.* If the Lord diſtrains pendant the Writ of *Ceſſavit* againſt his Tenant, the Writ ſhall abate. The *Writ Ceſſavit* is directed to the Sheriff, *To command* A. B. *that*, &c. *he render to* C. D. *one Meſſuage, which he holds by certain Services, and which ought to come to the ſaid* C. *by Force of the Statute*, &c. *becauſe the ſaid* A. *in doing thoſe Services has ceaſed two Years*, &c.

Ceſſavit de Cantaria, Lies where a Man gives Land to any Houſe of Religion or Parſon, to ſay Divine Service, provide Alms for the Poor, &c. If the ſaid Services be not done in two Years, the Donor or his Heirs ſhall have this Writ againſt him that holds the Land thus given, after ſuch Ceſſure. *Stat. Weſtm.* 2. *c.* 41.

Ceſſe, Signifies an *Aſſeſſment*, or Tax, and is mentioned in the Stat. 22 *Hen.* 8. *cap.* 3. *Ceſſe* or *Ceaſſe*, in *Ireland*, is an Exaction of Victuals, at a certain Rate, for Soldiers in Garriſon. *Antiq. Hiberniæ.*

Ceſſion, (*Ceſſio*) A Ceaſing, Yielding up, or Giving over. And is when an Eccleſiaſtical Perſon is created Biſhop, or a Parſon of a Parſonage takes another Benefice, without Diſpenſation, or otherwiſe not qualified, &c. In both Caſes their firſt Benefices are become void, and are in the Law ſaid to be void by *Ceſſion*: And to thoſe Benefices that the Perſon had who was created Biſhop, the King ſhall preſent for that Time, whoever is Patron of them; and in the other Caſe the Patron may preſent. *Cowel.* Not only a Benefice with Cure, may be ſaid to be void by *Ceſſion*, when the Incumbent thereof accepts of another Benefice, but alſo when ſuch Incumbent is made a Biſhop; for thereby all his Eccleſiaſtical Preferments which he had before, whether with, or without Cure, are actually void. *Vaugh.* 19. But it is not the Election of any one to be a Biſhop, and Confirmation thereof, that doth void his former Preferments, until Conſecration be alſo had: And by Diſpenſation of Retainer, a Biſhop may retain ſome, or all of thoſe Preferments he was intitled to before he was Biſhop. *Dyer* 223. The *Ceſſion* on Promotion of a Biſhop, not making an Avoidance in the common Way, and it being by the King's Means that the Livings are void, whoſe Preſentation in ſuch a Caſe is only as it were an Exchange of one Life for another, intitles the King to preſent to thoſe Livings, and as he is Supreme Patron. *Ceſſion* makes a Living void, without any Reſignation, Deprivation, &c.

Ceſſor, (*Lat.*) A Loiterer; but more particularly uſed for him who *ceaſeth*, or neglects ſo long to perform a Duty, as he thereby incurs the Danger of the Law. *Old. Nat. Br.* 136.

Ceſſure, or *Ceſſer*, Is uſed for *ceaſing*, giving over; or departing from. *Stat. Weſtm.* 2. *c.* 1.

Ceſtui que Truſt, Is he who hath a Truſt in Lands or Tenements, committed to him for the Benefit of another. *Anno* 12 *Car.* 2. *cap.* 30. And Lands of *Ceſtui que Truſt* may be delivered in Execution, where any Perſon is ſeiſed in *Truſt* for another. 29 *Car.* 2. If the Perſon intruſted doth not perform his *Truſt*, he is compellable in the Chancery, &c.

Ceſtui que Uſe, (Fr. *Ceſtui a l'uſe de qui*) Signifies him to whoſe *Uſe* any other Man is enfeoffed of Lands or Tenements. 1 *Rep.* 133. Feoffees to *Uſes* were formerly deemed Owners of the Lands; but now the Poſſeſſion is adjudged in *Ceſtui que Uſe*, and without any Entry he may bring Aſſiſe, &c. *Stat.* 27 *Hen.* 8. *Cro. Eliz.* 46. See *Uſe*.

Ceſtui que Vie, Is he for whoſe *Life* any Lands or Tenements are granted. *Perk.* 97. And if Tenant for Term of another's Life dieth, while *Ceſtui que Vie* is living; now, by the Common Law, he that firſt entereth, ſhall hold the Land as Occupant during ſuch other Perſon's Life. 1 *Inſt.* 41, 388. But this is prevented by making Leaſes for the Lives of others to the Leſſees, their Heirs or Executors, during the Life of *Ceſtui que Vie*, &c. And the Stat. 29 *Car.* 2. *cap.* 3. charges ſuch Lands for Debt. See *Occupant*.

Chacea, Is a Station of Game, more extended than a Park, and leſs than a Foreſt: And is ſometimes taken for the Liberty of chaſing or hunting within ſuch a Diſtrict. And according to *Blount* it hath another Signification, *i. e.* The way through which Cattle are drove to Paſture, commonly called in ſome Places a *Drove-Way*; *Ut ſi quis omnino viam obſtruit vel* Chaceam *per quam ingredi ſolet paſturæ*. Bracton lib. 4. c. 44. *Vide* Chaſe.

Chaceare *ad Lepores, vel vulpes*: To hunt Hare or Fox. —— *Licet*, &c. Chaceare *ad Lepores & vulpes in Manerio ſuo de Donham*. Cartular. Abbat. Glaſton. MS. 87.

Chacurus, (from the Fr. *Chaſſeur*) A Horſe for the Chaſe; or rather a Hound or Dog, a Courſer. *Rot.* 7 *Johan*

Chafe, From the Fr. *Chaufer* to heat, whence our *Chafing* Diſh.

Chafewax, An Officer in *Chancery*, that fitteth the *Wax* for ſealing of the Writs, and ſuch other Inſtruments as are there made to be iſſued out: So in *France*, Calefactores ceræ *ſunt, qui Regiis literis in Cancellaria ceram imprimunt*. Coraſius.

Chaffers, Seem to ſignify Wares or Merchandize; and we yet uſe *Chaffering* for buying and ſelling,

ling, tho' I take it to be generally a Kind of bartering of one Thing for another; it is mentioned in the Stat. of 3 *Ed.* 4. *c.* 4.

Chaldron or **Chalder** of Coals, contains thirty-ſix Buſhels heaped up, according to the Buſhel ſealed for that Purpoſe at *Guildhall, London.* Stat. 16 & 17 Car. 2. c. 2.

Chalking. The Merchants of the Staple require to be eaſed of divers new Impoſitions, as *Chalking*, Ironage, Wharfage, *&c. Rot. Parl.* 50 *Ed* 3.

Challenge, *Calumnia* (from the Fr. *Chalenger*) is uſed in the Law for an Exception to Jurors, who are returned to paſs on a Trial. And this *Challenge* to Jurors is either made to the *Array*, or to the *Polls:* To the Array is, when Exception is taken to the whole Number impanelled; and to the Polls is, when ſome one or more are excepted againſt, as not indifferent. *Challenge* to Jurors is alſo divided into *Challenge Principal* or *Peremptory*; and *Challenge per Cauſe, i. e.* upon Cauſe or Reaſon: *Challenge* Principal or Peremptory, is that which the Law allows without Cauſe alledged, or further Examination; as a Priſoner at the Bar, arraigned for Felony, may *Challenge* peremptorily the Number allowed him by Law, one after another, alledging no Cauſe, but his own Diſlike, and they ſhall be put off, and new taken in their Places: But yet there is a Difference between *Challenge* Principal, and *Challenge* Peremptory; this being uſed only in Matters Criminal, and barely without Cauſe alledged; whereas that is in Civil Actions for the moſt part, and by aſſigning ſome ſuch Cauſe of Exception, as being found true the Law allows. *Staundf. P. C.* 124, 157. *Lamb. Eiren. lib.* 4. *cap.* 14. In Treaſon, and Petit Treaſon, the Number of thirty-five Jurors may be peremptorily *challenged*, without ſhewing any Cauſe, in Favour of Life; and in Murder and Felony, twenty: And more may be *challenged* ſhewing Cauſe. 1 *Inſt.* 155. 22 *H.* 8. *cap.* 14. 1 *P. & M. cap.* 10. A Perſon indicted of Treaſon may *challenge* thirty-five of thoſe returned on the Panel of Jurors to try him, without Cauſe ſhewn; and if two or more are to be tried, they may *challenge* ſo many each, but then they are to be tried ſingly, or all may *challenge* that Number in the Whole, and be tried jointly. 3 *Salk.* 81. By the Stat. 3 *Hen.* 7. *c.* 14. In Treaſon for compaſſing to kill the King, *&c.* no *Challenge* ſhall be allowed, but for Malice. If a Priſoner *challenge* peremptorily more than allowed, he is to be dealt with as one ſtanding Mute, *&c.* And ſome Statutes which take away the Benefit of Clergy from Felons, exclude thoſe their Clergy who peremptorily *challenge* more than twenty, whereby they are liable to Judgment of Death. 2 *Hawk. P. C.* 414. 3 & 4 *W. & M. c.* 9. But if the Offence be within the Benefit of the Clergy, the *Challenge* ſhall be over-ruled, and the Party put upon his Trial. The King cannot *challenge* peremptorily in Murder, *&c.* without ſhewing cauſe. *Moor* 595. And by Stat. 33 *E.* 1. if thoſe who proſecute for the King challenge a Juror, they ſhall aſſign the Cauſe; and if they alledge not a good Cauſe, the Inqueſt ſhall be taken. All Peremptory *Challenges* are to be taken by the Party himſelf; and where there are divers *Challenges*, they muſt be taken all at once. But there can be no *Challenge* till the Jury is full; and then the Array is to be *challenged* before one of them is ſworn. *Hob.* 235. Where the King is Party, if the other Side *challenge* a Juror above the Number allowed by Law, he ought to ſhew the Cauſe of his *Challenge* immediately. 1 *Bulſt.* 191. A Defendant ſhall ſhew all Cauſes of *Challenge*, before the King ſhall ſhew any. 2 *Hawk.* 413. And the King ought not to ſhew his Cauſe of *Challenge* before all the Jurors are called over; for if there are enough beſides thoſe *challenged*, there will be no Occaſion to ſhew any Cauſe why he *challenged* the Reſt: But if there are not enough, then he muſt ſhew the Cauſe of his *Challenge. Raym.* 473. There may be a Principal Cauſe of *Challenge* to the Array, and a *Challenge* to the Favour: A Principal Cauſe of *Challenge* is in Reſpect of Partiality or Default of the Sheriff, *&c.* and not in Reſpect of the Perſons returned; and this Partiality in the Sheriff, may be by Reaſon of Kindred, or Affinity to the Plaintiff or Defendant; or if one of the Jury is returned at the Nomination of the Plaintiff or Defendant; if a Knight be not returned, when a Peer is Party, *&c.* 1 *Inſt.* 156, 157. *Challenge* to the Favour is where the Plaintiff or Defendant is Tenant to the Sheriff, or if the Sheriff's Son hath married the Daughter of the Party, *&c.* and is alſo when either Party cannot take any Principal *Challenge*, but ſheweth Cauſe of Favour; and Cauſes of Favour are infinite. But where the King is Party, one ſhall not *challenge* the Array for Favour, though the King may do it. *Wood's Inſt.* 592. Where *Challenge* is to the Favour, by Reaſon of Kindred to the Sheriff, you muſt ſhew how Kin, and then the *Challenge* is good. 1 *Nelſ. Abr.* 423. If one of the Parties is of Affinity to a Juror, the Juror hath married the Plaintiff's Daughter, *&c.* If a Juror hath given a Verdict before in the Cauſe, Matter or Title; if one labours a Juror to give his Verdict; if after he is returned, a Juror eats and drinks at the Charge of either Party; if the Plaintiff, *&c.* be his Maſter, or the Juror hath any Intereſt in the Thing demanded, *&c.* theſe are *Challenges* to the Favour. 2 *Roll. Abr.* 636. *Hob.* 294. If the Juror is convicted and attainted of Treaſon, Felony, Perjury, adjudged to the Pillory, or other Puniſhment, whereby he becomes infamous, or is outlawed, or excommunicate; theſe are all Principal *Challenges:* But in theſe Caſes and others, he that *challengeth*, is to ſhew the Record, if he will have it take Place as a Principal *Challenge*; otherwiſe he muſt conclude to the Favour, unleſs it be a Record of the ſame Court. 1 *Inſt.* 157. A Perſon under Proſecution for any Crime, may before indicted, *challenge* any of the Grand Jury, as being outlawed, *&c.* or returned at the Inſtance of the Proſecutor, or not returned by the proper Officer, *&c.* 2 *Hawk. P. C.* 215. As a Peer ought not to be ſworn on Juries, he may be *challenged:* But a Peer of the Realm tried for Treaſon or Felony, ſhall not *challenge* any of his Peers. *Trials per pais* 130. A Juror may be *challenged* for Defect, as well as for any Crime; as Defect of Birth, where he is an Alien born; of Age, becauſe a Minor; or of Eſtate, for Want of ten Pounds *per Annum* Freehold, *&c.* in the ſame County, or a Taleſman five Pounds a Year, by Stat. 4 & 5 *W. & M. c.* 24. In Corporation Towns Freemen worth forty Pounds in Goods, are qualified to be Jurors for trying of Felonies. *Stat.* 23 *Hen.* 8. But on Trials in *London* for High Treaſon, every Juror ought to have ſuch Freehold, *&c.* as is required by 4 & 5 *W. & M.* And common Jurors there, are to have Lands or Goods of One hundred Pounds value, *&c.* by Stat. 3 *Geo.* 2. A Principal *Challenge*, being found true, is ſufficient without leaving it to Triers: But if ſome of a Jury are *challenged* for Favour, they ſhall be tried by the Reſt of the Jury, whether indifferent. 1 *Inſt.* 158. And where a *Challenge* is made to the Array, the Court appoint two Triers, who are ſworn, and then the Cauſe of Favour is ſhewed to them, which may be called the Iſſue they are to try; and if 'tis proved, then they give their Verdict that they are not indifferently impanelled, and this is entered of Record: But if the Favour is not proved, then they ſay that the Jury was indifferently impanelled, and ſo the Trial goes on, without making any Entry of the Matter. 1 *Bulſt.* 114. If one take a Principal *Challenge* againſt a Juror, he cannot afterwards *challenge* that Juror for Favour, and wave his former *Challenge:* But a *Challenge* may be made to the Polls, after made to the Array. *Wood* 592. A new Jury is to be impanelled by the Coroner, where the Array is quaſhed for Partiality, *&c.* of the Sheriff. If there be Cauſe of *Challenge* againſt the Sheriff, the Proceſs is to be directed to the Coroners; and if there is Cauſe of *Challenge* againſt them, the Court will appoint certain Eliſors, againſt whoſe Return no *Challenge* can be taken to the Array, though it may be to the Polls. *Trials per pais* 15. If a Plaintiff or Defendant have Action of Battery, *&c.* againſt the Sheriff, or the Sheriff againſt them, it is Cauſe of *Challenge:* And if either of the Parties have Action of Debt againſt the Sheriff; or if the Sheriff hath any Parcel of Land depending on the ſame Title as the Parties; or if he, or his Bailiffs who returned the Jury, be under the Diſtreſs of either Party, *&c.* Theſe are good Cauſes of *Challenge. Ibid.* 154. Where one of the Jurors hath a Suit of Law depending with the Plaintiff, tis good *Challenge. Stile* 129. An Action depending betwixt either of the Parties and a Juror, implying Malice, is Cauſe of *Challenge:* And a Juror may be *challenged* for holding Lands by the ſame Title as the Defendant. 2 *Leon.* 40. If a Perſon owes Suit of Court, *&c.* to a Lord of a Hundred who is Plaintiff, it is a Principal *Challenge*, as he is within the Diſtreſs of the Plaintiff. *Dyer* 176. But it is ſaid to be no *Challenge* that a Perſon is in Debt to either Party. 1 *Nelſ. Abr.* 426. A Juror returned by a wrong Name, may be *challenged* and withdrawn, ſo that the Jury ſhall not be taken; yet a *Tales* may be granted. 1 *Lill. Abr.* 260. And if a Juror declares the Right of either of the Parties, *&c.* it is Cauſe of *Challenge:* Though it hath been ruled that it is not ſufficient Cauſe of *Challenge*, that a Juror delivered his Opinion touching the Title of the Land in Queſtion; becauſe his Opinion may be altered on hearing the Evidence. *Paſch.* 23 *Car. B. R.* If there are two Demandants in a real Action, or two Tenants, and one *challenge* a Juror, and the other will not, the Juror (the *Challenge* being allow'd) ſhall be drawn againſt the Reſt. 11 *H.* 6. 15. *Jenk. Cent.* 114. To ſay of a Perſon to be tried for any Crime, that *he is Guilty, or will be hanged*, *&c.* is good Cauſe of *Challenge*; but the Priſoner muſt prove it by Witneſſes, and not out of the Mouth of the Juryman, who may not be examined: And tho' a Juryman may be asked upon a *Voire dire* whether he hath any Intereſt in the Caſe, or whether he hath a Freehold, *&c.* yet a Juryman, or a Witneſs, ſhall not be examined, whether he hath been convict of Felony, or guilty of any Crime, *&c.* which would make a Man diſcover that of himſelf which tends to make him infamous, and the Anſwer might charge him with a Miſdemeanor. 1 *Salk.* 153. Default of Hundredors is Cauſe of *Challenge* by the Common Law; but by Statute 4 & 5 *Ann. cap.* 16. every *Venire facias* for Trial of Iſſues in any Court of Record, ſhall be awarded of the Body of the proper County; though this extends only to Civil Cauſes, and not to Appeals of Felony, Indictments, *&c.* In a Writ of Right, four Knights were returned; they muſt appear with their Swords, or it will be good Cauſe of *Challenge. Moor* 67. If one *challenge* a Juror, and the *Challenge* is entered, he may not afterwards have him ſworn on the Jury. And if the Defendant do not appear at the Trial when called, he loſeth his *Challenge* to the Jurors, tho' he afterwards appear. 1 *Lill. Abr.* 259. When the Jury appear at a Trial, before the Secondary calls them to be ſworn, he bids the Plaintiff and Defendant to attend their *Challenges*, *&c.* See *Jury*.

Chamberdekins, or *Chamber Deacons*, were certain poor *Iriſh* Scholars, cloathed in mean Habit, and living under no Rule; baniſhed *England* by Stat. 1 *Hen.* 5. *cap.* 7, 8.

Chamberlain, (*Camerarius*) Is variouſly uſed in our Laws, Statutes and Chronicles: As firſt there is *Lord Great* Chamberlain *of England*, to whoſe Office belongs the Government of the Palace at *Weſtminſter*, and upon all ſolemn Occaſions the Keys of *Weſtminſter-Hall*, and the Court of Requeſts are delivered to him: He diſpoſes of the Sword of State to be carried before the King when he comes to the Parliament, and goes on the Right Hand of the Sword next to the King's Perſon: He has the Care of providing all Things in the Houſe of Lords in Time of Parliament; to him belongs Livery and Lodgings in the King's Court, *&c.* And the Gentleman Uſher of the Black Rod, Yeoman Uſher, *&c.* are under his Authority. The *Lord* Chamberlain *of the Houſhold* has the Overſight and Government of all Officers belonging to the King's Chamber, (except the Bed chamber, which is under the Groom of the Stole) and alſo of the Wardrobe; of Artificers retained in the King's Service, Meſſengers, Comedians, Revels, Muſick, *&c.* The Serjeants at Arms are likewiſe under his Inſpection; and the King's Chaplains, Phyſicians, Apothecaries, Surgeons, Barbers, *&c.* And he hath under him a *Vice-Chamberlain*, both being always Privy Counſellors. There were formerly *Chamberlains of the King's Courts.* 7 *Ed.* 6. *cap.* 1. And there are *Chamberlains of the Exchequer*, who keep a Controlment of the Pells of *Receipts* and *Exitus*, and have in their Cuſtody the Leagues and Treaties with foreign Princes, many antient Records, the two famous Books of Antiquity called *Domeſday*, and the *Black Book of the Exchequer*; and the Standards of Money, and Weights, and Meaſures are kept by them. There are alſo *Under-Chamberlains* of the Exchequer, who make Searches for all Records in the Treaſury; and are concerned in making out the Tallies, *&c.* The Office of *Chamberlain* of the Exchequer is mentioned in the Stat. 34 & 35 *H.* 8. *cap.* 16. Beſides theſe, we read of a *Chamberlain of North Wales. Stow. pag.* 641. A *Chamberlain of Cheſter*, to whom it belongs to receive the Rents and Revenues of that City; and when there is no Prince of *Wales*, and Earl of *Cheſter*, he hath the Receiving and Returning of all Writs coming thither out of any of the King's Courts. The *Chamberlain of London*, who is commonly the Receiver of the City Rents payable into the Chamber; and hath great Authority in making and determining Rights of Freemen, concerning Apprentices, Orphans, *&c.*

Chambers of the King, (*Regiæ Cameræ*) The Havens or Ports of the Kingdom are ſo called in our antient Records. *Mare Clauſ. fol* 242.

Chambre depinct, Antiently *St. Edward's Chamber*, now called the *Painted Chamber.*

Champarty, or *Champerty*, (from the Fr. *Champ*, a Field, and *Parti* divided, or the Lat. *Campus*, and *Partitio*, becauſe the Parties in *Champerty* agree to divide the Thing in Queſtion) Signifies a Bargain with the Plaintiff or Defendant in any Suit, to have Part of the Land, Debt, or other Thing ſued for, if the Party that undertakes it prevails therein. 1 *Inſt.* 368. This ſeems to have been an ancient Grievance in our Nation; for notwithſtanding the ſeveral Statutes of 3 *Ed.* 1. *cap.* 25. 13 *Ed.* 1. *c.* 49. 28 *Ed.* 1. *cap.* 11. and 33 *Ed.* 1. *&c.* and a Form of a Writ framed to them; yet 4 *Ed.* 3. *cap.* 11. and 33 *Hen.* 8. enacted, That whereas former Statutes provided Redreſs for this Evil in the King's Bench only, from henceforth it ſhould be lawful for Juſtices of the Common Pleas, Juſtices of Aſſiſe, and Juſtices of Peace in their Quarter-Seſſions, to inquire, hear and determine this and ſuch like Caſes, as well at the Suit of the King, as of the Party: And this Offence is puniſhable by Common Law and Statute; the Stat. 33 *Ed.* 1. makes the Offenders liable to three Years Impriſonment, and a Fine at the King's Pleaſure. By the Stat. 28 *E.* 1. *c.* 11. it is ordained, that no Officer, nor any other, ſhall take upon him any Buſineſs in Suit, to have Part of the Thing in Plea; nor none upon any Covenant, ſhall give up his Right to another; and if any do, and be convicted thereof, the Taker ſhall forfeit to the King ſo much of his Lands and Goods as amounts to the Value of the Part purchaſed, &c. for ſuch Maintenance. In the Conſtruction of theſe Statutes, it hath been adjudged, that under the Word Covenant, all Kinds of Promiſes and Contracts are included, whether by Writing, or Parol: That Rent granted out of Land in Variance, is within the Statute of *Champerty:* And Grants of Part of the Thing in Suit made merely in Conſideration of the Maintenance, are within the Meaning of this Statute; but not ſuch as are made in Conſideration of a precedent honeſt Debt, which is agreed to be ſatisfied with the Thing in Demand when recovered. *F. N. B.* 172. 2 *Inſt* 209. 2 *Roll. Abr.* 113. It is ſaid not to be material, whether he who brings a Writ of *Champerty*, did in Truth ſuffer any Damage by it; or whether the Plea wherein it is alledged be determined or not. 1 *Hawk.* 257. A Conveyance executed hanging a Plea, in Purſuance of a Bargain made before, is not within the Statutes againſt *Camperty:* And if a Man purchaſe Land of a Party, pending the Writ, if it be *Bona fide*, and not to maintain, it is not *Champerty.* *F N. B.* 272. 2 *Roll. Abr.* 113. But it hath been held, that the Purchaſe of Land while a Suit of Equity concerning it is depending, is within the Purview of the Statute 28 *E.* 1. *Moor* 655. A Leaſe for Life, or Years, or a voluntary Gift of Land, is within the Statutes of *Champerty*; but not a Surrender made by a Leſſee to his Leſſor: Or a Conveyance relating to Lands in Suit, made by a Father to his Son, &c. 1 *Hawk. P. C.* 258. The Giving of Part of the Lands in Suit, after the End of it, to a Counſellor for his Wages, is not *Champerty*, if there be no precedent Bargain relating to ſuch Gift: But if it had been agreed between the Counſellor and his Client before the Action brought, that he ſhould have Part for his Wages, then it would be *Champerty. Bro. Champert.* 3. And it is dangerous to meddle with any ſuch Gift, ſince it carries with it a ſtrong Preſumption of *Champerty.* 2 *Inſt.* 564. If any Attorney follow a Cauſe to be paid in groſs, when the Thing in Suit is recovered, it hath been adjudged that this is *Champerty. Hob.* 117. Every *Champerty* implies Maintenance; but every Maintenance is not *Champerty*; for *Champerty* is but a Species of Maintenance. *Crom. Jur.* 39. 2 *Inſt.* 208.

Form *of an* Indictment *for* Champerty.

Wilts. ſſ. THE *Jurors,* &c. *preſent. That whereas by the Common Council of the Kingdom* of England, *or by a Statute made,* &c. *it is provided, That no Officer of our Sovereign Lord the King, nor any other ſhall maintain Pleas, Suits, or Matters depending in the King's Courts, for Lands, Tenements, or other Things whatſoever, to have Part of the Thing in Variance, or any Profit by Covenant made for that Purpoſe, nor ſhall any under ſuch Covenant give up his Right to another, as in the ſaid Statute is fully contained: Nevertheleſs one* E. F. *on the Day,* &c. *in the Year of the Reign,* &c. *at* M. *in the ſaid County, hath undertaken to maintain, and hath maintained a certain Suit, (which was depending in the King's Court, before the King himſelf, by a Writ of our ſaid Lord the King, between* A. B. *and* C. D. *in a Plea of Debt for,* &c. *which the ſaid* A. B. *demanded of the ſaid* C. D.) *to have Part of the Debt and Damages recovered in that Suit, that is to ſay, to have half of the ſaid Debt and Damages, by Covenant made between the ſaid* E. F. *and* A. B. *againſt the Peace of our ſaid Lord the now King, his Crown and Dignity, and againſt the Form of the Statute aforeſaid in ſuch Caſe made and provided.*

Champertors, By Statute, are they who move Pleas or Suits, or cauſe them to be moved, either by their own Procurement, or by others, and ſue them at their proper Coſts, to have Part of the Land in Variance, or Part of the Gain. 33 *Ed.* 1. ——— Champertores, *vel Campi Participes, ſunt qui per ſe vel per alios placita movent, vel movere faciunt, & ea ſuis ſumptibus proſequuntur ad Campi partem, vel pro parte lucri habenda.* Stat. 2. Artic. ſuper Chart. 11.

Champion, (*Campio*) Is taken in the Law not only for him that fights a *Combat* in his own Cauſe, but alſo for him that doth it in the Place or Quarrel of another. *Bract. lib.* 3. *Tract.* 2. *cap.* 21. And in Sir *Edward Biſhe's* Notes on *Upton*, *fol.* 36. you will find that *Henry de Ferneberg* for 30 Marks Fee, did by Charter covenant to be *Champion* to *Roger* Abbot of *Glaſtenbury. An.* 42 *Hen.* 3. Theſe *Champions*, mentioned in our Law-Books and Hiſtories, were uſually hired; and any one might hire them, except Parricides, and thoſe who were accuſed of the higheſt Offences: Before they came into the Field, they ſhaved their Heads, and made Oath that they believed the Perſons who hired them, were in the Right, and that they would defend their Cauſe to the utmoſt of their Power; which was always done on Foot, and with no other Weapon than a Stick or Club, and a Shield: And before they engaged, they always made an Offering to the Church, that God might aſſiſt them in the Battle. When the Battle was over, the Puniſhment of a *Champion* overcome, and likewiſe the Perſon for whom he fought, was various: If it was the *Champion* of a Woman for a Capital Offence, ſhe was burnt, and the *Champion* hanged: If it was of a Man, and not for a Capital Crime, he not only made Satiſfaction, but had his Right Hand cut off; and the Man was to be cloſe confined in Priſon, 'till the Battle was over. *Bract. lib.* 2. *c.* 35. See *Combat.*

Champion of the King, (*Campio Regis*) Is an antient Officer, whoſe Office it is at the Coronation of our Kings, when the King is at Dinner, to ride armed *Cap-a-pe* into *Weſtminſter-Hall*, and by the Proclamation of a Herald make a Challenge, *That if any Man ſhall deny the King's Title to the Crown, he is there ready to defend it in ſingle Combat, &c.* Which being done, the King drinks to him, and ſends him a gilt Cup, with a Cover, full of Wine, which the *Champion* drinks, and hath the Cup for his Fee. This Office, ever ſince the Coronation of King *Richard* II. when *Baldwin Freville* exhibited his Petition for it, was adjudged from him to Sir *John Dymocke* his Competitor, (both claiming from *Marmion*) and hath continued ever ſince in the Family of the *Dymockes*; who hold the Manor of *Scrivelsby* in *Lincolnſhire*, Hereditary from the *Marmions*, by Grand Serjeanty, *viz.* That the Lord thereof ſhall be the King's *Champion*, as aboveſaid. Accordingly Sir *Edward Dymocke* performed this Office at the Coronation of King *Charles* II.

Chancellor, (*Cancellarius*) Was at firſt only a chief Notary or Scribe under the Emperor, and was called *Cancellarius*, becauſe he ſate *infra Cancellos*, to avoid the Crowd of the People. This Word is by ſome derived from *Cancello*, and by others from *Chancellis*, an incloſed or ſeparated Place, or Chancel, encompaſſed with Bars, to defend the Judges, and other Officers from the Preſs of the Publick. And *Cancellarius* originally, as *Lupanus* thinks, ſignified only the Regiſters in Court; *Grapharios, ſcil. qui conſcribendis & excipiendis Judicum actis dant operam:* But this Name and Officer is of late Times greatly advanced, not only in this, but in other Kingdoms; for he is the chief Adminiſtrator of Juſtice, next to the Sovereign, who antiently heard equitable Cauſes himſelf. All other Juſtices in this Kingdom are tied to the ſtrict Rules of the Law, in their Judgments; but the *Chancellor* hath the King's abſolute Power to moderate the written Law, governing his Judgment by the Law of Nature and Conſcience, and ordering all Things *juxta æquum & bonum:* And having the King's Power in theſe Matters, he hath been called the Keeper of the King's Conſcience. According to a late Treatiſe, the *Chancellor* originally preſided over a Political College of Secretaries, for the Writing of Treaties, Grants, and other Publick Buſineſs; and that the Court of Equity under the old Conſtitution was held before the King and his Counſel in the Palace, where one Supreme Court for Buſineſs of every Kind was kept: And at firſt the *Chancellor* became a Judge to hear and determine Petitions to the King, which were referred to him; and in the End as Buſineſs increaſed, the People intitled their Suits to the *Chancellor*, and not the King: And thus the *Chancellor*'s equitable Power had by Degrees Commencement by Preſcription. *Hiſt. Chan. pag.* 3, 10, 44, &c. *Staundford* ſays, the *Chancellor* hath two Powers; one abſolute, the other ordinary; meaning, that although by his ordinary Power, in ſome Caſes, he muſt obſerve the Form of Proceeding as other inferior Judges, in his abſolute Power he is not limited by the Law, but by Conſcience and Equity, according to the Circumſtances of Things. And tho' *Polydore Virgil*, in his Hiſtory of *England* makes *William* the Firſt, called the *Conqueror*, the Founder of our *Ceancellors*; yet our Antiquary Mr. *Dugdale* has ſhewn that there were many *Chancellors of England* long before that Time, which are mentioned in his *Origines Juridiciales*, and Catalogues of *Chancellors*; and Sir *Edward Coke* in his fourth *Inſtitute* ſaith, it is certain, That both the *Britiſh* and *Saxon* Kings had their *Chancellors*, whoſe great Authorities under their Kings, were in all Probability drawn from the reaſonable Cuſtoms of neighbouring Nations, and the Civil Law. He that bears this Chief Magiſtracy, is ſtiled the *Lord High* Chancellor of *Great Britain*, which is the higheſt Honour of the long Robe; being made ſo *Per traditionem magni ſigilli ſibi per Dominum Regem*, and by taking his Oath: And a *Chancellor* may be made ſo at Will, by Patent, but 'tis ſaid not for Life, for being an ancient Office, it ought to be granted as has been accuſtomed. 4 *Inſt*. 87. But Sir *Edward Hide*, afterwards *Earl of Clarendon*, had a Patent to be Lord *Chancellor* for Life, though he was diſmiſſed from that Office, and the Patent declared void. 1 *Sid*. 338. By the Stat. 5 *Eliz. cap*. 18. the Lord *Chancellor* and *Keeper* have one and the ſame Power; and therefore ſince that Statute, there cannot be a Lord *Chancellor* and Lord Keeper at the ſame Time; before there might, and hath been. 4 *Inſt*. 78. King *Hen*. 5. had a great Seal of Gold, which he delivered to the Biſhop of *Durham*, and made him Lord *Chancellor*, and alſo another of Silver, which he delivered to the Biſhop of *London* to keep; but at this Day there being but one Great Seal, there cannot be a Lord *Chancellor* and Lord Keeper at once, and becauſe they are but one Office, as is declared by 5 *Eliz*. and the Taking away the Seal determines the Office. 1 *Sid*. 338. But the Lord *Bridgeman* was Lord Keeper, and Lord Chief Juſtice of the Common Pleas, at the ſame Time; which Offices were held not to be inconſiſtent. *Ibid*. By 1 *W. & M. cap*. 21. *Commiſſioners* appointed to execute the Office of Lord *Chancellor*, may exerciſe all the Authority, Juriſdiction, and Execution of Laws, which the Lord *Chancellor*, or Lord Keeper, of Right ought to uſe and execute, &c. ſince which Statute, this High Office hath been ſeveral Times in Commiſſion; though generally on the Diſmiſſion of a *Chancellor*, 'till another was appointed. The Lord *Chancellor*, now there is no Lord High Steward, is accounted the firſt Officer of the Kingdom; and he not only keeps the King's Great Seal, but all Patents, Commiſſions, Warrants, &c. from the King, are peruſed by him before ſigned: And he has the Diſpoſal of all Eccleſiaſtical Benefices in the Gift of the Crown under 20 *l.* a Year in the King's Books, which has occaſioned this Office to be formerly poſſeſſed by a Clergyman. He by his Oath ſwears well and truly to ſerve the King, and to do Right to all manner of People, &c. In his judicial Capacity, he hath divers Aſſiſtants and Officers, *viz.* The Maſter of the Rolls, the Maſters in Chancery, &c. And in Matters of Difficulty, he calls one or more of the Chief Juſtices, and Judges to aſſiſt him in making his Decrees; though in ſuch Caſes they only give their Advice and Opinion, and have no Share of the judicial Authority. As to the *Maſter of the Rolls*, he hath judicial Power; and is an Aſſiſtant to the Lord *Chancellor* when preſent, and his Deputy when abſent, but he has certain Cauſes aſſigned him to hear and decree, which he uſually doth on certain Days appointed at the Chapel of the Rolls, being aſſiſted by one or more Maſters in Chancery: He is, by Virtue of his Office, chief of the Maſters in Chancery, and chief Clerk of the Petty-Bag Office. The twelve *Maſters in Chancery*, ſit ſome of them in Court, and take Notice of ſuch References as are made to them, to be reported to the Court, relating to Matters of Practice, the State of the Proceedings, Accounts, &c. And they alſo take *Affidavits*, acknowledge Deeds and Recognizances, &c. The *Six Clerks* in Chancery tranſact and file all Proceedings by Bill and Anſwer; and alſo iſſue out ſome Patents that paſs the Great Seal; which Buſineſs is done by their Under Clerks, each of which has a Seat there, and whereof every Six Clerk has a certain Number in his Office, uſually about ten. The *Curſitors* of the Court, four and twenty in Number, make out all original Writs in Chancery, which are returnable in *C. B.* &c. and among theſe the Buſineſs of the ſeveral Counties is ſeverally diſtributed. The *Regiſter* is a Place of great Importance in this Court, and he hath ſeveral Deputies under him to take Cognizance of all Orders and Decrees, and enter and draw them up, &c. The *Maſter of the* Subpœna *Office* iſſues out all Writs of *Subpœna*. The *Examiners* are Officers in this Court, who take the Depoſitions of Witneſſes, and are to examine them, and make out Copies of the Depoſitions. The *Clerk of Affidavit* files all *Affidavits* uſed in Court, without which they will not be admitted. The *Clerk of the Rolls* ſits conſtantly in the Rolls to make Searches for Deeds, Offices, &c. and to make out Copies. The *Clerks of the Petty-Bag-Office*, in Number three, have great Variety of Buſineſs that goes through their Hands, in making out Writs of Summons to Parliament, *Conge d' Eſliers* for Biſhops, Patents for Cuſtomers; *Liberates* upon Extents of Statute Staple, and Recovery of Recognizances forfeited, &c. And alſo relating to Suits for and againſt Privileged Perſons, &c. And the Clerks of this Office have ſeveral Clerks under them. The *Uſher* of the Chancery had formerly the Receiving and Cuſtody of all Money ordered to be depoſited in Court, and paid it back again by Order: But this Buſineſs hath been of late aſſumed by the Maſters in Chancery. And *Anno* 12 *Geo.* 1. A new Officer was appointed by Statute, called *Accountant General*, to receive the Money lodged in Court, and convey the ſame to the *Bank*, to be there kept for the Suitors of the Court. Then there is a *Serjeant at Arms*, to whom Perſons ſtanding in Contempt are brought up by his Subſtitutes as Priſoners. A *Warden of the Fleet*, who receives ſuch Priſoners as ſtand committed by the Court, &c. And beſides theſe Officers, there is a *Clerk of the Crown* in Chancery; *Clerk* and *Controller* of the *Hanaper*; *Clerk* for *Inrolling* Letters Patent, &c. not employed in Proceedings of Equity, but concerned in making out Commiſſions, Patents, Pardons, &c. under the Great Seal, and collecting the

Fees thereof. A *Clerk of the Faculties*, for Diſpenſations, Licences, *&c.* *Clerk of the Preſentations*, for Benefices of the Crown in the *Chancellor*'s Gift; *Clerk of Appeals*, on Appeals from the Courts of the Archbiſhop to the Court of Chancery: And divers other Officers, who are conſtituted by the *Chancellor*'s Commiſſion.

Chancellor of the Dutchy of Lancaſter, A great Officer, whoſe Office is principally to determine Controverſies between the King and his Tenants of the *Dutchy Land*, and otherwiſe to direct all the King's Affairs belonging to that Court. The *Chancellor* is the chief Judge of the *Dutchy Court*, who in difficult Points of Law is uſually aſſiſted by two Judges of the Common Law, out of one Court or other, to decide the Matter in Queſtion: This Court is held in *Weſtminſter Hall*; and was formerly much uſed in Relation to Suits between Tenants of Dutchy Lands, and againſt Accountants and others for the Rents and Profits of the ſaid Lands. Under the *Chancellor of the Dutchy*, are an *Attorney* of the Court, one *Chief Clerk* or Regiſter, and ſeveral *Auditors*, *&c.* This Officer is mentioned in the Stat. 3 *Ed. 6. cap.* 1. and 5. *Ibid.* c. 26.

Chancellor of the Exchequer, Is likewiſe a great Officer, who 'tis thought by many was originally appointed for the qualifying Extremities in the Exchequer: He ſometimes ſits in Court, and in the Exchequer-Chamber; and with the Judges of the Court, orders Things to the King's beſt Benefit. He hath by the Stat 33 *H.* 8. *c.* 39. Power with others, to compound for the Forfeitures upon Penal Statutes, Bonds and Recognizances entered into to the King: He hath alſo great Authority in the Management of the Royal Revenue, *&c.* which ſeems of late to be his chief Buſineſs, being commonly the firſt Commiſſioner of the Treaſury. And though the Court of Equity in the Exchequer Chamber, was intended to be holden before the Treaſurer, *Chancellor*, and Barons; it is uſually before the Barons only. When there is a Lord-Treaſurer, the *Chancellor of the Exchequer* is Under-Treaſurer.

Chancellor of the Order of the Garter, Stow's Annals, pag. 706. *Chancellor of the Univerſities.* See 9 Hen. 5. c. 8. *Chancellor of the Dioceſe*, 32 H. 8. c. 15. *Chancellor in Cathedral Churches*: His Office is thus deſcribed in the *Monaſticon*, and the Statute of *Litchfield*, *viz.*—*Lectiones legendas in Eccleſia per ſe vel per ſuum Vicarium auſcultare, male legentes emendare, Scholas conferre, ſigilla ad cauſas conferre, literas capituli facere & conſignare, libros ſervare, quotieſcunq; voluerit prædicationes in Eccleſia vel extra Eccleſiam prædicare, & cui voluerit prædicationis Officium aſſignare.* Mon. Angl. Tom. 3. p. 24, 339.

Chancery, (*Cancellaria*) Is the higheſt Court of Judicature in this Kingdom next to the Parliament, and of very antient Inſtitution. The Juriſdiction of this Court is of two Kinds; ordinary, or legal; and extraordinary, or abſolute. The Ordinary Juriſdiction, is that wherein the Lord Chancellor in his Proceedings and Judgments, is bound to obſerve the Order and Method of the Common Law; and in ſuch Caſes the Proceedings have been uſually in *Latin*, and filed or inrolled in the Petty-Bag Office: And the extraordinary or unlimited Power, is that Juriſdiction which this Court exerciſes in Caſes of Equity, wherein Relief is to be had by Way of *Engliſh Bill and Anſwer.* The *Ordinary Court* holds Plea of Recognizances acknowledged in the *Chancery*, Writs of *Scire facias* for Repeal of Letters Patent, Writs of Partition, *&c.* and alſo of all Perſonal Actions, by or againſt any Officer of the Court; and by Acts of Parliament of ſeveral Offences and Cauſes: All original Writs; Commiſſions of Bankrupts; of Charitable Uſes; of Ideots, and Lunacy, *&c.* iſſue out of this Court, for which it is always open; and ſometimes a *Superſedeas* or Writ of Privilege, hath been here granted to diſcharge a Perſon out of Priſon: One from hence may have an *Habeas Corpus*, Prohibition, *&c.* in the Vacation, which are to be had out of the other Courts only in Term-time; and here a *Subpœna* may be had to force Witneſſes to appear in other Courts, when they have no Power to call them. 4 *Inſt.* 79. 1 *Danv. Abr.* 756. But in proſecuting Cauſes, if the Parties deſcend to Iſſue, this Court cannot try it by Jury; but the Lord Chancellor delivers the Record into the King's Bench to be tried there; and after Trial had, it is to be remanded into the *Chancery*, and there Judgment given: Though if there be a Demurrer in Law, it ſhall be argued and adjudged in this Court. When there is Demurrer upon Part, and Iſſue upon Part, the Record being in *B. R.* that Court ought to give Judgment, becauſe there can be but one Execution; and if the Record come thither entirely, they cannot ſend it back again. 1 *Mod. Rep.* 29. But ſee 4 *Inſt.* 80. Upon a Judgment given in this Court, a Writ of Error lies returnable in *B. R.* 4 *Inſt.* 80. The *Extraordinary Court*, or Court of Equity, proceeds by the Rules of Equity and Conſcience, and moderates the Rigour of the Common Law, conſidering the Intention rather than the Words of the Law. It gives Relief for and againſt Infants, notwithſtanding their Minority: And for and againſt married Women, notwithſtanding their Coverture: In ſome Caſes a Woman may ſue her Husband for Maintenance; ſhe may ſue him when he is beyond Sea, *&c.* and be compelled to Anſwer without her Husband: All Frauds and Deceits, for which there is no Redreſs at Common Law; All Breaches of Truſt and Confidences; and Accidents, as to relieve Obligors, Mortgagors, *&c.* againſt Penalties and Forfeitures, where the Intent was to pay the Debt, are here remedied: For in *Chancery*, a Forfeiture, *&c.* ſhall not bind, where a Thing may be done after, or Compenſation made for it. 1 *Danv.* 752. 2 *Vent.* 352. 1 *Roll. Abr.* 373. Alſo this Court will give Relief againſt the Extremity of unreaſonable Engagements, entered into without Conſideration; oblige Creditors that are unreaſonable, to compound with an unfortunate Debtor: And make Executors, *&c.* give Security and pay Intereſt for Money that is to lie long in their Hands. 2 *Vent.* 346. Here Executors may ſue one another, or one Executor alone be ſued without the Reſt: Order may be made for performance of a Will: It may be decreed who ſhall have the Tuition of a Child: This Court may confirm Title to Lands, though one hath loſt his Writings; Render Conveyances defective through Miſtake, *&c.* good and perfect; but not Defects in a voluntary Conveyance, unleſs where intended as a Proviſion for younger Children. 2 *Vent.* 265. In *Chancery*, Copyholders may be relieved againſt the ill Uſage of their Lords: Incloſures of Lands that are Common be decreed; and this Court may decree Money or Lands given to Charitable Uſes; Things in Action, upon Aſſignment on Conſideration: Oblige Men to account with each other: Avoid the Bar of Actions, by the Statute of Limitations, *&c.* for Debts thus barred, are ſtill Debts in Equity, and the Duty remains. 1 *Danv. Abr.* 749, 750, *&c.* 1 *Salk.* 154. But in all Caſes, where the Plaintiff can have his Remedy at Law, he ought not to be relieved in *Chancery*: And a Thing which may be tried by a Jury, is not triable in this Court. *Danv.* 763. Alſo long Leaſes, as for 1000 Years; naked Promiſes; verbal Agreements not executed; Eſtates deriv'd under conceal'd Titles, *&c.* have been refuſed Relief in this Court: And Mortgages are not relievable in Equity after twenty Years, where no Demand has been made, or Intereſt paid, or there are not other particular Circumſtances, *&c.* 2 *Vent.* 340. A Bond, when neither the Principal nor Intereſt hath been demanded in 20 Years, will be preſumed in Equity to be ſatisfied, and be decreed to be cancelled; and a perpetual Injunction may be granted to ſtay Proceedings thereon. 1 *Ch. Rep.* 79. *Finch Rep.* 78. A Deed appearing to be cancelled, has been Decreed to be a good Deed, on ſpecial Circumſtances: And a Defendant having ſuppreſſed a Settlement, whereby a Remainder in Tail was limited, *&c.* upon Proof that the Deed came to his Hands, the Plaintiff had a Decree in Chancery to hold the Eſtate. 1 *Ch. Caſ.* 249. 2 *Vern. Rep.* 380. Articles of Agreement upon Marriage reduc'd into Writing, though not ſign'd by either Party, being proved to be agreed to, were decreed to be perform'd. 2 *Vern.* 200. Alſo an Agreement in Writing made ſince the Statute of Frauds, has been Decreed to be diſcharged by Parol. 1 *Vernon's Rep.* 240 An underhand Agreement may be ſet aſide as fraudulent: And Articles, a Deed of Conveyance executed, and a Fine in Purſuance thereof, were ſet aſide in Chancery for Fraud, where the Party was impos'd upon. *Ibid.* 205. A Deed not fraudulent at firſt, may become ſo afterwards; and if one add a Seal to a Note, which is good without it, he will loſe his Security; and a Bill of Exchange being gained by Fraud, Equity will relieve againſt it, and Decree that the Money ſhall be repaid, *&c.* 2 *Vern.* 162, 123. A Releaſe ſhall be avoided for Fraud, where there is *ſuppreſſio veri*, or *ſuggeſtio falſi*; and a Releaſe may be ſet aſide in Chancery by reaſon of the Miſapprehenſion of the Party that gave it. 1 *Vern. Rep.* 20, 32. A Will concerning Lands, may be avoided in a Court of Equity when obtained by Fraud: A Mortgage made by a Man ſubſequent to his Will ſhall be a Revocation *pro tanto* only in Equity, and not of the whole Will, *&c.* 2 *Ch. Rep.* 97. An Heir may be relieved in Equity againſt a contingent Contract, made during his Father's Life, to pay a large Sum of Money, if he outlives his Father, when it is unconſcionable. 2 *Chan. Rep.* 397. And a Broker who had made it his Buſineſs to ſell Goods at extravagant Rates to young Perſons, to be paid five for one upon the Deaths of their Fathers, was Decreed to deliver up Securities thus obtain'd for great Sums, on Payment of what he had really paid to the Plaintiff, and for his Uſe, *&c.* 1 *Vern.* 467. A Purchaſer of Land, without Notice of an Incumbrance, ſhall not be hurt thereby in Equity; and in Pleading a Purchaſe, the Defendant ought to deny Notice of Incumbrances, *&c.* No Intereſt will be allowed in Chancery for Book-Debts; nor ſhall Intereſt Money be allowed to be made Principal on Securities, ſo as to make Intereſt upon Intereſt, unleſs it be where Intereſt Money is reduced to a ſtated Sum, *&c.* 3 *Ch. Rep.* 65. 1 *Vern.* 169. 2 *Ch. Rep.* 286. It has been held, That the Court of Chancery cannot aſſeſs Damages for a Treſpaſs, *&c.* but it ought to be aſcertained by a Jury at Law, and not otherwiſe. 1 *Ch. Rep.* 230. A Bill may be brought for diſcovering the Contents of a Letter, which would diſcharge the Plaintiff of an Action at Law, before Verdict. 3 *Ch. Rep.* 17. Indentures of Apprenticeſhip have been Decreed to be delivered up, and the Money given with the Apprentice to be paid back by the Maſter, on ill Uſage of the Apprentice, *&c.* *Finch Rep.* 125. Charity Lands being Let at a great Under-value, as was found by Inquiſition, on a Commiſſion of Charitable Uſes, the Leaſe was avoided in Equity, and the Leſſee Decreed to pay the Arrears in Rent according to the full Value, and to yield up the Poſſeſſion. 2 *Vern.* 415. A Grazier's Cattle driving to *London*, were diſtrained in Grounds for the Innkeeper's Rent, and in Replevin the Landlord had Judgment at Law; but the Grazier was relieved in Equity againſt it. 2 *Vern. Rep.* 129. Trials and Iſſues at Law are frequently directed out of the Court of Chancery; and ſometimes it is order'd, that after Trial, the Parties ſhall reſort to the Court on the Equity reſerv'd, *&c.* This Court will not retain a Suit for any Thing under 10*l.* Value, except it be in Caſes of Charity; nor for Lands, *&c.* under 40*s.* *per Annum*: And refuſes Relief in Suits where the Subſtance of them tends to the Overthrow of an Act of Parliament; or any fundamental Point of the Common Law. If a Man loſes his Obligation, he ſhall not be relieved for his Debt, being againſt a Maxim in Law. 1 *Danv.* 754. And an Executor in a Court of Equity ought not to be compelled to pay Legacies before Bonds, *&c.* for this is againſt the Common Law: So in many other Caſes. *Ibid.* 756. And where a Man by his own Act deſtroys his Remedy at Law, he ſhall not be relieved in Equity: But in Caſe of an apparent Fraud, or in a dubious Caſe in Law, of which the Party could not have Conuſance, Relief may be had in Equity againſt a Statute. *Ibid.* 755, 759. Defendants may not be regularly relieved in *Chancery*, after Judgment at Law; tho' Decrees are made in ſuch Caſes: But on Perſons being committed for Non performance, they have been formerly diſcharged by *Habeas Corpus*. *Cro. Eliz.* 220. 1 *Roll. Rep.* 252. 1 *Nelſ. Abr.* 432. It is common to give Relief in *Chancery*, notwithſtanding there is an Agreement between the Parties that there ſhall be no Relief in Law or Equity. 1 *Mod.* 141, 305. And where a Party hath both Law and Equity on his Side, it will prevail againſt Equity only. 1 *Danv. Abr.* 773. If a Portion be given to a Woman, provided ſhe marries not without Conſent of a certain Perſon, altho' ſhe marries without ſuch Conſent, ſhe ſhall be relieved in *Chancery*, and have her Portion: But if the Portion, on ſuch Marriage, had been limited over to another, it would be otherwiſe. 1 *Danv.* 752. 1 *Mod.* 300. If a Father, on the Marriage of his Son, take a Bond of the Son that he ſhall pay him ſo much, *&c.* this is void in Equity, being adjudg'd by Coercion while he is under the Awe of the Father. 1 *Salk.* 158. Alſo where a Son, without Privity of the Father, treating the Match, gives Bond, to return any Part of the Portion, in Equity it is void. *Ibid* 156. A Man is not bound to diſcover the Conſideration of a Bond generally given, which in itſelf implies a Conſideration. *Hard.* 200. If a Factor to a Merchant hath Money in his Hands, it ſhall be accounted his own; for Equity cannot follow Money; but it may Goods to make them the Merchant's, which may be known, tho' Money cannot. 1 *Salk* 260. Money articled to be laid out in Land, ſhall be taken as Land in Equity, and deſcend to the Heir. *Ibid.* 154. Perſonal Eſtate in the Hands of Executors, ſhall be applied in Diſcharge of the Heir, where there is ſufficient Aſſets to pay the Debts and Legacies. 1 *Danv.* 770. There ſhall be no Bill in Equity againſt an Executor, to diſcover Aſſets before a Suit commenced at Law. *Hard.* 115. Legal Aſſets ſhall be applied in a Courſe of Adminiſtration; but Equitable Aſſets amongſt all the Creditors proportionably, on a Bill brought, *&c.* 2 *Vern. Ch. Rep.* 62. Where Truſtees convert Money rais'd out of Land for Payment of Debts, to their own Uſe, the Heir ſhall have the Land diſcharg'd, which hath born its Burden, and the Truſtees are liable to the Debts in Equity. 1 *Salk.* 153. If Leſſee for Years, without Impeachment of Waſte about the End of his Term cuts down Timber-Trees, the Court of *Chancery* by Injunction may ſtop the Cutting down of the Trees, it being againſt the Publick Good to deſtroy Timber. 1 *Roll. Abr.* 380. And Tenant after Poſſibility of Iſſue extinct, or for Life, diſpuniſhable of Waſte, may be ſtopped in Equity from pulling down Houſes, *&c.* 1 *Danv.* 761. The King cannot create a Court of Equity at this Day; but the ſame muſt be done by Act of Parliament. 4 *Inſt.* 84. And tho' the Power of the *Chancery* is very great, and it may reſtrain other Courts that exceed their Juriſdiction, and remove Suits to it ſelf by *Certiorari*, yet it is no Court of Record; and therefore 'tis ſaid can bind the Perſon

ſon only, and not the Eſtate of the Defendant, *&c.* And if he will not obey the Decree of the Court, he muſt be committed to the *Fleet* till he does. 1 *Danv Abr.* 749. By Statute, the Court of *Chancery* is to follow the King. 28 *Ed.* 1. *c.* 5. And whoſoever ſhall find himſelf grieved with any Statute, he ſhall have his Remedy in the *Chancery*. 36 *Ed* 3. *c.* 9. No *Subpœna* or other Proceſs of Appearance, ſhall iſſue out of *Chancery*, *&c.* till after a Bill is filed, (except Bills for Injunctions to ſtay Waſte, or Suits at Law commenced) and a Certificate thereof brought to the *Subpœna* Office. 4 *&* 5 *An. c.* 16. And for preventing vexatious Suits, it is enacted, That upon the Plaintiff's diſmiſſing his own Bill, or the Defendant's diſmiſſing the ſame for Want of Proſecution, the Plaintiff ſhall pay to the Defendant full Coſts, *&c. Stat. Ibid.* Perſons in Remainder, or Reverſion of any Eſtate, after the Death of another, on making Affidavit in the Court of *Chancery*, that they have Cauſe to believe ſuch other Perſon dead, and his Death concealed by the Guardian, Truſtees or others, may move the Lord Chancellor to order ſuch Guardian, Truſtees, *&c.* to produce the Perſon ſuſpected to be concealed; and if he be not produc'd, he ſhall be taken to be dead, and thoſe in Reverſion, *&c.* may enter upon the Eſtate: And if ſuch Perſon be abroad, a Commiſſion may be iſſued for his being viewed by Commiſſioners. *Stat. 6 Ann. c.* 18. Infants under the Age of twenty-one Years, ſeiſed of Eſtates in Truſt, or by Way of Mortgage, are enabled by Statute to make Conveyances thereof; or they may be compelled thereto, by Order of the Court of *Chancery*, *&c.* upon Petition and Hearing of the Parties concern'd. 7 *Ann c.* 9. See the Statute of K. *Geo.* 2. whereby Ideots and Lunaticks ſeiſed of Eſtates in Truſt, *&c.* may make Conveyances by Order of the *Chancery*, &c. 4 *Geo.* 2. *c.* 10. The Stat. 13 *Car.* 2. relates to the Maſters in *Chancery*, Ordering that one publick Office be kept near the *Rolls* for the ſaid Maſters, where they ſhall attend, and limits and appoints their Fees, *&c.* And by a late Act, the Power of the Maſters was abridged, on their miſemploying the Suitors Money, which is now to be paid into the *Bank* of *England:* And an additional Stamp-Duty, on Writs, Proceſſes, *&c.* is granted for Relief of the Suitors, and as a common Stock of the Court of *Chancery*. 12 *Geo.* 1. *c.* 33. All Orders and Decrees made and ſigned by the Maſter of the Rolls, ſhall be deemed and taken to be good and valid Orders and Decrees of the Court of *Chancery*; but not to be Inrolled till Signed by the Lord Chancellor, and ſubject to Reverſal, *&c.* by him. Stat. 3 *Geo.* 2. *c.* 30. A Defendant not appearing after *Subpœna* iſſued, but keeping out of the Way to avoid being ſerved with the Proceſs; on Affidavit that he is not to be found, and ſuſpected to be gone beyond Sea, or to abſcond, *&c.* the Court of *Chancery* may make an Order for his Appearance at a certain Day, a Copy of which is to be publiſhed in the *Gazette*, *&c.* and then if he do not appear, the Plaintiff's Bill ſhall be taken *pro Confeſſo*, and Defendant's Eſtate ſequeſtred, *&c.* But Perſons out of the Kingdom, returning in ſeven Years, may have a Rehearing in ſix Months, and be admitted to Anſwer; otherwiſe to be barred, by final Decree. 5 *Geo.* 2. *c.* 25.

The Proceedings in Chancery, Are firſt to file the *Bill* of Complaint, ſigned by ſome Counſel, ſetting forth the Fraud or Injury done, or Wrong ſuſtained, and praying Relief: After the Bill is filed, Proceſs of *Subpœna* iſſues to compel the Defendant to appear; and when the Defendant appears, he puts in his *Anſwer* to the Bill of Complaint, if there be no Cauſe for Plea to the Juriſdiction of the Court, in Diſability of the Perſon, or in Bar, *&c.* Then the Plaintiff brings his *Replication*, unleſs he files Exceptions againſt the Anſwer as inſufficient, referring it to a Maſter to report, whether it be ſufficient or not; to which Report Exceptions may be alſo made. The *Anſwer*, *Replication*, and *Rejoinder*, *&c.* being ſettled, and the Parties come to Iſſue, Witneſſes are to be examined upon *Interrogatories*, either in Court, or by Commiſſion in the Country, wherein the Parties uſually join; and when the Plaintiff and Defendant have examined their Witneſſes, *Publication* is to be made of the *Depoſitions*, and the Cauſe is to be ſet down for Hearing, after which follows the *Decree*. If the Plaintiff diſmiſſeth his own Bill, or the Defendant diſmiſſeth it by Reaſon of Want of Proſecution, as I have already obſerv'd, or if the Decree is in Behalf of the Defendant; the Bill is diſmiſſed with Coſts to be taxed by a Maſter. If the Defendant doth not appear, on being ſerved with the Proceſs of *Subpœna*, in Order to anſwer, upon Affidavit of the Service of the Writ, an *Attachment* will iſſue out againſt him; and if a *Non eſt inventus* is returned, an Attachment with Proclamation goes forth againſt him; and if he ſtands further out in Contempt, then a *Commiſſion of Rebellion* may be iſſued, for apprehending him, and bringing him to the *Fleet* Priſon, in the Execution whereof the Perſons to whom directed may juſtify breaking open Doors. If the Defendant ſtands further in Contempt, a Serjeant at Arms is to be ſent out to take him; and if he cannot be taken, a *Sequeſtration* of his Land may be obtained till he appears. And if a Decree, when made, be not obeyed, being ſerved upon the Party under the Seal of the Court, all the aforementioned Proceſſes of Contempt will iſſue out againſt him, for his Impriſonment till he yields Obedience to it. If a *Bill in Chancery* be exhibited againſt a *Peer*, the Courſe is for the Lord Chancellor to write a Letter to him; and if he doth not put in his Anſwer, then a *Subpœna* iſſues, and then an Order to ſhew Cauſe why a Sequeſtration ſhould not go forth; and if he ſtill ſtands out, then a Sequeſtration ſhall be had; for there can be no Proceſs of Contempt againſt his Perſon. Where there is any *Error* in a *Decree* in Matter of Law, there may be a *Bill of Review*, which is in Nature of a Writ of Error; or an Appeal to the Houſe of Lords. A Party grieved with a Decree in *Chancery*, on Petition to the King, it hath been adjudged that the Matter might be referred by the King to the Judges, who may reverſe the Decree, *&c.* 3 *Bulſt.* 116. But it is now uſual to *Appeal to the Houſe of Lords*; which Appeals are to be ſigned by two noted Counſels, and exhibited by Way of Petition: The Petition or Appeal is lodged with the Clerk of the Houſe of Lords, and read in the Houſe, whereon the Appellee is ordered to put in his Anſwer, and a Day fixed for Hearing the Cauſe; and after Counſel heard and Evidence given on both Sides, the Lords will affirm or reverſe the Decree of the *Chancery*, and finally determine the Cauſe by a Majority of Votes, *&c.* Though it is obſerved on an *Appeal* to the Lords, from a Decree in *Chancery*, no Proofs will be permitted to be read as Evidence, which were not made uſe of in the *Chancery*. *Preced. Canc.* 212. If a Bill be brought where the Lord Chancellor is Party to the Suit, it muſt be directed to the King's Majeſty; for no Man may be both Judge and Party in a Cauſe.

Form of a Bill in Chancery.

To the Right Honourable *Philip* Lord *Hardwicke*, Baron of *Hardwicke*, Lord High Chancellor of *Great Britain.*

HUmbly *Complaining, ſheweth unto your Lordſhip your Orator* A. B. *of*, &c. *That whereas about*, &

&c. Years laſt paſt, T. B. of, &c. did grant to L. M. all that Meſſuage or Tenement called, &c. and the Lands, ſituate, &c. And afterwards, that is to ſay, on, &c. he the ſaid L. M. by his Deed bearing Date, &c. under his Hand and Seal, in Conſideration of the Sum of, &c. to him paid, did bargain, ſell, aſſign and ſet over the ſaid Premiſſes, &c. unto J. D. of, &c. which ſaid J. D. not long after, viz. on, &c. did, in Conſideration of, &c. by your Orator to him in Hand paid, bargain, ſell, aſſign, transfer and ſet over unto your Orator, all and ſingular the ſaid Premiſſes above mentioned, and every Part thereof; upon which Bargain, Sale, and Aſſignment of the ſaid Premiſſes ſo made as aforeſaid, your Orator well hoped to have peaceably and quietly entered into the ſaid Premiſſes, and to have held, occupied and enjoyed the ſame accordingly: But now ſo it is, may it pleaſe your Lordſhip, that one L. E. of, &c. pretending to have a Leaſe for divers Years, yet to come, of Part of the ſaid Premiſſes made unto him by the ſaid J. D. &c. long before any ſuch Sale or Aſſignment made thereof to your Orator as aforeſaid, hath kept, and doth ſtill keep your Orator out of the Poſſeſſion of the ſaid Premiſſes, upon which Leaſe he the ſaid L. E. pretends a certain yearly Rent is reſerved to the ſaid J. D. his Executors or Aſſigns, which Rent, if any be, your Orator hath heard is, &c. And which your Orator, by Reaſon of the lawful Conveyance to him made, as aforeſaid, ought in Equity and good Conſcience, to have and enjoy during ſuch Term as the ſaid L. E. ſhall hold and enjoy the Premiſſes aforeſaid, by Reaſon of the ſaid Leaſe which he ſo pretendeth to have; but foraſmuch as your Orator doth not certainly know whether the ſaid L. E. hath any ſuch Leaſe, or if he hath any ſuch Leaſe, what Date the ſame beareth, nor what Term the ſaid L. E. hath therein unexpired, nor what Rent is thereby reſerved, or what Covenants are therein contained: And for that the ſaid L. E. doth not only Uſe and Occupy the ſaid Premiſſes to his own Profit and Advantage, without Yielding or Paying any Rent therefore to your Orator, but doth alſo utterly refuſe to ſhew his ſaid Leaſe, whereby he pretendeth to claim the Premiſſes aforeſaid, either to your Orator, or to any other Perſon; and for that the ſaid L. E. in Confederacy with, &c. giveth out, &c. All which Actions and Doings of the ſaid L. E. &c. are contrary to all Right, Equity and Good Conſcience, and tend to the manifeſt Wrong, Injury, and Oppreſſion of your Orator: In tender Conſideration whereof, and foraſmuch as your Orator is Remedileſs ſave in this honourable Court, and for that your Orator cannot by the ordinary Courſe of the Common Law enter into the Premiſſes, nor commence any Action againſt the ſaid L. E. either for the Recovery of the ſaid Land, or the Rent aforeſaid, or to enforce the ſaid L. E. to produce or ſhew to your Orator ſuch Writings as he hath for the Holding and Occupying the Premiſſes aforeſaid; but is altogether deſtitute of the Means to obtain or have a Sight of the ſame, but by the Aſſiſtance of this Honourable Court: To the End therefore, that the ſaid L. E. may be obliged upon his Oath to diſcover what Right he hath to the Premiſſes, or any Part thereof; and what Rent or Rents he hath paid for the ſame, and to whom, and that he may alſo ſet forth in his Anſwer upon Oath a true Copy of ſuch Leaſe or other Writings whereby he claimeth the Premiſſes aforeſaid, or any Part thereof; and that the ſaid L. E. may truly and directly Anſwer all the Matters and Things herein before contained, as fully and perfectly as if the ſame had been here again repeated and interrogated, and may particularly ſet forth upon Oath, whether, &c. And may come to account for, and pay, &c. And that your Orator may be relieved in the Premiſſes according to Equity and Good Conſcience.

May it pleaſe your Lordſhip, the Premiſſes conſidered, to grant to your Orator his Majeſty's Writ or Writs of Subpœna to be directed to the ſaid L. E. and other his Confederates when diſcovered, thereby commanding them and every of them at a certain Day, and under a certain Pain therein limited, perſonally to be and appear before your Lordſhip in this Honourable Court, then and there to anſwer all and ſingular the Premiſſes, and to ſtand to, perform and abide ſuch Order and Decree therein, as to your Lordſhip ſhall ſeem meet.

And your Orator ſhall ever pray, &c.

Form of an Anſwer in Chancery.

The Anſwer of L. E. Defendant to the Bill of Complaint of A. B. Complainant.

THIS Defendant now, and at all Times hereafter, ſaving to himſelf all Manner of Benefit and Advantage of Exception to the many Incertainties, Inſufficiencies and Imperfections in the ſaid Complainant's Bill of Complaint contained; for Anſwer thereunto, or unto ſo much thereof as this Defendant is adviſed is any Ways material for him to make Anſwer unto, he anſwereth and ſaith, That the ſaid J. D. named in the Complainant's ſaid Bill, was poſſeſſed for divers Years yet to come of the ſaid Meſſuage or Tenement, Lands and Hereditaments in the ſaid Bill mentioned, called, &c. by Virtue of a Leaſe thereof made by, &c. in the ſaid Bill named unto the ſaid J. D. long before, &c. mentioned in the ſaid Bill of Complaint; and the ſaid J. D. ſo being thereof poſſeſſed, had in ſuch Manner as in the ſaid Complainant's Bill is ſuppoſed, made a lawful Demiſe of the ſaid Meſſuage and Lands unto the ſaid Defendant for divers Years to come; upon which Leaſe the ſaid J. D. reſerved an yearly Rent of, &c. to be paid during the Continuance of the ſaid Leaſe, by Force of which Leaſe the Defendant entered into the ſaid Lands, &c. and was and is yet lawfully poſſeſſed thereof accordingly, and ever ſince hath and yet doth enjoy the ſame by Virtue of the ſaid Leaſe and Demiſe, and is thereby to have and enjoy the ſame during the Continuance of the ſaid Leaſe, of which there are at this Time about, &c. Years to come, and unexpired; and ſaith, that the Plaintiff is a Perſon altogether unknown to this Defendant, being one he this Defendant never had any Dealings or Correſpondence with; and therefore this Defendant cannot but admire at this Suit commenced by the ſaid Complainant againſt this Defendant touching the Premiſſes: And this Defendant ſaith that he humbly conceives and is adviſed, that he, this Defendant, is for the Payment of his Rent chargeable, and ought by the Law to pay the Rent ſo reſerved unto the ſaid J. D. and not the ſaid Complainant, which ſaid J. D. this Defendant doth verily think is his lawful Landlord, during the ſaid Term of Years yet to come, and not the Complainant, who is altogether a Stranger to this Defendant; and ſaith, that the ſaid Complainant never at any Time heretofore demanded any Rent for the ſaid Meſſuage, or Tenement and Lands that this Defendant hath and occupieth by Virtue of the ſaid Leaſe for Years; and alſo ſaith, &c. and therefore the ſaid Defendant is the more ſurprized at this Suit brought againſt him by the ſaid Complainant touching the Premiſſes, whereby this Defendant is wrongfully vexed and ſued without any juſt Cauſe; without that there is any ſuch Bargain and Sale made by, &c. as in the ſaid Bill is ſet forth, or that the ſaid, &c. bargained and ſold the Premiſſes to the Complainant; or that the ſaid Complainant ought to have and enjoy the ſaid Premiſſes, to the Knowledge of this Defendant; and this Defendant denies all Combination in the Bill charged; without that, that there is any other Matter or Thing in the Complainant's ſaid Bill of Complaint contained, material or effectual for this Defendant to make Anſwer unto, and not herein and hereby ſufficiently anſwered unto, confeſſed or avoided, traverſed or denied, is true, to the Knowledge and Belief of this Defendant; all which Matters and Things this Defendant is ready to aver and prove as this Honourable Court ſhall award; and humbly prays to be hence diſmiſſed with his reaſonable Coſts and Charges in this Behalf wrongfully ſuſtained.

Form of a Replication *to an Anſwer.*

The Replication of *A. B.* Complainant, to the Anſwer of *L E.* Defendant, put in to the ſaid Repliant's Bill of Complaint.

THE *ſaid Repliant, ſaving to himſelf all Advantages of Exception to the Defendant's ſaid Anſwer, for Replication thereunto ſaith, That all and every the Matters and Things in and by his ſaid Bill of Complaint already ſaid, he will juſtify, maintain and prove to be good, certain, and ſufficient in the Law, to be anſwered unto in ſuch Manner as the ſame are therein or thereby ſet forth and declared; and that the Anſwer of the ſaid Defendant is untrue, and inſufficient in the Law to be by this Repliant replied unto, for divers manifeſt Imperfections and Incertainties therein contained; the Benefit of Exception whereunto being now and at all Times ſaved to this Repliant: This Repliant for farther Replication ſaith, That,* &c. *and that the Matters contained in the ſaid Bill of Complaint are altogether relievable in this Honourable Court,* &c. Without that, *that any other Matter or Thing in the ſaid Defendant's Anſwer contained, material or effectual in the Law to be replied unto, and herein and hereby not well and ſufficiently replied unto, confeſſed, or avoided, traverſed or denied, is true; all which Matters and Things this Repliant is ready to aver, maintain and prove, as this Honourable Court ſhall award; and humbly prays, as in and by his ſaid Bill he hath already prayed.*

A Rejoinder *to a Replication in* Chancery.

The Rejoinder of *L. E.* Defendant to the Replication of *A. B.* Complainant.

THE *ſaid Defendant, now, and at all Times hereafter, ſaving and reſerving to himſelf all Manner of Benefit and Advantage of Exception to the Incertainty and Inſufficiency of the ſaid Replication; for Rejoinder ſaith, That the Defendant's ſaid Anſwer is true, certain, and ſufficient in the Law to be replied unto; and ſaith, as in and by his ſaid Anſwer he hath already ſaid, and doth and will aver and maintain all and every Thing and Things therein to be true and certain, in ſuch Manner as therein is alledged and expreſſed; and this Defendant alſo ſaith, That the ſaid Replication of the ſaid Complainant is uncertain and inſufficient in the Law to be rejoined unto, by the ſaid Defendant, for divers Defects and Imperfections therein contained; and for that,* &c. *and* without that, *that,* &c. *in the ſaid Replication material or effectual in the Law to be rejoined unto,* &c. *All which Matters this Defendant is ready to aver and prove, as this Honourable Court ſhall award: And therefore prays, as before in his ſaid Anſwer he hath prayed.*

Form of a Decree in Chancery.

WHereas *heretofore, that is to ſay, about,* &c. *Term, which was in the Year,* &c. A. B. *Complainant did exhibit his Bill of Complaint into this High and Honourable Court of* Chancery, *againſt* L. E. *Defendant, thereby ſetting forth,* &c. *(Here recite the Bill briefly) for Relief wherein,* &c. *the Complainant humbly prayed the Aid and Aſſiſtance of this Honourable Court, and that Proceſs of* Subpœna *might be awarded againſt the ſaid Defendant to compel him to appear and anſwer the ſaid Bill; which being granted, and the Defendant ſerved therewith, he appeared accordingly, and anſwered the ſaid Bill; and by his ſaid Anſwer confeſſed and ſet forth,* &c. *(Here recite the Subſtance of the Anſwer.) To which Anſwer the Complainant replied, and the Defendant rejoined, and ſo the Parties being at Iſſue, divers Witneſſes were examined in the Cauſe, and their Depoſitions duly taken and publiſhed, according to the uſual Courſe of this Court, as by the ſaid Bill, Anſwer, Replication, Depoſition of Witneſſes, and other Proceedings remaining upon Record in this Honourable Court may more at large appear; and the ſaid Cauſe thus ſtanding in Court, the Day of,* &c. *was by this Court appointed for the Hearing thereof, on which Day the ſame coming to be heard and debated accordingly in Preſence of Counſel learned on both Sides, the Subſtance of the Complainant's Bill and the Defendant's Anſwer appeared to be as is herein before recited and ſet forth; whereupon, and upon Debate of the Matter, and hearing what could be alledged on all Sides, this Court did think fit to order and decree, and accordingly it is this preſent Day, that is to ſay, the Day,* &c. *in the Year,* &c. *by the Right Honourable,* &c. *Lord High Chancellor of* Great Britain, &c. *ordered, adjudged and decreed, that,* &c. *And that,* &c.

Chancemedley, (From the Fr. *Chance*, Lapſus, and *Meſler*, Miſcere) Signifies the caſual Killing of a Man, not without the Killer's Fault, though without any evil Intention; and is where a Perſon is doing a lawful Act, and a Perſon is killed by *Chance* thereby: For if the Act be unlawful, it is Felony. If a Perſon caſts a Stone, which happens to hit one, whereof he dies: Or ſhoots an Arrow in a Highway, and another that paſſeth by is killed therewith: Or if a Workman, in throwing down Rubbiſh from a Houſe, after Warning to take Care, kills a Perſon: Or a Schoolmaſter in Correcting his Scholar, a Maſter his Servant, or an Officer in Whipping a Criminal, in a reaſonable Manner, happens to occaſion his Death; it is *Chancemedley* and Miſadventure. 3 *Inſt.* 56. *Dalt.* 351. But if a Man throws Stones in a Highway, where Perſons uſually paſs: Or ſhoot an Arrow, *&c.* in a Market-place, among a great many People: Or if a Workman caſt down Rubbiſh from a Houſe, in Cities and Towns, where People are continually paſſing: Or a Schoolmaſter, Maſter, *&c.* correct his Servant or Scholar, *&c.* exceeding the Bounds of Moderation, it is Manſlaughter; and if with an improper Inſtrument of Correction, as with a Sword or Iron Bar, or by a Kicking, Stamping, *&c.* in a cruel Manner, it is Murder. *Terms de Ley* 113. *H. P. C.* 58, 31, *&c. Kel.* 40, 65, 113. If a Man whips his Horſe in a Street to make him gallop, and the Horſe runs over a Child and kills it, it is Manſlaughter: But if another whips the Horſe, 'tis Manſlaughter in him, and *Chancemedley* in the Rider. *H. P. C.* 48, 59. And if two are Fighting, and a third Perſon coming to part them is killed by one of them, without any evil Intent, yet this is Murder in him; and not Manſlaughter by *Chancemedley*, or Miſadventure: And if they were met with prepenſed Malice, the one intending to kill the other, then it is Murder in both. *Terms de Ley* 113. In *Chancemedley* the Offender forfeits his Goods; but hath a Pardon of Courſe. *Stat. 6 Ed.* 1. *c.* 9.

Changer, An Officer belonging to the King's *Mint*, whoſe Office conſiſts chiefly in exchanging Coin for Bullion brought in by Merchants or others: It is written after the old Way, *Chaunger.* Stat. 2 Hen. 6. cap. 12.

Chanter, (*Cantator*) A *Singer* in the Choir of a Cathedral Church; and is uſually applied to the Chief of the Singers. This Word is mentioned in 13 *Eliz. c.* 10. At St. *David*'s Cathedral in *Wales*, the *Chanter* is next to the Biſhop; for there is no Dean. *Camb. Britan.*

Chantry, or **Chauntry,** (*Cantaria*) Is a little Church, Chapel, or particular Altar, in ſome Cathedral Church, *&c.* endowed with Lands, or other Revenues, for the Maintenance of one or more Prieſts, daily to *Sing Maſs*, and officiate Divine Service for the Souls of the Donors, and ſuch others as they appointed. *Stat.* 37 *Hen.* 8. *cap.* 4. 1 *Ed.* 6. *cap.* 14. and 15 *Car.* 2. *cap.* 9. Of theſe *Chantries*

Mention is made of forty-ſeven belonging to St. *Paul's* Church in *London*, by *Dugdale*, in his Hiſtory of that Church. I find in an ancient MS. this Record —— *Sciant, &c. quod Ego* Reginaldus Seuard *dedi* Willielmo Crumpe *Capellano* Cantariæ *beatæ* Mariæ de Yarpol, *unam parcellam paſturæ, &c. Dat. apud* Leominſtre *die* Martis *prox poſt Feſtum Sancti* Hillarii, *An.* 7. *Hen.* 5.

Chapel, (*Capella*, Fr. *Chapelle*) Is either adjoining to a Church, for performing Divine Service; or ſeparate from the Mother-Church, where the Pariſh is wide, which is commonly called a *Chapel of Eaſe*. And *Chapels of Eaſe* are built for the Eaſe of thoſe Pariſhioners who dwell far from the Parochial Church, in Prayer and Preaching only; for the Sacraments and Burials ought to be performed in the Parochial Church. 2 *Roll. Abr.* 340. —— *Ad* Capellam *non pertinet Baptiſterium neque Sepultura. Selden of Tithes, p.* 265. Theſe *Chapels* are ſerved by inferior Curates, provided at the Charge of the Rector, &c. And the Curates therefore removeable at the Pleaſure of the Rector or Vicar: But *Chapels* of Eaſe may be Parochial, and have a Right to Sacraments and Burials, and to a diſtinct Miniſter, by Cuſtom; (though ſubject in ſome Reſpects to the Mother Church:) And Parochial *Chapels* differ only in Name from Pariſh Churches, but they are ſmall, and the Inhabitants within the Diſtrict are few. In ſome Places *Chapels* of Eaſe are endowed with Lands or Tithes, and in other Places by voluntary Contributions; and in ſome few Diſtricts there are *Chapels* which baptize and adminiſter the Sacraments, and have *Chapel*-Wardens; but theſe *Chapels* are not exempted from the Viſitation of the Ordinary, nor the Pariſhioners who reſort thither from contributing to the Repairs of the Mother-Church; eſpecially if they bury there; for the *Chapel* generally belongs to, and is as it were a Part of the Mother-Church, and the Pariſhioners are obliged to go to the Mother-Church, but not to the *Chapel*. 2 *Roll. Abr.* 289. And hence it is ſaid, that the Offerings made to any *Chapel*, are to be rendered to the Mother-Church; unleſs there be a Cuſtom that the Chaplain ſhall have them. Publick *Chapels*, annexed to Pariſh-Churches, ſhall be repaired by the Pariſhioners, as the Church is; if any other Perſons be not bound to do it. 2 *Inſt.* 489. Beſides the afore-mentioned *Chapels*, there are *Free Chapels*, perpetually maintained and provided with a Miniſter, without Charge to the Rector or Pariſh; or that are free and exempt from all ordinary Juriſdiction; and theſe are where ſome Lands or Rents are charitably beſtowed on them. *Stat.* 37 *Hen.* 8. *cap.* 4. 1 *Ed.* 6. *c.* 14. Then there are *Private Chapels*, built by Noblemen, and others, for private Worſhip, in or near their own Houſes, maintained at the Charge of thoſe noble Perſons to whom they belong, and provided with Chaplains and Stipends by them; which may be erected without Leave of the Biſhop, and need not be conſecrated, though they antiently were ſo, nor are they ſubject to the Juriſdiction of the Ordinary. And alſo *Chapels in the Univerſities*, belonging to particular Colleges, which tho' they are conſecrated, and Sacraments are adminiſtred there, yet they are not liable to the Viſitation of the Biſhop, but of the Founder. 2 *Inſt.* 363.

Chapelry, (*Capellania*) Is the ſame Thing to a *Chapel*, as a Pariſh to a Church; being the Precinct and Limits thereof: It is mentioned in the Statute 14 *Car.* 2. *cap.* 9.

Chaperon, (*Fr.*) A Hood or Bonnet, antiently worn by the Knights of the Garter, as Part of the Habit of that noble Order: But in *Heraldry* it is the little Eſcutcheon fixed in the Forehead of the Horſes that draw a Hearſe at a Funeral. See *Stat.* 1 *R.* 2. *cap.* 17.

Chapiters, (Lat. *Capitula*, Fr. *Chapitres*, *i. e.* Chapters of a Book) Signifies in our Common Law a Summary of ſuch Matters as are to be enquired of, or preſented before Juſtices in Eyre, Juſtices of Aſſiſe, or of Peace, in their Seſſions. *Briton, cap.* 3. uſeth the Word in this Signification: And *Chapiters* are now moſt commonly called *Articles*, and delivered by the Mouth of the Juſtice in his *Charge* to the Inqueſt; whereas, in antient Time, (as appears by *Bracton* and *Briton*) they were, after an Exhortation given by the Juſtices for the good Obſervation of the Laws and the King's Peace, firſt read in open Court, and then delivered in Writing to the Grand Inqueſt, for their better Obſervance; and the Grand Jury were to anſwer upon their Oaths to all the Articles thus delivered them, and not put the Judges to long and learned *Charges* to little or no Purpoſe, for Want of Remembring the ſame, as they now do, when they think their Duty well enough performed, if they only preſent thoſe few of many Miſdemeanors which are brought before them by Way of Indictment. It is to be wiſhed that this Order of delivering written Articles to Grand Juries were ſtill obſerved, whereby Crimes would be more effectually puniſhed; and in ſome inferior Courts, as the Court-Leet, &c. in ſeveral Parts of *England*, it is uſal at this Day for Stewards of thoſe Courts to deliver their Charges in Writing to the Juries ſworn to enquire of Offences. *Horne*, in his Mirror of Juſtices, expreſſes what theſe Articles were wont to contain, *Lib.* 3. *cap. Des Articles in Eyre.* And an Example of Articles of this Kind, you may find in the Book of Aſſiſes, *f.* 138.

Chaplain, (*Capellanus*) Is moſt commonly taken for one that is depending upon the King, or other noble Perſon, to inſtruct him and his Family, and ſay Divine Service in his Houſe, where there is uſually a private Chapel for that Purpoſe. The King, Queen, Prince, Princeſs, &c. may retain as many *Chaplains* as they pleaſe; and the King's *Chaplains* may hold any Number of Benefices of the King's Gift, as the King ſhall think fit to beſtow upon them. An Archbiſhop may retain eight *Chaplains*; a Duke or a Biſhop Six; Marqueſs or Earl, Five; Viſcount, Four; Baron, Knight of the Garter, or Lord Chancellor, Three: A Dutcheſs, Marchioneſs, Counteſs, Baroneſs, the Treaſurer, and Controller of the King's Houſe, the King's Secretary, Dean of the Chapel, Almoner, and Maſter of the Rolls, each of them Two; the Chief Juſtice of the King's Bench, &c. One; all which may purchaſe a Licence or Diſpenſation, and take two Benefices with Cure of Souls. *Stat.* 22 *Hen.* 8. *cap.* 13. Alſo every Judge of the King's Bench, and Common Pleas; and Chancellor and Chief Baron of the Exchequer, and the King's Attorney and Solicitor General, may each of them have one *Chaplain*, attendant on his Perſon, having one Benefice with Cure, who may be non-reſident on the ſame, by Statute 25 *Hen.* 8. *cap.* 16. And the Groom of the Stole, Treaſurer of the King's Chamber, and Chancellor of the Dutchy of *Lancaſter*, may retain each one *Chaplain*. *Stat.* 33 *Hen.* 8. *cap.* 28. If a Nobleman hath his full Number of *Chaplains* allowed by Law, and retains one more, who has Diſpenſation to hold Plurality of Livings, it is not good. 1 *Cro.* 723. A Perſon retaining a *Chaplain*, muſt not only be capable thereof at the Time of Granting the Inſtrument of Retainer, but he muſt continue capable of Qualifying 'till his *Chaplain* is advanced: And therefore if a Duke, Earl, &c. retain a *Chaplain*, and die; or if ſuch a noble Perſon be attainted of Treaſon; or if an Officer qualified to retain a *Chaplain*, is removed from his Office, the Retainer is determined: But where the *Chaplain* hath taken a ſecond Benefice before his Lord dieth, or is attainted, &c. the Retainer is in Force to qualify him to enjoy the Benefices. And if a Woman that is noble by Marriage, afterwards marries one under the Degree of Nobility, her Power to retain *Chaplains* will be determined; Tho' 'tis otherwiſe where a Woman is noble by Deſcent, if ſhe marry under Degree of Nobility, for in ſuch Caſe her Retainer before or after Marriage is good. A Baroneſs, *&c.* during the Coverture, may not retain *Chaplains*; if ſhe doth, the Lord, her Husband, may diſcharge them, as likewiſe her former *Chaplains*, before their Advancement. 4 *Rep.* 118. A *Chaplain* muſt be retained by Letters teſtimonial, under Hand and Seal, or he is not a *Chaplain* within the Statute; ſo that it is not enough for a Spiritual Perſon to be retained by Word only to be a *Chaplain*, by ſuch Perſon as may qualify by the Statutes to hold Livings, *&c.* altho' he abide and ſerve as *Chaplain* in the Family. And where a Nobleman hath retained and thus qualified his Number of *Chaplains*, if he diſmiſſes them from their Attendance upon any Diſpleaſure, after they are preferred, yet they are his *Chaplains* at large, and may hold their Livings during their Lives; and ſuch Nobleman, tho' he may retain further *Chaplains* in his Family, meerly as *Chaplains*, he cannot qualify any others to hold Pluralities whilſt the Firſt are living: For if a Nobleman could diſcharge his *Chaplain* when advanced, to qualify another in his Place, and qualify other *Chaplains* during the Lives of *Chaplains* diſcharged, by theſe Means he might advance as many *Chaplains* as he would, whereby the Statutes would be evaded. 4 *Rep.* 90.

Form of a *Retainer* of a Nobleman's *Chaplain.*

KNow *all Men by theſe Preſents, That I the Right Honourable* T. *Lord* A. *Baron of*, &c. Have *admitted, conſtituted and appointed, and by theſe Preſents do admit, conſtitute and appoint* C. D. *of*, &c. *Clerk, my Domeſtick* Chaplain; *To have, hold and enjoy all and ſingular the Benefits, Privileges, Liberties and Advantages, due and of Right granted to the* Chaplains *of Nobility, by the Laws and Statutes of this Realm.* In Witneſs, *&c.*

Chapter, (*Capitulum*) Is a Congregation of Clergymen under the Dean in a Cathedral Church: *Congregationem Clericorum in Eccleſia Cathedrali, Conventuali, Regulari vel Collegiata.* This Collegiate Company is metaphorically termed *Capitulum*, ſignifying a little Head, it being a Kind of Head, not only to govern the Dioceſe in the Vacation of the Biſhoprick, but alſo in many Things to adviſe and aſſiſt the Biſhops when the See is full, for which, with the Dean, they form a Council. 1 *Inſt.* 103. The *Chapter* conſiſts of Prebends or Canons, which are ſome of the chief Men of the Church, and therefore are called *Capita Eccleſiæ*: They are a Spiritual Corporation Aggregate, which they cannot ſurrender without Leave of the Biſhop, becauſe he hath an Intereſt in them; they, with the Dean, have Power to confirm the Biſhop's Grants; during the Vacancy of an Archbiſhoprick, they are Guardians of the Spiritualties, and as ſuch have Authority by the Stat. 25 *Hen.* 8. *cap.* 21. to grant Diſpenſations; likewiſe as a Corporation they have Power to make Leaſes, *&c.* When the Dean and *Chapter* confirm Grants of the Biſhop, the Dean joins with the *Chapter*, and there muſt be the Conſent of the major Part; which Conſent is to be expreſſed by their Fixing of their Seal to the Deed, in one Place, and at one Time, either in the *Chapter-Houſe*, or ſome other Place; and this Conſent is the Will of many joined together. *Dyer* 233. A *Chapter* is not capable to take by Purchaſe or Gift, without the Dean, who is the Head of the Body: But there may be a *Chapter* without a Dean, as the *Chapter* of the Collegiate Church of *Southwell*; and Grants by or to them are as effectual as other Grants by Dean and *Chapter*. Yet where there are *Chapters* without Deans, they are not properly *Chapters*: And the *Chapter* in a Collegiate Church, where there is no Epiſcopal See, as at *Weſtminſter* and *Windſor*, is more properly called a College. *Chapters* are ſaid to have their Beginning before Deans; and formerly the Biſhop had the Rule and Ordering of Things without a Dean and *Chapter*, which were conſtituted afterwards; and all the Miniſters within his Dioceſe were as his *Chapter*, to aſſiſt him in Spiritual Matters. 2 *Roll. Rep.* 454. 3 *Co.* 75. The Biſhop hath a Power of Viſiting the Dean and *Chapter*: But the Dean and *Chapter* have nothing to do with what the Biſhop tranſacts as Ordinary. 3 *Rep.* 75 Tho' the Biſhop and *Chapter* are but one Body, yet their Poſſeſſions are for the moſt part divided; as the Biſhop hath his Part in Right of his Biſhoprick; the Dean hath a Part in Right of his Deanery; and each Prebendary hath a certain Part in Right of his Prebend; and each too is incorporate by himſelf. And Deans and *Chapters* have ſome of them Eccleſiaſtical Juriſdiction in ſeveral Pariſhes, (beſides that Authority they have within their own Body) executed by their Officials; alſo temporal Juriſdiction in ſeveral Manors belonging to them, in the ſame Manner as Biſhops, where their Stewards keep Court, *&c.* 2 *Roll. Abr.* 229. It has been obſerved, that tho' the *Chapter* have diſtinct Parcels of the Biſhop's Eſtate aſſigned for their Maintenance, the Biſhop hath little more than a Power over them in his Viſitations, and is ſcarce allowed to nominate Half of thoſe to their Prebends, who were originally of his Family: But of common Right it is ſaid he is their Patron. *Roll. Ibid.*

Charge of Juſtices in Seſſions, *&c.* See *Chapiters*, or *Chapitres.*

Charge and Diſcharge, A *Charge* is ſaid to be a Thing done that bindeth him that doth it, or that which is his, to the Performance thereof: And *Diſcharge* is the Removal, or taking away of that *Charge. Terms de Ley.* Land may be *charged* divers Ways; as by Grant of Rent out of it, by Statutes, Judgments, Conditions, Warranties, *&c.* Lands in Fee-ſimple, may be *charged* in Fee; and where a Man may diſpoſe of the Land itſelf, he may *charge* it by a Rent, or Statute, one way or other. *Litt. Sect.* 648. *Moor Ca.* 129. *Dyer* 10. If one *charge* Land in Tail, and Land in Fee-ſimple, and die; the Land in Fee only ſhall be chargeable. *Bro. Cha.* 9. Lands intailed may be *charged* in Fee, if the Eſtate-tail be cut off by Recovery: If Tenant in Tail *charge* the Land, and after Levy a Fine or ſuffer a Recovery of the Lands, to his own Uſe; this confirms the *Charge*, and it ſhall continue. 1 *Co. Rep.* 61. A Tenant for Life *charges* the Land, and then makes a Feoffment to a Stranger, or doth Waſte, *&c.* whereby it is forfeited, he in Reverſion ſhall hold it *charged* during his Life: And if one have a Leaſe for Life or Years of Land, and grant a Rent out of it; if after he ſurrenders his Eſtate, yet the *Charge* ſhall continue ſo long as the Eſtate had endured, in caſe it had not been ſurrendered. 1 *Rep.* 67, 145. *Dyer* 10. If a Feme Sole Leſſee for Years takes Husband, and he *charges* the Land and dies, ſhe may avoid it; for the Husband might have given or forfeited, but he may not *charge* it. *Bro. Cha.* 41. If one Jointenant *charge* Land, and after releaſe to his Companion, and die, the Survivor ſhall hold it *charged*: But if it had come to him by Survivorſhip, it would be otherwiſe. 6 *Rep.* 76. 1 *Shep. Abr.* 325. He that hath a Remainder or Reverſion of Land may *charge* it; becauſe of the Poſſibility that the Land will come into Poſſeſſion, and then the Poſſeſſion ſhall be *charged.* But where one leaſes Land for Life, and grants the Reverſion or Remainder over to *A. B.*

who *charges* the Land, and dies, and the Tenant for Life is Heir to the Fee; in this Caſe, he ſhall hold it *diſcharged*, for he had the Poſſeſſion by Purchaſe, tho' he had the Fee by Diſcent. *Bro.* 11, 16. 1 *Rep.* 62. If a Rent be iſſuing out of a Houſe, *&c.* and it falls down, the *Charge* ſhall remain upon the Soil. 9 *E.* 4. 20. But when the Eſtate is gone upon which the *Charge* was grounded, there generally the *Charge* is determined. *Co. Lit.* 349. And in all Caſes where any Executory Thing is created by Deed, there by Conſent of all the Parties it may be by Deed defeated and *diſcharged*. 10 *Rep.* 49. Vide *Diſcharge.*

Charitable Corporation. A Society of Perſons in the late Reign obtained a Statute to lend Money to *Induſtrious Poor*, at 5*l.* *per Cent.* Intereſt on Pawns and Pledges, to prevent their falling into the Hands of the Pawn-brokers, and therefore they were called the *Charitable Corporation:* But they likewiſe took 5*l.* *per Cent.* for the Charge of Officers, Warehouſes, *&c.* And in the fifth Year of King *Geo.* 2. the chief Officers of this Corporation, by Connivance of the Principal Directors, abſconded and broke, and defrauded the publick Proprietors of great Sums; for Relief of the Sufferers wherein, as to Part of their Loſſes, ſeveral Statutes were made and enacted. See Stat. 5 *Geo.* 2. *cap.* 31, 32. 7 *Geo.* 2. *cap.* 11.

Charitable Uſes, where any Lands, *&c.* are given to *Charitable Uſes*, Commiſſions of Inquiry, and Deeds how made and taken, *&c.* See *Chancery* and *Mortmain.* Stat. 9 *Geo.* 2.

Charks, Are Pit-coal when *charred* or *charked*, ſo called in *Worceſterſhire*; as Sea-coal thus prepared at *Newcaſtle* is called *Coke.*

Charre of Lead, Is a Quantity of Lead conſiſting of thirty *Pigs*, each Pig containing ſix *Stone* wanting two Pounds, and every Stone being twelve Pounds.—— *La* Charre *de Plumbo conſtat ex* 30 *fotinellis, & qualibet fotinella continet* 6 *Petras, exceptis duabus libris, & qualibet Petra conſtat ex* 12 *libris.* Aſſiſa de Ponderibus. Rob. 3. R. Scot. cap. 22.

Charta, A Word made Uſe of not only for a *Charter*, for the Holding an Eſtate; but alſo a Statute. See *Magna Charta.*

Charte, A Card or Plain which Mariners uſe at Sea, mentioned 14 *Car.* 2. *c.* 33.

Chartel, (Fr. *Cartel*) A Letter of Defiance, or Challenge to a ſingle Combat; in Uſe heretofore to decide difficult Controverſies at Law, which could not otherwiſe be determined. *Blount.*

Charter, (Lat. *Charta*, Fr. *Chartres*, i.e. *Inſtrumenta*) Is taken in our Law for written Evidence of Things done between Man and Man: Whereof *Bracton, lib.* 2. *cap.* 26. ſays thus, *Fiunt aliquando Donationes in Scriptis, ſicut in* Chartis, *ad perpetuam rei memoriam, propter brevem hominum vitam, &c.* And *Briton* in his 39th Chapter divides *Charters* into thoſe of the King, and thoſe of private Perſons. *Charters of the King* are thoſe whereby the King paſſeth any Grant to any Perſon or Body Politick; as a *Charter* of Exemption, of Privilege, *&c.* *Charter of Pardon*, whereby a Man is forgiven a Felony, or other Offence committed againſt the King's Crown and Dignity; and of theſe there are ſeveral Sorts, *viz. Charta Pardonationis Utlagariæ, Charta Pardonationis ſe Defendendo, &c.* and others mentioned in *Reg. Writs*, 287, 288, *&c.* *Charter of the Foreſt*, wherein the Laws of the Foreſt are compriſed, ſuch as the *Charter of Canutus*, &c. *Kitch.* 314. *Fleta, lib.* 3. *c.* 14. *Charters of Private Perſons* are Deeds and Inſtruments for the Conveyance of Lands, *&c.* And the Purchaſer of Lands, ſhall have all the *Charters*, Deeds and Evidences as incident to the ſame, and for the Maintenance of his Title. *Co. Lit.* 6. *Charters* belong to a Feoffee, altho' they be not ſold to him, where the Feoffor is not bound to a general Warranty of the Land; for there they ſhall belong to the Feoffor, if they be ſealed Deeds or Wills in Writing: But other *Charters* go to the Tertenant. *Moor Ca.* 687. The *Charters* belonging to the Feoffor in caſe of Warranty the Heir ſhall have, tho' he hath no Land by Diſcent, for the Poſſibility of Diſcent after. 1 *Rep.* 1.

Charterer, In *Cheſhire*, a Freeholder is called by this Name. Sir *P. Ley's Antiq. fol.* 356.

Charter-land, (*Terra per Chartam*) Is ſuch as a Man holds by *Charter*, that is by Evidence in Writing otherwiſe called Freehold. *Anno* 19 *H.* 7. *cap.* 13. This in the Time of the *Saxons* was called *Bockland*, which was held (according to *Lambard*) with more commodious and eaſy Conditions than *Folkland* was, *i.e.* Lands held without Writing; becauſe that was *Hæreditaria, libera atque immunis*; whereas, *Fundus ſine ſcripto cenſum penſitabat annuum, atque officiorum quadam ſervitute eſt obligatus: Priorem viri plerumque nobiles, atque ingenui; poſteriorem Ruſtici fere & pagani poſſidebant: Illum nos vulgo* Freehold *& per Chartam; hanc ad voluntatem Domini appellamus.* Lamb.

Charter-party, (Lat. *Charta partita*, Fr. *Chartre parti, i. e.* a Deed or Writing divided) Is what among Merchants and Sea-faring Men, we commonly call a *Pair of Indentures*, containing the Covenants and Agreements made between them, touching their Merchandize and maritime Affairs. 2 *Inſt.* 673. And *Charter-parties* of Affreightment ſettle Agreements, as to the Cargo of Ships, and bind the Maſter to deliver the Goods in good Condition at the Place of Diſcharge, according to Agreement; and the Maſter ſometimes obliges himſelf, Ship, Tackle and Furniture for Performance. The Common Law conſtrues *Charter parties*, as near as may be, according to the Intention of them, and not according to the literal Senſe of Traders, or thoſe that merchandize by Sea, but they muſt be regularly pleaded. In Covenant by *Charter-party*, that the Ship ſhould return to the River of *Thames*, by a certain Time, *Dangers of the Sea excepted*, and after in the Voyage, and within the Time of the Return, the Ship was taken upon the Sea by Pirates, ſo that the Maſter could not Return at the Time mentioned in the Agreement; it was adjudged that this Impediment was within the Exception of the *Charter-party*, which extends as well to any Danger upon the Sea by Pirates and Men of War, as Dangers of the Sea by Shipwreck, Tempeſt, *&c.* *Stile* 132. 2 *Roll. Abr.* 248. A Ship is freighted at ſo much *per* Month that ſhe ſhall be out, covenanted to be paid after her Arrival at the Port of *London*; the Ship is caſt away coming up from the *Downs*, but the Lading is all preſerved, the Freight ſhall in this Caſe be paid; for the Money becomes due Monthly by the Contract, and the Place mentioned is only to aſcertain where the Money is to be paid, and the Ship is intitled to Wages, like a Mariner that ſerves by the Month, who if he dies in the Voyage, his Executors are to be anſwered *pro rata.* *Molloy de Jur. Maritim.* 260. If a Part owner of a Ship refuſe to join with the other Owners in ſetting out the Ship, he ſhall not be entitled to his Share of the Freight; but by the Courſe of the Admiralty, the other Owners ought to give Security if the Ship periſh in the Voyage, to make good to the Owner ſtanding out his Share of the Ship. Sir *Lionel Jenkins*, in a Caſe of this Nature, certified that by the Law Marine and Courſe of the Admiralty, the Plaintiff was to have no Share of the Freight; and that it was ſo in all Places, for otherwiſe there would be no Navigation. *Lex Mercat.* 100. See *Freight.*

Form of a *Charter party* of *Affreightment.*

THIS Charter-party *indented, made,* &c. *between* A. B. *of,* &c. *Mariner, Maſter and Owner of the good Ship or Veſſel called,* &c. *now riding at*

Anchor at, &c. *of the Burden of two hundred Tons, or thereabouts, of the one Part, and* C. D. *of,* &c. *Merchant of the other Part,* Witneſſeth, *That the ſaid* A. B. *for the Conſiderations herein after mentioned,* Hath *granted and to Freight letten, and by theſe Preſents doth grant and to Freight let unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, the whole Tonnage of the Hold, Stern-ſheets and Half-deck of the ſaid Ship or Veſſel, called,* &c. *from the Port of* London, *to,* &c. *in a Voyage to be made by the ſaid* A. B. *with the ſaid Ship, in Manner hereafter mentioned; (that is to ſay) to ſail with the firſt fair Wind and Weather that ſhall happen after,* &c. *next from the ſaid Port of* London, *with the Goods and Merchandize of the ſaid* C. D. *his Factors or Aſſigns on Board to,* &c. *aforeſaid, (the Dangers of the Sea excepted) and there unlade and make Diſcharge of the ſaid Goods and Merchandizes: And alſo ſhall there take into and aboard the ſaid Ship again, the Goods and Merchandizes of the ſaid* C. D. *his Factors or Aſſigns, and ſhall then return to the Port of* London *with the ſaid Goods, in the Space of,* &c. *limited for the End of the ſaid Voyage.* In Conſideration *whereof the ſaid* C. D. *for himſelf, his Executors, and Adminiſtrators, doth covenant, promiſe and grant to and with the ſaid* A. B. *his Executors, Adminiſtrators, and Aſſigns, by theſe Preſents, that the ſaid* C. D. *his Executors, Adminiſtrators, Factors or Aſſigns, ſhall and will well and truly pay or cauſe to be paid, unto the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns for the Freight of the ſaid Ship and Goods, the Sum of,* &c. *(or ſo much* per *Ton) within twenty-one Days after the ſaid Ship's Arrival, and Goods returned and diſcharged at the Port of* London *aforeſaid, for the End of the ſaid Voyage:* And *alſo ſhall and will pay for Demorage, (if any ſhall be by the Default of him the ſaid* C. D. *his Factors or Aſſigns) the Sum of,* &c. per *Day, daily and every Day, as the ſame ſhall grow due.* And *the ſaid* A. B. *for himſelf, his Executors and Adminiſtrators, doth covenant, promiſe and grant, to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, by theſe Preſents, that the ſaid Ship or Veſſel ſhall be ready at the Port of* London, *to take in Goods by the ſaid* C. D. *on or before,* &c. *next coming. And the ſaid* C. D. *for himſelf, his,* &c. *doth covenant and promiſe, within ten Days after the ſaid Ship, or Veſſel ſhall be thus ready, to have his Goods put on Board the ſaid Ship, to proceed on in the ſaid Voyage: And alſo on the Arrival of the ſaid Ship at,* &c. *within,* &c. *Days, to have his Goods ready to put on Board the ſaid Ship, to return on the ſaid Voyage.* And *the ſaid* A. B. *for himſelf, his Executors and Adminiſtrators, doth further covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, that the ſaid Ship or Veſſel now is, and at all Times during the ſaid Voyage, ſhall be to the beſt Endeavours of him the ſaid* A. B. *his Executors, and Adminiſtrators, and at his and their own proper Coſts and Charges, in all Things made and kept ſtiff, ſtaunch, ſtrong, well apparelled, furniſhed and provided, as well with Men and Mariners, ſufficient and able to ſail, guide and govern the ſaid Ship, as with all Manner of Rigging, Boats, Tackle, Apparel, Furniture, Proviſion and Appurtenances, fitting and neceſſary for the ſaid Men and Mariners, and for the ſaid Ships during the Voyage aforeſaid.* In Witneſs, *&c.*

Chartis Reddendis, Is a Writ which lies againſt him that hath Charters of Feoffment entruſted to his Keeping, and refuſeth to deliver them. *Reg. Orig.* 159.

Chaſe, (Fr. *Chaſſe*) In its general Signification is a great Quantity of woody Ground lying open, and privileged for wild Beaſts, and wild Fowl: And the Beaſts of *Chaſe* properly extend to the Buck, Doe, Fox, *&c.* and in common and legal Senſe to all the Beaſts of the Foreſt. 1 *Inſt.* 233. But if one have a *Chaſe* within a Foreſt, and he kill or hunt any Stag or Red Deer, or other Beaſts of the Foreſt, he is fineable. 1 *Jones's Rep.* 278. A *Chaſe* is of a middle Nature, between a Foreſt and a Park, being commonly leſs than a Foreſt, and not endowed with ſo many Liberties, as the Courts of Attachment, Swainmote and Juſtice-Seat; tho' of a larger Compaſs, and ſtored with greater Diverſity both of Keepers, and wild Beaſts or Game, than a Park. A *Chaſe* differs from a *Foreſt* in this, becauſe it may be in the Hands of a Subject, which a *Foreſt* in its proper and true Nature cannot; and from a *Park*, in that it is not encloſed, and hath a greater Compaſs, and more Variety of Game, and Officers likewiſe. *Crompt. in his Juriſdict. fol.* 148. ſays, A Foreſt cannot be in the Hands of a Subject, but it forthwith loſeth its Name, and becomes a *Chaſe:* But *fol* 197. he ſays, A Subject may be Lord and Owner of a Foreſt, which though it ſeems a Contradiction, yet both ſayings are in ſome Sort true: For the King may give or alienate a Foreſt to a Subject, ſo as when it is once in the Subject, it loſeth the true Property of a Foreſt, becauſe the Courts called the Juſtice-Seat, Swainmote, *&c.* do forthwith vaniſh, none being able to make a Lord Chief Juſtice in *Eyre* of the Foreſt, but the King; yet it may be granted in ſo large a Manner, as there may be Attachment, Swainmote, and a Court equivalent to a Juſtice Seat. *Manwood, part* 2. *c.* 3, 4. A Foreſt and a *Chaſe* have different Officers and Laws: Every Foreſt is a *Chaſe, & quiddam amplius*; but any *Chaſe* is not a Foreſt. A *Chaſe* is *ad communem Legem*, and not to be guided by the Foreſt Laws; and it is the ſame of Parks. 4 *Inſt.* 314. A Man may have a free *Chaſe* as belonging to his Manor in his own Woods, as well as a Warren and a Park in his own Grounds; for a *Chaſe*, Warren and Park are collateral Inheritances, and not iſſuing out of the Soil; and therefore if a Perſon hath a *Chaſe* in other Men's Grounds, and after purchaſeth the Grounds, the *Chaſe* remaineth. *Ibid.* 318. If a Man have Freehold in a fee *Chaſe*, he may cut his Timber and Wood growing upon it, without View or Licenſe of any; though it is not ſo of a Foreſt: But if he cut ſo much that there is not ſufficient for Covert, and to maintain the Game, he ſhall be puniſhed at the Suit of the King: And ſo if a common Perſon hath a *Chaſe* in another's Soil, the Owner of the Soil cannot deſtroy all the Covert, but ought to leave ſufficient thereof, and alſo Browſewood, as hath been accuſtomed. 11 *Rep.* 22. And it has been adjudged, that within ſuch *Chaſe*, the Owner of the Soil by Preſcription may have Common for his Sheep, and Warren for his Conies; but he cannot ſurcharge with more than has been uſual, nor make Coney-Burrows in other Places than has been uſed. *Ibid.* If a free *Chaſe* be incloſed, it is ſaid to be a good Cauſe of Seiſure into the King's Hands. It is not lawful to make a *Chaſe*, Park or Warren, without Licence from the King under the Broad Seal.

Chaſor, An hunting Horſe. —— *Dederunt mihi unum* Chaſorem, *&c. Leg. Will.* 1. *cap.* 22. And in another Chapter it is written *Cacorem.*

Chaſtellaine, A noble Woman: *Quaſi caſtelli Domina.*

Chattels or **Catals,** (*Catalla*) Comprehend all Goods moveable and immoveable, except ſuch as are in Nature of Freehold, or Parcel of it. The *Normans* call moveable Goods only *Chattels*; but this Word by the Common Law extends to all moveable and immoveable Goods: And the *Civilians* denominate not only what we call *Chattels*, but alſo Land, all under *Bona.* But no Eſtate of Inheritance or Freehold, can be termed in our Law Goods and Chattels; though a Leaſe for Years may paſs as Goods. *Chattals* are either *Perſonal* or *Real: Perſonal*, as Gold, Silver, Plate, Jewels, Houſhold-Stuff, Goods and Wares in a Shop, Corn ſown on the Ground, Carts, Ploughs, Coaches, Saddles, *&c.* Cattle, as Horſes, Oxen, Kine, Bullocks, Sheep, Pigs, and all tame Fowls and Birds, Swans, Turkeys, Geeſe, Poultry, *&c.* and theſe are called

Perſonal in two Reſpects, one becauſe they belong immediately to the Perſon of a Man; and the other, for that being any Way injuriouſly with-held from us, we have no means to recover them but Perſonal Action. *Chattels Real* are ſuch as either appertain not immediately to the Perſon, but to ſome other Thing by Way of Dependency, as a Box with Charters of Land, *&c.* or ſuch as are iſſuing out of ſome immoveable Thing to a Perſon, as a Leaſe, or Rent for Term of Years: And *Chattels* Real concern the Realty, Lands and Tenements, Leaſes for Years, Intereſt in Advowſons, in Statutes-Merchant, *&c.* And alſo include Corn cut, Trees cut, *&c.* 1 *Inſt.* 118. *Noy's Max.* 49. But Deeds relating to a Freehold, Obligation, *&c.* which are Things in Action, are not reckoned under Goods and *Chattels*; though if Writings are pawned, they may be *Chattels:* And Money hath not been accounted Goods or *Chattels*; nor are Hawks or Hounds ſuch, being *feræ Naturæ.* 8 *Rep.* 33. *Terms de Ley* 103. *Kitch.* 32. Perſonal Eſtate is uſually taken for Money, Goods, Bonds, Leaſes for Years, *&c.* And *Chattels* Perſonal are not only moveable and immoveable, but ſome are animate, as Horſes, *&c.* and others inanimate, as Beds, *&c.* A Collar of SS, Garter of Gold, Buttons, *&c.* belonging to the Dreſs of a Knight of the Garter, are not Jewels to paſs by that Name in Perſonal Eſtate, but Enſigns of Honour. *Dyer* 59. The Law will not ſuffer the Deviſe of a Perſonal *Chattel*, with a Remainder over; but a Deviſe of a *Chattel* Real, with Remainder over, hath been in ſome Caſes adjudged good in Equity. 2 *And.* 185. The *Uſe* of Perſonal Things, ſuch as Plate, Jewels, *&c.* may be given to one, and the Remainder to another; and in that Caſe the Property is veſted in the laſt Deviſee. *Owen.* 33. But a Deviſe of the Uſe of Money, has been adjudg'd a Deviſe of the Money it ſelf; and ſo a Deviſe of the Uſe of Books, Medals, *&c.* and Limitations over have been declared void. 2 *Chan. Rep.* 167. 1 *Chan. Rep.* 129. *Chattels* Perſonal are immediately upon the Death of the Teſtator, in the actual Poſſeſſion of the Executor, as the Law will adjudge, though they are at never ſo great a Diſtance from him; *Chattels* Real, as Leaſes for Years of Houſes, Lands, *&c.* are not in the Poſſeſſion of the Executor 'till he makes an Entry, or hath recovered the ſame; except there be a Leaſe for Years of Tithes, where no Entry can be made. 1 *Nelſ. Abr.* 437. Leaſes for Years, tho' for 1000 Years; Leaſes at Will, Eſtates of Tenants by *Elegit*, *&c.* are *Chattels*, and ſhall go to the Executor: All Obligations, Bills, Statutes, Recognizances and Judgments, ſhall be as a *Chattel* in the Executors, *&c. Bro. Obl.* 18. *F. N. B.* 120. But if one be ſeiſed of Land in Fee on which Trees and Graſs grow, the Heir ſhall have theſe, and not the Executor; for they are not *Chattels* 'till they are cut and ſevered, but Parcel of the Inheritance. 4 *Rep* 63. *Dyer* 273. The Game of a Park with the Park, Fiſh in the Pond, and Doves in the Houſe, with the Houſe, go to the Heir, *&c.* and are not *Chattels:* Though if Pigeons, or Deer, are tame, or kept alive in a Room; or if Fiſh be in a Trunk, *&c.* they go to the Executors as Chattels. *Noy* 124. 11 *Rep.* 50. *Kelw.* 88. An Owner of *Chattels* is ſaid to be poſſeſſed of them; as of Freehold the Term is, that a Perſon is *Seiſed* of the ſame.

Chaumpert, A Kind of Tenure mentioned *Pat.* 35 *Ed.* 3. To the Hoſpital of *Bowes* in the Iſle of *Guernſey.* Blount.

Chaunter, A Singer in a Cathedral. See *Chanter.*

Check-Roll, Is a *Roll* or Book containing the Names of ſuch as are Attendants and in Pay to the King or other great Perſonages, as their Houſhold Servants. *Stat.* 19 *Car.* 2. *cap.* 1. It is otherwiſe called the *Checquer Roll*, and ſeems to take its Etymology from the *Exchequer.* 14 *Hen.* 8. *c.* 13.

Chelindra, A Sort of Ship.—— *Obligavit ſe Imperator ad* 100 Chelindras *&* 50 *Galleias ducendas ultra mare.* Mat. Paris, Anno 1238.

Chelſea, A *College* ſhall be erected at *Chelſea*, and a Trench made to convey Water from the River *Lee* to *London*, to maintain the ſame, by *Stat.* 7 *Jac.* 1. *c.* 9. By late Statutes concerning the Army, one Day's Pay in a Year is to be deducted out of every Officer and Soldier's Pay, for *Chelſea Hoſpital.* *Stat.* K. *Will.* Q. *Ann.* and K. *Geo.* 1. and 2.

Cheſt, An uncertain Quantity of Merchandize, Wine, *&c.*

Cheſter. Where Felony, *&c.* is committed by any Inhabitant of the Palatine of *Cheſter*, in another County, Proceſs ſhall be made to the *Exigent* where the Offence was done, and if the Offender then fly into the County of *Cheſter*, the Outlawry ſhall be certified to the Officers there. 1 *H.* 4. *c.* 18. The Seſſions for the County Palatine of *Cheſter*, is to be kept twice in the Year, at *Michaelmas* and *Eaſter:* And Juſtices of Peace, *&c.* in *Cheſter* ſhall be nominated by the Lord Chancellor. *Stat.* 27 *H.* 8. *c.* 5. 32 *H.* 8. *c.* 43. Recognizances of Statutes Merchant may be acknowledged, and Fines levied before the Mayor of *Cheſter*, &c. for Lands lying there. 2 *&* 3 *Ed.* 6. *c.* 31. But no Writ of Protection ſhall be granted in the County Palatine. See *County.*

Chevage, (*Chevagium*, from the Fr. *Chef*, i. e. *Caput*) Is a Tribute or Sum of Money formerly paid by ſuch as held Lands in Villenage to their Lords in Acknowledgment, and was a Kind of Head or Poll Money. Of which *Bracton, lib.* 1. *cap.* 10. ſays thus; Chevagium *dicitur recognitio in ſignum Subjectionis & Dominii de capite ſuo.* *Lambard* writes this Word *Chivage*; but it is more properly *Chiefage:* And anciently the *Jews*, whilſt they were admitted to live in *England*, paid *Chevage* or Poll-Money to the King, as appears by *Pat.* 8 *Ed.* 1. *par.* 1. It ſeems alſo to be uſed for a Sum of Money, yearly given to a Man of Power for his Protection, as a Chief *Head* or Leader: But the Lord *Coke* ſays, that in this Signification, it is a great Miſpriſion for a Subject to take Sums of Money, or other Gifts yearly of any, in Name of *Chevage*, becauſe they take upon them to be their Chief Heads or Leaders. *Co. Lit.* 140.

Chevantia, A Loan or Advance of Money upon Credit; Fr. *Chavarice*, Goods, Stock.—— *Idem Prioratus pene deſtructus, & poſſeſſionis ſuæ ad plurimos terminos pro plurimis* Chevantiis *alienatæ exiſtunt.* Mon. Ang. Tom. 1. pag. 629.

Cheveril, (*Cheverillus*) A young Cock, or Cockling. *Pat.* 15 *H.* 3.

Cheviſance, (from the Fr. *Chevir*, i. e. *Venir a Chief de quelque choſe*, to come to the Head or End of a Buſineſs) Signifies an Agreement or Compoſition made; an End or Order ſet down between a Creditor or Debtor; or ſometimes an indirect Gain in Point of Uſury, *&c.* In our Statutes it is often mentioned, and moſt commonly uſed for an unlawful Bargain or Contract. *Stat.* 37 *Hen.* 8. *c.* 9. 13 *Eliz. cap.* 5 *&* 8. 21 *Jac.* 1. *c.* 17. and 12 *Car.* 2. *c.* 13.

Chevitiæ and **Cheviſæ**, Are Heads of ploughed Lands. *Novem Acras Terræ cum* Cheviſcis *ad ipſas pertinentibus.* Mon. Angl. Tom. 2. f. 116.

Chief Pledge, (*Plegius vel vas Capitalis*) Mentioned 20 *Hen.* 6. *cap.* 8. See *Borough-head* and *Borough-holder.*

Children, Are in Law a Man's Iſſue begotten on his Wife. In Caſe Land be given by Will to a Man and his *Children*, who has ſuch alive, the Deviſee takes only an Eſtate for Life; but if there be no Child living, it is held to be an Eſtate-Tail. 1 *Vent.* 214, 225. A Deviſe to one's *Children*, *prima facie* refers only to thoſe as are alive at the Time of Making the Will; though were the ſame to *Children living at his Death*, a Child in *Ventre ſa Mere*, may be looked upon as living. 1 *Peer Williams* 342, 244. Alſo a Son, with which a Wife is *priviment enſient*, is adjudg'd living at the Time of the Teſtator's Death, to prevent an an Eſtate going over to another, *&c. Ibid.* 486. If a Sum of Money is given in Truſt for the *Children* of another Perſon, and he had only one Child and ſeveral *Grandchildren*, the Child only ſhall take, yet it is ſaid if ſuch Perſon had not any Child living, the Grandchildren might have taken by the Name of *Children*. 2 *Vern.* 106. *Abr. Caſ. Eq.* 202. A Father being about to make his Will, and thereby intended to have made Proviſions for his younger *Children*; his Son and Heir diſſuaded him from doing it, and promiſed that he would take Care his Brothers and Siſters ſhould have the Proviſions; upon which the Father forbore making them, and they were decreed in Chancery againſt the Heir; his Promiſe being by Fraud. *Preced. Canc.* 4. And where a Perſon going to ſuffer a Recovery, in order to provide for younger *Children*, was kept from it by the Heir in Tail, he promiſing to do for them himſelf; it has been ruled he ſhould do it, after the Father's Death. *Ibid.* 5. See *Adminiſtrator.* See alſo *Poſthumous.*

Childwit, (*Sax.*) Is a Fine or Penalty of a Bond-Woman unlawfully begotten with Child: *Prior habeat Gerſumam de Nativa ſua impregnata ſine Licentia maritandi. Ex Reg. Priorat' de* Cokesford. *Cowel* ſays, it ſignifieth a Power to take a Fine of your Bond-Woman gotten with Child without your Conſent: And within the Manor of *Writtel in Com. Eſſex*, every reputed Father of a baſe Child, pays to the Lord for a Fine 3 *s.* 4 *d.* where it ſeems to extend as well to Free as Bond-Women; and the Cuſtom is there called *Childwit* to this Day.

Chimin, (Fr. *Chemin*, i. e. *Via*) In Law Phraſe is a Way; which is of two Sorts; the King's Highway, and a private Way. The *King's Highway*, (*Chiminus Regius*) is that in which the King's Subjects, and all others under his Protection, have free Liberty to paſs, though the Property of the Soil where the Way lies, belongeth to ſome private Perſon. A *Private Way* is that in which one Man or more have Liberty to paſs through the Ground of another, by Preſcription or Charter; and this is divided into *Chimin in Groſs*, and *Chimin appendant*. *Chimin in Groſs* is where a Perſon holds a Way principally and ſolely in itſelf; *Chimin appendant* is that Way which a Man hath as appurtenant to ſome other Thing: As if he rent a Cloſe or Paſture, with Covenant for Ingreſs and Egreſs through ſome other Ground in which otherwiſe he might not paſs. *Kitch.* 117. *Co. Lit.* 56. It is ſaid a Way may not be claimed by Preſcription as appendant or appurtenant to an Houſe, becauſe it is only an Eaſement and no Intereſt; but a Perſon may preſcribe for a Way from his Houſe through a certain Cloſe, *&c.* to Church, though he himſelf hath Lands next adjoining to his ſaid Houſe, through which of Neceſſity he muſt firſt paſs; for the general Preſcription ſhall be applied only to the Lands of others. *Yelv.* 159. 1 *Danv. Abr.* 785. See *Highway.*

Chiminage, (*Chiminagium*) Is a Toll due by Cuſtom for having a Way through a Foreſt; and in antient Records it is ſometimes called *Pedagium*. Cromp. Juriſd. 189. Co. Lit. 56. —— *Telonium quod in Foreſtis exigebant Foreſtarii a Plauſtris & Equis oneris cauſa eo venientibus.* Chart. Foreſt, cap. 14. *Et nullus Foreſtarius qui non ſit Foreſtarius de Feodo, &c. capiat* Chiminagium, *&c.*

Chimney-Money, Otherwiſe called *Hearth-Money*. a Duty to the Crown on Houſes. By Statute 14 *Car.* 2. *cap.* 2. Every Fire-Hearth and Stove of every Dwelling and other Houſe within *England* and *Wales*, (except ſuch as pay not to Church and Poor) ſhall be chargeable with 2 *s. per Annum*, payable at *Michaelmas* and *Lady-Day*, to the King and his Heirs, and Succeſſors, *&c.* which Payment was commonly called *Chimney-Money*. This Tax being much complained of, as burthenſome to the People, hath been long ſince taken off, and others impoſed in its Stead; among which that on *Windows* of Houſes, laid 7 & 8 *W.* 3. has by ſome Perſons been eſteemed almoſt equally grievous. See *Frage.*

Chipp, Cheap, Chipping, Signifies the Place to be a Market-Town, as *Chippenham*, &c. *Blount.*

Chippingavel, or *Cheapingavel*, Toll for Buying and Selling.

Chirgemot, *Circgemot*, *Chirch-gemot*, (Sax.) *Forum Eccleſiaſticum.* —— *Quouſque* Chirgemot *Diſcordantes inveniet, vel amore congreget, vel ſequeſtret Judicio.* Leg. Hen. 1. c. 8. 4 Inſt. 321.

Chirograph, (*Chirographum*, or *Scriptum Chirographatum*) Any publick Inſtrument of Gift or Conveyance, atteſted by the Subſcription and Croſſes of Witneſſes, was in the Time of the *Saxons* called *Chirographum*; which being ſomewhat changed in Form and Manner by the *Normans*, was by them ſtiled *Charta:* In following Times, to prevent Frauds and Concealments, they made their Deeds of mutual Covenant in a *Script* and *Reſcript*, or in a Part and Counter part, and in the Middle between the two Copies, they drew the Capital *Letters of the Alphabet*, and then tallied or cut aſunder in an indented Manner, the Sheet or Skin of Parchment; which being delivered to the two Parties concerned, were proved authentick by matching with and anſwering to one another: And when this prudent Cuſtom had for ſome Time prevailed, then the Word *Chirographum* was appropriated to ſuch bipartite Writings or Indentures. Anciently when they made a *Chirograph* or Deed, which required a Counter-part, they ingroſſed it twice upon one Piece of Parchment contrariwiſe, leaving a Space between, in which they wrote in great Letters the Word **Chirograph**; and then cut the Parchment in two, ſometimes even and ſometimes with Indenture, through the Midſt of the Word: This was afterwards called *Dividenda*, becauſe the Parchment was ſo divided or cut; and 'tis ſaid the firſt Uſe of theſe *Chirographs* was in *Henry* the Third's Time. *Chirograph* was of Old. uſed for a *Fine*; the Manner of Ingroſſing whereof, and cutting the Parchment in two Pieces, 'tis ſtill obſerved in the *Chirographer's Office:* But as to Deeds; that was formerly called a *Chirograph*, which was ſubſcribed by the proper Handwriting of the Vendor or Debtor, and delivered to the Vendee or Creditor: And it differed from *Singraphus*, which was in this Manner, *viz.* Both Parties, as well the Creditor as Debtor, wrote their Names and the Sum of Money borrowed, on Paper, *&c.* and the Word **Syngraphus** in Capital Letters in the Middle thereof, which Letters were cut in the Middle, and one Part given to each Party, that upon comparing them (if any Diſpute ſhould ariſe) they might put an End to the Difference. The *Chirographs* of Deeds have ſometimes concluded thus, —— *Et in hujus rei Teſtimonium huic ſcripto in modum* Chirograpi *confecto vi iſſim ſigilla noſtra appoſuimus.* The *Chirographs* were called *Chartæ Diviſæ, Scripta per* Chirographum *Diviſa, Chartæ per Alphabetum Diviſæ:* as the *Chirographs* of all Fines are at this Time. *Kennet's Antiq.* 177. *Mon. Ang. Tom.* 2. *p.* 94.

Chirographer of Fines (*Chirographus Finium & Concordiarum*, of the Greek Χειρόγραφον, a Compound of Χεὶρ, *Manus* a Hand, and γράφω, *Scribo*, to write, a Writing of a Man's Hand) Signifies that Officer in the Common Pleas which ingroſſeth Fines acknowledg'd in that Court into a perpetual Record, after they are examined and paſſed in the other Offices, and that writes and delivers the Indentures of them to the Party: And this Officer makes out two Indentures, one for the Buyer, another for the Seller; and alſo makes one other indented Piece, containing the Effect of the Fine, which he delivers to the *Cuſtos Brevium*, which is called the *Foot of the Fine*. The *Chirographer* likewiſe, or his Deputy, proclaims all the Fines in the Court every Term, according to the Statute, and endorſes the Proclamation upon the Backſide of the Foot thereof; and always keeps the Writ of Covenant, and Note of the Fine: And the *Chirographer* ſhall take but 4 *s*. Fee for a Fine, in Pain to forfeit his Office, *&c. Stat.* 2 *Hen.* 4. *c.* 8. 23 *Eliz. cap.* 3. 2 *Inſt.* 468.

Chivalry, (*Servitium Militare*) Comes from the Fr. *Chevalier*, and in our Law is uſed for a Tenure of Lands by Knights Service; whereby the Tenant was bound to perform Service in War unto the King, or the meſne Lord of whom he held by that Tenure. And *Chivalry* was either *General* or *Special*; *General*, where it was only in the Feoffment that the Tenant held *per ſervitium militare*, without any Specification of Serjeanty, Eſcuage, *&c. Special*, when it was declared particularly by what Kind of Knight-Service the Land was held. For the better Underſtanding of this Tenure, it has been obſerved, that there is no Land but is holden mediately or immediately of the Crown by ſome Service; and therefore all our Freeholds that are to us and our Heirs, are called *Feuda* or *Feoda*, Fees, as proceeding from the King, for ſome ſmall yearly Rent, and the Performance of ſuch Services as were originally laid upon the Land at the Donation thereof; for as the King gave to the great Nobles, his immediate Tenants, large Poſſeſſions for ever, to hold of him for this or that Service or Rent, ſo they in Time parcelled out to ſuch others as they liked the ſame Lands, for Rents and Services as they thought good: And theſe Services were by *Littleton* divided into two Sorts, *Chivalry* and *Socage*; the Firſt whereof was Martial and Military, the other Ruſtical; *Chivalry* therefore was a Tenure of Service, whereby the Tenant was obliged to perform ſome noble or military Office unto his Lord, being of two Kinds, either *Regal*, that is held only of the King, or common, where held of a common Perſon: That which might be held only of the King was called *Servitium* or *Serjeantia*, and was again divided into Grand and Petit Serjeanty; the *Grand Serjeanty* was where one held Lands of the King by Service, which he ought to do in his own Perſon, as to bear the King's Banner or Spear, to lead his Hoſte, or to find a Man at Arms to fight, *&c. Petit Serjeanty* was when a Man held Lands of the King, to yield him annually ſome ſmall Thing towards his Wars, as a Sword, Dagger, Bow, *&c. Chivalry* that might be holden of a common Perſon, was termed *Scutagium*, *Eſcuage*, that is Service of the Shield, which was either uncertain or certain; *Eſcuage uncertain* was likewiſe twofold, firſt, where the Tenant was bound to follow his Lord, going in Perſon to the King's Wars, either himſelf or ſending a ſufficient Man in his Place, there to be maintained at his Coſt ſo long as was agreed upon between the Lord and his firſt Tenant, at the Granting of the Fee; and the Days of ſuch Service ſeem to have been rated by the Quantity of Land ſo holden, as if it extended to a whole Knight's Fee, then the Tenant was to follow his Lord forty Days; and if but to Half a Knight's Fee, than twenty Days; if a fourth Part, then ten Days, *&c.* and the other Kind of this Eſcuage was called *Caſtleward*, where the Tenant was obliged by himſelf or ſome other, to defend a Caſtle, as often as it ſhould come to his Turn; and theſe were called Eſcuage uncertain; becauſe it was uncertain how often a Man ſhould be called to follow his Lord to the Wars, or to defend a Caſtle, and what his Charge would be therein. *Eſcuage certain* was where the Tenant was ſet at a certain Sum of Money to be paid in Lieu of ſuch Service; as that a Man ſhould pay yearly for every Knight's Fee twenty Shillings, for Half a Knight's Fee ten Shillings, or ſome like Rate; and this Service, becauſe it is drawn to a certain Rent, groweth to be of a mixt Nature, not merely Socage, and yet Socage in Effect, being now neither Perſonal Service nor uncertain. *Littleton.* The Tenure called *Chivalry* had other Conditions annexed to it: But there is a great Alteration made in theſe Things by the Stat. 12 *Car.* 2. *c.*24. which enacts that Tenures by *Knights-Service* of the King, or any other Perſon, *in Capite*, *&c.* and the Fruits and Conſequences thereof happened, or which ſhall or may happen or ariſe thereupon, or thereby, are taken away and diſcharged; and all Tenures ſhall be conſtrued and adjudged to be free and common *Socage*, &c.

Chop-church, (*Eccleſiarum Permutatio*) Is a Word mentioned in a Statute of King *Hen.* 6. by the Senſe of which, it was in thoſe Days a Kind of Trade, and by the Judges declared to be lawful: But *Broke* in his Abridgment ſays, it was only permiſſable by Law: It was without Doubt a Nick-name given to thoſe that uſed to change Benefices; as to *chop* and *change* is a common Expreſſion. 9 *Hen.* 6. *cap.* 65. *Vide Litera miſſa omnibus Epiſcopis*, *&c. contra* Choppe-Churches, *Anno* 1391. Spelm. de Conc. vol. 2 p. 642.

Choral, (*Choralis*) Signifies any Perſon that by Virtue of any of the Orders of the Clergy, was in antient Time admitted to ſit and ſerve God in the *Choire*; which in *Latin* is termed *Chorus*: And Mr. *Dugdale* in his Hiſtory of St. *Paul's* Church ſays, that there was formerly ſix *Vicars Choral* belonging to that Church.

Chorepiſcopi, *Suffragan* or *Rural Biſhops*, anciently delegated by the Prime Dioceſan; their Authority was reſtrained by ſome Councils, and their Office by Degrees aboliſhed; after whom the *Rural Deans* were ſo commiſſioned to exerciſe Epiſcopal Juriſdiction, till inhibited by Pope *Alexander* the Third. *Kennet's Paroch. Antiq.* 639.

Choſe, (Fr) A Thing; uſed in the Common Law with divers Epithets; as *Choſe Local*, *Choſe Tranſitory*, and *Choſe in Action*. *Choſe Local* is ſuch a Thing as is annexed to a Place, as a Mill, and the like: And *Choſe Tranſitory* is that Thing which is moveable, and may be taken away, or carried from Place to Place: *Choſe in Action* is a Thing incorporeal, and only a Right; as an Annuity, Obligation for Debt, *&c.* And generally all Cauſes of Suit for any Debt, Duty, or Wrong, are to be accounted *Choſes in Action*: And it ſeems *Choſe in Action* may be alſo called *Choſe in Suſpence*, becauſe it hath no real Exiſtence or Being, nor can properly be ſaid to be in our Poſſeſſion. *Bro.* Tit. *Choſe in Action.* When a Man may bring an Action for ſome Duty, *viz.* Debt upon Bond, or for Rent; or Action of Covenant, or Treſpaſs for Goods taken away, or ſuch like; theſe are *Choſes in Action*: And as they are Things whereof a Perſon is not poſſeſſed, but is put to his Action for Recovery of them, they are therefore called *Choſes in Action*. 1 *Lill. Abr.* 264. A Perſon diſſeiſes me of Land, or takes away my Goods; my Right or Title of Entry into the Lands, or Action and Suit for it, and ſo for the Goods, is a *Choſe in Action*: So a Debt on an Obligation, and Power and Right of Action to ſue for the ſame 1 *Brownl.* 53. And a Condition and Power of Reentry into Land upon a Feoffment, Gift or Grant, before the Performance of the Condition, is of the Nature of a *Choſe in Action*. *Co. Lit.* 214. 6 *Rep.* 50. *Dyer* 244. If one have an Advowſon, when the Church becomes void, the Preſentation is but as a *Choſe in Action*, and not grantable: But 'tis otherwiſe before the Church is void. *Dyer* 296. Where a Man hath a Judgment againſt another for Money, or a Statute, theſe are *Choſes in Action*. An Annuity in Fee to a Man and his Heirs, is grantable

able over: But it has been held, that an Annuity is *Choſe in Action*, and not grantable. 5 *Rep.* 89. *Fitz. Grant*, 45. A *Choſe in Action* cannot be tranferred over; nor is it deviſable: Nor can a *Choſe in Action* be a Satisfaction, as one Bond cannot be pleaded to be given in Satisfaction for another; but in Equity *Choſes in Action* may be aſſignable; and the King's Grant of a *Choſe in Action* is good. *Cro. Jac.* 170, 371. *Chanc. Rep.* 169. When Bonds are aſſigned, it is done with Power of Attorney to receive and ſue in the Aſſignor's Name; ſo that tho' in this Caſe a *Choſe in Action* is ſaid to be aſſignable over, yet it amounts to little more than a Letter of Attorney to ſue for the Debt. *Wood's Inſt.* 282. A Man may authoriſe another to ſue for a Debt due by Specialty in his Name, and by Agreement promiſe it to him when recovered; or he may give, grant or aſſign the Writing, and ſo deprive himſelf of the Means to recover the Debt, though ſuch a Debt itſelf being a *Choſe in Action*, cannot be regularly aſſigned over. 1 *Shep. Abr.* 337. Charters where the Owner of the Land hath them in Poſſeſſion are grantable: A Poſſibility of an Intereſt or Eſtate in a Term for Years, is near to a *Choſe in Action*, and therefore may not be granted; but a Poſſibility joined with an Intereſt, may be a grantable Chattel. *Co. Lit.* 265. 4 *Rep.* 66. *Moor Ca.* 1128. And this the Law doth provide to avoid Multiplicity of Suits, and the Subverſion of Juſtice, which would follow if theſe Things were grantable from one Man to another. *Dyer* 30. *Plowd.* 185. But by Releaſe *Choſes in Action* may be releaſed and diſcharged for ever; but then it muſt be to Parties and Privies in the Eſtate, *&c.* For no Stranger may take Advantage of Things in Action; ſave only in ſome ſpecial Caſes, as upon the Stat. 32 *Hen.* 8. *cap.* 8. *Co. Lit.* 214. *Yelv.* 9, 85. A *Choſe in Action*, as an Obligation, *&c.* is not within the Stat. 21 *H.* 8. concerning Larceny by Servants, in going away with or imbeziling their Maſter's Goods, to the Value of 40 *s.* And generally theſe are of no Uſe to any but the Owner. 1 *Hawk P. C.* 92, 93. But ſee Stat. 2 *Geo.* 2. *cap.* 25.

Chriſm, A Confection of Oil and Balſam conſecrated by the Biſhop, and uſed in the *Popiſh* Ceremonies of Baptiſm, Confirmation, and ſometimes Ordination.

Chriſmale, *Chriſmal*, *Chriſom*, the Face-Cloth, or Piece of Linen laid over the Child's Head at Baptiſm, which in antient Times was a Perquiſite due to the Pariſh Prieſt —— *Mulieres ſequentes debent offerre* Chriſmalia *Infantum*, *nec* Chriſmalia *debent alienari*, *nec in aliquos uſus mitti debent*, *niſi in uſus Eccleſiæ.* Statut. Ægid. Epiſ. Saliſbur. An. 1256.

Chriſmatis denarii, *Chriſom-pence*, Money paid to the Dioceſian, or his Suffragan, by the Parochial Clergy, for the *Chriſm* conſecrated by them about *Eaſter*, for the Holy Uſes of the Year enſuing. This cuſtomary Payment being made in *Lent* near *Eaſter*, was in ſome Places called *Quadrageſimals*, and in others *Paſchals* and *Eaſter-Pence.* The Biſhops Exaction of it was condemn'd by Pope *Pius* XI. for Simony and Extortion; and thereupon the Cuſtom was releaſed by ſome of our *Engliſh* Biſhops: As *Robert* Biſhop of *Lincoln*, by expreſs Charter. — *Sciatis non remiſiſſe Clericis omnibus infra Epiſcopatum* Lincolnienſem *Paſchalem conſuetudinem quam* Chriſmatis denarios *vocant.* ——Cartular. Mon. de Berdeny, MS. Cotton.

Chriſtianitatis Curia, The Court Chriſtian, or Eccleſiaſtical Judicature. See *Court Chriſtian.*

Church, (*Eccleſia*) Is a Temple or Building conſecrated to the Honour of God and Religion, and antiently dedicated to ſome Saint, whoſe Name it aſſumed; or it is an Aſſembly of Perſons united by the Profeſſion of the ſame Chriſtian Faith, met together for Religious Worſhip; and if it hath Adminiſtration of the Sacraments and Sepulture, it is in Law adjudged a *Church.* If the King founds a *Church*, he may exempt it from the Ordinary's Juriſdiction; but 'tis otherwiſe in Caſe of a Subject. The Manner of founding *Churches* in antient Times was, after the Founders had made their Applications to the Biſhop of the Dioceſe, and had his Licenſe; the Biſhop or his Commiſſioners ſet up a Croſs, and ſet forth the *Church* Yard where the *Church* was to be built; and then the Founders might proceed in the Building of the *Church*, and when the *Church* was finiſhed, the Biſhop was to conſecrate it, and then and not before the Sacraments were to be adminiſtred in it. *Stillingfleet's Eccleſiaſt. Caſes.* But by the Common Law and Cuſtom of this Realm, any Perſon who is a good Chriſtian, may build a *Church* without Licence from the Biſhop, ſo as it be not prejudicial to any antient *Churches*; tho' the Law takes no Notice of it as a *Church*, till conſecrated by the Biſhop, which is the Reaſon why *Church* and no *Church*, &c. is to be tried and certified by the Biſhop. And in ſome Caſes, though a *Church* has been conſecrated, it muſt be conſecrated again; as in Caſe any Murder, Adultery, or Fornication be committed in it, whereby it is defiled; or if the *Church* be deſtroyed by Fire, *&c.* The antient Ceremonies in conſecrating the Ground on which the *Church* was intended to be built, and of the *Church* itſelf after it was built, were thus: When the Materials were provided for Building, the Biſhop came in his Robes to the Place, *&c.* and having prayed, he then perfumed the Ground with Incenſe, and the People ſung a Collect in Praiſe of that Saint to whom the *Church* was dedicated; then the Corner-Stone was brought to the Biſhop, which he croſſed, and laid for the Foundation: And a great Feaſt was made on that Day, or on the Saint's Day to which it was dedicated; but the Form of Conſecration was left to the Diſcretion of the Biſhop, as it is at this Day. Some Biſhops, who have conſecrated *Churches*, on entering into them have pronounced the Place to be holy, *In the Name of the Father*, &c. then with their Retinue of grave Divines went round the *Church*, repeating the Hundredth Pſalm, and a Form of Prayer, concluding, *We conſecrate this Church, and ſet it apart to Thee, O Lord Chriſt, as Holy Ground*, &c. After which, turning to the Communion Table, and having bowed to it ſeveral Times, they pronounced Bleſſings on all thoſe who ſhould be Benefactors, and Curſes againſt thoſe who ſhould prophane that Place: And then a Sermon hath been preached, and the Sacrament adminiſtred with more than common Ceremony of Bowing, Kneeling, *&c.* A *Church* in general conſiſts of three principal Parts, that is, the Belfrey or Steeple, the Body of the *Church* with the Iſles, and the Chancel: And not only the Freehold of the whole *Church*, but of the *Church-yard*, are in the Parſon or Rector; and the Parſon may have an Action of Treſpaſs againſt any one that ſhall commit any Treſpaſs in the *Church* or *Church-yard*; as in breaking of Seats annexed to the *Church*, or the Windows, taking away the Leads, or any of the Materials of the *Church*, cutting the Trees in the *Church-yard*, &c. The Property of the Bells, Books, and other Ornaments, and the Goods of the *Church*, is in the Pariſhioners; but in the Cuſtody of the Church-wardens, who may maintain Action of Treſpaſs againſt ſuch as ſhall wrongfully take them away. 1 *Rol. Rep.* 255. If a Man erect a Pew in a *Church*, or hang up a Bell, *&c.* therein, they thereby become *Church* Goods, tho' not expreſly given to the *Church*; and he may not afterwards remove them. *Stat.* 10 *H.* 4. The Perſon only is to give Licence to bury in the *Church*; but for defacing a Monument in a *Church*, &c. the Builder or Heir of the Deceaſed may have an Action. 2 *Cro.* 367. And a Man may be indicted for digging up the Graves of Perſons buried, and taking away their Burial Dreſſes,

ſes, &c. The Property whereof remains in the Party who was the Owner when uſed, and 'tis ſaid an Offender was found guilty of Felony in this Caſe, but had his Clergy. *Co. Lit.* 113. Though the Parſon hath the Freehold of the *Church*, he hath not the Fee-ſimple, which is always in Abeyance; but in ſome Reſpects the Parſon hath a Fee-ſimple qualified. *Litt.* 644, 645. The Uſe of the Body of the *Church*, and the Seats fixed to the Freehold, is common to all the Pariſhioners that pay to the Repairs thereof. The Chancel of the *Church* is to be repaired by the Parſon, unleſs there be a Cuſtom to the contrary; and for theſe Repairs, the Parſon may cut down Trees in the *Church-yard*, but not otherwiſe. 35 *Ed.* 1. The Church-wardens are to ſee that the Body of the *Church* and Steeple are in Repair; but not any Iſle, &c. which any Perſon claims by Preſcription, to him or his Houſe: Concerning which Repairs the Canons require every Perſon who hath Authority to hold Eccleſiaſtical Viſitation, to view their *Churches* within their Juriſdictions once in three Years, either in Perſon, or cauſe it to be done; and they are to certify the Defects to the Ordinary, and the Names of thoſe who ought to repair them; and theſe Repairs muſt be done by the Church-wardens, at the Charge of the Pariſhioners. *Can.* 86. 1 *Mod.* 236. By the Common Law, Pariſhioners of every Pariſh are bound to repair the *Church:* But by the Canon Law, the Parſon is obliged to do it; and ſo it is in Foreign Countries. 1 *Salk.* 164. In *London*, the Pariſhioners repair both the *Church* and the Chancel. The Spiritual Court may compel the Pariſhioners to repair the *Church*, and excommunicate every one of them till it be repaired; but thoſe that are willing to contribute ſhall be abſolved till the greater Part agree to a Tax, when the Excommunication is to be taken off; but the Spiritual Court cannot aſſeſs them towards it. 1 *Mod.* 194. 1 *Vent.* 367. For tho' this Court hath Power to oblige the Pariſhioners to repair by Eccleſiaſtical Cenſures; yet they cannot appoint in what Sum, or ſet a Rate, for that muſt be ſettled by the Church-wardens, &c. 2 *Mod.* 8. Where a *Church* is ſo much out of Repair, that 'tis neceſſary to pull it down, in ſuch Caſe, upon a general Warning to the Pariſhioners, the major Part meeting may make a Rate for pulling it down, and rebuilding it on the old Foundation, and it ſhall be good; and if any Pariſhioner refuſe to pay his Proportion, they may libel againſt him in the Eccleſiaſtical Court. 2 *Mod.* 222. And if a *Church* be down, and the Pariſh is encreaſed, the greater Part of the Pariſh may raiſe a Tax for the neceſſary Inlarging it, as well as the Repairing thereof, &c. 1 *Mod.* 237. But in ſome of our Books it is ſaid, that if a *Church* falls down, the Pariſhioners are not obliged to rebuild it; tho' they ought to keep it in due Repair. 1 *Ventr.* 35. In a Caſe where Church-wardens made a Rate for Repairs of the *Church*, it was adjudged that the Pariſhioners ought to aſſeſs the Rate, and they are bound to repair the *Church*. 1 *Salk.* 165. *Church* Rates for Repairs, are to be made by the Church-wardens and the major Part of the Pariſhioners, which ſhall bind the others, after a general Notice given; and if the Pariſhioners refuſe or neglect to meet, upon ſuch Notice; or if on Meeting they refuſe to make a Rate, then the Church-wardens and Overſeers of the Poor may make a Rate, and levy it upon the Inhabitants, being firſt confirmed by the Ordinary or Archdeacon. And Rates for repairing of *Churches*, &c. are of Eccleſiaſtical Cognizance; and to be recovered in the Eccleſiaſtical Court: Alſo if a Pariſh is unequally rated, thoſe who are grieved muſt plead it in the Spiritual Court, being ſued there. 1 *Ventr.* 367. 2 *Roll. Abr.* 291. Theſe Rates muſt be made upon the whole Pariſh, and not on particular Perſons; and the Charge is in Reſpect of the Land, upon every Occupier, &c. If the Owner lives in another Pariſh, he ſhall be rated for Repairs in the Pariſh where the Lands lie, and not where he liveth; for tho' the Charge is upon the Perſon, yet 'tis in Regard of his Lands: If he let the ſame by Leaſe, then he ſhall be charged in Reſpect of the Rent reſerved, and the Farmer ſhall make up the Reſt. 2 *Roll. Rep.* 270. For Church Ornaments, Utenſils, &c. the Charge is upon the Perſonal Eſtates of the Pariſhioners; and for this Reaſon Perſons muſt be charged for theſe where they live: But tho' generally Lands ought not to be taxed for Ornaments, yet by ſpecial Cuſtom, both Lands and Houſes may be liable to it. 2 *Inſt.* 489. *Cro. Eliz.* 843. *Hetley* 131. It has been reſolved that no Man ſhall be charged for his Land to contribute to the *Church* Reckonings, if he do not reſide in the ſame Pariſh. *Moor* 554. The Communion Tables are to be kept in Repair in *Churches*, and covered in Time of Divine Service with a Carpet, &c. And the Ten Commandments to be ſet up at the Eaſt End of every *Church* or Chapel, and other choſen Sentences of Scripture upon the Walls. And at the common Charge ſhall be provided a ſtrong Cheſt with a Hole in the upper Part thereof, having three Keys, of which one ſhall be kept in the Cuſtody of the Parſon, and the other two by the Church-wardens ſeverally; which Cheſt is to be fixed in a proper Place in the *Church*, to collect the Alms for the Poor; and the Alms ſhall be Quarterly diſtributed to the Poor, in the Preſence of the Chief of the Pariſh. *Can.* 82, 83. By Statute, *Churches* not above ſix Pounds a Year in the King's Books, by Aſſent of the Ordinary, Patron and Incumbent, may be united: And in Cities and Corporations, &c. *Churches* may be united by the Biſhop, Patrons, and Chief Magiſtrates, unleſs the Income exceeds 100 *l. per Ann.* and then the Pariſhioners are to conſent, &c. 37 *Hen.* 8. *cap.* 21. 17 *Car.* 2. *cap.* 3. For compleating of St. *Paul's Church*, and repairing *Weſtminſter* Abbey, a Duty of 2 *s. per* Chaldron on Coals is granted; and the Archbiſhop of *Canterbury*, Biſhop of *London*, Lord Mayor, &c. are appointed Commiſſioners: And the *Church yard* is to be encloſed, and no Perſons build thereon, except for the Uſe of the *Church*. 8 & 9 *W.* 3. *cap.* 14. 1 *Ann. cap.* 2. Fifty new *Churches* are to be built in or near *London* and *Weſtminſter*, for the Building whereof a like Duty is granted upon Coals, and Commiſſioners appointed to purchaſe Lands, aſcertain Bounds, &c. The Rectors of which *Churches* ſhall be appointed by the Crown, and the firſt Church-wardens and Veſtrymen, &c. are to be elected by the Commiſſioners. 9 *Ann. cap.* 22. A Duty is alſo granted on Coals imported in *London*, to be appropriated for maintaining of Miniſters for the Fifty new *Churches*. *Stat.* 1 *Geo.* 1. *cap.* 23. A Miniſter by Ordination of Prieſthood receives Authority to preach in the *Church*, though he is nevertheleſs to have a Licence from the Biſhop of the Dioceſe, &c. If a Layman be admitted and inſtituted to a Benefice, and doth adminiſter the Sacraments, marry, &c. theſe Acts performed by him during the Time he continues Parſon in Fact, are good. 3 *Cro.* 775. Miniſters are to declare their Aſſent to the Thirty-nine Articles of Religion, &c. and are bound to read Morning and Evening Prayers, on every Holyday, on the 5th of *November*, the 30th of *January*, and the 29th of *May*, as on the Lord's Day. And if any Miniſter ſhall uſe any Form of *Church* Service but ſuch as is in the Book of Common Prayer, &c. he ſhall forfeit a Year's Profit of his Living, and ſuffer ſix Months Impriſonment for the firſt Offence; and for the ſecond Offence be deprived, &c. Stat. 1 *Eliz. c.* 2. And if a Parſon in reading Prayers, ſtand or ſit when he is appointed to kneel, or kneel when he ſhould ſtand, &c. he is puniſhable by this Statute. If any Perſons deprave the Book of Common Prayer, *&c.* they ſhall be impriſoned ſix Months, and forfeit 100 Marks. 13 & 14 *Car.* 2. *cap.* 4. Every Perſon is to repair to his Pariſh *Church* every *Sunday*, on Pain of forfeiting 1 *s.* for every Offence; and being preſent at any Form of Prayer uſed contrary to the Book of Common Prayer, is puniſhed with ſix Months Impriſonment, *&c.* 1 *Eliz. cap.* 2. 23 *Eliz. cap.* 1. Perſons above ſixteen Years of Age, who abſent from *Church* above a Month, are to forfeit 20 *l. per* Month, *&c.* But Proteſtant Diſſenters are exempted from Penalties, by 1 *W. & M.* And a Perſon is not ſo bound to go to his Pariſh *Church*, but upon reaſonable Excuſe he may go to another; of which Excuſe the Spiritual Courts are Judges. 2 *Roll. Rep.* 438, 455. No Man ſhall cover his Head in the *Church*, in Time of Divine Service, except he have ſome Infirmity, and then with a Cap; and all Perſons are to kneel and ſtand, *&c.* as directed by the Common Prayer during Service. *Can.* 18. No ill Language is to be uſed, or Noiſe made in *Churches* or *Church yards*; and Perſons ſtriking others there, are to be excommunicated, and loſe one of their Ears: And a Man may not lawfully return Blows in his own Defence in theſe Caſes. 5 & 6 *Ed.* 6. *cap.* 4. Diſturbing Miniſters officiating Divine Service, incurs three Months Impriſonment, and a Forfeiture of 20*l.* by Stat. 1 *M. cap.* 3. and 1 *W. & M.* Any Perſon may be indicted for indecent or irreverent Behaviour in the *Church*; and thoſe that offend againſt the Acts of Uniformity, are Puniſhable either by Indictment upon the Statutes, or by the Ordinary, *&c.*

An *Indictment* for not coming to *Church.*

Wilts, ſſ. THE *Jurors,* &c. *That* A. B. *of* M. *in the ſaid County, Gent. on the Day of,* &c. *in the Year of the Reign,* &c. *being of the Age of ſixteen Years and upwards, did not repair to his Pariſh* Church *of M. aforeſaid, or to any other Church, Chapel, or uſual Place of Common Prayer and Divine Service, at any Time within the Space of one Month next after the ſaid Day of,* &c. *in the Year above mentioned, but did willingly and obſtinately, without any lawful or reaſonable Excuſe, forbear to do the ſame, contrary to the Form of the Statute in ſuch Caſe made and provided, in Contempt of our ſaid Lord the now King and his Laws, and againſt the Peace,* &c.

Church-wardens, (*Eccleſiæ Guardiani*) Are ancient Officers choſen yearly in *Eaſter* Week, by the Miniſter and Pariſhioners of every Pariſh, to look to and take Care of the Church and Church-yard, and the Things belonging to the ſame: They are to be choſe by the joint Conſent of the Pariſhioners and Miniſter; and by Cuſtom the Miniſter may chuſe one, and the Pariſhioners another; or by Cuſtom the Pariſhioners alone may elect both, though it be againſt the Canon. 1 *Vent.* 267. They are ſworn into their Offices by the Archdeacon; and if the Archdeacon refuſeth to ſwear a *Church warden*, a *Mandamus* ſhall iſſue to compel him. 3 *Cro.* 551. As the Pariſhioners chuſe *Church-wardens*, who have a Truſt repoſed in them by the Pariſh as Temporal Officers, they are the proper Judges of their Ability to ſerve, and not the Archdeacon who ſwears them. 5 *Mod.* 325. In the City of *London*, by ſpecial Cuſtom, the *Church-wardens* with the Miniſter make a Corporation for Lands as well as Goods; and may as ſuch, hold, purchaſe and take Lands for the Uſe of the Church, *&c.* And there is another Cuſtom in *London*, for the Pariſhioners to chuſe both *Church-wardens* excluſive of the Miniſter; who is alſo there excuſed from repairing the Chancel of the Church. 2 *Cro.* 325. 1 *Inſt.* 3. 1 *Roll. Abr.* 339. *Church-wardens* are a Corporation to ſue and be ſued for the Goods of the Church; and they may purchaſe Goods, but not Lands, except it be in *London*, by Cuſtom. And they may have Appeal of Robbery for ſtealing the Goods of the Church. 1 *Rol. Ab.* 393. *Cro. Eliz.* 179. But *Church wardens* cannot releaſe to the Prejudice of the Church: Nor can they diſpoſe of the Church Goods, without the Conſent of the Veſtry. If they waſte the Goods of the Church, the new *Church-wardens* may have Actions againſt them, or call them to account before the Ordinary; tho' the Pariſhioners cannot have an Action againſt them for waſting the Church Goods, for they muſt make new *Church wardens*, who muſt proſecute the former, *&c.* 1 *Danv. Abr.* 788. 1 *Cro.* 145. *Bro. Account* 1. The *Church-wardens* are to take Care of the Repairs of the Church; and if they erect, or add any Thing new to the ſame, they muſt have the Conſent of the Pariſhioners or Veſtry; and if in the Church the Licence of the Ordinary. 2 *Inſt.* 489. 1 *Vent.* 367. They have with Conſent of the Miniſter, the Placing the Pariſhioners in the Seats of the Body of the Church, appointing Gallery Keepers, *&c.* reſerving to the Ordinary a Power to correct the ſame: And in *London*, the *Church-wardens* have this Authority in themſelves. Particular Perſons may preſcribe to have a Seat, as belonging to them by Reaſon of their Eſtates, as being an ancient Meſſuage, *&c.* and the Seats having been conſtantly repaired by them: Alſo one may preſcribe to an Iſle in the Church, to ſit and bury there, always repairing the ſame. 3 *Inſt.* 202. 2 *Cro.* 366. If the Ordinary diſplaces a Perſon claiming a Seat in a Church by Preſcription, a Prohibition ſhall be granted, *&c.* 12 *Rep.* 106. The Parſon impropriate has a Right to the chief Seat in the Chancel; but by Preſcription another Pariſhioner may have it. *Noy's Rep.* The *Church-wardens* ſhall ſuffer no Man to preach within their Churches, without producing his Licence: And they are to keep the Keys of the Bellfrey, and take Care that the Bells be not rung without good Cauſe, to be allowed of by the Miniſter and themſelves. *Can.* 50, 88. *Church-wardens* are to ſee that all the Pariſhioners duly reſort to their Pariſh-Church, and there continue during the Time of Divine Service; they are not to permit any to ſtand idle, walk, or make any Noiſe in the Church, or to contend for Places, *&c.* they may apprehend thoſe that diſturb the Miniſter, *&c.* and juſtify the Appeaſing any Diſorder in the Church or Church-yard; they are to chaſtiſe diſorderly Boys, and take off the Hats of thoſe who would irreverently keep them on. 1 *Saund.* 13. Further, they muſt ſearch Ale-houſes on *Sundays*, that there be no Perſons therein, during the Divine Service; and execute Warrants againſt thoſe who profane the Lord's Day, *&c.* Alſo levy Penalties on Perſons not coming to Church, againſt Profaners of the Sabbath in Paſtimes, Tipling, *&c.* and for Drunkenneſs, Curſing and Swearing, *&c.* by divers Statutes. And they are to preſent to the Ordinary all Things preſentable by the Eccleſiaſtical Laws, which relate to the Church, the Parſon, and Pariſhioners: Theſe *Preſentments* are made upon Oath, and uſually twice a Year, eſpecially at the Viſitation: And what relates to the *Church*, is chiefly of Repairs, and whether there be a Box for Alms in the Church, a Bible, Common-Prayer Book, and Book of Canons, a Desk for the Reader, Cuſhion for the Pulpit, a Communion Table, Table-Cloth, Cups and Covers for Bread, Flagons and Font, a Regiſter-Book, King's Arms ſet up, Lord's Prayer, Creed and Commandments in fair Letters, *&c.* What concerns the *Parſon*, is whether he reads the thirty-nine Articles twice a Year, and the Canons once in the Year, Preaches every *Sunday* good Doctrine, reads the Common Prayer, celebrates the Sacraments, preaches in his Gown, viſits the Sick, catechiſes Children, marries according to Law, *&c.* And what relates to the *Pariſhioners*, is whether they come to Church, and duly attend the Worſhip of God, if Baptiſm be neglected, Women not churched, Perſons Marrying in prohibited Degrees, or without Banns or Licence, Alms-houſes or Schools abuſed, Legacies given to pious Uſes, &c. They muſt likewiſe preſent Crimes and Offences, ſuch as Drunkenneſs, Fornication, Adultery, Inceſt, Blaſphemy, &c. and by Statute Popiſh Recuſants: And if they refuſe to make Preſentments, the Parſons or Vicars, &c. may preſent to the Biſhop all Crimes committed in their Pariſhes. *Can.* 117. 3 *Cro.* 291. 1 *Ventr.* 114. At the End of the Year, the *Church-wardens* are to yield juſt Accounts to the Miniſter and Pariſhioners, and deliver what remains in their Hands to the Pariſhioners, or to the new *Church wardens:* In Caſe they refuſe, they may be preſented at the next Viſitation, or the new Officers may by Proceſs call them to Account before the Ordinary, or ſue them by Writ of Account at Common Law. And if all the Pariſh have allowed their Accounts of the Church Goods, the Ordinary may nevertheleſs call them to Account before him too, and puniſh them if he find Cauſe; but in laying out their Money, they are puniſhable for Fraud only, not Indiſcretion. If their Receipts fall ſhort of their Disburſements, the ſucceeding *Church-wardens* may pay them the Ballance, and place it to their Account. 1 *Rol. Abr.* 121. *Can.* 89, 109, &c. Diſputes ariſing about *Church-wardens* Accounts, are to be decided before the Ordinary: And for Diſburſements of any Sum not exceeding 40 *s.* the *Church-wardens* Oath alone is a ſufficient Proof; but for all Sums above, Receipts are to be produced, &c. If *Church-wardens* through Improvidence, Indiſcretion or Negligence, either waſte the Church Goods in their Cuſtody, or much damnify the Pariſh; on Proof thereof, they may be removed at any Time, by the Authority of the Ordinary. 8 *El.* 4. 6. 13 *Co.* 70. Beſides their Ordinary Power, the *Church-wardens* have the Care of the Benefice during its Vacancy; and as ſoon as there is any Avoidance, they are to apply to the Chancellor of the Dioceſe for a Sequeſtration; which being granted, they are to manage all the Profits and Expences of the Benefice for him that ſucceeds, plough and ſow his Glebes, gather in Tithes, thraſh out and ſell Corn, repair Houſes, &c. and they muſt ſee that the Church be duly ſerved by a Curate approved by the Biſhop, whom they are to pay out of the Profits of the Benefice. 2 *Inſt.* 489. And they are to join with the Overſeers of the Poor, in making Rates for Relief of the Poor, ſetting up Trades for employing them, placing out poor Apprentices, ſettling poor Perſons, &c. And in the Execution of their whole Office, by Statutes 43 *Eliz.* 14 *Car.* 2. 3 & 4 *W.* & *M.* &c. It is their Duty to collect the Charity Money upon Briefs, which are to be read in Churches, and the Sums collected, &c. to be indorſed on the Briefs in Words at Length, and ſigned by the Miniſter and *Church wardens*; after which, they ſhall be delivered, with the Money collected to the Perſons undertaking them, in a certain Time, under the Penalty of 20 *l.* A Regiſter is to be kept of all Money collected, &c. Alſo the Undertakers in two Months after the Receipts of the Money, and Notice to Sufferers, are to account before a Maſter in Chancery, appointed by the Lord Chancellor. *Stat.* 4 & 5 *Ann.* They are to ſign Certificates of receiving the Sacrament by Perſons, to qualify them to bear Offices, &c. And in *London* and within the Bills of Mortality, they muſt fix Fire-Cocks, keep Engines, &c. in their Pariſhes, under the Penalty of 10 *l.* For the Maintenance whereof, the Pariſh is to be aſſeſſed: And the firſt Perſon who brings in a Pariſh Engine, or other large Engine with a Socket, &c. when any Fire happens, ſhall be paid as an Encouragement 30 *s.* the Perſon that brings in the ſecond Engine 20 *s.* and the Third 10 *s.* &c. Stat. 6 *Ann.* & 7. There may be ſelect *Veſtries* elected in Pariſhes to make Rates, and take the *Church-wardens* Accounts, &c. But thoſe that do not pay to any Church-Rates have no Votes, except the Parſon or Vicar. See *Church.*

Church-Reeve, Is the ſame with *Church-warden,* (*Reve* in the *Sax.* being as much as *Guardian* in the *French*) the Guardian or Overſeer of the Church: The Word is now out of Uſe, but is mentioned by *Chaucer* on the Juriſdiction of Archdeacons, *viz.*

Of Church-Reves, *and of Teſtaments,*
Of Contracts and of Lack of Sacraments.

Churcheſſet, or *Chirchſet, Ciricſeat,* A *Saxon* Word uſed in *Domeſday,* which is interpreted *Quaſi ſemen Eccleſiæ,* Corn paid to the Church. *Fleta* ſays, it ſignifies a certain Meaſure of Wheat, which in Times paſt every Man on St. *Martin*'s Day gave to Holy Church, as well in the Times of the *Britains* as of the *Engliſh*; yet many great Perſons after the Coming of the *Romans,* gave that Contribution according to the ancient Law of *Moſes,* in the Name of *Firſt-Fruits*; as in the Writ of King *Canutus* ſent to the Pope is particularly contained, in which they call it *Chirchſed,* as one would ſay *Church-ſeed.* Selden's Hiſt. Tithes, pag. 216.

Church-ſcot, Cuſtomary Oblations paid to the Pariſh-Prieſt; from which Duty the Religious ſometimes purchaſed an Exemption for themſelves and their Tenants.

Churle, *Ceorle Carl,* Was in the *Saxon* Time a Tenant at Will, of free Condition, who held ſome Land of the *Thanes,* on Conditions of Rents and Services: Which *Ceorles* were of two Sorts; one that hired the Lord's tenementary Eſtate, like our Farmers; the other that tilled and manured the *Demeſnes,* (yielding Work and not Rent) and were thereupon called his *Sockmen* or *Ploughmen.* Spelm.

Cinque Ports, (*Quinque Portus*) Are thoſe ſpecial Havens that lie towards *France,* and therefore have been thought by our Kings to be ſuch as ought to be vigilantly guarded and preſerved againſt Invaſion: In which Reſpect they have an eſpecial Governor, called *Lord Warden of the Cinque Ports,* and divers Privileges granted them, as a peculiar Juriſdiction; their Warden having not only the Authority of an Admiral among them, but ſending out Writs in his own Name, &c. *Stat.* 32 *Hen.* 8. *c.* 48. 4 *Inſt.* 222. *Camden* tells us, that *Kent* is accounted the Key of *England*; and that *William,* called *the Conqueror,* was the firſt who made a Conſtable of *Dover* Caſtle, and Warden of the *Cinque Ports,* which he did to bring that Country under a ſtricter Subjection to his Government; but King *John* was the firſt who granted the Privileges to thoſe *Ports,* which they ſtill enjoy: However, it was upon Condition that they ſhould provide a certain Number of Ships at their own Charge for forty Days, as often as the King ſhould have occaſion for them in the Wars, he being then under a Neceſſity of having a Navy for paſſing into *Normandy,* to recover that Dukedom which he had loſt. And this Service the *Barons of the Cinque Ports* acknowledged and peformed, upon the King's Summons, attending with their Ships the Time limited at their proper Coſts, and ſtaying as long after as the King pleaſed at his own Charge. *Somner of Rom. Ports in Kent.* The *Cinque Ports,* as we now account them, are *Dover, Sandwich, Rumney, Winchelſea* and *Rye*; and to theſe we may add *Hythe* and *Haſtings,* which are reckoned as Part or Members of the *Cinque Ports:* Though by the firſt Inſtitution, it is ſaid that *Winchelſea* and *Rye,* were added as Members, and that the others were the *Cinque Ports*; there are alſo ſeveral other Towns adjoining that have the Privileges of the *Ports.* Theſe *Cinque Ports* have certain Franchiſes to hold Pleas, &c. and the King's Writs do not run there: But on a Judgment in any of the King's Courts, if the Defendant hath no Goods, *&c.* but in the *Ports*; the Plaintiff may get the Record certified into Chancery, and from thence ſent by *Mittimus* to the Lord Warden to make Execution. 4 *Inſt.* 223. 3 *Leon.* 3. The Conſtable of *Dover* Caſtle, is Lord Warden of the *Cinque Ports.* And there are ſeveral Courts within the *Cinque Ports*; one before the ſaid Conſtable, others within the *Ports* themſelves, before the Mayors and Jurats; another which is called *Curia quinque Portuum apud Shepway:* There is likewiſe a Court of Chancery in the *Cinque Ports*, to decide Matters of Equity; but no original Writs iſſue thence. 1 *Danv. Abr.* 793. The Juriſdiction of the *Cinque Ports* is general, extending to Perſonal, Real and Mix'd Actions: And if any erroneous Judgment is given in the *Cinque Ports* before any of the Mayors and Jurats, Writ of Error lies not in *B. R.* but it ſhall be redreſſed, according to the Cuſtom, by Bill in Nature of a Writ of Error, *Coram Domino Cuſtode ſeu Guardiano Quinque Portuum apud Curiam ſuam, &c.* And in theſe Caſes the Mayor and Jurats may be fined, and the Mayor removed, *&c.* 4 *Inſt.* 224. *Crompt. Juriſd.* 138. It has been obſerved, that the *Cinque Ports* are not *Jura Regalia*, like Counties Palatine, but are Parcel of the County of *Kent:* So that if a Writ be brought againſt one for Land within the *Cinque Ports*, and he appears and pleads to it, and Judgment is given againſt him in the Common Pleas, this Judgment ſhall bind him; for the Land is not exempted out of the County, and the Tenant may wave the Benefit of his Privilege. *Wood's Inſt.* 519 The *Cinque Ports* cannot award Proceſs of Outlawry. *Cro. Eliz.* 910. And a *Quo Minus* lies to the *Cinque Ports. Ibid.* 911. If a Man is impriſoned at *Dover* by the Lord Warden, an *Habeas Corpus* may be iſſued; for the Privilege that the King's Writ lies not there is intended between Party and Party and there can be no ſuch Privilege againſt the King; and an *Habeas Corpus* is a Prerogative Writ, by which the King commands an Account of the Liberty of the Subjects. *Cro. Jac.* 543. 1 *Nelſ. Abr.* 447. *Certiorari* lies to the *Cinque Ports* to remove Indictments; and the Juriſdiction that *Brev. Dom. Regis non currit* there, is only in Civil Cauſes between Party and Party: But this has been held to extend only to Indictments before the Mayors, Barons, *&c*, as Juſtices of Peace, on late Statutes, *&c. Cro. Car.* 252, 253. 2 *Hawk. P. C.* 286, 287.

Circa, A Watch; from which *Circuitor: Quatuor* Circuitores *Monaſterii quos alio nomine* Circas *vocant, juxta præceptum ſancti Benedicti certis horis circuire debent monaſterii officinas.*

Circada, A Tribute antiently paid to the Biſhop or Archdeacon for viſiting the Churches. *Du Freſne.*

Circuit, or Circuity of Action, (*Circuitus Actionis*) Is a longer Courſe of Proceeding to recover a Thing ſued for than is needful: As if a Perſon grant a Rent-charge of 10*l. per Annum* out of his Manor of *B.* and after the Grantee diſſeiſeth the Grantor of the ſame Manor, who brings an Aſſiſe, and recovers the Land, and 20*l.* Damages; which being paid, the Grantee brings his Action for 10*l.* of his Rent due during the Time of the Diſſeiſin, which he muſt have had if no Diſſeiſin had been: This is called *Circuity of Action*, becauſe as the Grantor was to receive 20*l.* Damages, and pay 10*l.* Rent, he might have received but 10*l.* only for Damages, and the Grantee might have kept the other 10*l.* in his Hands by Way of Retainer for his Rent, and ſo ſaved his Action, which appears to be needleſs. *Terms de Ley* 128. This Example ſhews that an Action may be rightfully brought for a Debt or Duty, and yet be wrong; for that it might have been as well otherwiſe anſwered and determined.

Circumſpecte Agatis, Is the Title of a Statute made *Ann.* 13 *Ed.* 1. relating to *Prohibitions*, preſcribing certain Caſes to the Judges, wherein the King's Prohibition lies not. 2 *Inſt.* 487.

Circumſtantibus, By-Standers; and ſignifies in our Law the Supply or making up the Number of *Jurors*, if any impanelled appear not, or appearing are challenged by either Party, by adding to them ſo many of thoſe that are preſent or ſtanding by that are qualified as will ſerve the Turn. *Stat.* 35 *H.* 8. *cap.* 6. The Act of Supplying is uſually called a *Tales de Circumſtantibus.* See *Tales.*

Citation, (*Citatio*) A Summons to appear, applied particularly to Proceſs in the Spiritual Court. The Eccleſiaſtical Courts proceed according to the Courſe of the Civil and Canon Laws, by *Citation, Libel,* &c. A Perſon is not generally to be cited to appear out of the Dioceſe, or peculiar Juriſdiction where he lives; unleſs it be by the Archbiſhop, in Default of the Ordinary; where the Ordinary is Party to the Suit, in Caſes of Appeal, *&c.* And by Law a Defendant may be ſued where he lives, though 'tis for ſubſtracting Tithes in another Dioceſe, *&c.* 1 *Nelſ.* 449. By the Stat. 23 *Hen.* 8. *cap.* 9. Every Archbiſhop may cite any Perſon dwelling in any Biſhop's Dioceſe within his Province for Hereſy, *&c.* if the Biſhop or other Ordinary conſents, or if the Biſhop or Ordinary, or Judge, do not his Duty in puniſhing the Offence. Where Perſons are cited out of their Dioceſe, and live out of the Juriſdiction of the Biſhop, a Prohibition or Conſultation may be granted: But where Perſons live in the Dioceſe, if when they are cited they do not appear, they are to be excommunicated, *&c.* The above Statute was made to maintain the Juriſdiction of inferior Dioceſes; and if any Perſon is cited out of the Dioceſe, *&c.* where the Civil or Canon Law doth not allow it, the Party grieved ſhall have double Damages. If one defame another within the Peculiar of the Archbiſhop, he may be puniſhed there; altho' he dwell in any remote Place out of the Archbiſhop's Peculiar. *Godb.* 190.

Citatio ad inſtantiam Partis, Is mentioned in 22 & 23 *Car.* 2. for laying Impoſitions on Proceedings at Law.

City, (*Civitas*) By *Cowel* is a Town Corporate, which hath a Biſhop and Cathedral Church, which is called *Civitas, Oppidum* and *Urbs*; *Civitas* in Regard it is governed by Juſtice and Order of Magiſtracy; *Oppidum*, for that it contains a great Number of Inhabitants; and *Urbs*, becauſe it is in due Form begirt about with Walls. But *Crompton* in his Juriſdictions, where he reckons up the *Cities*, leaveth out *Ely*, altho' it hath a Biſhop and Cathedral Church; and puts in *Weſtminſter*, though it hath at preſent no Biſhop: And Sir *Edward Coke* makes *Cambridge* a *City*; yet there is no Mention that it ever was an Epiſcopal See. Indeed it appears by the Stat. 35 *H.* 8. *cap.* 10. that there was a Biſhop of *Weſtminſter*; ſince which, by 27 *Eliz. cap.* 5. it is termed a *City*, or Borough: And notwithſtanding what the Lord *Coke* obſerves of *Cambridge*, by the Stat. 11 *H.* 7. *c.* 4. *Cambridge* is called only a Town, Kingdoms have been ſaid to contain as many *Cities* as they have Sea's of Archbiſhops and Biſhops: But according to *Blount*, *City* is a Word which hath obtained ſince the Conqueſt; for in the Time of the *Saxons* there were no *Cities*, but all great Towns were called *Burghs*, and even *London* was then ſtiled *Lunden Burgh*; as the Capital of *Scotland* is now called *Edinburgh.* And long after the Conqueſt the Word *City* is uſed promiſcuouſly with the *Burgh*, as in the Charter of *Leiceſter* 'tis call'd both *Civitas* and *Burgus*; which ſhews that thoſe Writers were miſtaken, that tell us every *City* was or is a Biſhop's See: And tho' the Word *City* ſignifies with us ſuch a Town Corporate as hath uſually a Biſhop and Cathedral Church; yet 'tis not alway ſo.

Citizens, (*Cives*) Of *London*, are either Freemen, or ſuch as reſide and keep a Family in the *City*, &c. and ſome are *Citizens* and Freemen; and ſome are not, who have not ſo great Privileges as the others: The *Citizens* of *London* may preſcribe againſt a Statute, becauſe their Liberties are reinforced by Statute. 1 *Roll. Rep.* 105.

Civil Law, Is defined to be that *Law* which every particular Nation, Common-wealth or City, has eſtabliſhed peculiarly for it ſelf: *Jus Civile eſt, quod quiſque Populus ſibi conſtituit.* But more ſtrictly the *Civil Law* is that which the old *Romans* uſed, compiled from the *Laws* of Nature and of Nations. The twelve Tables were alſo the Foundation of this *Law*; which for its great Wiſdom is as it were the Common *Law*, or the Foundation of it, in all well governed Kingdoms, a very few only excepted; and no other *Laws* are eſteemed comparable to it for its Equity. The *Civil Law* is either *written* or *unwritten*; and the *written Law* is Publick or Private: Publick, which immediately regards the State of the Common-wealth, as the Enacting and Execution of *Laws*, Conſultations about War and Peace, Eſtabliſhment of Things relating to Religion, &c. Private, that more immediately has Reſpect to the Concerns of every particular Perſon. The *unwritten Law* is Cuſtom introduced by the tacit Conſent of the People only, without any particular Eſtabliſhment: The Authority of it is great, and it is equal with a written *Law*, if it be wholly uninterrupted, and of a long Continuance. The whole *Civil Law*, is contained in four Books or Tomes, 1. *The Code.* 2. *The Pandects or Digeſts.* 3. *The Inſtitutes.* 4. *The Novels or Authenticks.* The *Code* is divided into twelve Books, and was the firſt Book of the *Civil Law*, which the Emperor *Juſtinian* ordered to be collected: It was publiſhed in the Year 534, and contains the Conſtitutions, &c. of fifty-ſix Emperors, and their wiſe Councils. The firſt Book of it treats of Religion, Prieſts, &c. Other Books are upon Trade, Merchandize, the Exchequer, &c. *The Digeſt or Pandects*, was collected from the Works and Commentaries of the antient Lawyers, ſome whereof lived before the coming of our Saviour: This Tome is divided into fifty Books; and upon a more particular Diviſion, the whole Digeſt is divided into ſeven Parts: The firſt Part contains the Elements of the *Law*, as what is Juſtice, Right, &c. The ſecond Part treats of Judges and Judgments: The third Part of perſonal Actions, &c. The fourth Part of Contracts, Pawns and Pledges: The fifth Part, of Wills, Teſtaments, &c. The ſixth Part, of the Poſſeſſion of Goods: The ſeventh Part of Obligations, Crimes, Puniſhments, &c. *The Inſtitutes*, contain a Syſtem of the whole Body of *Law*, and are an Epitome of the Digeſt divided into four Books; but ſometimes they correct the Digeſt: They are called Inſtitutes, becauſe they are of Inſtruction, and ſhew an eaſy Way to the obtaining a Knowledge of the *Civil Law:* But they are not ſo diſtinct and comprehenſive as they might be, nor ſo uſeful at this Time as they were at firſt. The *Novels or Authenticks* were publiſhed at ſeveral Times without any Method: They are termed *Novels* as they are new *Laws*, and Authenticks, being authentically tranſlated from the *Greek* into the *Latin* Tongue; and the whole Volume is divided into nine Collations, Conſtitutions or Sections, and they again into 168 Novels, which alſo are diſtributed into certain Chapters: The firſt Collation relates to Heirs, Executors, &c. The ſecond, the State of the Church, The third is againſt Bawds: The fourth concerns Marriages, &c. The fifth forbids the Alienation of the Poſſeſſions of the Church: The ſixth ſhews the Legitimacy of Children, &c. The ſeventh determines who ſhall be Witneſſes: The eighth ordains Wills to be good, though imperfect, &c. And the ninth contains Matter of Succeſſion in Goods, &c. To theſe Tomes of the *Civil Law* we may add the *Book of Feuds*, which contains the Cuſtoms and Services that the Subject or Vaſſal doth to his Prince or Lord, for ſuch Lands or Fees as he holdeth of him. The *Conſtitutions of the Emperor*, are either by a *Reſcript*, which is the Letter of the Emperor in Anſwer to particular Perſons who enquire the Law of him; or by *Edict*, which the Emperor eſtabliſhes of his own Accord, that it may be generally obſerved by every Subject; or by *Decree*, which the Emperor pronounces between Plaintiff and Defendant, upon hearing a particular Cauſe. The Power of iſſuing forth Reſcripts, Edicts and Decrees, was given to the Prince by the *Lex Regia*, wherein the People of *Rome* wholly ſubmitted themſelves to the Government of one Perſon, *viz.* *Julius Cæſar*, after the Defeat of *Pompey*, &c. And by this Submiſſion the Prince could not only make *Laws*, but was eſteemed above all coercive Power of them. The Matters wherein the whole *Civil Law* is generally exerciſed, relate either to *Perſons* in the Common-wealth; or the *Things* belonging or not belonging to them; or to the *Actions* whereby Men claim ſuch Things as are due to them by the *Law*, &c. The *Civil Law* is allowed in this Kingdom in the two Univerſities, for the training up of Students, &c. In Matters of foreign Treaties between Princes; marine Affairs *Civil* and Criminal; in the Ordering of Martial Cauſes; the Judgments of Enſigns and Arms, Rights of Honour, &c. Vide my *Treatiſe of Laws, pag.* 243, 396.

Civil Liſt, To defray the extraordinary Charge of the *Civil Liſt, viz.* for paying Debts and Arrears due to his Majeſty's Servants, Tradeſmen, &c. and other Uſes of his Civil Government, 1,000,000 *l.* was granted by Parliament, by Stat. 11 *Geo.* 1. *c.* 16. Vide *King's Houſhold.*

Clack Wool, Is to cut off the Sheep's Mark, which makes it weigh lighter; as to *force Wool*, ſignifies to clip off the upper and hairy Part thereof; and to *bard* it, is to cut the Head and Neck from the Reſt of the Fleece. *Stat.* 8 *Hen.* 6. *cap.* 22.

Clades, *Clida*, *Cleta*, *Cleia*, from the Brit. *Clie*, and the Iriſh *Clia*, A Wattle or Hurdle; and a Hurdle for penning or folding of Sheep, is ſtill in ſome Counties of *England* called a *Cley*. Paroch. Antiq. p. 575.

Claretum, A Liquor made of Wine and Honey, clarified or made clear by Decoction, &c. which the *Germans*, *French* and *Engliſh*, called *Hippocras:* And it was from this, the Red Wines of *France* were called *Claret.* ——— *Ad hæc etiam in tanta abundantia vinum hic videas, & ſiceram, Pigmentum, &* Claretum *muſtum & medonem.* Girald. Camb. apud Wharton. Ang. Sax. Par. 2. p. 480.

Claim, (*Clameum*) Is a Challenge of Intereſt in any Thing that is in the Poſſeſſion of another, or at leaſt out of a Man's own, as *Claim* by Charter, by Diſcent, &c. And *Claim* is either verbal, where one doth by Words *claim* and challenge the Thing that is ſo out of his Poſſeſſion; or it is by an Action brought, &c. and ſometimes it relates to Lands, and ſometimes to Goods and Chattels. *Litt. Sect.* 420. Where any Thing is wrongfully detained from a Perſon, this *Claim* is to be made; and the Party making it, may thereby avoid Deſcents of Lands, Diſſeiſins, &c. and preſerve his Title, which otherwiſe would be in Danger of being loſt. *Co. Litt.* 250. A Man which hath preſent Right or Title to enter, muſt make a *Claim*; and in Caſe of Reverſions, &c. one may make a *Claim* where he hath Right, but cannot enter on the Lands: When a Perſon dares not make an Entry on Land, for Fear of being beaten or other Injury, he may approach as near as he can to the Land, and *claim* the ſame; and it ſhall be ſufficient to veſt the Seiſin in him. 1 *Inſt.* 25. If nothing doth hinder a Man having Right to Land, from entering or making his *Claim*; there he muſt do ſo, before he ſhall be ſaid to be in Poſſeſſion of it, or can grant it over to another: But where the Party who hath Right, is in Poſſeſſion already, and where an Entry or *Claim* cannot be made, it is otherwiſe. 1 *Rep.* 157. A *Claim* will deveſt an Eſtate out of another when the Party muſt enter into ſome Part of the Land; but if it be only to bring him into Poſſeſſion, he may do it in View. By *Claim* of Lands in moſt Caſes is intended a *Claim* with an Entry into Part of the Land, or by a near Approach to it. *Co. Litt.* 252, 254. *Popb.* 67. One in Reverſion after an Eſtate for Years, or after a Statute-Merchant, Staple, or *Elegit*, may enter and make a *Claim* to prevent a Deſcent, or avoid a collateral Warranty. And *Claim* of a Remainder by Force of a Condition muſt be upon the Land, or it will not be ſufficient. *Co. Litt.* 202. If a Man ſeiſed of Lands in Right of his Wife, make a Feoffment in Fee on Condition, and the Husband dieth, and then the Condition is broken, and the Heir enters; in this Caſe the Wife need not *claim* to get Poſſeſſion of her Eſtate, for the Law doth veſt it in her without any *Claim. Co. Litt.* 202. 8 *Rep.* 43. The *Claim* of the particular Tenant, ſhall be good for him in Reverſion or Remainder; and of him in Reverſion, *&c.* for particular Tenant: So *Claim* of a Copyholder, will be good for the Lord, *&c.* But if Tenant for Years, in a Court of Record *claim* the Fee of his Land, it is a Forfeiture of his Eſtate. *Plowd.* 359. *Co. Litt.* 251. A *Claim* may be made by the Party himſelf; and ſometimes by his Servant or Deputy: And a Guardian in Socage, *&c.* may make a *Claim* or enter in the Name of the Infant that hath Right, without any Commandment. *Co. Litt.* 245. *Claim* or Entry ſhould be made as ſoon as may be; and by the Common Law it is to be within a Year and a Day after the Diſſeiſin, *&c.* and if the Party who hath unjuſtly gained the Eſtate, do afterwards occupy the Land, in ſome Caſes an Aſſiſe, Treſpaſs, or Forcible Entry may be had againſt him. *Lit. Sect* 426, 430. If a Fine is levied of Lands, Strangers to it are to enter and make a *Claim* within five Years, or be barred: Infants after their Age, Feme Coverts after the Death of their Husbands, *&c.* have the like Time, by Stat. 1 *R.* 3. *cap.* 7. If a Diſſeiſor levy a Fine, and the Diſſeiſee enters his *Claim* in the Record of the Foot of the Fine, this is not ſuch a *Claim* as ſhall avoid the Statute. 4 *Hen.* 7. *cap.* 24. 1 *Lill. Abr.* 270. See the Stat. 4 *&* 5 *Ann.* and *Continual Claim.*

Claim of Liberty, Is a Suit or Petition to the King in the Court of *Exchequer*, to have Liberties and Franchiſes confirmed there by the King's Attorney General. *Co. Ent.* 93.

Clamea admittenda in Itinere per Attornatum, A Writ by which the King commands the Juſtices in Eyre to admit a Perſon's Claim by Attorney who is employed in the King's Service, and cannot come in his own Perſon. *Reg. Orig.* 19.

Clap-board, Is Board cut in order to make Casks or Veſſels; which ſhall contain three Foot and two Inches at leaſt in Length: And for every ſix Ton of Beer exported, the ſame Cask, or as good, or 200 of *Clap-boards* ſhall be imported, by Statute 35 *El. c.* 11.

Clarigarius Armorum, An Herald at Arms. *Blount.*

Clario, A Trumpet. *Statimque clangebant* Clariones *&* *Tubæ.* Knighton, Anno 1346.

Claſſiarius, A Seaman, or Soldier ſerving at Sea. —— *Omneſque ejus Capitaneos, Milites &* Claſſiarios, *&c.* Chart. Carol. 5. Imperator. Thomæ Comit. Surr. dat. in Urbe Londinenſi, 8 Junii 1522.

Claud, (*Brit.*) A Ditch: *Claudere*, to encloſe, or turn open Fields into Incloſures. —— *Dedi & conceſſi totam culturam ad* Claudendum *& faciendum quicquid inde dictis Canonicis placuerit.* Paroch. Antiq. 236.

Claves Inſulæ, Is a Term uſed in the *Iſle of Man*, where all ambiguous and weighty Caſes are referred to twelve Perſons, whom they call *Claves Inſulæ*, i. e. the Keys of the Iſland.

Clavia. In the Inquiſition of Serjeanties in the 12th and 13th Years of King *John*, within the Counties of *Eſſex* and *Hertford*; Boydin Aylet *tenet quatuor lib. terræ in* Bradwell, *per manum* Willielmi *de Dono per Serjeantiam* Claviæ, *viz.* By the Serjeanty of the Club or Mace. *Brady's Append. Introduct. to Eng. Hiſt.* 22.

Clavigeratus, A Treaſurer of a Church. —— *Aliter* Willielmus Wallingford *Clavigeratus.* Mon. Angl. Tom. 1. p. 184.

Clauſe Rolls, (*Rotuli Clauſi*) Contain all ſuch Matters of Record as were committed to cloſe Writs: Theſe Rolls are preſerved in the *Tower.*

Clauſtura, Bruſhwood for Hedges and Fences King *Henry* 3. gave to the Prior and Canons of *Chetwode, quinque carucatas* Clauſturæ *ad prædictæ terræ* Clauſturam *ſuſtinendam.* Paroch. Antiq. 247.

Clauſum fregit, Signifies in our Law as much as Action of Treſpaſs; and it is a Writ ſo called, becauſe the Defendant is ſummoned thereby to anſwer *Quare Clauſum fregit* of the Plaintiff, that is why he did ſuch a Treſpaſs. It is the Courſe of the Common Pleas, to declare in Actions (eſpecially upon an *Aſſumpſit* or the like) upon a *Quare Clauſum fregit*, as they do on a *Latitat* in the King's Bench. 2 *Vent.* 192, 259. But by the Lord *Clarendon's* Orders in Chancery, Curſitors of that Court are not to make Writs of *Clauſum fregit, &c.* in *London*, without ſpecial Warrant from the Lord Chancellor, or Maſter of the Rolls, unleſs it appear by Affidavit that the ſame is the proper Cauſe of Action, *&c.* In C. B. a *Pone* in Treſpaſs, (and here the Proceedings are by *Præcipe* or *Pone*) according to the ancient Courſe, is made out thus: Wilts, ſſ. *Si* A. B. *fec. &c. tunc Pone* C. D. *nuper de, &c. de Placito quare Vi & Armis* Clauſum *& Domum ipſius* A. fregit *& alia enormia ei intulit, Ad grave Dampn. ipſius* A. *Et contra pacem, &c.* This is delivered to the Filizer of the County to draw out the *Capias, &c.* And Debt may be added to it, *viz. Pone, &c.* C. D. *nuper de, &c. in Com. tuo* Clauſum freg. *apud, &c. Ac etiam in Debito pro* 50 *l. &c.*

Clauſum Paſchæ, Stat. *Weſtm.* 1. *In Craſtino* Clauſi Paſchæ, or *In Craſtino Octabis Paſchæ*, which is all one, that is the Morrow of the *Utas* of *Eaſter.* 2 *Inſt.* 157. Clauſum Paſchæ, i. e. *Dominica in Albis*; *ſic dictum, quod* Paſcha Claudat. *Blount.*

Clauſura Heye, The Encloſure of a Hedge. —— Johannes Stanley *Ar. clamat quod ipſe & hæredes ſui ſunt quieti de* Clauſura Heye *de* Macclesfield, *ſcil.* Clauſura *unius Rodæ terræ circiter* Hayam *prædict.* Rot. Plac. in Itinere apud Ceſtriam, ann. 14 H. 7.

Clawa, A Cloſe, or ſmall Meaſure of Land. —— *Unam* Clawam *terræ cum pertinentiis.* Mon. Angl. Tom. 2. pag. 250.

Cleptor. This Word is taken for a Rogue or Thief. *Hoveden Anno* 946.

Clergy, (*Clerus*) Signifies the Aſſembly or Body of Clerks, or Eccleſiaſticks, being taken for the whole Number of thoſe who are *De Clero Domini*, of our Lord's Lot or Share, as the Tribe of *Levi* was in *Judæa*; and are ſeparate from the Noiſe and Buſtle of the World, that they may have Leiſure to ſpend their Time in heavenly Meditation and Prayer. And ſometimes *Clergy* is uſed for a Plea to an Indictment of Felony, *&c.* being an antient Privilege of the Church, where a Prieſt or one in Orders is arraigned of Felony, before a ſecular Judge, who may pray his *Clergy*; which is as much as if he prayed to be delivered to his Ordinary, to purge himſelf of the Offence objected againſt him. *Staundf. P. C. lib.* 2. *cap.* 41. Antiently the *Clergy* ſtrongly inſiſted that by the Law of God their Perſons were ſo ſacred that they could not, without a Violation of that Law, be convened before, and much leſs be puniſhed by any ſecular Judge; but it hath been obſerved that this is not warranted by Scripture: Though all Perſons in Holy Orders have this Privilege from the *Canon Law*. 2 *Hawk. P. C.* 337. It is ſaid by the Lord Chief Juſtice *Hale*, that anciently Princes converted to Chriſtianity, in Favour of the *Clergy*, and for encouraging them in their Offices and Imployments, did grant to them very bountiful Privileges; as 1ſt, an Exemption of Places conſecrated to religious Duties from Arreſts for Crimes, which was the Original of Sanctuaries. 2dly, The Exemption of their Perſons from criminal Proceedings, in ſome Caſes capital before ſecular Judges; and this was the true Original of the *Privilegium Clericale:* The *Clergy* increaſing in Wealth, Power and Intereſt afterwards ſet up for themſelves; and that which they obtained by the Favour of Princes and States at firſt, they now began to claim as their Right, and that of the higheſt Nature *Jure Divino*; and by their Canons and Conſtitutions, procured vaſt Extenſions of thoſe Exemptions. 2 *Hale*'s *Hiſt. P. C.* 323. As to the *Clergy* in general, they are *Regular* or *Secular*: Thoſe are *Regular*, which live under certain Rules, being of ſome Religious Order, and are called Men of Religion, or *the Religious:* Such as all Abbots, Priors, Monks, &c. The *Secular* are thoſe that live not under any certain Rules of the Religious Orders; as Biſhops, Deans, Parſons, Vicars, &c. And altho' the *Clergy* claimed an Exemption from all ſecular Juriſdiction, yet *Mat. Paris* tells us, that ſoon after *William* the *Firſt* had conquered *Harold*, he ſubjected the Biſhopricks and Abbeys who held *per Baroniam*, that they ſhould be no longer free from military Service; and for that Purpoſe he in an arbitrary Manner regiſtred how many Soldiers every Biſhoprick and Abbey ſhould provide, and ſend to him and his Succeſſors in Time of War; and having placed theſe Regiſters of Eccleſiaſtical Servitude in his Treaſury, thoſe who were aggrieved, departed out of the Realm: But the *Clergy* were not, till then, exempted from all ſecular Service; becauſe by the Laws of King *Edgar* they were bound to obey the ſecular Magiſtrate in three Caſes, *viz.* Upon any *Expedition to the Wars*, and to contribute to the Building and Repairing of *Bridges*, and of *Caſtles* for the Defence of the Kingdom. 'Tis probable that by Expedition to the Wars, it was not at that Time intended they ſhould perſonally ſerve, but contribute towards the Charge: One they muſt do; as appears by the Petition to the King, *Anno* 1267, *viz. Ut omnes* Clerici *tenentes per Baroniam vel feudum laicum, perſonaliter armati procederent contra Regios Adverſarios, vel tantum ſervitium in Expeditione Regis invenirent, quantum pertineret ad tantam terram vel Tenementum.* But their Anſwer was, That they ought not to fight with the Military, but with the Spiritual Sword, that is with Prayers and Tears; that they were to maintain Peace and not War, and that their Baronies were founded in Charity; for which Reaſon they ought not to perform any Military Service. *Blount.* That the *Clergy* had greater Privileges and Exemptions at Common Law than the *Laity* is certain; for they are confirmed to them by *Magna Charta*, and other ancient Statutes; but theſe Privileges are in a great Meaſure loſt, the *Clergy* being included under general Words in later Statutes; ſo that *Clergymen* are liable to all publick Charges impoſed by Act of Parliament, where they are not particularly excepted. Indeed they are not at this Day to undergo temporal Offices, as the Office of Sheriff, Conſtable, &c. (though they are ſometimes in the Commiſſion of the Peace, in which Commiſſion they may either act as Juſtices, or not act at their Pleaſure) nor are they to ſerve on Juries, or obliged to appear at Turns and Leets; or to be preſſed to ſerve in the Wars in Perſon, although by Statutes they are compellable to contribute to the Charge of a War, and to Muſters of the Militia: Their Bodies are not to be taken upon Statutes Merchant or Staple, &c. for the Writ to take the Body of the Conuſor is *Si laicus ſit*; and if the Sheriff or any other Officer arreſt a *Clergyman* upon any ſuch Proceſs, it is ſaid an Action of falſe Impriſonment lies againſt him that does it, or the *Clergyman* arreſted may have a *Superſedeas* out of the Chancery. In Action of Treſpaſs, Account, &c. againſt a Perſon in Holy Orders, wherein Proceſs of *Capias* lies, if the Sheriff return that the Defendant is *Clericus Beneficiatus nullum habens Laicum feodum ubi Summoneri poteſt*; in this Caſe the Plaintiff cannot have a *Capias* to arreſt his Body; but the Writ ought to iſſue to the Biſhop, to compel him to appear, &c. But on Execution had againſt ſuch *Clergyman*, a Sequeſtration ſhall be had of the Profits of his Benefice. *Clergymen* may not be arreſted in the Church, or Church-yard, while attending on Divine Service, &c. upon Pain of Impriſonment, and Ranſom at the King's Pleaſure, and likewiſe to make Agreement with the Party; And he that beats a *Clergyman*, may be obliged to do Penance in the Spiritual Court. But theſe are all the Privileges remaining on Civil Accounts: Though by the Common Law, they were to be free from the Payment of Tolls, in all Fairs and Markets, as well for all the Goods gotten upon their Church Livings, as for all Goods and Merchandizes by them bought to be ſpent upon their Rectories; and they had ſeveral other Exemptions, &c. Theſe Privileges, for the moſt part, have been allowed the *Clergy*, that they might with the more Freedom attend the Service of God and Religion, and be reſpected as they ought; and therefore they are not to undertake any ſecular Buſineſs, by which they may be diverted from their Duty, or be brought into Contempt. They are uſed like other Men in criminal Caſes; except as to Burning in the Hand for Felony, from which upon producing of their Orders, or the Ordinary's Certificate, they ought to be freed: And tho' they have had the Privilege of the *Clergy* for a Felony, yet they may again have their *Clergy*, and ſo cannot a Layman. But ſee Stat. 28 *H.* 8. *c.* 1. In ancient Times *Clergymen* convicted of Crimes, were delivered over to the Ordinary, to be puniſhed by the Eccleſiaſtical Laws; but this Privilege is long ſince aboliſhed, nor was it ever allowed in Treaſon or Sacrilege. *Wood's Inſt.* 24. *Parſon's Counc.* 145, &c. 2 *Inſt.* 4, 58, &c.

Benefit of Clergy, I have already ſaid is an ancient Privilege, where one in Orders claimed to be delivered to his Ordinary to purge himſelf of a Felony. And this Purgation was to be by his own Oath affirming his Innocency, and the Oaths of twelve Compurgators as to their Belief of it, before a Jury of twelve Clerks: If the Clerk failed in his Purgation, he was deprived of his Character, whereby he became a mere Layman, or he was to be kept in Priſon till a Pardon was obtained: But if he purged himſelf, he was ſet at Liberty. Sometimes the Delivery to the Ordinary was without Purgation, as upon Attainder by Confeſſion of the Felony, or by Verdict, where the Felony was notorious, and then the Clerk was to be degraded, or kept in Priſon by the Ordinary, &c. though in theſe Caſes the Ordinaries would frequently proceed to Purgation. But Purgation is now taken away by Stat. 18 *Eliz. cap.* 7. which enacts that where an Offender is admitted to his *Clergy*, after Burning in the Hand, he ſhall not be delivered to the Ordinary, but ſhall be enlarged by the Court, &c. And the *Benefit of Clergy*, and Burning in the Hand, comes in the Place of Purgation at Common Law. In ancient Times in the King's Courts where Felonies were determined, the Biſhop or his Deputy were to attend to inform the Court whether the Felon could read as a Clerk or not; but the Court was ſtill to judge of his Sufficiency. Since the Stat.

18 *Eliz.* Every Man to whom *Benefit of Clergy* was granted, hath been put to read at the Bar after found guilty, and convicted of Felony, and ſo burnt in the Hand, and ſet free for the firſt Time, if the Ordinary's Commiſſioner or Deputy ſtanding by did ſay,——*Legit ut Clericus*; or otherwiſe he was to be hanged. But Reading at laſt, as well as Purgation, is wholly laid aſide; for by the 5 *Ann. c.* 6. if any Perſon convict of ſuch Felony, for which he ought to have the *Benefit of the Clergy*, doth pray the *Benefit* of this Act, he ſhall not be required to read, but ſhall be puniſhed as a Clerk convict. A Lord of Parliament ſhall have the *Benefit of his Clergy*, tho' he cannot read, and without Burning in the Hand, for the firſt Time only; and the King may pardon the Burning of the Hand in others, which is not ſo much in Nature of a Puniſhment, as a Mark to notify that the Perſon may have his *Clergy* but once. The Privilege of *Clergy* is ſaid to have its beginning from an Encroachment of the *Pope* upon the temporal Power, in Behalf of the *Clergy*, whom he endeavoured to exempt from the Juriſdiction of lay Judges in Caſe of Life and Member; which the temporal Courts would not yield to, but only in Part: And firſt they would indict Clerks for Felony, as well as others, and proceed thereon until the Ordinary did demand them; and if the Ordinary would not demand them, the King's Courts proceeded to Conviction, Attainder and Execution; and if the Ordinary did claim Clerks before Conviction, then an Inquiſition was taken, whether the Party was guilty or not; and if acquitted, he was diſcharged; but if found guilty, then delivered to the Ordinary, &c. The Privilege ſo reſtrained was confirmed and eſtabliſhed by the Statute of *Weſtm.* 1. *cap.* 2. and allowed by divers other Acts of Parliament: And tho' originally the *Clergy* never intended that any ſhould have that Privilege, but thoſe who were in Holy Orders; yet afterwards they extended it to thoſe who were not ſtrictly in Orders, but were Aſſiſtants to them in doing Divine Offices. And as to Laymen being admitted to this Privilege, it hath been obſerved that in thoſe Days few were bred to Literature, but thoſe who were actually in Orders, or educated for that Purpoſe; and therefore the Way of Trial whether one was a Clerk or no, was by reading, of which the Court was judge; for if he could not read, the Court would not deliver him as a Clerk, though the Ordinary did claim him; and if he did read, he ſhould be allowed as a Clerk, tho' the Ordinary refuſed him: And Reading being the Way of Trial, whether a Man were a Clerk or not, without further Examination into any other Qualification, by an equitable Conſtruction of the Statutes that eſtabliſhed and extended this Privilege, all Perſons that ſo approved themſelves by Reading, were allowed to be Clerks. *Linwood* 92, 100. *Kel.* 180. It appears by our Books that Laymen that could read ever had the Privilege of *Clergy* ſince the 25 *Ed* 3. which Allowance never was condemned in Parliament, or complained of as a Grievance, but rather approved of: And by the 18 *Eliz.* all Perſons as well Lay as Spiritual, have a Right to the *Benefit* of that Statute, for the firſt Offence, in the ſame Manner as *Clergymen. Ibid.* Though it was anciently the uſual Method for the Ordinary to demand the Criminal as his Clerk, before the Court allowed him the *Benefit of his Clergy*; yet there was no Neceſſity for ſuch Demand, but the Court might without it admit a Perſon to the *Benefit of Clergy*, on ſufficient Evidence of his being a Clerk, as upon producing Letters of Orders, or reading as a Clerk, &c. except he appeared to have been guilty of Sacrilege, or of breaking of Priſon of the Ordinary, in which Caſes it is ſaid to have been at the Diſcretion of the Ordinary, whether he ſhould have his *Clergy* or not: And as there is no Neceſſity that the Ordinary ſhould demand the *Benefit of the Clergy* for a Clerk; ſo neither is there any that the Priſoner himſelf ſhould demand it, where it ſufficiently appears to the Court that he hath a Right to it, in Reſpect of his being in Orders, &c. In which Caſe; if the Priſoner does not demand it, it is left to the Diſcretion of the Judge, either to allow, or not allow it him. 2 *Hawk. P. C.* 359. Thoſe who demand the *Benefit of Clergy*, are to plead, and put themſelves upon Trial; but after a Clerk hath put himſelf upon Trial, and the Inqueſt are charged with him, ſome Writers tell us, that he may, if he deſire it, be admitted to his *Clergy* before the Jury come back; and ſhall not forfeit his Goods, unleſs they find him guilty. *Ibid.* 358. This Claim of *Clergy* might formerly be made on Arraignment, or as ſoon as the Priſoner was brought to the Bar: Afterwards it could not be claimed till after Conviction, becauſe it is for the Advantage of the King as to the Forfeiture of the Lands and Goods of the Criminal Convict, and for the Advantage of the Party himſelf to make his Challenges to the Inqueſt; and perhaps he may be acquitted, and then he will not need this Privilege. 2 *Inſt.* 164, 633. At Common Law, if the Party had not demanded his *Clergy* before Conviction, he loſt it: But in the Time of *H.* 6. an Alteration was made in the Method of allowing *Clergy*, *viz.* That the Party indicted or appealed, was to anſwer to the Felony, and after Conviction, upon his Demand the Judge to allow him his *Clergy*; which Courſe has been ever ſince obſerved. *Kel.* 100. *Clergy* may be demanded after Judgment given againſt a Perſon, whether of Death, &c. And even under the Gallows, if there be a proper Judge there who has Power to allow it. 2 *Hawk.* 357. *Clergy* is never allow'd by the Civil Law; ſo that Pirates, &c. ſhall not have *Clergy*. 1 *Nelſ. Abr.* 449. The Common Law did not deny *Clergy* but in certain Caſes; as in High Treaſon, or Sacrilege; where a Perſon was convict of Hereſy; was a *Turk*, *Jew*, or *Infidel*, &c. Alſo Women were not allow'd it; but this is alter'd by Stat. 3 *W.* & *M.* By Statutes, *Clergy* is denied in a great many Felonies; though it is allowed in all Caſes where not expreſly taken away. And where *Clergy* is taken away expreſly by any Statute, the Offence muſt be laid in the Indictment to be againſt that very Statute, and the Words of it, or the Offender ſhall have his *Clergy*. Kel. 104. H. P. C. 231.

Clergy is taken away by Statutes, in the following Caſes; where Perſons are convicted of Petit Treaſon, Murder, Robbing of Churches, Dwelling-Houſes, or burning of Dwelling-Houſes, Barns, &c. 23 *H.* 8. *c.* 1. 1 *Ed.* 6. &c. Alſo from Acceſſories to theſe Crimes. 4 & 5 *P.* & *M.* Perſons guilty of Buggery. 25 *H.* 8. *c.* 6. Of Horſe-ſtealing. 1 *Ed.* 6. Robbing in Tents or Booths, in Fairs or Markets. 5 & 6 *Ed.* 6. Forging of falſe Deeds or Writings, the ſecond Offence. 5 *Eliz.* 14. Taking of Money or Goods privately from the Perſon of another, without his Knowledge: And if any admitted to *Clergy*, hath before committed any other Offence where *Clergy* is not allowed, he may be tried for ſuch Offence, as though there were no Admiſſion of *Clergy*. 8 *El. c.* 4. Rapes of Women: And Stealing of them having Lands, &c. or being Heirs apparent. 18 *El. cap.* 7. 39 *Eliz. cap.* 9. Stabbing any Perſon, if he die of the Wound within ſix Months. 1 *Jac.* 1. *c.* 8. Acknowledging any Fine, Recovery, Deed inrolled, Statute or Recognizance, Bail or Judgment in the Name of another, not privy and conſenting. 21 *Jac.* 1. *c.* 26. Concealing the Death of a Baſtard Child, whether born alive or not. 21 *Jac.* 1. *cap.* 27. Cutting, taking, and ſtealing away Cloth from the Rack or Tenters, in the Night-Time; and purloining or embezilling Armor, Ordnance, or Habiliments of War, Naval Stores, &c. to the Value of 20*s.* but the Judges may cauſe ſuch Offenders to be tranſported. 22 *Car.* 2. *c.* 5.

Cutting out, or diſabling the Tongue, putting out an Eye, ſlitting or cutting off a Noſe or Lip, or cutting off any Limb or Member, with a malicious Intent to maim or disfigure. 22 & 23 *Car.* 2. *c.* 1. Perſons who ſhall rob any Dwelling-Houſe in the Day-time, any Perſon being therein, or ſhall abet, or command any one in ſuch Robbery; or break any Dwelling Houſe, Shop or Ware-houſe thereunto belonging, in the Day time, and feloniouſly take away any Money or Goods, to the Value of 5*s.* although no Perſon be therein, &c. 3 & 4 *W.* & *M.* *c.* 9. If any Perſon indicted of an Offence for which he would be excluded *Clergy*, ſhall ſtand mute, not anſwer directly, or challenge peremptorily above 20 Jurors, or ſhall be outlawed on the Indictment. *Stat. Ibid.* And where any Perſon hath once had the Benefit of *Clergy*, the Certificate of the Clerk of the Crown, Clerk of the Peace, or of the Aſſiſes, ſhall be a ſufficient Proof. *Ibid.* Forging or Counterfeiting the Seal of the Bank of *England*, or any Bank Bills. 7 & 8 *W.* 3. *c.* 31. Perſons that by Night or Day, in any Shop, Warehouſe, Coach-houſe or Stable, privately ſteal any Goods or Merchandizes of the Value of 5*s.* although the Shop be not broke, &c. 10 & 11 *W.* 3. *c.* 23. Setting forth Pirates, aſſiſting or adviſing any Piracy; and receiving, entertaining or concealing ſuch Pirate, or Veſſels, Goods, &c. piratically taken, 11 & 12 *W.* 3. *cap.* 7. If any Maſter or Mariner ſhall caſt away, burn or deſtroy any Ship: Or if any Perſon ſhall make a Hole in the Bottom of a Ship, ſteal any Pump, or do any Thing which tends to the Loſs of the Ship. 1 *Ann. c.* 9. 12 *Ann. c.* 18. Where a Perſon convicted of Theft, ſhall have Benefit of *Clergy*, and be burnt in the Hand; the Court may commit the Offender to the Houſe of Correction for any Time not under ſix Months, or above a Year, there to be kept at hard Labour. 5 *Ann. c.* 6. Counterfeiting Exchequer-Bills, or any Indorſement, &c. or tendring any ſuch counterfeit Bill, or demanding the ſame to be exchanged for Money knowing thereof. 7 *Ann. c.* 17. Unlawfully attempting to kill, or aſſaulting and ſtriking, or wounding any one of the Privy Council, in the Execution of his Office. 9 *Ann. c.* 16. Forging the common Seal of the *South Sea* Company; or forging or counterfeiting any Bond under the Seal of the ſaid Company, or offering to diſpoſe of any counterfeited Bond knowingly. 9 *Ann. cap.* 21. Forging or Counterfeiting any Stamp or Mark on Vellum, Paper, &c. to defraud the Crown of her Duty, or uttering Parchment, &c. with ſuch counterfeit Stamp. 10 *Ann cap.* 19. Forging or Counterfeiting any Lottery Order, or Altering the Number, or Sum of ſuch Order. 12 *Ann. c.* 2. Servants ſtealing or purloining Goods, &c. of 40*s.* Value from their Maſters: But this is not to extend to Apprentices under 15 Years of Age, who ſhall rob their Maſters. 12 *Ann. c.* 7. If any Perſons to the Number of twelve, unlawfully and riotouſly aſſembled to the Diſturbance of the Peace, required by a Juſtice of Peace, Mayor, &c. by Proclamation to diſperſe, continue together an Hour after; or if they obſtruct ſuch Proclamation, and then continue an Hour after the ſame. 1 *Geo.* 1. *c.* 5. Soldiers inliſted in his Majeſty's Service, exciting or joining in any Mutiny or Sedition, or deſerting the Service, &c. 3 *Geo.* 1. *c.* 2. If any Perſon ſhall be convicted of Grand or Petit Larceny, who by Law would be intitled to *Clergy*, (except Perſons receiving or buying ſtolen Goods) the Court inſtead of ordering the Offender to be burnt in the Hand or Whipt, may order him to be ſent to the Plantations for ſeven Years, &c. 4 *Geo.* 1. *c.* 11. Where any Perſon ſhall take any Money or Reward for helping another to ſtolen Goods, unleſs he cauſe the Felon to be apprehended, and brought to his Trial, and give Evidence againſt him. *Ibid.* If any one who ſhall become a Bankrupt, or any by his Order, ſhall remove, conceal, or imbezil any Goods whereof he or any Perſon in Truſt for him was poſſeſſed or intitled to at the Time of the Bankruptcy, to the Value of 20*l.* or any Books of Account, Bonds, Bills, Notes, Papers, &c. relating thereto. 5 *Geo.* 1. *cap.* 14. Forging, Counterfeiting or Altering any Receipt, or Warrant, &c. of the *South-Sea* Company upon Subſcriptions for enlarging their Stock. 6 *Geo.* 1. *cap.* 11. Forging any Lottery Ticket or Certificate, &c. 8 *Geo.* 1. *cap.* 2. Forging or Counterfeiting any Letter of Attorney to transfer or aſſign any capital Stock of any Body Politick or Corporate, eſtabliſhed by Parliament; or to receive any Annuity, &c. And Forging the Name of any Proprietor; or fraudulently demanding to have any Stock transferred, by Virtue of any forged Letter of Attorney. 8 *Geo.* 1. *cap.* 22. If any Maſter of a Ship, &c. ſhall trade with any Pirate, or furniſh him with Stores, Ammunition, &c. or ſhall combine or confederate with Pirates: Or if any Perſon belonging to any Ship, forcibly board any other Ship or Veſſel, and throw over Board, or deſtroy any of the Goods, &c. 8 *Geo.* 1. *c.* 24. Perſons going abroad armed, in Masks and Diſguiſes, robbing Foreſts, Parks, &c. killing or wounding Cattle, ſhooting at any Perſons, or ſending threatening Letters to Perſons, demanding Money, &c. 9 *Geo.* 1. *c.* 22. Forging or Counterfeiting any Deed, Will, Bond, Bill, Note, Acquittance, &c. or uttering or publiſhing, knowing them to be falſe. 2 *Geo.* 2. *c.* 25. Stealing of Linen or Cotton, &c. by Day or Night, from whitening Grounds, or drying Houſes, &c. to the Value of 10*s.* 4 *Geo.* 2. *c.* 16. Perſons maliciouſly cutting any Hop-binds growing on Poles, in any Plantation of Hops. 6 *Geo.* 2. *c.* 37. Forging the Acceptance of any Bill of Exchange; or the Number, or principal Sum of an accountable Receipt for any Note, Bill, Warrant or Order, for Payment of Money, or Delivery of Goods, with Intent to defraud; or uttering as true any counterfeited Acceptance of a Bill of Exchange, &c. 7 *Geo.* 2. *c.* 22. Perſons maliciouſly pulling down, and otherwiſe deſtroying any Turnpike Gate, Poſts, Rails, &c or any Houſe there erected; or reſcuing ſuch Offenders. 8 *Geo.* 2. *c.* 20. Subjects of the Crown of *Great Britain*, in this Kingdom or *Ireland*, or without the ſame, inliſting as Soldiers to go beyond Sea, and ſerve any foreign Prince, without his Majeſty's Leave, and not diſcorering by whom inliſted, &c. 9 *Geo.* 2. *c.* 30. Perſons ſetting on fire any Mine, or Pit of Coal, maliciouſly, upon Conviction. 10 *Geo.* 2. *c.* 32. And Perſons that drive away, ſteal or kill any Sheep, or Cattle, with Intention of ſtealing their Carcaſſes, or Part thereof, &c. 14 *Geo.* 2. *cap.* 6. In all theſe Inſtances, *Clergy is taken away.* Vide the *Statutes.*

Clerico admittendo, Is a Writ directed to the Biſhop, for *admitting* a *Clerk* to a Benefice, upon a *Ne admittas* tried and found for the Party that procures the Writ. *Reg. Orig.* 31. If a Parſon recover a Benefice, the Patron may have this Writ to the Biſhop, tho' the ſix Months are paſt, if the Church is void, &c. And this ancient Writ begins thus: *Rex venerabili in Chriſto Patri,* &c. *Cum* A. B. *de,* &c. *in Curia noſtra Recuperaſſet verſus nos Præſentationem ſuam ad vicariam de,* &c. *vobis Mandamus quod ad Præſentat. ipſius* A. B. *ad vicariam idoneam Perſonam* admittatis, &c.

Clerico infra ſacros Ordines conſtituto, non Eligendo in Officium, Is a Writ directed to thoſe who have thruſt a Bailiwick, or other Office upon one in Holy Orders, charging them to releaſe him. *Reg. Orig.* 143.

Clerico capto per Statutum Mercatorum, &c. A Writ for the Delivery of a *Clerk* out of Priſon, who is taken and impriſoned upon the Breach of a Statute Merchant. *Reg. Orig.* 147.

Clerico convicto commiſſo Gaolæ in defectu Ordinarii deliberando, Is an ancient Writ that lay for the *Delivery* of a *Clerk* to his *Ordinary*, that was formerly *convicted* of Felony, by Reaſon his *Ordinary* did not challenge him according to the Privileges of *Clerks*. Reg. Orig. 69.

Clerk, (*Clericus*) In the moſt general Signification, is one that belongs to the Holy Miniſtry of the Church; under which, where the *Canon Law* hath full Power, are not only comprehended *Sacerdotes*, and *Diaconi*, but alſo *Subdiaconi*, *Lectores*, *Acolyti*, *Exorciſtæ* and *Oſtiarii*: But the Word has been anciently uſed for a *Secular Prieſt*; in Oppoſition to a *Religious* or *Regular. Paroch. Antiq.* 171. And is ſaid to be properly a Miniſter or Prieſt, one who is more peculiarly called *in ſortem Domini*. Blount.

Clerk, In another Senſe denotes a Perſon who practiſes his Pen in any Court, or otherwiſe; of which *Clerks* there are various Kinds, in ſeveral Offices, *&c.* As the *Officers* of the Courts of Law, were formerly often Clergymen, hence it is ſaid they go under the Term of *Clericus*, or *Clerk*. And *Temp.* Ed. 1. Johannes Sawell, *Clericus Domini Regis*, was ſuppoſed to ſignify Secretary or *Clerk* of his Council. *Antiq. Nottinghamſh.* 317.

Clerk of the Acts, Is an Officer in the Navy-Office, whoſe Buſineſs is to record all Orders, Contracts, Bills, Warrants, *&c.* tranſacted by the Lord High Admiral, or Lords Commiſſioners of the Admiralty, and Commiſſioners of the Navy; and is mentioned in the Stat. 16 *Car.* 2. *c.* 5. And 22 *&* 23 *Car.* 2.

Clerk of Affidavits, In the Court of *Chancery*, is an Officer that files all *Affidavits* made Uſe of in Court.

Clerk of the Aſſiſe, Is he that writes all Things judicially done by the Juſtices of *Aſſiſe* in their Circuits. *Cromp. Juriſd.* 227. This Officer is aſſociated to the Judge in Commiſſion of *Aſſiſe*, to take *Aſſiſes*, *&c.*

Clerk of the Bails, An Officer belonging to the Court of King's Bench. *Stat.* 22 *&* 23 *Car.* 2. He files the Bail-Pieces taken in that Court, and attends for that Purpoſe.

Clerk of the Check, Is an Officer in the King's Court, ſo called, becauſe he hath the *Check* and Controlment of the Yeoman of the Guard, and all other ordinary Yeomen belonging either to the King, Queen, or Prince; giving Leave, or allowing their Abſence in Attendance, or diminiſhing their Wages for the ſame: He alſo by himſelf or Deputy takes the View of thoſe that are to Watch in the Court, and hath the Setting of the Watch. 33 *H.* 8. *c.* 12. Alſo there is an Officer of the ſame Name in the King's Navy at *Plymouth*, *&c.* 19 Car. 2. c. 1.

Clerk of the Crown, (*Clericus Coronæ*) An Officer in the King's Bench, whoſe Function is to Frame, Read and Record all Indictments againſt Offenders there arraigned or indicted of any Publick Crime. And when divers Perſons are jointly indicted, the *Clerk of the Crown* ſhall take but one Fee, *viz.* 2 *s.* for them all. *Stat.* 2 *H.* 4. *c.* 10. He is otherwiſe termed *Clerk of the Crown-Office*, and exhibits Informations, by Order of the Court, for divers Offences: And on Informations exhibited in the Crown-Office, for Treſpaſs, Battery, *&c.* Recognizances are to be entered into for the Informer to proſecute with Effect, *&c.* 4 *&* 5 *W. & M.*

Clerk of the Crown in Chancery, Is an Officer in that Court who continually attends the Lord Chancellor in Perſon or by Deputy: He writes and prepares for the Great Seal, ſpecial Matters of State by Commiſſion, or the like, either immediately from his Majeſty's Orders, or by Order of his Council, as well Ordinary as Extraordinary, *viz.* Commiſſions of Lieutenancy, of Juſtices of Aſſiſe, *Oyer* and *Terminer*, Gaol Delivery, and of the Peace, with their Writs of Aſſociation, *&c.* Alſo all General Pardons, at the King's Coronation; or in Parliament, where he ſits in the Lords Houſe in Parliament Time; and into whoſe Office the Writs of Parliament, with the Names of Knights and Burgeſſes elected thereupon, are to be returned and filed. He hath likewiſe the Making out of all ſpecial Pardons; and Writs of Execution upon Bonds of Statute-Staple forfeited, which was annexed to his Office in the Reign of Queen *Mary*, in Conſideration of his chargeable Attendance.

Clerk of the Declarations, An Officer of the Court of King's Bench, that files all Declarations in Cauſes there depending, after they are ingroſs'd, *&c.*

Clerk of the Deliveries, Is an Officer in the *Tower* of *London*, who exerciſes his Office in taking of Indentures for all Stores, Ammunition, *&c.* iſſued from thence.

Clerk of the Errors, (*Clericus Errorum*) In the Court of *Common Pleas*, tranſcribes and certifies into the King's Bench, the Tenor of the Records of the Cauſe or Action, upon which the Writ of *Error*, made by the Curſitor, is brought there to be heard and determined. The *Clerk of the Errors* in the *King's Bench*, likewiſe tranſcribes and certifies the Records of Cauſes in that Court into the Exchequer, if the Cauſe or Action were by Bill: If by Original, the Lord Chief Juſtice certifies the Record into the Houſe of Peers in Parliament, by taking the Tranſcript from the *Clerk of the Errors*, and delivering it to the Lord Chancellor, there to be determined, according to the Statutes 27 *Eliz. c.* 8. and 31 *Eliz. c.* 1. The *Clerk of the Errors* in the *Exchequer* alſo tranſcribes the Records, certified thither out of the King's Bench, and prepares them for Judgment in the Court of Exchequer-Chamber, to be given by the Juſtices of *C. B.* and Barons there. *Stat.* 16 *Car.* 2. *c.* 2. 20 *Car.* 2. *c.* 4.

Clerk of the Eſſoins, Is an Officer belonging to the Court of *Common Pleas*, who keeps the *Eſſoin Rolls*; and the *Eſſoin Roll* is a Record of that Court: He hath the Providing of Parchment, and cutting it out into *Rolls*, marking the Numbers thereon; and the Delivery out of all the Rolls to every Officer of the Court; the Receiving of them again when they are written, and the Binding and Making up the whole Bundles of every Term; which he doth as Servant to the Chief Juſtice. The Chief Juſtice of *C. B.* is at the Charge of the Parchment of all the Rolls, for which he is allowed; as is alſo the Chief Juſtice of *B. R.* beſides the Penny for the Seal of every Writ of Privilege and Outlawry, the ſeventh Penny taken for the Seal of every Writ in Court under the Green Wax, or Petit Seal, the ſaid Lord Chief Juſtices having annexed to their Offices or Places, the Cuſtody of the ſaid Seals belonging to each Court.

Clerk of the Eſtreats, (*Clericus Extractorum*) A *Clerk* or Officer belonging to the *Exchequer*, who every Term receives the *Eſtreats* out of the Lord Treaſurer's Remembrancer's Office, and writes them out to be levied for the King: And he makes Schedules of ſuch Sums *eſtreated*, as are to be diſcharged.

Clerk of the Hanaper, or Hamper, Is an Officer in the *Chancery*, whoſe Office is to receive all the Money due to the King, for the Seals of Charters, Patents, Commiſſions and Writs; as alſo Fees due to the Officers for inrolling and examining the ſame. He is obliged to Attendance on the Lord Chancellor daily in the Term-time, and at all Times of ſealing, having with him Leather Bags, wherein are put all Charters, *&c.* After they are ſealed, thoſe Bags, being ſealed up with the Lord Chancellor's private Seal, are delivered to the *Controller of the Hanaper*, who upon Receipt of them, enters the Effect of them in a Book, *&c.* This *Ha-*

naper repreſents what the *Romans* termed *Fiſcum* which contained the Emperor's Treaſure: And the *Exchequer* was anciently ſo called, becauſe *in eo reconderentur* Hanapi *& ſcutræ cæteraque vnſa quæ in cenſum & tributum perſolvi ſolebant*; or it may be for that the yearly Tribute which Princes received was in *Hampers* or large Veſſels full of Money.

Clerk of the Inrollments, Is an Officer of the Common Pleas, that inrolls and exemplifies all Fines and Recoveries, and Returns Writs of Entry, Summons and Seiſin, *&c.*

Clerk of the Juries, (*Clericus Juratorum*) An Officer belonging to the Court of Common Pleas, who make out the Writs of *Habeas Corpora* and *Diſtringas*, for Appearance of *Juries*; either in that Court, or at the Aſſizes, after the Jury or Panel is returned upon the *Venire facias*: He alſo enters into the Rolls the Awarding of theſe Writs: and makes all the Continuances from the going out of the *Habeas Corpora* until the Verdict is given.

Clerk Controller of the King's Houſe Is an Officer in the *King's* Court, that hath Authority to allow or diſallow the Charges and Demands of Purſivants, Meſſengers of the Green-Cloth, *&c.* He hath likewiſe the Overſight of all Defects and Miſcarriages of any of the inferior Officers; and hath a Right to ſit in the Counting houſe, with the ſuperior Officers, *viz.* The Lord Steward, Treaſurer, *Controller*, and Cofferer of the Houſhold, for correcting any Diſorders. *Stat.* 33 *H.* 8. *c.* 12.

Clerk Marſhal of the King's Houſe, An Officer that attends the *Marſhal* in his Court, and records all his Proceedings. 33 *H.* 8. *c.* 22.

Clerk of the King's Silver, (*Clericus Argenti Regis*) Is an Officer belonging to the Court of Common Pleas, to whom every Fine is brought after it hath paſſed the Office of the *Cuſtos Brevium*, and by whom the Effect of the Writ of Covenant is entered into a Paper-Book; according to which all the Fines of that Term are recorded in the Rolls of the Court. And the Entry is in this Form: Wilts, *ſſ.* A. B. *dat Domino Regi dimidiam Marcam, &c. pro licentia concordandi cum* C. D. *pro talibus Terris in, &c. & habet per Chirographum per pacem admiſſum, &c.* After the *King's Silver* is entered, it is accounted a Fine in Law, and not before.

Clerk of the King's Great Wardrobe, An Officer of the *King*'s Houſhold, that keeps an Account or Inventory of all Things belonging to the Royal *Wardrobe.* Stat. 1 E. 4. c. 1.

Clerk of the Market, (*Clericus Mercati Hoſpitii Regis*) Is an Officer of the King's Houſe, to whom it belongs to take Charge of the King's Meaſures, and keep the Standards of them, which are Examples for all Meaſures throughout the Land; as of Ells, Yards, Quarts, Gallons, *&c.* And of Weights, Buſhels, *&c.* And to ſee that all Weights and Meaſures in every Place be anſwerable to the ſaid Standard: Of which Office, you may read in *Fleta*, *lib.* 2. *cap.* 8, 9, 10, *&c.* Touching this Officer's Duty, there are alſo divers Statutes, as 13 *R.* 2. *c.* 4. and 16 *R.* 2. *c.* 3. by which every *Clerk of the Market* is to have Weights and Meaſures with him when he makes Eſſay of Weights, *&c.* mark'd according to the Standard; and to ſeal Weights and Meaſures, under Penalties. The 16 *Car.* 1. *c.* 19. enacts, That *Clerks of the Market* of the King's or Prince's Houſhold, ſhall only execute their Offices within the Verge; and Head Officers are to act in Corporations, *&c.* The *Clerks of Markets* have generally Power to hold a Court, to which End they may iſſue out Proceſs to Sheriffs and Bailiffs to bring a Jury before them; and give a Charge, take Preſentments of ſuch as keep or Uſe falſe Weights and Meaſures; and may ſet a Fine upon the Offenders, *&c.* 4 *Inſt.* 274. But if they take any other Fee or Reward than what is allowed by Statute, *&c.* or impoſe any Fines without legal Trial; or otherwiſe miſdemean themſelves, they ſhall forfeit 5 *l.* for the firſt Offence, 10 *l.* for the Second, and 20 *l* for the third offence, on Conviction before a Juſtice of Peace, *&c.* Stat. 16 *Car.* 1.

Clerk of the Nichils, or Nihils, (*Clericus Nihilorum*) An Officer of the Court of Exchequer, who makes a Roll of all ſuch Sums as are *nihiled* by the Sheriffs upon their Eſtreats of Green Wax, and delivers the ſame into the Remembrancer's Office, to have Execution done upon it for the King. See Stat. 5 *R.* 2. *c.* 13. *Nihils* are Iſſues by Way of Fine or Amercement.

Clerk of the Ordnance, Is an Officer in the *Tower*, who regiſters all Orders touching the King's *Ordnance.*

Clerk of the Outlawries, (*Clericus Utlagariarum*) An Officer belonging to the Court of Common Pleas, being the Servant or Deputy to the King's Attorney General, for making out Writs of *Capias Utlagatum*, after *Outlawry*; the King's Attorney's Name being to every one of thoſe Writs.

Clerk of the Paper-Office, Is an Officer in the Court of *King's Bench*, that makes up the Paper-books of ſpecial Pleadings and Demurrers in that Court.

Clerk of the Papers, An Officer in the Common Pleas; who hath the Cuſtody of the *Papers* of the Warden of the *Fleet*, enters Commitments and Diſcharges of Priſoners, delivers out Day-Rules, *&c.*

Clerk of the Parliament Rolls (*Clericus Rotulorum Parliamenti*) Is that Perſon which records all Things done in the High Court of *Parliament*, and ingroſſeth them in Parchment *Rolls*, for their better Preſervation to Poſterity: Of theſe Officers there are two, one in the Lords Houſe, and another in the Houſe of Commons.

Clerk of the Patents, Or of the Letters Patent under the Great Seal of *England*; an Office erected 18 *Jac.* 1.

Clerk of the Peace, (*Clericus Pacis*) Is an Officer belonging to the Seſſions of the *Peace:* His Duty is to read Indictments, inrol the Proceedings, and draw the Proceſs; he keeps the Counter-part of the Indenture of Armour; records the Proclamation of Rates for Servants Wages; has the Cuſtody of the Regiſter Book of Licenſes given to Badgers of Corn; of Perſons licenſed to kill Game, *&c.* And he regiſters the Eſtates of Papiſts and others not taking the Oaths. Alſo he certifies into the *King's Bench* Tranſcripts of Indictments, Outlawries, Attainders and Convictions, had before the Juſtices of *Peace*, within the Time limited: And by Statute, *Clerks of the Peace, &c.* are to certify the Tenor of every Indictment, Outlawry, *&c.* into *B. R.* within forty Days under a certain Penalty. *Stat.* 34 *&* 35 *Hen.* 8. *cap.* 14. And every *Clerk of the Peace* is to deliver to the Sheriff within twenty Days after *Michaelmas* yearly, an Eſtreat of all Fines, *&c.* 22 *Car.* 2. The *Cuſtos Rotulorum* of the County hath the Appointment of the *Clerk of the Peace*, who may execute his Office by Deputy. 37 *H.* 8. *c.* 1. And if a *Clerk of the Peace* miſdemeans himſelf, the Juſtices of *Peace* in Quarter-Seſſions have Power to diſcharge him; and the *Cuſtos Rotulorum* is to chuſe another Reſident in the County, or on his Default the Seſſions may appoint one: The Place is not to be ſold, on Pain of forfeiting double the Value of the Sum given, and Diſability to enjoy it, *&c. Stat.* 1 *W. & M. Seſſ.* 1. *c.* 21. See 3 *Geo.* 1. *c.* 18.

Clerk of the Pell, (*Clericus Pellis*) Is a *Clerk* belonging to the Exchequer, whoſe Office is to enter every Teller's Bill into a Parchment-Roll called *Pellis Receptorum*, and alſo to make another Roll of Payments, which is termed *Pellis Exituum*; wherein he ſets down by what Warrant the Money was paid; mentioned in the Stat. 22 *&* 23 *Car.* 2.

Clerk of the Petty-Bag, (*Clericus Parvæ Bagæ*) An Officer of the Court of *Chancery*. There are three f theſe Officers, of whom the Maſter of the Rolls is the Chief. Their Office is to record the Return of all Inquiſitions out of every Shire; to make out Patents of Cuſtomers, Gaugers, Controllers, *&c.* all *Conge d'Eſliers* for Biſhops, the Summons of the Nobility, and Burgeſſes to Parliament; Commiſſions directed to Knights and others of every Shire, for aſſeſſing Subſidies and Taxes: All Offices found *Poſt Mortem* are brought to the *Clerks of the Petty Bag* to be filed; and by them are entered all *Pleadings* of the Chancery concerning the Validity of Patents or other Things which paſs the Great Seal; they alſo make forth *Liberates* upon *Extents* of Statutes-Staple, and Recovery of Recognizances forfeited, and all *Elegits* upon them: And all Suits for or againſt any privileged Perſon are proſecuted in their Office, *&c.*

Clerk of the Pipe, (*Clericus Pipæ*) Is an Officer in the Exchequer, who having the Accounts of Debts due to the King, delivered and drawn out of the Remembrancer's Offices, charges them down in the Great Roll, and is called *Clerk of the Pipe* from the Shape of that Roll, which is put together like a *Pipe:* He alſo writes out Warrants to the Sheriffs to levy the ſaid Debts upon the Goods and Chattels of the Debtors; and if they have no Goods, then he draws them down to the Lord Treaſurer's Remembrancer, to write Eſtreats againſt their Lands. The antient Revenue of the Crown ſtands in Charge to him, and he ſees the ſame anſwered by the Farmers and Sheriffs: He makes a Charge to all Sheriffs of their Summons of the *Pipe*, and Green Wax, and takes Care it be anſwered on their Accounts. And he hath the Drawing and Ingroſſing of all Leaſes of the King's Lands; having a *Secondary* and ſeveral Clerks under him. In the Reign of King *Hen.* 6. this Officer was called *Ingroſſator Magni Rotuli.* See Stat. 33 *H.* 8. *c.* 22.

Clerk of the Pleas, (*Clericus Placitorum*) An Officer in the Court of *Exchequer*, in whoſe Office all the Officers of the Court, upon ſpecial Privilege belonging unto them, ought to ſue or be ſued in any Action, *&c.* In this Office are alſo proſecuted Actions at Law, by other Perſons as well as Officers of the Court; but the Plaintiff ought to be Tenant, or Debtor to the King, or ſome Way accountant to him: The *Clerk of the Pleas* has under him a great many *Clerks*, who are Attornies in all Suits commenced or depending in the Exchequer.

Clerk of the Privy Seal, (*Clericus Privati ſigilli*) There are four of the Officers which attend the Lord *Privy Seal*; or if there be no Lord *Privy Seal*, the Principal Secretary of State, writing and making out all Things that are ſent by Warrant from the Signet to the *Privy Seal*, and which are to be paſſed to the Great Seal; alſo they make out *Privy Seals*, upon a ſpecial Occaſion of his Majeſty's Affairs, as for Loan of Money, and the like. He that is now called *Lord Privy Seal*, ſeems to have been in ancient Times called *Clerk of the Privy Seal*; but notwithſtanding to have been reckoned in the Number of the Great Officers of the Realm. Stat. 12 *R.* 2. *c.* 11. And 27 *H.* 8. *c.* 11.

Clerk of the Rolls, An Officer of the Chancery, that makes Searches after and Copies of Deeds, Offices, *&c.*

Clerk of the Rules, In the Court of King's Bench, is he who draws up and enters all the *Rules* and Orders made in Court; and gives Rules of Courſe on divers Writs: This Officer is mentioned in the 22 and 23 *Car.* 2.

Clerk of the Sewers, An Officer belonging to the Commiſſioners of *Sewers*, who writes and records their Proceedings, which they tranſact by Virtue of their Commiſſions, and the Authority given them by Statute 13 *El.* *c.* 9.

Clerk of the Signet, (*Clericus Signeti*) Is an Officer continually attendant on his Majeſty's Principal Secretary, who hath the Cuſtody of the *Privy Signet*, as well for ſealing his Majeſty's private Letters, as ſuch Grants as paſs the King's Hand by Bill ſigned: And of theſe Clerks or Officers there are four that attend in their Courſe, and have their Diet at the Secretary's Table. The Fees of the *Clerk of the Signet*, and Privy Seal, are limited particularly by Statute, with a Penalty annexed for taking any Thing more. See 27 *H.* 8 *c.* 11.

Clerk of the Superſedeas's, An Officer belonging to the Court of Common Pleas, who makes out Writs of *Superſedeas*, upon a Defendant's appearing to the *Exigent* on an Outlawry, whereby the Sheriff is forbidden to return the *Exigent*.

Clerk of the Treaſury, (*Clericus Theſauravii*) Is an Officer of the Common Pleas, who hath the Charge of Keeping the Records of the Court, and makes out all the Records of *Niſi prius*; alſo he makes all Exemplifications of Records being in the *Treaſury*; and he hath the Fees due for all Searches. He is taken to be the Servant of the Chief Juſtice, and removable at Pleaſure; whereas all other Officers of the Court are for Life: There is a *Secondary* or *Under-Clerk of the Treaſury* for Aſſiſtance, who hath ſome Fees and Allowances: And likewiſe an *Under-Keeper*, that always keeps one Key of the *Treaſury* Door, and the chief *Clerk* of the Secondary another; ſo as the one cannot come in without the other.

Clerk of the Warrants, (*Clericus Warrantorum*) An Officer belonging to the Common Pleas Court, who enters all *Warrants* of Attorney for Plaintiffs and Defendants in Suits; and inrolls Deeds of Indentures of Bargain and Sale, which are acknowledged in the Court, or before any Judges out of the Court. And it is his Office to eſtreat into the Exchequer all Iſſues, Fines and Amerciaments, which grow due to the King in that Court, for which he hath a ſtanding Fee or Allowance.

Cleronimus, An old Word ſignifying Heir; it is mentioned in *Mon. Angl. Tom.* 3. *pag.* 129.

Clitones, The Eldeſt, and all the Sons of Kings. In the Charter of King *Æthelred*——— Ethelſtanus Ecbryth, *&c. cum epitheto* Clitonis *ſubſcribunt.* Mat. Pariſ. pag. 158. ——— *Ego* Edgar, *&c.* Clito *Legitimus præfati Regis, &c.* *Selden*'s Notes upon *Eadmerus.*

Clive, Cliff. The Names of Places beginning or ending with theſe Words, ſignify a Rock from the old *Saxon*,

Cloere, A Priſon or Dungeon; 'tis conjectured from *Britiſh* Original; The Dungeon or inner Priſon in *Wallingford* Caſtle, *Temp. H.* 2. was called *Cloere Brien, i. e. Carcer Brieni, &c.* Hence ſeems to come the Lat. *Cloaca*, which was anciently the cloſeſt Ward or naſtieſt Part of the Priſon: The old *Cloacerius*, is interpreted *Carceris Cuſtos*; and the preſent *Cloacerius*, or Keeper of a *Jakes*, is an Office in ſome Religious Houſes abroad, impoſed on an offending Brother, or by him choſen as an Exerciſe of Humility and Mortification. *Cowel.*

Cloſh, Was an unlawful Game, forbidden by Stat. 17 *Ed.* 4. *c.* 3. and 33 *H.* 8. *c.* 9. It is ſaid to have been the ſame with our *Nine-Pins*; and is called *Cloſh cayles* by the 33 *H.* 8. At this Time 'tis allowed, and called *Kailes*, or *Kittles*.

Cloth, No *Cloth* made beyond Sea, ſhall be brought into the King's Dominions, on Pain of forfeiting the ſame, and the Importers to be farther puniſhed. Stat. 12 *Ed.* 3. *c.* 3.

Clothiers, Are to make Broad Cloths of certain Lengths and Breadths, within the Lifts; and ſhall cauſe their Marks to be Woven in the Cloths, and ſet a Seal of Lead thereunto, ſhewing the true Length thereof. 4 *Ed.* 4. *c.* 1. 27 *H.* 8. *c.* 12. Expoſing to Sale faulty Cloths, are liable to forfeit the ſame: And *Clothiers* ſhall not make Uſe of Flocks or other deceitful Stuff, in making of Broad Cloth, under the Penalty of 5 *l.* Stat. 5 & 6 *Ed.* 6. Juſtices of Peace are to appoint Searchers of *Cloth* yearly, who have Power to enter the Houſes of *Clothiers*, and Perſons oppoſing them, ſhall forfeit 10 *l.* &c. 39 *Eliz. c.* 20. 4 & 21 *Jac.* 1. All *Cloth* ſhall be meaſured at the Fulling-mill, by the Maſter of the Mill; who ſhall make Oath before a Juſtice, for true Meaſuring; and the Millman is to fix a Seal of Lead to *Cloths*, containing the Lenghth and Breadth, which ſhall be a Rule of Payment, by the Buyer, &c. 10 *Ann. c.* 16. By 1 *Geo.* 1. *c.* 15. Broad *Cloths* muſt be put into Water for Proof, and be meaſured by two indifferent Perſons choſen by the Buyer and Seller, &c. And *Clothiers* ſelling *Cloths* before ſealed, or not containing the Quantity mentioned in the Seals, incur a Forfeiture of the ſixth Part of the Value; Perſons taking off or counterfeiting Seals, forfeit 20 *l.* And by a late Statute, if any Weavers of *Cloth* enter into any Combination for advancing their Wages, or leſſening their uſual Hours of Work, or depart before the End of their Terms agreed, return any Work unfiniſhed, &c. they ſhall be committed by two Juſtices of Peace to the Houſe of Correction for three Months: And *Clothiers* are to pay their Work-People their full Wages agreed in Money, under the Penalty of 10 *l.* &c. *Stat.* 12 *Geo.* 1. *c.* 32. Inſpectors of Mills and Tenter-Grounds, to examine and ſeal *Cloths*, are to be appointed by Juſtices of Peace in Seſſions; and Mill-men ſending *Clothiers* any *Cloths* before inſpected, forfeit 40 *s.* The Inſpectors to be paid by the *Clothiers* 2 *d. per Cloth.* 13 *Geo.* 1. *c.* 23. If any *Cloth* remaining on the Tenters, be ſtolen in the Night, and the ſame is found upon any Perſon, on a Juſtice's Warrant to ſearch, ſuch Offender ſhall forfeit treble Value, leviable by Diſtreſs, &c. or be committed to Gaol for three Months; but for a ſecond Offence, he ſhall ſuffer ſix Months Impriſonment; and the third Offence be tranſported as a Felon, &c. Stat. 15 Geo. 2. cap. 27.

Clove, Is the two and thirtieth Part of a Weigh of Cheeſe, *i. e.* eight Pounds. 9 *H.* 6. *cap.* 8.

Clough, A Word made Uſe of for Valley, in *Domeſday* Book. But among Merchants, it is an Allowance for the Turn of the Scale, on buying Goods Wholeſale by Weight. *Lex. Mercat.*

Clunch, In *Staffordſhire* upon ſinking of a *Coal-Mine*, near the Surface they meet with Earth and Stone, then with a Subſtance called *Blue Clunch*, and and after that they come to *Coal.*

Cluta, (Fr. *Clous*) Shoes, clouted Shoes; and moſt commonly Horſe-Shoes: It alſo ſignifies the Strakes of Iron with which Cart-Wheels are bound. *Conſuetud. Dom. de* Farend. MS. fol. 16. Hence *Clutarium*, or *Cluarium*, a Forge where the *Clous* or Iron Shoes are made. —— *Tenuit duas Carucatas Terræ de Domino Rege, in Capite per tale ſervitium deferendo Palefridum Domini Regis, ſuper quatuor pedes de* Cluario *Domini Regis quotieſcunque ad Manerium ſuum de* Mansfield *venerit,* &c. Mon. Angl. Tom. 2. pag. 598.

Clypeus, One of a noble Family. *Clypei Proſtrati*, a noble Family extinct. —— *Sic nobilis* Clypeus *ille Mareſcallorum tot & tantis Hoſtibus Angliæ formidabilis evanuit.* Mat. Pariſ. 463.

Coach, (*Currus*) A Convenience well known; and for the Regulating of Hackney *Coaches* in *London*, there are ſeveral Statutes. By 9 *Ann.* Eight hundred Hackney *Coaches* and Two hundred Chairs, are allowed in *London* and *Weſtminſter*; which are to be licenſed by Commiſſioners, and pay a Duty to the Crown: And if any Perſon drive a Hackney *Coach* without Licenſe, he ſhall forfeit 5 *l.* and a Chair 40 *s.* Coachmen and Chairmen, giving abuſive Language, or demanding more than their Fare, &c. a Juſtice of Peace may order them to pay not exceeding 20 *s.* to the Poor, and not being able to pay it, ſend them to the Houſe of Correction; and Perſons not paying Coachmen their Fare, or cutting or defacing *Coaches*, &c. a Juſtice will order to make Satisfaction, and on Refuſal, may bind them over to the Quarter-Seſſions: The 1 *Geo.* 1. ordains, That where Coachmen refuſe to go at, or exact more for their Hire than is limited by the Act, they ſhall forfeit not exceeding 3 *l.* nor under 10 *s* and the Commiſſioners have Power to determine it The Fare of Hackney Coachmen in *London*, or within ten Miles thereof, is 10 *s. per* Day, allowing 12 Hours to the Day; and by the Hour not above 1 *s* 6 *d.* for the Firſt, and 1 *s.* for every Hour after: And none are obliged to pay above 1 *s.* for the Uſe of any Hackney *Coach* for any Diſtance, not mentioned in the Act, which is not above one Mile and four Furlongs; nor above 1 *s* 6 *d.* for any Diſtance not exceeding two Miles: The Fare of a Hackney Chair is 1 *s.* for any Diſtance not exceeding Mile, and 1 *s.* 6 *d.* for any Diſtance not exceeding a Mile and four Furlongs. There are certain Places and Diſtances mentioned in the Act for the Extent of the reſpective Fares; and other Diſtances meaſured and rated by the Commiſſioners, in Purſuance of the Statutes. Coachmen are to have Numbers to their *Coaches* on Tin-Plates, or ſhall forfeit 5 *l.* and refuſing any Perſon to take the Number of their *Coaches*, or giving a wrong Number, incurs the Forfeiture of a Sum not exceeding 40 *s.* None but licenſed *Coaches* ſhall ply at Funerals for Hire, under the Penalty of 5 *l.* Drivers of Hackney *Coaches*, are to give Way to Perſons of Quality, and Gentlemen's *Coaches*, on the Penalty of 10 *s.* On *Sundays* there are only One hundred and ſeventy five *Coaches* to ply; which are to be appointed by the Commiſſioners. And there are ſeveral Standings of *Coaches*, at the moſt noted Parts of the Town, ordered by the Comiſſioners to be in the Middle of Streets, &c. Vide 5 & 6 *W.* & *M. cap.* 22. 9 *Ann. c.* 23. 1 *Geo.* 1. *c.* 57. The Maſters of *Stage-Coaches* are not liable to an Action for Things loſt by their *Coachmen*, who have Money given them to carry the Goods; unleſs where any ſuch Maſter takes a certain Price for the ſame. See 1 *Salk.* 282.

Coachmakers. The Wares of *Coachmakers* ſhall be ſearched, by Perſons appointed by the Sadlers Company. *Stat.* 1 *Jac.* 1. *cap.* 22.

Coadjutor, (*Lat.*) A Fellow-helper or Aſſiſtant; particularly applied to one appointed to aſſiſt a *Biſhop*, being grown old and infirm, ſo as not to be able to perform his Duty.

Coals. The Sack of *Coal* is to contain four Buſhels of clean *Coals*: And Sea *Coals* brought into the River *Thames*, and ſold, ſhall be after the Rate of thirty-ſix Buſhels to the Chaldron; and One hundred and twelve Pounds the Hundred, &c. The Lord Mayor and Court of Aldermen in *London*, and Juſtices of the Peace of the ſeveral Counties, or three of them, are impowered to ſet the Price of all *Coals* to be ſold by Retail; and if any Perſon ſhall refuſe to ſell for ſuch Prices, they may appoint Officers to enter any Wharfs or Places where *Coals* are kept, and cauſe the *Coals* to be ſold at the Prices appointed. 7 *Ed.* 6. *cap.* 7. 16 & 17 *Car.* 2. *cap.* 2. Commiſſioners are ordained for the Meaſuring and Marking of Keels, and Boats for *Coals* at *Newcaſtle*; and Veſſels carrying *Coals* before meaſured and marked, ſhall be forfeited, &c. 30 *Car.* 2. *c.* 8. *Engliſh* Ships trading in *Coals*, may be manned with Foreigners during the War. 2 *W.* & *M. c.* 17. A Duty is laid on *Coals* imported, by Statutes 6 & 7 *W.* 3. *cap.* 18. 9 & 10 *W.* 3. *cap.* 13. 8 *Ann* &c. And by 9 *Ann. c.* 28. Contracts between *Coal* Owners and Maſters of Ships, &c. for reſtraining the Buying of *Coals* are void; and the Parties to forfeit 100 *l.* And ſelling *Coals*, for other Sorts than they are, ſhall forfeit 50 *l.* Not above fifty laden Colliers are to continue in the Port of *Newcaſtle*, &c. And Work-People in the Mines there, ſhall not be employed who are hired by others, under the Penalty of 5 *l.* A late Act for better Regulation of the *Coal* Trade, ordains that *Coal* Sacks ſhall be ſealed and marked at *Guildhall*, *&c.* and be four Feet and two Inches in Length, and twenty-ſix Inches in Breadth, on Pain of 20 *s.* Alſo Sellers of *Coals* are to keep a lawful Buſhel, and put three Buſhels to each Sack, which Buſhel and other Meaſures ſhall be edged with Iron, and ſealed; and uſing others, or altering them, incurs a Forfeiture of 50 *l.* *&c.* The Penalties above 5 *l.* recoverable by Action of Debt, *&c.* and under that Sum before Juſtices of Peace. *Stat.* 3 *Geo.* 2. *cap.* 26. Owners or Maſters of Ships ſhall not enhance the Price of *Coals* in the River of *Thames*, by the Keeping of Turn in delivering of *Coals* there, under the Penalty of 100 *l.* *&c.* 4 *Geo.* 2. *cap.* 30. The Price of Sea-*Coals* imported into *London* and Ports adjacent, to be there ſold, may be ſet by the Lord Mayor, *&c.* for one Year; and Perſons ſelling *Coals* out of any Veſſel, Yard, or Warehouſe, for a higher Price, ſhall forfeit 36 *s.* *per* Chalder, to be levied by Warrant of two Juſtices. Dealers in *Coals* at *Billingſgate*, *&c.* refuſing to ſign legal Contracts, ſhall forfeit 50 *l.* And any Perſon vending *Coals* at *Newcaſtle*, that refuſeth to put a Loading on Shipboard, on Tender of the Price they bear, is liable to the Forfeiture of 100 *l.* to be recovered by Action in the Courts at *Weſtminſter*, within ſix Months, by Stat. 11 *Geo.* 2. *c.* 15.

Cocherings, An Exaction or Tribute in *Ireland* now reduced to chief Rents. See *Bonaght.*

Cochineal. The Importation of *Cochineal* from Ports in *Spain* was declared lawful during the late War, *&c.* *Stat.* 6 *Ann.* Any Perſons may import *Cochineal* into this Kingdom, in Ships belonging to *Great Britain*, or other Country in Amity, from any Place whatſoever, by 7 *Geo.* 2. *cap.* 18.

Cocket, (*Cockettum*) Is a Seal belonging to the King's Cuſtom-houſe: Or rather a Scroll of Parchment ſealed, and delivered by the Officers of the Cuſtom-houſe to Merchants, as a Warrant that their Merchandizes are cuſtomed: Which Parchment is otherwiſe called *Literæ de Coketto*, or *Literæ Teſtimoniales de* Coketto. 11 *Hen.* 6. *Reg. Orig.* 192, 179. So it is uſed, 5 & 6 *Ed.* 6. *cap.* 14, *&c.* The Word *Cockettum* or *Cocket*, is alſo taken for the Cuſtom-houſe or Office where Goods to be tranſported were firſt entered, and paid their Cuſtom, and had a *Cocket* or Certificate of Diſcharge: And *Cockettata Lana* is Wool duly entered and *cocketted*, or authorized to be tranſported. *Mem. in Scac.* 23 *Ed.* 1. *Cocket* is likewiſe uſed for a Sort of Meaſure, as we may read in *Fleta*, *lib.* 2. *cap.* 9. *Panis vero integer quadrantalis frumenti ponderabit unum* Cocket *& dimidium:* And it is made uſe of for a Diſtinction of Bread, in the Statute of Bread and Ale. 51 *H.* 3. Where Mention is made of *Waſtel-Bread*, Cocket-*Bread*, *Bread of Treet*, and *Bread of Common Wheat*; the Waſtel-Bread being what we now call the *fineſt Bread*, or *French* Bread; the *Cocket*-Bread the ſecond Sort of *White Bread*; Bread of Treet, and of common Wheat, *Brown*, or *Houſhold Bread*, *&c.*

Cocſetus, A Boatman, *Cockſwain* or Coxon. *Cowel.*

Cocula, A Cogue, or little drinking Cup, in Form of a ſmall Boat, uſed eſpecially at Sea; and ſtill retained in a *Cogue* of Brandy. Theſe drinking Cups are alſo uſed in Taverns to drink new Sherry, and other white Wines, which look foul in a Glaſs.

Codicil, (*Codicillus*, from *Codex* a Book, a Writing) Is a Schedule or Supplement to a Will, where any Thing is omitted, which the Teſtator would add, or he would explain, alter or retract what he hath done; and it is the ſame with a Teſtament, but that it is without an Executor: And one may leave behind him only one Teſtament, but as many *Codicils* as he pleaſes. *Weſt. Symb. p.* 636. A *Codicil* is taken as Part of the Will; and the *Codicils* ought to be annexed to the Teſtament, and the Executor is to ſee that they are all performed: If the Will or *Codicils* are kept from the Executor, he may force the Party detaining them to deliver them up by the Eccleſiaſtical Law, and recover them in the Spiritual Court. *Swinb. pag.* 1. *Sect.* 1. Some Writers conferring a Teſtament and a *Codicil* together, call a Teſtament a great Will, and a *Codicil* a little one.

Coffee, Tea, and Chocolate. The Cuſtom Duties on *Coffee*, *Tea*, and *Chocolate*, are taken off by Statute, and Inland Duties granted in their Stead, payable by Druggiſts, and all Perſons dealing in *Coffee*, *&c.* And Entries are to be made of all Warehouſes, under Penalties and Forfeiture of the Goods. *Stat.* 10 *Geo.* 1. *c.* 10. The Duties to be paid are 2 *s* *per* Pound for *Coffee*, for *Tea* 4 *s.* and *Chocolate* 1 *s.* 6 *d.* And *Coffee*, *&c.* not to be ſold but in Places entered; and if above ſix Pounds Weight, to have a Permit: Dealers in *Coffee* and *Chocolate*, *Coffee-houſe keepers*, &c. ſhall keep an Account of Goods ſold every Day, and deliver their Books to the Officers on Oath, *&c.* *Chocolate* ſhall be ſtamped, and *Chocolate-makers* are to make an Entry of all *Chocolate* made, under the Penalty of 50 *l.* And Perſons mixing other Drugs with *Coffee* or *Tea*, ſhall forfeit 100 *l.* *Stat.* 11 *Geo.* 1. *cap.* 30. See the late Statute againſt ſophiſticating *Tea*, and importing Cocoa Nutſhels or Husks to make *Chocolate*, *&c.* 4 *Geo.* 2. *cap.* 14. See 5 *Geo.* 2. *c.* 24.

Cofra, A Coffer, Cheſt or Trunk.——*Cuſtos Collegii, & Miniſtri ejuſdem, &c. capientes certam ſummam pecuniæ de* Cofris *fundatoris.* Munimenta Hoſpit. SS. Trinit. de Pontefracto, MS. fol. 50.

Cofferer of the King's Houſhold, Is a Principal Officer of the *King*'s Houſe, next under the *Controller*, who in the Counting-Houſe, and elſewhere, hath a ſpecial Charge and Overſight of other Officers of the Houſhold, to all which he pays their Wages: This Officer paſſes his Accounts in the Exchequer, and is mentioned in 39 *Eliz. cap.* 7.

Coggle, A ſmall fiſhing Boat, upon the Coaſts of *Yorkſhire:* And *Cogs*, (*Cogones*) are a Kind of little Ships, or Veſſels, uſed in the Rivers *Ouſe* and *Umber.* Stat. 23 H. 8. c. 18.—— *Præparatis* Cogonibus *Galleis, & aliis Navibus, &c. Mat. Pariſ. Anno* 1066. And hence the *Cogmen*, Boatmen or Seamen, who after Shipwreck or Loſſes by Sea, travelled and wandered about to defraud the People by Begging and Stealing, 'till they were reſtrained by divers good Laws. *Du Freſne.*

Cognatione, A Writ of Coſenage. See *Coſenage*

Cogniſance, (Fr. *Connuſance*, Lat. *Cognitio*) Is uſed diverſly in our Law: Sometimes it is an Acknowledgment of a *Fine*, or Confeſſion of a Thing done; and there is a *Cogniſance* of taking a *Diſtreſs:* Sometimes it is the Hearing of a Matter judicially; as to take *Cogniſance* of a *Cauſe:* And ſometimes it ſignifies a Juriſdiction, as *Cogniſance of Pleas* is a Power to call a Cauſe or Plea out of another Court; which none can but the King, or by Charter. This *Cogniſance* of Pleas is a Privilege granted by the King to a City or Town, to hold Plea of all Contracts, *&c.* within the Liberty of the Franchiſe: and when any Man is impleaded for ſuch Matters in the Courts of *Weſtminſter*, the Mayor, *&c.* of ſuch Franchiſe may aſk *Cogniſance* of the Plea, and demand that it ſhall be determined before them: But if the Courts at *Weſtminſter* be poſſeſſed of the Plea before *Cogniſance* is demanded, it is then too late. *Terms de Ley* 178, 179. See Stat. 9 *H.* 4. *c.* 5. *Cogniſance of Pleas* extends not to Aſſiſes; and when granted, the Original ſhall not be removed: It lies not in a *Quare Impedit*, for they cannot write to the Biſhop; nor of a Plea out of the County-Court, which cannot award a Reſummons, *&c.* *Jenk. Cent.* 31, 34. This *Cogniſance* ſhould be demanded the firſt Day: And if the Demandant in a Plea of

Land counterpleads the Franchiſe, and the Tenant joins with the Claim of the Franchiſe, and it is found againſt the Franchiſe, the Demandant ſhall recover the Land; but if it be found againſt the Demandant, the Writ ſhall abate. *Ibid.* 18. ——— *Cogniſance* alſo ſignifies the Badge of a Waterman or Servant, which is uſually the Giver's *Creſt*, whereby he is known to belong to this or that Nobleman or Gentleman.

Cogniſor and **Cogniſee**, *Cogniſor*, Is he that paſſeth or acknowledgeth a Fine of Lands or Tenements to another; and *Cogniſee* is he to whom the Fine of the ſaid Lands, *&c.* is acknowledged. *Stat.* 32 *H.* 8. *c.* 5.

Cognitiones, Enſigns and Arms, or a military Coat painted with Arms.——— *Cum viderunt Hoſtes Chriſti armis vexillis &* Cognitionibus *picturatis, &c.* Mat. Pariſ. 1250.

Cognitionibus Mittendis, Is a Writ to one of the King's Juſtices of the Common Pleas, or other that hath Power to take a Fine, who having taken the Fine defers to certify it, commanding him to certify it. *Reg. Orig.* 68.

Cognovit Actionem, Is where a Defendant acknowledges or confeſſes the Plaintiff's Cauſe againſt him to be juſt and true, and after Iſſue ſuffers Judgment to be entered againſt him without Trial. And here the Confeſſion generally extends no further than to what is contained in the Declaration; but if the Defendant will confeſs more, he may. 1 *Roll.* 929. *Hob.* 178.

Cogware, Is ſaid to be a Sort of coarſe Cloths, made in divers Parts of *England*, of which Mention is made in the 13 *R.* 2. *cap.* 10.

Cohuagium, A Tribute paid by thoſe who meet promiſcuouſly in the Market or Fair; *Cohua* ſignifying a promiſcuous Multitude of Men in a Fair or Market.——— *Quieti ab omni Theloneo, Paſſagio, Pontagio,* Cohuagio, *Pallagio, &c.* Du Cange.

Coif, (*Coifa*) A Title given to Serjeants at Law; who are called *Serjeants of the Coif*, from the Lawn *Coif* they wear on their Heads under their Caps, when they are created. The Uſe of it was anciently to cover *Tonſuram Clericalem*, otherwiſe called *Corona Clericalis*; becauſe the Crown of the Head was cloſe ſhaved, and a Border of Hair left round the lower Part, which made it to look like a Crown. *Blount.*

Coin, (*Cuna Pecunia*) Seems to come from the Fr. *Coign, i. e. Angulus*, a Corner; whence it has been held, that the ancienteſt Sort of *Coin* was ſquare with Corners, and not round as it now is: It is any Sort of Money *coined.* Cromp. Juriſd. 220. *Coin* is a Word collective, which contains in it all Manner of the ſeveral Stamps and Species of Money in any Kingdom: And this is one of the Royal Prerogatives belonging to every Sovereign Prince, that he alone in his own Dominions may order and diſpoſe the Quantity and Value, and Faſhion of his *Coin.* But the *Coin* of one King is not current in the Kingdom of another, unleſs it be at great Loſs; though our King by his Prerogative may make any Foreign *Coin* lawful Money of *England* at his Pleaſure, by Proclamation. *Terms de Ley* 136 If a Man binds himſelf by Bond to pay one hundred Pounds of lawful Money of *Great Britain*, and the Perſon bound, the Obligor, pays the Obligee the Money in *French*, *Spaniſh*, or other *Coin*, made current either by Act of Parliament, or the King's Proclamation, the Obligation will be well performed. 1 *Inſt.* 207. But 'tis ſaid a Payment in Farthings, is not a good Payment. 2 *Inſt.* 517. When a Perſon has accepted of Money in Payment from another, and put the ſame into his Purſe, it is at his Peril after his Allowance; and he ſhall not then take Exception to it as bad, notwithſtanding he preſently reviews it. *Terms de Ley.* By Statute, any Perſon may break or deface Pieces of Silver Money ſuſpected to be counterfeit or diminiſhed, otherwiſe than by wearing: But if ſuch Pieces on breaking, *&c.* are found to be good *Coin*, it will be at the Breaker's Peril, who ſhall ſtand to the Loſs of it. 9 *&* 10 *W.* 3. *c.* 21. *Coins* of Gold and Silver are to paſs notwithſtanding ſome of them are crack'd, or worn, but not if they are clipt. 19 *H.* 7. *c.* 5. Counterfeiting, Impairing, or Clipping of the King's *Coin*, is made High Treaſon. 25 *Ed.* 3. *c.* 14. and 18 *Eliz. cap.* 7. It is alſo Treaſon to make any Stamp, Dye, Mould, *&c.* for *coining*, except by Perſons imployed in the *Mint*, *&c.* Conveying ſuch out of the *Mint*, is the ſame; and ſo is colouring Metal reſembling *Coin* of Gold or Silver, marking it on the Edges, *&c.* And if any Perſons mix blanched Copper with Silver, to make it heavier, and look like Gold, or receive, or pay counterfeit milled Money, it is Felony. 8 *&* 9 *W.* 3. *c.* 26. Counterfeiting Broad Pieces of Gold, *&c.* is declared to be Treaſon. *Stat.* 6 *Geo.* 2. *cap.* 26. Perſons that waſh or gild any Shilling, or Six Pence, or alter the Impreſſion, ſo as to make them reſemble a Guinea, Half Guinea, *&c.* are adjudged guilty of High Treaſon; and thoſe who tender in Payment, any counterfeit *Coin* knowingly, ſhall be impriſoned ſix Months for a firſt Offence, two Years for the ſecond, and a Third ſuffer as Felons. 15 *Geo.* 2. *c.* 28. The Statutes which ordain milled Money to be made, give Liberty to any Perſon to refuſe hammered Silver *Coin*, as not being the lawful *Coin* of this Kingdom. 9 *W.* 3. *c.* 2. Counterfeiting of the *Coin* extends only to Gold and Silver *Coin*; for the *Coining* of Farthings or Half-pence, or Pieces to go for ſuch, of Copper, incurs a Penalty of 5 *l.* for every Pound Weight, by Stat. 9 *&* 10 *W.* 3. *c.* 33. This Offence is now puniſhed with two Years Impriſonment, and Surety to be given by the Offenders for good Behaviour two Years more. 15 *Geo.* 2. Perſons apprehending Money-*Coiners*, Clippers, *&c.* are to have 40 *l.* Reward; and a guilty Perſon diſcovering two others, to be pardoned, *&c.* 6 *&* 7 *W.* 3. By the late Statute, 10 *l.* is alſo given as a Reward, for apprehending and convicting *Coiners* of Copper Money. In the ſeventh Year of King *William* III. an Act was made for calling in all the old *Coin* of the Kingdom, and to melt it down and recoin it; the Deficiences whereof were to be made good at the publick Charge: And in every Hundred Pound *coined*, 40 *l.* was to be Shillings, and 10 *l.* Sixpences, under certain Penalties. Perſons bringing Plate to the *Mint* to be *coined*, were to have the ſame Weight of Money delivered out, as an Encouragement, and Receivers General of Taxes, *&c.* were to receive Money at a large Rate *per* Ounce. Our Guineas have been raiſed and fallen, as Money has been ſcarce or plenty, ſeveral Times by Statute: And *Anno* 3 *Geo.* 1. on a Scarcity of Silver *Coin*, for Remedy, Guineas were ſunk to 21 *s.* at which they now paſs by Proclamation. See *Money.*

An *Indictment* for *Coining* of Money.

Somerſet, ſſ. THE *Jurors*, &c. *That* A. B. *of*, &c. *not having God before his Eyes, but being ſeduced by the Inſtigation of the Devil, on the Day*, &c. *in the Year of the Reign*, &c. *at the Pariſh of*, &c. *in the ſaid County, did falſly and traiterouſly forge, counterfeit and* Coin *twenty Pieces of Braſs and Copper, and other mixed Metals, to the Reſemblance and Likeneſs of good, lawful and current Money of the King of this Kingdom of* England, *called Shillings; and knowing the ſaid twenty Pieces, ſo to be falſly and traiterouſly counterfeited and* coined, *the ſaid* A. B. *afterwards, that is to ſay, on the ſaid Day of*, &c. *in the* &c. *Year aboveſaid, at*, &c. *in the ſaid County, and elſewhere, deceitfully, falſly, and traiterouſly did expoſe, pay and utter ſix Pieces thereof, to divers Subjects of our* *ſaid Sovereign Lord the King, for the true, lawful and current Money of* England, *to the great Prejudice and Deceit of the Subjects of our ſaid Lord the King, and againſt the Peace,* &c. *and alſo againſt the Form of the Statute,* &c.

Coinage, (*Cunagium*) Is the Stamping and Making of Money, by the King's Authority. And there is a Duty of 10 *s. per* Ton on Wine, Beer, and Brandy imported, called the *Coinage Duty*, granted for Expence of the King's *Coinage*, but not to exceed 3000 *l. per Ann. Stat.* 18 *Car.* 2. *cap.* 5. This Duty for *Coinage* hath been continued and advanced, by divers Statutes, as 4 *&* 5 *Ann. c.* 22. 1 *Geo.* 1. *c.* 43. 9 *Geo.* 1. *&c.* The *Coinage* Duties are continued for ſeven Years, by a late Statute; and the Commiſſioners of the Treaſury, out of the Money ariſing by this Act, or other publick Supplies, ſhall defray the Expence of the *Mints* of *England* and *Scotland*, not exceeding 15000 *l.* a Year. *Stat.* 4 *Geo.* 2. *c.* 12.

Coliberts, (*Coliberti*) Were Tenants in Socage; and particularly ſuch Villeins as were manumitted or made Freemen. *Domeſday.* But they had not an abſolute Freedom; for tho' they were better than Servants, yet they had ſuperior Lords to whom they paid certain Duties, and in that Reſpect they might be called Servants, tho' they were of middle Condition, between Freemen and Servants.—— *Libertate carens* Colibertus *dicitur eſſe.* Du Cange.

Collateral, (*Collateralis*) From the Lat. *Laterale*, Sideways, or that which hangeth by the Side, not direct; As *Collateral Aſſurance* is that which is made over and above the Deed itſelf: *Collateral* Security, is where a Deed is made of other Land, beſides thoſe granted by the Deed of Mortgage: And if a Man covenants with another, and enters into Bond for Performance of his Covenant, the Bond is a *Collateral* Aſſurance; becauſe it is external, and without the Nature and Eſſence of the Covenant. If a Man hath Liberty to pitch Booths or Standings, for a Fair or Market in another Perſon's Ground; it is *Collateral* to the Ground. The private Woods of a common Perſon, within a Foreſt, may not be cut without the King's Licence; it being a Prerogative *Collateral* to the Soil. And to be ſubject to the Feeding of the King's Deer, is *Collateral* to the Soil of a Foreſt. *Cromp. Juriſd.* 185. *Manwood, p.* 66.

Collateral Diſcent, and **Collateral Warranty,** See *Diſcent* and *Warranty*.

Collatio Bonorum, Is in Law where a Portion or Money advanced by the Father to a Son or Daughter, is brought into *Hotchpot*, in order to have an equal diſtributory Share of his perſonal Eſtate, at his Death, according to the Intent of the Stat. 22 *&* 23 *Car.* 2. *c.* 10. *Abr. Caſ. Eq. p.* 254. See *Hotchpot.*

Collation of a Benefice, (*Collatio Beneficii*) Signifies the Beſtowing of a *Benefice* by the Biſhop, when he hath Right of Patronage. And it differs from Inſtitution in this, that *Inſtitution* is performed by the Biſhop upon the Preſentation of another, and *Collation* is his own Act of Preſentation; and it differeth from a common *Preſentation*, as it is the Giving of the Church to the Parſon, and Preſentation is the Giving or Offering of the Parſon to the Church. But *Collation* ſupplies the Place of Preſentation and Inſtitution; and amounts to the ſame as Inſtitution, where the Biſhop is both Patron and Ordinary. 1 *Lill. Abr.* 273. Antiently the Right of Preſentation to all Churches, was in the Biſhop; and now if the Patron neglects to preſent to a Church, then this Right returns to the Biſhop by *Collation:* And if the Biſhop neglects to collate within ſix Months after the Lapſe of the Patron, then the Archbiſhop hath a Right to do it; and if the Archbiſhop neglects, then it devolves to the King; the one as Superior, to ſupply the Defects of Biſhops, the other as Supreme, to reform all Defects of Goverment. As a Biſhop may neglect to *collate*, ſo it may happen that he may make his *Collation* without Title; but ſuch a wrongful *Collation* doth not put the true Patron out of Poſſeſſion; for after the *Collatee* of the Biſhop is inſtituted and inducted, he may preſent his Clerk: And *Collation* in this Caſe, ſhall be intended only as a proviſional Incumbency to perform Divine Service 'till Preſentment is made by the true Patron. 1 *Inſt.* 344. By *Collation* the Church is not full; and a right Patron may bring his Writ at any Time to remove the Perſon *collated*; except his Right be likewiſe to *collate*, when *Plenarty by Collation* may be pleaded. *Wood's Inſt.* 159. Where a Biſhop gives a Benefice as *Patron*, he collates to it *Jure Pleno*; and when by *Lapſe*, he doth it *Jure devoluto.* The *Collation* by Lapſe, is in Right of the Patron, and for his Turn: And in Aſſiſe of *Darrein Preſentment, &c.* it ſhall be laid as his Poſſeſſion. 24 *Ed.* 3. 26. *F. N. B.* 31.

Collatione facta uni poſt Mortem alterius, Is a Writ directed to the Juſtices of the *Common Pleas*, commanding them to iſſue their Writ to the Biſhop, for the Admiſſion of a Clerk in the Place of another preſented by the King; who died during the Suit between the King and the Biſhop's Clerk: For Judgment once paſſed for the King's Clerk, and he dying before Admittance, the King may beſtow his Preſentation on another. *Reg. Orig.* 31.

Collatione Heremitagii, A Writ whereby the King conferred the Keeping of an *Hermitage* upon a Clerk. *Reg. Orig.* 303, 308.

Collation of Seals, This was when upon the ſame Libel, one Seal was ſet on the Back or Reverſe of the other.———*Ad majorem ſecuritatem Præmiſſorum Sigillum diſcreti viri Officialis Domino* Batho-Well. *Epiſcopi filo medio per modum* Collationis, *ſigillo meo apponi procuravi.* Cartular. Abbat. Glaſton. MS. 105.

Collectors, of Money due to the King, not paying the ſame to whom it ought to be paid, ſhall anſwer ſo much *per Cent.* to his Majeſty 'till Payment. *Stat.* 20 *Car.* 2. *c.* 2. See *Receivers.*

College, (*Collegium*) A particular Corporation, Company or Society of Men, having certain Privileges, founded by the King's Licence: And for *Colleges* in Reputation, ſee 4 *Rep.* 106, 108. Vide *Leaſes.*

Collegiate Church, Is that which conſiſts of a Dean and ſecular Canons; or more largely, it is a Church built and endowed for a Society, or Body Corporate, of a Dean or other Preſident, and ſecular Prieſts, as Canons or Prebendaries in the ſaid Church. There were many of theſe Societies diſtinguiſhed from the Religious or Regulars, before the *Reformation:* And ſome are eſtabliſhed at this Time; as *Weſtminſter*, *Windſor*, *Wincheſter*, *Southwell*, *Mancheſter*, &c.

Colloquium, (*a Colloquendo*) A Talking together, or affirming of a Thing, laid in Declarations for Words in Actions of Slander, *&c. Mod. Caſ.* 203. *Carthew* 90.

Colluſion, (*Colluſio*) Is a deceitful Agreement or Contract between two, or more Perſons, for the one to bring an Action againſt the other, to ſome evil Purpoſe, as to defraud a third Perſon of his Right, *&c.* This *Colluſion* is either apparent, when it ſhews itſelf in the Face of the Act; or which is more common, it is ſecret, where done in the Dark, or covered over with a Shew of Honeſty. And 'tis a Thing the Law abhors; wherefore when found, it makes void all Things dependant upon the ſame, tho' otherwiſe in Themſelves never ſo good. *Co. Lit.* 109, 360. *Plowd.* 54. *Colluſion* may ſometimes be tried in the ſame Action wherein the Covin is, and ſometimes in another Action, as for Lands aliened in Mortmain by a *Quale jus:* And where it is apparent there needs no Proof of it; but when it is ſecret, it muſt be proved by Witneſſes, and found by a Jury like other Matters of Fact. 9 *Rep.* 33. The Statute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 33. gives the Writ *Quale jus*, and Inquiry in theſe Caſes: And there are ſeveral other Statutes relating to Deeds, made by *Colluſion* and Fraud. The Caſes particularly mentioned by the Statute of *Weſtm.* 2. are of *Quare Impedit*, *Aſſiſe*, *&c.* which any Corporation brings againſt another, with Intent to recover the Land or Advowſon, for which the Writ is brought, held in Mortmain, *&c.* *Vide* the Statute.

Colonus, An Husbandman or Villager, who was bound to pay yearly a certain Tribute, or at certain Times in the Year to plough ſome Part of the Lord's Land; and from hence comes the Word *Clown*; who is called by the Dutch *Boor*.

Colour, (*Color*) Signifies a probable Plea, but what is in Fact falſe; and hath this End, to draw the Trial of the Cauſe from the Jury to the Judges: And therefore *Colour* ought to be Matter in Law, or doubtful to the Jury. This *Colour* is uſed in Aſſiſes, or Action of Treſpaſs; and every *Colour* ought to have theſe Qualities following: 1. It is to be doubtful to the Lay-Gents, as in Caſe of a Deed of Feoffment pleaded, and it is a Doubt whether the Land paſſeth by the Feoffment, without Livery, or no. 2. *Colour* ought to have Continuance, tho' it wants Effect. 3. It ſhould be ſuch *Colour*, that if it were effectual, would maintain the Nature of the Action; as in Aſſiſe, to give Colour of Freehold, *&c.* 10 *Rep.* 88, 91. *Colour* muſt be ſuch a Thing, which is a good *Colour* of Title, and yet is not any Title. *Cro. Jac.* 122. If a Man juſtifies his Entry for ſuch a Cauſe as binds the Plaintiff or his Heirs for ever, he ſhall not give any *Colour*: But if he pleads a Deſcent in Bar, he muſt give *Colour*, becauſe this binds the Poſſeſſion, and not the Right; ſo that when the Matter of the Plea bars the Plaintiff of his Right, no *Colour* muſt be given. When the Defendant entitles himſelf by the Plaintiff; where a Perſon pleads to the Writ, or to the Action of the Writ; he who juſtifies for Tithes, or where the Defendant juſtifies as Servant: In all theſe Caſes no *Colour* ought to be given. 10 *Rep.* 91. *Lutw.* 1343. Where the Defendant doth not make a Special Title to himſelf, or any other, he ought to give *Colour* to the Plaintiff. *Cro. Eliz.* 76. In Treſpaſs for Taking and Carrying away Twenty Loads of Wood, *&c.* the Defendant ſays, that *A. B.* was poſſeſs'd of them, *ut de bonis propriis*, and that the Plaintiff claiming them by *Colour* of a Deed after made, took them, and the Defendant retook them; and adjudged that the *Colour* given to the Plaintiff, makes a good Title to him, and confeſſeth the Intereſt in him. 1 *Lill. Abr.* 275. *Colour* is for this Cauſe, *viz.* Where the Defendant juſtifies by Title in Treſpaſs or Aſſiſe, if he do not give the Plaintiff *Colour*, his Plea amounteth only to Not guilty; for if the Defendant hath Title, he is not guilty. 1 *Rep.* 79, 108. *Terms de Ley* 140.

Colour of Office, (*Color Officii*) Is when an Act is evilly done by the Countenance of an Office; and always taken in the worſt Senſe, being grounded upon Corruption, to which the *Office* is as a Shadow and *Colour*. Plowd. Comment. 64. See *Extortion.*

Colpices, (*Colpicium*, *Colpiciis*) Young Poles, which being cut down, make Leavers or Lifters; and in *Warwickſhire* they are called *Colpices* to this Day. *Blount.*

Colpo, A ſmall Wax-Candle, *à* Copo *de Cere*: We read in *Hoveden*, that when the King of *Scots* came to the *Engliſh* Court, as long as he ſtaid there, he had every Day, *De Liberatione triginta ſol & duodecim vaſſellos Dominicos*, *& quadraginta groſſos longos* Colpones *de Dominica Candela Regis*, *&c.* *Anno* 1194.

Combarones, The Fellow Barons, or Commonalty of the Cinque Ports: King *Hen.* 3. grants to the Barons, or Freemen of the Port of *Feverſham*, *quietantiam de omni Thelonio*, *& Conſuetudine*, *ſicut ipſi & anteceſſores ſui*, *&* Combarones *ſui de quinque Portubus eam melius & plenius habuerunt tempore Regis* Edwardi. *Placit. temp.* Ed. 1. *&* Ed. 2. But the Title of Barons of the Cinque Ports is now given to their Repreſentatives in Parliament; and the Word *Combaron* is uſed for a Fellow Member, the *Baron* and his *Combaron.*

Comba terræ, From Sax. *Cumbe*, Brit. *Kum*, Eng. *Comb*, a Valley or low Piece of Ground or Place between two Hills; which is ſtill ſo called in *Devonſhire* and *Cornwall*: Hence many Villages in other Parts of *England* have their Names of *Comb*, as *Wickcomb*, *&c.* from their Situation. *Kennet*'s *Gloſſ.*

Combat, (Fr.) Is taken with us for a formal Trial between two Champions, of a doubtful Cauſe or Quarrel, by the Sword or Baſtons. The laſt Trial by *Combat* in this Kingdom was *Anno* 6 *Car.* 1. between *Donald* Lord *Rey*, Appellant, and *David Ramſey*, Eſq; Defendant, both *Scotchmen*, before *Robert* Earl of *Lindſey*, Lord High Conſtable, *Thomas* Earl of *Arundel*, Earl Marſhal, with other Lords; when after the Court had met ſeveral Times in the Painted Chamber, and other Formalities, it was at laſt referred to the King's Will and Pleaſures, who was inclined to favour *Ramſey*. Co. Lit. 294. Orig. Juridical. fol. 65. See *Battel.*

Combinations to do unlawful Acts, are puniſhable before the unlawful Act is executed; this is to prevent the Conſequence of *Combinations*, and Conſpiracies, *&c.* 9 *Rep.* 57. See *Confederacy.*

Combuſtio Pecuniæ, The ancient Way of Trying mixt and corrupt Money, by melting it down upon Payments into the Exchequer. In the Time of King *Henry* 2. a Conſtitution was made called the *Trial by Combuſtion*; the Practice of which differed little or nothing from the preſent Method of *aſſaying* Silver. But whether this Examination of Money by *Combuſtion*, was to reduce an Equation of Money only of *Sterling*, *viz.* a due Proportion of Allay with Copper; or to reduce it to fine pure Silver with Allay, doth not appear. On making the Conſtitution of Trial, it was conſidered, that tho' the Money did anſwer *Numero & Pondere*, it might be deficient in Value; becauſe mix'd with Copper or Braſs, *&c.* Vide *Lowndes's Eſſay upon Coin*, *p.* 5.

Comitatus, A County. *Ingulphus* tells us, That *England* was firſt divided into Counties by King *Alfred*; and Counties into Hundreds, and theſe again into Tithings: And *Forteſcue* writes, that *Regnum* Angliæ *per* Comitatus *ut Regnum* Franciæ *per Ballivatus diſtinguitur.* Sometimes it is taken for a Territory or Juriſdiction of a particular Place, as *in Mat. Pariſ.* Anno 1234. *Infra Metas illas continentur quædam prædia & etiam Civitates & Caſtra*, *quas* Comitatui *ſuo aſſignare præſumunt.* And *in Charta H.* 2 *apud* Hoveden: *Caſtellum de* Nottingham *cum* Comitatu, *&c.* And, *De firmis mortuis & debitis*, *de quibus non eſt ſpes*, *fiat unus Rotulus*, *& intituletur* Comitatus, *& legatur ſingulis Annis ſuper Computum Vicecomitum.* Clauſ. 12 Ed. 1. See *County.*

Comitatu Commiſſo, Is a Writ or Commiſſion whereby a Sheriff is authoriſed to take upon him the Charge of the County. *Reg. Orig.* 295.

Comitatu & Caſtro Commiſſo, A Writ by which the Charge of a County, together with the Keeping of a Caſtle, is committed to the Sheriff. *Reg. Orig. Ibid.*

Comitiva, A Companion or Fellow Traveller; 'tis mentioned in *Brompton*, *Regn. H.* 2. And ſometimes it ſignifies a Troop or Company of Robbers; as in *Walſingham*, *Anno* 1366. *Interpellaverunt auxilium Regis* Angliæ *contra Magnas* Comitivas, *&c.*

Commandry, (*Præceptoria*) Was any Manor or Chief Meſſuage, with Lands and Tenements thereto appertaining, which belonged to the Priory of *St. John of Jeruſalem in England*; and he who had the Government of ſuch a Manor or Houſe was ſtiled the *Commander*, who could not diſpoſe of it but to the Uſe of the Priory, and only taking thence his own Suſtenance, according to his Degree. *New Eagle* in *Lincolnſhire* was and ſtill is called the *Commandry of Eagle*, and did anciently belong to the ſaid Priory of St. *John:* So *Selbach* in *Pembrokeſhire*; and *Shingay* in *Cambridgeſhire*, were *Commandries* in the Time of the Knights Templers, ſays *Camden:* And theſe in many Places of *England* are termed *Temples*, becauſe they formerly belonged to the ſaid Templers. *Stat.* 26 *H.* 8. *c.* 2. The Manors and Lands belonging to the Priory of St. *John of Jeruſalem*, were given to King *Henry* 8. by the Stat. 32 *H.* 8. about the Time of the Diſſolution of Abbies and Monaſteries; ſo that the Name only of *Commandries* remains, the Power being long ſince extinct.

Commandment, (*Præceptum*) Is diverſly taken; as the *Commandment of the King*, when upon his own Motion he hath caſt any Man into Priſon. *Commandment of the Juſtices*, Abſolute or Ordinary; Abſolute, where upon their own Authority they commit a Perſon for Contempt, *&c.* to Priſon, as a Puniſhment; Ordinary is when they commit one rather for ſafe Cuſtody, than for any Puniſhment: And a Man committed upon ſuch an ordinary *Commandment* is replevisable *Staundf. P. C.* 72, 73. Perſons committed to Priſon by the Special *Command* of the King, were not formerly bailable by the Court of King's Bench; but at this Day the Law is otherwiſe declared and ſettled, as appears under Bail. 2 *Hawk. P. C.* 96. In another Senſe of this Word; Magiſtrates may *Command* others to aſſiſt them in the Execution of their Offices, for the doing of Juſtice; and ſo may a Juſtice of Peace to ſuppreſs Riots, apprehend Felons; an Officer to keep the King's Peace, *&c. Bro.* 3. A Maſter may *Command* his Servant to drive another Man's Cattle out of his Ground, to enter into Lands, ſeize Goods, diſtrain for Rent, or do other Things; if the Thing be not a Treſpaſs to others. *Fitz. Abr.* The *Commandment* of a Thing is good, where he that *Commands* hath Power to do it: And a verbal *Command* in moſt Caſes is ſufficient; unleſs it be where it is given by a Corporation, or when a Sheriff's Warrant is to a Bailiff to arreſt, *&c. Bro.* 288. *Dyer* 202. *Commandment* is alſo uſed for the *Offence* of him that willeth another Man to tranſgreſs the Law, or do any Thing contrary to it: And in the moſt common Signification, it is taken where one willeth another to do an unlawful Act; as Murder, Theft, or the like: Which the Civilians call *Mandatum. Bract. lib.* 3. *c.* 19. He that *commandeth* any one to do an unlawful Act, is Acceſſary to it and all the Conſequences, if it be executed in the ſame Manner as *commanded:* But if the *Commander* revoke the *Command*; or if the Execution varies from it, or in the Nature of the Offence, in ſuch Caſe he will not be Acceſſary. 3 *Inſt.* 51, 57. 2 *Inſt.* 182. If a Man *command* another to commit a Felony on a particular Perſon, and he doth it on another, as to kill *A.* and he kills *B.* or to burn the Houſe of *A.* and he burns the Houſe of B. or to ſteal one Thing, and he ſteals another; or to commit a Felony of one Kind, and he commits another; it is ſaid that the *Commander* is not an Acceſſary, becauſe the Act done varies in Subſtance from that which was *commanded. H. P. C.* 217. *Plowd.* 475. But where a Perſon *commands* or adviſes another to kill ſuch a one in the Night, and he kills him in the Day; or to kill him in the Fields, and he kills him in the Town; or to poiſon him, and he ſtabs or ſhoots him; theſe Acts being the ſame Felony in Subſtance with that which was intended, and varying only in Circumſtances, in Reſpect to Time, Place, *&c.* the *Commander* is as much an Acceſſary as if there had been no Variance at all between the *Command* and the Execution of it. 2 *Hawk.* 316. If I *command* a Man to rob another, and he kills him in the Attempt, tho' he doth not rob him, I am guilty of the Murder; it being the direct and immediate Effect of an Act done in Execution of my *Command* to commit a Felony: And if the *Command* be to beat a Perſon, and the Perſon *commanded* beat him in ſuch a Manner that he dies thereof, I am an Acceſſary before to the Felony; becauſe it happened in the Execution of a *Command*, which tended to endanger the Life of the other. Alſo it is ſaid, that if one *command* another to burn the Houſe of a certain Perſon, and he by Burning it burn likewiſe the Houſe of another, the *Commander* is equally acceſſary to the ſubſequent Felony, as to that which was directly *commanded. Ibid.* 315, 316. To *Command* or Counſel any one to commit Burglary, is Felony without Benefit of Clergy. *Stat.* 3 *&* 4 *W. & M.* In Forcible Entries, *&c.* an Infant or Feme Covert may be guilty in Reſpect of actual Violence done by them in Perſon; though not in Regard to what ſhall be done by others at their *Command*, becauſe all ſuch *Commands* of theirs are void. *Co. Lit.* 357. 1 *Hawk.* 147. In Treſpaſs, *&c.* the Maſter ſhall be charged criminally for the Act of the Servant, done by his *Command*; but Servants ſhall not be excuſed for committing any Crime, when they act by *Command* of their Maſters; who have no Authority over them to give ſuch *Command. Doct. & Stud. c.* 42. *H. P. C.* 66. *Kel.* 13. And if a Maſter commands his Servant to diſtrain, and he abuſeth the Diſtreſs, the Servant ſhall anſwer it to the Party injured, *&c. Kitch.* 372.

Commarchio, The Confines of the Land; from whence probably comes the Word *Marches.* —— *Imprimis de noſtris Landimeris*, Commarchionibus. *Du Cange.*

Commendam, (*Eccleſia* Commendata, *vel Cuſtodia Eccleſiæ alicui commiſſa*) Is the Holding of a Benefice or Church-Living, which being void, is *commended* to the Charge and Care of ſome ſufficient Clerk, to be ſupplied until it may be conveniently provided of a Paſtor: And he to whom the Church is *commended*, hath the Profits thereof only for a certain Time, and the Nature of the Church is not changed thereby, but is as a Thing depoſited in his Hands in Truſt, who hath nothing but the Cuſtody of it, which may be revoked. When a Parſon is made Biſhop, there is a Ceſſion or Voidance of his Benefice by the Promotion; but if the King by Special Diſpenſation gives him Power to retain his Benefice, notwithſtanding his Promotion, he ſhall continue Parſon, and is ſaid to hold it *in Commendam. Hob.* 144. *Latch* 236. As the King is the Means of Avoidances on Promotions to Dignities, and the Preſentations thereon belong to him, he often on the Creation of Biſhops grants them Licenſes to hold their Benefices *in Commendam*; but this is uſually where the Biſhopricks are ſmall, for the better Support of the Dignity of the Biſhop promoted: And it muſt be always before Conſecration; for afterwards it comes to late, becauſe the Benefice is then abſolutely void. A *Commendam*, founded on the Statute 25 *H.* 8. is a Diſpenſation from the ſupreme Power, to hold or take an Eccleſiaſtical Living *contra jus Poſitivum:* And there are ſeveral Sorts of *Commendams*, as a *Commendam Semeſtris*, which is for the Benefit of the Church without any Regard to the *Commendatory*, being only a Proviſional Act of the Ordinary, for Supplying the Vacation of ſix Months, in which Time the Patron is to preſent his Clerk, and is but a Sequeſtration of the Cure and Fruits until ſuch Time as the Clerk is preſented: A *Commendam Retinere*, which is for a Biſhop to retain Benefices, on his Preferment; and theſe *Commendams* are granted on the King's Mandate to the Archbiſhop, expreſſing his Conſent, which continues the Incumbency, ſo that there is no Occaſion for Inſtitution. A *Commendam Recipere* is to take a

Benefice *de Novo* in the Biſhop's own Gift, or in the Gift of ſome other Patron, whoſe Conſent muſt be obtained. *Dyer* 228. 3 *Lev.* 381. *Hob.* 143. *Dav.* 79. A *Commendam* may be Temporary for ſix or twelve Months; two or three Years, *&c.* or it may be perpetual, *i. e.* for Life, when it is equal to a Preſentation, without Inſtitution or Induction. But all Diſpenſations beyond ſix Months, were only permiſſive at firſt, and granted to Perſons of Merit: The *Commendam Retinere* is for one or two Years, *&c.* and ſometimes for three or ſix Years, and doth not alter the Eſtate which the Incumbent had before: A *Commendam Retinere*, as long as the *Commendatory* ſhould live and continue Biſhop, hath been held good. *Vaugh.* 18. Tho *Commendam Recipere* muſt be for Life, as other Parſons and Vicars enjoy their Benefices; and as a Patron cannot preſent to a full Church, ſo neither can a *Commendam Recipere* be made to a Church that is then full. *Show.* 414. A Benefice cannot be *commended* by Parts, any more than it may be preſented unto by Parts; as that one ſhall have the Glebe, another the Tithes, *&c.* Nor can a *Commendatory* have a *Juris Utrum*, or take to him and his Succeſſors, ſue or be ſued, in a Writ of Annuity, *&c.* But a *Commenda perpetua* may be admitted to do it. 11 *H.* 4. *Compl. Incumb.* 360. See 1 *Nelſ. Abr.* 454.

Commendatory, (*Commendatarius*) Is he that hath a Church Living or Preferment *in Commendam.*

Commendatory Letters, Are ſuch as are Writ by one Biſhop to another, in Behalf of any of the Clergy, or others of his Dioceſe, travelling thither, that they may be received among the Faithful: Or that the Clerk may be promoted; or Neceſſaries adminiſtred to the others, *&c.* ſeveral Forms of theſe Letters may be ſeen in our Hiſtorians, as in *Bede, lib.* 2. *c.* 18.

Commendatus, One that lives under the Protection of a Great Man. *Spelm. Commendati Homines* were Perſons who by voluntary Homage put themſelves under the Protection of any ſuperior Lord: For ancient Homage was either *Predial*, due for ſome Tenure; or *Perſonal*, which was by Compulſion, as a Sign of neceſſary Subjection; or voluntary, with a Deſire of Protection: And thoſe, who by voluntary Homage put themſelves under the Protection of any Men of Power, were ſometimes call'd *Homines ejus Commendati*; and ſometimes only *Commendati*, as often occurs in *Domeſday*. *Commendati Dimidii* were thoſe who depended on two ſeveral Lords, and paid one Half of their Homage to each: And *Sub-Commendati* were like Under-Tenants, under the Command of Perſons that were Dependants themſelves on a ſuperior Lord: Alſo there were *Dimidii ſub-commendati*, who bore a double Relation to ſuch depending Lords. *Domeſday*. This Phraſe ſeems to be ſtill in Uſe, in the uſual Compliment, *Commend me to ſuch a Friend*, &c. which is to let him know, *I am his humble Servant.* Spelm. of Feuds, cap. 20.

Commerce, (*Commercium*) Traffick, Trade or Merchandize in Buying and Selling of Goods. See *Merchant.*

Commiſſary, (*Commiſſarius*) Is a Title in the Eccleſiaſtical Law, belonging to one that exerciſeth Spiritual Juriſdiction, in Places of a Dioceſe which are ſo far from the Epiſcopal City, that the Chancellor cannot call the People to the Biſhop's Principal Conſiſtory Court, without their too great Inconvenience. This *Commiſſary* was ordained to ſupply the Biſhop's Juriſdiction and Office in the Outplaces of the Dioceſe; or in ſuch Places as are peculiar to the Biſhop, and exempted from the Juriſdiction of the Archdeacon: For where, either by Preſcription or Compoſition, Archdeacons have Juriſdiction within their Archdeaconries, as in moſt Places they have, this *Commiſſary* is ſuperfluous and oftentimes vexatious, and ought not to be; yet in ſuch Caſes a *Commiſſary* is ſometimes appointed by the Biſhop, he taking Preſtation-Money of the Archdeacon yearly *pro exteriori Juriſdictione*, as it is ordinarily called. But this is held to be a Wrong to Archdeacons and the poorer Sort of People. *Cowel's Interp.* 4 *Inſt.* 338.

Commiſſion, (*Commiſſio*) Is taken for the Warrant or Letters Patent, which all Men exerciſing Juriſdiction either ordinary or extraordinary, have to authorize them to hear or determine any Cauſe or Action: As the *Commiſſion* of the Judges, *&c.* *Commiſſion* is with us as much as *Delegatio* with the Civilians: And this Word is ſometimes extended farther than to Matters of Judgment; as the *Commiſſion of Purveyance*, *&c.* *Commiſſions* of Inquiry ſhall be made to the Juſtices of one Bench or the other, *&c.* and to do lawful Things, are grantable in many Caſes: Alſo moſt of the great Officers, Judicial and Miniſterial, of the Realm, are made by *Commiſſion.* And by ſuch *Commiſſions*, Treaſons, Felonies, and other Offences, may be heard and determined; by this Means likewiſe, Oaths, Cogniſance of Fines, Anſwers are taken, Witneſſes examined, Offices found, *&c. Bro. Abr.* 12. *Rep.* 39. *Stat.* 42 *E.* 3. *c.* 4. And moſt of theſe *Commiſſions* are appointed by the King under the Great Seal of *England*: But a *Commiſſion* granted under the Great Seal, may be determined by a Privy Seal; and by granting another new *Commiſſion* to do the ſame Thing the former *Commiſſion* determines; and on the Death or Demiſe of the King, the *Commiſſions* of Judges and Officers generally ceaſe. *Bro. Commiſ.* 2 *Dyer* 289. There was formerly a *High Commiſſion* Court founded on 1 *Eliz. c.* 1. but it was aboliſhed by Act of Parliament 17 *Car.* 1. *c.* 11. And by Stat. 13 *Car.* 2. *c.* 2. Of *Commiſſions* you may ſee divers in the Table of the *Regiſter of Writs.*

Commiſſion of Anticipation, Was a *Commiſſion* under the Great Seal to collect a Tax or Subſidy before the Day. 15 *H.* 8.

Commiſſion of Aſſociation, Is a *Commiſſion* to *aſſociate* two or more learned Perſons with the Juſtices in the ſeveral Circuits and Counties of *Wales*, &c. 18 *Eliz. c.* 9.

Commiſſion of Bankrupts, Where any Perſon is become a Bankrupt within any of the Statutes againſt Bankrupts, on Security given to prove the Party a Bankrupt, *&c.* this Commiſſion iſſues from the Lord Chancellor to certain Commiſſioners appointed to take Order with the Bankrupt's Lands and Goods, for the Satisfaction of the Creditors. *Stat.* 34 *H.* 8. 13 *Eliz. c.* 7. 1 *Jac.* 1, *&c.*

Commiſſion of Charitable Uſes, Goes out of the Chancery to the Biſhop and others, where Lands given to Charitable Uſes are miſemploy'd, or there is any Fraud or Diſputes concerning them, to enquire of and redreſs the Abuſe, *&c.* 43 *Eliz. c.* 4.

Commiſſion of Delegates, Is a Commiſſion under the Great Seal to certain Perſons, uſually two or three Temporal Lords, as many Biſhops, and two Judges of the Law, to ſit upon an Appeal to the King in the Court of Chancery, where any Sentence is given in any Eccleſiaſtical Cauſe by the Archbiſhop. *Stat.* 25 *H.* 8. *c.* 19.

Commiſſion to enquire of Faults againſt the Law, Was an ancient Commiſſion ſent forth on extraordinary Occaſions and Corruptions.

Commiſſion of Lunacy, A Commiſſion out of Chancery to enquire whether a Perſon repreſented to be Lunatick be ſo or not, that if Lunatick the King may have the Care of his Eſtate, *&c.* 17 *Ed.* 2 *c.* 10.

Commiſſion of Rebellion, Otherwiſe called a Writ of Rebellion, iſſues when a Man after Proclamation made by the Sheriff, upon a Proceſs out of the *Chancery*, on Pain of his Allegiance, to preſent himſelf to the Court by a Day aſſign'd, makes Default in his Appearance: And this Commiſſion is directed to certain Perſons, ſo the End they, Three Two, or one of them apprehend the Party, or cauſe him to be apprended as a *Rebel* and Contemner of the King's Laws, whereſoever found within the Kingdom, and bring or cauſe him to be brought to the Court on a Day therein aſſigned: This Writ or Commiſſion goes forth after an Attachment returned, *Non eſt inventus*, &c. Terms de Ley 144.

Commiſſion of Sewers, Is directed to certain Perſons to ſee Drains and Ditches well kept and maintained in the marſhy and fenny Parts of *England*, for the better Conveyance of the Water into the Sea, and preſerving the Graſs upon the Land. *Stat.* 23 *H.* 8. *c.* 5 13 *Eliz. c.* 9.

Commiſſion of Treaty with Foreign Princes, Is where Leagues and Treaties are made and tranſacted between States and Kingdoms, by their Embaſſadors and Miniſters, for the mutual Advantage of the Kingdoms in Alliance.

Commiſſion to take up Men for War, Was a Commiſſion to preſs or force Men into the King's Service.

Commiſſioner, (*Commiſſionarius*) Is he that hath a Commiſſion, Letters Patent, or other lawful Warrant, to examine any Matters, or to execute any publick Office, &c. And ſome *Commiſſioners* are to hear and determine Offences, without any Return made of their Proceedings; and others to Inquire and Examine, and certify what is found. 4 *H.* 4. 9. *Commiſſioners* by the Common Law muſt purſue the Authority of the Commiſſion, and perform the Effect thereof; and they are to obſerve the ancient Rules of the Courts whence they come; and if they do any Thing for which they have not Authority, it will be void. 2 *Co. Rep.* 25. *Co. Lit.* 157. The Office of *Commiſſioners* is to do what they are commanded; and it is neceſſarily implied, that they may do that alſo, without which what is commanded cannot be done: Their Authority when appointed on any Statute Law, muſt be uſed as the Statutes preſcribe. 12 *Rep.* 32. If a Commiſſion is given to *Commiſſioners* to execute a Thing againſt Law, they are not bound to accept or obey it: *Commiſſioners* not receiving a Commiſſion may be diſcharged, upon Oath before the Barons of the Exchequer, &c. and the King by *Superſedeas* out of Chancery, may diſcharge *Commiſſioners*. Beſides *Commiſſioners* relating to judicial Proceedings; there are *Commiſſioners* of the *Treaſury*, of the *Cuſtoms*, *Wine-Licences*, *Alienations*, &c. of which there is an infinite Number.

Committee, Are they to whom the Conſideration or Ordering of any Matter is referred, by ſome Court, or by Conſent of Parties to whom it belongs: As in Parliament, a Bill either conſented to and paſſed, or denied, or neither, but referred to the Conſideration of certain Perſons appointed by the Houſe farther to examine it, who are thereupon called a *Committee*. And when a Parliament is called, and the Speaker and Members have taken the Oaths, and the ſtanding Orders of the Houſe are read, *Committees* are appointed to ſit on certain Days, *viz.* The *Committee* of *Privileges and Elections*, of *Religion*, of *Grievances*, of *Courts of Juſtice*, and of *Trade*; which are the ſtanding *Committees*. But tho' they are appointed by every new Parliament, they do not all of them act, only the *Committee* of Privileges; and this being not of the whole Houſe, is firſt called in the Speaker's Chamber, from whence it is adjourned into the Houſe, every one of the Houſe having a Vote therein, tho' not named, which makes the ſame uſually very numerous: And any Member may be preſent at any ſelect *Committee*; but is not to Vote unleſs he be named. The Chairman of the *Grand Committee*, who is always ſome leading Member, ſits in the Clerk's Place at the Table, and writes the Votes for and againſt the Matter referred to them; and if the Number be equal, he has a caſting Voice, otherwiſe he hath no Vote in the *Committee*; and after the Chairman hath put the Queſtion for Reporting to the Houſe, if that be carried, he leaves the Chair, and the Speaker being called to his Chair, (who quits it in the Beginning, and the Mace is laid under the Table) he is to go down to the Bar, and ſo bring up his Report to the Table After a Bill is read a ſecond Time in the Houſe of Commons, the Queſtion is put, whether it ſhall be committed to a *Committee of the whole Houſe*, or a *Private Committee*; and the *Committees* meet in the Speaker's Chamber, and report their Opinion of the Bill with the Amendments, &c. And if there be any Exceptions againſt the Amendments reported the Bill may be *recommitted*: Eight Perſons make a *Committee*, which may be adjourned by Five, &c. *Lex Conſtitutionis* 147, 150. There is a *Committee of the King*, mentioned in *Weſt's Symb.* Tit. *Chancery*, *Sect.* 144. And this hath been uſed, tho' improperly, for the Widow of the King's Tenant being dead, who is called the *Committee of the King*, that is, one committed by the ancient Law of the Land to the King's Care and Protection. *Kitch. fol.* 160. See *Parliament.*

Commitment, Is the ſending of a Perſon to Priſon, by Warrant or Order, who hath been guilty of any Crime: And it may be by the King and Council, by the Judges of the Law, Juſtices of Peace, and other Magiſtrates, who have Authority by the Laws and Statutes of the Realm to do it, which muſt be exactly purſued. Every *Commitment* to Priſon ought generally to be made by Warrant under the Hand and Seal of him that *commits* the Party; and the Cauſe of *Commitment* is to be expreſſed in the Warrant, &c. And where a Man is *committed* as a Criminal, it muſt be until he is diſcharged according to due Courſe of Law; but if it be for Contumacy, then 'tis only until he comply and perform the Thing required. *Garthew's Rep.* 153. If the Words of a Statute are not purſued in a *Commitment*, the Party ſhall be diſcharged by *Habeas Corpus. Ibid.* 291. See *Bail*, *Impriſonment.*

Commoigne, (*Fr.*) A Word ſignifying a Fellow Monk, that lives in the ſame Convent. 3 *Inſt.* 15.

Commonalty, (*Populus*, *Plebs*, Communitas) *In Art. ſuper Chartas*, 28 Ed. 1. c. 1. *Tout le Commune d'Engleterre* ſignifies all the People of *England.* 2 *Inſt.* 539. But this Word is generally uſed for the middle Sort of the King's Subjects, ſuch of the Commons as are raiſed beyond the ordinary Sort, and coming to have the Managing of Offices, by that Means are one Degree under Burgeſſes, which are ſuperior to them in Order and Authority; and in Companies incorporated, they are ſaid to conſiſt of Maſters, Wardens, and *Commonalty*, the firſt Two being the Chief, and the others ſuch as are uſually called of the Livery. The ordinary People, and Freeholders, or at beſt Knights and Gentlemen, under the Degree of Baron, having been of late Years called *Communitas Regni*, or *Tota terræ Communitas*; but anciently the Barons and Tenants *in Capite*, or military Men, were the *Community* of the Kingdom; and thoſe only were reputed as ſuch in our moſt ancient Hiſtories and Records. *Brady's Gloſſ. to his Introduct. to Engl. Hiſt.*

Common, Communia, (*i. e. Quod ad omnes pertinet*) Signifies that Soil whereof the Uſe is *common* to this or that Town or Lordſhip. Or it is a Profit that a Man hath in the Land of another Perſon, uſually in *Common* with others; or a Right which a Perſon hath to put his Cattle to Paſture into Ground that is not his own. And there is not only *Common* of *Paſture*; but alſo *Common* of *Fiſhing*; *Common* of *Eſtovers*; *Common* of *Turbary*, &c. and in all Caſes of *Common*, the Law doth much reſpect the Cuſtom of the Place, for there the Rule is *Conſuetudo loci eſt obſervanda.* 7 Rep 5. *Common of Paſture* is divided into *Common in Groſs*, *Common Appendant*, *Common Appurtenant*

tenant, and *Common pur Cauſe de Vicinage.* *Common in Groſs* is a Liberty to have *Common* alone, without any Lands or Tenements, in another Perſon's Land, granted by Deed to a Man and his Heirs, or for Life, *&c.* *F N. B.* 31, 37. 4 *Rep.* 30 *Common Appendant* is a Right belonging to a Man's arable Land, of putting Beaſts *commonable* into another's Ground. And *Common Appurtenant* is belonging to an Eſtate for all Manner of Beaſts *commonable* or not *commonable.* 4 *Rep.* 37. *Plowd.* 161. *Common Appendant and Appurtenant*, are in a Manner confounded, as appears by *Fitzherbert*; and are there defined to be a Liberty of *Common* appertaining to or depending on a Freehold; which *Common* muſt be taken with Beaſts *commonable*, as Horſes, Oxen, Kine and Sheep; and not with Goats, Hogs and Geeſe. But ſome make this Difference, that *Common Appurtenant* may be ſevered from the Land whereto it pertains; but not *Common Appendant*, which, according to Sir *Edward Coke*, had this Beginning: When a Lord enfeoffed another of arable Land, to hold of him in *Socage*, the Feoffee to maintain the Service of his Plough, had at firſt by the Curteſy or Permiſſion of the Lord, *Common* in his Waſtes for neceſſary Beaſts to ear and compoſt his Land, and that for two Cauſes; one, for that it was tacitly implied in the Feoffment, by Reaſon the Feoffee could not till or compoſt his Land without Cattle, and Cattle could not be ſuſtained without Paſture; ſo by Conſequence the Feoffee had, as a Thing neceſſary and incident, *Common* in the Waſte and Lands of the Lord: And this may be collected from the ancient Books and Statutes: And the ſecond Reaſon of this *Common* was, for the Maintenance and Advantage of Tillage, which is much regarded and favoured by the Law. *F. N. B.* 180. 4 *Rep.* 37. *Common pur Cauſe de Vicinage*, *Common* by Reaſon of Neighbourhood, is a Liberty that the Tenants of one Lord in one Town have to *Common* with the Tenants of another Lord in another Town: It is where the Tenants of two Lords have uſed Time out of Mind to have *Common* promiſcuouſly in both Lordſhips, lying together and open to one another. 8 *Rep.* 78. And thoſe that challenge this Kind of *Common*, which is uſually called *Intercommoning*, may not put their Cattle in the *Common* of the other Lord, for then they are diſtrainable; but they may turn them into their own Fields, and if they ſtray into the *Neighbour Common*, they muſt be ſuffered. *Terms de Ley* 146. The Inhabitants of one Town or Lordſhip may not put in as many Beaſts as they will, but with Regard to the Freehold of the Inhabitants of the other; for otherwiſe it were no good Neighbourhood, upon which all this depends. *Ibid.* If one Lord encloſes the *Common*, the other Town cannot then *common*; but though the *Common of Vicinage* is gone, *Common Appendant* remains. 7 *Rep.* 5. 4 *Rep.* 38. Every *Common pur Cauſe de Vicinage* is a *Common* Appendant. 1 *Danv. Abr.* 799. *Common Appendant* is only to ancient arable Land; not to a Houſe, Meadow, Paſture, *&c.* It is againſt the Nature of *Common Appendant*, to be appendant to Meadow or Paſture: But if in the Beginning Land be arable, and of late a Houſe hath been built on ſome Part of the Land, and ſome Acres are employ'd to Meadow and Paſture, in ſuch Caſe it is appendant; tho' it muſt be pleaded as appendant to the Land, and not to the Houſe, Paſture, *&c.* 1 *Nelſ. Abr.* 457. This may be *Common* Appendant, tho' it belongs to a Manor, Farm, or Plough land: And *Common* Appendant is of *Common* Right; but it is not *Common* Appendant, unleſs it has been appendant Time out of Mind. 1 *Danv.* 746. It may be upon Condition; be for all the Year, or for a certain Time, or for a certain Number of Beaſts, *&c.* by Uſage: Tho' it ought to be for ſuch Cattle as plough and compoſt the Land, to which it is appendant. *Ibid.* 797. *Common* Appendant may be to *Common* in a Field after the Corn is ſever'd, till the Ground is reſown: So it may be to have *Common* in a Meadow after the Hay is carried off the ſame till *Candlemas*, *&c.* *Yelv.* 185. This *Common*, which is in its Nature without Number, by Cuſtom may be limited as to the Beaſts: *Common* Appurtenant ought always to be for thoſe *Levant and Couchant*, and may be *Sans Number. Plowd.* 161. A Man may preſcribe to have *Common* Appurtenant for all Manner of Cattle, at every Seaſon in the Year. 25 *Aſſ.* 8. *Common* by Preſcription for all Manner of *Commonable* Cattle as belonging to a Tenement, *&c.* muſt be for Cattle *Levant and Couchant* upon the Land, (which is ſo many as the Land will maintain) or it will not be good: And if a Perſon grants *common ſans Number*, the Grantee cannot put in ſo many Cattle, but that the Grantor may have ſufficient *Common* in the ſame Land. 1 *Danv Abr.* 798, 799. He who hath *Common* Appendant or Appurtenant, can keep but a Number of Cattle proportionable to his Land; for he can *common* with no more than the Lands to which his *Common* belongs is able to maintain. 3 *Salk.* 93. *Common Appurtenant* may be to a Houſe, Paſture, *&c.* tho' *Common* Appendant cannot; but it ought to be preſcribed for as againſt *Common* Right: And uncommonable Cattle, as Hogs, Goats, *&c.* are appurtenant: This *Common* may be created by Grant at this Day; ſo may not *Common* appendant. 1 *Inſt.* 122 1 *Roll. Abr.* 398. If a Man grant *Common* to another in Land wherein he hath nothing, if he afterwards purchaſes the Land, this ſhall be a good *Common* appurtenant: And it is not neceſſary that he ſhould have the Land at the Time of the Grant. 1 *Danv.* 800. If *A.* hath *Common* in the Lands of *B* as appurtenant to a Meſſuage, and after *B.* enfeoffs *A.* of the ſaid Lands, whereby the *Common* is extinguiſhed; and then *A.* leaſes to B. the ſaid Meſſuage and Lands, with all *Commons*, *&c.* *Occupat' vel uſitat' cum pred. Meſſuagio*; this is a good Grant of a new *Common* for the Time. *Cro Eliz.* 570. Where a Perſon Purchaſes Part of the Land wherein he hath *Common*, the whole *Common* is extinct and gone. *Cro. Eliz.* 594. If ſeveral Perſons are ſeiſed of ſeveral Parts of a *Common*, and a *Commoner* purchaſes the Inheritance of one Part, his entire *Common* is extinct. 1 *And.* 159. When a Man hath *Common* Appendant for a certain Number of Cattle, and to a certain Parcel of Land, if he ſell Part of it, the *Common* is not extinguiſhed; for the Purchaſer ſhall have *Common pro rata:* But 'tis otherwiſe in *Common* Appurtenant. 8 *Rep.* 78. 1 *Nelſ.* 460. *Common* Appurtenant for a certain Number of Beaſts may be granted over. 1 *Danv.* 802. A Man may uſe *Common* Appurtenant to his Manor, with Cattle which are for his Houſhold; tho' it is ſaid he cannot uſe it with Cattle which are to ſell. Lords of Manors may depaſture in *Commons* where their Tenants put in Cattle; and a Preſcription to exclude the Lord is againſt Law. 1 *Inſt.* 122. The *Commoner* cannot uſe *Common* but with his own proper Cattle: But if he hath not any Cattle to manure the Land, he may borrow other Cattle to manure it, and uſe the *Common* with them; for by the Loan, they are in a Manner made his own Cattle. 1 *Danv.* 798. Grantee of *Common* Appurtenant, for a certain Number of Cattle, cannot *Common* with the Cattle of a Stranger: He that hath *Common in Groſs*, may put in a Stranger's Cattle, and uſe the *Common* with ſuch Cattle. *Ibid.* 803. *Common* Appendant or Appurtenant, cannot be made *Common in Groſs:* And Approvement extends not to *Common in Groſs.* 2 *Inſt* 86. The Lord may agiſt the Cattle of a Stranger in the *Common* by Preſcription: And he may Licence a Stranger to put in his Cattle, if he leaves ſufficient Room for the *Commoners.* 1 *Danv.* 795. 2 *Mod.* 6. Alſo the Lord may ſurcharge, *&c.* an Overplus of the *Common:* And if, where there is not an Overplus, the Lord ſurcharges the *Common*, the *Commoners* are not to diſtrain his Beaſts; but muſt commence an Action againſt the Lord. *F. N. B.* 125. But it is ſaid, if the Lord of the Soil put in Cattle into a Cloſe, contrary to Cuſtom, when it ought to lie freſh, a *Commoner* may take the Cattle Damage-feazant: Otherwiſe it is a general Rule that he cannot diſtrain the Cattle of the Lord. 1 *Danv.* 807. A *Commoner* may diſtrain Beaſts put into the *Common* by a Stranger, or every *Commoner* may bring Action of the Caſe, where Damage is received. 9 *Rep.* 112. But one *Commoner* cannot diſtrain the Cattle of another *Commoner*, tho' he may thoſe of a Stranger, who hath no Right to the *Common.* 2 *Lutw.* 1238. The Lord may diſtrain where the *Common* is ſurcharged; and bring Action of Treſpaſs for any Treſpaſs done in the *Common.* 9 *Rep.* 113. Where a *Commoner* ſurcharges the *Common*, the other *Commoners* may have a Writ of *Admeaſurement*; and Admeaſurement is to be according to the Quality and Quantity of the Freehold, and for all the Cattle which are upon the Land. It lies only by one *Commoner* againſt another; but not againſt a *Commoner ſans Number*; nor againſt the Lord, in which Caſe there muſt be an Aſſiſe. 1 *Danv.* 809. If a Man be diſſeiſed of his *Common*, he ſhall have an Aſſiſe. *New Nat. Br.* 399. If any *Commoner* incloſes, or builds on the *Common*, every *Commoner* may have an Action for the Damage. Where Turf is taken away from the *Common*, the Lord only is to bring the Action: But 'tis ſaid the *Commoners* may have an Action for the Treſpaſs, by entering on the *Common*, &c. 1 *Roll. Abr.* 89, 398. 2 *Leon.* 201. If a *Commoner* who hath a Freehold in his *Common* be ouſted of, or hindered therein, that he cannot have it ſo beneficially as he uſed to do; whether the Interruption be by the Lord or any Stranger, he may have an Aſſiſe againſt him: But if the *Commoner* hath only an Eſtate for Years, then his Remedy is by Action on the Caſe. And if it be only a ſmall Treſpaſs, that is little or no Loſs to the *Commoner*, but he hath *Common* enough beſides; the *Commoner* may not bring any Action. 8 *Rep.* 79. 4 *Rep.* 37. *Dyer* 316. A *Commoner* cannot dig Clay on the *Common*, which deſtroys the Graſs, and carrying it away doth Damage to the Ground: So that the other *Commoners* can't enjoy the *Common in tam amplo modo* as they ought. *Godb.* 344. Alſo a *Commoner* may not cut Buſhes, dig Trenches, &c. in the *Common*, without a Cuſtom to do it. 1 *Nelſ.* 462. If he makes any Thing *de novo*, he is a Treſpaſſer: He can do nothing to impair the *Common*: but may reform a Thing abuſed, fill up Holes, dig down Mole-hills, &c. for Improvement. 1 *Brownl.* 208. A Lord may make a Pond on the *Common*: Tho' the Lord cannot dig Pits for Gravel or Coal; the Statutes of Approvement being only by Incloſure. 3 *Inſt.* 204. 1 *Sid.* 106. If the Lord makes a Warren on the *Common*, the *Commoners* may not kill the Conies; but are to bring their Action, for they may not be their own Judges. 1 *Roll.* 90, 405. The Property of the Soil in the *Common* is entirely in the Lord; and the Uſe of it, jointly in him and the *Commoners.* No *Commoner* can make the Graſs that grows on the *Common*, otherwiſe than by depaſturing it; nor can he meddle with the Soil: But if the Owner of the Soil, ſet up a Hedge on the *Common*, the *Commoner* may throw it down. 15 *H.* 7. A *Commoner* may abate Hedges erected on a *Common*; for tho' the Lord hath an Intereſt in the Soil, by abating the Hedges, the *Commoner* doth not meddle with it. 2 *Mod.* 65. Any Man may by Preſcription have *Common* and feeding for his Cattle in the King's Highway, although the Soil doth belong to another. *Hill.* 42 *Eliz.* But the Occupation of *Common* by Uſurpation, will not give Title to him that doth Occupy it, unleſs he hath had it Time beyond Memory. And if a Man enfeoffed of Land, by reaſon of which he hath Right to *common*, aliens it to one who doth not take or uſe the *Common*; and then he makes an Alienation to another, the laſt Feoffee may not have it, for he ſhall not have a better Eſtate in the Land than his Feoffor had. *Fitz. Abr. Comm.* 255. By Statute, Lords may *approve* againſt their Tenants, *viz.* incloſe Part of the Waſte, &c. and thereby diſcharge it from being *Common*, leaving *Common* ſufficient; and Neighbours as well as Tenants claiming *Common* of Paſture, ſhall be bound by it. 20 *H.* 3. *c.* 4. If the Lord encloſes on the *Common*, and leaves not *Common* ſufficient, the *Commoners* may not only break down the Incloſures; but may put in their Cattle, although the Lord ploughs and ſows the Land. 2 *Inſt.* 88. 1 *Roll. Abr.* 406. Upon Agreement between two *Commoners* to encloſe a *Common*, a Party having Intereſt not privy to the Agreement, will not be bound; but one or two wilful Perſons ſhall not hinder the publick Good. *Chan. Rep.* 48. *Commons* muſt be driven yearly at *Michaelmas* or within fifteen Days after; infected Horſes, and Stone-Horſes under Size, &c. are not to be put into *Commons* under Forfeitures, by Stat. 32 *H.* 8. *c.* 13. New erected Cottages, tho' they have four Acres of Ground laid to them ought not to have *Common* in the Waſte. 2 *Inſt.* 740. In Law Proceedings, where there are two diſtinct *Commons*, the two Titles muſt be ſhewn: Cattle are to be alledged *commonable*; and *Common* ought to be in Lands *commonable*: And the Place is to be ſet forth where the Meſſuage and Lands lie, &c. to which the *Common* belongs. 1 *Nelſ.* 462, 463.

Common of Eſtovers, Is a Right of taking Wood out of another Man's Woods, for Houſe-bote, Plough-bote, and Hay-bote. What Botes are neceſſary, Tenants may take, notwithſtanding no Mention be made thereof in their Leaſes; but if a Tenant take more Houſe-bote than is needful, he may be puniſhed for Waſte. *Terms de Ley* 387, 396. Tenants for Life may take upon the Land demiſed reaſonable Eſtovers, unleſs reſtrained by Special Covenant: And every Tenant for Years hath three Kind of Eſtovers incident to his Eſtate. 1 *Inſt.* 41. When a Houſe having Eſtovers appendant or appurtenant, is blown down by Wind, if the Owner rebuilds it in the ſame Place and Manner as before, his Eſtovers ſhall continue: So if he alters the Rooms and Chambers, without making new Chimnies; but if he erect any new Chimnies he will not be allowed to ſpend any Eſtovers in ſuch new Chimnies. 4 *Rep.* 87. 4 *Leon.* 383. If one have a Dwelling-houſe whereunto *Common of Eſtovers* doth belong, and the Houſe by Fire is burnt down, and a new one built near to the Place, or in the Place in another Form, the Eſtovers are gone: But if the old Houſe be only ſome of it down, it is otherwiſe; and in all Caſes where the Alterations to a Houſe do no Prejudice to the Tertenant or Owner of the Land or Wood, the Eſtovers will remain. *F. N. B.* 180. Where a Man hath Eſtovers for Life, if the Owner cut down all the Wood, that there is none left for him, he may bring an *Aſſiſe of Eſtovers*; and if the Tenant have but an Eſtate for Years, or at Will, he may have Action of the Caſe. *Moor Ca.* 65. 9 *Rep.* 112. If the Tenant who hath *Common of Eſtovers*, ſhall uſe them to any other Purpoſe than he ought, he that owns the Wood may bring Treſpaſs againſt him: As where one grants twenty Loads of Wood to be taken yearly in ſuch a Wood, ten Loads to burn, and ten to repair Pales; here he may cut and take the Wood for the Pales, though they need no amending, but then he muſt keep it for that Uſe. 9 *Rep.* 113. *F. N. B.* 58, 159.

Common of Piſcary, Is a Liberty of Fiſhing in another Man's Water. *Common of Piſcary* to exclude the Owner of the Soil, is contrary to Law: Tho' a Perſon by Preſcription may have a ſeparate Right of Fiſhing in ſuch Water, and the Owner of the Soil be excluded; for a Man may grant the Water, without paſſing the Soil: And if one grant

Separalem Piſcariam, neither the Soil nor the Water paſs, but only a Right of Fiſhing. 1 *Inſt*. 4, 122. 164. 5 *Rep*. 34. No Perſon ſhall fiſh in any River without the Owner's Conſent, under Penalties: And Nets, Angles, *&c.* ſhall be ſeiſed and deſtroyed, by Stat. 22 & 23 *Car*. 2. *c*. 25. See *Fiſh and Fiſhing*.

Common of Turbary, Is a Licence to dig Turf upon the Ground of another, or in the Lord's Waſte. This Common is appendant or appurtenant to an Houſe, and not to Lands; for Turfs are to be burnt in the Houſe: And it may be *in Groſs*; but it does not give any Right to the Land, Trees, or Mines. It cannot exclude the Owner of the Soil. 1 *Inſt* 4. 4 *Rep*. 37.

There is a *Common* or Liberty of digging *Coals*, and *Gravel*, *Sand*, *&c.* as well as *Turf*.

Common Bench, (*Bancus Communis*, from the Sax. *Banc*, Bank, and thence metaphorically a *Bench*, high Seat or Tribunal.) The Court of *Common Pleas* was anciently called *Common Bench*, becauſe Communia *Placita inter ſubditos ex jure noſtro, quod* Commune *vocant, in hoc diſceptantur*: That is, the Pleas or Controverſies between common Perſons are there tried and determined. *Camb. Britan.* 113. In Law-Books and References the Court of Common Pleas is writ *C. B.* from *Communi Banco.* And the Juſtices of that Court are ſtiled *Juſticiarii de Banco.* See *Common Pleas.*

Common Day in Plea of Land, Signifies an ordinary Day in Court, as *Octabis Hillarii*, *Quindena Paſchæ*, *&c.* It is mentioned in the Stat. 51 *H*. 3 concerning general *Days in Bank.*

Common Fine, (*Finis Communis*) A ſmall Sum of Money, which the Reſiants within the Liberty of ſome Leets pay to the Lords, called in divers Places *Head-Silver* or *Head-Pence*, in others *Cert-Money*; and was firſt granted to the Lord, towards the Charge of his Purchaſe of the *Court-Leet*, whereby the Reſiants have the Eaſe to do their Suit within their own Manors, and are not compellable to go to the *Sheriff's Turn*: In the Manor of *Sheapſhead* in the County of *Leiceſter*, every Reſiant pays 1 *d*. *per* Poll to the Lord at the Court held after *Michaelmas*, which is there called *Common Fine*. For this *Common Fine* the Lord may diſtrain; but he cannot do it without a Preſcription. 11 *Rep*. 44. There is alſo *Common Fine of the County.*—— *Quod* Communes *Miſericordiæ, vel* Fines Comitatuum *americiatorum in* Finibus *itinerum Juſticiariorum, &c.* Fleta, lib. 7. c. 48. See Stat. 3 Ed. 1. c. 18.

Commons House of Parliament, Is the Lower Houſe of Parliament, ſo called, becauſe the *Commons* of the Realm, that is, the Knights, Citizens, and Burgeſſes returned to Parliament, repreſenting the whole Body of the Commons, do ſit there. *Crompt. Juriſd.* See *Parliament.*

Common Intendment, Is common Meaning or Underſtanding, according to the Subject Matter, not ſtrained to any extraordinary or foreign Senſe: *Bar to Common Intendment* is an ordinary or general Bar, which commonly diſables the Plaintiff's Declaration. There are ſeveral Caſes in the Law where *Common Intendment*, and Intendment take Place: And of *Common Intendment* a Will ſhall not be ſuppoſed to be made by Colluſion. *Co. Litt.* 78.

Common Law, (*Lex Communis*) Is taken for the Law of this Kingdom ſimply, without any other Laws; as it was generally holden before any Statute was enacted in Parliament to alter the ſame: And the King's Courts of Juſtice, are called the *Common Law Courts.* The *Common Law* is grounded upon the general Cuſtoms of the Realm; and includes in it the Law of Nature, the Law of God, and the Principles and Maxims of the Law: It is founded upon Reaſon; and is ſaid to be the Perfection of *Reaſon*, acquired by long Study, Obſervation and Experience, and refined by Learned Men in all Ages. And it is the Common Birthright, that the Subject hath for the Safe-guard and Defence, not only of his Goods, Lands, and Revenues; but of his Wife and Children, Body, Fame, and Life alſo. *Co. Litt.* 97, 142. *Treatiſe of Laws, p.* 2. According to *Hale*, the *Common Law* of *England*, is the common Rule for adminiſtring Juſtice, within this Kingdom, and aſſerts the King's Royal Prerogatives, and likewiſe the Rights and Liberties of the Subjects: 'Tis generally that Law, by which the Determinations in the King's *Ordinary Courts* are guided; and this directs the Courſe of Diſcents of Lands; the Nature, Extent and Qualification of Eſtates; and therein the Manner and Ceremonies of conveying them from one to another; with the Forms, Solemnities and Obligation of Contracts; the Rules and Directions for the Expoſition of Deeds, and Acts of Parliament: The Proceſs, Proceedings, Judgments and Executions of our Courts of Juſtice; alſo the Limits and Bounds of Courts, and Juriſdictions; the ſeveral Kinds of Temporal Offences and Puniſhments; and their Application, *&c.* Sir *Matthew Hale's Hiſt. of the Law.* pag. 44, 45, and 24. As to the *Riſe of the Common Law*, this Account is given by ſome ancient Writers: After the Decay of the *Roman* Empire, three Sorts of the *German* People invaded the *Britons*, *viz.* the *Saxons*, the *Angles*, and the *Jutes*; from the laſt ſprung the *Kentiſh* Men, and the Inabitants of the *Iſle of Wight*; from the *Saxons* came the People called *Eaſt*, *South*, and *Weſt Saxons*; and from the *Angles*, the *Eaſt Angles*, *Mercians* and *Northumbrians*: Theſe People having different Cuſtoms, they inclined to the different Laws by which their Anceſtors were governed; but the Cuſtoms of the *Weſt-Saxons* and *Mercians*, who dwelt in the Midland Counties, being preferred before the Reſt, were for that Reaſon called *Jus Anglorum*; and by theſe Laws thoſe People were governed for many Ages: But the *Eaſt Saxons* having afterwards been ſubdued by the *Danes*, their Cuſtoms were introduced, and a third Law was ſubſtituted, which was called *Dane-Lage*; as the other was then ſtiled *Weſt-Saxon Lage*, *&c.* At length the *Danes* being overcome by the *Normans*, *William* called the *Conqueror*, upon Conſideration of all thoſe Laws and Cuſtoms, abrogated ſome, and eſtabliſhed others; to which he added ſome of his own Country Laws, which he judged moſt to conduce to the Preſervation of the Peace: And this is what we now call the *Common Law*. But though we uſually date our *Common Law* from hence, this was not the Original of the *Common Law*; for *Ethelbert*, the firſt Chriſtian King of this Nation, made the firſt *Saxon* Laws, which were publiſhed by the Advice of ſome wiſe Men of his Council: And King *Alfred*, who lived 300 Years afterwards, being the firſt ſole Monarch after the Heptarchy, collected all the *Saxon Laws* into one Book, and commanded them to be obſerved through the whole Kingdom, which before only affected certain Parts thereof; and it was therefore properly called the *Common Law*, becauſe it was common to the whole Nation; and ſoon after it was called the *Folc Right*, *i. e.* the *People's Right*. *Alfred* was ſtiled *Anglicarum Legum Conditor*: And when the *Danes* had introduced their Laws on the Conqueſt of the Kingdom, they were afterwards deſtroyed; and *Edward the Confeſſor* out of the former Laws compoſed a Body of the *Common Law*; wherefore he is called by our Hiſtorians *Anglicarum Legum Reſtitutor*. *Blount.* In the Reign of *Edw.* 1. *Britton* wrote his learned Book of the *Common Law* of this Realm, which was done by the King's Command, and runs in his Name, anſwerable to the *Inſtitutions* of the *Civil Law*, which *Juſtinian* aſſumes to himſelf, though compoſed by others. *Staundf. Prerog.* 6, 21. This *Britton* is mentioned by *Gwin* to be Biſhop of *Hereford*. *Bracton*, a great

Lawyer, in the Time of *Hen.* 3. wrote a very learned Treatiſe of the *Common Law of England*, held in great Eſtimation; and is ſaid to be Lord Chief Juſtice of the Kingdom. And the famous and learned *Glanvil*, Lord Chief Juſtice in the Reign of *Hen.* 2. wrote a Book of the *Common Law*, which is ſaid to be the moſt antient Compoſition extant on that Subject. Beſides theſe, in the Time of *Ed.* 4. the renowned Lawyer *Littleton* wrote his excellent Book of *Engliſh Tenures*. In King *James* the Firſt's Reign, the great Oracle of the Law, Sir *Edward Coke*, publiſhed his learned and laborious *Inſtitutes* of our Law, and Commentaries on *Littleton*. About the ſame Time likewiſe Dr. *Cowel*, a Civilian, wrote a ſhort Inſtitute of our Laws. And in the Reign of King *George* the Firſt, Dr. *Tho. Wood*, a Civilian and Common Lawyer, and at laſt Divine, wrote an Inſtitute of the Laws of *England*, which is ſomething after the Manner of the Inſtitutes of the Civil Law.

Common Pleas, (*Communia Placita*) Is one of the King's Courts now conſtantly held in *Weſtminſter Hall*; but in ancient Time was moveable, as appears by *Magna Charta*, *cap.* 11. *Gwyn*, in the Preface of his Reading, ſays, That till *Hen.* 3. granted the Great Charter there were but two Courts, called the King's Courts, *viz.* the *King's Bench* and the *Exchequer*, which were then ſtiled *Curia Domini Regis*, and *Aula Regis*, becauſe they followed the Court or King; and that upon the Grant of that Charter, the Court of *Common Pleas* was erected and ſettled in one certain Place, *i. e. Weſtminſter-hall*; and after that, all the Writs ran *Quod ſit coram Juſticiariis meis apud Weſtm.* whereas before, the Party was required by them to appear, *Coram me vel Juſticiariis meis*, without any Addition of Place, &c. as he obſerves out of the Writings of *Glanvil* and *Bracton*. But Sir *Edward Coke* is of Opinion in his Preface to the eighth Report, that the Court of *Common Pleas* was conſtituted before the Conqueſt; and was not created by *Magna Charta*, at which Time there were *Juſticiarii de Banco*, &c. Though before this Act, *Common Pleas* might have been held *in Banco Regis*; and all original Writs were returnable there. Writs returnable in this Court, are now *coram Juſticiariis noſtris apud Weſtm.* But Writs returnable in *B. R.* are, *Coram nobis ubicunque fuerimus in Anglia*. The Juriſdiction of this Court is general, and extends itſelf throughout *England*: It holds Plea of all Civil Cauſes at Common Law, between Subject and Subject, in Actions real, perſonal, and mixed; and it ſeems to have been the only Court for Real Cauſes. In perſonal and mixed Actions it hath a concurrent Juriſdiction with the King's Bench: But it hath no Cognizance of Pleas of the Crown; and *Common Pleas* are all Pleas that are not ſuch. This Court cannot regularly hold Plea in any Action, real or perſonal, &c. but by Writ out of *Chancery* returnable here; except it be by Bill for or againſt an Officer, or other privileged Perſon of the Court. All Actions belonging to this Court, come hither either by Original, as Arreſts and Outlawries; or by Privilege or Attachment, for or againſt privileged Perſons; or out of inferior Courts, not of Record, by *Pone*, *Recordare*, *Accedas ad Curiam*, *Writ of Falſe Judgment*, &c. Actions popular, and Actions penal, of Debt, &c. upon any Statute, are cognizable by this Court: And beſides having Juriſdiction for Puniſhment of its Officers and Miniſters; the Court of *Common Pleas* may grant Prohibitions to keep Temporal and Eccleſiaſtical Courts within due Bounds. 4 *Inſt.* 99, 100, 118. In this Court are four Judges, created by Letters Patent; of whom the Chief Juſtice is a Lord by his Office: The Seal of the Court is committed to the Cuſtody of the Chief Juſtice. The other Officers of the *Common Pleas* are, the *Cuſtos Brevium*, three *Prothonotaries* and their *Secondaries*, the Clerk of the *Warrants*, Clerk of the *Eſſoins*, fourteen *Filazers*, four *Exigenters*, a Clerk of the *Juries*, the *Chirographer*, Clerk of the *King's Silver*, the Clerk of the *Treaſury*, Clerk of the *Seal*, of *Outlawries*, and the Clerk of the *Inrolment of Fines and Recoveries*, Clerk of the *Errors*, &c. The *Cuſtos Brevium* is the Chief Clerk in this Court, who receives and keeps all Writs returnable therein; and all Records of *Niſi Prius*, which are delivered to him by the Clerks of the Aſſiſe of every Circuit, &c. and he files the Rolls together, and carries them into the Treaſury of Records: He alſo makes out Exemplifications, and Copies of all Writs and Records, &c. The *Prothonotaries* enter and inrol all Declarations, Pleadings, Judgments, &c. and they make out all judicial Writs, Writs of Execution, Writs of Privilege, *Procedendo's*, &c. The *Secondaries* are Aſſiſtants to the *Prothonotaries* in the Execution of their Offices; and they take Minutes, and draw up all Orders and Rules of Court. The *Filazers*, who have the ſeveral Counties of *England* divided among them, make out all meſne Proceſs, as *Capias*, *Alias*, *Pluries*, &c. between the Original Writ and the Declaration; and they make all Writs of View, &c. The *Exigenters*, appointed for ſeveral Counties, make out all Exigents and Proclamations in order to Outlawry. The *Clerk of the Warrants*, enters all Warrants of Attorney; inrols Deeds of Bargain and Sale; and eſtreats all Iſſues. The *Clerk of the Eſſoins*, keeps the Roll of the Eſſoins, wherein he enters them, and Nonſuits, &c. The *Clerk of the Juries* makes out all Writs of *Habeas Corpora Jurator'*, for Juries to appear; and he enters the Continuances till the Verdict given. The *Clerk of the Treaſury*, keeps the Records of the Court, and makes Exemplifications of Records, Copies of Iſſues, Judgments, &c. The *Clerk of the Seals*, ſeals all Writs and meſne Proceſs; alſo Writs of Outlawry and *Superſedeas*, and all Patents. The *Clerk of the Outlawries*, makes out the Writs of *Capias Utlegatum*. The *Clerk of the Errors* is for the Allowance of Writs of Error, &c. The *Clerk of the Inrolments* of Fines and Recoveries, returns all Writs of Covenant, Writs of Entry and Seiſin, and inrols and exemplifies Fines, &c. The *Clerk of the King's Silver* enters the Subſtance of the Writ of Covenant: And the *Chirographer* ingroſſeth all Fines, and delivers the Indentures to the Parties, &c. And to theſe Officers may be added, a *Proclamator*; a *Keeper* of the Court; *Cryer*; and *Tipſtaffs*; beſides the *Warden of the Fleet*. There are alſo *Attornies* of this Court, whoſe Number is unlimited; and none may plead at the Bar of the Court, or ſign any ſpecial Pleadings, but *Serjeants* at Law.

Common Prayer, (*Preces Publicæ*) Is the Liturgy, or *Prayers* uſed in our Church. It is the particular Duty of Clergymen every *Sunday*, &c. to uſe the publick Form of *Prayer* preſcribed by the *Book of Common Prayer*: And if any Incumbent be reſident upon his Living, as he ought to be, and keep a Curate, he is obliged by the *Act of Uniformity* once every Month at leaſt, to read the *Common Prayers* of the Church, according as they are directed by the Book of *Common Prayer*, in his Pariſh Church, in his own Perſon, or he ſhall forfeit 5*l.* for every Time he fails therein. *Stat.* 14 *Car.* 2. *cap.* 4. Alſo by that Statute the Book of *Common Prayer* is to be provided in every Pariſh, under the Penalty of 3*l* a Month: And the *Common Prayer* muſt be read before every *Lecture*; the Whole appointed for the Day, with all the Circumſtances, and Ceremonies, &c. And by one of the *Canons of the Church*, Miniſters before all *Sermons*, are to move the People to join in a ſhort *Prayer*, for the Catholick Church; and the whole Congregation of Chriſtian People, &c. for the King and Royal Family; the Miniſters of God's Word, Nobility, Magiſtrates, and whole Commons of the Realm, &c. and conclude with the

Lord's Prayer. Can. 55. Refuſing to uſe the *Common Prayer*; or uſing any other open *Prayers*, &c. is puniſhable by Stat. 1 *Eliz. c.* 2. See *Church.*

Common Weal, Is underſtood in our Law to be *Bonum publicum*, and is a Thing much favoured; and therefore the Law doth tolerate many Things to be done for *Common Good*, which otherwiſe might not be done: And hence it is that Monopolies are void in Law; and that Bonds and Covenants to reſtrain free Trade, Tillage, or the like, are adjudged void. 11 *Co. Rep.* 50. *Plowd.* 25. *Shep. Epit.* 270.

Commorancy, (*Commorantia*, from *Commoro*) An Abiding, Dwelling or Continuing in any Place; as an Inhabitant of a Houſe in a Vill, &c. And *Commorancy* for a certain Time, may make a Settlement in a Pariſh. *Dalt.* See *Poor.*

Commorth, or **Comorth**, (*Comortha*) From the Brit. *Cymmorth, i. e. Subſidium*; a Contribution which was gathered at Marriages, and when young Prieſts ſaid or ſung the firſt Maſſes, &c. 4 *H.* 4. *c.* 27. But the 26 *H.* 8. *c.* 6. prohibits the Levying any ſuch in *Wales*, or the *Marches*, &c.

Commote, In *Wales* is Half a *Cantred* or Hundred, containing fifty Villages. *Stat. Walliæ*, 12 *Ed.* 1. *Wales* was antiently divided into three Provinces; and each of theſe were again ſubdivided into *Cantreds*, and every *Crantrrd* into *Commotes* *Doderige's Hiſt. Wal. fol.* 2. *Commote* alſo ſignifies a great Seigniory or Lordſhip, and may include one or divers Manors. *Co. Lit.* 5.

Communance. The Commoners, or Tenants and Inhabitants, who had the Right of *Common*, or Commoning in open Fields, &c. were formerly called the *Communance.* Cowel.

Commune Concilium Regni Angliæ, The Common Council of the King and People Aſſembled in Parliament.

Communia placita non tenenda in Scaccario, Is an antient Writ directed to the Treaſurer and Barons of the *Exchequer*, forbidding them to hold Plea between common Perſons in that Court, where neither of the Parties belong to the ſame. *Reg. Orig.* 187.

Communi Cuſtodia, A Writ which antiently lay for the Lord, whoſe Tenant holding by Knight's Service died, and left his eldeſt Son under Age, againſt a Stranger that entered the Land, and obtained the Ward of the Body. *F. N. B.* 89. *Reg. Orig.* 161. Since the Statute 12 *Car.* 2. *cap.* 24. hath taken away Wardſhips, this Writ is become of no Uſe.

Community of the Kingdom. *Vide* Commonalty.

Companage, (*Fr.*) Is all Kind of Food, except Bread and Drink: And the learned *Spelman* interprets it to be *Quicquid cibi* cum pane *ſumitur.* In the Manor of *Feſkerton* in the County of *Nottingham*, ſome Tenants when they performed their Boons or Work-days to the Lords, had three Boon Loaves with *Companage* allowed them. *Reg. de Thurgarton* cited in *Antiq. Nottingham.*

Companion of the Garter, Is one of the Knights of that moſt noble Order; at the Head of which is the King, as Sovereign. 24 *H.* 8. *c.* 13.

Compellativum, An Adverſary or Accuſer.—— *Epiſcopus in* Compellativum *adlegiationem docere ne quis alium perperam cogat jurejurando vel in Ordalio.* Leg. Athelſtan.

Compertorium, A Judicial Inqueſt in the Civil Law, made by Delegates, or Commiſſioners to find out and relate the Truth of a Cauſe. *Paroch. Antiq.* 575.

Compoſition, (*Compoſitio*) An Agreement or Contract between a Parſon, Patron and Ordinary, &c. for Money or other Thing in Lieu of Tithes. Land may be exempted from the Payment of Tithes, where *Compoſitions* have been made: And Real *Compoſitions* for Tithes are to be made by the concurrent Conſent of the Parſon, Patron and Ordinary. Real *Compoſitions* are diſtinguiſhed from Perſonal Contracts; for a *Compoſition* called a Perſonal Contract is only an Agreement between the Parſon and Pariſhioners, to pay ſo much inſtead of Tithes; and though ſuch Agreement is confirmed by the Ordinary, yet that doth not make it a Real *Compoſition*, becauſe he ought to be a Party to the Deed of *Compoſition. March's Rep.* 87. The *Compoſitions* for Tithes made by the Conſent of the Parſon, Patron and Ordinary, by Virtue of 13 *Eliz. cap.* 10. ſhall not bind the Succeſſor unleſs made for twenty-one Years, or three Lives, as in Caſe of Leaſes of Eccleſiaſtical Corporations, &c. *Compoſitions* were at firſt for a valuable Conſideration, ſo that though in Proceſs of Time, upon the Increaſe of the Value of the Lands, ſuch *Compoſitions* do not amount to the Value of the Tithes, yet Cuſtom prevails, and from hence ariſes what we call a *Modus decimandi. Hob.* 29. The Word *Compoſition* hath likewiſe another Meaning, *i. e. Deciſio Litis.*

Compoſitio Menſurarum, Is the Title of an antient Ordinance for Meaſures, not printed, mentioned in the Stat. 23 *H.* 8.

Compoſtum, Dung, Soil or Compoſt laid on Lands. *Regiſt. Eccl. Cantuar. MS.*

Comprint, Intends a ſurreptitious Printing of another Bookſeller's Copy, to make Gain thereby, which is contrary to the Stat. 14 *Car.* 2. *cap.* 33. and other Statutes.

Compromiſe, (*Compromiſſum*) Is defined to be a mutual Promiſe of two or more Parties at Difference, to refer the Ending of their Controverſy to Arbitrators: And *Weſt* ſays it is the Faculty or Power of pronouncing Sentence between Perſons at Variance, given to Arbitrators by the Parties private Conſent. *Weſt's Symb. Sect.* 1. Matters *compromiſed*, are alſo Matters of Law referred, or made an End of.

Compurgator, One that by Oath juſtifies another's Innocence. See *Oath.*

Computation, (*Computatio*) Is the true Account and Conſtruction of Time; and to the End neither Party to an Agreement, &c. may do Wrong to the other, nor the Determination of Time be left at large, it is to be taken according to the juſt Judgment of the Law. A Deed dated the 20th Day of *Auguſt*, to hold from the Day of the Date, ſhall be conſtrued to begin on the 21ſt Day of *Auguſt:* But if in the *Habendum* it be to hold from the Making, or from thenceforth, it ſhall begin on the Day delivered. 1 *Inſt.* 46. 5 *Rep.* 1. If an Indenture of Leaſe dated the 4th Day of *July*, made for three Years from thenceforth, be delivered at four of the Clock in the Afternoon of the ſaid 4th Day of *July*, the Leaſe ſhall end the 3d Day of *July* in the third Year: And the Law in this *Computation* rejects all Fractions or Diviſions of the Day. But ſome have held that Rent is not due on the Day limited to be paid, 'till the middle of the Day, and after Noon; in Caſe a Tenant for Life dies at ſuch a critical Juncture, &c. See *Day* and *Month.*

Computation of Miles, after the *Engliſh* Manner, is allowing 5280 Feet, or 1760 Yards to each Mile; and the ſame ſhall be reckoned not by ſtrait Lines, as a Bird or Arrow may fly, but according to the neareſt and moſt uſual Way. *Cro. Eliz.* 212.

Computo, (*Lat.*) Is a Writ to compel a Bailiff, Receiver or Accountant, to yield up his Accounts: It is founded on the Statute of *Weſtm. cap.* 12. And alſo lies againſt Guardians, &c. *Reg. Orig.* 135.

Concealers, (*Concelatores*, ſo called *à concelando*, as *Mons à movendo*, by an *Antiphraſis*) Are ſuch as find out *concealed* Lands, *i. e.* ſuch Lands as are privily kept from the King by common Perſons, having nothing to ſhew for their Title or Eſtate therein. 39 *Eliz. cap.* 22. There are *Concealers of Crimes*;

and *Concealing* Treaſon, *&c.* when Miſpriſion, ſee *Miſpriſion.*

Conceſſi, A Word of frequent Uſe in Conveyances, creating a Covenant in Law; as *Dedi* makes a Warranty. *Co. Lit.* 384. This Word is of a general Extent, and ſaid to amount to a Grant, Feoffment, Leaſe and Releaſe, *&c.* 2 *Saund.* 96.

Concionators, Common-Council-Men, Freemen called to the Hall or Aſſembly, as *moſt worthy.*—— *Quodam tempore cum conveniſſent* Concionatores *apud* London, *&c.* Hiſtor. Elien. Edit. Gale, c. 46.

Concluſion, (*Concluſio*) Is when a Man by his own Act upon Record hath charged himſelf with a Duty or other Thing, or confeſſed any Matter whereby he ſhall be concluded: As if a Sheriff returns that he hath taken the Body of upon a *Capias*, and hath not the Body in Court at the Day of the Return of the Writ; by the Return, the Sheriff is concluded from Plea of Eſcape, *&c.* *Terms de Ley* 153. In another Senſe this Word *Concluſion* ſignifies the End of any Plea, Replication, *&c.* and a Plea to the Writ is to conclude to the Writ; a Plea in Bar, to conclude to the Action, *&c.* *Concluſion* of Plea in Bar ſhall be, *Et hoc paratus eſt verificare:* Of other Places, *Et de hoc ponit ſe ſuper Patriam.* Kitch. 219, 220.

Concord, (*Concordia*) Is an Agreement made between two or more, upon a Treſpaſs committed; and is divided into *Concord executory*, and *Concord executed:* And according to *Plowden*, one binds not, as being imperfect, but the other is abſolute, and ties the Party. Though by ſome Opinions, Agreements executory are perfect, and bind no leſs than Agreements executed. *Plowd* 5, 6, 8. Theſe *Concords* and Agreements are by Way of Satisfaction for the Treſpaſs, *&c.* *Concord* is alſo an Agreement between Parties, who intend the Levying of a Fine of Lands one to the other, how and in what Manner the Lands ſhall paſs: It is the Foundation and Subſtance of the Fine, taken and acknowledged by the Party before one of the Judges of *C. B.* or by Commiſſioners in the Country, and in Latin begins thus: *Et eſt* Concordia *talis ſcilicet quod præd.* A. B. *recogn. Tenementa præd. cum pertin' eſſe jus ipſius* C. D. *ut ill. quæ idem* C. D. *habet de Dono præd.* A. B. *Et ill. remiſer. & quiet. clam. de ſe & Hæred ſuis præfat.* C. *& Hæred. ſuis imperpetuum, &c.*

Concubaria, A Fold, Pen, or Place where Cattle lie. *Cowel.*

Concubeant, Signifies a lying together. *Stat.* 1 *H.* 7 *cap.* 6.

Concubinage, (*Concubinatus*) In common Acceptation is the Keeping of a Whore or Concubine: But in a legal Senſe, it is uſed as an Exception againſt her that ſueth for Dower, alledging thereby that ſhe was not a Wife lawfully married to the Party, in whoſe Lands ſhe ſeeks to be endowed, but his *Concubine.* *Brit. c.* 107. *Bract. lib.* 4. *tract.* 6. *cap.* 8. There was a *Concubinage* allowed in Scripture to the Patriarchs, *ſecundum legem Matrimonii, &c.* Blount.

Conders, (from the Fr. *Conduire*, to conduct) Are ſuch as ſtand upon high Places near the Sea-Coaſt, at the Time of Herring-Fiſhing, to make Signs with Boughs, *&c.* to the Fiſhermen at Sea, which Way the Shole of Herrings paſſeth; for this may be better diſcovered by ſuch as ſtand upon ſome high Cliff on the Shore, by Reaſon of a kind of blue Colour which the Herrings cauſe in the Water, than by thoſe that are in the Ships or Boats for Fiſhing. Theſe are otherwiſe called *Huers* and *Balkers*, *Directors* and *Guiders*, as appears by the Stat. 1 *Jac. c.* 23.

Condition, (*Conditio*) Is a Reſtraint or Bridle annexed to a Thing, ſo that by the Non-performance, the Party to it ſhall receive Prejudice and Loſs; and by the Performance, Commodity and Advantage: Or it is a Reſtriction of Men's Acts, qualifying or ſuſpending the ſame, and making them uncertain whether they ſhall take Effect or not; alſo 'tis defined to be what is referred to an uncertain Chance, which may happen or not happen. *Weſt's Symb. part* 1. *lib.* 2. *ſect.* 156. And of *Conditions* there are divers Kinds, *viz.* *Conditions* in *Deed*, and in *Law*; *Conditions Precedent*, and *Subſequent*; *Conditions Inherent*, and *Collateral*, &c. A *Condition in Deed* is that which is joined by expreſs Words to a Feoffment, Leaſe or other Grant; as if a Man makes a Leaſe of Lands to another, reſerving a Rent to be paid at ſuch a Feaſt, upon *Condition* if the Leſſee fail in Payment, at the Day, then it ſhall be lawful for the Leſſor to enter. *Condition in Law* is when a Perſon grants another an Office, as that of Keeper of a Park, Steward, Bailiff, *&c.* for Term of Life; here though there be no *Condition* expreſſed in the Grant, yet the Law makes one, which is if the Grantee do not juſtly execute all Things belonging to the Office, it ſhall be lawful for the Grantor to enter and diſcharge him of his Office. *Lit. lib.* 3. *c.* 5. Theſe *Conditions* are alſo called *Condition expreſſed*, and *Condition implied.* *Condition Precedent* is when a Leaſe or Eſtate is granted to one for Life, upon *Condition* that if the Leſſee pay to the Leſſor a certain Sum at ſuch a Day, then he ſhall have Fee-ſimple: In this Caſe the *Condition* precedes the Eſtate in Fee, and on Performance thereof gains the Fee ſimple. *Condition ſubſequent* is when a Man grants to another his Manor of *Dale*, &c. in Fee, upon *Condition* that the Grantee ſhall pay to him at ſuch a Day ſuch a certain Sum, or that his Eſtate ſhall ceaſe; here the *Condition* is ſubſequent, and following the Eſtate, and upon the Performance thereof continues and preſerves the ſame: So that a *Condition Precedent* doth get and gain the Thing or Eſtate made upon *Condition* by the Performance of it; as a *Condition Subſequent* keeps and continues the Eſtate, by the Performance of the *Condition.* 1 *Inſt.* 201, 327. *Terms de Ley* 156. If one agree with another to do ſuch an Act, and for the Doing thereof the other ſhall pay ſo much Money; here the Doing the Act is a *Condition Precedent* to the Payment of the Money, and the Party ſhall not be compelled to pay 'till the Act is done; But where a Day is appointed for the Payment of Money, which Day happens before the Thing contracted for can be performed, there the Money may be recovered before the Thing is done; for here it appears that the Party did not intend to make the Performance of the Thing a *Condition Precedent.* 3 *Salk.* 95. *Inherent Conditions* are ſuch as deſcend to the Heir, with the Land granted, *&c.* And *Collateral Condition* is that which is annexed to any collateral Act. *Conditions* are likewiſe *Affirmative*, which conſiſt of doing; *Negative*, and conſiſt of not doing: Some are further ſaid to be *Reſtrictive*, for not doing a Thing; and ſome *Compulſory*, as that the Leſſee ſhall pay the Rent, *&c.* Alſo ſome *Conditions* are *ſingle*, to do one Thing only; ſome *Copulative*, to do divers Things; and others *Disjunctive*, where one Thing of ſeveral is required to be done. *Co. Lit.* 201. *Conditions* may be to any Eſtate, whether in Fee-ſimple, Fee-tail, for Life or Years: They run with the Eſtate, and bind in whoſeſoever Hands they come. *Lit. Rep.* 128. But a *Condition* may not be made but on the Part of the Leſſor, Donor, *&c.* For no Man may annex a *Condition* to an Eſtate, but he that doth create the Eſtate it ſelf. *Conditions* are good to inlarge or limit Eſtates: And there are four Incidents, which *Conditions* to create and increaſe an Eſtate ought to have. 1 They ſhould have a particular Eſtate, as a Foundation whereupon the Increaſe of the greater Eſtate ſhall be built. 2. Such particular Eſtate ſhall continue in the Leſſee or Grantee, until the Increaſe happens. 3. It muſt veſt at the Time the Contingency happens, or it ſhall never veſt. 4. The particular

Eſtate and Increaſe muſt take Effect by the ſame Deed, or by ſeveral Deeds delivered at the ſame Time. 8 *Rep.* 75 *Conditions* to create Eſtates ſhall be favourably conſtrued: But *Conditions* which tend to deſtroy, or reſtrain an Eſtate, are to be taken ſtrictly. A Feoffment upon *Condition*, that the Feoffee ſhall not alien, is void: But a *Condition* in a Feoffment not to alien for a particular Time, or to a particular Perſon, may be good. *Hob.* 13, 261. And if a *Condition* is, that Tenant in Tail ſhall not alien in Fee, *&c.* or Tenant for Life or Years not alien during the Term, theſe *Conditions* are good: Where the Reverſion of an Eſtate is in the Donor, he may reſtrain an Alienation by *Condition.* 10 *Rep.* 39. 1 *Inſt.* 222. If one make a Gift in Tail, on *Condition* that the Donee or his Heirs ſhall not alien; this is good to ſome Intents, and void to others: For if he make a Feoffment in Fee, or any other Eſtate by which the Reverſion is diſcontinued tortiouſly, the Donor may enter; but 'tis otherwiſe if he ſuffer a common Recovery. 1 *Inſt.* 223. A Liberty inſeparable from an Eſtate, cannot be reſtrained; and therefore a *Condition* that a Tenant in Tail ſhall not levy a Fine, within the Stat. 4 *H.* 7. or ſuffer a Recovery; or not make a Leaſe, within the Stat. 32 *Hen.* 8. is void and repugnant. But if the *Condition* reſtrain levying a Fine at Common Law, it may be good. 2 *Danv. Abr.* 22. A Gift in Tail, or in Fee, upon Condition that a Feme ſhall not be endowed; or Baron be Tenant by the Curteſy, is repugnant and void. So is a *Condition* in a Leaſe, *&c.* that the Leſſee ſhall not take the Profits: And where a Man grants a Rent-charge out of Land, provided it ſhall not charge the Lands. *Co. Lit.* 146. *Conditions* repugnant to the Eſtate, impoſſible, *&c.* are void: And if they go before the Eſtate, the Eſtate and *Condition* are void; if to follow it, the Eſtate is abſolute, and the *Condition* void. 1 *Inſt.* 206. 9 *Rep.* 128. But if at the Time of entring into a *Condition*, a Thing be poſſible to be done, and become afterwards impoſſible by the Act of God, the Eſtate of a Feoffee (created by Livery) ſhall not be avoided. 2 *Mod.* 204. A Feoffment in Fee is made upon *Condition*, that the Feoffee ſhall within a Year go to *Rome*, &c. If the Feoffee dies before the Year ended, yet the Eſtate of the Feoffee is become abſolute; for the Eſtate once veſted by the Livery, ſhall not be deveſted without Default in the Feoffee. *Ibid.* Where a *Condition* is of two Parts, one poſſible, and the other not ſo, it is a good *Condition* for performing that Part which is poſſible. *Cro. Eliz.* 780. Though if a *Condition* is of two Parts disjunctive, and one Part becomes impoſſible by the Act of God, the Perſon bound is not obliged to perform the other. 5 *Rep.* If a *Condition* be in the Copulative, and is not poſſible to be performed, 'tis ſaid it may be taken in the Disjunctive. 1 *Danv. Abr.* 73. Where an Eſtate is to be wholly created upon a *Condition* impoſſible to be performed, there the Eſtate ſhall never come *in eſſe.* 1 *Leon. cap.* 311. A Woman makes a Feoffment to a Man that is married, upon *Condition* that he ſhall marry her; this *Condition* is not impoſſible, for the Man's Wife may die, and then he may marry her. 2 *Danv.* 25. A Reverſion may be granted in Tail upon *Condition*, that if the Grantee pays ſo much, he ſhall have Fee. 8 *Rep.* 73. But if a Man grants Land, *&c.* for Years, upon *Condition* that if the Leſſee pay 20 *s.* within one Year, that he ſhall have it for Life; and that if he after the Year pay 20 *s.* he ſhall have Fee: Though both Sums are paid, he ſhall have but an Eſtate for Life; the Eſtate for Life, at the Time of the Grant, being only in Contingency, and a Poſſibility cannot increaſe upon a Poſſibility, nor can the Fee increaſe upon the Eſtate for Years 8 *Rep.* 75. If a Leaſe be made to two, with *Condition* to have Fee, and one dies, the Survivor may perform the *Condition*, and have the Fee; but if they make Partition, the *Condition* is deſtroyed. 8 *Rep.* 75, 76. If a Feoffee grant the Reverſion of Part of the Land, on a Leaſe for Years, on which a Rent upon *Condition* is reſerved, all the *Condition* is confounded and gone; though if the Leſſee aſſign Part, the *Condition* remains, for he cannot diſcharge the Eſtate of the *Condition.* 2 *Danv. Abr.* 119. A Man makes a Feoffment upon *Condition*, and after levies a Fine to a Stranger, the *Condition* is gone. *Ibid.* 120. If a Feoffee upon *Condition* to infeoff another, infeoff a Stranger; or if it be to reinfeoff the Feoffor, and he grant the Land to another Perſon, upon *Condition* to perform the *Condition*, the *Condition* is broke, becauſe the Feoffee hath diſabled himſelf to do it: So where ſuch Feoffee upon *Condition* to reinfeoff, *&c.* takes a Wife, that the Land is ſubject to the Dower of the Wife; and ſo if the Land is recovered, and Execution ſued out by another, the *Condition* is broke. *Co. Litt.* 221. 1 *Danv.* 79. If one diſſeiſe the Feoffee, or any other who hath Land by juſt Title, and thereof infeoff a Stranger on *Condition*, and the Land is lawfully recovered from him that hath the Title; by this the *Condition* is deſtroyed: And if a Diſſeiſor make a Feoffment in Fee upon *Condition*; and after the Diſſeiſe doth enter upon the Feoffee, this doth extinguiſh the *Condition.* *Perk. Sect.* 821. If the Feoffee makes a Feoffment of all or Part of the Land to the Feoffor, before the *Condition* is broke; the *Condition* is gone for ever: And if he make a Leaſe for Life or Years only, then the *Condition* will be ſuſpended for that Time. *Co. Lit.* 218. But 'tis otherwiſe where the Feoffment, or Leaſe for Life or Years, are made to any other but the Feoffor. *Ibid.* Where the *Condition* of a Feoffment is, that if the Feoffor or his Heir pay a certain Sum of Money to the Feoffee ſuch a Day, and before that Day the Feoffor dieth without Heir: Or if the Feoffment be made by a Woman on *Condition* to pay her 10 *l.* or that the Feoffee infeoff her by a certain Day, and they intermarry before the Day, and the Marriage doth continue till after it; in theſe Caſes the *Condition* is gone. *Perk. Sect.* 763, 764. A *Condition* may be well performed, when it is done as near to the Intent as may be: For if the *Condition* of a Feoffment be that the Feoffee ſhall make an Eſtate back to the Feoffor and his Wife, and the Heirs of their two Bodies, Remainder to the right Heirs of the Feoffor; in this Caſe, if the Feoffor die before, the Eſtate ſhall be made to the Wife without Impeachment of Waſte, the Remainder to the Heirs of the Body of the Huſband begotten on the Wife, *&c.* *Co. Lit.* 219. 8 *Rep.* 69 If a *Condition* be performed in Subſtance and Effect, it is good altho' it differs in Words; as where it is to deliver Letters Patent, and the Party bound having loſt them, delivers an Exemplification, *&c.* 2 *Danv.* 40. Tho' Payment of the Money before the Day, is Payment at the Day, in Performance of a *Condition*; yet a Feoffor, *&c.* cannot re-enter, and reveſt his old Eſtate by Force of the *Condition*, 'till the Day whereon the *Condition* gives him Power to re-enter. *Ibid.* 121. If a Man ſeiſed of Land in Right of his Wife, make a Feoffment in Fee on *Condition*, and dies; if the Heir of the Feoffor enters for the *Condition* broken, and defeats the Feoffment, his Eſtate vaniſhes, and preſently it is veſted in the Wife. *Co. Lit.* 202. And if a Perſon ſeiſed of Land, as Heir on the Part of his Mother, makes a Feoffment on *Condition* and dieth; though the Heir on the Part of the Father, who is Heir at Common Law, may enter for the *Condition* broken, the Heir of the Part of the Mother ſhall enter upon him, and enjoy the Land. *Ibid.* 12. Where there is a *Condition* in a Feoffment or Leaſe, that if no Diſtreſs can be found, the Feoffor, &c. ſhall re-enter; if the Place is not open to the Diſtreſs, as if there be only a Cupboard in in the Houſe which is locked, *&c.* it is all one as if there were no Diſtreſs there, and the Feoffor, *&c.* may enter. 2 *Danv.* 46. When a Rent is to be paid upon *Condition* at a certain Day, the Leſſor cannot enter for the *Condition* broke, before Demand of the Rent. *Ibid.* 98. And the Leſſor ought to demand the Rent at the Day, or the *Condition* ſhall not be broke by the Nonpayment of the Rent. A Re-entry may be given on a Feoffment, *&c.* tho' none be reſerved: If one make a Leaſe for Life, or Feoffment upon *Condition*, that if the Feoffee or Leſſee does ſuch an Act, the Eſtate ſhall be void: Now although the Eſtate cannot be void before Entry, this is a good *Condition*, and ſhall give an Entry to the Leſſor, *&c.* by Implication. 1 *Roll. Abr.* 408. A Leaſe for Life on *Condition*, being a Freehold, cannot ceaſe without Entry; but if it be a Leaſe for Years, the Leaſe is void *ipſo facto*, on Breach of the *Condition*, without any Entry. 1 *Inſt.* 214. If a Leaſe for Years is that on Breach of the *Condition*, the Term ſhall ceaſe, the Term is ended without Entry; but where the Words are that the Leaſe ſhall be void, it is otherwiſe. *Cro. Car.* 511. 3 *Rep.* 64. Regularly, where one will take Advantage of a *Condition*, if he may enter, he muſt do it; and if he cannot enter, he muſt make a Claim *Co. Lit.* 218. No one can reſerve the Power or Benefit of Re-entry, on Breach of a *Condition*, to any other but himſelf, his Heirs, Executors, *&c.* Parties and Privies, in Right and Repreſentation: Privies in Law, Grantees of Reverſions, *&c.* are to have no Advantage by it. But by Statute 32 *H.* 8. Grantees of Reverſions may take Advantage againſt Leſſees, *&c.* by Action. 1 *Inſt.* 214, 215 *Plowd.* 175. Where one doth enter for a *Condition* broken, it generally makes the Eſtate void *ab initio*, and the Party comes in of his firſt Eſtate; and he ſhall have the Land in the ſame Manner it was when he departed with it, and his Poſſeſſion at the Time of making the *Condition*: Therefore he ſhall avoid all ſubſequent Charges on the Lands. 4 *Rep.* 120. *Plowd.* 186. *Co. Lit.* 233. If one enters on a *Condition* performed; he ſhall avoid all Incumbrances upon the Land after the *Condition* made: And a *Condition* when broken, or performed, *&c.* will defeat the whole Eſtate. So that if there be a Leaſe for Life, Remainder in Fee, on *Condition* that the Leſſee for Life ſhall pay 20 *l.* to the Leſſor; if he pay not this Money, the Eſtate in Remainder will be avoided alſo. *Dyer* 127. 8 *Rep.* 90. But this may be otherwiſe by ſpecial Limitation to an Uſe: And if Tenant for Life, and he in Remainder join in a Feoffment on *Condition*, that if, *&c.* then the Tenant for Life ſhall re-enter, this may be good without defeating the whole Eſtate; tho' regularly a *Condition* may not avoid Part of an Eſtate, and leave another Part entire, nor can the Eſtate be void as to ſome Perſons, and good as to others. 8 *Rep.* 190. 1 *Inſt.* 214. Leſſee for Life makes a Feoffment on *Condition*, and enters for the *Condition* broken; by this he ſhall be reſtored to his Eſtate for Life, and reduce the Reverſion to the Leſſor; and the Rent due to the Leſſor ſhall be revived: But in this Caſe the Leſſee will not be in the ſame Courſe as he was before, for his Eſtate is ſubject to Forfeiture, though he be Tenant for Life ſtill. *Rol.* 474. *Shep. Ab.* 405. Tenants by the Curteſy, Tenant in Tail after Poſſibility of Iſſue extinct, Tenant in Dower, for Life, or Years, *&c.* hold their Eſtates ſubject to a *Condition* in Law, not to grant a greater Eſtate than they have, nor to commit Waſte, *&c.* 1 *Inſt.* 233. And Eſtates made by Deed to Infants, and Feme Coverts, upon *Condition*, ſhall bind them, becauſe the Charge is on the Land. 2 *Danv.* 30. A Releaſe of all a Man's Right, may be upon *Condition*: A Leſſee may ſurrender upon *Condition*; a Contract may be upon *Condition*, &c. But a Parſon cannot reſign upon *Condition*, any more than be admitted upon *Condition*: And a *Condition* cannot be releaſed on *Condition* 9 *Rep.* 85. A *Condition* that would take away the whole Effect of a Grant, is void; and ſo it is if it be contrary to the expreſs Words of it. *Conditions* againſt Law are void; but what may be prohibited by Law, may be prohibited by Deed. 1 *Inſt.* 223, 206. He that taketh an Eſtate in Remainder, is bound by *Condition* in a Deed, though he doth not ſeal it. No Perſon ſhall defeat any Eſtate of Freehold upon *Condition* without ſhewing the Deed wherein the *Condition* is contained: But of Chattels Real or Perſonal, *&c.* a Man may plead that ſuch Grants or Leaſes were made upon *Condition* without ſhewing the Deeds; and in the Caſe of a Condition to avoid a Freehold, though it may not be pleaded without the Deed, it may be given in Evidence to a Jury, and they may find the Matter at large. *Lit.* 374. 5 *Rep.* 40. A *Condition* may be apportioned by Act of the Law, or the Leſſee. 4 *Rep.* 120. But a Man cannot by his own Act divide, or apportion a *Condition*, which goes to the Deſtruction of an Eſtate. 1 *Nelſ. Abr.* 474. A *Condition* in a Will is a Thing odious in Law, which ſhall not be created without ſufficient Words. 2 *Leon.* 40. A Deviſe to the Heir at Law, provided he pay to *A. B.* 20 *l.* is a void *Condition*, becauſe there is no Perſon to take Advantage of the Nonperformance. 1 *Lutw.* 797. Yet *Conditional* Deviſes, as well of Lands as of Goods, are allowed by our Law; and not being performed, the Heir or Executors, ſhall take Advantage of them. 1 *Nelſ.* 467. The Word *Si* will not always make a *Condition*; but ſometimes it makes a Limitation, as where a Leaſe is made for Years, if *A. B.* lives ſo long. And this is contrary to a *Condition*, for a Stranger may take Advantage of an Eſtate determined thereby, *&c.* *Co. Lit.* 236. *Dyer* 300. *Sub Conditione* is the moſt proper Word to make a *Condition*: *Proviſo* is as good a Word, when not dependant upon another Sentence; but in ſome Caſes, the Word Proviſo may make no *Condition*, but be only a Qualification, or Explication of a Covenant. 2 *Danv.* 1, 2. And neither the Word Proviſo, nor any other, makes a *Condition*, unleſs it is reſtrictive. *Plowd.* 34 1 *Nelſ.* 466. A Grant to one, to the Intent he ſhall do ſo and ſo, is no *Condition*, but a Truſt and Confidence. *Dyer* 138. Some Words in a Leaſe do not make a *Condition* but a Covenant, upon which the Leſſor may bring his Action. A Leaſe being the Deed of Leſſor and Leſſee, every Word is ſpoken by both; and a *Condition* may be therein, though it ſounds in Covenant. 1 *Nelſ.* 464. A Covenant not to grant, ſell, *&c.* may be a *Condition*; and Covenant that paying the Rent, the Leſſee ſhall enjoy the Land, is conditional. 2 *Danv.* 2, 6. Where Words are indefinite, and proper to defeat an Eſtate, they ſhall be taken to have the Force of a *Condition*. *Palm.* 503. *Conditions* regularly follow the *Habendum* in a Deed; but are good in Law, in any other Place. 2 *Rep.* 70.

Conduits for Water in *London*, ſhall be made and repaired, and the Lord Mayor and Aldermen may inquire into Defaults therein, *&c.* by the Statutes 32 *&* 35 *H.* 8.

Cone and Key. A Woman at the Age of fourteen or fifteen Years, might take the Charge of her Houſe, and receive *Cone and Key*: *Cone* or *Colne* in the *Sax.* ſignifying *Computus*, ſo that ſhe was then held to be of competent Years, when ſhe was able to keep the *Accounts* and *Keys* of the Houſe. —— *Fœmina in tali ætate poteſt diſponere Domui ſuæ & habere* Cone and Key. *Bract. lib.* 2. *cap.* 37. And there is ſomething to the ſame Purpoſe in *Glanv. lib.* 7. *c.* 9.

Confederacy, (*Confœderatio*) Is when two or more combine together to do any Damage or Injury to another, or to do any unlawful Act. And falſe *Confederacy* between divers Perſons ſhall be puniſhed, though nothing be put in Execution: But this *Confederacy* puniſhable by Law before it is executed, ought to have theſe Incidents; firſt, it muſt be declared by ſome Matter of Proſecution, as by making of Bonds, or Promiſes the one to the other; ſecondly, it ſhould be malicious, as for unjuſt Revenge; thirdly, it ought to be falſe againſt an Innocent; and laſtly, it is to be out of Court voluntarily. *Terms de Ley* 158. Where a Writ of Conſpiracy doth not lie, the *Confederacy* is puniſhable: And Inquiry ſhall be made of *Conſpirators* and *Confederators*, which bind themſelves together, &c.

Confeſſion, (*Confeſſio*) Is where a Priſoner indicted of Treaſon or Felony, and brought to the Bar to be arraigned; and his Indictment being read to him, the Court demands what he can ſay thereto; then either he *confeſſes* the Offence, and the Indictment to be true, or pleads *Not guilty*, &c. *Confeſſion* may be made in two Kinds, and to two ſeveral Ends: The one is, that the Criminal may confeſs the Offence whereof he is indicted openly in the Court, before the Judge, and ſubmit himſelf to the Cenſure and Judgment of the Law; which *Confeſſion* is the moſt certain Anſwer, and beſt Satisfaction that may be given to the Judge to condemn the Offender; ſo that it proceeds freely of his own Accord, without any Threats or Extremity uſed; for if the *Confeſſion* ariſe from any of theſe Cauſes, it ought not to be recorded; As a Woman indicted for the felonious taking of a Thing from another, being thereof arraigned, confeſſed the Felony, and ſaid that ſhe did it by Commandment of her Husband; the Judges in Pity would not record her *Confeſſion*, but cauſed her to plead *Not guilty* to the Felony; whereupon the Jury found that ſhe did the Fact by Compulſion of her Husband, againſt her Will, for which Cauſe ſhe was diſcharged. 27 *Aſſiſ. pl.* 50. The other Kind of *Confeſſion* is, when the Priſoner confeſſes the Indictment to be true, and that he hath committed the Offence whereof he is indicted, and then becomes an Approver or Accuſer of others, who have committed the ſame Offence whereof he is indicted, or other Offences with him; and then prays the Judge to have a Coroner aſſigned him, to whom he may make Relation of thoſe Offences, and the full Circumſtances thereof. There is alſo a third Sort of *Confeſſion*, formerly made by an Offender in Felony, not in Court before the Judge, as the other two are, but before a Coroner in a Church, or other privileged Place, upon which the Offender by the ancient Law of the Land was to abjure the Realm. 3 *Inſt.* 129. *Confeſſion* is likewiſe a Plea in Civil Caſes, where the Defendant confeſſes the Plaintiff's Action to be good: By which *Confeſſion* there may be Mitigation of a Fine againſt the Penalty of a Statute; though not after Verdict. *Finch* 387. 2 *Keb.* 408. And there is a *Confeſſion* indirectly implied, as well as directly expreſſed in Criminal Caſes; as if the Defendant in a Caſe not Capital, doth not directly own himſelf guilty of the Crime, but by ſubmitting to a Fine, owns his Guilt; whereupon the Judge may accept of his Submiſſion to the King's Mercy. *Lamb. lib.* 4. *c.* 9. By this indirect *Confeſſion*, the Defendant ſhall not be barred to plead Not Guilty to an Action, &c. for the ſame Fact: The Entry of it is, that the Defendant *poſuit ſe in gratiam Regis*, &c. And of the direct *Confeſſion, quod Cognovit Indictamentum*, &c. And this laſt *Confeſſion* carries with it ſo ſtrong a Preſumption of Guilt, that being entered on Record, in Indictment of Treſpaſs, it eſtops the Defendant to plead Not Guilty to an Action brought afterwards againſt him for the ſame Matter: But ſuch Entry of a Confeſſion of an Indictment of a capital Crime, 'tis ſaid will not eſtop a Defendant to plead Not Guilty to an Appeal, it being in Caſe of Life. And where a Perſon upon his Arraignment actually confeſſes himſelf guilty, or unadviſedly diſcloſes the ſpecial Manner of the Fact, ſuppoſing that it doth not amount to Felony, where it doth; the Judges upon probable Circumſtances, that ſuch *Confeſſion*, may proceed from Fear, Weakneſs, or Ignorance, may refuſe ſuch a *Confeſſion*, and ſuffer the Party to plead. 2 *Hawk.* 333. A *Confeſſion* may be received, and the Plea of Not Guilty be withdrawn, though recorded. *Kel.* 11. The *Confeſſion* of the Defendant, whether taken upon an Examination before Juſtices of Peace, in Purſuance of the 1 & 2 *P. & M.* 13. or 2 & 3 *P. & M. c.* 10. upon a Bailment, or Commitment for Felony; or taken by the Common Law, upon an Examination before a Secretary of State, or other Magiſtrate, for Treaſon or other Crimes, is allowed to be given in Evidence againſt the Party confeſſing; but not againſt others. Alſo two Witneſſes of a *Confeſſion* of High Treaſon, upon an Examination before a Juſtice of Peace, were ſufficient to convinct the Perſon ſo confeſſing, within the Meaning of 1 *Ed.* 6. *cap.* 12. and 5 & 6 *Ed.* 6. *cap.* 11. which required two Witneſſes in High Treaſon; unleſs the Offender ſhould willingly confeſs, &c. But the 7 *W.* 3. *cap.* 3. requires two Witneſſes, except the Party ſhall willingly without Violence *confeſs*, &c. in open *Court*. 2 *Hawk. P. C.* 429. It has been held that where-ever a Man's *Confeſſion* is made uſe of againſt him, it muſt all be taken together, and not by Parcels. *Ibid.* And no *Confeſſion* ſhall before final Judgment, deprive the Defendant of the Privilege of taking Exceptions in Arreſt of Judgment, to Faults apparent in the Record. 333. A Demurrer amounts to a *Confeſſion* of the Indictment as laid ſo far, that if the Indictment be good, Judgment and Execution ſhall go againſt the Priſoner. *Bro.* 86. *S. P. C.* 150. *H P C.* 246. And in criminal Caſes not capital, if the Defendant demur to an Indictment, &c. whether in Abatement, or otherwiſe, the Court will not give Judgment againſt him to anſwer over, but final Judgment. 2 *Hawk.* 334. Where a Priſoner confeſſes the Fact, the Court has nothing more to do than to proceed to Judgment againſt him. And *Confeſſus in Judicio pro Judicato Habetur.* 11 Rep. 30. 4 Inſt 66.

Confeſſor, (Lat. *Confeſſor, Confeſſionarius*) Hath Relation to private *Confeſſion* of *Sins*, in Order to *Abſolution*: And the Prieſt, who received the auricular Confeſſion, had the Title of *Confeſſor*; though improperly, for he is rather the *Confeſſee*, being the Perſon to whom the Confeſſion is made. This Receiving the Confeſſion of a Penitent, was in old *Engliſh* to *Shreve* or *Shrive*; whence comes the Word *Beſhrieved*, or looking like a confeſſed or *ſhrieved* Perſon, on whom was impoſed ſome uneaſy Penance. The moſt ſolemn Time of *Confeſſing* was the Day before *Lent*, which from thence is ſtill called *Shrove-Tueſday*. Cowel.

Confirmation, (*Confirmatio*, from the Verb *Confirmare, quod eſt firmum facere*) Is a Conveyance of an Eſtate, or Right *in eſſe*, from one Man to another, whereby a voidable Eſtate is made ſure and unavoidable; or a particular Eſtate is increaſed, or a Poſſeſſion made perfect. And 'tis a Strengthening of an Eſtate formerly made, which is voidable, tho' not preſently void: As for Example; A Biſhop granteth his Chancellorſhip by Patent, for Term of the Patentee's Life; this is no void Grant, but voidable by the Biſhop's Death, except it be ſtrengthened by the *Confirmation* of the Dean and Chapter. *Confirmation, aut eſt* perficiens, creſcens, *aut* diminuens: *Perficiens*, as if Feoffee upon Condition make a Feoffment, and the Feoffor confirm the Eſtate of the ſecond Feoffee: *Creſcens*, that doth always enlarge the Eſtate of a Tenant; as Tenant for Years, to hold for Life, &c. *Diminuens*, as when the Lord of whom the Land is holden, confirms the Eſtate of his Tenant, to hold by a leſs Rent. 9 *Rep.* 142. The Lord may diminiſh the Services of his Tenant by *Confirmation*; but not reſerve new Services, ſo long as the former Eſtate in the Tenancy continues:

And therefore if he confirm to the Tenant, to yield him a Hawk, *&c.* yearly, it is void. *Lit. Sect.* 539 1 *Co. Inſt.* 296. Leaſes for Years may be confirmed for Part of the Term, or Part of the Land, *&c*, But it is otherwiſe of an Eſtate of Freehold, which being entire, cannot be confirmed for Part of the Eſtate. 5 *Rep.* 81. There may be a *Confirmation* implied by Law, as well as expreſs by Deed; where the Law by Conſtruction makes a *Confirmation* of a Grant made to another Purpoſe: And a *Confirmation* may enlarge an Eſtate, from Eſtate held at Will to Term of Years, or a greater Eſtate; from an Eſtate for Years to an Eſtate for Life; from an Eſtate for Life, to Eſtate in Tail, or in Fee; and from an Eſtate in Tail to an Eſtate in Fee-ſimple. 1 *Inſt.* 305. 9 *Rep.* 142. *Dyer* 263. But if the *Confirmation* be made to Leſſee for Life or Years, of his Term or Eſtate, and not of the Land, this doth not increaſe the Eſtate, though if the Leſſor confirm the Land, to have and to hold the Land to the Leſſee and his Heirs, this will enlarge the Eſtate, and ſo of the Reſt. *Co. Lit.* 299. *Plowd.* 40. In every good *Confirmation*, there muſt be a Precedent rightful or wrongul Eſtate in him to whom made, or he muſt have the Poſſeſſion of the Thing as a Foundation for the *Confirmation* to work upon; the *Confirmor* muſt have ſuch an Eſtate and Property in the Land, that he may be thereby enabled to confirm the Eſtate of the *Confirmee*; the precedent Eſtate muſt continue till the *Confirmation* come, ſo that the Eſtate to be increaſed comes into it; and it is required that both theſe Eſtates be lawful. *Co. Lit.* 296. 1 *Rep.* 146. *Dyer* 109 5 *Rep.* 15. If one have Common of Paſture in another's Land, and he confirms the Eſtate of the Tenant of the Land, nothing paſſes of the Common, but it remains as it was before: So if a Man have a Rent out of the Land, and he doth confirm the Eſtate which the Tenant hath in the Land, the Rent remaineth. *Litt. Sect.* 537. Tenant for Life makes a Leaſe for Years to a Man, and after Leaſes the Land to another Perſon for Years; and he in Reverſion confirms the laſt Leaſe, and after that the firſt Leaſe, this is not good: The ſecond Leſſee hath an Intereſt before by the *Confirmation* of him in Reverſion. But in a like Caſe, *Confirmation* of the firſt Leaſe, after the Second was confirmed, was held good; for the Leaſe takes no Intereſt by the *Confirmation*, but only to make it durable and effectual. *Moor*, *c.* 180. 1 *Inſt.* 296. *Plowd.* 10. If a Diſſeiſee confirm the Land to the Diſſeiſor, but for one Hour, one Week, a Year, or for Life, *&c.* it is a good *Confirmation* of the Eſtate for ever: And if he confirms the Eſtate of the Diſſeiſor without any Word of Heirs, he hath a Fee-ſimple; and if a Diſſeiſor make a Gift in Tail, and the Diſſeiſee doth confirm the Eſtate of the Donee, it ſhall enure to the whole Eſtate: Alſo if the Diſſeiſor enfeoffs *A.* and B. and the Heirs of B. and the Diſſeiſee confirms the Eſtate of *B.* for his Life; this ſhall extend to his Companion, and for the whole Fee-ſimple. *Co. Lit.* 291, 297, 299. But where the Eſtate is divided it is otherwiſe; as if there be an Eſtate for Life, the Remainder over, there the *Confirmation* may be of either of the Eſtates: And if the Leſſee of a Diſſeiſor of a Leaſe for 20 Years, makes a Leaſe for 10 Years; the Diſſeiſee may confirm to one of them, and not the other. 1 *Cro.* 472. 5 *Rep.* 81. If a Diſſeiſor or any other make a Leaſe for Years to begin at a Day to come, a *Confirmation* to the Leſſee before the Leaſe begins will not be good; for there is no Eſtate in him. *Co. Lit.* 296. The Tenant in Tail of Land, hath a Reverſion in Fee expectant; in this Caſe, the *Confirmation* of the Eſtate-tail will not extend to the Reverſion. And if my Diſſeiſor make a Leaſe for Life, the Remainder in Fee, and I confirm the Eſtate of the Tenant for Life; this ſhall not confirm the Eſtate of him in Remainder: But if I confirm the Remainder Eſtate, without any *Confirmation* to Tenant for Life; it ſhall enure to him alſo. *Co. Lit.* 297, 298. If Lands are given to two Men, and the Heirs of their two Bodies begotten, and the Donor confirms their Eſtates in the Lands, to have and to hold to them two and their Heirs; this ſhall be conſtrued a joint Eſtate for their Lives, and after they ſhall have ſeveral Inheritances. *Co. Lit.* 299. Tenant in Tail, or for Life of Land, lets it for Years, if after he make a *Confirmation* of the Land to the Leſſee for Years, to hold to him and his Heirs for ever, the Leſſee hath only an Eſtate for the Life of the Tenant in Tail, *&c.* and therein his Leaſe for Years is extinct. *Lit. Sect.* 606. A Freehold for Life, and Term for Years, it is ſaid, cannot ſtand together of the ſame Land, in the ſame Perſon. 1 *Nelſ. Abr.* 480. If a Feme Leſſee for Years marries, and the Leſſor confirms the Eſtate of Husband and Wife, to hold for their Lives, by ſuch a *Confirmation*, the Term will be drowned; and the Huſband and Wife be Jointenants for their Lives. *Co. Lit.* 300. But if the Feme were Leſſee for Life, then by the *Confirmation* to Husband and Wife for their Lives, the Husband holdeth only in Right of his Wife for her Life; but ſhall take a Remainder for his Life. *Ibid.* 299. *Confirmation* to Leſſee for Life, and a Stranger to hold for their Lives, is void, for there is no Privity: But 'tis otherwiſe, if for Years. 2 *Danv. Abr.* 141. If Tenant for Life grant a Rent-charge, *&c.* to one and his Heirs, he in Reverſion is to confirm it, otherwiſe 'tis good only for the Life of Tenant for Life. *Lit.* 529. A Tenant for Life, and Remander-man in Fee, join in a Leaſe, this ſhall be taken to be the Leaſe of Tenant for Life, during his Life, and *Confirmation* of him in Remainder: Tho' after the Death of Tenant for Life, it is the Leaſe of him in Remainder, and *Confirmation* of Tenant for Life. 6 *Rep.* 15. 1 *Nelſ. Abr.* 481. If Leſſee for Years, without Impeachment of Waſte, accepts a *Confirmation* of his Eſtate for Life; by this he hath loſt the Privilege annexed to his Eſtate for Years. 8 *Rep.* 76. Acceptance of Rent in ſome Caſes makes a *Confirmation* of a Leaſe: And if a Man leaſes for Life, reſerving Rent upon a Condition of Re-entry; if after the Condition is broke, by Non-payment of the Rent, the Leſſor diſtrains for the ſaid Rent, this Act ſhall be a *Confirmation* of the Leaſe, ſo as he cannot enter. 2 *Danv.* 128, 129. What a Perſon may defeat by his Entry, he may make good by his *Confirmation*. *Co. Lit.* 300. But none can confirm, unleſs he hath a Right at the Time of the Grant; he that hath but a Right in Reverſion cannot enlarge the Eſtate of a Leſſee. 2 *Danv.* 140, 141. And where a Perſon hath but *Intereſſe termini*, he hath no Eſtate in him, upon which a *Confirmation* may enure. *Co. Lit.* 296. A *Confirmation* is to bind the Right of him who makes it; but not alter the Nature of the Eſtate of him to whom made; it ſhall not diſcharge a Condition *Poph.* 51. If *A.* enfeoffs *B.* upon Condition, and after *A.* confirms the Eſtate of *B.* yet the Condition. remains: Though if *B.* had enfeoffed *C.* ſo that the Eſtate of *C.* had been only ſubject to the Condition in another Deed, and after *A.* had confirmed the Eſtate of *C.* this would have extinguiſh'd the Condition, which was annexed to the Eſtate of *B.* 1 *Rep.* 147. A *Confirmation* will take away a Condition annexed by Law: And by *Confirmation*, a Condition after broken in a Deed of Feoffment is extinguiſh'd. 1 *Co. Rep.* 146. *Confirmations* may make a defeaſible Eſtate good; but cannot work upon an Eſtate that is void in Law. *Co. Lit.* 295. A *Confirmation* of Letters Patent, which are void as they are againſt Law, is a void *Confirmation*. 1 *Lill. Abr.* 295. If there be Lord and Tenant, and the Tenant having Iſſue is attainted of Felony, if the King pardons him, and the Lord confirms his Eſtate, and the Tenant dies, his Iſſue ſhall not inherit, but the Lord ſhall have it againſt his own *Confirmation:* For that could not enable him to take by Deſcent, who by the Attainder of his Father was diſabled. 9 *Rep.* 141. Grants and Leaſes of Biſhops not warranted by the Stat. 32 *H.* 8. muſt be confirmed by Dean and Chapter: And Grants and Leaſes of Parſons, *&c.* by Patron and Ordinary. 1 *Inſt.* 297, 300, 301. Biſhops may grant Leaſes of their Church-Lands for three Lives, or twenty-one Years, having the Qualities required by 32 *Hen* 8. and concurrent Leaſes for twenty-one Years, with *Confirmation* of Dean and Chapter. If a Prebend Leaſes Parcel of his Prebendary, and the Biſhop, who is Patron, confirms it; this ſhall not bind the ſucceeding Biſhop, without *Confirmation* of Dean and Chapter, becauſe the Patronage is Parcel of the Poſſeſſions of the Biſhoprick; but it ſhall bind the preſent Biſhop, *&c.* 2 *Danv.* 139. If a Parſon grants a Rent, the *Confirmation* of the Patron and Biſhop, is ſufficient without the Dean and Chapter, and ſhall be good againſt the Succeſſor Biſhop. *Ibid* 140. The Dean of *Wells* may paſs his Poſſeſſions, with the Aſſent of the Chapter, without any *Confirmation* of the Biſhop. *Ibid.* 135. Leaſes of Biſhops are affirmed *ex aſſenſu & conſenſu Decani & totius Capituli.* A *Confirmation* is in Nature of a Releaſe, and in ſome Things is of greateſt Force: And in this Deed, it is good to recite the Eſtate of the Tenant, as alſo of him that is to confirm it; and to mention the Conſideration: The Words *Ratify* and *Confirm*, are commonly made Uſe of; but Words *Give*, *Grant*, *Demiſe*, &c. by Implication of Law, may enure as a *Confirmation.* 1 Inſt. 295. Weſt. Symb. 1. pag. 457.

Confiſcate, From the Lat. *Confiſcare*, and that from *Fiſcus*, which ſignifies metonymically the Emperor's Treaſure: And as the *Romans* ſay, ſuch Goods as are Forfeited to the Emperor's *Treaſury* for any Offence are *Bona Confiſcata*; ſo we ſay of thoſe that are forfeited to our King's *Exchequer.* And the Title to have theſe Goods is given to the King by the Law, when they are not claimed by ſome other: As if a Man be indicted for ſtealing the Goods of another Perſon, when they are in Truth his own proper Goods, and when the Goods are brought in Court againſt him, and he is asked what he ſays to the ſaid Goods, if he diſclaims them, he ſhall loſe the Goods, although that afterwards he be acquitted of the Felony, and the King ſhall have them as *confiſcated*; but 'tis otherwiſe if he do not diſclaim them. It is the ſame where Goods are found in the Poſſeſſion of a Felon, if he diſavows them, and afterwards is attainted for other Goods, and not of them; for there the Goods which he diſavows are *confiſcate* to the King; but had he been attainted of the ſame Goods, they ſhould have been ſaid to be *forfeited* and not *confiſcate.* So if an Appeal of Robbery be brought, and the Plaintiff leaves out ſome of his Goods, he ſhall not be received to enlarge his Appeal; and foraſmuch as there is none to have the Goods ſo left out, the King ſhall have them as *confiſcate*, according to the Rule, *Quod non Capit Chriſtus, capit Fiſcus. Staund. P. C. lib.* 3. *cap.* 24. Goods *confiſcated* are generally ſuch as are arreſted and ſeiſed for the King's Uſe: But *Confiſcare* and *Forisfacere*, are ſaid to be *Synonyma*; and *Bona Confiſcata* are *Bona Forisfacta.* 3 Inſt. 227.

Conformity to the Church of *England.* See Stat. 35 *Eliz. &c.* and *Recuſant.*

Confrairie, (*Confraternitas*) A Fraternity, Brotherhood, or Society; as the *Confrairie de St.* George, or *Les Chevaliers de la bleu Gartier*, the Honourable Society of the Knights of the Garter.

Confreres, (*Confratres*) Brethren in a Religious Houſe; Fellows of one and the ſame Society. *Stat.* 32 *Hen.* 8. *c.* 24.

Congeable, (From the Fr. *Conge*, i. e. Leave or Permiſſion) Signifies in our Law as much as lawful, or lawfully done, or done with Permiſſion: As *Entry Congeable*, &c. *Lit. Sect.* 420.

Conge d'Accorder, (*Fr.*) Leave to accord or agree, mentioned in the Statute of *Fines*, 18 *Ed.* 1. in theſe Words. —— When the original Writ is delivered in the Preſence of the Parties before Juſtices, a *Pleader* ſhall ſay this, Sir Juſtice *Conge d'Accorder*; and the Juſtice ſhall ſay to him, what ſaith Sir *R.* and name one of the Parties, *&c.*

Conge d'Eſlire, (*Fr.* i. e. Leave to chooſe) Is the King's Licence or Permiſſion ſent to a Dean and Chapter to proceed to the Election of a Biſhop, when any Biſhoprick becomes vacant. According to *Gwin*, in his Preface to his *Readings*, the King of *England*, as Sovereign Patron of all Biſhopricks, and other Eccleſiaſtical Benefices, had of ancient Time free Appointment of all Church Dignities, when ever they became void, inveſting them firſt *per Baculum & Annulum*, and afterwards by his Letter Patent; and in Proceſs of Time he made the Election over to others, under certain Forms and Conditions; as, that they ſhould at every Vacation, before they chuſe, demand of the King *Conge d'Eſlire*; that is Leave to proceed to Election, and then after the Election, to crave his Royal Aſſent, *&c.* And he affirms that King *John* was the firſt that granted this; which was afterwards confirm'd by Stat. *Weſt.* 1. 3 *Ed.* 1. *cap.* 1. And by *Articuli Cleri*, 25 *Ed.* 3. *c.* 1. All the Prelacies in *England* were conferred at the Pleaſure of the King, and the Perſons inveſted by the King's Delivery of a Staff and Ring, till *Archbiſhop Anſelm* denied this Royal Prerogative; and prevailed with *Pope Paſchal* to abrogate this Cuſtom by a ſolemn Canon: After which, the firſt Biſhop who came in by a regular Election, was *Roger* Biſhop of *Salisbury*, *Anno* 3 *H.* 1. By Statute, no Man is to be preſented to the See of *Rome* for the Dignity of a Biſhop, *&c.* but Election is to be by the King's *Conge d'Eſlire*, or Licenſe, to elect the Perſon named by the King; which the Dean and Chapter muſt do in twenty Days, or they will incur a *Præmunire:* And if they fail to make Election, the King is to nominate, *&c.* by his Letters Patent. 25 *H* 8. *c.* 20. The 1 *Ed.* 6. *c.* 6. ouſted the Writ of *Conge d'Eſlire*, and impowered the King to collate to an Archbiſhoprick or Biſhoprick, abſolutely by Letters Patent. But this Statute was repealed by 1 *M. cap.* 2. though the Election by *Conge d'Eſlire*, as now made, ſeems to be little more than Form.

Congius, An ancient Meaſure, containing about a Gallon and a Pint. —— *Et reddat quinque* Congios *ceræ & unum Ydromelli*, *&c.* Charta Edmondi Regis, Anno 946.

Coningeria, A Coney-Borough, or Warren of Conies —— *Item dicunt, quod Idem Dominus poteſt capere in duabus* Coningeriis *quas habet infra*, *&c.* 100 *Cuniculos per Annum*, *& valet quilibet Cuniculus* 2 *d.* Inquiſ. Anno 47 H. 3.

Conjuratio, Is an Oath; and *Conjuratus*, the ſame with *Conjurator*, viz. one who is bound by the ſame Oath. *Conjurare* is where ſeveral affirm a Thing by Oath. *Mon. Ang. Tom.* 1. *p.* 207.

Conjuration, (*Conjuratio*) Signifies a Plot or Compact made by Perſons combining by *Oath*, to do any publick Harm: But it is more eſpecially uſed for the having perſonal Conference with the Devil, or ſome evil Spirit, to know any Secret, or effect any Purpoſe. The Difference between *Conjuration* and *Witchcraft* is, that a Perſon uſing the one endeavours by Prayers and Invocations to compel the Devil to ſay or do what he commands him; the other deals rather by friendly and voluntary Conference, or Agreement with the Devil or Familiar, to have his Deſires ſerved, in Lieu of Blood or other Gift offered. And both differ from *Enchantment* or *Sorcery*; becauſe they are Perſonal Conferences with the Devil, and theſe are as it were but Medicines and ceremonial Forms of Words, uſually called *Charms*, without Apparition. *Cowel.* *Hawkins, in his Pleas of the Crown, lib.* 1. *pag.* 5. ſays that *Conjurors* are thoſe who by Force of certain Magick Words, endeavour to raiſe the Devil, and oblige him to execute their Commands. *Witches* are ſuch who by Way of Conference bargain with an evil Spirit, to do what they deſire of him; And *Sorcerers*, are thoſe who by the Uſe of certain ſuperſtitious Words, or by the Means of Images, &c. are ſaid to produce ſtrange Effects, above the ordinary Courſe of Nature. All which were anciently puniſhed in the ſame Manner as *Hereticks*, by the Writ *de Hæretico Comburendo*, after a Sentence in the Eccleſiaſtical Court: And they might be condemned to the Pillory, &c. upon an Indictment at Common Law. 3 *Inſt.* 44. *H. P. C.* 38. But by Stat. 1 *Jac.* 1. *c.* 12. Theſe Offenders are divided into two Degrees; and thoſe in the *firſt Degree*, and their Acceſſaries before, ſhall ſuffer as Felons without Benefit of Clergy; and of theſe there are the four following Species. 1. Such as ſhall uſe any Invocation or *Conjuration* of any evil Spirit. 2. That conſult, covenant with, entertain, employ, or reward any evil Spirit, to any Intent. 3. As take up any dead Perſon's Body, or any Part thereof, to be uſed in any manner of Witchcraft. 4. Or that exerciſe any Witchcraft, Inchantment, Charm or Sorcery, whereby any Perſon ſhall be killed, deſtroyed, conſumed, or lamed in his Body, or any Part thereof. And if a Spirit doth not actually appear, upon Invocation, &c. Or if a dead Perſon or Part of it be taken up to be uſed, and not actually uſed; they are within the Statute: But one muſt actually effect the Miſchief to be within the Clauſe of killing, laming, &c. 3 *Inſt.* 45. *H. P. C.* 6, 7. Thoſe in the *ſecond Degree* ſhall for the firſt Offence, ſuffer a Year's Impriſonment, and the Pillory; and for the Second, be adjudged Felons, excluded Clergy: And theſe Offenders are divided into the following Kinds: Such as take upon them by Witchcraft, Charm, &c. to tell where Treaſure, or Things loſt or ſtolen, may be found; or to do any Thing to the Intent to provoke any Perſon to unlawful Love; or to hurt any Perſon in his Body; or whereby any Cattle or Goods of any Perſon, ſhall be deſtroyed or impaired, &c. but thoſe who take upon them to do the Laſt, are not within the Act, unleſs they actually accompliſh it. 3 *Inſt.* 46. *Stat.* 1 *Jac.* 1. *c.* 12. This *Statute* of K. *James* I. againſt *Conjuration* and Witchcraft is repealed; and no Proſecution ſhall be commenced on the ſame: But where Perſons pretend to exerciſe any kind of Witchcraft or *Conjuration*, &c. Or undertake to tell Fortunes, or from their Skill in any crafty Science to diſcover where Goods ſtolen or loſt may be found; upon Conviction, they ſhall be Impriſoned a Year, and ſtand in the Pillory once in every Quarter, in ſome Market-Town, and may be ordered to give Security for their Good Behaviour, by Stat. 9 Geo. 2. *c.* 5.

Conqueſt, Countries got by, what Laws to have for Government. See *King*.

Conſanguineo, Is a Writ mentioned in *Reg. Orig. de Avo, Proavo &* Conſanguineo, &c. *f.* 226.

Conſanguinity, (*Conſanguinitas*) Is a Kindred by Blood or Birth: As *Affinity* is a Kindred by Marriage: And it is conſiderable in the *Diſcent* of Lands, who ſhall take it as next of Blood, &c. And alſo in *Adminiſtrations*, which ſhall be granted to the next of Kin. See the *Heads*.

Conſervator, (*Lat.*) A Protector, Preſerver, or Maintainer; or a ſtanding Arbitrator, choſen and appointed as a Guarantee to compoſe and adjuſt Differences that ſhould ariſe between two Parties, &c. *Paroch. Antiq. p.* 513.

Conſervator of the Peace, (*Conſervator vel Cuſtos Pacis*) Is he that hath an eſpecial Charge to ſee the King's *Peace* kept: And of theſe *Conſervators Lambard* ſaith, That before the Reign of *Ed.* 3. who firſt created *Juſtices of Peace*, there were divers Perſons that by the Common Law had Intereſt in keeping the *Peace*; ſome whereof had that Charge by Tenure, as holding Lands of the King by this Service, &c. And others as incident to their Offices which they bore, and ſo included in the ſame, that they were nevertheleſs called by the Name of their Office only: Alſo ſome had it ſimply, as of itſelf, and were thereof named *Cuſtodes Pacis, Wardens or Conſervators of the Peace.* The *Chamberlain* of *Cheſter* is a *Conſervator of the Peace* in that County, by Virtue of his Office. 4 *Inſt.* 212. Sheriffs of Counties at Common Law are *Conſervators of the Peace*; and *Conſtables*, by the Common Law were *Conſervators*, but ſome ſay they were only ſubordinate to the *Conſervators of the Peace*, as they are now to the *Juſtice*.

Conſervator of the Truce and Safe Conducts, (*Conſervator Induciarum & ſalvorum Regis Conductuum*) Was an Officer appointed by the King's Letters Patent, whoſe Charge was to inquire of all Offences done againſt the King's *Truce and Safe Conducts* upon the main Sea, out of the Liberties of the *Cinque Ports*, as the Admirals cuſtomably were wont to do, and ſuch other Things as are declared 3 *Hen.* 5. *c.* 6. Two Men learned in the Law were joined to *Conſervators* of the *Truce* as Aſſociates; and Maſters of Ships ſworn not to attempt any Thing againſt the *Truce*, &c. And Letters of Requeſt and of Marque were to be granted when *Truce* was broken at Sea, to make Reſtitution. *Stat.* 4 *H.* 5. *c.* 7.

There was anciently a *Conſervator of the Privileges of the Hoſpitalers and Templars.* Weſt. 2. c. 43. And the Corporation of the Great *Level of the Fens* conſiſts of a Governor, ſix Bailiffs, twenty *Conſervators*, and Commonalty. *Stat.* 15 *Car.* 2. *cap.* 17.

Conſideratio Curiæ, Is often mentioned in Law Pleadings, and where Matters are determined by the Court. *Ideo* Conſideratum *eſt per* Curiam, *i. e.* Therefore it is conſidered and adjudged by the Court; for *Conſideratio Curiæ* is the Judgment of the Court. In the Entry of a Judgment for Debt, it concludes thus: *Ideo* Conſideratum eſt per Cur. *quod præd.* A. *recuperet verſus præfat.* B. *Debitum ſuum, necnon, &c. pro Dampnis ſuis, &c. quam pro Miſ. & Cuſtag', &c. Et præd.* B. *in mia', &c.*

Conſideration, (*Conſideratio*) Is the material Cauſe or *Quid pro quo*, of any Contract, without which it will not be effectual or binding. This *Conſideration* is either *expreſſed*; as when a Man bargains to give ſo much, for a Thing bought; or to ſell his Land for 100 *l.* or grants it in Exchange for other Lands; or where I Promiſe that if one will marry my Daughter, or build me a Houſe, &c. I will give him a certain Sum of Money; or one agrees for 20 *s.* to do a Thing. Or it is *implied*, when the Law itſelf enforces a *Conſideration*; as where a Perſon comes to an Inn, and there ſtaying eats and drinks, and takes Lodging for himſelf and Horſe, the Law preſumes he intends to pay for both, tho' there be no expreſs Contract for it; and therefore if he diſcharge not the Houſe, the Hoſt may ſtay his Horſe: And ſo if a Taylor makes a Garment for another, and there is no expreſs Agreement what he ſhall have for it; he may keep the Clothes till he is paid, or ſue the Party for the ſame. 5 *Rep.* 19. *Plowd.* 308. *Dyer* 30, 337. Alſo there is a *Conſideration* of *Nature* and *Blood*; and *valuable Conſideration* in Deeds and Conveyances: But if a Man be indebted to divers others, and in *Conſideration* of natural Affection, gives all his Goods to his Son, or other Relation, this ſhall be conſtrued a fraudulent Gift, within the Stat. 13 *Eliz. cap.* 5. becauſe that Act intends a valuable *Conſideration.* Terms de Ley 165, 166. *Conſiderations* of natural Love, Affection, Marriage, &c. are good to raiſe Uſes to a Man's Family: If the *Uſes* are limited to a Stranger, then it muſt be for valuable *Conſideration*, not for Love, Affection, *&c.* 1 *Inſt.* 271. 1 *Rep.* 176. A Sale can never be without a valuable *Conſideration:* Tho' the Law eſtabliſhes free Gifts without the ſame. *Noy's Max.* 87. *Hob.* 230. One may ſell his Freedom and Privilege for a *Conſideration*; for by the *Conſideration* it is intended he hath a full Recompence for it, by Reaſon of his own Contract. And a Man may, upon a valuable *Conſideration* reſtrain himſelf by Contract from uſing his Trade in ſuch a particular Place. 1 *Lill. Abr.* 297, 298. A *Conſideration* ought to be Matter of Profit and Benefit to him to whom it is done; by Reaſon of the Charge or Trouble of him who doth it. *Cro Car.* 8. *Conſiderations* altogether paſs; as if a Perſon hath disburſed ſeveral Sums for another, without his Requeſt, and afterwards ſuch others ſay, that in *Conſideration* he hath paid the ſaid Sums for him, he promiſes to pay them: This is no *Conſideration*, becauſe it was executed before. But it will be otherwiſe, if the Sums were paid at the Requeſt of the other. *Moor* 220. *Cro. Eliz.* 282. A mere voluntary Curteſy will not be a good *Conſideration* of a Promiſe: But the Value and Proportion of the *Conſideration* is not material, to maintain an Action; for a Shilling, or a Penny, is as much binding as 100*l.* Though in theſe Caſes, the Jury will give Damages proportionably to the Loſs. *Hob.* 4. 10 *Rep.* 76. A *Conſideration* that is void in Part, is void in the Whole: And if two *Conſiderations* be alledged, and one of them is found falſe by the Jury, the Action fails. *Hob.* 126. *Cro. Eliz.* 848. But if there be a double *Conſideration*, for the Grounding of a Promiſe, for the Breach whereof an Action is brought; tho' one of the *Conſiderations* be not good, yet if the other be good, and the Promiſe broken, the Action will lie upon that Breach: For one *Conſideration* is enough to ſupport the Promiſe. 1 *Lill.* 297. A *Conſideration* muſt be lawful, to ground an *Aſſumpſit.* 2 *Lev.* 161. Where *Conſiderations* are valuable, and conſiſt of two or more Parts, there the Performance of every Part ought to be ſhewn. *Cro. El.* 579. If a Deed expreſs a *Conſideration* of Money, on a Purchaſe, it is ſaid this will be no Proof on a Trial that the Money was actually paid; but it is to be made out by Proof of Witneſſes. *Style's Rep.* 169. In Caſe a Deed of Feoffment be made of Lands; or a Fine and Recovery be paſſed, and no *Conſideration* is expreſſed in the Deed, *&c.* for the doing thereof, it ſhall be intended by the Law, that it was made in Truſt, for the Uſe of the Feoffor or Conuſor; for it ſhall be preſumed he would not part with his Land without a *Conſideration*, and yet the Deed ſhall be conſtrued to operate ſomething, and that which is moſt reaſonable. 1 *Lill. Abr.* 299.

Conſign, Is a Word uſed by Merchants, where Goods are aſſigned or delivered over to a Factor, *&c. Lex Mercat.*

Conſilium, (*Dies Conſilii*) Was a Time allowed for one accuſed to make his Defence, and anſwer the Charge of the Accuſer. —— *In aliis quærat Accuſatus* Conſilium, *& habeat ab amicis & paribus ſuis, quod nullo jure debet defendi, &c. Leg. H.* 1. *c.* 46. It is now uſed for a ſpeedy Day appointed to argue a *Demurrer*; which the Court grants after the Demurrer joined on reading the Record of the Cauſe, *&c.*

Conſiſtor, A Magiſtrate ſo called: *Teſtibus* Rogero *de* Gant, Willielmo Conſiſtore *Ceſtriæ*, *&c.* Blount.

Conſiſtory, (*Conſiſtorium*) Signifies as much as *Prætorium*, or Tribunal: It is commonly uſed for a Council-Houſe of Eccleſiaſtical Perſons, or Place of Juſtice in the Spiritual Court; a Seſſion or Aſſembly of Prelates. And every Archbiſhop and Biſhop of every Dioceſe, hath a *Conſiſtory Court*, held before his Chancellor, or Commiſſary in his Cathedral Church, or other convenient Place of his Dioceſe, for Eccleſiaſtical Cauſes. 4 *Inſt.* 338. The Biſhop's Chancellor is the Judge of this Court, ſuppoſed to be skilled in the Civil and Canon Law: And in Places of the Dioceſe, far remote from the Biſhop's *Conſiſtory*, the Biſhop appoints a Commiſſary, (*Commiſſarius Foreneus*) to judge in all Cauſes within a certain Diſtrict, and a Regiſter to enter his Decrees, *&c.* 2 *Roll. Abr.* 286. *Selden's Hiſt. of Tithes*, 413, 414.

Conſolidation, (*Conſolidatio*) Is uſed for the Uniting of two Benefices into one. *Stat.* 37 *H.* 8. *c.* 21. Which Union is to be by the Aſſent of the Ordinary, Patron and Incumbent, *&c.* and to be of ſmall Churches lying near together. *Vide* Church. This Word is taken from the *Civil Law*, where it ſignifies properly an Uniting of the Poſſeſſion, Occupancy or Profit of Lands, *&c.* with the Property. See *Extinguiſhment.*

Conſpiracy, (*Conſpiratio*) Is uſed for an Agreement of two or more Perſons falſly to indict one, or to procure him to be indicted of Felony; who after Acquittal, ſhall have Writ of *Conſpiracy:* And Writ of *Conſpiracy* lies for him that is indicted of a Treſpaſs, and acquitted, though it was not Felony: Alſo upon an Indictment for a Riot. 2 *Mod.* 306 5 *Mod.* 405. Where a Man is falſly indicted of any Crime, which may prejudice his Fame or Reputation; and though it doth not import Slander, if it endangers his Liberty; or if the Indictment be injurious to his Property, *&c.* Writ of *Conſpiracy* lieth. 3 *Salk.* 97. And for a falſe Charge, before the Party is acquitted of it, Indictment lies, *&c.* But tho' a *Conſpiracy* to charge falſly be indictable, yet the Party ought to ſhew himſelf to be innocent; and the Writ of *Conſpiracy* lies not without an Acquittal. *Mod. Caſ.* 137, 185, 186. Not only Writ of *Conſpiracy*, which is a civil Action at the Suit of the Party; but alſo Action of the Caſe in the Nature of a Writ of *Conſpiracy*, doth lie for a falſe and malicious Accuſation of any Crime, whether Capital, or not Capital, even of High Treaſon; and though the Bill of Indictment is found *Ignoramus*, or it does not go ſo far as an Indictment. And the ſame Damages may be recovered in ſuch Action, as in a Writ of *Conſpiracy*, where the Party is lawfully acquitted by Verdict. 1 *Roll. Ab.* 111, 112. 9 *Rep.* 56. If one falſly and maliciouſly procure another to be arreſted, and brought before a Juſtice of Peace to be examined concerning a Felony, *&c.* on purpoſe to vex and diſgrace him, and put him to Charges and Trouble, although he is not indicted for the ſame, yet he may have an Action of the Caſe; in which he need not aver that he was lawfully acquitted, as he ought to do in a Writ of *Conſpiracy*; but he muſt aver that the Accuſation was *Falſo & Malitioſe*, which Words are neceſſary in the Declaration; and it muſt appear that there was no Ground for it. And as Action on the Caſe may be proſecuted againſt one Perſon, where the Writ of *Conſpiracy* or Indictment doth not lie but againſt two, this Action is moſt commonly brought. 1 *Danv. Abr.* 208, 213. 2 *Inſt.* 562, 638. *Conſpirators* may be indicted at the Suit of the King; and at the Common Law, one may prefer an Indictment againſt *Conſpirators*, who only conſpire together, and nothing is executed; Though the *Conſpiracy* ought to be declared by ſome Act, or Promiſe to ſtand by one another, *&c.* But a bare *Conſpiracy*, will not maintain a Writ of *Conſpiracy*, at the Suit of the Party grieved, becauſe he is not damaged by it; tho' it is a Ground for an Indictment. 9 *Rep.* 56. 2 *Roll. Abr.* 77. If the Defendants can ſhew any Foundation or probable Cauſe of Suſpicion, they ſhall be diſcharged: And if a Man hath good Cauſe of Suſpicion, that a Perſon is Guilty of Felony, and cauſes him to be indicted, in Proſecution of Juſtice, notwithſtanding there be no Felony committed, Action of *Conſpiracy* will not lie: But 'tis otherwiſe if the Proſecutor impoſes the Crime of Felony, where no Felony was commited. 1 *Rol. Abr.* 115. and *Rep.* 438. An Action lies not againſt a Juſtice of Peace, who ſends out his Warrant upon a falſe Accuſation; but it lies if he makes it out without any Accuſation. 1 *Leon.* 187. *Conſpiracies* ought to be out of Court; for if a Proſecution be ordered in a Courſe of Juſtice, and Witneſſes appear againſt a Party, *&c.* there ſhall be no Puniſhment: And if Perſons acted only as Jurors in a criminal Matter; or Judges in open Court, there is no Ground for Proſecution. *S. P. C.* 173. 12 *Rep.* 24. If all the Defendants but one are acquitted on Indictment for *Conſpiracy*, that one muſt be acquitted alſo; becauſe one Perſon alone cannot be indicted for this Crime: And Huſband and Wife being but one Perſon, may not be indicted. 2 *Rol. Abr.* 708. The Acquittal of one Perſon is the Acquittal of another upon Indictment of *Conſpiracy.* 3 *Mod.* 220. Though where one is found guilty, according to the Opinion of the Lord Chief Juſtice *Hale*; if the other doth not come in upon Proceſs, or if he dies pending the Suit, Judgment ſhall be had againſt the other. 1 *Vent.* 234. Writ of *Conſpiracy* was brought againſt two Perſons, and one found Not guilty; the other ſhall not have Judgment: But in Action on the Caſe, it had been good, *Cro. Eliz.* 701. If the Parties are found guilty of the *Conſpiracy*, upon an Indictment of Felony, at the King's Suit; the Judgment is, that they ſhall loſe their *Frank Law* (which diſables them to be put upon any Jury, to be ſworn as Witneſſes, or to appear in Perſon in any of the King's Courts) and that their Lands, Goods and Chattels be ſeiſed as forfeited, and their Bodies committed to Priſon; which is called a *Villanous Judgment.* 2 *Inſt.* 143, 222. *Crompt. Juſt.* 156. The Matter of the *Conſpiracy* ought to touch a Man's Life, where this Judgment is impoſed. 1 *Hawk. P. C.* 193. For *conſpiring* to charge a Perſon with poiſoning another, *&c.* one of the Parties was fined 1000 *l.* and ſome others had Judgment of the Pillory, and to be burnt in the Cheek with the Letters F. and C. to ſignify Falſe Conſpirators. *Moor* 816. Fine and Impriſonment is the uſual Puniſhment at this Day on Indictment for *Conſpiracy*: And on Writ of *Conſpiracy*, *&c.* the Party ſhall be fined, and render Damages. There is a *Conſpiracy* to maintain Suits and Quarrels; and of Victuallers, to ſell their Victuals at certain Prices; of Labourers and Artificers, *&c.* puniſhable by Statutes 33 *Ed.* 1. 37 *H.* 8. 2 & 3 *Ed.* 6.

A Writ of Conſpiracy.

GEORGE *the Second,* &c. *To the Sheriff of* B. *Greeting: If* A. B. *ſhall make you Secure in proſecuting,* &c. *then put* C. D. *and* E. F. *to find Pledges and Sufficient Sureties, that they be before us at* Weſtminſter, *on the Day,* &c. *to ſhew, why by* Conſpiracy *between them had at* W. *they falſly and Maliciouſly procured the ſaid* A. B. *to be Indicted of a certain Felony of,* &c. *and him on that Occaſion to be taken, and in our Priſon of* R. *until in the Court before our beloved and faithful,* &c. *our Juſtices,* &c. *according to the Law and Cuſtom of our Realm he was acquitted, to be there detained; to the great Damage of him the ſaid* A. B. *and againſt the Form of the Statute or Ordinance in ſuch Caſe made and provided; and have you there the Names of the Pledges, and this Writ. Witneſs,* &c.

Conſpirators, (*Conſpiratores*) By 33 *E.* 1. are defined to be thoſe that do bind themſelves by Oath, Covenant, or other Alliance, that every of them ſhall aid the other falſly and maliciouſly to indict Perſons; or falſly to move or maintain Pleas, *&c.* And ſuch as retain Men in the Country, with Liveries, or Fees, to maintain their malicious Enterprizes, which extends as well to the Takers, as the Givers; and Stewards and Bailiffs of great Lords, who by their Office or Power, undertake to bear and maintain Quarrels, Pleas or Debates, that concern other Parties than ſuch as relate to the Eſtate of their Lords or themſelves. 2 *Inſt.* 384, 562. And againſt *Conſpirators*, falſe Informers and Imbracers of Inqueſt, the King hath provided a Writ in the Chancery; and the Juſtices of either Bench and Juſtices of Aſſiſe, ſhall on every Plaint, award Inqueſt thereupon. Stat. 28 *E.* 1. *c.* 10. From the Deſcription of *Conſpirators*, in ſeveral of our old Law Books, *Conſpiracy* is taken generally, and confounded with *Maintenance* and *Champerty.* Beſides theſe, there are *Conſpirators* in *Treaſon*; by plotting againſt the Government, *&c.* See *Treaſon.*

Conſpiratione, Is a Writ that lies againſt *Conſpirators.* Reg. Orig. 134. F. N. B. 114.

Conſtable, (*Conſtabularius*) Is a Saxon Word, compounded of *Coning*, *i. e.* King, and *Staple*, which ſignify the Stay or Hold of the King. This Word is diverſly uſed in our Law; firſt for the Lord *Conſtable* of *England*, whoſe Power was antiently ſo extenſive, that ſome Time ſince that Office hath been thought too great for any Subject; unleſs at the King's Coronation to compleat the Grandeur of that Ceremony, and for the antient Trials by Combat, *&c.* In the Reign of *Henry* the Fourth, the *Lord North* was made Lord *Conſtable* for Life: And this Office being formerly of Inheritance, by Tenure of certain Manors, the Line of the *Bohuns*, *Earls of Hereford* and *Eſſex*, enjoyed it in Right of the Manors of *Harleſield*, *Newman*, and *Witenhurſt*, and afterwards it came to the *Staffords*, and Dukes of *Buckingham*, as Heirs general of them; but *Edward* Duke of *Buckingham* being attainted of High Treaſon *Anno* 13 *H.* 8. this Office became forfeited to the Crown, and ſince that Time it was never granted but *pro hac vice*, to be exerciſed at a Coronation, *&c.* The Power and Juriſdiction of the *Lord High Conſtable*, was the ſame with the *Earl Marſhal.* and he ſat as Judge having Precedence of the Earl Marſhal in the Marſhal's Court: But the *Conſtable* of *England* is by ſome of our Books alſo called *Marſhal*; who takes Cognizance of all Matters of War and Arms, and had originally ſeveral Courts under him; but has now only the *Marſhalſea*; and his Office is in Force both in Time of Peace and War, ſo that tho' the Lord *Conſtable* had the Precedency, yet the Court held before them was called the Marſhal's Court. See my *Lex Conſtitutionis*, *p.* 175, 176. Of this Officer or Magiſtrate, *Gwyn* ſaith to this Effect; The *Court of the* Conſtable *and Marſhal* determineth Contracts touching Deeds of Arms out of the Realm upon Land, and handleth Things concerning War within the Realm, as Combats, Blazons of Armory, *&c.* which cannot be determined by the Common Law; and in theſe Matters is commonly guided by the Civil Law. By Statute, the *Conſtable* of *England* hath Cognizance of Things concerning Arms and Wars, which cannot be diſcuſſed by the Common Law: And when a Plea is commenced before the *Conſtable* and Marſhal, which may be tried at the Common Law, the Party grieved ſhall have a privy Seal to cauſe the *Conſtable* and Marſhal to ceaſe, until it be decided by the King's Counſel whether it may be tried there or at the Common Law. 13 *R.* 2. *c.* 2. The *Conſtable* and Marſhal ſhall not have Cognizance of Pleas or Suits that ought to be tried at Common Law. *Stat.* 8 *R.* 2. *c.* 5. Appeals of Things done out of the Realm, are to be tried by the *Conſtable* and Marſhal of *England.* 1 *H.* 4. *c.* 14. And if a Man be wounded on the High Sea, and die of the ſame Wound in a foreign Country, though this be done in the Seas belonging to *England*, yet it cannot be inquired of by the Common Law, becauſe it is not within any of the Counties of the Realm: Neither can the Admiral hear and determine this Murder; for though the Stroke was within his Juriſdiction, the Death was *Infra Corpus Comitatus*, whereof he cannot inquire: Nor is it within the Stat. 28 *H.* 8. becauſe the Murder was not committed on the Sea. But by Stat. 13 *R.* 2. the *Conſtable* and Marſhal may hear and determine the ſame. And *vide* the 2 *Geo.* 2. *c.* 21. The Office of *Conſtable* of *England* is ſaid to conſiſt in the Care of the common Peace of the Land, in Deeds of Arms and Matters of War: And there is a *Conſtable of the Tower*; a *Conſtable of Dover Caſtle* and of divers other Caſtles; but theſe are more properly called *Caſtellanes.* Out of the High Magiſtracy of the *Conſtable* of *England* (ſays *Lambard*) were drawn thoſe inferior *Conſtables*, which we call *Conſtables of Hundreds* and *Franchiſes*; and the Statute of *Wincheſter*, 13 *E.* 1. appoints for Conſervation of the Peace, and View of Armour, two *Conſtables* in every Hundred and Franchiſe, who in *Latin* are called *Conſtabularii Capitales*, *High Conſtables*; becauſe Continuance of Time, and Increaſe of People and Offences, hath under theſe made others neceſſary in every Town, called *Petty Conſtables*, in Latin *Sub Conſtabularii*, which are of like Nature, but of inferior Authority to the other. And there are other Officers, whoſe Duty is much the ſame with *Conſtables*; as *Headboroughs*, *Tithingmen*, *&c.* of which the Petty *Conſtable* ſeems to be the principal Officer, but in his Abſence, or where there is no Petty *Conſtable*, their Duty is the ſame. It has been held that both High *Conſtables*, and Petty *Conſtables*, were Officers at Common Law, before the Statute of *Winton*, 13 *Ed.* 1. *cap.* 6. And that by the Common Law they might arreſt Perſons for a Breach of the Peace, and carry them before a Juſtice to find Sureties for their good Behaviour, *&c.* But my Lord *Coke* ſays, That they were created by 13 *Ed.* 1. and their Duty was thereby limited, though ſubſequent Statutes have enlarged their Power; but being created by Act of Parliament, they have no more Authority than the Act that created them, or ſome other Acts have given them, and cannot preſcribe as Officers at the Common Law may. 4 *Inſt.* 267. 2 *Danv. Abr.* 148. Anciently High and Petty *Conſtables* were appointed by the Sheriff in his Tourn, and ſworn there as well as in the Leet: And by the Common Law, they ought to be choſen in the Tourn or Leet. *Dalt. cap.* 21. Of common Right, a *Conſtable* is to be choſen by the Jury in the Leet; and if he be preſent, and refuſe to be ſworn, the Steward may fine him: If he be abſent, he ſhall be ſworn before Juſtices of Peace; and if ſuch *Conſtable* refuſes to be ſworn, the Jury muſt preſent his Refuſal at the next Court, and then he ſhall be amerced, for the Steward of the Leet may not fine him if he is abſent. 1 *Salk.* 175. 5 *Mod.* 130. A High *Conſtable* may be choſen at a Court-Leet by the Steward, on Preſentment of the Jury, when Cuſtom warrants it; but where ſuch Courts are not kept, or there is a Neglect in chuſing him, the Juſtices at their Quarter-Seſſions may chuſe and ſwear a High *Conſtable*; and this is the uſual Way obſerved at this Time. *Mich.* 21 *Car.* 1. *Mod. Juſt.* 133. And he may be ſworn out of Seſſions, by Warrant from thence; and be elected out of the Seſſion, by the greater Number of Juſtices in the Diviſion. *Ibid.* If one that is elected to the Office of *Conſtable*, refuſe to take the Oath to ſerve in that Office, a Writ of *Mandamus* may be had to compel him to do it. 1 *Lill. Abr.* 303. The Juſtices of Peace may appoint a *Conſtable* in ſuch Place where there was never any before. 1 *Mod.* 13. If *Conſtables*, Headboroughs, *&c.* die or go out of the Pariſh, two Juſtices of Peace are to ſwear new ones till the Lord of the Manor hold a Court-Leet, or till the next Quarter-Seſſions, who ſhall approve of them or appoint others: And if any of them continue above a Year, the Juſtices of Peace may diſcharge them, and put in others till the Lord of the Manor holds a Court. By Stat. 13 & 14 *Car* 2. *cap.* 12. *Conſtable*'s Oath runs thus: ‘ You ſhall well and truly ſerve our Sovereign Lord the King, and the ‘ Lord of this Leet (if ſworn in a Court-Leet) in the ‘ Office of *Conſtable*, in and for the Hundred of, *&c.* ‘ or Pariſh of, *&c.* for the Year enſuing, or until you ‘ ſhall be thereof diſcharged according to due Courſe ‘ of Law: You ſhall well and truly do and execute ‘ all Things belonging to the ſaid Office, according ‘ to the beſt of your Knowledge. *So help you God.*’ Formerly the Oath of a *Conſtable* was very long, he being ſworn to ſeveral Articles which included his particular Duty. High *Conſtables* are generally choſen and ſworn by the Juſtices of Peace in their Seſſions: And Petty *Conſtables*, who are their Aſſiſtants, in each Town, Pariſh or Vill, the Choice of them properly belongs to the Court-Leet; but at this Day they are uſually elected by the Pariſhioners, and ſworn by a Juſtice of Peace, who on juſt Cauſe may remove them. 4 *Inſt.* 267. Theſe *Conſtables* are appointed yearly; and are to be Men of Honeſty, Knowledge and Ability, not Infants, Lunaticks, *&c.* And if they refuſe to ſerve, they may be bound over to the Seſſions, and indicted, and fined and impriſoned. 8 *Rep.* 41. 5 *Mod.* 96. But Phyſicians, Apothecaries, *&c.* are excuſed by Statute from bearing the Office of *Conſtable*, or other Pariſh Office: Alſo Attornies, and Officers of the Courts at *Weſtminſter*, Barriſters at Law, Aldermen of *London*, *&c.* are privileged from ſerving the Office of *Conſtable*: And if a Gentleman of Quality be choſe *Conſtable*, where there are ſufficient Perſons beſide, and no ſpecial Cuſtom concerning it; 'tis ſaid ſuch Perſons may be relieved in *B. R.* 2 *Hawk. P. C.* 63, 64. A *Conſtable* may make a Deputy; but the Conſtable is anſwerable, and his Deputy muſt be ſworn. *Sid.* 355. Diſſenters choſen to the Office of *Conſtables*, *&c.* ſcrupling to take the Oaths, may execute the Office by Deputy, who ſhall comply with the Law in this Behalf. 1 *W. & M. c.* 18. *Conſtables* may appoint a Deputy, or Perſon to execute a Warrant when by Reaſon of Sickneſs, *&c.* they cannot do it themſelves. A Woman made *Conſtable*, by Virtue of a Cuſtom, that the Inhabitants of a Town ſhall ſerve by Turns, on Account of their Eſtates or Houſes, may procure another to ſerve for her, and the Cuſtom is good. 2 *Hawk. P. C.* 63. The High *Conſtable* has the Direction of the Petty *Conſtables*, Headboroughs, and Tithingmen, within his Hundred: His Duty is to keep the Peace, and apprehend Felons, Rioters, *&c.* to make Hue and Cry after Felons; and take Care that the Watch be duly kept in his Hundred; and that the Statutes for puniſhing Rogues and Vagrants be put in Execution. He ought to preſent unlawful Games; Tipling, and Drunkenneſs; Bloodſhed, Affrays, *&c.* He is to execute Precepts and Warrants, directed to him by Juſtices of the Peace, and make Returns to the Seſſions of the Peace to all the Articles contained in his Oath, or that concern his Office: And ſhall alſo cauſe the Petty *Conſtables* to make their Returns. He is to Return all Victuallers and Alehouſe-keepers that are unlicenſed; and all ſuch Perſons as entertain Inmates, who are likely to be a Charge to the Pariſh. He muſt likewiſe preſent the Faults of Petty *Conſtables*, Headboroughs, *&c.* who neglect to apprehend Rogues, Vagrants and idle Perſons, Whores, Night-walkers, Mothers of Baſtard Children like to be chargeable to the Pariſh, *&c.* And alſo all Defects of Highways and Bridges, and the Names of thoſe who ought to repair them: Scavengers who neglect their Duty; and all common Nuſances in Streets and Highways; Bakers who ſell Bread under Weight; Brewers ſelling Beer to unlicenſed Alehouſes; Foreſtallers, Regrators, Ingroſſers, *&c.* And at every Quarter-Seſſions they are to pay to the Treaſurer of the County all ſuch Money as hath been levied and received by them, of the Church-wardens, *&c.* for the Relief of Priſons and Hoſpitals. *Dalt. Ca.* 28. *Lamb.* 125. By Statute, High *Conſtables* now Collect a general County Rate, made by the Juſtices in Seſſions, and aſſeſſed upon every Pariſh, *&c.* which the Church-wardens and Overſeers, out of the Money raiſed for the Poor, ſhall pay to them within thirty Days, or may be levied by Diſtreſs; and then they pay the ſame to the Treaſurers appointed, as the publick Stock for repairing Bridges, Gaols, Houſes of Correction, *&c.* Stat. 12 Geo. 2. cap. 29. The Authority of Petty *Conſtables*, in their ſeveral Towns, Tithings, and Boroughs, is generally the ſame as the High *Conſtables* hath in his Hundred: They are to keep the Peace in the Abſence of the High *Conſtable*; and aſſiſt him in making Preſentments at the Aſſizes and Quarter-Seſſions, of every Thing that is amiſs: They may command Affrayers to keep the Peace, and depart, *&c.* And may break into a Houſe to ſee the Peace kept; make freſh Purſuit into another County, *&c.* Alſo they may command all Perſons to aſſiſt them, to prevent a Breach of the Peace; juſtify Beating another if aſſaulted; and if they happen to be killed, doing their Duty, it will be taken to be premeditated Murder. They may, without Warrant from a Juſtice of Peace, take into Cuſtody any Perſons whom they ſee committing a Felony or Breach of the Peace; but if it be out of their Sight, as where a Perſon is ſeiſed by another, *&c.* they may not do it without a Warrant from a Juſtice. A *Conſtable* cannot detain a Man at his Pleaſure; but only ſtay him to bring him before a Juſtice, to be examined, *&c.* And this detaining of an Offender by the *Conſtable* may be for a Day, without Warrant, and be juſtified. *Dalt. c.* 1, 8. *Lamb.* 125. *H. P. C.* 135. 1 *Leon.* 307. *Moor* 408. If one abuſes a *Conſtable* in the Execution of his Office, he cannot commit him to Priſon, there to remain 'till puniſhed for the Offence; but muſt carry him before a Juſtice, who may commit him, *&c.* 2 *Danv. Abr.* 149. But 'tis ſaid, by the original Power in the *Conſtable*, he may for Breach of the Peace, and ſome other Miſdemeanors, leſs than Felony, impriſon a Man: And if an Offence be committed, for which a *Conſtable* may Arreſt, he may convey the Offenders to the Sheriff or his Gaoler; tho' the ſafeſt Way in all Caſes is to bring them to a Juſtice, to be bailed or committed, as the Caſe ſhall require. 2 *Hale's Hiſt. P. C.* 88, 90. The *Conſtable*'s Office being miniſterial and relative to the Juſtices of Peace, Coroners, Sheriffs, *&c.* their Precepts ought to be executed by him, or on Default he may be indicted and fined. *Ibid.* Petty *Conſtables* are to execute all Warrants of Juſtices, and not diſpute it where the Juſtice hath Juriſdiction, and the Warrant is lawful: And being ſworn Officers, they need not ſhew their Warrants when they come to arreſt any one. 10 *Rep.* 76. If any Juſtice ſends his Warrant to a *Conſtable*, *&c.* to bring a Perſon before him to anſwer all ſuch Matters as ſhall be objected againſt him by another, and doth not ſet forth the ſpecial Matter in the Warrant, the Warrant is unlawful, becauſe it doth not give the Offender Time and Opportunity to find Sureties: And the *Conſtable*, if he executes it, is liable to an Action of falſe Impriſonment. 2 *Inſt.* 521. So if a Juſtice of Peace ſends a Warrant to a *Conſtable* to take up one for Slaunder, *&c.* the Juſtices having no Juriſdiction, in ſuch Caſes, the *Conſtable* ought not to execute it. The *Conſtable* is the proper Officer to a Juſtice of Peace, and bound to execute his lawful Warrants; and therefore where a Statute authorizes a Juſtice to convict a Perſon of any Crime, and to levy the Penalty, *&c.* without ſaying to whom ſuch Warrant ſhall be directed, the *Conſtable* is the Officer to execute the Warrant, and muſt obey it. 5 *Mod.* 130. 1 *Salk.* 381. If a Warrant be directed to a *Conſtable* by Name, commanding him to execute it, tho' he is not compellable to go out of his own Pariſh, yet he may if he will, and execute it in any Place in the County, and ſhall be juſtified by the Warrant for ſo doing; but if the Warrant be directed to all *Conſtables*, *&c.* generally, no *Conſtable* can execute the ſame out of his Precinct. 1 *Salk.* 175. 3 *Salk.* 99. It is at the Election of a *Conſtable* to carry an Offender before any other Juſtice, than him who iſſued the Warrant; if the Warrant be not ſpecial, to bring the Offender before the Juſtice that granted it. 5 *Rep* 59. A *Conſtable* is not obliged to return a Juſtice's Warrant to the Juſtice, but may keep the ſame for his own Juſtification, in Caſe he ſhould be queſtion'd for his Acting; but he muſt give the Juſtice an Account of what he hath done upon it. 2 *Ld. Raym.* 1196. And by *Holt* Chief Juſtice, where the *Conſtable* returns Want of Diſtreſs upon a Warrant to diſtrain; the Juſtice ought to make a Record of it, and then give Judgment for corporal Puniſhment. *Ibid. Conſtables*, Headboroughs, *&c.* out of Purſe in their Offices, they and the Inhabitants may tax all Perſons chargeable by the 43 *El. c.* 2. as every Occupier of Land, *&c.* which Rate being confirmed by two Juſtices, the *Conſtables* may levy it by Diſtreſs and Sale of Goods. *Stat.* 13 & 14 *Car.* 2. A *Conſtable* by Warrant from a Juſtice of Peace, may ſell the Goods of an Offender apprehended, to diſcharge the Expence of carrying him to Priſon: If the Offender hath no Goods, then the Town where he was apprehended muſt be at the Expence, and the *Conſtable* with three or four of the principal Inhabitants, may impoſe a Tax on every Inhabitant, *&c.* which being allowed by a Juſtice, the *Conſtable* by his Warrant may levy it: And if the Inhabitants refuſe to make a Tax; two Juſtices may by Warrant compel them to do it. 3 *Jac.* 1. *c.* 10. *Conſtables* ſued may plead the General Iſſue, and give the ſpecial Matter in Evidence, for any Thing done in their Offices. 21 *Jac.* 1. *c.* 5. And if a *Conſtable* doth not his Duty, he may be indicted and fined by the Juſtices of Peace.

The *particular Duty of Conſtables*, is further as follows: They are not only to command *Affrayers* to depart, but call others to their Aſſiſtance to ſuppreſs Affrays; and they may put Affrayers in the Stocks, till they can convey them before a Juſtice, *&c. Dalt.* 33. *Lamb.* 135, 141. *Conſtables* are to levy the Penalties of Perſons keeping *Alehouſes* without Licence, ſelling leſs than Meaſure, *&c.* or forfeit 40 *s.* *&c.* 1 *Jac.* 1. They are to ſtop Perſons as go or ride unlawfully *armed*, in Terror of the People; take away their Arms and carry them before a Juſtice of Peace. *Dalt.* 338. To take up *Artificers* going out of the Kingdom, by Juſtice's Warrant. 5 *Geo.* 1. *Conſtables* ſhall levy Penalties on *Bakers*, making or ſelling Bread wanting Weight deficient in Goodneſs, *&c.* and ſelling large Bread at a higher Price than ſet by Mayors, *&c.* 1 *Geo.* 1. 3 *Geo.* 2. The *Conſtable* of a Pariſh is to apprehend Mothers of *Baſtard*-Children. *Dalt.* A *Conſtable* may with others called to his Aſſiſtance enter *Bawdy-Houſes*, and arreſt Perſons with lewd Women, for Breach of the Peace. *Mich.* 13 *Hen.* 7. The *Conſtable* and two moſt able Inhabitants in the Pariſh, are to make an Aſſeſſment for the Repairs of *Bridges*, to be allowed by Juſtices. 22 *H.* 8. The Forfeiture for mixing corrupt *Butter* with good, and opening Casks, *&c.* is leviable by *Conſtables.* 14 *Car.* 2. 4 & 5 *W.* & *M.* By a Juſtice's Warrant, *Conſtables* ſhall levy Penalties for uſing Cloth *Buttons*, *&c.* upon Clothes. 4 & 7 *Geo.* 1. *Conſtables* ſhall provide *Carriages* on the marching of Soldiers, by Virtue of a Juſtice of Peace's Warrant, being allow'd by the Officers 1 *s.* a Mile for a Waggon, *&c.* 3 *Geo.* 1. They may ſeiſe *Cattle* brought from *Ireland*, and cauſe them to be killed, and the Fleſh diſtributed among the Poor. 18 *Car.* 2. High

Conſtables may hear and determine Complaints of *Clothiers*, and their Work-people; Search for and ſeiſe Ropes, Engines, *&c.* for the ſtretching of Cloth: Spinſters, *&c.* imbezilling Wool from *Clothiers*, ſhall make Satisfaction, or be whipped by *Conſtables*, *&c.* and *Conſtables*, by Warrant of two Juſtices, may enter and ſearch Houſes of Clothiers for Ends and Refuſe of Yarn, which may not be worked up again, under Penalties leviable by the *Conſtables*; and they alſo levy by Diſtreſs the Forfeiture, for taking away Cloth from the Tenters, or Yarn, Wool, *&c.* left abroad to dry in the Night. 4 *E.* 4. 39 *Eliz.* 7 *Jac.* 1. 13 *Geo.* 1. 15 *Geo.* 2. Where *Coals* are ſold by Sacks not lawful Meaſure, *&c.* *Conſtables* ſhall levy the Forfeiture inflicted. 3 *Geo.* 2. Alſo the Penalty for ſelling Coals, at higher Price than appointed, by Juſtice's Warrant, *&c.* 11 *Geo.* 2. *Conſtables*, Headboroughs, *&c.* are to levy the Fines impoſed on thoſe who ſhall be preſent at unlawful *Conventicles*; and by Virtue of a Juſtice's Warrant may enter ſuch Places, break open Doors upon their being refuſed Entrance, and take into Cuſtody Perſons unlawfully aſſembled, *&c.* 22 *Car.* 2. To levy Penalties on *Curriers*, who do not curry Leather ſufficiently, or that neglect the ſame within certain Times. 1 *Jac.* 1. 12 *Geo.* 2. They are to be aſſiſting to all Perſons appointed by the King for the Collecting and Management of the *Cuſtoms*; and to Perſons having a Warrant from the Lord Treaſurer, *&c.* to make a Search for Goods which have not paid the Cuſtoms. 12 *&* 14 *Car.* 2. 9 *Geo.* 2. The Penalties on *Deer-ſtealers* are to be levied by *Conſtables*, by Virtue of a Juſtice's Warrant: And the Penalties are 20*l.* for hunting Deer in any Place encloſed; and 30*l.* for each Deer killed, *&c.* And they may enter any ſuſpected Place, and carry away Veniſon, Skins of Deer, Toils, *&c.* 13 *Car.* 2. 3 *&* 4 *W.* *&* *M.* By Juſtice's Warrant to levy the Penalty of *Diſtillers*, *&c.* ſelling Brandy, about the Streets, on any Bulks, or Sheds, *&c.* 6 *Geo.* 2. And *Conſtables*, and other Officers of the Peace, are to carry unlawful Retailers of Spirituous Liquors before a Juſtice, *&c.* and refuſing to be aiding in executing the Acts againſt *Diſtillers*, ſhall forfeit 20*l.* 11 *Geo.* 2. *Conſtables* are to aſſiſt Landlords in taking *Diſtreſſes* for Rent in Arrear; and in the Appraiſement of the Goods, Sale, *&c.* if the ſame are not replevied in five Days. 2 *W.* *&* *M.* They ſhall give Aſſiſtance to Searchers of *Dyed* Cloths, in entering and examining whether the Cloths or Stuffs are deceitfully dyed, *&c.* 13 *Geo.* 1. They are to levy the Penalty of 5*s.* on *Drunkards*, for the Uſe of the Poor; or ſhall forfeit 10*s.* 4 *Jac.* 1. *Conſtables* are to attend Officers of the *Exciſe*, and enter with them into Brew-houſes, private Houſes, *&c.* for Diſcovery of Frauds: And by Warrant from Juſtices, they are to levy the Penalties on Offenders againſt any Law of Exciſe, by Diſtreſs, *&c.* 12 *Car.* 2. and 7 *&* 8 *W.* 3. A *Conſtable* permitting a Felon to *eſcape*, before arreſted, is guilty of a Miſdemeanor, for which he may be indicted and fined; and if the Felon be actually in Cuſtody and then he voluntary permits him to eſcape, 'tis Felony in the *Conſtable*; but if the Eſcape be involuntary, it is only fineable: He may put a Felon in the Stocks, and lock him in; or put Irons upon him, or pinion him, to prevent an Eſcape. A *Conſtable* may diſcharge any Perſon arreſted on Suſpicion of Felony, where no Felony is actually committed. *Dalt.* 272. *Cro. El.* 202, 752. *Conſtables ex Officio* are to apprehend *Felons*, may call other Perſons to their Aſſiſtance therein, and apprehend any upon Suſpicion, and carry them before a Juſtice, *&c.* A *Conſtable*, upon Complaint or common Fame of a Felony, may ſearch ſuſpicious Houſes, both for the Felon and Goods ſtolen; and may juſtify breaking open a Houſe to take a Felon; and if the Felon fly, he is to make an Inventory of his Goods, ſend Hue and Cry, after him, *&c.* *Dalt.* 289, 340. 27 *Eliz.* *Conſtables* muſt levy the Penalty of 10*s.* for *fiſhing* in a River, without the Owner's Conſent; and ſearch for unlawful Nets, Engines, *&c.* Alſo levy Forfeitures for uſing Engines to deſtroy the Breed of Fiſh; and ſelling Sea-fiſh under certain Lengths. 22 *&* 23 *Car.* 2. 3 *Jac.* 1. 4 *&* 5 *Ann.* 1 *Geo.* 1. They are to give Aſſiſtance to Juſtices of the Peace, in removing *forcible Entries*, *&c.* or ſhall be committed and fined. 5 *R.* 2. To preſent *Foreſtallers* of Markets, Ingroſſers, *&c.* 5 *&* 6 *Ed.* 6. *Conſtables* are to carry Higlers, Chapmen, Victuallers, *&c.* before a Juſtice, who have in their Cuſtody any Hare, or other *Game*; and by a Juſtice's Warrant are to ſearch ſuſpected Houſes for Game, *&c.* They may carry Perſons, not qualified to kill Game, before a Juſtice, for keeping Grey-hounds, ſetting Dogs, *&c.* 4 *&* 5 *W.* *&* *M.* 5 *Ann.* 3 *Geo.* 1. They are to make a Search Monthly for *Gaming-houſes*, where unlawful Games ſhall be kept; and they may commit the Maſters of ſuch Houſes, and the Gameſters found therein: Though it is beſt to carry them before a Juſtice of Peace: *Conſtables* neglecting their Duties in this particular, forfeit 40*s.* They likewiſe levy Penalties on Perſons for playing at *unlawful Games*, Ace of Hearts, Pharaoh, *&c.* adjudg'd to be a Kind of Lotteries. 33 *Hen.* 8. 12 *Geo.* 2. If Gaolers refuſe to receive a Felon, the *Conſtable* may either ſecure the Priſoner in his Houſe, or carry him back to the Town where apprehended: And to defray the Charge of carrying him to *Gaol*, *&c.* *Conſtables* have Power to ſell the Offender's Goods, *&c.* or the ſame may be levied by a Tax. 10 *H.* 4. *Dalt.* 340. 3 *Jac.* 1. In *London* and *Weſtminſter* the *Conſtables*, &c. ſhall make a Search for *Gunpowder* in the Houſes of Perſons keeping a greater Quantity than allowed by Statute, and remove the ſame 5 *&* 11 *Geo.* 1. And they are to levy the Penalty for putting Gunpowder on board Ships, *&c.* above *Blackwall* in the River Thames. 5 *Geo.* 2. If any *Conſtable* refuſe to aſſiſt in putting the Laws in Execution againſt *Hawkers* and *Pedlars*, that travel without Licenſes, and are thereby liable to Penalties, he ſhall forfeit 40*s.* 8 *&* 9 *W.* 3. The Penalties for ſelling Truſſes of Hay, *&c.* under due Weight in the *Hay-market*, are leviable by *Conſtables.* 2 W. & M. *Conſtables* are to whip *Hedge-breakers*, *&c.* for not making Satisfaction ordered by a Juſtice: They may apprehend Perſons ſuſpected of Hedge-breaking, or of having in their Poſſeſſion any Underwood, Poles, Gates, Stiles, *&c.* and carry them before a Juſtice, *&c.* 43 *El.* 15 *Car.* 2. To be aiding and aſſiſting in putting the Acts in Execution relating to the repairing of the *Highways*; under the Penalty of 40*s.* And they are to return Liſts of Perſons qualified for the Office of Surveyor, to the Juſtices in their Seſſions on the 3d of *January* yearly, under the Penalty of 20*s.* 22 *Car.* 2. 3 *&* 4 *W.* *&* *M.* 1 *Geo.* 1. To levy the Penalty for privately conveying away *Hops*, to avoid paying Duty; and Forfeiture for adulterating Hops, *&c.* 9 *Ann.* 1 *Geo.* 1. 7 *Geo.* 2. *Conſtables* are to be aſſiſting in driving of Commons, Foreſts, *&c.* of *Horſes* and Cattle; on Pain of 40*s.* 32 *H.* 8. They are to make *Hue* and *Cry* after Offenders where a Felony or Robbery is committed: To call upon the Pariſhioners to aſſiſt in the Purſuit; and if the Criminal be not found in the Precinct of the firſt *Conſtable*, he is to give Notice to the next *Conſtable*, and he to the next, who are to do as the Firſt, and continue the Purſuit from Town to Town, and County to County, *&c.* 13 *Ed.* 1. 27 *Eliz.* Purſuers of the Hue and Cry may ſearch ſuſpected Houſes, and arreſt all ſuſpicious Perſons. And where Offenders are not taken, *Conſtables* ſhall levy the Tax to ſatisfy an Execution, on Recovery againſt a Hundred, and pay the ſame to the Sheriff, *&c.* and neglecting to make *Hue and Cry*, ſhall forfeit 5*l.* 8 *Geo.* 2. A *Conſtable* on Complaint is to cauſe an *Innkeeper* to be indicted and puniſhed, for refuſing to lodge a Traveller, or to provide him Victuals, &c. who offers to pay for the ſame. 10 *H* 7. *Conſtables* muſt give in to the Juſtices at *Michaelmas* Seſſions yearly, a Liſt of Perſons qualified to ſerve on *Juries*; and neglecting to return Liſts, incurs a Forfeiture of 5*l.* 7 & 8 *W.* 3. Theſe Liſts of Jurors, are to be made from the Rates of each Pariſh; and *Conſtables*, &c. wilfully omitting Perſons qualified, or inſerting wrong Perſons, ſhall forfeit 20*s.* 3 *Geo.* 2. In the Time of Harveſt, a *Conſtable* may ſet *Labourers*, Artificers, and ordinary Tradeſmen on Work, and put thoſe in the Stocks who refuſe. 5 *El.* To levy the Forfeiture for breaking down *Lamps*, ſet up in the Streets of *London*, by Virtue of a Juſtice's Warrant. 9 *Geo.* 2. *Conſtables* are to give their Aſſiſtance in collecting the *Land-Tax*; and take Diſtreſſes for it, &c. when refuſed Payment. 2 *W.* & *M.* By Warrant from Juſtices, *Conſtables* are to levy the Penalties and Forfeitures for ſelling inſufficient *Leather*, &c. 1 *Jac.* 1. They have Power to ſearch for bad *Malt*, and if they find any bad mingled with good, they may with the Advice of a Juſtice cauſe the ſame to be ſold at reaſonable Rates. 2 & 3 *Ed.* 6. And there are divers Penalties for making bad Malt, and Frauds concerning the Duty, leviable by *Conſtables*. 9 *W.* 3. 1 *Geo.* 1. 3 *Geo.* 2. *Conſtables* are to ſearch and examine if any Perſons uſe other *Meaſures* than ſuch as are *Wincheſter* Meaſure, and agreeable to the Standard. 22 *Car.* 2. By Warrant from the Lieutenancy, *Conſtables* are to commit Perſons to Gaol, refuſing to provide Arms for Horſe and Foot Soldiers, for the *Militia*, if no Diſtreſs can be taken. 13 & 14 *Car.* 2. *Night-walkers* of ill Fame, may be taken up by *Conſtables* and carried before a Juſtice of Peace, who may bind them to the Good Behaviour, &c. 13 *Ed.* 1. Robbers of *Orchards*, &c. ſhall be whipped, by Order of a Juſtice, by the *Conſtable* of the Place. 15 *Car.* 2. *Conſtables* may complain to and carry before a Juſtice of Peace, Perſons ſuſpected to be *Papiſts*. 3 *Jac.* 1. In the City of *London*, they are to be aſſiſting to the College of *Phyſicians*, &c. in putting their Laws in Execution. 14 *H.* 8. They may command and oblige Perſons infected with the *Plague*, to keep within their Houſes, &c. And are to levy Money appointed by Juſtices, for Relief of poor Perſons infected. 1 *Jac.* 1. *Conſtables* ſhall preſent *Popiſh Recuſants*, within their Liberties, &c. and certify to the Seſſions, ſuch Popiſh Recuſants convict, who within twenty Days after the Arrival at the Place of their Birth, give in their Names to the Parſon of the Pariſh: And neglecting, to forfeit 20*s.* 35 *Eliz.* 7 *Jac.* 1. To levy Money due for *Poſtage* of Letters, under 5*l* by Juſtice's Warrant. 9 *Ann.* They are at the Quarter-Seſſions to take *Preſentment* of all Things againſt the Peace, and belonging to their Offices, &c. The *Conſtables* ſhall levy a Tax on Pariſhes, for relieving poor *Pariſhioners*. 43 *Eliz.* *Conſtables* are to ſuppreſs *Riots*, and they may *ex Officio* commit Offenders, &c. 17 *R.* 2. And by 1 *Geo.* 1. Rioting, where twelve Rioters continue together an Hour after Proclamation, is made Felony. They are to make a Tax and Aſſeſſment by Warrant from two Juſtices, on the Inhabitants of their Pariſhes, where a *Robbery* on the Highway is committed in the Hundred. 17 *Eliz.* See 8 *Geo.* 2. *Conſtables* are to whip wandring *Rogues*, &c. by ſtripping them from he Middle upwards, and cauſing them to be laſhed ill their Bodies be bloody. 1 *Jac.* 1. The Penalies for ſelling *Salt* under Weight, &c. and not enering Salt-pits, are to be levied by *Conſtables*. 9 & 10 *W.* 3 7 *Geo.* 2. *Scavengers* Rates in *London* ſhall be made by *Conſtables* and Churchwardens, &c. and he *Conſtables* to levy Forfeitures for Defaults of cavengers in not carrying away Dirt, &c. 2 *W.* & *M.* 1 *Geo.* 1. *Conſtables* and two Houſholders of Towns, Pariſhes, &c. by an old Law were to give Teſtimonials to *Servants*; And Servants not procuring ſuch were not to be retained, but puniſhed as Vagrants. 5 *Eliz.* By Virtue of a Juſtice's Warrant *Conſtables* ſhall ſearch after Shoes, Leather, &c. imbezilled or pawned by Journeymen *Shoemakers* in *London*, who ſhall make Satisfaction, &c. 9 *Geo.* 1. *Conſtables* are to quarter *Soldiers* in Inns, Alehouſes, Victualling Houſes, &c. Refuſing to billet Soldiers, they are to be fined not exceeding 40*s.* nor leſs than 10*s.* and receiving any Reward to excuſe Quarterage; or if Victuallers, &c. refuſe Soldiers quartered, they ſhall forfeit not above 5*l.* nor under 40*s.* If they quarter the Wives, Children, or Servants of Officers or Soldiers, in any Houſe, without Conſent of the Owner, they forfeit 20*s.* The *Conſtables*, &c. ſhall give in Liſts to the Juſtices of the Houſes and Perſons obliged to quarter Soldiers, with their Names and Signs, and the Number of Officers and Soldiers billetted on them. 1 *Geo.* 1. 7 *Geo.* 1. *c.* 6. 3 *Geo.* 2. 15 *Geo.* 2. Perſons ſuſpected of Deſertion, may be taken up by *Conſtables*, and carried before a Juſtice: And 20*s.* Reward is given for taking up a Deſerter. They are to levy the Penalty of 5*s.* on Perſons reſorting to Wreſtling, Dancing, or other Sports on a *Sunday*; and on Perſons doing any worldly Labour on that Day, &c. Alſo 6*s.* 8*d.* on Butchers killing Meat; and 20*s.* upon Carriers, Drovers, &c. travelling on *Sunday*. 1 *Car.* 1. 29 *Car.* 2. On receiving a *Superſedeas* from another Juſtice, &c. *Conſtables* ſhall diſcharge a Perſon taken up by Warrant. *Dalt.* To levy the Penalty for prophane *Swearing*; which is 1*s.* for a Servant, Labourer, &c. and 2*s.* for others; and as the Crime is repeated, the Penalty is to be doubled. 6 & 7 *W.* 3. *Conſtables* ſhall levy the Penalty of 5*l.* on *Taylors* giving greater Wages than allowed; likewiſe the Wages of Journeymen by Diſtreſs, by a Juſtice's Warrant. 7 *Geo.* 1. By Warrant from two Juſtices, *Conſtables*, &c. are to levy ſmall *Tithes*, refuſed Payment, by Diſtreſs and Sale. 10 & 11 *W.* 3. *Conſtables*, on Information, are to deſtroy *Tobacco* planted contrary to the Stat. 22 & 23 *Car.* 2. or be liable to a Forfeiture of 5*s.* for every Rod not deſtroyed: And upon Warrant to make Search, and preſent Offences of planting Tobacco, &c. 17 *Car.* 2. 22 & 23 *Car.* 2. To execute Warrants of Commiſſioners for *Turnpikes*; and levy the Penalty for paſſing thro' them without paying the Toll, &c. 8 *Geo.* 2. 14 *Geo.* 2. *Conſtables*, &c. are to apprehend *Vagrants*, and carry them before a Juſtice; and to convey them by the Juſtice's Paſs and Certificate, to their Place of Birth or Settlement, &c. being paid the Allowances mentioned in the Certificates: They are to pay 10*s.* to any Perſon apprehending a Vagrant by Order of Juſtices, which is to be repaid by the High *Conſtable*, &c. and refuſing to pay it ſhall forfeit 20*s.* Vagabonds lodging in Houſes or Barns, are alſo to be apprehended by *Conſtables*, &c. And if they refuſe, or neglect to do their Duty, they ſhall forfeit not above 5*l.* nor leſs than 40*s* by 13 *Geo.* 2. *Conſtables* of Towns, ſhall ſee that Night *Watches* be kept, from Sun-ſetting to Sun-riſing, who muſt be able Perſons, Inhabitants of the Place, and watch by Turns; and not doing it, may put them in the Stocks, &c. 13 *Ed* 1. And *Conſtables* in the large Pariſhes of *Weſtminſter* are twice or oftener in every Night to go their Rounds, and ſee that the Watch do their Duty, and uſe Endeavours to prevent Fires, Murders, Robberies, &c. and apprehend Malefactors, and Perſons ſuſpected. 9 & 10 *Geo.* 2. They are to execute all *Warrants* of Juſtices, being lawful, and not out of the Juſtice's Juriſdiction. 14 *H.* 8. *Conſtables* being Head Officers of Places, ſhall have in their Cuſtody ſealed *Weights*, &c. under Penalties: Perſons buying or ſelling by falſe Weights or Meaſures, forfeit 5*s.* leviable by *Conſtables*. 8 *H.* 6. 17 *Car.* 1. And *Conſtables* are to call together Aſſiſtance to ſave Ships from *Wreck*; and no Perſons ſhall enter any ſuch Ships, without leave from the Commander, *Conſtable*, &c. 12 *Ann. cap.* 18.

Conſtables of London, (which City is divided into twenty-ſix Wards, and every Ward into the like Number of Precincts, in each whereof is a *Conſtable*) are nominated by the Inhabitants of each Precinct on St. *Thomas*'s Day, and confirmed, or otherwiſe at the Court of Wardmote; and after they are confirmed, they are ſworn in their Offices at a Court of Aldermen, on the next *Monday* after Twelfth Day. The Subſtance of their Oath is, to keep the King's Peace to the utmoſt of their Power; to arreſt Affrayers, Rioters, and ſuch as make Conteſts to the Breach of the Peace, and carry them to the Houſe of Correction or Compter of one of the Sheriffs; and in Caſe of Reſiſtance, to make Outcry on them, and purſue them from Street to Street, and from Ward to Ward, till they are arreſted: To ſearch for common Nuſances, in their reſpective Wards, being required by Scavengers, &c. and upon Requeſt to aſſiſt the Beadle and Raker in collecting their Salaries and Quarterage; to preſent to the Lord Mayor and Miniſters of the City, Defaults relating to the Ordinances of the City; to certify once a Month into the Mayor's Court, the Names and Surnames of all Freemen deceaſed; and alſo of the Children of ſuch Freemen, being Orphans: And by the Articles of the Wardmote Inqueſt, *Conſtables* are to certify the Names, Surname, Place of Dwelling, Poſſeſſion and Trade of every Perſon, who ſhall newly come to inhabit in their Precincts, and to keep a Roll thereof; in order to which, they are to make Inquiry at leaſt once a Month into what Perſons are come to lodge and ſojourn there, and if they find by their own Confeſſions, or the Record of the Aldermens Books, that ſuch new Comers are ejected from any other Ward for bad living, or any Miſdemeanor, and refuſe to find Sureties for their good Behaviour, Warning is to be given to them and their Landlords, that they depart; and on Refuſal, they may be impriſoned, and the Landlords fined a Year's Rent agreed for by ſuch new Comers. *Calth. Rep.* 129, 138. *Conſtables of London* in each Ward are to attend the Watch by Turns, and go the Rounds; and with the Beadles every Night are to warn ſuch Perſons as are to ſerve upon the Watch in their ſeveral Precincts; and if they refuſe to appear, the *Conſtable* may hire others in their Stead, and they ſhall pay him according to the Cuſtom of the City: But the Common Council appoint the Watchmen. Watchmen are to apprehend Night-walkers, Vagabonds, Perſons going armed, &c. and may arreſt Strangers in the Night, and carry them before the *Conſtable* to be examined, and finding Cauſe of Suſpicion ſecure them till the Morning; and whether they are Horſemen or Footmen, or Drivers of Carriages, or Perſons that carry Burdens, the Watch may ſtay them till the Morning, unleſs they can render a good Account of themſelves, their Company, and Carriage, &c. And *Conſtables*, &c. are to be aiding and aſſiſting to the Watch; and the Watchmen are to obey their Orders, in conveying Offenders to the Compter, which is the common Priſon for Offenders for the Breach of the Peace, till they are examined, and puniſhed by the Lord Mayor, &c. But *Conſtables* ought to be careful whom they ſend to the Compter, for fear of Action for falſe Impriſonment; Proſecution for Damages, &c. If any will not obey the Arreſt of the Watch, they may make Hue and Cry after them; and for ſuch Arreſt of a Stranger, (eſpecially one ſuſpected) none is liable to Puniſhment. *Dalt.* 240. The Court of Common Council are to meet the firſt of *October* yearly, and order a proper Number of Watchmen, Beadles and Nightly *Conſtables* for the City of *London* and Liberties, and determine Sums to be levied to bear the Charge thereof upon each Ward; and for raiſing Money, the Aldermen and Common Council-men of Wards, ſhall make a Rate and Aſſeſſment upon the Inhabitants, leviable by Diſtreſs; and ſhall appoint their Watchmen, ſet down in Writing their Stands, and Number of Rounds, and make Orders for regulating the Watch, &c. *Conſtables* to keep Watch and Ward, from the 10th of *Sept.* to the 10th of *March*, from 9 in the Evening, till 7 the next Morning, and from 10th of *March* to 10th of *September*, from 10 in the Evening till 5 next Morning. The *Conſtables* ſhall uſe their beſt Endeavours, for preventing Fires, Robberies and Diſorders, and arreſt Malefactors; and go twice or oftener about their Wards, in every Night; and the Watchmen are to apprehend all ſuſpected Perſons, &c. and deliver them to the *Conſtable* of the Night, who ſhall carry them before a Juſtice of Peace; *Conſtables* misbehaving themſelves, to forfeit 20*s.* and the Lord Mayor, or two Juſtices for the City, may hear and determine Offences, and levy Penalties by Diſtreſs and Sale of Goods, &c. Stat. 10 *Geo.* 2. *c.* 22. *Conſtables* are to certify to the Lord Mayor, and Common Council of the City, the Names of all ſuch Perſons as ſhall interrupt them in the Diſcharge of their Offices: And a *Conſtable of London* has Power to execute Warrants, &c. throughout the whole City, upon Occaſion. Such as are choſen into the Office are obliged to place the King's Arms, and the Arms of the City over their Doors; and if they reſide in Alleys, at the End of ſuch Alleys, towards the Streets; to ſignify that a *Conſtable* lives there, and that they may be the more eaſily found when wanted. See *Comp. Pariſh Officer*, 6 *Edit. p.* 7, 8, &c.

Conſtat, (*Lat.*) Is the Name of a Certificate, which the Clerk of the Pipe, and Auditors of the *Exchequer*, make at the Requeſt of any Perſon who intends to plead or move in that Court, for the Diſcharge of any Thing: And the Effect of it is the Certifying what does *Conſtare* upon *Record*, touching the Matter in Queſtion. 3 & 4 *Ed.* 6. *c.* 4. and 13 *Eliz. cap.* 6. A *Conſtat* is held to be ſuperior to an Ordinary *Certificate*, becauſe it contains nothing but what is evident on Record. And the Exemplification under the Great Seal, of the Inrolment of any Letters Patent, is called a *Conſtat.* Co. Litt. 225.

Conſuetudinarius, A Ritual or Book, containing the Rites and Forms of Divine Offices, or the Cuſtoms of Abbeys and Monaſteries: 'Tis mentioned in *Brompton.*

Conſuetudinibus & Servitiis, Is a Writ of Right Cloſe, which lies againſt the Tenant that deforceth his Lord of the Rent or Service due to him. *Reg. Orig.* 159. *F. N. B.* 151. When the Writ is brought by the Party in the Right only, he ſhall count of the Seiſin of his Anceſtor, and the Writ be in the *Debet*; but when he counts of his own Seiſin, then the Writ is in the *Debet & ſolet*, &c. And if the Party ſay in the Writ *ut in Redditibus & Arreragiis*, theſe Words prove that the Demandant himſelf was ſeiſed of the Services; and then if he count in ſuch Writ of Seiſin of his Anceſtors, and not of his own Seiſin, the Writ ſhall abate: So that if he will bring a Writ of Cuſtoms and Services of the Seiſin of his Anceſtors, he ought to leave theſe Words *ut in Redditibus*, &c. out of the Writ. Where a Perſon brings a Writ of Cuſtoms and Services againſt any Tenant, and by Count demands Homage, the Writ ought to make ſpecial Mention thereof; as *ut in Homagio*, &c. or the Writ will abate. *New Nat. Brev.* 338. If this Writ be brought againſt Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, &c. The Writ, which is returnable in the Common Pleas, runs thus:

GEORGE *the Second*, *&c.* *To the Sheriff of* S. *Greeting: Command* A. B. *that*, &c. *he do to* C. D. *the* Cuſtoms and Services *which to him he ought to do, for his free Tenement, that of him he holdeth in*, &c. *as in Rents, Arrearages, and other Things:* Or, *in Homage, Reliefs*, &c. Or *Suits of Court, and other*, &c. *unleſs*, &c.

Conſulta Eccleſia, A Church full, or provided for, according to *Cowel.*

Conſultation, (*Conſultatio*) Is a Writ whereby a Cauſe being removed by Prohibition from the Eccleſiaſtical Court, to the King's Court, is returned thither again; for if the Judges of the King's Court, upon comparing the Libel with the Suggeſtion of the Party, find the Suggeſtion falſe, or not proved, and therefore the Cauſe to be wrongfully called from the Eccleſiaſtical Court, then upon this *Conſultation* or Deliberation they decree it to be returned; whereupon the Writ in this Caſe obtained is called a *Conſultation. Reg. Orig.* 44, *&c.* Statute of *Writ of Conſultations*, 24 *Ed.* 1. This Writ is in Nature of a *Procedendo*; but properly a *Conſultation* ought not to be granted, but in Caſe where a Man cannot recover at the Common Law, in the King's Courts. *New Nat. Br.* 119. Cauſes of which the Eccleſiaſtical or Spiritual Courts have Juriſdiction, are of Adminiſtrations, Admiſſions of Clerks, Adultery, Appeals in Eccleſiaſtical Cauſes, Apoſtacy, General Baſtardy, Blaſphemy, Solicitation of Chaſtity, Dilapidations and Church Repairs, Celebration of Divine Service, Divorces, Fornication, Hereſy, Inceſt, Inſtitution of Clerks, Marriage Rites, Oblations, Obventions, Ordinations, Commutation of Penance, Penſions, Procurations, Schiſm, Simony, Tithes, Probate of Wills, *&c.* and where a Suit is in the Eccleſiaſtical Court, for any of theſe Cauſes, or the like, and not mixed with any Temporal Thing; if a Suggeſtion is made for a Prohibition, a *Conſultation* ſhall be awarded. 5 *Rep.* 9. To move for a Prohibition in another Court, after Motion in the Chancery, *&c.* on the ſame Libel which is granted, is merely vexatious, for which a *Conſultation* ſhall be had. *Cro. Eliz.* 277. Where a *Conſultation* is granted upon the Right of the Thing in Queſtion, there a new Prohibition ſhall never be granted on the ſame Libel; but where granted upon any Default of the Prohibition, in Form, *&c.* there a Prohibition may be granted upon the ſame Libel again. 1 *Nelſ. Abr.* 485. A *Conſultation* muſt be purſuant to the Libel, *&c. Vide* Prohibition.

Conſul, (*Lat.*) In our Law Books ſignifies an Earl. *Bract. lib.* 1. *cap.* 8. tells us, that as *Comes* is derived from *Comitatu*, ſo *Conſul* is derived from *Conſulendo*; and in the Laws of *Edward the Confeſſor*, Mention is made of *Vicecomites* and *Viceconſules*. Blount. *Conſuls* among the *Romans*, were chief Officers, of which two were yearly choſen, to govern the City of *Rome:* But this Government of *Rome* has long ſince been abrogated. Our *Conſuls* abroad take Care of the Affairs and Intereſts of Merchants, in foreign Kingdoms where they are appointed by the King; as at *Liſbon*, *&c.*

Contempt, (*Contemptus*) Is a Diſobedience to the Rules and Orders of a Court, which hath Power to puniſh ſuch Offence: And one may be impriſoned for a *Contempt* done in Court; but not for a *Contempt* out of Court, or a private Abuſe. *Cro. Eliz.* 689. Attachment alſo lies againſt one for *Contempt* to the Court, to bring in the Offender to anſwer on Interrogatories, *&c.* and if he cannot acquit himſelf, he ſhall be fined. 1 *Lill.* 305. If a Sheriff being required to return a Writ directed to him, doth not return the Writ, it is a *Contempt:* And this Word is uſed for a kind of Miſdemeanor, by doing what one is forbidden; or not doing what he is commanded. 12 *Rep.* 36. And as this is ſometimes a greater, and ſometimes a leſſer Offence; ſo it is puniſhed with greater or leſs Puniſhment, by Fine, and ſometimes Impriſonment. *Dyer* 177, 128. 1 *Bulſt.* 85. See *Attachment.*

Contenement, (*Contenementum*) Is ſaid to ſignify a Man's Countenance or Credit, which he hath together with, and by Reaſon of his Freehold: In which Senſe, it is uſed in the Statute of 1 *Ed.* 3. and other Statutes: And *Spelman* in his *Gloſſary* ſays, Contenementum *eſt Æſtimatio & Conditionis forma, qua quis in Repub. ſubſiſtit.* But *Contenement* is more properly that which is neceſſary for the Support and Maintenance of Men, agreeable to their ſeveral Qualities, or States of Life: And ſeems to be Freehold Land, which lieth to a Man's Tenement, or Dwelling Houſe, that is in his own Occupation. For by *Magna Charta*, *cap.* 14. it is enacted, that á Freeman ſhall not be amerced, but *ſecundum magnitudinem delicti, ſalvo ſibi* Contenemento *ſuo*; *& Mercator eodem modo, ſalva Merchandiſa*; *& villanus ſalvo Wainagio*; that is, as *Glanvil* tells us, he ſhould be amerced, *ſecundum quantitatem feodorum ſuorum, & ſecundum facultates, ne nimis gravari inde videantur vel ſuum* Contenementum *amittere.* Lib. 9. c. 8.

Contingent Uſe, Is a *Uſe* limited in a Conveyance of Land, which may, or may not happen to veſt, according to the *Contingency* expreſſed in the Limitation of ſuch *Uſe:* A *Uſe* in *Contingency* is ſuch which by Poſſibility may happen in Poſſeſſion, Reverſion or Remainder. 1 *Rep.* 121. A *Contingent Remainder* is where an Eſtate is limited to take Place *in futuro*, upon an uncertain Event; as where a particular Eſtate which doth ſupport a Remainder, may or may not determine before the Remainder may commence. 10 *Rep.* 85. A Remainder *Contingent* is ſaid to be an Eſtate veſted; but on ſuch Remainder in executory Deviſes, the Eſtate deſcends till the *Contingency* happens, and nothing is veſted till then. 1 *Vent.* 189.

Continual Claim, Is a *Claim* made from Time to Time, within every Year and Day, to Land, or other Thing, which in ſome Reſpect we cannot attain without Danger: As if a Perſon be diſſeiſed of Land, into which though he hath a Right of Entry, he dare not enter for fear of Beating, *&c.* it behoves him to hold on his Right of Entry at his beſt Opportunity, by approaching as near it as he can, once a Year, as long as he lives, and to ſave the Right of Entry to his Heir. *Lit. lib.* 3. *cap.* 7. *Continual Claim* is where it is made, and repeated yearly, ſo as to be within a Year and a Day before the Death of him that hath the Lands; and if after he dies ſeiſed, ſo that his Heir is in by Diſcent, yet he that makes the *Claim* may enter. *&c.* but if no *Claim* be made, then the Entry of the Perſon diſſeiſed, *&c.* is taken away. 32 *H.* 8. *cap.* 33. Tho' by the Statute the Diſſeiſor is to have peaceable Poſſeſſion five Years, without Entry or *Continual Claim*, for a Diſcent on his Death, to take away the Entry of the Diſſeiſee, or his Heir; after the five Years, the Diſſeiſee is to make *Continual Claim*, as before the Statute: The Feoffee of a Diſſeiſor, Abators, *&c.* are out of the Statute. As to this *Claim*, tho' the Tenant die within the Year and Day, and it be but once made, it ſhall preſerve the Entry of him that maketh it; And if the Anceſtor claim, and the Diſſeiſor die, and then the Anceſtor dieth, now his Heir may enter: But if an Anceſtor or Predeceſſor make a *Continual Claim*, and dieth, and the Son or Succeſſor make no *Continual Claim*, and within the Year and Day after the *Claim* made by the Anceſtor, the Diſſeiſor dies; this ſhall take away the Entry of the Son or Succeſſor, for the Diſcent was caſt in his Time. *Co. Litt.* 250, 251. If there be Tenant for Life, Remainder for Life, the Remainder in Fee, and the Tenant for Life alien in Fee; if he in Remainder for Life maketh *Continual Claim*, before the Dying ſeiſed of the Alienee, and after the Alienee die ſeiſed, and after that the Remainder-Man for Life dieth before any Entry made by him: In this Caſe he in Remainder in Fee ſhall have Benefit by the *Claim* of Tenant for Life, and he may enter upon the Heir of the Alienee, *&c. Lit. Sect.* 416. This *Claim* ſhall not avoid a Diſcent, unleſs it be made by him that hath Title to enter, and in whoſe Life the Dying ſeiſed was: And ſo it is for the *Continual Claim* of a Tenant for Life, to give him in Remainder Advantage, except the Diſſeiſor, *&c.* die in the Life time of Tenant for Life. *Co. Lit.* 250.

Continuance, Is the Continuing of a Cauſe in Court, by an Entry upon the Records there for that Purpoſe. There is a *Continuance* of the *Aſſiſe, &c.* And *Continuance* of a *Writ* or *Action* is from one Term to another, in Caſe where the Sheriff hath not returned a former Writ, iſſued out in the ſaid Action. *Kitch.* 262. *Continuances* and Eſſoins are amendable upon the Roll, at any Time before Judgment: They are the Acts of the Court, and at Common Law they may amend their own Acts before Judgment, though in another Term; but their Judgments are only amendable in the ſame Term wherein they are given. 3 *Lev.* 431. Upon an Original, a Term or two or three Terms, may be meſne between the Teſte and the Return; and this ſhall be a good *Continuance*; for the Defendant is not at any Prejudice by it, and the Plaintiff may give a Day to the Defendant beyond the common Day if he will: But a *Continuance* by *Capias* ought to be made from Term to Term, and there cannot be any meſne Term, becauſe the Defendant ought not to ſtay ſo long in Priſon. 2 *Danv. Abr.* 150. If a Man recovers upon Demurrer, or by Default, *&c.* and a Writ of Inquiry of Damages is awarded, there ought to be *Continuances* between the firſt and ſecond Judgment, otherwiſe it will be a Diſcontinuance; for the firſt is but an Award, and not compleat 'till the ſecond Judgment upon the Return of the Writ of Inquiry of Damages. *Ibid.* 153. If the Plaintiff be nonſuit, by which the Defendant is to recover Coſts; if the Plaintiff will not enter his *Continuances*, on Purpoſe to ſave the Coſts, the Defendant ſhall be ſuffered to enter them. *Cro. Jac.* 316, 317. The Courſe of the Court of King's Bench is to enter no *Continuance* upon the Roll, 'till after Iſſue or Demurrer; and then to enter the *Continuance* of all upon the Back, before Judgment: And if it is not entered, it is Error. *Trin.* 16 *Jac. B. R.* Vide *Diſcontinuance.*

Continuando, Is a Word uſed in a ſpecial Declaration of Treſpaſs, when the Plaintiff would recover Damages for ſeveral Treſpaſſes in the ſame Action: And to avoid Multiplicity of Suits, a Man may in one Action of Treſpaſs recover Damages for many Treſpaſſes, laying the firſt to be done with a *Continuando* to the whole Time, in which the Reſt of the Treſpaſſes were done; which is in this Form, Continuando *Tranſgreſſionem prædictam, &c. a prædicto die, &c. uſque talem Diem*, including the laſt Treſpaſs. *Terms de Ley* 173. In Treſpaſs with a *Continuando* of divers Things, though of ſome of thoſe Things there could be no *Continuando*; yet it ſhall be good for thoſe Things for which the *Continuando* could be, and not for the others: But if the *Continuando* had been particularly of ſuch Things whereof a *Continuando* could not be, then it had been naught. 3 *Lev.* 94. Every Day's Treſpaſs is ſaid to be a ſeveral Treſpaſs; though a *Continuando* may not be of Men's continuing a Treſpaſs Day and Night, for ſome Time together; for Mankind muſt take ſome Reſt: Where Cattle do Treſpaſs upon Ground, they are continually treſpaſſing Night and Day, and therefore the *Continuando* in that Caſe is good. 1 *Lill. Abr.* 307. Treſpaſs for Breaking an Houſe with a *Continuando*, is good; and until a Re-entry is made, the Continuation of the Poſſeſſion is a Continuing of the Treſpaſs. *Lutw.* 1312. It is uſual in Practice to lay the *Continuando* for longer Time than you can prove; but Damages ſhall be given only for what can be proved. 2 *Mod.* 253.

Contraband Goods, (from *Contra*, and the Ital. *Bando*, an Edict or Proclamation) Are thoſe which are prohibited by Act of Parliament, or the King's Proclamation to be imported into, or exported out of this into any other Nation: As during the late War with *France, French* Wines, *&c.* were prohibited by Statute to be imported here from thence: And Wool, *&c.* is not to be exported from hence to other Kingdoms. *Stat.* 27 *E.* 3. *c.* 3. 13 *&* 14. *Car.* 2. 7 *&* 8 *W.* 3. *&c.*

Contracauſator, A Criminal, or one proſecuted for a Crime: This Word is mentioned in *Leg. H.* 1. *cap.* 61.

Contract, (*Contractus*) Is a Covenant or Agreement between Two or more Perſons, with a lawful Conſideration or Cauſe. *Weſt. Symb. part* 1. As if a Man ſells his Horſe or other Thing to another, for a Sum of Money; or covenants, in Conſideration of 20*l.* to make him a Leaſe of a Farm, *&c.* theſe are good *Contracts*, becauſe there is a *Quid pro quo*, or one Thing for another: But if a Perſon make a Promiſe to me, that I ſhall have 20*s.* and that he will be Debtor to me therefore, and after I demand the 20*s.* and he will not give it me, yet I ſhall never have any Action to recover this 20*s.* becauſe this Promiſe was no *Contract*, but a bare Promiſe, or *Nudum Pactum*; though if any Thing were given for the 20*s.* if it were but to the Value of a Penny, then it had been a good *Contract*. Every *Contract* doth imply in itſelf an *Aſſumpſit* in Law, to perform the ſame; for a *Contract* would be to no Purpoſe, if there were not Means to enforce the Performance thereof. 1 *Lill. Abr.* 308. Where an Action is brought upon a *Contract*, and the Plaintiff miſtakes the Sum agreed upon, he will fail in his Action: But if he brings his Action on the Promiſe in Law, which ariſes from the Debt, there, altho' he miſtakes the Sum, he ſhall recover. *Aleyn* 29. There is a Diverſity where a Day of Payment is limited on a *Contract*, and where not; for where it is limited, the *Contract* is good preſently, and an Action lies upon it, without Payment; but in the other not: If a Man buys 20 Yards of Cloth, *&c.* the *Contract* is void, if he do not pay the Money preſently; but if Day of Payment be given, there the One may have an Action for the Money, and the other Trover for the Cloth. *Dyer* 30, 293. Where a Seller ſays to a Buyer, he will ſell his Horſe for ſo much, and the Buyer ſays he will give it; if he preſently tell out the Money, it is a *Contract*; but if he do not, it is no *Contract. Noy's Max.* 87. *Hob.* 41. The Property of any Thing ſold is in the Buyer immediately by the *Contract*; though regularly it muſt be delivered to the Buyer, before the Seller can bring his Action for the Money. *Noy* 88. If one contract to buy a Horſe or other Thing of me, and no Money is paid, or Earneſt given, nor Day ſet for Payment thereof, nor the Thing delivered; in theſe Caſes, no Action will lie for the Money, or the Thing ſold, but it may be ſold to another. *Plowd.* 309, 128. All *Contracts* are to be certain, perfect, and compleat: For an Agreement to give ſo much for a Thing as it ſhall be reaſonably worth, is void for Incertainty; ſo a Promiſe to pay Money in a ſhort Time, *&c.* or to give ſo much, if he likes the Thing when he ſees it. *Dyer* 91. 1 *Bul.* 92. But if I *contract* with another to give him 10*l.* for ſuch a Thing, if I like it on ſeeing the ſame; this Bargain is ſaid to be perfect at my Pleaſure: Though I may not take the Thing before I have paid the Money; if I do, the Seller may have Treſpaſs againſt me; and if he ſell it to another, I may bring Action of the Caſe againſt him. *Noy* 104. If a *Contract* be to have for Cattle ſold 10*l.* If the Buyer do a certain Thing, or elſe to have 20*l.* it is a good *Contract*, and certain enough: And if I agree with a Perſon to give him ſo much for his Horſe, as *J. S.* ſhall judge him to be worth, when he hath judged it, the *Contract* is compleat, and an Action will lie on it; and the Buyer ſhall have a reaſonable Time to demand the Judgment of *J. S.* But if he dies before his Judgment is given, the *Contract* is determined. *Perk. Sect.* 112, 114. *Shep. Abr.* 294. In *Contracts*, the Time is to be regarded, in and from which the *Contract* is made: The Words ſhall be taken in the common and uſual Senſe, as they are taken in that Place where ſpoken; and the Law doth not ſo much look upon the Form of Words, as on the Subſtance and Mind of the Parties therein. 5 *Rep.* 83. 1 *Bulſt.* 175. A *Contract* for Goods may be made as well by Word of Mouth, as by Deed in Writing; and where it is in Writing only, not ſealed and delivered, it is all one as by Word. But if the *Contract* be by Writing ſealed and delivered, and ſo turned into a Deed; then it is of another Nature, and in this Caſe generally the Action on the verbal Contract is gone, and ſome other Action lies for Breach thereof. *Plowd.* 130, 309. *Dyer* 90. *Contracts*, not to be performed in a Year, are to be in Writing, ſigned by the Party, *&c.* or no Action may be brought on them: But if no Day is ſet, or the Time is uncertain, they may be good without it. *Stat.* 29 *Car.* 2. *c.* 3. And by the ſame Statute, no *Contract* for the Sale of Goods for 10*l.* or upwards, ſhall be good, unleſs the Buyer receive Part of the Goods ſold; or gives ſomething in Earneſt to bind the *Contract*; or ſome Note thereof be made in Writing, ſigned by the Perſon charged with the *Contract*, *&c.* If two Perſons come to a Draper, and one ſays, let this Man have ſo much Cloth, and I'll ſee you paid; there the Sale is to the Undertaker only, tho' Delivery is to another by his Appointment: But if a *Contract* be made with *A. B.* and the Vendor ſcruples to let the Goods go without Money, and *C. D.* comes to him and deſires him to let *A. B.* have the Goods, and undertakes that he ſhall pay him for them, that will be a Promiſe within the Statute 29 *Car.* 2. and ought to be in Writing. *Mod. Caſ.* 249. A *Contract* made and entered into upon good Conſideration, may for good Conſiderations be diſſolved. See *Agreement* and *Sale*. *Uſurious Contracts*, vide *Uſury*.

Contrafaction, (*Contrafactio*) A Counterfeiting; as Contrafactio *ſigilli Regis*, Counterfeiting the King's Seal. *Blount.*

Contra formam Collationis, Is a Writ that lay where a Man had given Lands in perpetual Alms, to any late Houſes of Religion, as to an Abbot and Convent, or to the Warden or Maſter of any Hoſpital and his Convent, to find certain poor Men with Neceſſaries, and do Divine Service, *&c.* If they aliened the Land, to the Diſheriſon of the Houſe and Church, then the Donor, or his Heirs, ſhould bring this Writ to recover the Lands. It was had againſt the Abbot, or his Succeſſor; not againſt the Alienee, though he were Tenant of the Land: And was founded upon the Statute of *Weſt.* 2. *c.* 1. Reg. Orig. 238. F. N. B. 210.

Contra formam Feoffamenti, A Writ that lies for the Heir of a Tenant enfeoffed of certain Lands or Tenements, by Charter of Feoffment from a Lord to make certain Services and Suits to his Court, who is afterwards diſtrained for more Services than are mentioned in the Charter. *Reg. Orig.* 176. *Old Nat. Br.* 162.

Contra formam Statuti, Is the uſual Concluſion of every Indictment, *&c.* laid on an Offence created by Statute.

Contramandatio Placiti, Signifies a reſpiting or giving a Defendant further Time to anſwer; or a Countermand of what was formerly ordered. *Leg. H.* 1. *c.* 59.

Contramandatum, Is ſaid to be a lawful Excuſe which the Defendant in a Suit by Attorney alledgeth for himſelf, to ſhew that the Plaintiff hath no Cauſe of Complaint. *Blount.*

Contrapoſitio, A Plea or Anſwer.——*Si quis in Placito per Juſtitiam poſito ſui vel ſuorum cauſam injuſtis Conterminationibus vel* Contrapoſitionibus *diſforciet, banc perdat.* Leg. Hen. 1. c. 34.

Contrarients. In the Reign of King *Edw.* 2 *Thomas* Earl of *Lancaſter* taking Part with the *Barons* aginſt the King, it was not thought fit, in Reſpect of their great Power, to call them Rebels or Traitors, but *Contrarients:* And hence we have a Record of thoſe Times, called *Rotulum Contrarienſium.*

Contratenere, To with-hold. *Si quis Decimas* contretenear. *Leg. Alfredi apud Bromptom, c.* 9.

Contribules, *Contribunales*, Kindred or Couſins. *Lamb. pag.* 75.

Contribution, (*Contributio*) Is where every one pays his Share, or *contributes* his Part to any Thing. One Parcener ſhall have *Contribution* againſt another; one Heir have *Contribution* againſt another Heir, in equal Degree: And one Purchaſer have *Contribution* againſt another. Alſo Conuſors in a Statute ſhall be equally charged, and not one of them ſolely extended. 3 *Rep.* 12, 13, *&c.* On a Statute or Recogniſance, there is a *Contribution* and Stay till the full Age of the Heir, *&c.* and this doth extend to the Leſſee for Life or Years of the Conuſor, who has Part of the Land liable, and the Heir within Age the Reſidue: For the Land of every one of them ought to be charged equally, becauſe the whole is liable to the Judgment; and this cannot be, if during the Nonage, the Burden ſhall fall upon one only. *Jenk. Cent.* 36. If Lands are mortgaged, and then deviſed to one Perſon for Life, with Remainder to another; both Deviſees ſhall make *Contribution* to Payment of the Mortgage-Money. *Chan. Caſ.* 224, 271. Where Goods are caſt into the Sea, for the Safe-guard of a Ship, or other Goods, *&c.* aboard, in a Tempeſt; there is a *Contribution* among Merchants, towards the Loſs of the Owners. 32 *H.* 8. *c.* 14. And where a Robbery is committed on the Highway, and Damages are recovered againſt one or a few Perſons, in Action againſt the Hundred, the Reſt of the Inhabitants ſhall make *Contribution* to the ſame. 27 *Eliz. c.* 13.

Contributione facienda, Is a Writ that lieth where there are Tenants in Common, that are bound to do one Thing, and one is put to the whole Burden; or who jointly hold a Mill *pro Indiviſo*, and take the Profits equally, and the Mill falling into Decay, one of them will not repair the Mill; now the other ſhall have a Writ to compel him to *contribute* to the Reparations. And if there be three Coparceners of Land, that owe Suit to the Lord's Court, and the eldeſt performs the Whole; then may ſhe have this Writ to compel the other to make their Contribution. So where one Suit is required for Land, and that Land being ſold to divers Perſons, Suit is demanded of them all, or ſome of them by Diſtreſs, as entirely as if all the Land were ſtill in one. *Reg. Orig.* 176. F. *N.* B. 162.

Form *of the Writ of* Contributione facienda.

GEORGE *the Second*, &c. *To the Sheriff of* &c. *If* A. B. *makes you ſecure*, &c. *then ſummon*, &c. C. D. *and* E. F. *that they be at*, &c. *to ſhew why*, *whereas the ſaid* A. B. C. D. *and* E. F. *a certain Mill*, *in*, &c. *undivided hold*, *the Iſſues thence proceeding to take by equal Portions*, *and to the Reparation and Suſtentation of the ſame Mill are held*; *the ſaid* C. D. *and* E. F. *although their Portion of theſe Iſſues happening they take*, *refuſe to contribute to the Reparation and Suſtentation*

tion of the ſaid Mill, to the Damage of the ſaid A. B. &c. *And have you there*, &c.

Controller, (Fr. *Contrerolleur*, Lat. *Contrarotulator*) Is an Overſeer or Officer relating to Publick Accounts, &c. And we have divers Officers of this Name; as *Controller* of the *King's Houſhold*; of the *Navy*; of the *Cuſtoms*; of the *Exciſe*; of the *Mint*, &c. And in our Courts, there is the *Controller* of the *Hamper*; of the *Pipe*; and of the *Pell*, &c. The Office of *Controller of the Houſhold* is to control the Accounts of the Green Cloth; and he ſits with the Lord Steward and other Officers in the Counting-Houſe, for daily taking the Accounts of all Expences of the Houſhold. The *Controller of the Navy* controls the Payments of Wages; examines and audits Accounts; and inquires into Rates of Stores for Shipping, &c. *Controllers of the Cuſtoms and Exciſe*, their Office is to control the Accounts of thoſe Revenues: And the *Controller of the Mint* controls the Payment of Wages, and Accounts relating to the ſame. *Controller of the Hamper* is an Officer in the Chancery attending the Lord Chancellor daily in Term-Time, and upon Seal-Days; whoſe Office is to take all Things ſealed from the Clerk of the Hamper, incloſed in Bags of Leather, and to note the juſt Number and Effect of all Things ſo received, and enter the ſame in a Book, with all the Duties appertaining to his Majeſty, and other Officers for the ſame. The *Controller of the Pipe* is an Officer of the Exchequer, who writes out Summons twice every Year to the Sheriffs to levy the Farms and Debts of the Pipe; and keeps a Controlment of the Pipe, &c. *Controller of the Pell* is alſo an Officer of the Exchequer; of which Sort there are Two, who are the Chamberlains Clerks, that do or ſhould keep a Controlment of the Pell, of Receipts and Goings out: And this Officer was originally ſuch as took Notes of other Officers Accounts or Receipts, to the Intent to diſcover if they dealt amiſs, and was ordained for the Prince's better Security. *Fleta, lib.* 1. *cap.* 18. *Stat.* 12 *Ed.* 3. *cap.* 3. This laſt ſeems to be the original Uſe and Deſign of all *Controllers*.

Controver, (*Fr. Controuveur*) Signifies in our Law one that of his own Head deviſes or invents falſe News. 2 *Inſt.* 227.

Convenable, (*Fr.*) Agreeable. *Stat.* 27 *Ed.* 3. *c.* 21. See *Covenable*.

Convenient, (*Conveniens*) Of the Uſe of this Word, the Lord *Coke* in his Inſtitute ſays, ——— *Non ſolum quod licet ſed quod eſt* conveniens *eſt Conſiderandum, nihil quod eſt* inconveniens *eſt licitum*. 1 Inſt. 66.

Convent, (*Conventus*) Signifies the Fraternity of an *Abbey* or *Priory*; as *Societas* doth the Number of Fellows in a College. *Bract. lib.* 2. *c.* 35.

Conventicle, (*Conventiculum*) A private Aſſembly or Meeting for the Exerciſe of Religion; firſt attributed in Diſgrace to the Meetings of *Wickliff* in this Nation, above Two hundred Years ſince; and now applied to the illegal Meetings of the *Nonconformiſts*: It is mentioned in the Statutes 2 *Hen.* 4. *c.* 15. 1 *H.* 6. *c.* 3. and 16 *Car.* 2. *c.* 4. which Statute was made to prevent and ſuppreſs *Conventicles*: And by 22 *Car.* 2. *cap.* 1. It is enacted, That if any Perſons of the Age of ſixteen Years, Subjects of this Kingdom, ſhall be preſent at any *Conventicle*, where there are Five or more aſſembled, they ſhall be fined 5 *s.* for the firſt Offence, and 10 *s.* for the Second; and Perſons Preaching incur a Penalty of 20 *l.* Alſo ſuffering a Meeting to be held in a Houſe, &c. is liable to 20 *l.* Penalty. Juſtices of Peace have Power to enter ſuch Houſes, and ſeize Perſons aſſembled, &c. And if they neglect their Duty, they ſhall forfeit 100 *l.* And if any Conſtable, &c. know of ſuch Meetings, and do not inform a Juſtice of Peace, or chief Magiſtrate, &c. he ſhall forfeit 5 *l.* But the 1 *W.* & *M. c.* 18. ordains, that Proteſtant Diſſenters ſhall be exempted from Penalties: Though if they meet in a Houſe, with the Doors lock'd, barr'd, or bolted, ſuch Diſſenters ſhall have no Benefit from 1 *W.* & *M.* Officers of the Government, &c. preſent at any *Conventicle*, at which there ſhall be ten Perſons, if the Royal Family be not prayed for in expreſs Words, ſhall forfeit 40 *l.* and be diſabled. *Stat.* 10 *Ann. c.* 2. See *Hereſy*.

Conventio, Is a Word uſed in ancient Law-Pleadings, for an Agreement or Covenant: As *A. B. queritur*, &c. *de* C. D. &c. *pro eo quod non teneat* Conventionem, &c. There is a pleaſant *Record* of the *Court* of the Manor of *Hatfield, in Com. Ebor.* held *Anno* 11 *Ed.* 3. which runs thus: Robertus R. *qui optulit ſe verſus* Johannem J. *de eo quod non teneat* Conventionem *inter eos factam*, & *unde queritur, quod certo die* & *anno apud*, &c. convenit *inter prædictum* Robertum & Johannem, *quod prædictus* Johannes *vendidit prædicto* Roberto *Diabolum ligatum in quodam ligamine pro iii d. ob.* & *prædictus* Robertus *tradidit prædicto* Johanni *quoddam* obulum earles (*i.* Earneſt-Money) *per quod Proprietas dicti* Diaboli *commoratur in Perſona dicti* Roberti *ad habend. deliberationem dicti* Diaboli, *infra quartam diem prox. ſequent. Ad quam diem idem* Robertus *venit ad præfatum* Johannem, & *petit deliberationem dicti* Diaboli, *ſecundum* Conventionem *inter eos factam; idem* Johannes *prædictum* Diabolum *deliberare noluit, nec adhuc vult*, &c. *ad grave dampnum ipſius* Roberti *lx ſol. Et inde producit ſectam*, &c. *Et prædictus* Johannes *venit*, &c. *Et non dedicit* Conventionem *prædictam. Et quia videtur Curiæ quod tale Placitum non jacet inter Chriſtianos, Ideo partes prædicti adjournantur uſque in Infernum, ad audiendum Judicium ſuum*, & *utraque Pars in Miſericordia*, &c.

Conventione, Is a Writ that lies for the Breach of any Covenant in Writing, whether Real or Perſonal: And it is called a *Writ of Covenant*. Reg. Orig. 115. F. N. B. 145.

Convention, Is properly where a Parliament is aſſembled, but no Act is paſſed, or Bill ſign'd, &c. See *Parliament*.

Convention Parliament. On the Abdication of King *James* II. *Anno* 1689. The Aſſembly of the States of the Kingdom, to take Care of their Rights and Liberties, and who ſettled King *William* and Queen *Mary* on the Throne, was called the *Convention*: And the Lords and Commons thus *convened* were declared the two Houſes of Parliament, notwithſtanding the Want of any Writ of Summons, &c. *Stat.* 1 *W.* & *M.*

Conventuals, Are thoſe Religious Men who are united together in a *Convent* or Religious Houſe. *Cowel.*

Conventual Church, Is a Church that conſiſts of Regular Clerks, profeſſing ſome Order of Religion; or of Dean and Chapter, or other Societies of Spiritual Men.

Converſos. The *Jews* here in *England* were formerly called *Converſos*, becauſe they were converted to the *Chriſtian* Religion. King *Hen.* 3. built an Houſe for them in *London*, and allowed them a competent Proviſion or Subſiſtence for their Lives; and this Houſe was called *Domus Converſorum*. But by Reaſon of the vaſt Expences of the Wars, and the Increaſe of thoſe *Converts*, they became a Burden to the Crown; ſo that they were placed in Abbeys and Monaſteries for their Support and Maintenance. And the *Jews* being afterwards baniſhed, King *Ed.* 3. in the 51ſt Year of his Reign, gave this Houſe which had been uſed for the converted *Jews*, for the Keeping of the Rolls; and it is ſaid to be the ſame which is at this Time enjoyed by the Maſter of the Rolls. *Blount.*

Conveyance, Is a Deed which paſſes Land from one Man to another. *Conveyance* by *Feoffment*, and *Livery*, was the general *Conveyance* at Common Law; and if there was a Tenant in Poſſeſſion, ſo that Livery could not be made, then was the Reverſion granted, and the Tenant always attorned: Alſo upon the ſame Reaſon, a *Leaſe* and *Releaſe* was held to be a good *Conveyance*, to paſs an Eſtate; but the Leſſee was to be in actual Poſſeſſion, before the Releaſe. And by the Common Law, when an Eſtate did not paſs by Feoffment, the Vendor made a Leaſe for Years, and the Leſſee actually entered; and the Leſſor granted the Reverſion to another, and the Leſſee attorn'd: Afterwards, when an Inheritance was to be granted, then likewiſe was a Leaſe for Years uſually made, and the Leſſee entered (as before) and then the Leſſor releaſed to him: But after the *Statute of Uſes*, it became an Opinion, that if a *Leaſe for Years* was made upon a valuable Conſideration, a *Releaſe* might operate upon it without an actual Entry of the Leſſee; becauſe the Statute did execute the Leaſe, and raiſed an Uſe preſently to the Leſſee: And *Serjeant Moor* was the Firſt who practiſed this Way. 2 *Mod.* 251, 252. The moſt common *Conveyances* now in Uſe are *Deeds of Gifts*, *Bargain and Sale*, *Leaſe and Releaſe*, *Fines and Recoveries*, *Settlements to Uſes*, &c. A Son did *give* and *grant* Lands to his Mother, and her Heirs; tho' this was a defective *Conveyance* at Common Law, yet it was adjudged good by Way of *Uſe*, to ſupport the Intention of the Donor, and therefore by theſe Words an Uſe did ariſe to the Mother by Way of Covenant to ſtand ſeiſed. 2 *Lev.* 225. A Feoffment, without *Livery and Seiſin*, will not enure as a Grant; but where made in Conſideration of a Marriage, *&c.* it has been adjudged, that it did enure as a Covenant to ſtand ſeiſed to Uſes. 2 *Lev.* 213. Tenant in Fee, in Conſideration of Marriage, *covenanted*, *granted*, and *agreed* all that Meſſuage to the Uſe of himſelf for Life, then to his Wife for Life, for her Jointure, then to their firſt Son in Tail Male, *&c.* Now by theſe Words it appeared, that the Husband intended ſome Benefit for his Wife, wherefore the Court ſupplied other Words to make the *Conveyance* ſenſible. 1 *Lutw.* 782. The Words *Give* and *Grant*, *&c.* are proper for a *Conveyance* at Common Law; but it has been held, that though ſome Books warrant that *Conveyances* ſhall operate according to the Words, yet of late the Judges have a greater Conſideration of the Paſſing the Eſtate, than the Manner by which 'tis paſſed. 2 *Lutw.* 1209. A *Conveyance* cannot be fraudulent in Part, and good as to the Reſt: For if it be fraudulent and void in Part, it is void in all, and it cannot be divided. 1 *Lill. Abr.* 311. Fraudulent *Conveyances* to deceive Creditors; defraud Purchaſers, *&c.* are void, by Stat. 50 *Ed.* 3. *cap.* 6. 13 *Eliz. cap.* 5. 27 *Eliz. c.* 4. Vide *Deeds*. See my *Accompliſh'd Conveyancer*, *Vol.* 1. *Edit.* 2.

Convict, (*Convictus*) Is he that is found guilty of an Offence by Verdict of a Jury. *Staund. P. C.* 186. *Crompton* ſaith, That *Conviction* is either when a Man is outlawed, or appeareth and confeſſeth, or is found guilty by the Inqueſt: And when a Statute excludes from Clergy Perſons found guilty of Felony, *&c.* it extends to thoſe who are *convicted* by Confeſſion. *Cromp. Juſt.* 9. The Law implies a *Conviction*, before Puniſhment, though not mentioned in a Statute: And where any Statute makes a ſecond Offence Felony, or ſubject to a heavier Puniſhment than the Firſt, it is always implied that ſuch ſecond Offence ought to be committed after a *Conviction* for the Firſt. 1 *Hawk. P. C.* 13, 107. Judgment amounts to *Conviction*; though it doth not follow that every one who is *convict*, is adjudged. *Ibid.* 14. A *Conviction* at the King's Suit may be pleaded to a Suit by an Informer, on a Penal Statute; becauſe while in Force it makes the Party liable to the Forfeiture, and no one ought to be puniſhed twice for the ſame Offence: But *Conviction* may not be pleaded to a new Suit by the King. *Ibid.* 18. A Perſon *convicted* or attainted of one Felony, may be proſecuted for another, to bring Acceſſaries to Puniſhment, *&c.* *Fitz. Coron.* 379. On a joint Indictment or Information, ſome of the Defendants may be acquitted, and others *convicted*. 2 *Hawk.* 240. Perſons *convicted* of Felony by Verdict, *&c.* are not to be admitted to *Bail*, unleſs there be ſome ſpecial Motive for granting it; as where a Man is not the ſame Perſon, *&c.* for Bail ought to be before Trial, when it ſtands indifferent whether the Party be guilty, or not. *Ibid.* 99, 114. *Conviction* of Felony, and other Crimes, diſables a Man to be a Juror, Witneſs, *&c.* By our Books, *Conviction* and Attainder are often confounded.

Conviction, before Juſtices of Peace. When an Act of Parliament orders the *Conviction* of Offenders by *Juſtices of Peace*, &c. it muſt be intended after Summons to bring them in, that they may have an Opportunity of making their Defence; and if it be otherwiſe, the *Conviction* ſhall be quaſhed. *Mich.* 2 *Ann. B. R. Mod. Caſ.* 41.

Convict Recuſant, According to the Statutes of 1 *&* 23 *Eliz.* See *Recuſants*.

Convivium, Signifies the ſame Thing among the Laity, as *Procuratio* doth with the Clergy, *viz.* When the Tenant by Reaſon of his Tenure is bound to provide Meat and Drink for his Lord once or oftner in the Year. *Blount.*

Convocation, (*Convocatio*) Is the Aſſembly of all the Clergy, to conſult of Eccleſiaſtical Matters in Time of Parliament: And as there are two Houſes of Parliament, ſo there are two Houſes of *Convocation*; the one called the *Higher or Upper Houſe*, where the Archbiſhops and all the Biſhops ſit ſeverally by themſelves; and the other the *Lower Houſe of Convocation*, where all the Reſt of the Clergy ſit, *i. e.* All Deans and Archdeacons, one Proctor for every Chapter, and two Proctors for all the Clergy of each Dioceſe, making in the whole Number One hundred and ſixty-ſix Perſons. Each *Convocation* Houſe hath a Prolocutor, choſen from among themſelves, and that of the Lower Houſe is preſented to the Biſhops, *&c.* The Archbiſhop of *Canterbury* is the Preſident of the *Convocation*, and prorogues and diſſolves it by Mandate from the King. The *Convocation* exerciſes Juriſdiction in making of Canons, with the King's Aſſent: For by the Stat. 25 *H.* 8. the *Convocation* is not only to be aſſembled by the King's Writ; but the Canons are to have the Royal Aſſent: They have the Examining and Cenſuring of heretical and ſchiſmatical Books, and Perſons, *&c.* But Appeal lies to the King in Chancery, or to his Delegates. 4 *Inſt.* 322. 2 *Roll. Abr.* 225. The Clergy called to the *Convocation*, and their Servants, *&c.* have the ſame Privileges as Members of Parliament. *Stat.* 8. *H.* 6. *c.* 1.

Conuſance of Pleas, A Privilege that a City or Town hath to hold Pleas. See *Cogniſance*.

Conuſant, (Fr. *Connoiſant*) Knowing or Underſtanding: As if the Son be *Conuſant*, and agreed to the Feoffment, *&c.* *Co. Lit.* 159.

Coopers, Shall make their Veſſels of ſeaſonable Wood, and mark them with their own Marks, on Pain of 3*s.* 4*d.* Forfeiture; and the Contents of Veſſels are appointed to be obſerved under like Penalty, as the Beer Barrel ſhall contain 36 Gallons, a Kilderkin 18, and Firkin 9, *&c.* The Wardens of the *Coopers* Company in *London*, with an Officer of the Mayor, are to ſearch all Veſſels for Ale, Beer and Soap to be ſold there; and to mark them that are right, and they may burn thoſe that be not ſo: And if any *Cooper*, &c. diminiſh a Veſſel by taking out the Head, or a Staff thereof, it ſhall be burnt, and the Offender forfeit 3*s.* 4*d.* Alſo *Coopers* are to ſell their Veſſels at ſuch Rates as ſhall be ordained by Juſtices, Mayors, *&c.* 23 *H.* 8. *c.* 4. This laſt Clauſe is repealed by 8 *Eliz. cap.* 9.

Coopertio, The Head or Branches of a Tree cut down; tho' *Coopertio Arborum* is rather the Bark of Timber Trees felled, and the Chumps and broken Wood. *Cowel.*

Coopertura, A Thicket or Covert of Wood. *Chart. de Foreſta, cap.* 12.

Coparceners, (*Participes*) Otherwiſe called *Parceners*, are ſuch as have equal Portion in the Inheritance of an Anceſtor; and by *Law* are the Iſſue Female, which, in Default of Heirs Male, come in Equality to the Lands of their Anceſtors. *Bract. lib.* 2. *cap.* 30. They are to make Partition of the Lands; which ought to be made by *Coparceners* of full Age, *&c.* And if the Eſtate of a *Coparcener* be in Part evicted, the Partition ſhall be avoided in the Whole. *Lit.* 243. 1 *Inſt.* 173. 1 *Rep.* 87. The Crown of *England* is not ſubject to *Coparcenary*; and there is no *Coparcenary* in Dignities, *&c. Co. Lit.* 27. *Stat.* 25 *H.* 8. *c.* 22. Vide Parceners.

Copartnerſhip, Is a Deed of Covenants between Merchants, or others, for carrying on a joint Trade, *&c.*

Cope, Is a Cuſtom or Tribute due to the King or Lord of the Soil, out of the *Lead Mines* in ſome Part of *Derbyſhire*; of which *Manlove* ſaith thus:

Egreſs and Regreſs to the King's Highway,
The Miners have; and Lot *and* Cope *they Pay:*
The thirteenth Diſh of Oar within their Mine,
To the Lord, for Lote *they pay at meaſuring Time;*
Six-pence a Load for Cope *the Lord demands,*
And that is paid to the Berghmaſter's *Hands*, &c.

Agreeable to this you may find in Sir *John Pettus*'s *Fodinæ Regales*, where he treats on this Subject. This Word, by *Domeſday-Book*, as Mr. *Hagar* hath interpreted it, ſignifies a Hill: And *Cope* is taken for the ſupreme Cover, as the *Cope of Heaven*. Alſo it is uſed for the Roof and Covering of a Houſe; the upper Garment of a Prieſt, *&c.*

Copia Libelli deliberanda, Is a Writ that lies where a Man cannot get the Copy of a Libel at the Hand of a Judge Eccleſiaſtical, to have the ſame delivered to him. *Reg. Orig.* 51.

Coppa, A Cop or Cock of Graſs, Hay or Corn, divided into Titheable Portions; as the Tenth Cock, *&c.* This Word in Strictneſs denotes the gathering or laying up the Corn in *Copes* or Heaps, as the Method is for Barley or Oats, *&c.* not bound up, that it may be the more fairly and juſtly tithed: And in *Kent* they ſtill retain the Word, a *Cop* or *Cap* of *Hay*, Straw, *&c.* *Thorn in Chron.*

Copy, (*Copia*) Is in a legal Senſe the Tranſcript of an original Writing; as the *Copy* of a *Patent*, of a *Charter*, Deed, *&c.* A Clauſe out of a Patent, taken from the Chapel of the Roll, cannot be given in Evidence; but you muſt have a true *Copy* of the whole Charter examined: It is the ſame of a Record. And if upon a Trial, you will give Part of a *Copy* of an Office in Evidence to prove a Deed, which Deed is to prove the Party's Title to the Land in Queſtion that gives it in Evidence; if that Part of the Office given in Evidence, be not ſo much of it as doth any Ways concern the Land in Queſtion, the Court will not admit of it: For the Court will have a *Copy* of the whole given, or no Part of it ſhall be admitted. 1 *Lill Abr.* 312, 313. Where a Deed is inrolled, certifying an atteſted *Copy* is Proof of the Inrollment; and ſuch *Copy* may be given in Evidence. 3 *Lev.* 387. A common Deed cannot be proved by a *Copy* or Counterpart, when the Original may be procured. 10 *Rep.* 92. And a *Copy* of a Will of Lands, or the Probate, is not ſufficient; but the Will muſt be ſhewn as Evidence. 2 *Roll. Abr.* 74. *Copies* of Court Rolls admitted as Evidence. See *Evidence.*

Copyhold, (*Tenura per Copiam Rotuli Curiæ*) Is a Tenure for which the Tenant hath nothing to ſhew but the *Copy* of the *Rolls*, made by the Steward of the Lord's Court; on ſuch Tenant's being admitted to any Parcel of Land or Tenement belonging to the Manor. 4 *Rep.* 25. It is called *Baſe Tenure*, becauſe held at the Will of the Lord: And *Fitzherbert* ſays, it was anciently *Tenure in Villenage*, and that *Copyhold* is but a new Name. Some *Copyholds* are held by the *Verge* in *Ancient Demeſne*; and tho' they are by *Copy*, yet are they a Kind of Freehold; for if a Tenant of ſuch a *Copyhold* commit Felony, the King hath *Annum, Diem & Vaſtum*, as in the Caſe of Freeholders: Some other *Copyholds* are ſuch as the Tenants hold by common Tenure, called *Meer Copyhold*, whoſe Land, upon Felony committed, eſcheats to the Lord of the Manor. *Kitch.* 81. But *Copyhold* Land cannot be made at this Day; for the Pillars of a *Copyhold* Eſtate are, That it hath been demiſed Time out of Mind by Copy of Court Roll; and that the Tenements are Parcel of or within the Manor. 1 *Inſt.* 58. 4 *Rep.* 24. A *Copyhold* Tenant had originally in Judgment of Law but an Eſtate at Will; yet Cuſtom ſo eſtabliſhed his Eſtate, that by the Cuſtom of the Manor it was deſcendible, and his Heirs inherited it: And therefore the Eſtate of the *Copyholder* is not merely *ad voluntatem Domini*, but *ad voluntatem Domini ſecundum conſuetudinem Manerii*; ſo that the Cuſtom of the Manor is the Life of *Copyhold* Eſtates; for without a Cuſtom, or if *Copyholders* break their Cuſtom, they are ſubject to the Will of the Lord: And as a *Copyhold* is created by Cuſtom, ſo it is guided by Cuſtom. 4 *Rep.* 21. A *Copyholder* ſo long as he doth his Services, and doth not break the Cuſtom of the Manor, cannot be ejected by the Lord; if he be, he ſhall have Treſpaſs againſt him: But if a *Copyholder* refuſes to perform his Services, it is a Breach of the Cuſtom, and Forfeiture of his Eſtate. *Copyholds* deſcend according to the Rules and Maxims of the Common Law; but ſuch cuſtomary Inheritances ſhall not be Aſſets, to charge the Heir in Action of Debt, *&c. Ibid.* Though a Leaſe for one Year of *Copyhold* Lands, which is warranted by the Common Law, ſhall be Aſſets in the Hand of an Executor. 1 *Vent.* 163. *Copyholders* hold their Eſtates free from Charges of Dower, being created by Cuſtom, which is paramount to Title of Dower. 4 *Rep.* 24. *Copyhold* Inheritances have no collateral Qualities, which do not concern the Diſcent; as to make them Aſſets; or whereof a Wife may be endowed; a Husband be Tenant by the Curteſy, *&c.* But by particular Cuſtom, there may be Dower and Tenancy by the Curteſy. *Cro. Eliz.* 361. There may be an *Eſtate-tail* in *Copyhold* Lands by Cuſtom, with the Co-operation of the Statute *W.* 2. And as a *Copyhold* may be entailed by Cuſtom, ſo by Cuſtom the Tail may be cut off by Surrender. 1 *Inſt.* 60. A *Copyhold* may be barred by a Recovery, by ſpecial Cuſtom; and a Surrender may bar the Iſſue by Cuſtom. A Fine and Recovery at Common Law, will not deſtroy a *Cophold* Eſtate; becauſe Common Law Aſſurances do not work upon the Aſſurance of the *Copyhold*: Tho' *Copyhold* Lands are within the Stat. 4 *H.* 7. of Fines with Proclamations, and five Years Non-claim, and ſhall be barred. 1 *Rol. Abr.* 506. A Plaint may be made in the Court of the Manor, in the Nature of a Real Action, and a Recovery ſhall be had in that Plaint againſt Tenant in Tail, and ſuch a Recovery ſhall be a Diſcontinuance to the Eſtate-tail. 1 *Brownl.* 121. And the ſuffering a Recovery by a *Copyholder* Tenant for Life in the Lord's Court is no Forfeiture, unleſs there is a particular Cuſtom for it. 1 *Nelſ. Abr.* 507. *Cobyholders* may entail *Copyhold* Lands, and bar the Entails and Remainders, by committing a Forfeiture, as making Leaſe without Licenſe, *&c.* and then the Lord is to make three Proclamations, and ſeiſe the *Copyhold*, after which the Lands are granted to the *Copyholder*, and his Heirs, *&c.* This is the Manner in ſome Places, but it muſt be warranted by Cuſtom. 2 *Danv. Abr.* 191. *Sid.* 314. *Cuſtoms* ought to be Time out of Memory; to be reaſonable, *&c.* And a Cuſtom in Deprivation or Bar of a *Copyhold* Eſtate, ſhall be taken ſtrictly; but when for Making and Maintaining it, ſhall be conſtrued favourably. *Comp. Cop. Sect.* 33. *Cro. El.* 879. An unreaſonable Cuſtom, as for a Lord to exact exorbitant Fines; for a *Copyholder* for Life to cut down and ſell Timber-Trees, *&c.* is void. A *Copyholder* for Life pleaded a Cuſtom, that every *Copyholder* for Life, might in the Preſence of two other *Copyholders* appoint who ſhould have his *Copyhold* after his Death; and that the two *Copyholders* might aſſeſs a Fine ſo as not to be leſs than had been uſually paid; and it was adjudged a good Cuſtom. 4 *Leon.* 238. But a Cuſtom to compel a Lord to make a Grant, is ſaid to be againſt Law; tho' it may be good to admit a Tenant. *Moor* 788. By the Cuſtom of ſome Manors, where *Copyhold* Lands are granted to Two or more Perſons for Lives, the Perſon firſt named in the Copy may ſurrender all the Lands. 1 *Nelſ. Abr.* 497. There are Cuſtoms *Ratione loci*, different from other Places: But tho' a Cuſtom may be applied to a particular Place; yet 'tis againſt the Nature of a Cuſtom of a Manor to apply it to one particular Tenant. 1 *Nelſ.* 504. 1 *Lutw.* 126. There are uſually *Cuſtom-Rolls* of Manors, exhibited on Oath by the Tenants; ſetting forth the Bounds of the Manor, the Royalties of the Lord, Services of the *Copyhold* Tenants, the Tenures granted, whether for Life, *&c.* concerning Admittances, Surrenders, and the Rights of the *Copyholders*, as to taking Timber for Repairs, Fire-boot, *&c.* Common belonging to the Tenants, Payment of Rent, ſuing in the Court of the Manor, taking Heriots, *&c.* All which Cuſtoms are to be obſerved. [illegible] *Court Keep.* 21. When an Act of Parliament al[illegible] ſervice, Cuſtoms, Tenure, and Intereſt [illegible] in Prejudice of the Lord or Tenant, there [illegible] general Words of ſuch an Act ſhall not extend to *Copyholds.* 3 *Rep.* 7. *Copyholders* are not within the *Stat.* 27 *H* 8. of Jointures; nor the 32 *H.* 8. of Leaſes, *Copyholds* being in their Nature demiſable only by *Copy:* They are not within the Statute of Uſes; nor are *Copyholds* extendible in Execution: But *Copyholds* are within the Statute 18 *Ed.* 1. of Limitation of Actions; and the 13 *Eliz. &c.* againſt Bankrupts. The Lord ſhall have the Cuſtody of the Lands of Ideots, *&c.* And a *Copyholder* is not within the Act 12 *Car.* 2. to diſpoſe of the Cuſtody and Guardianſhip of the Heir; for if there be a Cuſtom for it, it belongs to the Lord of the Manor. 3 *Lev.* 395. 1 *Nelſ. Abr.* 492, 522. *Copyholders* ſhall neither *implead* nor be *impleaded* for their Tenements by Writ, but by Plaint in the Lord's Court held within the Manor: And if on ſuch Plaint, erroneous Judgment be given, no Writ of falſe Judgment lies, but Petition to the Lord in Nature of a Writ of falſe Judgment, wherein Errors are to be aſſigned, and Remedy given according to Law. *Co. Lit.* 60. Where a Man holds *Copyhold* Lands in Truſt to ſurrender to another, *&c.* if he refuſes to ſurrender to the other accordingly, he may be compelled by Bill exhibited in the Lord's Court, who, as Chancellor has Power to do Right. 1 *Leon.* 2. A *Copyholder* may have a Formedon in Deſcender in the Lord's Court. Leſſee of a *Copyholder* for Life for one Year, ſhall maintain an Ejectment: But Ejectment will not lie for a *Copyhold*, unleſs the Plaintiff declare on the Cuſtom, upon a Leaſe, *&c.* 4 *Rep.* 26. *Moor* 679. A Manor is loſt when there are no cuſtomary Tenants or *Copyholders:* And if a *Copyhold* comes into the Hands of the Lord in Fee, and the Lord Leaſes it for one Year, or half a Year, or for any certain Time, it can never be granted by Copy after: But if the Lord aliens the Manor, *&c.* his Alienee may regrant Land by Copy. If the Lord keeps the *Copyhold* for a long Time in his Hand, it is no Impediment but that he may after Grant it again by Copy. 2 *Danv. Abr.* 176, 177. A *Copyholder* in Fee accepts of a Leaſe, Grant, or Confirmation of the ſame Land from the Lord, this determines his *Copyhold* Eſtate. 2 *Cro.* 16. *Cro. Jac.* 253. If a *Copyholder* bargains and ſells his *Copyhold* to a Leſſee for Years, *&c.* of the Manor, his *Copyhold* is *extinguiſhed.* 2 *Danv.* 205. A *Copyholder* may grant his Eſtate to his Lord, by Bargain and Sale, Releaſe, *&c* for between Lord and Tenant the Conveyance need not be according to Cuſtom. 1 *Nelſ.* 504. A *Copyholder* in other Caſes cannot alien by Deed: Though he that hath a Right only to a *Copyhold* may releaſe it by Deed. And if a *Copyholder* ſurrenders upon Condition, he may afterwards releaſe the Condition by Deed. 2 *Danv.* 205. *Cro. Jac.* 36. Alſo one joint *Copyholder* may releaſe to another, which will be good without any Admittance, *&c. Ibid.* The cuſtomary Grant of a *Copyhold* from Lord to Tenant is in this Form:

A Grant *and* Admittance *by* Copy of Court-Roll.

Manor of *A.* } *At a Court Baron of* T. B. *Eſquire, Lord of the Manor aforeſaid, held for the ſaid Manor the twenty-ſixth Day of* October *in the ſixth Year of the Reign of the Lord* George *the Second, by the Grace of God, King of* Great Britain, France *and* Ireland, *Defender of the Faith,* &c. *and in the Year of our Lord* 1732. *Before* G. J. *Gentleman, Steward there; it was inrolled among other Things, as follows.*

A*T this Court came* J. C. *and took of the Lord of the Manor aforeſaid, by the Delivery of the Steward aforeſaid, one Meſſuage or Tenement, and forty Acres of Land, Meadow, and Paſture, with their Appurtenances, within the aforeſaid Manor, late in the Tenure of* W. D. *deceaſed:* To have and to hold *the ſaid Meſſuage or Tenement and forty Acres of Land with all and ſingular the Appurtenances, unto the aforeſaid* J. C. *and alſo to* J *and* T. *his Sons, for the Term of their Lives, and the Life of either of them longeſt living ſucceſſively, at the Will of the Lord, according to the Cuſtom of the Manor aforeſaid;* By *the Rent of ten Shillings by the Year, and for a Heriot when it happens, thirty Shillings, and by all other Rents, Works, Suits, Cuſtoms and Services therefore due, and of Right accuſtomed; and for ſuch Eſtate and Entry ſo in the Premiſſes had, the aforeſaid* J. C. *gives to the Lord for a Fine ninety Pounds before-hand paid: And ſo he is admitted Tenant thereof, and doth his Fealty; but the Fealties of the others are reſpited, until,* &c. Dated *by Copy of the Rolls of the aforeſaid Court, the Day and Year abovesaid.*

Examined with the Rolls
of the ſaid Court,
By me G. J. *Steward there.*

A *Copyholder* cannot convey or transfer his *Copyhold* Eſtate to another otherwiſe than by Surrender; which is the Yielding up of the Land by the Tenant to the Lord, according to the Cuſtom of the Manor, to the Uſe of him that is to have the Eſtate: Or it is in Order to a new Grant, and further Eſtate in the ſame. And theſe Surrenders are as follow:

Form *of a* Surrender *of a* Copyhold Eſtate *in Fee.*

A*T this Court* A. B. *a cuſtomary Tenant of this Manor, ſurrendred into the Hands of the Lord, by the Hands of the Steward aforeſaid, all that cuſtomary Meſſuage or Tenement,* &c. *called,* &c. *with the Appurtenances, to the Uſe and Behoof of* C. D. *his Heirs and Aſſigns for ever; which ſaid* C. D. *being preſent here in Court, prayed to be admitted Tenant to the Tenement aforeſaid, with the Appurtenances; to whom the Lord, by the Steward aforeſaid, granted and delivered to him Seiſin thereof by the Rod:* To have and to hold *the Tenement aforeſaid, with the Appurtenances, to the ſaid* C. D. *his Heirs and Aſſigns at the Will of the Lord, according to the Cuſtom*

Cuſtom, &c. *and he gives to the Lord for a Fine*, &c. *and is admitted Tenant thereof, and does Fealty*, &c.

A Surrender *and* New Grant *of* Copyhold *Lands for Life.*

A*T this Court came* W. E. *who claims to hold for the Term of his Life, and of the Life of* J. *his Son, by Copy of Court-Roll of the Manor there, bearing Date*, &c. *one Tenement, called*, &c. *with the Appurtenances, within the Manor aforeſaid; and all and ſingular the Premiſſes, and the whole Eſtate thereof, Right, Title, Intereſt, Poſſeſſion, Reverſion, Claim and Demand of him the ſaid* W. E. *and* J. *his Son, (the ſaid* W. *being ſole Purchaſer of the Premiſſes) together with a Copy thereof made now to be cancelled, into the Hands of the Lord in the aforeſaid Court he hath ſurrendered, that the ſaid Lord may do therewith according to his Pleaſure; from whence there accrues to the Lord a Heriot, which is included in the Fine here under written:* Whereupon *to this ſame Court came the aforeſaid* W. E. *and* J. *his Son, and took of the Lord in the ſaid Court, by the Delivery of the Steward, the aforeſaid Premiſſes, with the Appurtenances:* To have and to hold *the Tenement and Premiſſes aforeſaid, with all and ſingular the Appurtenances, to the aforeſaid* W. E. *and* J. E. *and alſo to* A. E. *Daughter of the ſaid* W. E. *for the Term of their Lives, and of the Life of the longeſt Liver of them ſucceſſively, at the Will of the Lord, according to the Cuſtom of the Manor aforeſaid; by the Rent therefore by the Year of* 13s. 4d. *and one Heriot when it ſhall happen, and by all other Rents, Burdens, Works, Suits, Cuſtoms and Services, formerly due and of Right accuſtomed; and the aforeſaid* W. and J. *to have ſuch Eſtate in and Entry on the Premiſſes, give to the Lord for a Fine*, &c. *before hand paid; and ſo the aforeſaid* W. *is admitted Tenant thereof, and doth his Fealty to the Lord, but the Fealties of the ſaid* J. *and* A. *are reſpited, until*, &c.

As to *Copyhold Grants*; which are made either in Fee, or for three Lives, &c. the *Lord of the Manor* that hath a lawful Eſtate therein, whether he be Tenant for Life or Years, Tenant by Statute-Merchant, &c. or at Will, is *Dominus pro tempore*, and may grant Lands, Herbage of Lands, a Fair, Mill, Tithes, &c. and any Thing that concerns Lands, by *Copy of Court*-Roll, according to Cuſtom; and ſuch Grants ſhall bind thoſe in Remainder: The Rents and Services reſerved by them ſhall be annexed to the Manor, and attend the Owner thereof after their particular Eſtates are ended. 4 *Rep.* 23. 11 *Rep.* 18. And if a Lord of a Manor for the Time being, Leſſee for Life, Years, &c. take a Surrender, and before Admittance he dieth, or the Years or Intereſt determine, tho' the next Lord comes in above the Leaſe for Life or Years, or other particular Intereſt, yet ſhall he be compelled to make Admittance according to the Surrender. *Co. Lit.* 59. But a Lord at Will, of a *Copyhold* Manor, cannot Licence a *Copyhold* Tenant to make a Leaſe for Years; though he may grant a *Copyhold* for Life, according to the Cuſtom: If a Lord for Life, gives Licence to a Tenant to make a Leaſe for Years, this Leaſe ſhall continue no longer than the Life of the Lord. 2 *Danv. Abr.* 202. If he that is *Dominus pro tempore* of the Manor, admits one to a *Copyhold*, he diſpenſes with all precedent Forfeitures; not only as to himſelf, but alſo as to him in Reverſion; for ſuch Grant and Admittance amount to an Entry for the Forfeiture, and a new Grant; but a Lord by Tort cannot by ſuch Admittance purge the Forfeiture as to the rightful Lord. 1 *Lev.* 26. Grants by Copy of Court-Roll by Infants, &c. will be binding: And if a Guardian in Socage grants a *Copyhold* in Reverſion, according to the Cuſtom of the Manor, this ſhall be a good Grant; for he is *Dominus pro tempore.* 2 *Roll. Abr.* 41. If Baron and Feme ſeiſed of a Manor in Right of the Feme grant a *Copyhold*, this ſhall bind the Feme notwithſtanding her Coverture. 4 *Rep.* 23. An Executor may make Grants of *Copyhold* Eſtates, according to the Cuſtom of the Manor, where a Deviſe is made that the Executor ſhall grant Copies for Payment of Debts. 2 *Danv.* 178. A Manor may be held by Copy of Court-Roll, and the Lord of ſuch Manor grant Copies; and ſuch cuſtomary Manor may paſs by Surrender and Admittance, &c. A cuſtomary Manor may be holden of another Manor, and ſuch cuſtomary Lord may grant Copies and hold Courts: But a *Copyholder* Lord of ſuch a Manor cannot hold a Court Baron to have Forfeitures, and hold Pleas in a Writ of Right, &c. 1 *Nelſ. Abr.* 524. All Grants of *Copyhold* Eſtates are to be according to the Cuſtom of the Manor; and Rents and Services cuſtomary muſt be reſerved; for what Acts of the Lord in granting *Copyholds* are not confirmed by Cuſtom, but only ſtrengthned by the Power and Intereſt of the Lord, have no longer Duration than the Lord's Eſtate continueth. *Comp. Court Keeper* 421. If by the Cuſtom, a *Copyhold* may be granted for three Lives, and the Lord grants it to one for Life, Remainder to ſuch Woman as he ſhall marry, and to the firſt Son of his Body; both theſe Remainders are void: And a Remainder limited upon a void Eſtate in the Creation, will be likewiſe void. But if by Cuſtom it is demiſable in Fee, a Surrender may be to the Uſe of one for Life, Remainder in Tail, Remainder in Fee. 2 *Danv. Abr.* 203. *Cro. Eliz.* 373. It is held, where by the Cuſtom of a Manor the Lord can grant a *Copyhold* for three Lives, he may grant it for any Eſtate coming within the Intent of the Cuſtom; as to *A. B.* and his Aſſigns, To hold to him and his Aſſigns for the Lives of three others, and of the longer Liver of them ſucceſſively, &c. 2 Ld. *Raym.* 994, 1000. The Lord of a Manor may himſelf grant a *Copyhold* Eſtate at any Place out of the Manor; but the Steward cannot grant a *Copyhold* at a Court held out of the Manor. 4 *Rep.* 26. Though the Steward may take Surrenders out of the Manor, as well as the Lord. 2 *Danv. Abr.* 181. A Steward is in Place of the Lord, and without a Command to the contrary may grant Lands by Copy, &c. But if a Lord command a Steward that he ſhall not grant ſuch a Copy, if he grants it, it is void: And if the Steward diminiſhes the ancient Rents and Services, the Grant will be void. *Cro. Eliz.* 699. Things of Neceſſity done by a Steward, who is but in reputed Authority, are good if they come in by Preſentment of the Jury; as the Admittance of an Heir upon Preſentment, &c. Though Acts voluntary, as Grants of *Copyholds*, &c. are not good by ſuch Stewards. *Ibid.* If an Under-Steward hold a Court without any Diſturbance of the Lord of the Manor, though he hath no Patent nor Deputation to hold it, yet it is good; becauſe the Tenants are not to examine what Authority he hath, nor is he bound to give them an Account of it. *Moor* 110. A Deputy Steward may authorize another to do a particular Act; but cannot make a Deputy to act in general. 1 *Salk.* 95. In *Admittances*, in Court upon voluntary Grants, the Lord is Proprietor; in Admittances upon Surrender, the Lord is not Proprietor of the Lands, but only a neceſſary Inſtrument of Conveyance; and in Admittances by Deſcent the Lord is a meer Inſtrument, not being neceſſary to ſtrengthen the Heir's Title, but only to give the Lord his Fine. 4 *Rep.* 21, 22. The Heir of a *Copyholder* may enter, and bring Treſpaſs, before Admittance, being in by Deſcent; and he may ſurrender before Admittance: But he is not a compleat Tenant to be ſworn of the Homage, or to maintain a Plaint in the Lord's Court. And if the Heir do not come in and be admitted, on the Death of his Anceſtor, where the ſame is preſented and Proclamation made, he may forfeit his Eſtate. *Cro. El.* 90.

4 *Rep.* 22, 27. On Surrender of a *Copyhold*, the Surrenderor or Perſon making the ſame, continues Tenant till the Admittance of the Surrendree; and the Surrendree may not enter upon the Lands, or Surrender before Admittance, for he hath no Eſtate till then; tho' 'tis otherwiſe of the Heir by Deſcent, who is in by Courſe of Law, and the Cuſtom caſts the Poſſeſſion upon him. *Comp. Court-Keep.* 436. A Surrender is not of any Effect until Admittance, and yet the Surrendree cannot be defrauded of the Benefit of the Surrender; for the Surrenderor cannot paſs away the Land to any other, or make it ſubject to any other Incumbrances; and if the Lord refuſe the Surrendree Admittance, he is compellable in Chancery. *Comp. Cop. Sect.* 39. A Grantee hath no Intereſt veſted in him till he is admitted: But Admittance of a *Copyholder* for Life is an Admittance of him in Remainder, for they are but one Eſtate; and the Remainder Man may, after the Death of Tenant for Life, ſurrender without Admittance. 3 *Lev.* 308. *Cro. El.* 504. Every Admittance upon a Deſcent or Surrender may be pleaded as a Grant; and a Perſon may alledge the Admittance of his Anceſtor as a Grant; and ſhew the Deſcent to him, and that he entered, *&c.* But he cannot plead that his Father was ſeiſed in Fee, *&c.* and that he died ſeiſed, and the Land deſcended to him. 2 *Danv.* 208. Admittance on Surrender, muſt in all Reſpects agree with the Surrender; the Lord having only a cuſtomary Power to admit *ſecundum formam & effectum ſurſum redditionis.* 4 *Rep* 26. If any are admitted otherwiſe, they ſhall be ſeiſed according to the Surrender: Yet where a voluntary Surrender is general, without ſaying to whoſe Uſe, a ſubſequent Admittance may explain it. 2 *Danv.* 187, 204. In voluntary Admittances, if the Lord admits any one contrary to Cuſtom, it ſhall not bind his Heir or Succeſſor. If a *Copyholder* ſurrender to the Uſe of another, and after the Lord having Knowledge of it, accepts the Rent of ſuch other out of Court, this is an Admittance in Law: And any Act implying the Conſent of the Lord to the Surrender, ſhall be adjudg'd a good Admittance. 1 *Nelſ. Abr.* 493. If the Steward accept a Fine of a *Copyholder*, it amounts to an Admittance. 2 *Danv.* 189. But delivering a Copy is no Admittance. Where a *Widow's Eſtate* is created by Cuſtom, that ſhall be an Admittance in Law: And her Eſtate ariſing out of that of her Husband's, his Admittance is the Admittance of her. *Hut.* 18. And ſhe who hath a Widow's Eſtate by the Cuſtom of the Manor, upon the Death of her Husband, need not pay a Fine to the Lord for the Eſtate; for this is only a Branch of the Husband's. *Hob.* 181. When a Cuſtom is, that the Wife of every *Copyholder* for Life ſhall have her Free-Bench, after the Death of the Baron, the Law caſts the Eſtate upon the Wife, ſo that ſhe ſhall have it before Admittance, *&c.* 2 *Danv.* 184. But if a Wife is entitled to her Free-Bench by Cuſtom, and a *Copyholder* in Fee ſurrenders to the Uſe of another, and then dies; it has been adjudged that the Surrendree ſhould have the Land, and not the Wife; becauſe the Wife's Title doth not commence till after the Death of her Husband; but the Plaintiff's Title begins by the Surrender, and the Admittance relates to that. 1 *Inſt.* 59. 1 *Salk.* 185. The Widow's Title commenceth not by the Marriage; if it did, then the Husband could do nothing in his Life-time to prejudice it: But 'tis plain he may Alien or Extinguiſh his Right, ſo as to bind the Eſtate of the Widow: The Free-Bench grows out of the Eſtate of the Husband; and 'tis his dying ſeiſed which gives the Widow a Title, and as the Husband has a defeaſible Eſtate, ſo the Wife may have her Free-Bank defeated. 4 *Mod. Rep.* 452, 453. Admittances are never by Attorney, for the Tenant ought to do Fealty: Though Surrenders are oftentimes by Attorney. 2 *Danv.* 189. A *Copyholder* in Fee may *Surrender* in Court, by Letter of Attorney: But not out of Court, without a ſpecial Cuſtom. 9 *Rep.* 75, 76. If one cannot come into Court to ſurrender in Perſon, the Lord may appoint a Special Steward to go to him, and take the Surrender. 1 *Leon.* 36. A *Copyholder* being in *Ireland*, the Steward of a Manor here, made a Commiſſion to one to receive a Surrender from him there, and it was held good. 2 *Danv.* 181. The Intent of *Surrenders* is, that the Lord may not be a Stranger to his Tenant, and the Alteration of the Eſtate. As a *Copyholder* cannot transfer his Eſtate to a Stranger by any other Conveyance than Surrender; ſo if one would exchange a *Copyhold* with another, both muſt ſurrender to each other's Uſe, and the Lord admit accordingly: And if any Perſon would deviſe a *Copyhold* Eſtate, he cannot do it by his Will; but he muſt ſurrender to the Uſe of his laſt Will and Teſtament, and in his Will declare his Intent. *Comp. Cop. Sect.* 36, 39. Alſo where a *Copyholder* ſurrenders to the Uſe of his Will, the Lands do not paſs by the Will, but by the Surrender; the Will being only declaratory of the Uſes of the Surrender. 1 *Bulſt.* 200. But in Caſe of a Will, the Chancery will ſupply the Defect of a Surrender, in the Behalf of Children, if not to diſinherit the eldeſt Son; and for the Benefit of Creditors, where a *Copyhold* Eſtate is charged by Will with the Payment of Debts, though there be no Surrender to thoſe Uſes, it will be good in Equity. 4 *Rep.* 25. 1 *Salk.* 187. 3 *Salk.* 84. Yet 'tis held, that Equity ſhall not ſupply the Want of ſuch Surrender in Favour of a Grandchild; or Baſtard, who is not conſider'd as a Child; or a Wife againſt the Heir; nor in Behalf of Legatees: But where the Surrender is refus'd, a Will of a *Copyhold* may be ſufficient without it. *Abr. Caſ. Eq.* 122, 124. A *Ceſtui que Truſt* may deviſe an Intereſt in Land, *&c.* without Surrender; and if *Copyhold* Lands are in Mortgage, the Mortgagor can diſpoſe of the Equity of Redemption by Will, without any Surrender made; becauſe he hath at that Time no Eſtate in the Land, whereof to make a Surrender. *Preced. Canc.* 320, 322. One Jointenant may ſurrender his Part in the Lands to the Uſe of his Will, *&c.* And where there are two Jointenants of a *Copyhold* in Fee, if one of them make a Surrender to the Uſe of his Will, and die, and the Deviſee is admitted, the Surrender and Admittance ſhall bind the Survivor. 2 *Cro.* 100. A Surrender may not be to commence *in futuro*; as after the Death of the Surrenderor, *&c.* tho' *Copyholds* may be ſurrendered to the Uſe of a Man's Will. *March* 177. A *Copyholder* cannot ſurrender an Eſtate abſolutely to another, and leave a particular Eſtate in himſelf: Though he may ſurrender to Uſes, *&c.* A *Copyholder* ſurrendered to the Uſe of his Wife and younger Son, without mentioning what Eſtate; and adjudged that they had an Eſtate for Life. 4 *Rep.* 29. If a Man having bought a *Copyhold* to himſelf, his Wife and Daughter, and their Heirs, afterwards ſurrenders it to another and his Heirs, for ſecuring a Sum of Money; after his Death, the Surrendree ſhall not be intitled to the Land, it being an Advancement for the Wife and Daughter. 2 *Vern.* 120. A Feme Covert may receive a *Copyhold* Eſtate, by Surrender from her Husband, becauſe ſhe comes not in immediately by him, but by the Admittance of the Lord according to the Surrender. 4 *Rep.* A Feme Covert is to be ſecretly examined by the Steward, on her ſurrendering her Eſtate. *Co. Litt.* 59. An Infant ſurrendered his *Copyhold*, and afterwards entered at full Age, and it was held lawful, tho' the Surrendree was admitted. *Moor* 597. By the general Cuſtom of *Copyhold* Eſtates, *Copyholders* may ſurrender in Court, and need not alledge any particular Cuſtom to warrant it: But where they ſurrender out of Court, into the Hands of the Lord by Cuſtomary Tenants, *&c.* Cuſtom muſt be pleaded. 9 *Rep.* 75. 1 *Roll. Abr.* 500

And Surrenders out of Court are to be *preſented* at the next Court; for it is not an effectual Surrender till preſented in Court. Where a *Copyholder* in Fee ſurrenders out of Court, and dies before it is preſented, yet the Surrender being preſented at the next Court will ſtand good, and *Ceſtui que Uſe* ſhall be admitted: So if *Ceſtui que Uſe* dies before it is preſented, his Heir ſhall be admitted. But if the Surrender be not preſented at the next Court, it is void. *Co. Litt.* 62. 2 *Danv.* 188. If the Tenants by whoſe Hands the Surrender was made ſhall die, and this upon Proof is preſented in Court, it is well enough. 4 *Rep.* 29. Tenants refuſing to make Preſentment, are compellable in the Lord's Court. And by Surrender of *Copyhold* Lands to the Uſe of a Mortgagee, the Lands are bound in Equity, though the Surrender be not preſented at the next Court. 2 *Salk.* 449. When a *Copyholder* ſurrenders upon Condition, and this is preſented abſolutely, the Preſentment is void: But where a conditional Surrender is preſented, and the Steward omits entering the Condition, on Proof thereof the Condition ſhall not be avoided; but the Rolls ſhall be amended. 4 *Rep.* 25. A *Copyholder* may ſurrender to the Uſe of another, reſerving Rent with a Condition of Re-entry for Non-payment, and in Default of Payment may re-enter. *Ibid.* 21. If a *Copyholder* of Inheritance, takes a Leaſe for Years of his *Copyhold* Eſtate, it is a Surrender in Law of his *Copyhold*. Where there is a Tenant for Life, and Remainder in Fee, he in Remainder may ſurrender his Eſtate, if there by no Cuſtom to the contrary. 3 *Leon.* 329. If a Surrender is made with Remainders over, Caſe lies for him in Remainder againſt a *Copyholder* for Life, who commits Waſte, &c. 3 *Lev.* 128. A Surrendree of a Reverſion of a *Copyhold*, is an Aſſignee within the Equity of the Stat. 32 *H.* 8. to bring Action of Debt or Covenant againſt a Leſſee, &c. 1 *Salk.* 185. A *Copyholder* in Fee ſurrenders to the Uſe of one for Life, with Remainder to another for Life, Remainder to another in Fee; as the particular Eſtates and Remainders make but one Eſtate, there is but one *Fine* due to the Lord. 2 *Danv.* 191. Fines are paid to the Lord on Admittances; and may be due on every Change of the Eſtate by Lord or Tenant: In Caſe of a Surrender, the Lord may make what Fine he pleaſes; but Fines are to be reaſonable; They are either certain, by Cuſtom, or uncertain; a Fine certain is to be paid preſently; but if it be uncertain, the *Copyholder* is to have Notice, and Time to pay it. The Lord may have Action of Debt for his Fine; or may diſtrain by Cuſtom. 4 *Rep.* 27. 13 *Rep.* 2. A *Heriot* is a Duty to the Lord, rendered at the Death of the Tenant, or on a Surrender and Alienation of an Eſtate; and is the beſt Beaſt or Goods, found in the Poſſeſſion of the Tenant deceaſed, or otherwiſe, according to Cuſtom. And for Heriots, Reliefs, &c. the Lord may diſtrain, or bring Action of Debt. *Plowd.* 96. *Relief* is a Sum of Money which every *Copyholder* in Fee, or Freeholder of a Manor pays to the Lord, on the Death of his Anceſtor; and is generally a Year's Profits of his Land. *Services* ſignifie any Duty whatſoever accruing unto the Lord from Tenants; and are not only annual, and accidental; but corporal, as Homage, Fealty, &c. *Comp. Court-Keep.* 7, 8, 9, &c.

Copyholds eſcheat, and are *forfeited* in many Caſes; *Eſcheat* of a *Copyhold* Eſtate, is either where the Lands fall into the Hands of the Lord, for Want of an Heir to inherit them; or where the *Copyholder* commits Felony, &c. But before the Lord can enter on an Eſtate eſcheated, the Homage Jury ought to preſent it. *Forfeitures* proceeding from Treaſons, Felonies, Alienation by Deed, &c. a Preſentment of them muſt be alſo made in Court, that the Lord may have Notice of them. A *Copyholder* refuſing to do Suit of Court, being ſufficiently warned, is a Forfeiture of his Eſtate; unleſs he be prevented by Sickneſs, Inundations of Water, &c. If the Lord demandeth his Rent, and the *Copyholder* being preſent denies to pay it at the Time required, this is a Forfeiture; but if the Tenant be not upon the Ground when demanded, the Lord muſt continue his Demand upon the Land, ſo that by a continual Denial in Law, it may amount to a Denial in Fact: Though it is ſaid there muſt be a Demand from the Perſon of the *Copyholder*, and a wilful Denial, to make a Forfeiture. A *Copyholder* not performing the Services due to his Lord; or if he ſue a Replevin againſt the Lord, upon the Lord's lawful Diſtreſs for his Rent or Services, theſe are Forfeitures. If the Lord upon Admittance of a *Copyholder*, the Fine by the Cuſtom of the Manor being certain, demandeth his Fine, and the *Copyholder* denieth to pay it upon Demand, this is a Forfeiture. Upon the Deſcent of any *Copyhold* of Inheritance, the Heir by the general Cuſtom is tied, upon three ſolemn Proclamations, made at three ſeveral Courts, to come in and be admitted to his *Copyhold*; or if he faileth therein, this Failure worketh a Forfeiture; but if an Infant come not in to be admitted at three Proclamations, it is no Forfeiture: So of one beyond Sea, &c. An Ideot, Lunatick, &c. tho' able to take *Copyholds*, yet they are unable to forfeit them: And in Reſpect to others, Forfeitures may be mitigated by Cuſtom, and the *Copyholder* only amerced. By Stat. 9 *Geo.* 1. *c.* 29. On Default of Infants, and Feme Coverts appearing to be admitted Tenants to *Copyhold* Lands, the Lord or his Steward may name a Perſon to be Guardian or Attorney for them, and by ſuch Guardian, &c. admit them: And if the uſual Fine thereon be not paid in three Months, being demanded in Writing, the Lord may enter on the *Copyhold*, and receive the Rents, &c. till the Fine is paid with all Charges. And by this Statute, no Infant or Feme Covert ſhall forfeit any *Copyhold* Lands for their Neglect to come to Court to be admitted, or Refuſal to pay any Fine. The general Cuſtom of *Copyholds* allows a *Copyholder* to make a Leaſe for one Year of his *Copyhold* Eſtate, and no more, without incurring a Forfeiture: But a *Copyholder* may make a Leaſe for one Year, and covenant with the Leſſee, that after the End of that Year, he ſhall have the ſame for another Year, and ſo *de anno in annum* during the Space of ſeven Years, &c. and be no Forfeiture. *Cro. Jac.* 300. Though a *Copyholder* may not make a Leaſe to hold for one Year, and ſo from Year to Year during his Life, excepting one Day yearly, &c. which will be a Forfeiture, being a mere Evaſion. A Woman who was a *Copyholder* in Fee married, her Husband made a Leaſe for Years, not warranted by the Cuſtom, which was a Forfeiture; the Husband died; and adjudged that the Lord ſhall not take Advantage of this Forfeiture after his Death, but the Wife ſhall enjoy the Eſtate. *Cro. Car.* 7. Livery upon any Conveyance of a *Copyhold* Eſtate amounts to a Forfeiture. And yet if a *Copyholder* for Life ſurrender to another in Fee, this is no Forfeiture; for it paſſeth by Surrender to the Lord, and not by Livery. If *Copyholder* for Life cuts down Timber-Trees, it is a Forfeiture of his *Copyhold*: Tho' ſuch *Copyholder* may take Houſe-boot, Hedge-boot, and Plough-boot, upon his *Copyhold*, of common Right, as a Thing incident to the Grant; if he be not reſtrained by Cuſtom, to take them by the Aſſignment of the Lord or his Bailiff. Where a *Copyholder* for Life fells Timber-Trees, the Lord may take them, and the Eſtate is forfeited: But if Under-Leſſee for Years of a *Copyholder* cut down Timber, this ſhall not be a Forfeiture of the *Copyhold* Eſtate, but the Lord is put to his Action of the Caſe againſt the Leſſee. 1 *Bulſt.* 150. *Style* 233. A *Copyhold* granted to two for their Lives ſucceſſively, where the Cuſtom of the Manor is, that they ſhall not fell Trees; if the firſt *Copyholder* for Life cut down Trees, &c. 'tis not only a Forfeiture of his own Eſtate for Life, but of him in Remainder.

Moor 49. In other Caſes, a *Copyholder* for Life committing Waſte, ſhall not forfeit the Eſtate of him in Remainder. *Cro. Eliz.* 880. If *Copyholder* for Life, where the Remainder is over for Life, commits a Forfeiture by Waſte, *&c.* he in Remainder ſhall not enter, but the Lord. 2 *Danv.* 198. A *Copyholder* committing Waſte voluntary, or permiſſive, this is a Forfeiture: Voluntary, as if he pluck down any Houſe, though built by himſelf; lop Trees, and ſell them, plough up Meadow, whereby the Ground is made worſe, *&c.* Permiſſive, if he ſuffer the Roof of the Houſe to let in Rain, or the Houſe to fall; or if he permit his Meadow Ground to be ſurrounded with Water, ſo that it becomes marſhy, or his arable Land to be thus ſurrounded and become unprofitable, *&c.* theſe and the like are Forfeitures. See 2 *Danv. Abr.* 192, 193, 196, *&c.* 1 *Nelſ. Abr.* 509, 510, *&c.* If a Feme *Copyholder* for Life takes Huſband, who commits Waſte, and dies, the Eſtate of the Feme is forfeited: Tho' not if a Stranger commit the Waſte, without the Aſſent of the Husband. 4 *Rep.* 37. Moſt Forfeitures are cauſed by Acts contrary to the Tenure: But a ſucceeding Lord of a Manor, ſhall not have any Advantage of a Forfeiture, by Waſte done by a *Copyholder* in the Time of his Predeceſſor. 2 *Sid.* 8. And if a preſent Lord doth any Thing whereby he acknowledges the Perſon to be his Tenant after Forfeiture, this Acknowledgment is a Confirmation of his Eſtate. *Coke's Cop.* 61. The Court of *Chancery* will not relieve a *Copyhold* Tenant, againſt a voluntary Forfeiture, on committing Waſte, *&c.* But it doth for permiſſive Waſte; and when the Eſtate is forfeited for Non payment of Rent, a Fine, or ſuch Things, where a Value may be ſet on them, and Compenſation made the Lord on any Laches of Time, the Tenant may be relieved; for there the Land is but in Nature of a Security for thoſe Sums. *Preced. Canc.* 569, 572. In Caſe of making a Leaſe for Years, without Licenſe, and not warranted by Cuſtom, found to be a Forfeiture at Law, Equity has nothing to do with it, to give any Remedy; it is like to a Feoffment made, or Fine levied by particular Tenants, againſt which their can be no Relief. *Ibid.* 574. Where *Copyhold* Lands are purchaſed in Fee, in Truſt for an Alien, the Lands are not ſeiſable by the King; nor is the Truſt forfeited to him; for if the Lands were forfeited as purchaſed for ſuch Alien, then the Lord of the Manor would loſe his Fines and Services, *&c.* *Hard.* 436. *Copyhold* Eſtates of poor Priſoners, aſſigned to Creditors, and Aſſignees admitted by the Lord, on paying the uſual Fine due on a Surrender, *&c.* See Stat. 10 *Geo.* 2. *c.* 26. See my *Comp. Court-Keeper*, 3d *Edit.* throughout, and *Nelſon's Lex. Manerior*, 2d *Edit.*

Coraage, (*Coraagium*) Is a Kind of extraordinary Impoſition, growing upon ſome unuſual Occaſion, and ſeems to be of certain Meaſures of Corn: For *Corus tritici* is a Meaſure of Wheat. *Bract lib.* 2. *c.* 116. *Numb.* 6. Who in the ſame Chapter *Numb.* 8. hath theſe Words. —— *Sunt etiam quædam communes Præſtationes, quæ ſervitia non dicuntur, nec de Conſuetudine veniunt, niſi cum neceſſitas intervenerit, vel cum Rex venerit; ſicut ſunt* Hidagia, Coraagia *&* Carvagia, *&c. alia plura de neceſſitate, & ex conſenſu communi totius Regni introducta, &c.* Blount.

Coracle, A ſmall Boat uſed by Fiſhermen on ſome Parts of the River *Severn*, made of an oval Form, of ſplit Sally Twigs interwoven, and on that Part next the Water covered with Leather, in which one Man being ſeated in the Middle, will row himſelf ſwiftly with one Hand, while with the other he manages his Net or Fiſh-Tackle; and coming off the Water, he will take the light Veſſel on his Back, and carry it home. This Boat is of the ſame Nature of the Indian *Canoos*; though not of the ſame Form, or employed to the like Uſe.

Coram non Judice, Is when a Cauſe is brought and determined in a Court whereof the Judges have not any Juriſdiction; then it is ſaid to be *Coram non Judice*, and void. 2 *Cro.* 351.

Corbel Stones, Are Stones wherein Images ſtand: The old *Engliſh Corbel*, was properly a Nich in the Wall of a Church, or other Structure, in which an Image was placed for Ornament or Superſtition; and the *Corbel* Stones were the ſmooth poliſhed Stones, laid for the Front and Outſide of the *Corbels* or Niches. Theſe Niches remain on the Outſide of very many Churches and Steeples in *England*, though the little Statues and Reliques are moſt of them broken down. *Paroch. Antiq.* 575.

Cord of Wood, Is a Quantity of Wood eight Foot long, four Foot broad, and four Foot high, ordained by Statute.

Cordage, (*Fr.*) Is a general Appellation for all Stuff to make Ropes, and for all Kind of Ropes belonging to the Rigging of a Ship: It is mentioned in 15 *Car.* 2. *c.* 13.

Cordiner, From the Fr. *Cordouannier*, a Shoemaker; we call him vulgarly a *Cordwainer*; and ſo this Word is uſed in divers Statutes, as 3 *H.* 8. *c.* 10. 5 *H* 8. *c.* 7. 27 *H.* 8. *c.* 14. 5 & 6 *Ed.* 6. *c.* 3. 1 *Jac.* 1. *c.* 22, *&c.* By which laſt Statute the Maſters and Wardens of the *Cordwainers* Company in *London*, *&c.* are to appoint Searchers and Triers of Leather; and Leather is not to be ſold before ſearched and ſealed, *&c.*

Cordubanarius, Alſo ſignifies a Shoe-maker. *Cowel.*

Coretes, From the Brit. *Cored*, Pools, Ponds, *&c.* —— *Et cum ſuis Piſcibus &* Coretibus *anguillarum & cum toto Territorio ſuo.* Du Freſne.

Corium Forisfacere, Was where a Perſon was condemned to be whipped; which was anciently the Puniſhment of a Servant. *Si quis* Corium *ſuum forisfaciat & ad Eccleſiam incurrat, ſit ei verberatio condonata.* Corium perdere, the ſame: And *Corium redimere* is to compound for a Whipping.

Corn, No *Corn* was formerly to be Tranſported, without the King's Licenſe; except for the Victualling of Ships, and in ſome ſpecial Caſes, from ſome Ports only: And none may buy *Corn* to ſell again, without Licence from Juſtices, *&c.* Stat. 5 *El. c.* 12. But now *Corn*, as Wheat, Barly, Oats, *&c.* may be tranſported to States in Amity when they exceed not ſuch and ſuch Prices, *viz.* Wheat 48 *s.* the Quarter, Barley 24 *s.* Oats 16 *s.* *&c.* by many Statutes; and the Exporters of it ſhall pay no Duty or Cuſtom, but be entitled to Bounty Money or a certain Allowance for Exportation, *viz.* 5 *s.* for every Quarter of Wheat, 2 *s.* 6 *d.* for Barley, *&c.* 3 *Car.* 1. 12. 15 & 22 *Car.* 2. 2 *W.* & *M.* *&c.* The Tranſportation of *Corn* to foreign Parts, was prohibited by 8 *Ann. c.* 2. See 2 *Geo.* 2. *cap.* 18. A Cuſtom Duty is granted on *foreign Corn* imported; to be paid according to the Price of *Engliſh Corn*, and no foreign *Corn* ſhall be tranſported from one Port of *Great Britain* to another, on Pain of Forfeiture, and 20 *s.* a Buſhel. *Stat.* 5 *Geo.* 2. *cap.* 12. If any Perſon uſe Violence on another Perſon to hinder him from buying, or carrying *Corn* to any Sea-port Town to be tranſported, *&c.* he ſhall be impriſoned by two Juſtices, not exceeding three Months, and be publickly whipped, *&c.* and committing a ſecond Offence, or deſtroying Granaries, or *Corn* in any Boat or Veſſel, to be adjudged a Felon, and tranſported for ſeven Years: And the Hundred to make good the Damage, if not above 100 *l.* as in Caſes of Robbery; where any Offender is not apprehended and convicted within twelve Months, but Notice muſt be given to the Conſtable in two Days, *&c.* by 11 *Geo.* 2. *c.* 22. This Statute is of little Uſe; for no Sort of *Corn*, Meal, Flour, Bread Buiſcuit, Beef, *&c.* may now be exported, on Pain of forfeiting 20 *s.* for every Buſhel of Grain, and 12 *d.* every Pound Weight of Bread, *&c.* But his Majeſty before a certain Time may permit the Exportation of *Corn* by Proclamation, and Notice in the *Gazette.* Stat. 14 Geo 2. *c.* 3.

Cornage, (*Cornagium*, from the Lat. *Cornu*) a Horn, Was a Kind of Tenure in Grand Serjeanty; the Service of which was to blow a Horn when any Invaſion of the *Scots* was perceived: And by this Tenure many Perſons held their Lands Northward, about the Wall commonly called the *Picts Wall. Camd. Britan.* 609. This old Service of *Horn-blowing* was afterwards paid in Money, and the Sheriffs accounted for it under the Title of *Cornagium.*—— *Memorandum quod cum vicecomes* Cambriæ *ſederet compotum ad Scaccarium apud* Salop, *idem vicecomes fecit Tallagium ſub nomine ſuo lx. lib. tam de* Cornagio, *quam de aliis debitis.* Mem. in Scacc. 6 Ed. 1. Sir *Edward Coke* in his firſt Inſtitute, *pag.* 107. ſays *Cornage* is alſo called in the old Books *Horngeld*; but they ſeem to differ much. See *Horngeld.*

Cornare, To blow in the Horn.—— *Faciat* Cornare *ne videatur furtive facere.* Mat. Pariſ. pag. 181.

Cornwall, A Royal Dutchy belonging to the Prince of *Wales*, abounding with Mines, and having *Stannary* Courts, *&c.* It yields a great Revenue to the Prince; and how Leaſes are to be made of Lands in the Dutchy of *Cornwall*, for three Lives, or thirty-one Years, under the ancient Rents, *&c.* See Stat. 13 *Car.* 2. *c.* 4. and 12 *Ann. c.* 22.

Corody, (*Corodium*) Signifies a Sum of Money, or Allowance of Meat, Drink, and Cloathing due to the King from an Abbey, or other Houſe of Religion, whereof he was Founder, towards the Suſtentation of ſuch a one of his Servants as he thought fit to beſtow it upon. The Difference between a *Corody* and *Penſion* ſeems to be, that a *Corody* was allowed towards the Maintenance of any of the King's Servants in an Abbey: A Penſion is given to one of the King's Chaplains, for his better Maintenance, 'till he may be provided of a Benefice: And of both theſe you may read *Fitz. Nat. Br. fol.* 250. where are ſet down all the *Corodies* and Penſions that our Abbeys, when they were ſtanding, were obliged to pay to the King. *Corody* is ancient in our Laws: And it is mentioned in *Staundf. Prærog.* 44. And by the Stat. of *Weſtm.* 2. *c.* 25. it is ordained, that an Aſſiſe ſhall lie for a *Corody.* It is alſo apparent by 34 & 35 *H.* 8. *cap.* 26. that *Corodies* belonged ſometimes to Biſhops, and Noblemen, from Monaſteries: And in the *New Terms of Law*, it is ſaid that a *Corody* may be due to a common Perſon, by Grant from one to another; or of common Right to him that is Founder of a Religious Houſe, not holden in *Frank Almoine*; for that Tenure was a Diſcharge of all *Corodies* in itſelf: By this Book it likewiſe appears, that a *Corody* is either certain or uncertain, and may be not only for Life or Years, but in Fee. *Terms de Ley* 182. 2 *Inſt.* 630. In the *Monaſticon Anglicanum*, there is recorded the following Grant of a *Corody.*

Form *of a* Grant *of a* Corody.

S*Ciant, &c. quod nos* Radulphus *Abbas Monaſterii* Sti. Johannis de Haghmon & *ejuſdem Loci Conventus, ad inſtantiam & ſpeciale rogatum Excellentiſſimi & Reverendiſſimi Domini noſtri* Thomæ *Comitis Arundeliæ & Surreiæ, Dedimus, &c.* Roberto Lee *unum* Corodium *pro termino vitæ ſuæ, eſſendo cum Abbate Monaſterii prædicti Armigerum cum uno Garcione & duobus Equis; capiendo ibidem Eſculenta & poculenta ſufficientia pro ſeipſo, ſicut Armigeri Abbatis, qui pro tempore fuerint, capiunt & percipiunt; & pro Garcione ſuo, ſicut Garciones Abbatis & Armigerorum ſuorum capiunt & percipiunt; capiendo etiam pro Equis ſuis fœnum & prœbendam.*—— *Et quod idem* Robertus *habeat veſturam Armigerorum, &c. Dat.* 3 Hen. 5. *Mon. Angl. Tom.* 2. *pag.* 933.

Corodio Habendo, A Writ to exact a *Corody* of an Abbey or Religious Houſe. *Reg. Orig.* 264.

Corona Mala, or **Mala Corona**, The Clergy who abuſed their Character, were formerly ſo called. *Blount.*

Coronare Filium, To make one's Son a Prieſt. Anciently, Lords of Manors, whoſe Tenants held by *Villenage*, did prohibit them *Coronare Filios*, leſt ſuch Lords ſhould loſe a Villein by their entering into Holy Orders: For Ordination changed their Condition, and gave them Liberty, to the Prejudice of the Lord, who could before claim them as his Natives or born Servants.—— *Homo Coronatus* was one who had received the firſt *Tonſure*, as preparatory to ſuperior Orders; and the *Tonſure* was in Form of a *Corona*, or Crown of Thorns. *Cowel.*

Coronatore Eligendo, Is a Writ which lies on the Death or Diſcharge of any Coroner, directed to the Sheriff out of the Chancery, to call together the Freeholders of the County, for the Choice of a new Coroner; and to certify into the Chancery both the Election, and the Name of the Party elected, and alſo to give him his Oath, *&c. Reg. Orig.* 177. *F. N. B.* 163. There are uſually four Coroners in a County, in ſome Counties fewer, and in ſome but one, according as the Uſage is; and if any of them dieth, or is diſcharged, then ſhall iſſue this *Writ*; which is in this Form: The King to the Sheriff, *&c.* Becauſe *A. B.* late one of our *Coroners* in your County is dead, as we have underſtood; We command you, that if ſo it be, then in your full County-Court by the Aſſent of the ſame County, in the Place of the ſaid *A. B.* you cauſe to be choſen another *Coroner*, according to the Form of the Statute thereof ſet forth and provided, who having taken his Oath, as the Manner is, ſhall thence-forward thoſe Things do and keep, which to the Office of the *Coroner*, belongeth in the ſame County; and ſuch Perſon cauſe to be choſen, who beſt ſhall know, and may that Office attend, and his Name make known to us, *Witneſs*, &c.

Coronatore exonerando, Is a Writ for the Diſcharge of a Coroner, for Negligence, or Inſufficiency in the Diſcharge of his Duty: And where Coroners are ſo far ingaged in any other publick Buſineſs, that they cannot attend the Office; or if they are diſabled by old Age or Diſeaſe, to execute it; or have not ſufficient Lands, *&c.* they may be diſcharged by this Writ. 2 *Inſt.* 32. 2 *Hawk. P. C* 44. But if any ſuch Writ be grounded on an untrue Suggeſtion, the Coroner may procure a Commiſſion from the Chancery to inquire thereof; and if the Suggeſtion, be diſproved, the King may make a *Superſedeas* to the Sheriff, that he do not remove the Coroner; or if he have removed him, that he ſuffer him to execute the Office. *Reg. Orig.* 177. 178. *F. N. B.* 164.

Coroner, (*Coronator, a Corona*) Is an ancient Officer of this Realm. Mention being made of him in King *Athelſtan's* Charter to *Beverly*, *Anno* 925. and is ſo called, becauſe he deals wholly for the King and *Crown.* This Officer by the Statute of *Weſtm. cap.* 10. ought to be a ſufficient Perſon, that is the wiſeſt and diſcreeteſt Knight, that beſt would and might attend upon ſuch an Office: And there is a Writ in the Regiſter, *Niſi ſit Miles, &c.* whereby it appears it was good Cauſe to remove a *Coroner* choſen, if he were not a Knight, and had not an hundred Shillings Rent of Freehold. *Coroners* are to be Men of good Ability, and have Lands in Fee in the County where choſen, to anſwer all People: And if inſufficient, the County ſhall anſwer for them. 2 *Inſt.* 174. The Lord Chief Juſtice of the King's Bench, is the *Sovereign Coroner* of the whole Kingdom in Perſon whereſoever he is. 4 *Rep.* 57. There are alſo ſpecial *Coroners*, within divers Liberties, as well as the ordinary Officers in every

County; as the *Coroner of the Verge*, which is a certain Compaſs about the King's Court; who is likewiſe called *Coroner of the King's Houſe. Cromp. Juriſd.* 102. And ſome Corporations and Colleges are licenſed by Charter to appoint their *Coroners* within their own Precincts. 4 *Inſt.* 271. And for what ariſes on the High Sea, we read of *Coroners* appointed by the King or his Admiral. 2 *Hale's Hiſt. P. C.* 53. The Office of *Coroners* eſpecially concerns the Pleas of the Crown; and they are Conſervators of the Peace in the County where generally elected. Their Authority is *Judicial* and *Miniſterial*; Judicial, where one comes to a violent Death, and to take and enter Appeals of Murder, pronounce Judgment upon Outlawries, &c. And to enquire of Lands and Goods, and Eſcapes of Murderers, Treaſure Trove, Wreck of the Sea, Deodands, &c. The Miniſterial Power is where *Coroners* execute the King's Writs, on Exception to the Sheriff, as being Party to a Suit, Kin to either of the Parties, on Default of the Sheriff, &c. 4 *Inſt.* 271. 1 *Plowd.* 73. And the Authority of *Coroners* does not determine by the Demiſe of the King; as that of Judges, &c. doth, who act by the King's Commiſſion. 2 *Inſt.* 174. Where *Coroners* are impowered to act as Judges, as in taking an Inquiſition of Death, or receiving an Appeal of Felony, &c. The Act of one of them, is of the ſame Force as if they had all joined; but after one of them has proceeded to act, the Act of another of them will be void: And where they are authorized to act only miniſterially, in the Execution of a Proceſs directed to them upon the Incapacity of the Sheriff, their Acts are void if they do not all join. 2 *Hawk. P. C.* 52. *Hob.* 70. So that *Coroners* as Miniſters muſt all join; but as Judges, they may divide. But two *Coroners* ought to be Judges in Rediſſeiſin; and though one ſerves to pronounce an Outlawry, the Entry ought to be in the Name of all of them: And ſo of all Proceſſes directed to the *Coroners. Staundf.* 53. *Jenk. Cent.* 85. If the Sheriff is either Plaintiff or Defendant, or one of the Cogniſees, the Writ muſt be directed to the *Coroner. Cro. Car.* 300. But the *Coroner* is not the Officer of *B. R.* but where the Sheriff is improper; not where there is no Sheriff; for if the Sheriff die, the *Coroner* cannot execute a Writ. In Caſe of two *Coroners*, if one is challenged, the other may execute the Writ, &c. yet both make but one Officer: It is the ſame of two Sheriffs of a City, &c. 1 *Salk.* 144. A *Venire facias* ſhall go to the *Coroner*, where the Sheriff is a Party, or the Defendant is Servant to the Sheriff, &c. but it ought to be on principal Challenge to the Favour. *Moor* 470. On Defaults of Sheriffs, *Coroners* are to impanel Juries, and return Iſſues on Juries not appearing, &c. 2 *H.* 5. *cap.* 8. As the Sheriff in his Turn might enquire of all Felonies by the Common Law, ſaving the Death of a Man; ſo the *Coroner* can inquire of no Felony but of the Death of a Perſon, and that *ſuper viſum Corporis*. 4 *Inſt.* 271. By *Magna Charta*, *cap.* 17. no Sheriff, &c. or *Coroner*, ſhall hold Pleas of the Crown: But by Stat. *Weſtm.* 1. 3 *Ed.* 1. *c.* 10. it is enacted, that *Coroners* ſhall lawfully attach and preſent Pleas of the Crown; and that Sheriffs ſhall have Counter-Rolls with the *Coroners*, as well of Appeals, as of Inqueſts, &c. *Coroners* before the Stat. *Magn. Chart.* might not only receive Accuſations againſt Offenders, but might try them: But ſince that Statute, they cannot proceed ſo far; and Appeals before them, are removeable into *B. R.* &c. by *Certicrari*, directed to the *Coroners* and Sheriffs, &c. Though Proceſs may be awarded by the Sheriff and *Coroner*, or the *Coroner* only, in the County-Court on Appeals, 'till the Exigent, &c. 2 *Hawk. P. C.* 51. By the Statute *de Officio Coronatoris*, 4 *Ed.* 1. The *Coroner* is to go to the Place where any Perſon is ſlain or ſuddenly dead, and ſhall by his Warrant to the Bailiffs, Conſtables, &c. ſummon a Jury out of the four or five neighbouring Towns, to make Inquiry upon View of the Body; and the *Coroner* and Jury are to inquire into the Manner of Killing, and all Circumſtances that occaſioned the Party's Death, who were preſent, whether the dead Perſon were known, where he lay the Night before, &c. Examine the Body if there be any Signs of Strangling about the Neck, or of Cords about the Members, &c. Alſo all Wounds ought to be viewed, and Enquiry made with what Weapons, &c. And the *Coroner* may ſend his Warrant for Witneſſes, and take their Examination in Writing; and if any appear guilty of the Murder, he ſhall enquire what Goods and Lands he hath, and then the dead Body is to be buried. A *Coroner* may likewiſe commit the Perſon to Priſon who is by his Inquiſition found Guilty of the Murder; and the Witneſſes are to be bound by Recognizance to appear at the next Aſſiſes, &c. When the Jury have brought in their Verdict, the *Coroner* is to inrol and return the Inquiſition, whether it be brought in Murder, Manſlaughter, &c. to the Juſtices of the next Gaol-delivery of the County, or certify it into *B. R.* where the Murderers ſhall be proceeded againſt. 2 *Rol. Abr.* 32. Upon an Inquiſition taken before the *Coroner*, he muſt put into Writing the Effect of the Evidence given to the Jury before him; and bind them to appear, &c. which is to be certified to the Court with the Inquiſition; and neglecting it ſhall be fined. 1 & 2 *P. & M. cap.* 13. 1 *Lill. Abr.* 327. The Word *Murdravit* is not neceſſary in a *Coroner*'s Inquiſition; tho' 'tis in an Indictment for killing another Perſon. 1 *Salk.* 377. It is no neceſſary that the Inquiſition be taken in the Place where the Body was viewed. 2 *Hawk.* 48. But a *Coroner* has no Authority to take an Inquiſition of Death without a View of the Body; and if the Inqueſt be taken by him without ſuch View, it is void. 2 *Lev.* 140. The *Coroner* may in convenient Time take up a dead Body that hath been buried, in Order to view it; but if it be buried ſo long that he can diſcover nothing from the Viewing it; or if there be Danger of Infection, the Inqueſt ought not to be taken by the *Coroner*, but by Juſtices of Peace, by the Teſtimony of Witneſſes; for none can take it on View, but the *Coroner. Bro. Coron.* 167, 173. If the Body is buried, the Town ſhall be amerced; as it ſhall be if the Body is ſuffered to lie ſo long that it ſtinks. 2 *Danv. Abr.* 209, &c. Where the Body hath lain for ſome Time, that it cannot be judged how it came by its Death, that muſt be recorded, that at the Coming of the Juſtices of Aſſiſe, the Town where, &c. may be amerced on Sight of the *Coroner*'s Rolls. A *Coroner* may find any Nuſance by which the Death of a Man happens; and the Townſhip ſhall be amerced on ſuch Finding. 1 *Nelſ. Abr.* 536. If one is ſlain in the Day, and the Murderer eſcapes, the Town where done ſhall be amerced, and the *Coroner* is to enquire thereof on View of the Body. 3 *Hen.* 7. *c.* 1. A *Coroner* may take an Indictment upon View of the Body; as alſo an Appeal, within a Year after the Death of one ſlain. *Wood's Inſt.* 491. But a *Coroner ſuper viſum Corporis*, cannot make an Inquiſition of an Acceſſary after the Murder; tho' he may of Acceſſaries before the Fact. *Moor* 29. *Coroners* ought to ſit and enquire on the Body of every Priſoner that dies in Priſon: They have no Juriſdiction within the Verge of the King's Courts; nor of Offences committed at Sea, or between high and low Water Mark, when the Tide is in; though they have in Arms and Creeks of the Sea. 3 *Inſt.* 134. If a Body is drowned, and cannot be found to be viewed, the Inquiſition muſt be taken by Juſtices of Peace, on the Examination of Witneſſes, &c. 5 *Rep.* 110. Where a *Coroner*'s Inqueſt is quaſhed, he muſt make a new one *ſuper viſum Corporis*: And a *Coroner* may attend and amend his Inquiſition in Matters of Form: But if he misbehaves himſelf, and a *Melius*

lius Inquirendum is granted upon it, that Inquiſition muſt be taken by the Sheriffs or Commiſſioners, upon Affidavits, and not *ſuper viſum Corporis*; becauſe none but a *Coroner* can take Inquiſition *ſuper viſum*, *&c.* and he is not to be truſted again. 1 *Salk.* 190. 2 *Danv. Abr.* 210. If a *Coroner* hath been Guilty of any corrupt Practice, Bribery, *&c.* in taking the Inquiſition, a *Melius Inquirendum* may be awarded for taking a new one by ſpecial Commiſſioners, *&c.* *Coroners* concealing Felonies, *&c.* are to be fined, and ſuffer one Year's Impriſonment. 3 *Ed.* 1. *cap.* 9. Alſo for Miſmanagement in the *Coroner*, Filing the Inquiſition may be ſtopped. 1 *Mod.* 82. A *Coroner*'s Inquiſition is not traverſable: If it be found before the *Coroner ſuper viſum Corporis*, that one was *Felo de ſe*, the Executors or Adminiſtrators of the Deceaſed, it is ſaid, cannot traverſe it. 3 *Inſt.* 55. But it has been held that the Inqueſt being moved into *B. R.* by *Certiorari*, may be there traverſed by the Executor or Adminiſtrator of the Deceaſed. 2 *Hawk.* 54. And it hath been adjudged, that the Inquiſition of *Felo de ſe* is traverſable; though *Fugam fecit* is not. 2 *Leon.* 152. A *Coroner*'s Inquiſition being final, the *Coroner* ought to hear Counſel, and Evidence on both Sides. 2 *Sid.* 90, 101. The *Coroner* muſt admit Evidence, as well againſt the King's Intereſt as for it; but it hath been held, that if a Perſon be killed by another, and it is certainly known that he did it, the *Coroner*'s Jury are to hear the Evidence only for the King: And inquire whether the Killing were by Malice, or without Malice, *&c.* *Per Hale* C. J. Where a *Coroner* would not admit of Evidence againſt the King, to prove a *Felo de ſe* to be *Non compos Mentis*, his Inquiſition was ſet aſide; and a new Inquiſition taken, whereby it was found that the Party was *Non compos.* 2 *Hale's Hiſt. P. C.* 60. If there be an Inquiſition of Manſlaughter or Murder, and alſo an Indictment by the Grand Jury againſt one, and he is arraigned, and found Not Guilty on the Indictment; here it is neceſſary to quaſh the *Coroner*'s Inquiſition, or to arraign the Party upon it, and acquit him on that alſo: For otherwiſe it ſtands as a Record againſt him, whereon he may poſſibly be outlawed. 2 *Hale* 65. And where a Perſon found Guilty by the *Coroner*'s Inqueſt, pleads, and is acquitted by the Petit Jury; they muſt give in who it was that killed the Man, which ſerves as an Indictment againſt that other Perſon, and if they cannot tell who, they may mention ſome fictitious Name. *Ibid.* By the Stat. 3 *Ed.* 1. *cap.* 10. *Coroners* ſhall demand or take nothing for doing their Offices: And by the ancient Law of *England*, none having any Office concerning the Adminiſtration of Juſtice, could take any Fee for doing his Office; and therefore this Statute was only in Affirmance of the Common Law. By 3 *Hen.* 7. *cap.* 1. upon an Inquiſition taken on View of the Body, the *Coroner* ſhall have 13 *s.* 4 *d.* Fee of the Goods of the Murderer; and if he be gone, out of the Amercement of the Town for the Eſcape. Tho' the 1 *H.* 8. *c.* 7. enacts that where a Perſon is ſlain by Miſadventure, the *Coroner* is to take no Fee, on Pain of 40 *s.* Juſtices of Aſſiſe and of Peace have Power to enquire of and puniſh Extortions of *Coroners*, and alſo their Defaults. *Stat. Ibid.*

A *Coroner's Inquiſition* for Murder.

Wilts, ſſ. AN *Inquiſition indented, taken at* M. *in the ſaid County, before me* E. F. *one of the* Coroners *of our Sovereign Lord the King for the County aforeſaid, on* Thurſday *the Day*, &c. *in the Year of the Reign*, &c. *upon View of the Body of* C. D. (*then and there lying dead*) *being feloniouſly murdered at* M. *aforeſaid, upon the Oath of honeſt and lawful Men of the ſaid Town of* M. *and three others of the next Towns, that is to ſay*, &c. (naming three other Places) *as the Cuſtom is, to inquire after what Manner, and by what Means the ſaid* C. D. *came to his Death, on the Oaths of* G. H. J. K. L. M. *&c.* (the Jury) *who ſay upon their Oath, that the ſaid* C. D. *on the Day, Year, and Place above mentioned, about Ten of the Clock in the Forenoon on the ſaid* Thurſday, *was in the Peace of God and our ſaid Sovereign Lord the now King, at* M. *aforeſaid, and then and there came* A. B. *late of*, &c. *Yeoman, and feloniouſly and as a Felon of our ſaid Lord the King, and of his Malice forethought, on the Day, Year, Hour, and Place above mentioned, did make an Aſſault upon the ſaid* C. D. *in the ſaid County, and ſtrike the ſaid* C. D. *with a certain Sword (of the Price of two Shillings, which the ſaid* A. B. *then and there held in his Right Hand) upon the Right Part of his Breaſt, and gave the ſaid* C. D. *one mortal Wound, of which ſaid Wound the ſaid* C. D. *immediately died; and ſo the ſaid* A. B. *then and there feloniouſly killed and murdered the ſaid* C. D. *againſt the Peace of our ſaid Lord the King, his Crown and Dignity. And the ſaid Jurors further ſay, upon their Oath aforeſaid, that* N. B. *of*, &c. *aforeſaid was feloniouſly preſent with a drawn Sword, at the Time of the ſaid Felony and Murder committed in Form aforeſaid, that is to ſay, on the ſaid Day*, &c. *in the Year*, &c. *at* M. *in the ſaid County, about Ten of the Clock in the Forenoon of the ſame Day, then and there comforting, abetting and aiding the ſaid* A. B. *to do and commit the Felony and Murder aforeſaid, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity. And moreover the Jurors aforeſaid upon their Oath ſay, that the ſaid* A. B. *and* N. B. *had not, nor had either of them, any Goods or Chattels, Lands or Tenements, to their Knowledge within the ſaid County, at the Time of the Felony and Murder committed as aforeſaid.* In Witneſs, *&c.*

Coroner of the King's Houſhold, Hath an exempt Juriſdiction within the Verge, and the *Coroner* of the County cannot intermeddle within it; as the *Coroner of the King's Houſe* may not intermeddle within the County out of the Verge. 2 *Hawk.* 45. If an Inquiſition be found before the *Coroner* of the County, and the *Coroner* of the Verge, where the Homicide was committed in the County, and it is ſo entered and certified, it will be Error. 4 *Rep.* 45. But if a Murder be committed within the Verge, and the King removes before any Indictment taken by the *Coroner of the King's Houſhold*; the *Coroner* of the County, and the *Coroner of the King's Houſe* ſhall enquire of the ſame: And according to Sir *Edw. Coke*, the Coroner of the County might enquire thereof at the Common Law. 2 *Hawk.* 45. 2 *Inſt.* 550. If the ſame Perſon be Coroner of the County, and alſo *of the King's Houſe*, an Indictment of Death taken before him as *Coroner*, both *of the King's Houſe*, and of the County, is good. 4 *Rep.* 46. 2 *Inſt.* 134. By the Stat. 33 *H.* 8. 12. *Par.* 1 *&* 3. *It is ordained, That all Inquiſitions upon the View of Perſons ſlain, within any of the King's Palaces or Houſes, or any other Houſe or Houſes wherein his Majeſty ſhall happen to be abiding in his Royal Perſon, ſhall be taken by the* Coroner *for the Time being* of the King's Houſhold, *without any Aſſiſting of another Coroner of any Shire within this Realm, by the Oaths of Twelve or more of the Yeomen Officers* of the King's Houſhold, *returned by the two Clerks Controllers, the Clerks of the Check, and the Clerks Marſhal, or one of them, of the ſaid Houſhold, to whom the ſaid* Coroner of the Houſhold *ſhall direct his Precept; and the ſaid* Coroner *ſhall certify under his Seal, and the Seals of ſuch Perſons as ſhall be ſworn before him, all ſuch Inquiſitions before the Maſter or Lord Steward* of the Houſhold; *who hath the Appointment of ſuch* Coroner, *&c.*

Coroner of London. By the Charter of King *Ed.* 4. the Mayor and Commonalty of *London* may grant the Office of *Coroner* to whom they pleaſe; and no other *Coroner* but he that belongs to the City, ſhall have any Power there: Alſo the Lord Mayor, *&c.* may chuſe two *Coroners* in *Southwark.* When any one is killed, or comes to an untimely Death in *London*, the *Coroner* upon Notice ſhall attend where the Body is, and forthwith cauſe the Beadles of the Ward to ſummon a Jury to make the neceſſary Inquiry, how ſuch Perſon came by his Death? And after Inquiſition taken, he ſhall give a Certificate to the Church-warden, Clerk or Sexton of the Pariſh, to the Intent the Corpſe may be buried: The *Coroner's* Fees here formerly amounted to 25 *s.* now to above double that Sum; unleſs the Friends of the Deceaſed are poor, and then he ſhall execute his Office for nothing. *Cit. Lib.* 46, 47. The *Coroners* in *London* and *Middleſex*, and in other *Cities*, &c. may bail Felons and Priſoners in ſuch Manner as hath been heretofore accuſtomed. 1 & 2 *P. & M. c.* 13. *ſect.* 6. 1 *Lill. Abr.* 327. What anciently belonged to *Coroners*, you may read at large in *Bracton, lib.* 3. *tract.* 2. *cap.* 5, 6, 7 & 8. *Britton, cap* 1. and *Fleta, lib.* 1. *c.* 18.

Corone, (Fr.) All Matters of the *Crown*, were heretofore reduced to this Law Head or Title; They are the Things that concern Treaſon, Felony, and divers other Offences, by the Common Law, and by Statute; of which ſome are greater, and others leſs, according to their Nature. *Shep. Epit.* 367.

Corporal Oath, And how it is adminiſtred. See *Oath.*

Corporation, (*Corporatio*) Is a Body Politick or Incorporate, ſo called, as the Perſons are made into a *Body*, and of Capacity to take and grant, &c. Or it is an Aſſembly and Joining together of many into one Fellowſhip and Brotherhood, whereof one is Head and Chief, and the Reſt are the Body; and this Head and Body knit together, make the *Corporation:* Alſo it is conſtituted of ſeveral Members like unto the natural Body, and framed by *Fiction* of Law to endure in perpetual Succeſſion. And of *Corporations* ſome are *Sole*, ſome *Aggregate*; *Sole*, when in one ſingle Perſon, as the King, a Biſhop, Dean, &c. *Aggregate*, which is the moſt uſual conſiſting of many Perſons, as Mayor and Commonalty, Dean and Chapter, &c. Likewiſe *Corporations* are *Spiritual* or *Temporal*; *Spiritual*, of Biſhops, Deans, Archdeacons, Parſons, Vicars, &c. *Temporal*, of Mayors, Commonalty, Bailiffs and Burgeſſes, &c. and ſome *Corporations* are of a *mixt Nature*, compoſed of Spiritual and Temporal Perſons, ſuch as Heads of Colleges and Hoſpitals, &c. All *Corporations* are ſaid to be *Eccleſiaſtical*, or *Lay:* And Bodies Politick or Incorporate may commence and be eſtabliſhed three Manner of Ways, *viz.* by *Preſcription*, by *Letters Patent*, or by *Act of Parliament*; but are moſt commonly by Patent or Charter. 1 *Inſt.* 250. 3 *Inſt.* 202 3 *Rep.* 73. There may be a *Corporation* without a Head: But where there is a Head, all Acts ought to be by and to the Head; nor can they ſue without ſuch Head; and if he dies, nothing can be done in the Vacancy. 10 *Rep.* 30, 32. 1 *Inſt.* 264. If Land be given to a Mayor and Commonalty for their Lives, they have an Eſtate by Intendment not determinable: So it is, if a Feoffment be made of Land to a Dean and Chapter, without Mention of Succeſſors. In caſe of a ſole *Corporation*, as Biſhop, Dean, Parſon, &c. no Chattel either in Action or Poſſeſſion ſhall go in Succeſſion; but the Executors or Adminiſtrators of the Biſhop, Parſon, &c. ſhall have them: But it is otherwiſe of a *Corporation* Aggregate, as a Dean and Chapter, Mayor and Commonalty, and the like; for they in Judgment of Law never die. And yet the Caſe of the *Chamberlain of London* differs from all theſe; his Succeſſor may in his own Name have Execution of a Recognizance acknowledged to his Predeceſſor for *Orphanage* Money; and the Reaſon is, becauſe the *Corporation* of the Chamberlain is by *Cuſtom*, which hath enabled the Succeſſor to take and have ſuch Recognizances, Obligations, &c. that are made to his Predeceſſor. *Terms de Ley* 187, 188. Though a ſole *Corporation* cannot generally take in Succeſſion Goods and Chattels, &c. yet it may take a Fee-ſimple in Succeſſion, by the Word Succeſſors. 1 *Inſt.* 8, 9, 46. Aggregate *Corporations* may take not only Goods and Chattels, but Lands in Fee ſimple, without the Word Succeſſors, for the Reaſon aforementioned. 4 *Inſt* 249. And Succeſſion in a Body Politick, is as Inheritance in a Body private. If a Leaſe for Years be made to a Biſhop and his Succeſſors, 'tis ſaid his Executors ſhall have it *in auter droit*; for regularly no Chattel can go in Succeſſion in caſe of a ſole *Corporation*, no more than if a Leaſe be made to a Man and his Heirs, it can go to his Heirs. 1 *Inſt.* 46. In making Aggregate *Corporations*, there muſt be, 1. Lawful Authority. 2. Proper Perſons to be incorporated. 3. A Name of Incorporation. 4. A Place, without which no *Corporation* can be made. 5. Words ſufficient in Law to make a *Corporation.* 10 *Rep.* 29, 123. 3 *Rep.* 73. The Words *Incorporo, Fundo,* &c. are not of Neceſſity to be uſed in making *Corporations*; but other Words equivalent are ſufficient: And of ancient Time, the Inhabitants of a Town were incorporated, when the King granted to them to have *Guildam Mercatoriam.* 2 *Danv. Abr.* 214. He that gave the firſt Poſſeſſions to the *Corporation*, is the Founder. The Pariſhioners or Townſmen of a Pariſh or Town; and Tenants of a Manor, are to ſome Purpoſes a *Corporation. Co. Lit.* 342, 95. If the King grants Lands to the Inhabitants of *B. Hæredibus & Succeſſoribus ſuis*, rendring a Rent, for any Thing touching theſe Lands, this is a *Corporation*; though not to other Purpoſes: But if the King grants Lands *Inhabitantibus de* B. and they be not incorporated before, if no Rent be reſerved to the King, the Grant is void. 2 *Danv.* 214. If the King grants *Hominibus de Iſlington* to be diſcharged of Toll, this is a good *Corporation* to this Intent; but not to purchaſe, &c. And by ſpecial Words the King may make a limited *Corporation*, or a *Corporation* for a ſpecial Purpoſe. *Ibid. London* is a *Corporation* by Preſcription; but though a *Corporation* may be by Preſcription, it ſhall be intended that it did originally derive its Authority by Grant from the King; for the King is the Head of the Common-wealth, and all the Common-wealth, in Reſpect of him, is but as one *Corporation*; and all other *Corporations* are but Limbs of the greater Body. 1 *Lill. Abr.* 330. A Mayor and Commonalty or *Corporation*, cannot make another *Corporation*, or Commonalty. 1 *Sid.* 290. The City of *London* cannot make a *Corporation*, becauſe that can only be created by the Crown; but *London*, or any other *Corporation*, may make a Fraternity. 1 *Salk.* 193. A *Corporation* is properly an Inveſting the People of the Place with the local Government thereof, and therefore their Laws ſhall be binding to Strangers; but a Fraternity is ſome People of a Place united together in Reſpect of a Myſtery and Buſineſs into a Company, and their Laws and Ordinances cannot bind Strangers, for they have not a local Power. *Salk. Ibid.* No Maſters and Wardens, &c. of any Myſtery, or other *Corporation*, ſhall make any By-Laws or Ordinances in Diminution of the King's Prerogative, or againſt the common Profit of the People; except the ſame be approved by the Lord Chancellor, or Chief Juſtices, &c. on Pain of 40 *l.* And ſuch Bodies Corporate ſhall not make any Acts or Ordinances for the reſtraining Perſons to ſue in the King's Courts for Remedy, &c. under the like Penalty. *Stat.* 19 *H.* 7. *cap.* 7. Ordinances made by *Corporations*, to be obſerved on Pain of Impriſonment, or of Forfeiture of Goods, &c. are contrary to *Magna Charta.* 2 *Inſt.* 47, 54. But Penalties may be inflicted by By-Laws, which may be recovered by Diſtreſs or Action of Debt: And a Cuſtom for the Lord Mayor and Aldermen of *London*, to commit a Citizen for not accepting of the Livery, &c. was held a good Cuſtom, being for the good Government of the City. 5 *Mod.* 320.

320. *Corporations* may not, by Bond or otherwiſe, reſtrain any Apprentice, *&c.* from keeping Shop in the *Corporation* under the Penalty of 40*l.* *Stat.* 28 H. 8. *c.* 5. When a *Corporation* is duly created, all Incidents, as to Purchaſe and Grant, ſue and be ſued, *&c.* are tacitly annexed to it; and altho' no Power to make Laws is given by a ſpecial Clauſe to a *Corporation*, it is included by Law in the very Act of Incorporating. 1 *Inſt.* 264. A new Charter doth not merge or extinguiſh any of the ancient Privileges of the old Charter. And if an ancient *Corporation* is incorporated by a new Name, yet their new Body ſhall enjoy all the Privileges that the old *Corporation* had. *Raym.* 439. 4 *Rep* 37. There are uſually granted in Charters to *Corporations*, divers Franchiſes; as Felons Goods, Waifs, Eſtrays, Treaſure Trove, Deodands, Courts, and Cogniſance of Pleas, Fairs, Markets, Aſſiſe of Bread and Beer, *&c.* 4 *Rep.* 65. Actions ariſing in *Corporations*, may be tried in the *Corporation* Courts; but if they try Actions which ariſe not within their Juriſdictions, and encroach upon the Common Law, they ſhall be puniſhed for it. *Lutw.* 1571, 1572. The *Corporation* of the City of *London* is to anſwer for all particular Miſdemeanors, which are committed in any of the Courts of Juſtice within the City; and for all other general Miſdemeanors committed within the City: So 'tis conceived of all other *Corporations.* 1 *Lill. Abr.* 329. If a common Officer of a Town doth any Thing for their common Uſe, it is reaſonable the Corporate Town ſhall be anſwerable for it. 1 *Leon.* 215. A *Corporation* may be diſſolved, for it is created upon a Truſt; and if that be broken 'tis forfeited. 4 *Mod.* 58. *Corporations* are diſſolved by Forfeiture of their Charter, Miſuſer, *&c.* upon the Writ *Quo Warranto* brought; by Surrender, or by Act of Parliament: And if they neglect to chooſe Officers, or make falſe Elections, *&c.* it is a Forfeiture of the *Corporation.* 4 *Rep.* 77. But by Statute 11 *Geo.* 1. *c.* 4. no *Corporation* ſhall be diſſolved, for any Default to chuſe a Mayor, *&c.* but the Electors are ſtill to proceed to Election; and if no Election be made, the Court of King's Bench ſhall iſſue a *Mandamus* requiring the Electors to chooſe ſuch Mayor, *&c.* By 2 *Ann. c.* 20. where Perſons intrude into the Office of Mayor, *&c.* of a *Corporation*, a *Quo Warranto* ſhall be brought againſt the Uſurpers, who ſhall be ouſted, and fined; And none are to execute an Office in a *Corporation* for more than a Year. No Perſons ſhall bear Office in any *Corporation*, &c. but ſuch as have received the Sacrament of the Church, and taken the Oaths. *Stat.* 13 *Car.* 2. *c.* 1. But ſee the *Stat.* 5 *Geo.* 1. *c.* 6. confirming Officers in *Corporations.* In Acts done by *Corporations*, the Conſent of the major Part ſhall be binding, by 33 *H.* 8. *cap.* 27. Grants of *Corporations* are to be by Deed, under their common Seal, and are good without Delivery; for the common Seal gives Perfection to *Corporation* Deeds. *Dav.* 44. An Obligation ſealed with the common Seal of a *Corporation*, if the Mayor ſigns it, he is ſuable if the *Corporation* be diſſolved: But if two of the Members ſign it, the particular Perſons are not bound by it. 2 *Lev* 137. *Raym.* 152. A Releaſe of a Mayor for any Sum of Money due to the *Corporation*, made in his own Name, is not good in Law; the *Corporation* muſt join and do it by their common Seal. *Terms de Ley.* A *Corporation* which hath a Head, may make a perſonal Command without Writing; but a *Corporation* aggregate without a Head cannot. *Lutw.* 1497. A *Corporation* aggregate may employ any one in ordinary Services, without Deed; tho' not to appear for them, in any Act which concerns their Intereſt or Title. 1 *Ventr.* 47, 48. Such a *Corporation* may appoint a Bailiff to take a Diſtreſs, without Deed or Warrant. 1 *Salk.* 191. But cannot without Deed command a Bailiff to enter into Lands for a Condition broken; for ſuch Command without Deed is void. *Cro.* 815. Though a *Corporation* cannot do any Act *in pais* without their common Seal, they may do an Act upon Record; and the Reaſon is, becauſe they are eſtopped by the Record to ſay it is not their Act. 1 *Salk.* 192. A Promiſe to a *Corporation* is good without Deed. 2 *Lev.* 252. The Head of a *Corporation* aggregate may not be charged with the Act of his Predeceſſor if it be not by common Seal, or for ſuch things as come to the Uſe of the whole Body or Society. 1 *And.* 25, 196. A *Corporation* may do an Act in that Capacity, to one of themſelves in his natural Capacity; and any Member in his natural Capacity, may perform an Act to the *Corporation* in its politick Capacity; And ſo they may ſue one another, in their diſtinct Capacities. 1 *Shep. Abr.* 436. Treſpaſs for an Aſſault and Battery, *&c.* will not lie againſt a *Corporation*; but it muſt be brought againſt the Perſons that do the Treſpaſs by their proper Names: Though if the Beaſts of the *Corporation* treſpaſs a Man in his Ground, Action of Treſpaſs lies againſt them for this: Proceſs of Outlawry will not lie againſt a *Corporation*; not *Capias* or Exigent, but Diſtreſs. 22 *Aſſ.* 67. 39 E. 3. 13. 21 *Ed.* 4. A *Corporation* cannot ſue, or appear in Perſon, but by Attorney: They cannot commit Treaſon or Felony, or be excommunicate, *&c.* They may not be Executors, or Adminiſtrators, be Jointenants, Truſtees, *&c.* Nor ſhall the Members of a *Corporation* be regularly Witneſſes for the *Corporation.* 10 *Rep.* 32. 11 *Rep.* 98. 1 *Inſt.* 134. But they may be disfranchiſed, and then be Witneſſes; though not ſurrender by Conſent. Attachment doth not lie againſt a *Corporation.* Raym. 152. *Corporations* may have Power not only to infranchiſe Freemen, but to disfranchiſe a Member, and deprive him of his Freedom; if he doth any Act to the Prejudice of the Body, or contrary to his Oath, *&c.* Though for conſpiring to do any Thing contrary to his Duty; or for Words of Contempt againſt the Chief Officers, he may not be disfranchiſed, but may be committed till he find Sureties for his good Behaviour. 11 *Rep.* 98. 5 *Mod.* 257. A *Corporation* cannot disfranchiſe for Breach of a By-Law. 1 *Lill.* 331. And one wrongfully disfranchiſed, may be reſtored, and have his Remedy by *Mandamus*, *&c.* in *B. R.* An Alderman or Freeman of a *Corporation*, cannot be removed from his Freedom or Place without good Cauſe, and a Cuſtom to remove them *ad Libitum* is void, becauſe the Party hath a Freehold therein. *Cro. Jac.* 540. A Perſon may be bound to the good Behaviour for Words ſpoke againſt Mayors, *&c.* but he may not be indicted for it: And if Juſtices of a *Corporation* deny to do Right, it is a Forfeiture of their Exemption from the Inquiry of the Juſtices of the County. *Mod. Caſ.* 125, 164. Head Officers of *Corporations* are to redreſs Abuſes of Merchant-Strangers, *&c.* or the Franchiſe ſhall be ſeiſed, *Stat.* 9 *Eliz.* 3. *ſect.* 1. and have Authority in many Caſes by Statute; for which ſee *Mayors.* No Strangers ſhall ſell by retail any Woollen or Linen Cloth, or Mercery Wares, in Corporate Towns, except at Fairs, on Pain of Forfeiture, *&c.* But ſuch Perſons may ſell Wares by Wholeſale, and Cloth of their own making by Retail. 1 & 2 *P.* & *M.* *cap.* 7. Bodies Politick Eccleſiaſtical may make Leaſes for three Lives, or twenty-one Years, under the Reſtrictions in the Acts 1 & 13 *Eliz.* &c. If Land is given in Fee to a Dean and Chapter, or to a Mayor and Commonalty, *&c.* and after ſuch Body Politick or Incorporate is diſſolved, the Donor ſhall have the Land again, and not the Lord by Eſcheat. 1 *Inſt.* 31.

Corporeal Inheritance, In Houſes, Lands, *&c.* Vide *Inheritance.*

Corpus Chriſti Day, Is a Feaſt inſtituted in the Year 1264 in Honour of the bleſſed *Sacrament:* To which alſo a *College* in *Oxford* is dedicated. It is mentioned in the Stat. 32 *Hen.* 8. *cap.* 21.

Corpus cum Cauſa, Is a Writ iſſuing out of the *Chancery*, to remove both the *Body* and Record, touching the *Cauſe* of any Man lying in Execution upon a Judgment for Debt, into the *King's Bench*, &c. there to lie till he have ſatisfied the Judgment. *F. N. B.* 251. See *Habeas Corpus*.

Corrector of the Staple, Is a Clerk belonging to the *Staple*, that writeth and recordeth the Bargains of Merchants there made. 27 *Ed.* 3. *Stat.* 2. *cap.* 22 & 23.

Corredium and **Conredium,** The ſame with *Corrodium*. See *Corody*.

Corruption of Blood, (*Corruptio Sanguinis*) Is an Infection growing to the State of a Man, and to his Iſſue; and is where a Perſon is attainted of Treaſon or Felony, by Means whereof his Blood is ſaid to be corrupted, and neither his Children, nor any of his Blood, can be Heirs to him or any other Anceſtor: Alſo if he is of the Nobility, or a Gentleman, he and all his Poſterity by the Attainder are rendered baſe and Ignoble. But by Pardon of the King, the Children born afterwards may inherit the Land of their Anceſtor, purchaſed at the Time of the Pardon or after; and ſo cannot they, who were born before the Pardon. *Terms de Ley* 189. If a Man that hath Land in Right of his Wife hath Iſſue, and his Blood is corrupt by Attainder of Felony, and the King pardons him; in this Caſe if the Wife dies before him, he ſhall not be Tenant by the Curteſy, for the *Corruption of the Blood* of that Iſſue: Though it is otherwiſe, if he hath Iſſue after the Pardon; for then he ſhould be Tenant by the Curteſy, although the Iſſue which he had before the Pardon be not inheritable. 13 *Hen.* 7. *c.* 17. A Son attainted of Treaſon or Felony in the Life of his Anceſtor, obtains the King's Pardon before the Death of his Anceſtor, he ſhall not be Heir to the ſaid Anceſtor, but the Land ſhall rather eſcheat to the Lord of the Fee by the *Corruption of Blood*. 26 *Aſſ. pl.* 32 *H.* 8. But if a Man ſeiſed of Lands hath Iſſue two Sons, and the Eldeſt is attainted in the Life-time of his Father, and after the Father dies ſeiſed; the youngeſt Son ſhall inherit the Lands as Heir unto his Father, if the eldeſt Son leaves no Iſſue alive: *Contra*, if he hath Iſſue, which ſhould have inherited but for the Attainder; then the Land ſhall eſcheat. 1 *Inſt.* 8, 391. *Dyer* 48. 3 *Inſt.* 211. If the Father of a Perſon attainted die ſeiſed of an Eſtate of Inheritance, during his Life, no younger Brother can be Heir; for the elder Brother though attainted, is ſtill a Brother, and no other can be Heir to his Father while he is alive; but if he die before the Father, the younger Brother ſhall be Heir. 2 *Hawk. P. C.* 457. *Corruption of Blood* from an Attainder is ſo high that it cannot be abſolutely ſalved but by Act of Parliament; for the King's Pardon doth not reſtore the Blood ſo as to make the Perſon attainted capable either of inheriting others, or being inherited himſelf by any one born before the Pardon. 1 *Inſt.* 391, 392. 2 *Hawk.* 458. A Statute which ſaves the *Corruption of Blood*, impliedly ſaves the Deſcent of the Land to the Heir; and it prevents the *Corruption of Blood* ſo far: Alſo it ſaves the Wife's Dower, &c. But nevertheleſs the Land ſhall be forfeited for the Life of the Offender. 3 *Inſt.* 47. 1 *Hawk.* 107. For Counterfeiting the Coin or Clipping, there is no *Corruption of Blood*. Stat. 5 *Eliz. cap.* 11. So on Attainder of Piracy, &c. And in Felony by imbeziling the King's Ordnance, Armour, &c. 22 *Car.* 2. And therefore it ſhall not make any Diſinheritance of an Heir, &c. See *Attainder*.

Corſelet, (*Fr.* in Lat. *Corpuſculum*) Signifies a little Body: And it is uſed with us for an Armour to cover the Body or Trunk of a Man, wherewith *Pike men* commonly ſet in the Front and Flanks of the Battle were formerly armed, for the better Reſiſtance of the Aſſaults of the Enemy, and the ſurer Guard of the Soldiers placed behind, who were more ſlightly armed for their ſpeedier Advancing and Retreating to Fire. *Stat.* 4 & 5 *P.* & *M. c.* 2.

Corſepreſent, (From the Fr. *Corps preſent*) Is a Word ſignifying a Mortuary: And the Reaſon why it was thus term'd ſeems to be, that where a Mortuary became due on the Death of any Man, the Beſt or ſecond Beaſt was, according to Cuſtom, offered or *preſented* to the Prieſt, and carried with the *Corps*. ——*Ego* Brianus *de* Brompton, &c. *Volo Corpus meum ſepeliri in Prioratu Majoris Malverniæ inter Prædeceſſores meos, & cum* Corpore *meo* Palefridum *meum cum herneſio & Equum Summarium, cum lecto meo, &c.* In Codice MS. penes Gul. Dugdale, Mil. See *Stat.* 21 *H.* 8. *c.* 6. and *Mortuary*.

Corſned Bread, (*Panis conjuratus*) *Ordeal Bread:* It was a Kind of ſuperſtitious Trial uſed among the *Saxons*, to purge themſelves of any Accuſation, by taking a Piece of Barley Bread, and eating it with ſolemn Oaths and Execrations, that it might prove *Poiſon*, or their laſt Morſel, if what they aſſerted or denied were not punctually true. Theſe Pieces of Bread were firſt execrated by the Prieſt, and then offered to the ſuſpected guilty Perſon to be ſwallowed by Way of Purgation: For they believed a Perſon, if guilty, could not ſwallow a Morſel ſo accurſed; or if he did, it would choak him. The Form was thus: *We beſeech Thee, O Lord, that he who is guilty of this Theft, when the Exorciſed Bread is offered to him in Order to diſcover the Truth, that his Jaws may be ſhut, his Throat ſo narrow that he may not ſwallow, and that he may caſt it out of his Mouth, and not eat it. Du Cange.* The old Form, or *Exorciſmus panis hordeacei vel caſei ad Probationem veri*, is extant in *Lindenbrogius*, *pag.* 107. And in the Laws of King *Canute*, *cap.* 6 ——*Si quis altari miniſtrantium accuſetur, & amicis Deſtitutus ſit, cum Sacramentales non habeat, vadat ad judicium quod Anglice dicitur* Corſned, *& fiat ſicut Deus velit, niſi ſuper Sanctum Corpus Domini permittatur ut ſe Purget:* From which it is conjectured, that *Corſned Bread* was originally the very Sacramental Bread, conſecrated and devoted by the Prieſt, and received with Solemn Abjuration, and devout Expectance that it would prove Mortal to thoſe who dared to ſwallow it with a Lie in their Mouth; till at Length the Biſhops and Clergy were afraid to proſtitute the Communion Bread to ſuch raſh and conceited Uſes, when to indulge the People in their ſuperſtitious Fancies, and idle Cuſtoms, they allowed them to practice the ſame judicial Rite, in eating ſome other Morſels of Bread, bleſt or curſt to the like Uſes. It is recorded of the perfidious *Godwin Earl of Kent*, in the Time of King *Edward the Confeſſor*, that on his Abjuring the Murder of the King's Brother, by this Way of Trial, as a juſt Judgment of his ſolemn Perjury, the Bread ſtuck in his Throat, and choaked him.——*Cum* Godwinus *Comes in menſa Regis de nece ſui fratris impetretur, ille poſt multa Sacramenta, tandem per Buccellam deglutiendam abjuravit, & buccella guſtata continuo ſuffocatus interiit.*——*Ingulph.* This with other barbarous Ways of Purgation, was by Degrees aboliſhed: Though we have ſtill ſome Remembrance of this ſuperſtitious Cuſtom in our uſual Phraſes of Abjuration; as, *I will take the Sacrament upon it;* ——*May this Bread be my Poiſon;* —— or, *May this Bit be my laſt*, &c.

Cortis, (*Curtis*) A Court or Yard before a Houſe. *Blount.*

Cortularium, (*Curtilagium*, Is alſo a Yard adjoining to a Country Farm. *Cartul. Glaſton. MS. f.* 42.

Corus, A certain Corn-Meaſure heaped up, from the Hebr. *Cora*, a *Hill:* Eight Buſhels of Wheat in a Heap, making a Quarter, are of the Shape of a little Hill; and probably a *Corus* of Wheat was eight Buſhels; for we read in *Bracton*, *Decem* Coros *tritici ſive decem Quarteria*. Bract. lib. 2. c. 6

Coſduna, An ancient Word for Cuſtom or Tribute. *Mon. Angl. Tom.* 1. *p.* 562.

Coſenage, (Fr. *Couſinage*, i. e. Kindred, Couſinſhip) Is uſed for a Writ that lies where the *Treſail*, that is, the Father of the *Beſail*, or Great Grandfather, being ſeiſed of Lands and Tenements in Fee at his Death, and a Stranger enters upon the Heir and abates; then ſhall his Heir have his Writ of *Coſenage*. *Brit. c.* 89. *F. N. B.* 221. A Man ſhall not have a Writ of *Coſenage* of the Seiſin of his Great Grandfather, but ſhall be put to his Writ of *Beſail*: And if a Perſon may have a Writ of *Aiel*, he ſhall not bring a Writ of *Coſenage*. Alſo on the Death of an Uncle, Writ of *Coſenage* doth not lie, becauſe *Aſſiſe of Mort d'Anceſtor* may be had of his Seiſin: And *Coſenage* lies not between Privies in Blood, no more than *Aſſiſe of Mort d'Anceſtor*, but the Party muſt bring *Nuper Obiit*. New Nat. Br. 492. In Writs of *Coſenage*, *Aiel* and *Beſail*, the Tenant's Anſwer that the Plaintiff is not next Heir, of the ſame Anceſtor by whoſe Death he demandeth his Lands, ſhall be admitted and enquired; and according to the ſame Inquiſition, the Juſtices ſhall proceed to Judgment. *Stat.* 13 *Ed.* 3. *c.* 20.

Form of a Writ of Coſenage.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: Command* A. B. *that juſtly*, &c. *he render to* C. D. *one Meſſuage with the Appurtenances in* M. *of which* E. D. *Couſin of the ſaid* C. D. *whoſe Heir he is, was ſeiſed in his Demeſne as of Fee, the Day that he died, as 'tis ſaid, and unleſs*, &c.

Coſening, Is an Offence where any Thing is done deceitfully, whether belonging to Contracts or not, which cannot be properly termed by any ſpecial Name. *Weſt. Symb. pag.* 2. *ſect.* 68.

Coſhering. As there were many Privileges inherent by Right and Cuſtom, allowed in the *Feudal* Laws; ſo were there ſeveral grievous Exactions impoſed by the Lords on their Tenants, by a Sort or Prerogative or ſeignioral Authority, as to lie and feaſt themſelves and their Followers at their Tenants Houſes, *&c.* which were called *Coſhering*. Spelm. of Parliaments, MS.

Coſmus, A Word mentioned by *Blount* for Clean.

Coſtard, Apple, whence *Coſtard-monger*, i. e. Seller of Apples. *Cartular. Abbat. Rading. MS. fol.* 916.

Coſtera, Coaſt, Sea-Coaſt.—— Richardum T. *ad Cuſtodiam* Coſteræ *Maris in Com.* Eſſex, *per Literas noſtras Patentes aſſignavimus*, *&c.*——— Memor. in Scaccar. Paſch. 24 Ed. 1.

Coſts, Are *Expenſæ Litis*, recovered by the Plaintiff in a Suit, together with his Damages; And if the Plaintiff be nonſuit, or overthrown by lawful Trial in any Action, the Defendant ſhall have Coſts. 4 *Jac.* 1. *cap.* 3. Alſo putting off Trials, inſufficient Pleas, *&c.* on their Amendment, are liable to *Coſts*: But it has been held *Coſts* ought not to be paid for the putting off a Trial, where no Fault was in the Party againſt whom it is moved; for *Coſts* are only to be paid by ſuch Perſons which by their Occaſion have cauſed the other Party to have been at extraordinary Charges: And no *Coſts* ſhall be allowed for unreaſonable Motions, but only for ſuch as the Party was neceſſarily put unto. 1 *Lill. Abr.* 335, 337. The Common Law doth not give *Coſts* in any Caſe; but they are given by Statute: For the Defendant on a Writ of Error, brought to delay Execution, if Judgment be affirmed, *Coſts* are allowed. 3 *Hen.* 7. *c.* 10. So in Actions of Waſte; Debt upon the Statute for Tithes; in all Suits by *Scire facias*, for malicious Treſpaſſes, *&c.* 13 *Car.* 2. *cap.* 2. And by ſome Statutes double and treble *Coſts*, and Damages, are given: But in Perſonal Actions, Actions of Treſpaſs, Aſſault and Battery, Actions on the Caſe for Words, *&c.* if the Debt or Damage amount not to 40*s.* or the Judge do not certify that the Battery was ſufficiently proved, *&c.* no more *Coſts* ſhall be allowed than Damages. 43 *Eliz. c.* 6. 21 *Jac.* 1. *c.* 16. 22 *&* 23 *Car.* 2. Where ſeveral are made Defendants in Action of Treſpaſs, Aſſault, *&c.* and one or more is acquitted, all of them ſhall have *Coſts*; unleſs the Judge certify there was reaſonable Cauſe for making them Defendants. 8 *&* 9 *W.* 3. *cap.* 11. In an Action of Treſpaſs removed out of an inferior Court into *B. R.* by *Habeas Corpus*, the Plaintiff ſhall have full *Coſts*, tho' the Damages are under 40*s.* And ſo it has been held in Action of the Caſe for Words, where ſpecial Damage is received, *&c.* 1 Ld. *Raym.* 395. 2 *Raym.* 1588. On a Judgment on Demurrer upon a Plea in Abatement, *Coſts* are not allowed; they are given only where the Merits of the Cauſe are determined on the Demurrer. *Ibid.* 992. No *Coſts* ſhall be allowed the Defendant where the Suit is commenced for the Uſe of the King. 24 *H.* 8. *cap.* 8. And *Coſts* are not awarded againſt Executors or Adminiſtrators. *Ibid.* Nor for or againſt one that ſues *in Forma Pauperis*. Though it has been adjudged that the King ſhall pay *Coſts* for an Amendment; but not for not going to Trial, *&c.* 1 *Salk.* 193. And if Executors bring an Action in their own Right, as for Converſion or Treſpaſs, *&c.* in their own Time, and a Verdict paſs againſt them, they ſhall pay *Coſts*. 2 *Danv. Abr.* 224. Alſo if a Plaintiff being admitted *in Forma Pauperis*, be afterward nonſuited, the uſual Courſe is to tax *Coſts*, and if not paid, to puniſh the Plaintiff by Whipping; but it is in the Diſcretion of the Court to ſpare both. 2 *Sid.* 261. Where a *Pauper* Plaintiff has a Decree to recover with *Coſts*; he ſhall be allowed no more than he is out of Pocket. *Preced. Canc.* 219. An Executor, Defendant in Equity pays no *Coſts*; tho' at Law it's ſaid he does in all Caſes. *Abr. Caſ. Eq.* 125. An Heir at Law, ſuing for the Family Eſtate, where he ſhall not pay *Coſts*, ſee 1 *Peer Williams* 482. When there is a Fault in the Original Writ, if a Plaintiff be afterwards nonſuit, 'tis ſaid he ſhall pay no *Coſts*; becauſe when the Original is abated, it is as if no Suit had been between the Parties. 1 *Leon.* 105. 1 *Nelſ. Abr.* 547. If a Sum certain is given to a Stranger by Statute, as where 'tis given to the Proſecutor, he ſhall have no *Coſts*, as he had no Right of Action till he commenced it; ſo in popular Actions, whether the Penalty is certain or not, there ſhall be no *Coſts*. 1 *Salk.* 206. 1 *Lutw.* 201. Where *Coſts* are allowed, it is not neceſſary that the Jury ſhould give the *Coſts*; but they may leave it to the Court to do it, who are beſt able to judge of what *Coſts* are fitting to be given. 23 *Car. B. R.* It is the Courſe of the Court of *B. R.* to refer the Taxing of the *Coſts* to the Secondary of the Office, and not to make any ſpecial Rules for ſuch Matters; except it be in extraordinary Caſes. 1 *Lill. Abr.* 338. If at a Trial Evidence be given, and the Jury charg'd and ready to give their Verdict, but the Plaintiff becomes nonſuited, on which the Jury depart without aſſeſſing *Coſts* and Damages, they ſhall be aſſeſs'd by a Writ of Enquiry, *&c.* *Skin.* 595. Attachment lies where *Coſts* are refuſed Payment: And where a Plaintiff is nonſuit, Action of Debt may be brought for the *Coſts*; alſo the Defendant may have a *Capias ad ſatisfaciendum* againſt him. 1 *Nelſ. Abr.* 550. Where *Coſts* are given after a Verdict, the Court will ſtop Proceeding in the ſame Court till they are paid, on Motion made: But when *Coſts* are given for not going on to Trial, a Party may proceed, tho' they are not paid. *Sid.* 279. The Awarding of *Coſts* is always diſcretionary in the Court; and in Caſe of a great Fraud, a Perſon may be obliged to pay ſuch *Coſts* as ſhall be aſcertained by the injured Party's Oath. 2 *Vern.* 123. See *Damages*, *&c.*

Coſts are allow'd in *Chancery*, for failing to make Anſwer to a Bill exhibited; or making an inſufficient Anſwer: And if a firſt Anſwer be certified by a Maſter to be inſufficient, the Defendant is to pay 40*s.* *Coſts*; 3*l.* for a ſecond inſufficient Anſwer; 4*l.* for a Third, *&c.* But if the Anſwer be reported good, the Plaintiff ſhall pay the Defendant 40*s.* *Coſts.* An Anſwer is not to be filed, (till when it is not reputed an Anſwer) until *Coſts* for Contempt in not anſwering are paid. *Practiſ. Attorn.* 1 *Edit. pag.* 210, 212. If a Plaintiff in Chancery diſmiſſes his Bill, or the Defendant; or if a Decree be obtained for the Defendant, *Coſts* are allowed by Stat. 4 & 5 *Ann. c.* 16.

Cot, In the old *Saxon* ſignifies *Cottage*, and ſo is ſtill uſed in many Parts of *England.*

Cotarius, A Cottager: The *Cotarii*, or Cottagers, are mentioned in *Domeſday.*

Cote and **Cot.** The Names of Places which begin or end with theſe Words or Syllables, have the Signification of a little Houſe or *Cottage:* There are likewiſe *Dove-Cotes*, which are ſmall Houſes or Places for the Keeping of *Doves* or Pigeons. *Game Law*, 2 *par. fol.* 133, 135. See *Pigeon-houſe.*

Cotellus, Coteria, Both ſignify a ſmall Cottage, Houſe or Homeſtall. *Cowel.*

Coterellus. *Cotarius* and *Coterellus*, according to *Spelman* and *Du Freſne*, are ſervile Tenants: But in *Domeſday* and other ancient MSS. there appears a Diſtinction, as well in their Tenure and Quality, as in their Name. For the *Cotarius* had a free Socage-Tenure, and paid a ſtated Firm or Rent in Proviſions or Money, with ſome occaſional cuſtomary Services; whereas the *Coterellus* ſeems to have held in mere Villenage, and his Perſon, Iſſue and Goods, were diſpoſable at the Pleaſure of the Lord. —— *Edmund* Earl of *Cornwall*, gave to the *Bon-hommes* of *Aſberugge*, his Manor of *Cheſterton* and *Ambroſden* —— *una cum Villanis*, Coterellis, *eorum Catallis*, *Servitiis*, *Sectis*, & *omnibus ſuis ubicunque pertinentibus.* Paroch. Antiq. 310.

Coteswold, Is uſed for Sheep-Cotes and Sheep feeding on Hills: From the Sax. *Cote* and *Wold*, a Place where there is no Wood.

Cotgare, A kind of refuſe Wool, ſo clung or clotted together, that it cannot be pulled aſunder. By Stat. 13 *R.* 2. *cap.* 9. it is provided, that neither Denizen or Foreigner ſhall make any other Refuſe of Wools but *Cotgare* and *Villein.*

Cotland and **Cotſethland,** Land held by a Cottager, whether in Socage or Villenage.——*Dimidia acra terræ jacet ibidem inter* Cotland, *quam* Johannes Goldering *tenet, ex una parte,* & Cotland *quam* Thomas Webbe *tenet ex altera.* Paroch. Antiq. 532.

Cotſethla, Cotſetle, The little Seat or Manſion belonging to a ſmall Farm. —— *Ego* Thomas de C. *Dedi Deo* & *Eccleſiæ* Malmsbury *unam* Cotſetle *in* Culern, *cum omnibus pertinentiis.* Cartular. Malmsbur. MS.

Cotſethus, A Cottage-holder, who by ſervile Tenure was bound to work for the Lord. *Cowel.* *Cotſets* are the meaneſt Sort of Men, now term'd *Cottagers.* And *Cotſeti* are thoſe who live in Cottages. —— *Villani vero vel* Cotſeti, *vel Perdingi, vel qui ſunt hujuſmodi viles, vel inopes perſonæ non ſunt inter legum Judices numerandi.* Leg. H. 1. c. 30.

Cottage, (*Cotagium*) Is properly a little Houſe for Habitation, without Lands belonging to it. *Stat.* 4 *Ed.* 1. But by a later Statute, the 31 *El. cap.* 7. No Man may build a *Cottage*, unleſs he lay four Acres of Land thereto; except it be in Market-Towns or Cities, or within a Mile of the Sea, or for the Habitation of Labourers in Mines, Sailors, Foreſters, Shepherds, *&c.* and *Cottages* erected by Order of Juſtices of Peace, *&c.* for poor impotent People, are excepted out of the Statute. The four Acres of Land to make it a *Cottage* within this Law, are to be Freehold, and Land of Inheritance: And four Acres of Ground holden by Copy, or for Life or Lives, or for any Number of Years, will not be ſufficient to make it a lawful *Cottage.* 2 *Inſt.* 737. Alſo the four Acres in Fee ſimple, or Fee-Tail, muſt lie near the *Cottage*, and be occupied therewith, ſo long as the *Cottage* ſhall be inhabited. 2 *Roll. Abr.* 139. But this Statute doth not extend to Houſes that are Copyhold 1 *Bulſt.* 50. The Penalty of erecting *Cottages* contrary to the Statute, is 10*l.* for every Erection, and 40*s* a Month for the Continuance of it; which is inquirable in the Leet, or the Offenders may be puniſhed by Indictment at the Quarter-Seſſions of the Peace, *&c.* And no Owner or Occupier of any *Cottage* ſhall ſuffer any *Inmates*, or more Families than one to inhabit therein, on Pain to forfeit to the Lord of the Leet 10*s.* a Month: But in *Cottages* built for the Poor, more Families than one may be placed. *Cottages* are oftentimes erected on the Waſte at the Charge of Pariſhes, for poor impotent Perſons, by the Church-wardens and Overſeers of the Poor, having obtained Leave of the Lord of the Manor, in Writing under Hand and Seal; but then it muſt be confirm'd by the Juſtices in Seſſions. *Mod. Juſt.* 152. *Cottagers* of new erected *Cottages* within the Memory of Man, ought not to have Common in the Lord's Waſte, tho' they have four Acres of Land laid to them. *Wood's Inſt.* 445. Every *Cottager*, *&c.* is obliged to work towards the Repairs of the Highways, or to hire an able Labourer to work on the Days appointed by the Statute, on Pain of forfeiting 1*s.* 6*d.* *per* Day. *Stat.* 22 *Car.* 2.

Cotton Library. For better ſettling and preſerving the *Library* kept in the Houſe at *Weſtminſter*; called *Cotton-houſe*, in the Name and Family of the *Cottons* for the Benefit of the Publick, a Statute was made 12 *W.* 3. *c.* 7. See Stat. 5 *Ann. c.* 30.

Cotuca, Coat-Armour. *Ad Arma proſiliunt* & *Milites quidem ſuper Armatura* Cotucas *induerant, vocat.* Quarteloys. *Walſingh.* 114.

Cotuchans, Boors or Husbandmen, of which Mention is made in *Domeſday.*

Coucher, or **Courcher,** Signifies a Factor that continues abroad in ſome Place or Country for Traffick; as formerly in *Gaſcoign*, for buying of Wines. *Stat.* 37 *Ed.* 3. *cap.* 16. This Word is alſo uſed for the General Book wherein any Corporation, *&c.* regiſter their particular Acts. 3 & 4 *Ed.* 6. *c.* 10.

Covenable, (Fr. *Convenable*, Lat. *Rationabilis*) Is what is convenient or ſuitable.——*Every of the ſame three Sorts of Goods*, &c. *ſhall be good and* covenable, *as in old Time hath been uſed.* Stat. 31 Ed. 3. cap. 2. *Covenably* endowed, that is, endowed as is fitting. 4 *H.* 8. *c.* 12. See *Plowd.* 472.

Covenant, (*Conventio*) Is the Conſent and Agreement of two or more Perſons to do or not to do ſome Act or Thing, contracted between them: Alſo it is the Declaration the Parties make, that they will ſtand to ſuch Agreement, relating to Lands or other Things; and is created by Deed in Writing, ſealed and executed by the Parties, or otherwiſe it may be implied in the Contract as incident thereto. 2 *Mod. Mod. Entr.* 91. And if the Perſons do not perform their Covenants, a Writ or Action of *Covenant* is the Remedy to recover Damages for the Breach of them. *Ibid.* A *Covenant* is generally either in Fact, or in Law: In *Fact* is that which is expreſly agreed between the Parties, and inſerted in the Deed; and *in Law*, is that *Covenant* which the Law intends and implies, though it be not expreſſed in Words; as if a Leſſor demiſe and grant to his Leſſee a Houſe or Lands, *&c.* for a certain Term, the Law will intend a *Covenant* on the Leſſor's Part, that the Leſſee ſhall during the Term quietly enjoy the ſame againſt all Incumbrances. 1 *Inſt.* 384. There is alſo a *Covenant Real*, and *Covenant Perſonal:* A real *Covenant* is that whereby a

Man ties himſelf to paſs a Thing real, as Lands or Tenements; or to levy a Fine of Lands, &c. And *Covenant* perſonal, is where the ſame is annexed to the Perſon and merely perſonal; as if a Perſon *Covenants* with another by Deed to build him a Houſe, or to ſerve him, &c. *F. N. B.* 145 5 *Rep.* 10. *Covenants* are likewiſe *Inherent*, that tend to the Support of the Land or Thing granted; or are *collateral* to it; and are *affirmative*, where ſomewhat is to be performed, or *negative*; *executed*, of what is already done, or *executory*: But a *Covenant* being to bind a Man, to do ſomething *in futuro*, is for the moſt part executory. 1 *Vent.* 176. *Dyer* 112, 271. And where a *Covenant* ſhall be conſtrued *dependant* upon another, and when *diſtinct* by itſelf, ſee *Winch* 74. 3 *Cro.* 107. Further, this Word is taken for the *ſolemn League and Covenant*; which was a ſeditious Conſpiracy, invented in *Scotland*, and voted illegal by Parliament, and Proviſion is made againſt it, by Stat. 14 *Car.* 2. *cap.* 4. All *Covenants* between Perſons muſt be to do what is lawful, or they will not be binding; and if the Thing to be done be impoſſible, the *Covenant* is void. *Dyer* 112. But where the Thing is lawful at the Time of the *Covenant* made, and afterwards the Matter agreed to be done, is prohibited by Act of Parliament, yet ſuch *Covenant* will be binding. 3 *Mod.* 39. And if a Man *covenants* to do a Thing before a certain Time; and it becomes impoſſible by the Act of God, this ſhall not excuſe him, inaſmuch as he hath bound himſelf preciſely to do it. 2 *Danv. Abr.* 84. If a Perſon *covenants* expreſly to repair a Houſe, and it is burnt down by Lightning, or any other Accident, yet he ought to repair it; for it was in his Power to have provided againſt it by his Contract. *Aleyn* 26, 27. 1 *Lill. Abr.* 349. But he is not ſo bound by *Covenant* in Law. Where Houſes are blown down by Tempeſt, the Law excuſes the Leſſee in Action of Waſte; though in a *Covenant* to repair and uphold, it will not. 1 *Plowd.* 29. If a Leſſee for Years, rendring Rent, *covenants* for him and his Aſſigns to repair the Houſe, and after the Leſſee aſſigns over the Term, and the Leſſor accepts the Rent from the Aſſignee, and then the *Covenant* is broke; notwithſtanding Acceptance of Rent from the Aſſignee, Action of *Covenant* lies againſt the firſt Leſſee, on his expreſs *Covenant* to repair: And this Perſonal *Covenant* cannot be transferred by the Acceptance of the Rent. 2 *Danv. Abr.* 240. Action of *Covenant* alſo lies on *Covenant* for Payment of Rent againſt ſuch Leſſee; but not Action of Debt after Acceptance. 3 *Rep.* 24. In *Covenant* upon a Demiſe, rendring Rent, the Defendant cannot ſay, that Part of it was to be allowed; for this is a *Covenant* againſt a *Covenant*. *Comb.* 21. There may be an Agreement and *Covenant*, only to be performed by the Parties themſelves; and there are ſome *Covenants* which none but the Party and his Heirs may take Advantage of, being ſuch as concern the Inheritance, and deſcend to the Heir, as knit to the Eſtate: *Covenants* in groſs go to the Executors, &c. 1 *Rol. Abr.* 520. 2 *Danv.* 235. Not only Parties to Deeds, but their Executors and Adminiſtrators, ſhall take Advantage of inherent *Covenants*, though not named; and every Aſſignee of the Land may have the Benefit of ſuch *Covenants*: Likewiſe Executors and Aſſigns are bound by them, although not named, as a *Covenant* to repair, &c. 5 *Rep.* 16, 17. 1 *Cro.* 552. If a Man *covenants* with another to do any Thing, his Heir ſhall not be bound, unleſs he be expreſly named: And yet where a Leſſee *covenants* to repair, the Heir ſhall have the Benefit of the *Covenant*, though not named, becauſe it runs with the Land. 2 *Lev.* 92. 5 *Rep.* 8. The Grantee of a Reverſion may bring Action of *Covenant* againſt a Leſſee, as well in the County where the Demiſe was made, as in the County where the Lands lie. *Carthew* 183. And Grantees of Reverſions have the like Remedy by Action of *Covenant* againſt Termors, as the Leſſors and their Heirs, &c. by Stat. 32 *H.* 8. A Perſon *covenants* with another, to pay him Money at a Time to come, and doth not ſay to his Executors, &c. if the *Covenantee* die before the Day, yet his Executors or Adminiſtrators ſhall have the Money. *Dyer* 112, 257. And in every Caſe where the Teſtator is bound by a *Covenant*, the Executor ſhall be bound by it; if it be not determined by his Death. 48 *Ed.* 3. 2. 2 *Danv.* 232. Aſſignees ſhall not have an Action upon Breach of any *Covenant*, before their Time. *Cro. Eliz.* 863. Nor ſhall an Aſſignee be charged in a Writ of *Covenant* for any Breach, after the Death of the firſt Leſſee; as it is perſonal to the Leſſee himſelf. 2 *Danv.* 238. If *A.* ſeiſed of Land in Fee, conveys it to *B.* and *covenants* with *B.* his Heirs and Aſſigns, to make any other Aſſurance upon Requeſt; and after *B.* conveys it to *C.* who conveys it to *D.* and then *D.* requires *A.* to make another Aſſurance, according to the *Covenant*; if he refuſes, *D.* ſhall have Action of *Covenant* againſt him, as Aſſignee to *B. Ibid.* 236. A Leſſor made a Leaſe of an Houſe for Years, excepting two Rooms, and free Paſſage to them; the Leſſee aſſigned the Term, and the Leſſor brought *Covenant* againſt the Aſſignee for diſturbing him in his Paſſage to thoſe Rooms; and adjudged that the Action lies: For the *Covenant* goes with the Tenement, and binds the Aſſignee. 1 *Salk.* 196. If a Man leaſes for Years, and ouſts the Leſſee, he ſhall have *Covenant* againſt him. 48 *Ed.* 3. 2. But if, where a Perſon leaſes Lands for Years, a Stranger enters before the Leſſee, ſuch Leſſee ſhall not have an Action of *Covenant* upon this Ouſter, becauſe he was never a Leſſee in Privity to have the Action. 2 *Danv.* 234. A Man grants a Watercourſe, and afterwards ſtops it; for this voluntary Miſfeaſance, *Covenant* lies. 1 *Saund.* 322. Though where the Uſe of a Thing is demiſed, and it runs to decay, ſo that the Leſſee cannot have the Benefit of it, for this Nonfeaſance no Action of *Covenant* lieth: Nor may *Covenant* be brought for a Thing which was not *in eſſe* at the Making of the Leaſe. 2 *Danv.* 233. If one makes a Leaſe for Years, reſerving a Rent, Action of *Covenant* lies for Non-payment of the Rent; for the *Reddendum* of the Rent is an Agreement for Payment of it, which will make a *Covenant*. *Ibid.* 230. A Leaſe is made to two, and one Seals the Deed, but the other doth not; if he accepts the Eſtate and occupies the Land, he is bound to perform the *Covenants* for Payment of Rent, Reparations, and the like. 1 *Shep. Abr.* 458. Where there is an Agreement under Hand and Seal, Action of *Covenant* may be brought on it: And if a Man is Party to a Deed, his Agreement to pay amounts to a *Covenant*, though formal Words are wanting. 2 *Mod.* 91, 269. Action of *Covenant* lies on a Deed indented, or Poll: Alſo on a Bond, it proving an Agreement. 2 *Danv.* 228. 1 *Lill. Abr.* 346. And if one Man *covenants* to pay another 20*l.* at a Day; although he may have Action of Debt for the 20*l.* yet 'tis ſaid he may have a Writ of *Covenant* at his Election. 2 *Danv* 229. It is agreed that *A. B.* ſhall pay to *C. D.* 100*l.* for Lands in *E.* this is a mutual *Covenant*, whereon Action of *Covenant* may be brought if *C. D.* will not convey. 1 *Sid* 423. But where there are mutual *Covenants*, and the one not to be performed before a precedent *Covenant*, in ſuch Caſe the *Covenant* is not ſuable 'till the other is performed: Though if the *Covenants* are diſtinct and mutual, ſeveral Actions may be brought by and againſt the Parties. 1 *Lill. Abr.* 350. 2 *Mod.* 74. In a *Covenant* to pay another ſo much Money, he making him an Eſtate in ſuch Land, &c. It has been adjudged, that if he tender the *Covenantor* a Feoffment, and offer to make Livery, he may have Action of *Covenant* for the Money, as if he had made a Title. 3 *Salk.* 107. If a Perſon *covenants* that he hath good Right to grant, *&c.* and he hath no Right, it is a Breach of *Covenant*, for which Action of *Covenants* lies. 2 *Bulſt.* 12. Where a Man *covenants* that he hath Power to grant, and that the Grantee, ſhall quietly enjoy notwithſtanding any claiming under him; theſe are diſtinct *Covenants*, for one goes to the Title, and the other to the Poſſeſſion. 1 *Mod.* 101. A *Covenant* for the Leſſee to enjoy againſt all Men; this extends not to tortious Acts and Entries, *&c.* for which the Leſſee hath his proper Remedy againſt the Aggreſſors. *Vaugh.* 111, 123. Where there is a *Covenant* to ſave harmleſs againſt a certain Perſon, there the *Covenantor* muſt ſave the *Covenantee* harmleſs againſt the Entry of that Perſon, be it by wrong or rightful Title: But if it be to ſave harmleſs againſt all Perſons, the Entry and Eviction muſt be by lawful Title. *Cro. Eliz.* 213. *Covenant* that Lands ſhall continue of ſuch a Value notwithſtanding any Act done, or to be done, extendeth only to the Time of the *Covenant* made; and 'tis ſaid cannot extend as well to that Time, as to the Time future. *Ibid.* 43, 479. 1 *Lill.* 352. A *Covenant* was entered into, that Lands ſettled on a Woman for her Jointure, were of the Value of 100*l.* *per Ann.* and ſo ſhould continue notwithſtanding any Act done by the *Covenantor*; in Action of *Covenant* for that the Lands were not of that yearly Value, adjudged that the Action did not lie, except ſome Act done by the *Covenantor* was the Cauſe which made them not of that Value. *Cro. Eliz.* 43. 1 *Nelſ. Abr.* 557. Where the *Covenant* is to do a Thing, and no Time appointed for it, it muſt be done in convenient Time: If it be inſerted in a Deed among other *Covenants*, that the Leſſee ſhall repair, provided the Leſſor allows Timber, *&c.* this will be a good *Covenant* on both ſides. 2 *And.* 73. *Dyer* 57, 150. *Hob.* 28. But a *Covenant* muſt wait upon and join with the Grant; ſo that if it be to make ſuch Aſſurance as ſhall be reaſonably deviſed, it muſt be of an Aſſurance as differs not from the Bargain: And when the Eſtate to which a *Covenant* is annexed is at an End, the *Covenant* is gone. *Hob.* 276. 1 *Leon* 179. In an Indenture, the Word *Covenant*, is a Word both of Leſſor and Leſſee; and therefore if the Leſſee *covenants* to pay the Rent, this is a Reſervation. Tho' when there is a *Covenant* for a Leſſee to repair, and he makes an Under-Leaſe to one who is in Poſſeſſion, the Under-Leſſee is not liable to that *Covenant*, in Law or Equity. 1 *Rol. Rep.* 80. 1 *Vern.* 87. 'Tis held in all Caſes where Words that begin any Sentence are *conditional*, and give another a Remedy, they ſhall not be conſtrued a a *Covenant*; and yet if Words of Condition and Covenant are coupled together in the ſame Sentence, as *Provided always, and it is covenanted*, &c. in that Caſe they may be adjudged both a Condition and *Covenant.* March 103. There is this Difference however between a *Covenant* and Condition; a Condition gives Entry, and *Covenant* gives an an Action only. *Owen* 54. A Perſon cannot have Action of *Covenant* upon a verbal Agreement, for it cannot be grounded without Writing, except by ſpecial Cuſtom. *F. N. B.* 145. An Infant within Age may bind himſelf Apprentice; but neither at Common Law nor by Statute may be bound by *Covenant* for his Apprenticeſhip, ſo as to make him liable to an Action of *Covenant* if he depart, *&c.* But Action of the Caſe may lie upon the *Covenant* in Law, if he defraud his Maſter: And by the Cuſtom of *London* he may bind himſelf by his *Covenant* at 14 Years old. 1 *Cro.* 129. *Winch* 63. An expreſs *Covenant* in a Deed, will qualify the general *Covenant* of Law: Tho' on a *Covenant* in Law, the Leſſee cannot charge the Executors or Adminiſtrators of the Leſſor; as he may upon an expreſs *Covenant* for quiet Enjoyment. *Dyer* 257. See 4 *Rep.* 80. If a Leſſor *Covenant* with the Leſſee that he ſhall have Houſe-bote, *&c.* by Aſſignment of his Bailiff, this is a good *Covenant*; and yet it doth not reſtrain the Power that the Leſſee hath by Law to take thoſe Things without Aſſignment: But if a Leſſee *Covenants*, that he will not cut any Timber, without the Leave or Aſſignment of the Leſſor; by this he will be reſtrained. *Dyer* 19, 115. A Man makes a Leaſe, wherein are divers *Covenants* to be performed by the Leſſee; and after the Leſſee doth *Covenant* that if any of the *Covenants* are broken, the Leſſor ſhall enter upon the Land demiſed, and hold it till the Leſſee make him Amends, *&c.* it is good, and the Leſſor may take Advantage thereof. *Fitz. Coven.* 3. No Duty nor Cauſe of Action ariſes on a *Covenant*, 'till it is broken: And as to Breaches of *Covenant*, if a Perſon by his own Act diſables himſelf to perform a *Covenant*, it is a Breach thereof. 5 *Rep.* 21. Tho' there can be no *Covenant* or Breach, where a Leaſe, *&c.* is void. *Yelv* 18, 19. But here although when a *Covenant* concerns the Intereſt of the Leaſe, as where 'tis for paying Rent, it is void, if the Leaſe be ſo: Yet where *Covenants* are collateral to the Leaſe and Intereſt, though that be void, the *Covenants* may be good. *Owen* 136. And if a *Covenant* to do a Thing is performed in Subſtance, and according to the Intent, it is good, though it differs from the Words; and on the other Hand, although the *Covenantor* performs the Letter of his *Covenant*, if he does any Act to defeat the Intent and Uſe of it, he is guilty of a *Breach.* Mod. Entr. Engl. In *Covenant* that a Perſon ſhall hold Lands free from all Incumbrances, and be kept indemnified from Arrears of Rent; there till an Action is brought, or Diſtreſs made, he is not damnified: And a Suit in Chancery is no Breach in ſuch Caſe; but where a Jointure, or Dower is recovered, it is. *Skin.* 397. *Moor* 859. *Palm.* 339. If *Covenants* perpetual are once broken, and an Action is brought, and Recovery thereon; upon a new Breach, a *Scire facias* ſhall be had on that Judgment, and the Plaintiff need not bring a new Writ of *Covenant. Cro. Eliz.* 5. When the Intention of the Parties can be collected out of a Deed for the doing, or not doing of the Thing, *Covenant* ſhall be had thereupon. *Chanc. Rep.* 294. A *Covenant* being one Part of a Deed, is ſubject to the general Rules of Expoſition of all Parts of the Deed: And in a *Covenant* the laſt Words, that are general, ſhall be expounded by the firſt Words, which are ſpecial and particular. 1 *Vent.* 218. Alſo a later *Covenant* cannot be pleaded in Bar to a former. When a *Covenant* is to two Perſons jointly, one of them may not bring Action of *Covenant*, or plead alone, but both muſt join. 1 *Nelſ.* 558. If a Man is bound to perform all the *Covenants* in an Indenture, and they are all in the Affirmative, he may plead Performance generally. *Co. Lit.* 303. *Covenants* in the Negative muſt be pleaded ſpecially. *Ibid.* 330. When ſome *Covenants* are in the Negative, and ſome in the Affirmative, the Defendant is to plead ſpecially to the Negative *Covenants*, that he had not done the Thing, and Performance generally as to the Affirmative: And where the Negative *Covenants* are againſt Law, and the Affirmative agreeable to Law, Performance generally may be pleaded. *Moor* 856. If any of the *Covenants* are in the Diſjunctive, ſo that 'tis in the Election of the *Covenantor* to perform the one, or the other, the Performance ought to be ſpecially pleaded, that it may appear what Part hath been perform'd. *Cro. Eliz.* 23. 1 *Nelſ.* 573. And commonly where an Act is to be done, according to a *Covenant*, he who pleads Performance ought to do it ſpecially. 1 *Leon.* 136. In Debt upon Bond for Performance of *Covenants*, one whereof for peaceable Enjoyment, and free from all Incumbrances, and another for farther Aſſurance, *&c.* the Defendant ſhould plead ſpecially, that the Houſe was free from Incumbrances at the Time of the Conveyance made, and not charged at any Time ſince, and that no farther Aſſurance had been required, or ſuch an Aſſurance which he had executed, &c. yet where a Defendant pleaded generally, in this Caſe, it was held good. 1 *Lutw.* 603. *Covenants* are generally taken moſt ſtrongly againſt the *Covenantor*, and for the *Covenantee*. *Plowd.* 287. But it is a Rule in Law, that where one Thing may have ſeveral Intendments, it ſhall be conſtrued in the moſt favourable Manner for the *Covenantor*. 1 *Lut.* 490. The common Uſe of *Covenants* is for aſſuring of Land; quiet Enjoyment free from Incumbrances; for Payment of Rent reſerved; and concerning Repairs, &c. And in Deeds of *Covenant*, ſometimes a Clauſe for Performance with a Penalty, is inſerted in the Body of the Deed: Other Times, and more frequently Bonds for Performance, with a ſufficient Penalty, are given ſeparate; which laſt being ſued, the Jury muſt find the Penalty; but on *Covenant*, only the Damages. *Wood's Inſt.* 250. It is held an Action of *Covenant* may be laid in *London*, for Nonpayment of Rent on a Leaſe of Lands in any other Place. 1 *Sid.* 401. And if in this Action, a Sum be miſcaſt, either too little or much; it is amendable; and not like to the Action of Debt, which if alledged leſs than it is, without ſhewing the Reſt to be ſatisfied, it is ill. 3 *Keb.* 39. 2 *Cro.* 247. In Action of *Covenant*, the Plaintiff muſt have Recourſe to the Deeds or Writings, and the Circumſtances of Time, Place, &c. and take Notice what particular *Covenant* in the Deed it is beſt to inſiſt upon, to lay a Breach right, &c. The Words of *Covenanting* are, *Covenant*, *Grant*, *Promiſe*, and *Agree*, &c. but there needs no great Exactneſs in Words to make a *Covenant*.

Covenant to ſtand ſeiſed of Uſes, Is when a Man that hath a Wife, Children, Brother, Siſter, or Kindred, doth by *Covenant* in Writing under Hand and Seal agree that for their or any of their Proviſion or Preferment, he and his Heirs will ſtand ſeiſed of Land to their Uſe; either in Fee-ſimple, Fee-tail, or for Life. The Uſe being created by the Stat. 27 *H.* 8. *c.* 10, which conveyeth the Eſtate as the Uſes are directed; this *Covenant to ſtand ſeiſed* is become a Conveyance of the Land ſince the ſaid Statute. The Conſiderations of theſe Deeds, are natural Affection, Marriage, &c. and the Law allows in ſuch Caſes Conſideration of Blood and Marriage, to raiſe Uſes, as well as Money and other valuable Conſideration when a Uſe is to a Stranger. *Plowd.* 302. There are no Conſiderations now to raiſe Uſes upon *Covenants to ſtand ſeiſed*, but natural Love and Affection, which is for Advancement of Blood; and Conſideration of Marriage, which is the joining of the Blood and Marriage together: Other Conſiderations, as Money, &c. for Land, tho' the Words in the Deed are *ſtand ſeiſed*, yet they are Bargains and Sales, and without Inrolment they raiſe no Uſe. *Carter* 138. *Lill. Abr.* 353. The uſual *Covenant to ſtand ſeiſed to Uſes* need not be by Deed indented and inrolled: And where a Man limits his Eſtate to the Uſe of his Wife for Life, this imports a ſufficient Conſideration in itſelf: Alſo if a Perſon *covenant to ſtand ſeiſed to the Uſe* of his Wife, Son, or Couſin, it will raiſe an Uſe without any expreſs Words of Conſideration, for ſufficient Conſideration appears. 7 *Rep.* 40. In Caſe of a *Covenant to ſtand ſeiſed*, ſo much of the Uſe as the Owner doth not diſpoſe of, remains ſtill in him. 1 *Ventr.* 374. And where an Uſe is raiſed by Way of *Covenant*, the *Covenantor* continues in Poſſeſſion; and there the Uſes limited, if they are according to Law, ſhall riſe and draw the Poſſeſſion out of him: But if they are not, the Poſſeſſion ſhall remain in him until a lawful Uſe ariſeth. 1 *Leon.* 197. 1 *Mod.* 159, 160. If on a *Covenant to ſtand ſeiſed to Uſes*, no Uſe doth ariſe, yet it may be good by Way of *Covenant* and give Remedy to the Covenantee in an Action; as if the *Covenant* be future, that in Conſideration of a Marriage, Lands ſhall deſcend or remain to a Son, and the Heirs of his Body on the Body of his Wife; in this Caſe the Covenantee may have *Writ of Covenant* upon the *Covenant* againſt the Covenantor: But if a *Covenant* be that a Man and his Heirs, ſhall from henceforth *ſtand and be ſeiſed* to ſuch and ſuch Uſes, and the Uſes will not ariſe by Law; here no Action of *Covenant* lies on the *Covenant*, for this Action will never lie upon any *Covenant* but ſuch as is either to do a Thing hereafter, or where the Thing is already done, and not when it is for a Thing preſent. *Plowd.* 307, 398. *Finch*'s *Law* 49.

Covert Baron, A married Woman. *Stat.* 27 *Eliz. cap.* 3.

Coverture, (*Fr.*) Any Thing that *covers*; as Apparel, a Coverlet, &c. but it is by our Law particularly apply'd to the State and Condition of a *married* Woman, who is *ſub poteſtate viri*; and therefore diſabled to contract with any to the Damage of herſelf or Huſband, without his Conſent and Privity, or his Allowance and Confirmation thereof. *Bract. lib.* 1. *c.* 10. *lib.* 2. *c.* 15, &c. *Bro. Abr.* When a Woman is married ſhe is called a *Feme Covert*; and whatever is done concerning her, during the Marriage, is ſaid to be during the *Coverture*: All Things that are the Wife's, are the Huſband's; nor hath the Wife Power over her ſelf, but the Huſband: And if the Huſband alien the Wife's Land, during the *Coverture*, ſhe cannot gainſay it during his Life; but after his Death, ſhe may recover by *Cui in vita*. Terms de Ley 195. See *Baron* and *Feme*.

Covin, (*Covina*) Is a deceitful Compact between two or more to deceive or prejudice others; as if Tenant for Life or in Tail, conſpires with another, that he ſhall recover the Land which he the Tenant holds, in Prejudice of him in Reverſion. *Plowd.* 546. *Covin* is commonly converſant in and about Conveyances of Land by Fine, Feoffment, Recovery, &c. And then it tends to defeat Purchaſers of the Lands they purchaſe, and Creditors of their Juſt Debts; and ſo it is uſed in Deeds of Gift of Goods: It may be likewiſe ſometimes in Suits of Law, and Judgments had in them. But where ever *Covin* is, it ſhall never be intended, unleſs it appears and be particularly found; for *Covin* and Fraud though proved, yet muſt be found by the Jury, or it will not be good. *Brownl.* 188. *Bridgm.* 112. If one make a Leaſe to a Perſon by *Covin*, and after grant another Leaſe to another *bona fide*, but without any Fine or Rent; in this Caſe the ſecond Leſſee may not avoid the firſt Leaſe, becauſe he is not a Purchaſer that comes in for Money. 3 *Rep.* 83. On Recovery by a good Title, there may be *Covin*; as where Tenant for Life by Aſſent, &c. ſuffers a Recovery by *Nil dicit*, without making any Defence: And if a Man hath a rightful and juſt Cauſe of Action, and of *Covin* and Conſent ſhall raiſe up a Tenant by Wrong againſt whom he may recover; the *Covin* doth ſo ſuffocate the Right, that the Recovery, although it be upon good Title, ſhall not bind. *Bro. Covin* 47. *Co. Lit.* 357. 1 *Shep. Abr.* 365. *A.* is Tenant for Life, Remainder in Tail to *B.* and a *Præcipe* is brought againſt them as Jointenants, by *Covin* between the Demandant and *A.* and an Anſwer procured for *B.* as Jointenant, and they join the Miſe, and after make Default, whereby final Judgment is given; this ſhall not defeat the Eſtate of *B.* who may bring a Writ of Diſceit and ſhall be reſtored to his Land. *Roll. Abr.* 621. If a Man that has a Right to certain Lands, by *Covin* cauſes another to ouſt the Tenant of the Land, to the Intent to recover it from him, and he recovers accordingly againſt him by Action tried; yet he ſhall not be remitted to his ancient Right; but is in of the Eſtate of him who made the Ouſter; and an Aſſiſe lies againſt him. 2 *Danv. Abr.* 309. Land is aliened, pending a Writ of Debt, by *Covin*, to avoid the Extent thereof for the Debt; the Land ſo aliened ſhall be extended, when the *Covin* appears upon the Return of the *Elegit* by the Sheriff. *Ibid.* 311. If a Man makes a Deed of Gift, *&c.* of his Goods in his Life-time by *Covin*, to ouſt his Creditors of their Debts, after his Death the Donee or Vendee ſhall be charged for them. 13 *H.* 4. And if Goods are ſold in Market overt by *Covin*, on Purpoſe to bar him that hath Right, this ſhall not bar him thereof. 2 *Inſt.* 713.

Council. In the City of *London*, there are Common *Council-men* choſen in every Ward at a Court of Wardmote held by the Aldermen of the reſpective Wards on St. *Thomas*'s Day yearly: They are to be choſen out of the moſt ſufficient Men; and ſworn to give true *Council* for the common Profit of the City, *&c.* *Lex Londinen* 117. In the Court of *Common Council*, are made Laws for Advancement of Trade; and Committees yearly appointed, *&c.* But Acts made by them, are to have the Aſſent of the Lord Mayor and Aldermen, by Stat. 11 *Geo.* 1.

Counſellor, (*Conſiliarius*) Is a Perſon retained by a Client to plead his Cauſe in a Court of Judicature. A *Counſellor* at Law hath a Privilege to enforce any Thing which is informed him by his Client, if pertinent to the Matter, and is not to examine whether it be true or falſe; for it is at the Peril of him who informs him. *Cro. Jac.* 90. But after the Court hath delivered their Opinions of the Matter in Law depending before them, the *Counſel* at the Bar are not to urge any Thing further in that Cauſe. 1 *Lill. Abr.* 355. It has been held that the *King's Counſel* ought not to be admitted to argue any Cauſe againſt the King; tho' this was oppos'd by *Serjeant Maynard.* Hill. 21 Car. 2. 1 Mod. 38. A *Counſellor* muſt not ſet his Hand to a frivolous Plea, to delay a Trial; which argues Ignorance or foul Practice. *Ibid.* And as *Counſellors* have a ſpecial Privilege to practice the Law, they are puniſhable by Attachment, *&c.* for Misbehaviour. 1 *Hawk. P. C.* 157. No Recuſant Convict, or Nonjuror, ſhall practice the Law, as a *Counſellor*, or otherwiſe, under Penalties, by Stat. 3 *Jac.* 1. *c.* 5. 13 & 14 *W.* 3. *c.* 6.

Counſel, for *Priſoners.* No *Counſel* is allowed a *Priſoner* upon a General Iſſue, on Indictment of Felony, *&c.* unleſs ſome doubtful Point of Law ariſe: The Court is the Priſoner's only *Counſel*; and the Behaviour of the Priſoner in his own Defence, is one Means of diſcovering the Truth. In Appeals, and upon ſpecial Pleas, *&c.* the Priſoner ſhall have *Counſel* aſſigned him by the Court: Tho' *Counſel* is not to prompt the Priſoner in Matters of Fact. 2 *Hawk.* 400, 401. Proviſion is made for *Counſel* for Priſoners in Treaſon, by Stat. 7 *W.* 3.

Count, Signifies the original Declaration of Complaint in a real Action. As Declaration is applied to perſonal; ſo *Count* is applicable to real Cauſes: But *Count* and Declaration are oftentimes confounded, and made to ſignify the ſame Thing. *F. N. B.* 16, 60. In paſſing a Recovery at the Common Pleas Bar, a Serjeant at Law *counts* upon the *Præcipe*, *&c.* See *Countors* and *Declarations.*

Countee, (Fr. *Comte*) Was the moſt eminent Dignity of a Subject, before the Conqueſt; and thoſe who in ancient Time were created *Countees*, were Men of great Eſtate: For which Reaſon and becauſe the Law intends that they aſſiſt the King with their Counſel for the publick Good, and preſerve the Realm by their Valour, they had great Privileges; as they might not be arreſted for Debt or Treſpaſs; or be put on Juries, *&c.* Of old the *Countee* was *Præfectus*, or *Præpoſitus Comitatus*, and had the Charge and Cuſtody of the *County*; but this Authority the *Sheriff* now hath. 9 *Rep.* 46. A *Countee* or *Count*, is an Earl, in the Law *French. Law Fr. Dict.*

Countenance. This Word ſeems to be uſed for Credit or Eſtimation. *Old Nat. Br.* 111. And in the Stat. 1 *Ed.* 3. *c.* 4. See *Contenement.*

Counter, (*Computatorium*, from the Lat. *Computare*) Is the Name of two Priſons in *London*, the *Poultry-Counter*, and *Woodſtreet Counter*, for the Uſe of the City, to confine Debtors, Peace-breakers, *&c.* wherein if any enter, he is like to *account* before he gets out. *Cowel.*

Counterfeits. Perſons obtaining any Money, Goods, *&c.* by *Counterfeit* Letters or falſe Tokens, being convicted before Juſtices of Aſſiſe, or Juſtices of Peace, are to ſuffer ſuch Puniſhment as ſhall be thought fit, under Death; as Impriſonment, Pillory, *&c.* Stat. 33 *H.* 8. *cap.* 1. It was the Opinion of Sir *Edward Coke*, that upon this Statute the Offender could not be fined; and that only corporal Pains ought to be inflicted: But it hath been otherwiſe adjudg'd in *Terry's* Caſe, who by a falſe Note in the Name of another obtain'd into his Hands a Wedge of Silver, of the Value of two hundred Pounds; and on Conviction thereof, was ſentenced to ſtand in the Pillory, pay a Fine of five hundred Pounds to the King, and be impriſoned during the King's Pleaſure. *Cro. Car.* 407. The Obtaining of Money from one Man to another's Uſe, upon a falſe Pretence of having a Meſſage and verbal Order to that Purpoſe, is not puniſhable by criminal Proſecution; it depending on a bare naked Lie, againſt which common Prudence and Caution may be a Security. 6 *Mod.* 105. 1 *Hawk. P. C.* 188. *Counterfeiting* the *King's Seal*, or Money, *&c.* which is Treaſon, *Vide Treaſon:* And *Counterfeiting Exchequer-Bills*, Bank-Bills, Lottery-Orders, *&c.* which are Felony. See *Felony.*

Countermand, Is where a Thing formerly executed, is afterwards by ſome Act or Ceremony made void by the Party that firſt did it. And it is either actual by Deed, or implied: *Actual*, where a Power to execute any Authority, *&c.* is by a formal Writing for that very Purpoſe put off for a Time, or made void: And *implied* is where a Man makes his laſt Will and Teſtament, and thereby deviſes his Land to *A. B.* if he afterwards enfeoffs another of the ſame Land, here this Feoffment is a *Countermand* to the Will, without any expreſs Words for the ſame, and the Will is void as to the Diſpoſition of the Land: Alſo if a Woman ſeiſed of Land in Fee-ſimple, makes a Will and deviſeth the ſame to *C. D.* and his Heirs, if he ſurvives her; and after ſhe intermarries with the ſaid *C. D.* there by taking him to Husband, and Coverture at the Time of her Death, the Will is *countermanded.* *Terms de Ley* 198. But if a Woman makes a Leaſe at Will, and then marries, this Marriage is no *Countermand* to the Leaſe, without expreſs Matter done by the Husband to determine the Will. Where Land is deviſed, and after a Leaſe made thereof for Years only; it ſhall not be a *Countermand* of the Will, which is good notwithſtanding for the Reverſion after the Leaſe for Years is ended: But in Caſe a Man have a Leaſe for Years, and gives it by his Will, and after Surrenders it; it is a *Countermand* of the Deviſe, and the Deviſee ſhall not have this Leaſe. *Dyer* 47. *Goldsb.* 93. If a Copyholder like to die, do ſurrender his Eſtate to the Uſe of his Wife or Children, without any Conſideration of Money, *&c.* and he recover before the Preſentment and Admittance, it may be *Countermanded:* 'Tis otherwiſe if it be to the Uſe of a Stranger. *Kitch.* 82. If there be a Feoffment with Letter of Attorney to make Livery and Seiſin; and before it is made the Feoffor makes a Feoffment, or Bargain and Sale of the Land, or Leaſe to another, it will be a *Countermand* in Law of the Authority given by the Letter of Attorney. 2 *Brownl.* 291. A Perſon may *countermand* his Command, Authority, Licence, *&c.* before the Thing is done; and if he dies, it is *countermanded.* There is a *Countermand* of *Notice of Trial*, &c. in Law Proceedings.

Counterplea, Is when the Tenant in any real Action, Tenant by the Curteſy, or in Dower, in his Anſwer and Plea, vouches any one to warrant his Title, or prays in Aid of another, who hath a larger Eſtate; as of him in Reverſion, *&c.* Or where one that is a Stranger to the Action, comes and prays to be received to ſave his Eſtate; then that which the Demandant alledgeth againſt it, why it ſhould not be admitted, is called a *Counterplea:* In which Senſe it is uſed Stat. 25 *Ed.* 3. *cap.* 7. So that *Counterplea* is in Law a Replication to *Aid Prier*; and is called *Counterplea to the Voucher:* But when the Voucher is allowed, and the Vouchee comes and demands what Cauſe the Tenant hath to vouch him, and the Tenant ſhews his Cauſe, whereupon the Vouchee pleads any Thing to avoid the Warranty; that is termed a *Counterplea of the Warranty. Terms de Ley* 199. Stat. 3 *E.* 1. *cap.* 39. If on Demurrer to a *Counterplea* of the Voucher upon a Warranty, it be found againſt the Vouchee, Judgment ſhall not be peremptory, but only *Stet vocare:* 'Tis otherwiſe upon a Plea to the Writ tried by the Country. 10 *Rep.* 34. 4 *Rep.* 80.

Counter-Rolls, Are the *Rolls* which *Sheriffs* of Counties have with the *Coroners* of their Proceedings, as well of Appeals, as of Inqueſts, *&c.* Stat. 3 *Ed.* 1. *c.* 10.

Countors, (Fr. *Contours*) Have been taken for ſuch *Serjeants* at Law, which a Man retains to defend his Cauſe, and ſpeak for him in any Court, for their Fees. *Horn*'s *Mirror*, *lib.* 2. And as in the Court of *C. B.* none but Serjeants at Law may plead; they were anciently called *Serjeant Countors.* 1 *Inſt.* 17.

County, (*Comitatus*) Signifies the ſame with *Shire*, the one coming from the *French*, the other the *Saxons*; and contains a Circuit or Portion of the Realm, into which the whole Land is divided, for the better Government of it, and the more eaſy Adminiſtration of Juſtice: So that there is no Part of this Kingdom that lies not within ſome County; and every County is governed by a yearly Officer whom we call a Sheriff. *Forteſcue*, *cap.* 24. Of theſe *Counties*, there are in *England* forty, beſides twelve in *Wales*, making in all fifty-two: And four of them are of ſpecial Note, which are therefore term'd *Counties Palatine*; as *Lancaſter*, *Cheſter*, *Durham*, and *Ely*; and we read anciently of the *Counties* Palatine of *Pembroke* and *Hexam*, tho' they have long ſince loſt their Privileges. The chief Governors of the *Counties* Palatine, by ſpecial Charter from the King, heretofore did all Things touching the Adminiſtration of Juſtice as abſolutely as the Prince himſelf in other *Counties*, only acknowledging him their Superior and Sovereign: But by the Stat. 27 *H.* 8. *cap.* 24. their Power is abridged. 4 *Inſt.* 204, 221. The *Counties Palatine* are reckoned among the ſuperior Courts: And are privileged as to Pleas, ſo as no Inhabitant of ſuch *Counties* ſhall be compelled by any Writ to appear or anſwer out of the ſame; except for Error, and in Caſes of Treaſon, *&c.* and the *Counties* Palatine of *Cheſter* and *Durham*, are by Preſcription, where the King's Writ ought not to come, but under the Seal of the *Counties* Palatine; unleſs it be Writs of Proclamation. *Crompt. Juriſd.* 137. 1 *Danv. Abr.* 750. But *Certiorari* lies out of *B. R.* to Juſtices of a *County* Palatine, *&c.* to remove Indictments, and Proceedings before them. 2 *Hawk. P. C.* 286. There is a Court of Chancery in the *Counties* Palatine of *Lancaſter* and *Durham*, over which there are Chancellors; that of *Lancaſter* called Chancellor of the Dutchy, *&c.* and there is a Court of Exchequer at *Cheſter*, of a mixt Nature, for Law and Equity, of which the *Chamberlain of Cheſter* is Judge. There is alſo a Chief Juſtice of *Cheſter*; and other Juſtices in the other *Counties* Palatine, to determine Civil Actions and Pleas of the Crown. The Biſhops of *Durham* and *Ely*, have thoſe *Counties* Palatine; and if any erroneous Judgment be given in the Courts of the Biſhoprick of *Durham*, a Writ of Error ſhall be brought before the Biſhop himſelf; and if he give an erroneous Judgment thereon, a Writ of Error ſhall be ſued out returnable in *B. R.* 4 Inſt. 218. But it has been held, that *Ely* is not a *County* Palatine, only a *Royal* Franchiſe, having Cognizance of Pleas like unto the *Cinque Ports.* Carthew 109. *Counties* Palatine, with *Jura Regalia*, were probably erected at firſt, becauſe they were adjacent to the Enemies Countries heretofore; as *Lancaſter* and *Durham* to *Scotland*, and *Cheſter* to *Wales*; that the Inhabitants might have Adminiſtration of Juſtice at Home, and remain there to ſecure the Country from Incurſions. 1 *Vent.* 155. The King may make a *County* Palatine by his Letters Patent without Parliament. 4 *Inſt.* 201. Beſides theſe *Counties* of both Sorts, there are *Counties Corporate.* Stat. 3 *E.* 4. *cap.* 5. And they are certain *Cities*, with Lands and Territories, having Liberties and Juriſdiction by Grant from the King: As the *County* of *Middleſex* annexed to the City of *London* by King *Hen.* 1. The *County* of the City of *York*, *Anno* 32 *H.* 8. The *County* of the City of *Cheſter*, 42 *Eliz.* The *County* of the City of *Briſtol*, *Norwich*, *Worceſter*, *&c.* and the *County* of the Town of *Kingſton* upon *Hull*, *New Caſtle*, *&c. Lamb. Eiren. lib.* 1. *Crompt. Juſt.* 59. And *County* in another Signification, is uſed for the *County Court*, kept by the Sheriff within his Charge, or by his Deputy. *Stat.* 2 *Ed.* 6. *cap.* 25. *Bract. lib.* 3. *cap.* 7. See *Comitatus.*

County-Court, (*Curia Comitatus*) Is by *Lambard* called *Conventus*, in his Explication of *Saxon* Words, and divided into two Sorts; one retaining the general Name, as the *County Court* held every Month, by the Sheriff or his Deputy: The other called the *Turn*, held twice in every Year, *viz.* within a Month after *Eaſter* and *Michaelmas*; of both which you may read in *Cromp. Juriſd. fol.* 241. All Adminiſtration of Juſtice was at firſt in the King's Hands; but afterwards when by the Increaſe of the People the Burden grew too great for him; as the Kingdom was divided into Counties, Hundreds, *&c.* So the Adminiſtration of Juſtice was diſtributed amongſt divers Courts; of which the Sheriff had the *County-Court* for Government of the County, and Lords of Liberties had their *Leets* and *Law-Days*, for the ſpeedier and eaſier adminiſtring Juſtice therein, *&c.* Before the *Courts* at *Weſtminſter* were erected, the *County-Courts* were the chief Courts of the Kingdom: And among the Laws of King *Edgar* it is ordained, that there be two *County Courts* kept in the Year, in which there ſhall be a Biſhop and an Alderman, or Earl, as Judges; one to judge according to the Common Law, and the other according to the Eccleſiaſtical Law: But theſe united Powers of a Biſhop and Earl, to try Cauſes, were ſeparated by *William* the Firſt, called the *Conqueror*; and ſoon after the Buſineſs of *Eccleſiaſtical* Cognizance was brought into its proper *Courts*, and the Common Law Buſineſs into the *King's Bench. Blount.* That the *County Court* in ancient Times had the Cognition of great Matters, appears by *Glanv. lib.* 1. *cap.* 2, 3, 4. by *Bracton*, and *Briton*, in divers Places, and *Fleta*, *lib.* 2. *c.* 62. But the Power of this *Court* was much reduced by *Magn. Chart. c.* 17. and by 1 *Ed.* 4. *cap.* 1. It had formerly, and now hath the Determination of certain Treſpaſſes, and Debts under 40*s*. And this *Court* holdeth not Plea of any Debt or Damage to the Value of 40*s*. or above; nor of Treſpaſs *Vi & Armis*, *&c.* But of Debt and other Actions perſonal above that Sum, the Sheriff may hold Plea by Force of a Writ of *Juſticies*, which is in Nature of a Commiſſion to him to do it. 4 *Inſt* 266. Here the Plaintiff takes out a Summons, and if the Defendant do not appear, an Attachment or *Diſtringas* is to be made out againſt him; but if the Defendant appears, the Plaintiff is to file his Declaration, and after the Defendant is to put in his Anſwer or Plea; and the Plaintiff having joined Iſſue, the Trial proceeds, *&c.* whereupon, if Verdict is given for the Plaintiff, Judgment is entered, and a *Fieri Facias* may be awarded againſt the Defendant's Goods, which may be taken by Virtue thereof, and be appraiſed and ſold to ſatisfy the Plaintiff: But if the Defendant hath no Goods, the Plaintiff is without Remedy in this *Court*; for no *Capias* lies therein, but an Action may be brought at Common Law, upon the Judgment entered. *Greenwood of Courts, pag.* 22. No Sheriff is to enter in the *County Court*, any Plaint in the Abſence of the Plaintiff; nor above one Plaint for one Cauſe, under Penalties: The Defendant in the *County Court* is to have lawful Summons; and two Juſtices of Peace are to view the Eſtreats of Sheriffs, before they iſſue them out of the *County-Court*, *&c.* by Statute 11 *Hen.* 7. *c.* 15. Cauſes are removed out of the *County-Court*, by *Recordare*, *Pone*, and Writ of *Falſe Judgment*, into *B. R. &c.*

County-Rates, Are thoſe ordered by Juſtices of Peace at their Quarter-Seſſions, who may make one General *Rate*, to anſwer all former diſtinct Rates, which ſhall be aſſeſſed on every Pariſh, *&c.* and collected and paid by the High Conſtables of Hundreds to Treaſurers appointed by the Juſtices; which Money ſhall be deemed the Publick Stock, and be laid out in Repairing of Bridges, Gaols, or Houſes of Correction, on Preſentment made by the Grand Jury, at the Aſſiſes or Quarter-Seſſions, of their wanting, Reparation; But Appeal lies by the Churchwardens and Overſeers of the Poor of Pariſhes to the Juſtices at the next Seſſions, againſt the *Rate* on any particular Pariſh. 12 *Geo.* 2. *c.* 29.

Counting-Houſe of the King's Houſhold, (*Domus Computus Hoſpitii Regis*) Is uſually called the *Green-Cloth*; where ſit the Lord Steward, and Treaſurer of the King's Houſe, the Comptroller, Maſter of the *Houſhold*, Cofferer, and two Clerks of the *Green Cloth*, *&c.* for daily taking the Accounts of all Expences of the *Houſhold*, making Proviſions, and ordering Payment for the ſame; and for the good Government *of the King's Houſhold* Servants, and paying the Wages of thoſe below Stairs. *Stat.* 39 *Eliz. cap.* 7.

Courier, (from the Fr. *Couree* to run) An expreſs Meſſenger of Haſte.

Courracier, A *French* Word ſignifying a Horſe-Courſer. 2 *Inſt.* 719.

Court, (*Curia*) Signifies the King's Palace, or Manſion; and is more eſpecially the Place where Juſtice is judicially adminiſtred. The *Superior Courts* are thoſe at *Weſtminſter*; and of *Courts ſome are of Record*, and ſome not, which are accounted *Baſe Courts*, in Reſpect of the Reſt: A *Court* of Record is that *Court* which hath Power to hold Plea, according to the Courſe of the Common Law, of real, perſonal, and mixed Actions, where the Debt or Damage is 40*s.* or above; as the *King's Bench*, *Common Pleas*, *&c.* A *Court* not of Record is where it cannot hold Plea of Debt or Damages amounting to 40*s.* but of Pleas under that Sum; or where the Proceedings are not according to the Courſe of the Common Law, nor inrolled; as the *County Court*, and the *Court-Baron*, *&c.* 1 *Inſt.* 117, 260. 4 *Rep.* 52. 2 *Roll. Abr.* 574. Every *Court* of Record is the *King's Court*, though his Subjects have the Benefit of it; and the free Uſe of all *Courts* of Record and not of Record, is to be granted to the People: The Leet and Tourn are the King's *Courts*, and of Record. 2 *Danv.* 259. The Rolls of the ſuperior *Courts* of Record are of ſuch Authority, as no Proof will be admitted againſt them; and they are only triable by themſelves. 3 *Inſt.* 71. But the County *Court*, *Court* Baron, *&c.* as they are no *Courts* of Record, the Proceedings therein may be denied, and tried by a Jury: And upon their Judgments, a Writ of Error lies not; but Writ of Falſe Judgment. 1 *Inſt.* 117. At the *Courts* at *Weſtminſter*, the Plaintiff need not ſhew at large in his Declaration, that the Cauſe of Action ariſes within their Juriſdiction, it being general: Inferior *Courts* are to ſhew it at large, becauſe they have particular Juriſdictions. 1 *Lill. Abr.* 371. Alſo nothing ſhall be intended to be within the Juriſdiction of an inferior *Court*, but what is expreſly ſo alledged: And if Part of the Cauſe ariſes within the inferior Juriſdiction, and Part thereof without it, the inferior *Court* ought not to hold Plea. 1 *Lev.* 104. 2 *Rep.* 16. An inferior *Court* not of Record cannot impoſe a Fine, or Impriſon: But the Courts of Record at *Weſtminſter* may fine, impriſon, and amerce. 11 *Rep.* 43. The King being the Supream Magiſtrate of the Kingdom, and intruſted with the executive Power of the Law, all *Courts* Superior and Inferior ought to derive their Authority from the Crown. *Staund.* 54. 2 *Hawk P. C.* 2. Tho' the King himſelf cannot ſit in Judgment in any *Court* upon an Indictment, becauſe he is one of the Parties to the Suit. *Hawk. Ibid.* The King hath committed all his Power Judicial to one *Court* or other. 4 *Inſt.* 71. And by Statute it is enacted, that all Perſons ſhall receive Juſtice in the King's *Court*, and none take any Diſtreſs, *&c.* of his own Authority, without Award of the King's *Courts*. *Stat.* 52 *Hen.* 3. *cap.* 1. It is ſaid the Cuſtoms, Precedents, and common Judicial Proceedings of a *Court*, are a Law to the *Court*: And the Determinations of *Courts*, make Points to be Law. 2 *Rep.* 16. 4 *Rep.* 53. *Hob.* 298. All Things determinable in *Courts*, that are *Courts* by the Common Law, ſhall be determined by the Judges of the ſame *Courts*; and the King's Writ cannot alter the Juriſdiction of a *Court*. 6 *Rep.* 11. The *Court* of *B R.* regulates all the *Courts* of Law in the Kingdom, ſo that they do not exceed their Juriſdictions, nor alter their Forms, *&c.* 22 *Car. B. R.* And as the *Court* of King's Bench hath a general Superintendency over all Inferior *Courts*, it may award an Attachment againſt any ſuch *Court*, uſurping a Juriſdiction not belonging to it: But it is ſometimes uſual firſt to award a Writ of Prohibition, and afterwards an Attachment, upon its continuing to proceed. 2 *Hawk.* 149, 150. If a *Court* having no Juriſdiction of a Cauſe depending therein, do nevertheleſs proceed, the Judgment in ſuch *Court* is *coram non Judice*, and void; and an Action lies againſt the Judges who give the Judgment, and any Officer that executes the Proceſs under them: Though where they have Authority, and give an ill Judgment, there the Party who executes the Proceſs, *&c.* upon the Judgment, ſhall be excuſed. 1 *Lill. Abr.* 370. Action on the Caſe lies againſt the Plaintiff in an Action for ſuing one in an Inferior *Court*, where the Cauſe of Action is out of its Juriſdiction. 1 *Vent.* 369. And if a Plaintiff on a Contract for a large Sum, ſplits it into ſeveral Actions for ſmall Sums to give an inferior *Court* Juriſdiction, a Prohibition ſhall go. *Mod. Caſ.* 90. Striking in the *Courts* at *Weſtminſter*, is puniſhed by cutting off the right Hand, and Forfeiture of Goods, *&c.* How *Contempts* to *Courts* are puniſhable by Fine and Impriſonment, *&c.* *Vide Attachment:* See more of *Courts*, under *Judges*.

Court of Admiralty, (*Curia Admiralitatis*) Was erected, as generally held, by King *Ed.* 3. for deciding Maritime Cauſes; and the Title of its Judge is *Supremæ Curiæ* Admiralitatis *Angliæ Locum tenens*, *Judex ſive Preſidens*. The *Admiralty Court* is not allowed to be a *Court* of Record, becauſe it proceeds by the *Civil Law*; and the Judge has no Power to take ſuch a Recognizance, as a *Court* of Record may: The Proceſs and Proceedings are in the Name of the Lord *Admiral*, and by Libel; and the Plaintiff and Defendant enter into a Stipulation, or Bond, for Appearance, and to abide the Sentence. 4 *Inſt.* 134, 135. This *Court* hath Juriſdiction to determine all Cauſes ariſing wholly upon the Sea; out of the Juriſdiction of a County: And a Judgment of a Thing done upon Land, is void: 1 *Inſt* 260. If the *Court of Admiralty* hold Plea of an Agreement made at Sea, but put in Writing and ſealed in foreign Lands, a Prohibition may be granted; but not if only a bare Remembrance had been made of it at Land. *Hob.* 69, 211. See *Latch* 11. By the Cuſtom of the *Admiralty*, Goods may be attached in the Hands of a third Perſon *in Cauſa civili & maritima.* March 204.

Court-Baron, (*Curia Baronis*) Is a *Court* which every Lord of a Manor, hath within his own Precinct: It is an inſeparable Incident to the Manor: and muſt be held by Preſcription, for it cannot be created at this Day. 1 *Inſt.* 58. 4 *Inſt.* 268. A *Court-Baron* muſt be kept on ſome Part of the Manor: And is of two Natures. 1. By *Common* Law, which is the *Barons* or *Freeholders Court*, of which the Freeholders being Suitors are the Judges; and this cannot be a *Court-Baron*, without two Suitors at leaſt. 2. By *Cuſtom*, which is called the *Cuſtomary Court:* And concerns the Cuſtomary Tenants and Copyholders, whereof the Lord, or his Steward is Judge. The *Court-Baron* may be of this double Nature, or one may be without the other: But as there can be no *Court-Baron* at Common-Law without Freeholders; ſo there cannot be a cuſtomary *Court*, without Copyholders or Cuſtomary Tenants. 4 *Rep.* 26. 6 *Rep.* 11, 12. 2 *Inſt.* 119. The Freeholders *Court*, which hath Juriſdiction for trying of Actions of Debt, Treſpaſſes, *&c.* under 40*s.* may be held every three Weeks; and is ſomething like a *County-Court*, and the Proceedings much the ſame: Tho' on Recovery of Debt, they have not Power to make Execution, but are to diſtrain the Defendant's Goods, and retain them till Satisfaction is made. The other *Court-Baron*, for taking and paſſing of Eſtates, Surrenders, Admittances, *&c.* is held but once or twice in a Year, (uſually with the *Court*-Leet) unleſs it be on Purpoſe to grant an Eſtate; and then it is holden as often as requiſite. In this *Court* the *Homage Jury* are to inquire that their Lords do not loſe their Services, Duties, or Cuſtom; but that the Tenants make their Suits of *Court*; pay their Rents and Heriots, *&c.* and keep their Lands and Tenements in Repair; they are to preſent all common and private Nuſances, which may prejudice the Lord's Manor; and every publick Treſpaſs muſt be puniſhed in this Court, by Amercement, on preſenting the ſame. By Statute, It ſhall be enquired of cuſtomary Tenants, what they hold, by what Works, Rents, Heriots, Services, *&c.* And of the Lord's Woods, and other Profits, Fiſhings, *&c. Stat. Extent. Manerii*, 4 *Ed.* 1. See my *Compleat Court-Keeper*, 3d Edit.

Court of Chivalry, (*Curia Militaris*) Otherwiſe called the *Marſhal-Court*; the Judges of it are the Lord *Conſtable of England*, and the *Earl Marſhal*: This *Court* is ſaid to be the Fountain of the *Marſhal Law*, and the Earl Marſhal hath both a judicial and miniſterial Power; for he is not only one of the Judges, but to ſee Execution done. 4 *Inſt.* 123. See *Conſtable.*

Court Chriſtian, (*Curia Chriſtianitatis*) Is an Eccleſiaſtical Judicature, oppoſed to the Civil *Court*, or Lay Tribunal: And as in ſecular *Courts*, Human Laws are maintained; ſo in the *Court Chriſtian*, the Laws of *Chriſt* ſhould be the Rule. And therefore the Judges are Divines; as Archbiſhops, Biſhops, Archdeacons, *&c.* 2 *Inſt.* 488. *Courts Chriſtian* are ſo called, becauſe they handle Matters eſpecially appertaining to *Chriſtianity*; and were held heretofore by our Biſhops from the *Pope*, as he challenged the Superiority in all Cauſes Spiritual: But ſince his Ejection, they hold them by the King's Authority, *Virtute Magiſtratus ſui, &c.* and as the Appeal from theſe *Courts* did lie to *Rome*, now by the Stat. 25 *Hen.* 8. *cap.* 19. it lies to the King in his Chancery. 4 *Inſt.* Theſe *Courts* were complained againſt long before the Reformation, the Biſhops having extended their Juriſdiction ſo far, that they had left very little Buſineſs for the ſecular Judges; for they aſſumed an Authority over the Clergy, even in Criminal Caſes, though they had no legal Power, but only in the Execution of the Sentence of Degradation, *&c.* and took upon them to judge in a great many other Things, that did not belong to them.

Court of Conſcience, (*Curia Conſcientiæ*) In the 9th Year of King *Hen.* 8. the *Court of Conſcience in London* was erected; there was then made an Act of Common Council, that the Lord Mayor and Aldermen ſhould aſſign monthly two Aldermen, and four diſcreet Commoners, to be Commiſſioners to ſit in this *Court* twice a Week, to hear and determine all Matters brought before them between Party and Party, between Citizens and Freemen of *London*, in all Caſes where the Debt or Damage was under 40*s.* And this Act of Common Council is confirmed by the Stat. 1 *Jac.* 1. which impowers the Commiſſioners of this *Court* to make ſuch Orders between the Parties touching ſuch Debts, as they ſhall find ſtand to Equity and good *Conſcience.* Alſo the Stat. 3 *Jac.* 1. *c.* 15. further eſtabliſhes this *Court*; the Courſe and Practice whereof is by Summons, to which if the Party appear, the Commiſſioners proceed ſummarily; examining the Witneſſes of both Parties, or the Parties themſelves on Oath, and as they ſee Cauſe give Judgment. And if the Party ſummoned appear not, the Commiſſioners may commit him to the Compter Priſon till he does; alſo the Commiſſioners have Power to commit a Perſon refuſing to obey their Orders, *&c.* Stat. 3 Jac. 1. By a late Statute, the Proceedings of the *Court of Conſcience* are regulated; and in Caſe any Perſon affront or inſult any of the Commiſſioners, on their certifying it to the Lord Mayor, he ſhall puniſh the Offender by Fine, not exceeding 20*s.* or may impriſon him ten Days. 14 *Geo.* 2. *c.* 10.

Court of Delegates, (*Curia Delegatorum*) Is ſo called, becauſe the Judges are *delegated*, and ſit by Force of the King's Commiſſion, under the Great Seal, upon Appeals to the King, in three Caſes. 1. When a Decree or Sentence is given in an Eccleſiaſtical Cauſe, by the Archbiſhop, or any of his Officials. 2. When any Decree or Sentence is given in an Eccleſiaſtical Cauſe in Places exempt, or Peculiars, belonging to the King, or an Archbiſhop. 3. When a Sentence is given in the *Court* of Admiralty in a Civil and Marine Cauſe, according to the Civil Law. 4 *Inſt.* 339. Stat. 25 *Hen.* 8. *c.* 19. If the *Delegates* in Eccleſiaſtical Cauſes are Spiritual Perſons, they may proceed to Excommunication, *&c.* This is the higheſt Court for Civil Affairs that concern the Church. See *Appeal to Rome.*

Courts Eccleſiaſtical, (*Curiæ Eccleſiaſticæ*) Are thoſe *Courts* which are held by the King's Authority as ſupreme Governor of the Church, for Matters which chiefly concern Religion. 4 *Inſt.* 321. And the *Laws and Conſtitutions* whereby the *Church* of *England* is governed, are, 1. Divers immemorial *Cuſtoms.* 2. Our own *Provincial Conſtitutions*; and the *Canons* made in Convocations, eſpecially thoſe in the Year 1603. 3. Statutes or *Acts of Parliament* concerning the Affairs of Religion, or Cauſes of *Eccleſiaſtical* Cognizance; particularly the *Rubricks*

bricks in our Common Prayer-Book, founded upon the Statutes of Uniformity. 4. The *Articles of Religion*, drawn up in the Year 1562, and eſtabliſhed by 13 *Eliz. cap.* 12. 5. And 'tis ſaid, by the General *Canon Law*, where all others fail. See the 25 *Hen.* 8. *c.* 28. As to Suits in Spiritual or *Eccleſiaſtical Courts*, they are for the Reformation of Manners, or for puniſhing of Hereſy, Defamation, laying violent Hands on a Clerk, and the like; and ſome of their Suits are to recover ſomething demanded, as Tithes, a Legacy, Contract of Marriage, &c. And in the Cauſes of this Nature, the Courts may give Coſts, but not Damages: Things that properly belong to theſe Juriſdictions are Matrimonial and Teſtamentary, and Defamatory Words, for which no Action lies at Law; as for calling one Adulterer, Fornicator, Uſurer, or the like. 11 *Rep.* 54 *Dyer* 240. The Proceedings in the *Eccleſiaſtical Courts*, are according to the *Civil* and *Canon Law*; by *Citation*, *Libel*, *Anſwer* upon *Oath*, Proof by *Witneſſes*, and *Preſumptions*, &c. and after *Sentence*, for Contempt, by *Excommunication:* And if the Sentence is diſliked, by *Appeal.* The Juriſdiction of theſe *Courts*, is *voluntary*, or *contentious:* And the Puniſhments inflicted by them, are Cenſures and Puniſhments *pro ſalute Animæ*, by way of Penance, &c. They are not *Courts* of Record. Vide *Conſultation* and *Prohibition.*

Court of Huſtings, (*Curia Huſtingi*) Is the higheſt Court of Record, holden at *Guildhall*, for the *City of London*, before the Lord Mayor and Aldermen, the Sheriffs, and Recorder. 4 *Inſt.* 247. This *Court* determines all Pleas real, perſonal, and mixt: And here all Lands, Tenements, and Hereditaments, Rents and Services, within the City of *London*, and *Suburbs* of the ſame, are pleadable in two *Huſtings*; one called *Huſtings of Plea of Lands*, and the other *Huſtings of Common Pleas.* In the *Huſtings* of Plea of Lands, are brought *Writs of Right Patent* directed to the Sheriffs of *London*, on which Writs the Tenant ſhall have three Summons at the three *Huſtings* next following; and after the three Summons there ſhall be three Eſſoins at three other *Huſtings* next enſuing; and at the next *Huſtings* after the third Eſſoin, if the Tenant makes Default, Proceſs ſhall be had againſt him by *Grand Cape*, or *Petit Cape*, &c. And if the Tenant appears, the Demandant is to declare in the Nature of what Writ he will; without making Proteſtation to ſue in Nature of any Writ: Then the Tenant ſhall have the View, &c. and if the Parties plead to Judgment, the Judgment ſhall be given by the Recorder: But no Damages, by the Cuſtom of the City, are recoverable in any ſuch Writ of Right Patent. *Practiſ. Solic.* 416, 417. In the *Huſtings* of Common Pleas, are pleadable Writs *Ex gravi Querela*, Writs of *Gavelet*, of *Dower*, *Waſte*, &c. alſo Writs of *Exigent* are taken out in the *Huſtings*; and at the fifth *Huſtings* the Outlawries are awarded, and Judgment pronounced by the Recorder. If an erroneous Judgment is given in the *Huſtings*, the Party grieved may ſue a Commiſſion out of Chancery directed to certain Perſons to examine the Record, and thereupon do Right. 1 *Rol. Abr.* 745.

Court-Leet, (*Leta*, *Viſus franci plegii*) Is a *Court* of Record, ordained for puniſhing Offences againſt the Crown; and is ſaid to be the moſt antient *Court* of the Land. 2 *Danv. Abr.* 289. It enquires of all Offences under High Treaſon; but thoſe which are to be puniſhed with Loſs of Life or Member, are only inquirable and preſentable here, and to be certified over to the Juſtices of Aſſiſe. *Stat.* 1 *Ed.* 3 And this *Court* is called the *View of Frank-pledge*, becauſe the King is to be there certified by the View of the Steward, how many People are within every Leet, and have an Account of their good Manners and Government; and every Perſon of the Age of 12 Years, which hath remained there for a Year and a Day may be ſworn to be faithful to the King, and the People are to kept in Peace, &c. Alſo every one from the Age of twelve to ſixty Years, that dwells within the Leet, is obliged to do Suit in this Court; except Peers, Clergymen, &c. unleſs they are under the *Sheriff's Turn.* 4 *Inſt.* 261, 263, &c. A Leet is incident to a Hundred, as a Court-Baron to a Manor; for by Grant of a Hundred, a Leet paſſeth, and a Hundred cannot be without a Leet. *Kitch.* 70. Leets may be held by Charter or Preſcription; but are commonly claim'd by Preſcription; and are to be kept twice a Year, one Time within a Month after *Eaſter*, and the other within a Month after *Michaelmas*, at a certain Place within the Precinct: Theſe are the uſual Times of holding the Leet; but if it hath been a Cuſtom to keep this Court at any other Time in the Year, it is good if due Warning be given. 1 *Inſt.* 115. 2 *Inſt* 72. The Steward is the Judge of this Court, as the Sheriff is in the Turn: And he hath Power to elect Officers, as Conſtables, Tithingmen, &c. as well as puniſh Offenders. 6 *Rep.* 12. 2 *Inſt.* 199. A Preſentment in a *Court-Leet*, or Sheriff's Turn, after the Day of Preſentment, ſubjects the Party to a Fine or Amerciament; and is not traverſable, except it toucheth the Party's Freehold; as that one ought to cleanſe the Highways, &c. by Reaſon of his Tenure: Though ſuch Preſentment may be removed into *B. R.* by *Certiorari*, where it may be traverſed. *Dyer* 13. 2 *Inſt.* 52. *Kitch.* 86, 91, &c. A *Court-Leet* may fine, but not impriſon: A Steward may impoſe a reaſonable Fine, for a Contempt in Court; or commit thoſe who make an Affray before him, in the Execution of his Office, or bind them to the Peace or Good Behaviour: But he may not grant Surety of the Peace, unleſs by Preſcription. 8 *Rep.* 38. 1 *Saund.* 135. The uſual Method of Puniſhment in the *Court-Leet*, is by Fine and Amercement; the former aſſeſſed by the Steward, and the latter by the Jury: For both of which, the Lord may have an Action of Debt, or take a Diſtreſs, &c. Twelve Freeholders or Reſiants, are to be of the Jury: And the particular *Articles* to be enquired into, by Statute, are, if all that owe Suit of Court are preſent; of Cuſtoms withdrawn; Purpreſtures in Lands, Woods, &c. of Houſes ſet up, or beat down, Cottages erected contrary to Law, and other Annoyances; of Bounds taken away; Ways or Waters turned or ſtopped; of Thieves, and Hues and Cries not purſued; of Bloodſhed, Eſcapes, Perſons outlawed, Money Coiners, Treaſure found; Aſſiſe of Bread and Ale, Perſons keeping Ale-houſes without Licence; Falſe Weights and Meaſures, Unlawful Games, Offences relating to the Game; Offences of Tanners in ſelling inſufficient Leather, of Foreſtallers, &c. of Markets, Victuallers and Labourers, unlawful Fiſhing, idle Perſons, &c. *Stat.* 18 *Ed.* 2. 14 & 15 *H.* 8. 2 & 3 *Ed.* 6. 31 *Eliz.* 1 *Jac.* &c. All theſe Articles are drawn up in Form, and given in *Charge* by the Steward. The Lord of the Leet ought to have a Pillory and Tumbrel, to puniſh Offenders; and for Want thereof, the Lord may be fined, or the Liberty ſeiſed. 2 *Danv.* 289. Alſo all Towns in the Leet are to have Stocks in Repair; and the Town that hath none ſhall forfeit 5 *l.* *Ibid.* Stewards of Leets, &c. are not to receive Profits to their own Uſe, belonging to the Lord, on Pain of 40 *l.* *Stat.* 1 *Jac.* 1. *c.* 5. *Vide* my *Compleat Court-Keeper*, 3 Edit.

Court of Marſhalſea, (*Curia Palatii*) A Court of Record to hear and determine Cauſes between the Servants of the King's Houſhold and others within the Verge; and hath Juriſdiction of all Matters within the Verge of the Court, and of Pleas of Treſpaſs, where either Party is of the King's Family; and of all other Actions perſonal, wherein both Parties are the King's Servants; and this is the original Juriſdiction of the *Court of Marſhalſea.*

But the *Caria Palatii*, erected by K. *Charles* I. by Letters Patent, in the 6th Year of his Reign, and made a Court of Record, hath Power to try all Perſonal Actions, as Debt, Treſpaſs, Slander, Trover, Actions on the Caſe, &c. between Party and Party, the Liberty whereof extends twelve Miles about *Whitehall*; which Juriſdiction hath ſince been confirmed by King *Charles* the Second: And the Judges of this Court, are the Steward of the King's Houſehold, and Knight-Marſhal for the Time being, and the Steward of the Court, or his Deputy, being always a Lawyer. *Crompt. Juriſd.* 102. *Kitch.* 199, &c. 2 *Inſt.* 548. This Court is kept once a Week, in *Southwark*: And the Proceedings here are either by *Capias* or Attachment; which is to be ſerved on the Defendant, by one of the Knight Marſhal's Men, who takes Bond with Sureties for his Appearance at the next Court; upon which Appearance, he muſt give Bail, to anſwer the Condemnation of the Court; and the next Court after the Bail is taken, the Plaintiff is to declare, and ſet forth the Cauſe of his Action, and afterwards proceed to Iſſue and Trial by a Jury, according to the Cuſtom of the Common Law Courts. If a Cauſe is conſiderable, it is uſually removed into *B. R.* or *C. B.* by an *Habeas Corpus cum cauſa*: Otherwiſe Cauſes are here brought to Trial in four or five Court-Days. *Practiſ. Solic.* 409, 410. By Statute, The Steward and Marſhal of the King's Houſe, are not to hold Plea of Freehold, &c. 28 *Ed.* 1. *c.* 3. Error in the *Marſhalſea* Court may be removed into the *King's Bench.* 10 *Ed.* 3. And the Fees of the *Marſhalſea* are limited by the Stat. 2 *H.* 4. *c.* 23. This *Marſhalſea* is that of the Houſhold; not the *King's Marſhalſea*, which belongs to the King's Bench.

Court Marſhal, (*Curia Martialis*) Is a Court for Puniſhing the Offences of Officers and *Soldiers* in Time of War. And it appears by our Books, that if any Perſon in Commiſſion, in Time of Peace, put to Death any Man by Martial Law, it is againſt *Magna Charta*, and Murder. 3 *Inſt.* 52. Tho' Temporal Acts of Parliament have of late enabled our Kings to hold *Courts Martial* in Time of Peace, &c. By 4 & 5 *W.* & *M.* *c.* 13. Deſertion and Mutiny is puniſhable by a *Court Martial*: And the King, or the General of the Army, may grant Commiſſions to any Field-Officer, &c. to call a *Court Martial*, of thirteen at leaſt Commiſſion Officers, who are to take an Oath for trying truly; and Sentence of Death is not to be given unleſs Nine concur: And a Field-Officer is not to be tried by any under the Degree of a Captain. By a ſubſequent Act, *Court Martials* may be called within the Realm, for trying Offenders againſt the Laws of War out of the Realm; or a Deſerter abroad may be ſent back to his Regiment to be proceeded againſt And an Acquittal or Conviction in a *Court Martial*, is a good Bar to an Indictment. *Stat.* 7 *Ann. c.* 4. See 1 *Geo.* 1. *c.* 9. 7 *Geo.* 1. *c.* 6. *Court Martial at Sea*, vide *Navy*.

Court of Piepowders, (*Curia Pedis Pulveriſati*) Is a Court held in Fairs, to do Juſtice to Buyers and Sellers, and for Redreſs of Diſorders committed in them: So called, becauſe they are moſt uſual in Summer, when the Suitors to the Court have duſty Feet; and from the Expedition in hearing Cauſes proper thereunto, before the Duſt goes off the Feet of the Plaintiffs and Defendants. 4 *Inſt.* 272. It is a Court of Record incident to every Fair; and to be held only during the Time that the Fair is kept. *Doct. & Stud. c.* 5. As to the Juriſdiction, the Cauſe of Action for Contract, Slander, &c. muſt ariſe in the Fair or Market; and not before at any former Fair, nor after the Fair: It is to be for ſome Matter concerning the ſame Fair or Market; and be done, complained of, heard and determined the ſame Day. Alſo the Plaintiff muſt make Oath that the Contract, &c. was within the Juriſdiction and Time of the Fair. *Stat.* 17 *Ed.* 4. *c.* 2. 2 *Inſt.* 220 The Court of *Piepowders* may hold Plea of a Sum above 40 *s.* and 'tis ſaid, Judgment may be given at another Fair, at a Court held there: And a Writ of Error lies upon a Judgment given. *Dyer* 133. *F. N. B.* 18. This Court may not meddle with any Thing done in a Market, without a ſpecial Cuſtom for it; but for what is done in a Fair only: And not there for ſlanderous Words, unleſs they concern Matter of Contract in the Fair; as where it is for Slandering the Wares of another, and not of his Perſon in the ſame Fair. *Moor ca.* 854. The Steward before whom the Court is held, is the Judge: And the Trial is by Merchants and Traders in the Fair; and the Judgment againſt the Defendant ſhall be *Quod Amercietur*. If the Steward proceeds contrary to the Statute 17 *Ed.* 4. he ſhall forfeit 5 *l.*

Court of Requeſts, (*Curia Requiſitionum*) Was a Court of Equity, of the ſame Nature with the Court of Chancery, but inferior to it; principally inſtituted for the Relief of ſuch Petitioners, as in conſcionable Caſes addreſſed themſelves by Supplication to his Majeſty. Of this Court, the *Lord Privy Seal* was Chief Judge, aſſiſted by the *Maſters of Requeſts*; and it had Beginning about the 9 *H.* 7. according to Sir *Julius Cæſar*'s Tractate on this Subject: Tho' Mr. *Gwyn*, in his *Preface to his Readings*, ſaith it began from a Commiſſion firſt granted by King *Hen.* 8. This Court having aſſumed great Power to itſelf, ſo that it became burdenſome, *Mich. Anno* 40 & 41 *Eliz.* in the Court of Common Pleas, it was adjudged upon ſolemn Argument, that the *Court of Requeſts* was no Court of Judicature, &c. And by Stat. 16 & 17 *Car.* 1. *c.* 10. it was taken away. 4 *Inſt* 97.

Court of the Lord Steward of the King's Houſe. The Lord Steward, or in his Abſence, the Treaſurer and Controller of the King's Houſe, and Steward of the Marſhalſea, may enquire of, hear and determine in this Court, all Treaſons, Murders, Manſlaughters, Bloodſheds, and other malicious Strikings, whereby Blood ſhall be ſhed, in any of the Palaces and Houſes of the King, or in any other Houſe where his Royal Perſon ſhall abide. And this Juriſdiction was given by Stat. 33 *H.* 8. *c.* 12. 3 *Inſt.* 140. But this Court was at firſt intended only to inquire of and puniſh Felonies, &c. by the King's Servants, againſt any Lord or other Perſon of the King's Council. 3 *H.* 7. *c.* 14.

Court of Star-Chamber, (*Curia Cameræ Stellatæ*) A Court erected by 3 *H.* 7. *c.* 8. which ordained, That the Lord Chancellor, Treaſurer, and Lord Privy Seal, calling a Biſhop, and Lord of the King's Council, and the Two Chief Juſtices to their Aſſiſtance, on Bill or Information might make Proceſs againſt Maintainors, Rioters, Perſons unlawfully Aſſembling, and for other Miſdemeanors, which through the Power and Countenance of ſuch as did commit them lifted up their Heads above their Faults, and puniſh them as if the Offenders had been convicted at Law, by a Jury, &c. But this Act was repealed, and the Court diſſolved by Statute 17 *Car.* 1. *c.* 10.

Courts of Univerſities. The *Courts of the Univerſities of Oxford* and *Cambridge* are of a particular Nature: They were granted by Charters, and confirmed by Authority of Parliament. See Stat. 13 *Eliz.* 4 *Inſt.* 227. Theſe Courts are called the *Chancellor's Courts*, and are kept by the Vice-Chancellors of the Univerſities: Their Juriſdiction extends to all Cauſes Eccleſiaſtical and Civil, (except for Maihem, Felony, and relating to Freehold) where a Scholar, Servant, or Miniſter of the Univerſities is one of the Parties to the Suit. The Cauſes are managed by Advocates and Proctors: And they proceed in a ſummary Way, according to the Practice of the Civil Law; and the Judges in their Sentences follow the Juſtice and Equity of the Civil

Law, or the Laws, Statutes and Cuſtoms of the Univerſities, or the Laws of the Land, at their Diſcretion. 3 *Cro.* 73. If any erroneous Judgment be given in theſe Courts, Appeal lies to the *Congregation*; thence to the *Convocation*; and thence to the *King* in Chancery, by his Delegates. *Wood's Inſt.* 526.

Courts of Wales, (*Curiæ Principalitatis Walliæ*) The Courts of the Principality of *Wales*, and their Juriſdiction, are ſettled by Acts of Parliament: And beſides County-Courts, Hundred-Courts, Courts-Leet, *&c.* by 34 & 35 *H.* 8. *c.* 26. it is enacted, that there ſhall be a *Court of Grand Seſſions*, kept twice in every Year in every of the twelve Counties of *Wales*; and the Juſtices of thoſe Courts may hold Pleas of the Crown in as large a Manner as the King's Bench, *&c.* And alſo Pleas of Aſſiſes, and all other Pleas and Actions Real and Perſonal, in as large a Manner as the Common Pleas, *&c.* And Errors in Judgment before any of the Juſtices in the Great Seſſions, ſhall be redreſſed by Writ of Error out of the Chancery of *England* returnable in B. *R.* The Proceedings in theſe Courts are according to the Laws of *England:* And the King's Writs ought not to go into *Wales*; tho' a *Quo Minus* out of the Exchequer is often ſent thither.

Court-Lands, Demains, or Lands kept in the Lord's Hands, to ſerve his Family. See *Curtiles Terræ.*

Couſenage, The Writ of and Proceedings therein. See *Coſenage.*

Couthutlaugh, (from the Sax. *Couth*, i.e. *Sciens*, and *Utlaugh*, exlex) Is a Perſon that willingly and knowingly receives a Man *outlawed*, and cheriſhes or conceals him: For which Offence he was, in an antient Time, to undergo the ſame Puniſhment as the Outlaw himſelf. *Bract. lib.* 3. *tract.* 2. *cap.* 13.

Cows, One Milch *Cow* is to be kept to every ten Beaſts, and ſixty Sheep, by Farmers, *&c.* on Pain of 20 *s.* *Stat.* 2 & 3 *P.* & *M. c.* 3.

Craiera, *Crayer*, A ſmall Veſſel of Lading; a Hoy or Smack. *Pat.* 2 *R.* 2. 14 *Car.* 2. *cap.* 27.

Crail, An Engine made uſe of to catch Fiſh. *Blount.*

Cranage, (*Cranagium*) Is a Liberty to uſe a *Crane* for drawing up of Goods and Wares of Burden from Ships and Veſſels, at any Creek of the Sea or Wharf, unto the Land, and to make Profit of it: It alſo ſignifies the Money paid and taken for the ſame. *Stat.* 22 *Car.* 2. *c.* 11.

Crannock, An ancient Meaſure of Corn.—— *Quilibet debet flagellare dimidium* Crannock *frumenti ad ſemen, & duos Buſſellos, &c. in firma ſua.* Cartular. Abbat. Glaſton. MS. f. 39.

Craſpicis, Is a Word ſignifying a Whale, *viz. Piſcis craſſus.*

Craſtino Sancti Vincentii, The Morrow after the Feaſt of St. *Vincent* the Martyr, *i.e.* the 22d of *January*; which is the Date of the *Statutes* made at *Merton*, *Anno* 20 *Hen.* 3. There are likewiſe certain *Return-Days* of *Writs* in Terms, in the Courts at *Weſtminſter*, beginning with *Craſtino, &c.* as *Craſtino Animarum*, in *Michaelmas* Term; *Craſtino Purificationis beatæ Mariæ Virginis*, in *Hillary-Term*; *Craſtino Aſcenſionis Domini* in *Eaſter*-Term; and *Craſtino Sanctæ Trinitatis*, in *Trinity*-Term. *Stat.* 32 *H.* 8. 16 & 17 *Car.* 1.

Crates, (Lat.) Is an Iron Grate before a *Priſon*, uſed in the Time of the *Romans.* 1 *Vent.* 304.

Cravare, To impeach. *Si Homicida divadietur ibi vel* Cravetur, *&c.* Leg. H. 1. c. 30.

Cravent, Was a Word of Obloquy, where in the antient Trial by Battel, the Victory ſhould be proclaimed, and the Vanquiſhed acknowledge his Fault, or pronounce the Word *Cravent*, in the Name of *Recreantiſſe*, *&c.* and thereupon Judgment was given forthwith; after which the *Recreant* ſhould become infamous, *&c.* 2 *Inſt.* 248. If the Appellant join'd Battel, and cried *Cravent*, he ſhould loſe *Liberam Legem*; but if the Appellee cried out *Cravent*, he was to be hanged. 3 *Inſt.* 221.

Creamer, A Foreign Merchant; but generally taken for one who hath a Stall in a Fair or Market. *Blount.*

Creanſor, *Creditor*, (of the Fr. *Croyance*) Signifies him that truſts another with any Debt, Money, or Wares: In which Senſe it is uſed in *Old Nat. Br.* 66. and 38 *Ed.* 3. *c.* 5.

Creaſt, or **Creſt**, (*Criſta*) Any Imagery, or carved Work, to adorn the Head of Wainſcot, *&c.* like our modern *Cornice:* But this Word is now applied by the *Heralds* to their Devices ſet over a Coat of Arms. *Kennet's Paroch Antiq.* 573.

Creation-Money. This is mentioned in Stat. *Car.* 2. *c.* 1.

Creche, A Drinking Cup. *Mon. Angl. tom.* 1. *pag.* 104.

Creditors, Shall recover their Debts of Executors or Adminiſtrators, who in their own Wrong waſte, or convert to their Uſe the Eſtate of the Deceaſed, *&c.* *Stat.* 30 *Car.* 2. *c.* 7. Wills and Deviſes of Lands, *&c.* as to *Creditors* on Bonds or other Specialties, are declared void; and the *Creditors* may have Actions of Debt againſt the Heir at Law and Deviſees. 3 & 4 *W.* & *M. c.* 14. 6 & 7 *W.* 3. And in Favour of *Creditors*, whenever it appears to be the Teſtator's Intent, in a Will, that his Lands ſhould be liable for paying his Debts; in ſuch Caſe Equity will make them ſubject, though there are not expreſs Words; but there muſt be more than a bare Declaration, or it ſhall be intended out of the perſonal Eſtate. 2 *Vern. Rep.* 708. Where one deviſes that all his Debts, *&c.* ſhall be firſt paid; if his perſonal Eſtate is not ſufficient to pay the *Creditors*, it ſhall amount to a Charge on his Real Eſtate for that Purpoſe. *Preced. Canc.* 430. See *Debtors* and *Executor.*

Creek, (*Creca, Crecca*) Is a Part of a Haven where any Thing is landed from the Sea: So that it is obſerved, if when you are out of the main Sea within the Haven, you look round and ſee how many landing Places there are, ſo many *Creeks* may be ſaid to belong to that Haven. *Cromp. Juriſd. fol.* 110. It is alſo ſaid to be a Shore or Bank whereon the Water beats, running in a ſmall Channel from any Part of the Sea; from the Lat. *crepido.* This Word is uſed in the Stat. 4 *H.* 4. *c.* 20. and 5 *Eliz. c.* 5.

Crementum Comitatus, The Sheriffs of Counties antiently anſwered in their Accounts for the *Improvement* of the King's Rents above the antient *Vicontiel* Rents, under the Title of *Crementum Comitatus*, or *Firma de* Cremento Comitatus. *Hale's Sher. Acco. p.* 36.

Crepare Oculum, To put out an Eye; which had a pecuniary Puniſhment annexed to it.—— *Si quis alii* crepat Oculum *ſolvat ei ſexaginta ſolid.* Leg. H. 1. c. 78.

Cretinus, *Cretena*, A ſudden Stream or Torrent. *Hiſtor. Croyland contin.* 485, 617.

Crocards, A Sort of old baſe Money. See *Pollards.*

Crocia, The *Croſier* or Paſtoral Staff, ſo called *à ſimilitudine* Crucis, which Biſhops, *&c.* had the Privilege to carry as the common Enſign of their Religious Office; and being inveſted in their Prelacies, by the Delivery of ſuch a *Croſier:* Hence the Word *Crocia* did ſometimes denote the Collation to, or Diſpoſal of Biſhopricks and Abbies, by the Donation of ſuch Paſtoral Staff; ſo as when the King granted large Juriſdictions, *Exceptis Crociis*, it is meant, except the Collation or Inveſtiture of Epiſcopal Sees, *&c.* *Addit. to Cowel.*

Crociarius, The *Crociary* or Croſs-bearer, who like our Virger, went before the Prelate, and bore his Croſs.—— Robertus de Wycombe, *Clericus Epiſcopi*

copi Dunelm. *quem vulgo* Crociarium *ejus vocant.* Liber de Miraculis Tho. Epiſc. Heref. MS. Anno 1290.

Croft, (Sax. *Croftum* and *Crofta*) A little Cloſe adjoining to a Dwelling-houſe; and encloſed for Paſture or Arable, or any particular Uſe. In ſome old Deeds *Crufta* occurs as the *Latin* Word for a *Croft*; but *cum* Toftis & Croftis, is moſt frequent. *Ingulph.* It ſeems to be derived from the old *Engliſh* Word *Creaft*, ſignifying, *Handy-Craft*; becauſe ſuch Grounds are uſually manured and extraordinarily dreſt by the Hand and Skill of the Owner.

Croiſes, and *Croiſado*, Are mentioned in our antient Law Books. See *Croyſes*.

Crok, (*Crocus*) Turning up the Hair into Curls or *Croks*; whence comes *Crook*, *crooked*, *&c.*——— *Sciatis quod Poteſtatem vobis Dedimus ſcindendi Capillos Clericorum noſtrorum, longos crines habentium, & ad* Crocos Capillorum *ſuorum deponendos, &c.* Pat. 21 H. 3.

Crop, *Crappa*, The Seeds or Products of the Harveſt in Corn, *&c.* *Fleta, lib.* 2. *c.* 82.

Croſs-Bows. None ſhall ſhoot in, or keep any *Croſs-Bow*, Hand-gun, Hagbut, *&c.* but thoſe who have Lands of the Value of 100 *l.* *per Annum*: And no Perſon ſhall travel with a *Croſs-Bow* bent, or Gun charged, except in Time of War; or ſhoot within a Quarter of a Mile of any City, or Market-Town, unleſs for Defence of himſelf or his Houſe, or at a dead Mark, under the Penalty of 10 *l.* *Stat.* 33 *H.* 8. *cap.* 6.

Croſſes. By Stat. 13 *Eliz. c.* 2. *Croſſes*, Beads, *&c.* uſed by the Roman Catholicks, are prohibited to be brought into this Kingdom, on Pain of a *Præmunire*, *&c.* And it was uſual in former Times for Men to erect *Croſſes* on their Houſes, by which they would claim the Privileges of the *Templars* to defend themſelves againſt their rightful Lords; but this was condemned by the Stat. *Weſtm.* 2. *c.* 37. It was likewiſe cuſtomary in thoſe Days, to ſet up *Croſſes* in Places where the *Corps* of any of the Nobility reſted, as it was carried to be buried, that *à Tranſeuntibus pro ejus anima deprecetur. Walſing. Anno* 1291. There were ſeveral of theſe *Croſſes* erected over *England*, eſpecially in Honour to the Reſting-places of our Kings, on their Bodies being tranſmitted to any diſtant Place for Burial: But theſe Superſtitions ſunk in this Kingdom with the *Romiſh Religion.*

Croyſes, (*Cruce Signati*) Is uſed by *Briton* for *Pilgrims*, becauſe they wear the Sign of the *Croſs* upon their Garments. Of theſe and their Privileges, *Bracton* hath treated, *lib.* 5. *par.* 2. *cap.* 2. and *par.* 5. *cap.* 9. Under this Word are alſo ſignified the *Knights of St. John of Jeruſalem*, created for the Defence of Pilgrims; and all thoſe worthy Perſons who in the Reigns of K. *Hen.* 2. *Ric.* 1. *Hen.* 3. and *Ed.* 1. *Cruce Signati* took upon them the *Croiſado*, dedicating and liſting themſelves to the Wars, for the Recovery of *Jeruſalem* and the *Holy Land.* Greg. Syntag. Lib. 15. cap. 13, 14.

Croy, Signifieth Marſh Land.——*Et quia paluſtris hujus* Croyland *ipſum nomen Indicat, nam crudam terram & cœnoſam ſignificat.* Ingulphus, p. 853.

Crown, (*Corona*) Signifies the Poſſeſſions and Dignity of a King of any Kingdom. The *Crown of England* has from the Beginning been ſucceſſive, by Right of Inheritance; but ſometimes our Kings, for political Reaſons, have conferred their Principalities on whom they pleaſed, eſteeming it lawful to appoint their Succeſſors after them. For *Edward* the *Confeſſor* appointed the *Crown*, after his Deceaſe, at ſeveral Times, to *William* called the *Conqueror*, and *Edgar* and *Harold*; and *Harold*, after the Deceaſe of his Father, upon the Title left him, was *crown'd* by the Archbiſhop of *York*; but *William of Normandy* having ſlain *Harold* at the Battle of *Haſtings*, he claim'd the Kingdom as well by the Nomination of *Edward the Confeſſor*, as by Right of Conqueſt, and he was *crown'd* and enjoy'd the Kingdom for his Time. *Bac. Coron.* 4. 27. And to come further down, we find that the Parliament, (which had the beſt Right) have aſſerted their Authority in theſe Caſes: The Crowns of *England* and *France* were entail'd on King *Henry the Fourth*, and his four Sons by Act of Parliament. *Stat.* 7 *H.* 4. *c.* 2. And the Parliament entail'd the *Crown* on *Henry* the *Sixth*, and his Iſſue; alſo *Richard* the *Third* was recognized by Parliament. But the moſt extraordinary Inſtance of this Nature was, the Nomination and Appointment of King *Henry* the *Eighth*, to whom the Parliament granted Power by his Laſt Will and Teſtament to make Conditions and Limitations at his Pleaſure, for ſettling the Inheritance of the *Crown*; and he by his Will ordain'd, that his Son *Edward* ſhould ſucceed him, and he dying without Iſſue, his Daughter *Mary*, and for her Want of Iſſue, his Daughter *Elizabeth* to enjoy the *Crown* in Succeſſion; with Remainders to ſuch as the King by his Letters Patent, *&c.* ſhould appoint. *Stat.* 35 *H.* 8. *c.* 1. After the Death of King *Henry* 8. his Son *Edward* the *Sixth* ſucceeded; and he was prevailed upon to appoint the Lady *Jane*, Daughter to the *Duke of Suffolk*, (who married K. *Henry*'s Siſter) a Proteſtant Lady, by his Letters Patent to ſucceed him: But this Appointment ſoon after the Death of K. *Edward*, was vacated by Queen *Mary*; the Lady *Jane* beheaded, and the Proteſtant Reform'd Religion eclipſed during her Reign; but it revived again and received Perfection, by her Succeſſor the glorious Q. *Elizabeth.* By the Stat. 1 *Eliz. c.* 1. the Parliament acknowledg'd the Queen to be right Heir to the *Crown*; and by this Act the Limitation of the *Crown* contain'd in 35 *H.* 8. is declared to ſtand and Remain Law for ever. And when King *James* the *Firſt* came to the *Crown*, the Parliament made a Recognition, that upon Queen *Elizabeth*'s Death, the *Crown* of *England*, and all the Kingdoms, Dominions, and Rights belonging to the ſame, did by lawful Birth-right and Succeſſion deſcend to K. *James. Stat.* 1 *Jac.* 1. *c.* 1. After this, I do not find that the Parliament intermeddled in ſettling the Succeſſion of the *Crown* 'till the *Abdication* of King *James* the *Second*; when the Lords Spiritual and Temporal, and Commons, lawfully repreſenting all the Eſtates of the People of the Realm, invited over *William*, *Prince of Orange*, and the Princeſs *Mary* (eldeſt Daughter of King *James* II.) to take Care of their Rights and Liberties; whom they declared to be King and Queen of *England.* And by Stat. 1 *W. & M. c.* 2. reciting the *Declaration* of the Lords and Commons for ſecuring the *Liberties of the Kingdom*, upon which the Prince and Princeſs of *Orange* accepted the *Crown*, the ſaid Prince and Princeſs were recognized King and Queen of *England*, *&c.* for their Lives, and the Life of the Survivor of them; and after their Deaths, the *Crown* was ſettled on the Heirs of the Body of the ſaid Princeſs; and for Want of ſuch Iſſue to the *Princeſs Anne* of *Denmark*, Siſter to the Queen, and the Heirs of her Body. Alſo by 12 *W.* 3. *c.* 2. (after the Deceaſe of Q. *Mary* without Iſſue) the *Princeſs Sophia of Hanover*, (Daughter of *Elizabeth*, eldeſt Daughter of King *James* the *Firſt*) was declared next in Succeſſion after King *William*, and the *Princeſs Anne*, and their Iſſue; and the *Crown* to remain to the *Princeſs Sophia*, and the Heirs of her Body being Proteſtants. By Virtue of which laſt Statute, his Majeſty King *George* the *Firſt*, eldeſt Son of the *Princeſs Sophia*, on the Death of her Majeſty Queen *Anne* without Iſſue, the ſaid *Princeſs Sophia* being likewiſe dead, came to the Poſſeſſion of the *Crown* of theſe Realms: By theſe laſt Acts, Papiſts are rendered incapable to inherit the *Crown* of *England*; and Subjects are abſolved of their Allegiance to ſuch; Perſons coming to the *Crown*, are to join in the Communion of the Church of *England*. And this Nation is not to be engaged in a War for Defence of Dominions not belonging to the *Crown*. Perſons endeavouring to deprive the next in Succeſſion to the *Crown* from ſucceeding, and who attempt it by any Overt-act, are guilty of High Treaſon. *Stat.* 1 *Ann. c.* 2. And if any affirm by Writing, *&c.* that the King or Queen of *England* cannot make Laws by the Authority of Parliament to bind the *Crown*, they are guilty of Treaſon: And Preaching or Speaking it incur a *Præmunire.* 4 *Ann. c.* 3. Affirming by Writing or Printing, that any other Perſon hath Right to the *Crown*, otherwiſe than according to the Stat. 1 *W. & M. &c.* is declared High Treaſon. *Stat. Ibid.* There is no *Interregnum* in this Kingdom; for when the *Crown* deſcends to the right Heir, he is *Rex* before Coronation, as there muſt always be a King in whoſe Name Laws are to be maintained and executed. *Hill.* 1 *Jac.* See *Deſcent of the Crown* and *King.*

Crown-Office, This is an Office under the King's Bench, of which the King's Coroner or Attorney there is commonly Maſter. The Attorney General, and Clerk of the Crown exhibit Informations in this Office, for Crimes and Miſdemeanors; the one *ex officio*, and the other uſually by Order of Court: And here Informations may be laid for Offences and Miſdemeanors at Common Law, as for *Batteries, Conſpiracies, Libelling, Nuſances, Contempt, Seditious Words, &c.* wherein the Offender is liable to pay a Fine to the King. *Finch* 340. *Show.* 109. By Stat. 4 & 5 *W. & M. c.* 18. the Clerk of the Crown in B. *R.* is not to receive or file any Information for *Treſpaſs, Battery, &c.* without expreſs Order of Court; nor to Iſſue any Proceſs, without taking a Recognizance in 20*l.* Penalty to proſecute with Effect; and if the Party appear, and the Plaintiff do not procure a Trial in a Year, or if Verdict paſs for the Defendant, *&c.* the Court ſhall award the Defendant Coſts: But this Act doth not extend to Informations in the Name of the King's Coroner or Attorney, *&c.* When a *Battery* is committed privately, ſo that the Perſon receiving it can make no Proof thereof by Witneſſes at Law; it is uſual to bring an Information in this Office, where the Party may be a Witneſs for the King, it being his Suit. Informations in the Nature of *Quo Warranto's* brought by the Attorney General, againſt Corporations, *&c.* Vide *Quo Warranto.*

Cruſtum, Was a Garment of Purple, mix'd with many Colours. —— *Duas Patenas argenteas auro ornatas, cum duobus Urceolis &* Cruſto *aureo.* Mon. Angl. Tom. 1. pag. 210.

Cry de Pais, On a Robbery or other Felony done, Hue and Cry may be raiſed by the Country in the Abſence of the Conſtable, which is called *Cry de pais.* 2 *Hale's Hiſt. P. C.* 100.

Crypta, A Chapel or Oratory under Ground: *Egreſſo toto Conventu, accepta abſconſa ſi nox eſt vadit per* Cryptam. *Du Cange.*

Cuckingſtool, (*Tumbrellum*) Is an Engine invented for the Puniſhment of *Scolds*, and unquiet Women, by Ducking them in Water, called in ancient Time a *Tumbrel*; and ſometimes a *Trebuchet. Lamb. Eiren. lib.* 1. *cap.* 12. And *Bracton* writes this Word *Tymborella.* In *Domeſday* it is called *Cathedra Stercoris:* And it was in Uſe even in our *Saxons* Time, by whom it was deſcribed to be *Cathedra, in qua rixoſæ mulieres ſedentes aquis demergebantur.* It was anciently alſo a Puniſhment inflicted upon *Brewers* and *Bakers*, tranſgreſſing the Laws; who were thereupon in ſuch a Stool immerged over Head and Ears *in Stercore*, ſome ſtinking Water. Some think it is a Corruption from *Duckingſtool*; others from *Choakingſtool*; *quia hoc modo demerſæ aquis ferè ſuffocantur.* Blount.

Cude, A *Cude Cloth* is a Chryſom or Face-Cloth for a Child baptized. *Vide* Chriſmale.

Cui ante Divortium, Is a Writ that a Woman divorced from her Husband hath to recover her Lands and Tenements which ſhe had in Fee-ſimple, or in Tail, or for Life, from him to whom her Huſband did alienate them during the Marriage, when ſhe could not gainſay it. *Reg. Orig.* 233. *F. N. B.* 240. And the Heir ſhall have a *Sur cui ante Divortium*, where the Wife dieth before the Action brought; as well as ſhe ſhall have a *Sur cui in Vita*: But of an Eſtate-tail, the Heir ſhall not have *Sur cui in Vita ante Divortium*, but ſhall be put to his *Formedon* in the Deſcender. *New Nat. Br.* 454.

Cui in Vita, Is a Writ of Entry, which a Widow hath againſt him to whom her Husband alienated her Lands or Tenements in his Life time; which muſt contain in it, that during his Life ſhe could not withſtand it. *Reg. Orig.* 232. *F. N. B.* 193. If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land, and dieth, ſhe ſhall have a *Cui in Vita* for a Moiety, and no more: But if they are joint Purchaſers, during the Coverture, and he alien all the Land, and dieth, his Wife ſhall have a *Cui in Vita* of the whole Land; becauſe that during the Coverture, as to Purchaſe, they are but one Perſon in Law. *F. N. B.* 187. And from this Reaſon, if Husband and Wife, and a third Perſon, purchaſe jointly, and the Huſband alieneth all in Fee, and dieth, the Wife ſhall have a *Cui in Vita* of a Moiety. *Ibid.* Where the Husband and Wife exchange the Lands of the Wife for other Lands, if the Wife agree unto the Exchange after the Husband's Death, ſhe ſhall not have a *Cui in Vita.* Alſo if the Wife do accept of Parcel of the Land in Dower, of which ſhe hath a *Cui in vita*, by that Acceptance ſhe ſhall be barred of the Reſidue. *New Nat. Br.* 430. If the Husband and Wife loſe by Default the Wife's Lands, after the Death of her Husband, ſhe ſhall have a *Cui in Vita* to recover thoſe Lands ſo loſt by Default. *F. N. B.* 187. By Stat. 13 *Ed.* 2. *c.* 3. *Cui in Vita* is given to the Wife where the deceaſed Husband loſt her Lands by Default in his Life-time: And ſhe ſhall be admitted to defend her Right during his Life, if ſhe come in before Judgment. Likewiſe if Tenant in Dower, by the Curteſy, or for Life, do make Default, *&c.* the Heirs and they to whom the Reverſion belongeth, ſhall be admitted to their Anſwer, if they come before Judgment: And if on Default Judgment happen to be given, ſuch Heirs, *&c.* ſhall have a Writ of *Entry* for Recovery of the ſame, after the Death of ſuch Tenants. The Form of the Writ *Cui in Vita* runs thus:

Form of a Writ *Cui in Vita.*

GEORGE the Second, &c. *to the Sheriff,* &c. *Command* A. B. *that juſtly,* &c. *he render to* C. D. *who was the Wife of* T. D. *one Meſſuage, with the Appurtenances in,* &c. *which ſhe claimeth to be her Right and Inheritance, and into which the ſaid* A. B. *hath not entered, but by the aforeſaid* T. D. *ſometime Husband of her the ſaid* C. D. *who that to him demiſed; whom ſhe in his Life time could not contradict, as ſhe ſaith,* &c.

Culagium, Is when a Ship is laid up in the Dock to be repaired. *MS. Arth. Trevor Arm. de Plac. Edw.* 3.

Culprit, Is a Reply of a proper Officer in Behalf of the King, affirming a Criminal to be *Guilty*, after he hath pleaded Not guilty, without which the Iſſue to be tried is not joined: It is compounded of two Words, *viz. Cul* and *Prit*; the one an Abbreviation of *Culpabilis*, and the other derived from the *French* Word *Preſt, i. e.* Ready; and 'tis as much as to ſay, That he is ready to prove the Offender guilty.

Cultura, This Word is often found in old Writings, and ſignifies a Parcel of arable Land. *Blount.*

Culvertage, (*Culvertagium*) Is ſaid by ſome Perſons to be derived from *Culum & Vertere*, to turn Tail: And in this Senſe, *ſub nomine* Culvertagii, was taken to be on Pain of Cowardice, or being accounted Cowards. But in the Opinion of others, it rather ſignifies ſome baſe Slavery, or the Confiſcation of an Eſtate; being a *Feudal* Term for the Lands of the Vaſſal forfeited and eſcheating to the Lord: And *ſub nomine* Culvertagii, in this Signification, was under Pain of Confiſcation. *Matt. Pariſ. Anno* 1212.

Culward and **Culverd**, Words uſed for a Coward, or Cowardice. *Chart. Temp. E.* 1.

Cuna Cerviſiæ, A Tub of Ale. *Domeſday.* But this Word is truly *Cuva.*

Cuneus, A Mint or Place to coin Money: *Cuneum Monetum* ſignifies the King's Stamp for Coinage; and from the Word *Cune*, is derived Coin. See *Coin.*

Cuntey-Cuntey, Is a Kind of Trial, as appears by *Bracton*, in theſe Words; *In Brevi de Recto, negotium terminabitur per* Cuntey-Cuntey, *&c.* which is taken to be the *Ordinary Jury.* Bract. lib 4. tract. 3 c. 18.

Curagulus, One who taketh Care of a Thing *Mon. Ang. Tom.* 2.

Cura Monaſterii, An Officer ſo called, who had the Charge of a Monaſtery.

Curate, (*Curatus*) Is he who repreſents the Incumbent of a Church, Parſon or Vicar, and officiates Divine Service in his Stead: And in Caſe of Pluralities of Livings, or where a Clergyman is old and infirm, it is requiſite there ſhould be a *Curate* to perform the Cure of the Church. He is to be licenſed and admitted by the Biſhop of the Dioceſe, or by an Ordinary, having Epiſcopal Juriſdiction: And when a *Curate* hath the Approbation of the Biſhop, he uſually appoints the Salary too; and in ſuch Caſe, if he be not paid, the *Curate* hath a proper Remedy in the Eccleſiaſtical Court, by a Sequeſtration of the Profits of the Benefice; but if he hath no Licenſe from the Biſhop, he is put to his Remedy at Common Law, where he muſt prove the Agreement, *&c. Right Clerg.* 127. By Statute, where *Curates* are licenſed by the Biſhop, they are to be appointed by him a Stipend not exceeding 50*l. per Ann.* nor leſs than 20*l.* a Year, according to the Value of the Livings, to be paid by the Rector or Vicar: And the ſame may be done on any Complaint made. *Stat.* 12 *Ann. c.* 2. One Perſon cannot be *Curate* in two Churches, unleſs ſuch may ſatisfy the Law, by Reading both Morning and Evening Prayers at each Place: Nor can he ſerve one Cure on one Sunday, and another Cure on the next; for he muſt not neglect to read Morning and Evening Prayer in his Church every Lord's Day; if he doth he is liable to Puniſhment. *Comp. Incumb.* 572. But it is otherwiſe where a Church or Chapel is a Member of the Pariſh Church; and where one Church is not able to maintain a *Curate. Can.* 48. A *Curate* having no fixed Eſtate in his Curacy, not being inſtituted and inducted, may be removed at Pleaſure by the Biſhop or Incumbent. *Noy.* But there are *Perpetual Curates*, as well as temporary, who are appointed where Tithes are impropriate, and no Vicarage endowed: Theſe are not removeable; and the Impropriators are obliged to find them, ſome whereof have certain Portions of the Tithes ſettled on them. *Stat.* 29 *Car.* 2. Every Clergyman that officiates in a Church, (whether Incumbent or Subſtitute) is in our Liturgy called a *Curate*: *Curates* muſt ſubſcribe the Declaration, according to the Act of Uniformity, or are liable to Impriſonment, *&c.*

Curfeu, (of the Fr. *Couvrir*, i. e. *Tegere*, and *Feu*, Ignis) Signifies the Ringing of a Bell, or Evening Peal, by which *William* the Firſt, called the *Conqueror*, commanded every Perſon to rake up or cover over his Fire, and put out his Light: And in many Places of *England* at this Day, where a Bell is cuſtomarily rung towards Bed-time, it is ſaid to Ring *Curfew.* Stow's Annals.

Curia, The Word was ſometimes taken for the Perſons, as feudatory and other cuſtomary Tenants, who did their Suit and Service at the Court of the Lord. *Kennet's Paroch. Antiq.* 139. And it was uſual for the Kings of *England*, in ancient Times, to aſſemble the Biſhops, Peers, and great Men of the Kingdom to ſome particular Place, at the chief Feſtivals in the Year, and this Aſſembly is called by our Hiſtorians *Curia*; becauſe there they conſulted about the weighty Affairs of the Nation. And it was therefore called *Solemnis Curia, Auguſtalis Curia, Curia Publica, &c.* See *Court.*

Curia adviſare vult, Is a Deliberation which a Court of Judicature ſometimes takes, where there is any Point of Difficulty, before they give Judgment in a Cauſe. *New Book Entr.* And when Judgment is ſtaid, upon Motion to arreſt it; then 'tis entered by the Judges *Curia aviſare vult.* Shep. Epit. 682.

Curia Curſus Aquæ, A Court held by the Lord of the Manor of *Graveſend* for the better Management of Barges and Boats uſing the Paſſage on the River of *Thames* from thence to *London*, and plying at *Graveſend* Bridge, *&c.* mentioned in the *Stat.* 2 *Geo.* 2. *c.* 26.

Curia Claudenda, Is a Writ to compel another to make a Fence or Wall, which he ought to make between his Land and the Plaintiff's, on his refuſing or deferring to do the ſame. *Reg. Orig.* 155. This Writ doth not lie but againſt him who hath a Cloſe adjoining to the Plaintiff's Land, who is obliged to encloſe it; and it lieth not but for him who hath a Freehold, *&c.* It may be ſued before the Sheriff in the County Court, or in the Common Pleas: And the Judgment is to recover the Incloſure and Damages. *New Nat. Br.* 282, 283.

Curia Domini, The Lord's Houſe, Hall or Court, where all the Tenants attend at the Time of keeping Courts.

Curia Penticiarum, Is a Court held by the Sheriff of *Cheſter*, in the Place there called the *Pendice* of *Pentice*: And 'tis probable its being originally kept under a *Pent-houſe*, or open Shed covered with Boards, gave it its Denomination.

Curnock, A Meaſure containing four Buſhels, or Half a Quarter. *Fleta, lib.* 2. *cap.* 12.

Curriers, Are Perſons that curry and dreſs Leather. No *Currier* ſhall uſe the Trade of a Butcher, Tanner, *&c.* or ſhall curry Skins inſufficiently tanned, or gaſh any Hides of Leather, on Pain of Forfeiting for every Hide or Skin 6*s.* 8*d.* And Perſons in *London* putting Leather to be curried to any but Freemen of the *Curriers* Company; and ſuch *Curriers* not currying the Leather ſufficiently, ſhall forfeit the Wares, or the Value, *&c.* Stat. 1 *Jac.* 1. The Clauſe relating to Freemen is repealed; but if any *Currier* do not curry Leather ſent him, within Sixteen Days between *Michaelmas* and *Lady-Day*, and in Eight Days at other Times, on Conviction before a Juſtice, he ſhall Forfeit 5*l.* to be levied by Diſtreſs, *&c.* yet ſubject to Mitigation. 12 *Geo.* 2. *c.* 25. *Curriers* and ſuch as deal in Leather, may cut and ſell it in ſmall Pieces in their Shops to any Perſons whatſoever. *Stat. Ibid.*

Curriculus, The Year, or Courſe of a Year: *Actum eſt hoc annorum Dominicæ incarnationis quatuor quinquagenis & quinquies, quinis Luſtris, & tribus* Curriculis. This is the Year 1028; for four Times 50 makes 200, and five Times 200 makes

1000. Then five *Luſtra* are twenty-five Years, and three *Curriculi*, three Years, making in all the very Year.

Curſitors, (*Clerici de Curſu*) Clerks belonging to the *Chancery*, who make out original Writs; and are called *Clerks of Courſe*, in their Oath appointed 18 *Ed.* 3. There are of theſe Clerks twenty-four in Number, which make a Corporation of themſelves; and to each Clerk is allotted a Diviſion of certain Counties, in which they exerciſe their Functions. 2 *Inſt.* 670.

Curſones terræ, Is uſed for Ridges of Land. 14 *Ed.* 2.

Curſoriæ, A ſort of light Ships, or ſwift Sailers: This Word is mentioned in *Hoveden*, *R.* 1. *Applicuerunt ibi Naves & Buſciæ* 500. *exceptis Galeis &* Curſoriis, *&c.*

Curteſy of England, (*Jus Curialitatis Angliæ*) Is where a Man taketh a Wife ſeiſed in Fee-ſimple, or Fee-tail general, or as Heireſs in ſpecial Tail, and hath Iſſue by her, Male or Female, born alive, which by any Poſſibility may inherit, and the Wife dies; the Husband holds the Lands during his Life; and is called *Tenens per Legem Angliæ*, or *Tenant by the Curteſy of England*; becauſe this Privilege is not allowed in any other Country, except *Scotland*, now belonging to *England*. And four Things are requiſite to give an Eſtate by the *Curteſy*, *viz.* Marriage, Seiſin of the Wife, Iſſue, and Death of the Wife. 1 *Inſt.* 30. If Land deſcend to the Wife, after the Husband hath Iſſue by her; or if the Iſſue be dead at the Time of her Death, being born alive; the Husband ſhall be Tenant by the *Curteſy*. Alſo if a Child is born alive, 'tis not material whether 'tis baptiſed, or ever heard to cry, to make the Husband Tenant by the *Curteſy*; for if 'tis born alive, 'tis enough. 1 *Nelſ. Abr.* 578. But the Child muſt be ſuch as by Poſſibility may inherit; and therefore if Land be given to a Woman, and the Heirs Male of her Body, and ſhe takes Husband and hath Iſſue a Daughter, and dies; as this Iſſue cannot poſſibly inherit, the Husband ſhall not be Tenant by the *Curteſy*. *Terms de Ley* 206. If the Child is rip'd forth of the Mother's Belly, after her Death, tho' it be alive, it will not entitle Tenancy by the *Curteſy*; for this ought to begin by the Iſſue, and be conſummate by the Death of the Wife, and the Eſtate of Tenant by the *Curteſy* ſhould avoid the immediate Deſcent. *Ibid.* A Man ſhall not be Tenant by the *Curteſy* of a bare Right, Title, Uſe, Reverſion, *&c.* expectant upon an Eſtate of Freehold, unleſs the particular Eſtate is determined during the Coverture; nor of a Seiſin in Law: But if a Wife dies before a Rent becomes due; or in the Caſe of an Advowſon, before the Church becomes void; the Husband ſhall be Tenant by the *Curteſy*, though the Wife had only a Seiſin in Law; for in this Caſe no other Seiſin could be attained. *F. N. B.* 149. 1 *Inſt.* 29, 30, 40. There is no Tenancy by the *Curteſy* of *Copyhold* Lands, except there be a ſpecial Cuſtom for it. And where a Husband is entitled to this Tenancy, if after the Wife is an Ideot, and her Eſtate in the Land found; when ſhe dies, he ſhall not be Tenant by the *Curteſy*, for the King's Title by Relation prevents it. *Plowd.* 263. If the Wife be ſeiſed in Fee of Lands, and attaint of Felony, but have Iſſue by her Husband, and ſhe is hanged, *&c.* 'tis ſaid the Husband ſhall be Tenant by the *Curteſy*: But yet the Land will be forfeited according to this Book. *Kitch.* 159. 21 *Ed.* 3. 49. A Woman ſeiſed of Land had two Daughters, and covenanted to ſtand ſeiſed to the Uſe of *E.* her eldeſt Daughter in Tail; on Condition that ſhe ſhould pay to her other Daughter within a certain Time 300*l.* And if *E.* made Default, or died without Iſſue before ſuch Payment, then the Land to go to the ſecond Daughter; the Mother dying *E.* took a Husband, and had Iſſue, and died afterwards without any Iſſue living, before the Day of Payment: It was here held, that her Husband ſhould be Tenant by the *Curteſy*. 1 *Leon. cap.* 233. See *Kitch.* 159.

Curteyn, (*Curtana*) Was the Name of King *Edward* the *Confeſſor*'s Sword; which is the firſt Sword carried before the Kings of *England* at their Coronation: And it is ſaid the Point of it is broken as an Emblem of Mercy. *Mat. Pariſ. in Hen.* 3.

Curtilage, (*Curtilagium*, from the Fr. *Cour*, *Court*, and *Sax. Leagh* locus) Is a Court Yard, Back-ſide, or Piece of Ground lying near and belonging to a Dwelling-houſe. 4 *Ed.* 1. *cap.* 1. 35 *H.* 8. *c.* 4. 39 *Eliz.* *c.* 10. 6 *Rep.* 64.—— *Mihi dici videtur* Curtilagium *à* Curtillum & ago, *ſcil. locus ubi* Curtis *vel* Curtilli *negotium* agitur. *Spelm.* And though it is ſaid to be a Yard or a Garden, belonging to a Houſe; it ſeems to differ from a Garden, for we find, *cum quodam* Gardino & Curtilagio. 15 *Ed.* 1. *n.* 34.

Curtiles Terræ, Court-Lands. It is recorded, that among our *Saxon* Anceſtors, the *Thanes* or Nobles who poſſeſſed *Bockland*, or hereditary Lands, divided them into *Inland* and *Outland*: The *Inland* was that which lay moſt convenient for the Lord's Manſion-houſe; and therefore the Lords kept that Part in their own Hands, for Support of their Families, and for Hoſpitality: Afterwards the *Normans* called theſe Lands *Terras Dominicales*, the Demains, or Lord's Lands: The *Germans* term'd them *Terras Indominicatas*, Lands in the Lord's own Uſe; And the *Feudiſts*, *Terras Curtiles*, Lands appropriate to the Court or Houſe of the Lord. *Spelm. of Feuds*, *cap.* 5.

Cuſtantia, The ſame with *Cuſtagium*, which ſignifies Coſts.

Cuſtode admittendo, and **Cuſtode amovendo,** Writs for the Admitting or Removing of Guardians. *Reg. Orig.*

Cuſtodes Libertatis Angliæ Authoritate Parliamenti, Was the Style in which Writs and all judicial Proceſs did run during the Grand Rebellion, from the Murder of King *Charles* I. till the Uſurper *Oliver* was declared Protector, *&c.* mentioned and declared traiterous, by Statute 12 *Car.* 2. *c.* 3.

Cuſtodiam dare, Was taken for a Gift or Grant for Life. *Du Cange.*

Cuſtom, (*Conſuetudo*) Is a Law not written, eſtabliſhed by long Uſage, and the Conſent of our Anceſtors. No Law can oblige a People without their Conſent: So where-ever they conſent and uſe a certain Rule or Method as a Law, ſuch Rule, *&c.* gives it the Power of a Law; and if 'tis univerſal, then 'tis Common Law; if particular to this or that Place, then 'tis *Cuſtom*. 3 *Salk.* 112. And as to the Riſe of *Cuſtoms*, when a reaſonable Act once done was found to be good and beneficial to the People, then did they uſe it often, and by frequent Repetition of the Act, it became a *Cuſtom*; which being continued without Interruption Time out of Mind, it obtain'd the Force of a Law, to bind the particular Places, Perſons, and Things concerned therein. Thus a *Cuſtom* had Beginning and grew to Perfection: And a good *Cuſtom* muſt be grounded on Antiquity, Continuance, Certainty, and Reaſon; *Antiquity*, for that it hath been Time out of Memory, or threeſcore Years, as limited by Statute; and Time out of Mind is where no Man then living hath heard or known any Proof to the contrary: If two or more Witneſſes can depoſe that they heard their Fathers ſay it was a *Cuſtom* all their Time; and that their Fathers heard their Grandfathers ſay it was ſo alſo in their Time; it is enough for the Proof of a *Cuſtom*. Blount. Davis Rep. 32. *Continuance* of a *Cuſtom* ought to be without any Interruption Time out of Memory; for if it be diſcontinued within Time of Memory, the *Cuſtom* is gone. *Certainty*, a *Cuſtom* muſt be certain, becauſe an uncertain Thing may not be continued Time out of

Mind: And *Cuſtom* muſt be *reaſonable*, for unreaſonable Things are unlawful. *Cuſtoms* have four inſeparable Incidents: They are to have a reaſonable Commencement; to be certain, and not ambiguous; to have uninterrupted Continuance; and not be againſt the King's Prerogative. And the two Pillars of *Cuſtom*, are common Uſage, and that they be Time out of Mind. *Davis* 32. 4 *Leon.* 384. A *Cuſtom* contrary to the publick Good; or injurious to a Multitude, and beneficial only to ſome particular Perſons, ſuch *Cuſtom* is repugnant to the Law of Reaſon, and conſequently void. *Dav.* 1. *Cuſtoms* ought to be beneficial to all, but may be good where againſt the Intereſt of a particular Perſon, if for the publick Good. *Dyer* 60. A *Cuſtom* is not unreaſonable for being injurious to private Perſons or Intereſts, ſo as it tends to the general Advantage of the People. 3 *Salk.* A *Cuſtom* may be good in ſome Caſes, where a Preſcription is not: But *Cuſtoms* that are good for the Subſtance and Matter of them, may yet be bad for the Manner; if they are incertain, or mix'd with any other *Cuſtom* that is unreaſonable, &c. 2 *Bulſt.* 166. 2 *Brownl.* 198. *Cuſtom* that every one who paſſeth over ſuch a Bridge, within the Lord's Manor, and which the Lord doth repair, ſhall pay him one Penny, is a good *Cuſtom*; but if it be to pay the Lord 12 *d.* it will be naught, for it is unreaſonable. *Calth. Cop.* 35. 1 *Bulſt.* 203. A *Cuſtom* that a Lord ſhall have within his Manor *Liberam faldam*, or throughout the Village; and that no other ſhall have it but by Agreement with him, and if any take it, the Lord may abate the ſame; this hath been held a good *Cuſtom.* 1 *Rol.* 560. The *Cuſtom* of a Place, for all the Inhabitants of the Pariſh, to have Common in a great Waſte of the Lord's for all Manner of Beaſts all the Year; and to have Liberty to Water them in ſuch a Pond, and when the Pond was foul, to cleanſe it, was adjudged good. *Mich.* 4 *Jac.* 1. 2 *Brownl.* 293. A *Cuſtom*, that a Tenant of a Manor ſhall grind all the Corn they ſpend in their own Houſes, in the Lord's Mill, &c. is good: But *Cuſtom* that every Inhabitant of a Houſe held of the Lord, ſhall grind the Corn that he ſpends, or ſhall ſell, at his Mill, is void. *Moor*, *cap.* 1217. *Hob.* 149. *Cuſtom* to have a common Bakehouſe in a Manor or Pariſh, for all the Tenants or Inhabitants, is a good *Cuſtom.* 2 Bulſt. 198. *Cuſtom* is, and muſt always be alledg'd to be in many Perſons, and ſo it may be claimed by Copyholders, or the Inhabitants of a Place, and when it is claimed, it muſt be as within ſuch a County, Hundred, City, Borough, Manor, Pariſh, Hamlet, &c. *Co. Lit.* 110, 113. 4 *Rep.* 31. A good *Cuſtom* or Preſcription hath the Force of a Grant; as where one and his Anceſtors have had a Rent Time out of Mind, and uſed to diſtrain, &c. But a *Cuſtom* that begins by Extortion of Lords of Manors, is Judged wanting a lawful Commencement, and therefore void: And where *Cuſtom* is amongſt many, and they are all dead but one, the *Cuſtom* is gone. *Plow.* 322. *Dyer* 199. *Cuſtoms* muſt be conſtrued according to vulgar Apprehenſion: And are to be taken ſtrictly, being in Derogation of the Common Law. 2 *Roll. Abr.* 270. They are not good which are meerly in the Negative; but if mixed with an Affirmative, they may be good. 1 *Roll.* 565. A *Cuſtom* which may be intended to have had lawful Beginning, is a good *Cuſtom*; otherwiſe not: Nor will Continuance of Time make *Malum in ſe* good. 1 *Lill Ab.* 375. *Cuſtoms* againſt common Right and the Rule of Law, are held good. 8 *Rep.* 126. The Law takes Notice of *Cuſtoms* of *Gavelkind*, &c. which alter Deſcents from the Common Law, in Favour of all the Sons, &c. And *Cuſtom* for an eldeſt Daughter to inherit, or a youngeſt Son, may be good: For theſe, though contrary to a particular Rule of Law, may have a reaſonable Beginning. 1 *Nelſ. Abr.* 579. And by *Cuſtom* a Woman may be endowed of a Moiety of the Husband's Lands, &c. Alſo by *Cuſtom*, an Infant may make a Feoffment, at the Age of Fifteen: And Infants may bind themſelves Apprentices, &c. 2 *Danv. Abr.* 458. Regularly a Man cannot alledge a *Cuſtom* againſt a Statute, becauſe that is the higheſt Matter of Record in Law: But a *Cuſtom* may be alledged againſt a negative Statute, which is made in Affirmance of the Common Law. 1 *Inſt.* 115. And Acts of Parliament do not always take away the Force of *Cuſtoms.* *Cuſtom* pleaded againſt *Cuſtom* is not good. 2 *Danv.* 436. A *Cuſtom* is to be poſitively alledged, by Uſage in Fact. *Lutw.* 1319. *General Cuſtoms* which are uſed throughout *England*, and are the Common Law, are to be determined by the Judges: But *Particular Cuſtoms*, ſuch as are uſed in ſome certain Town, Borough, City, &c. ſhall be determined by Jury. *Doct. & Stud. c.* 7, 10. 1 *Inſt.* 110. *Conſuetudo pro Lege ſervatur*, &c. ſaith *Bracton*, *lib.* 3. *c.* 3. And *Cuſtom* is ſaid to be *altera Lex:* But the Judges of the Court of *B. R.* or *C. B.* can over-rule a *Cuſtom* though it be one of the *Cuſtoms* of *London*, if it be againſt natural Reaſon, &c. 1 *Mod.* 212.

Cuſtom of London. The City of *London* hath divers particular Cuſtoms, different from any other Place. By the *Cuſtom of London*, when a Citizen and Freeman dies, his Goods and Chattels ſhall be divided into three Parts; the Wife to have one Part; the Executors another, to diſcharge Legacies, &c. and the Children unprovided for, the other third Part. 2 *Danv. Abr.* 311, 312. If a Freeman of *London* hath no Wife, but Children, the Half of his Perſonal Eſtate goes to them, and he may diſpoſe of the other Moiety; ſo if he have a Wife and no Children, the Half belongs to her; but if he have both Wife and Children, then one third Part belongs to the Wife, another third to the Children, and he may diſpoſe of the other third; and if he dies Inteſtate, the remaining third is to be diſtributed according to the Statute. 2 *Nelſ.* 1139. But ſee 11 *Geo.* 1. *c.* 18. An after-born Child ſhall come in with the others, for a *Cuſtomary* Share of a Freeman's Eſtate. And where any Child dies, before one and twenty, his Share ſurvives to the other Children; but in Caſe he die after that Age, at which Time he might make a Will of it, there on his dying Inteſtate, it ſhall go according to the Statute of Diſtributions. *Preced. Canc.* 499, 537. A Deviſe or Settlement of Lands, does not bar a Child of his Part of the Perſonal Eſtate by the *Cuſtom:* But where a Wife is to have a certain Sum out of the Husband's Eſtate, it ſhall be intended in Satisfaction of her Share. 2 *Vern.* 753. 1 *Chan. Caſ.* 160. A Freeman of *London* dies without Iſſue, his Widow is to have her Widow's Chamber, and a Moiety of the Reſt of the Eſtate; and in an extraordinary Caſe, ſhe was allowed the Benefit of the other Moiety for Life, by Virtue of her Husband's Will. 1 *Vern.* 132. 2 *Vern. Rep.* 110. By the Statute 11 *Geo.* 1. Freemen by Will may now give and Diſpoſe of their Perſonal Eſtates, to whom they think fit; yet if they die Inteſtate, ſuch Eſtates ſhall be ſubject to, and be diſtributed agreeable to the *Cuſtom* of the City. Where a Freeman dies, and leaves Orphan Children under Age, unmarried, the Court of Orphans hath the Cuſtody of their Bodies and Goods, by the *Cuſtom of London:* It is alſo the ſame, tho' he dies, or the Children were born out of *London.* 1 *Mod.* 80. By the City *Cuſtom*, Action on the Caſe lies for calling a married Woman Whore; for in *London* ſuch Woman may be carted: And this reaches to all the Inhabitants within *London.* 2 *Danv.* 310. 1 *Lill.* 378. A Woman that uſeth a Trade in *London*, without her Husband, is chargeable without him as a *Feme Sole* Merchant: She ſhall plead as ſole, and if condemned, be put in Priſon 'till ſhe pay the Debt; alſo the Bail for her are liable, if ſhe abſent herſelf; and the Husband ſhall not be charged. *Privil. Londini.* And if Action of Treſpaſs be brought againſt a Man and his Wife, and the Wife only arreſted, *&c.* by the *Cuſtom of London*, the Plaintiff may proceed againſt the Wife. It is the Cuſtom of the City of *London*, that where a Perſon is educated in one Trade, he may ſet up another. 1 *Saund.* 312. If a Debtor be Fugitive, he may be arreſted by the *Cuſtom of London*, before the Day, to find better Security. *Hob* 86. Where two Perſons are bound as Sureties for another, and Recovery is had againſt one of them, he may have Contribution againſt the other, by the City Laws. 2 *Danv. Abr* 310. Debts on ſimple Contract will maintain an Action in *London*, as well as Debts on Specialty: And it is the *Cuſtom* of the City, that Action of Debt ſhall be maintained upon ſuch a Contract againſt Executors or Adminiſtrators, who ſhall be chargeable therewith, as if it were upon a Bond or Obligation. 8 *Co. Rep.* 126. 5 *Rep.* 82. There is a foreign Attachment, by the *Cuſtom of London*, of Money, *&c.* in the Hands of a third Perſon, where one Man owes another any Debt, *&c.* See *Attachment.* By a *Cuſtom of London*, every Tenant at Will of any Houſe above 40 *s. per Ann.* in the City, ought to give, or to have, half a Year's Warning, on leaving it: And a Landlord recovered half Year's Rent, where the Tenant had left the Houſe, *&c.* without ſuch Warning. *Comber.* 384. If any *Cuſtom of London* be pleaded and denied, it ſhall be tried by Writ to the Lord Mayor and Aldermen, to certify whether there be ſuch a *Cuſtom*; who ſhall make Certificate by the Mouth of their Recorder. *Cro. Car.* 516. The Courts at *Weſtminſter* of Courſe take Notice of the *Cuſtoms of London*; but not of any other Place, without being alledged. 1 *Rol. Rep.* 106.

Cuſtom of Merchants, Merchants giving Characters of Strangers to thoſe who ſell them Goods, are liable to the Debts of ſuch Strangers for the Goods ſold; by the *Cuſtom of Merchants. Lex Mercat. cap.* 10. *fol.* 69. If two Perſons be found in arrear, upon an Account grounded on the *Cuſtom of Merchants*, any one of them may be charged to pay the whole Sum, that both were found in Arrear. 1 *Lill. Abr.* 376. And if two joint Merchants occupy their Stock and Merchandize in Common, one of them naming himſelf a Merchant, ſhall have an Account againſt the other, and charge him as Receiver. *Co. Lit.* 172. By the *Cuſtom of Merchants*, where a Merchant orders his Factor to buy Goods of a particular Perſon, there the Merchant is Debtor, and not the Factor: But 'tis otherwiſe where the Merchant orders his Factor to buy Goods generally, without ſaying of whom; here the Factor is Debtor, tho' the Goods come to the Uſe of the Merchant. 1 *Lill.* 376. The *Cuſtom of Merchants* as to Bills of Exchange, that the Indorſee ſhall charge the firſt Drawer before the Indorſor, *&c.* See *Bill of Exchange.*

Cuſtoms, (*Cuſtuma*) Are uſed for the Tribute or Toll that Merchants pay to the King, for carrying out and bringing in Merchandize. *Stat.* 14 *Ed.* 3. *c.* 21. They are Duties payable to the Crown for Goods exported and imported, and are due to the King of common Right; firſt becauſe the Subject hath Leave to depart the Kingdom, and to export the Commodities thereof; ſecondly, for the Intereſt which the King hath in the Sea, and as he is Guardian of, and maintains all the Ports, wherein the Commodities are exported or imported; and laſtly, for that the King protects Merchants from Enemies and Pirates. *Dyer* 43. The Word *Cuſtoms* comprehends *Magna & Antiqua Cuſtuma*, which is payable out of our own native Commodities, as for Wool, Woodfells, and Leather; and *Parva Cuſtuma*, which are *Cuſtoms* payable by Merchants, Strangers and Denizens; and theſe began in the Reign of *Edw.* I. when the Parliament granted him 3 *d.* in the Pound for all Merchandizes exported and imported. *Ibid.* 165. But that which is granted by Parliament, is properly called a *Subſidy*; and ſometimes granted to the King for Life; and there are ſeveral Sorts of theſe Subſidies, as *Tonnage*, a Duty granted out of every Ton of Wine imported, which was firſt granted by Parliament to King *Edward* III. And *Poundage*, a Subſidy granted for all Goods exported and imported, except Wines, *&c.* and is uſually the twentieth Part of the Value of the Goods, or 12 *d.* in the Pound, and this was firſt given to *Hen* 6. for Life. 1 *Nelſ. Abr.* 583, 584. In the Reign of *Edward* III. the Great Charter for free Traffick was confirm'd: And *Anno* 6 *Ed* III. it was enacted, that no new *Cuſtoms* could be levied, nor ancient increaſed, but by Authority of Parliament. 2 *Inſt.* 60 But tho' the King cannot lay any Impoſition on Merchandize without Conſent of Parliament; yet by his Prerogative he may reſtrain Merchants from Trading without his Royal Licenſe. In the 14th Year of *Ed.* 3. it was enacted in Parliament, that a Mark ſhould be paid as *Cuſtom* for a Sack of Wool. *Anno* 4 *H.* 8. Collectors were appointed of the Subſidy of Cloth of Gold, Silver, Velvet, *&c.* And 1 *Eliz.* Duties were granted on Sweets, Wines, *&c.* And *An.* 12 *Car.* 2. The Subſidies of Tonnage and Poundage, *&c.* were granted to King *Charles* during his Life; as they have been ſince to his Royal Succeſſors, down to his Majeſty King *George* II. And many and various are the Duties of *Cuſtoms* granted on foreign Goods and Merchandize, in the Reigns of King *James* II. K. *William*, Q. *Anne*, and his late and preſent Majeſty. The *Tonnage* Duty granted to King *Charles* II. was for every Tun of *French* Wine, brought into the Port of *London*, by Merchants natural Subjects, 4 *l.* 10 *s.* by Alien Strangers 6 *l.* for *Malmſeys*, *Tents*, *Alicants*, *Sacks*, *Canaries*, *Malaga's*, *Madera's*, and all other ſweet Wines, by native Subjects, 2 *l.* 5 *s.* the Ton, by Strangers and Aliens 3 *l.* *&c.* The *Poundage* Duty was 12 *d.* in the Pound value for all *Merchandize Goods*, according to the *Book of Rates*, except Woollen Cloths made in *England*, and for all *Woollen Broad Cloths*, to be paid after the Rate of each 64 Pounds in Weight, by Subjects 3 *s.* 4 *d* and Strangers 6 *s.* 8 *d.* Stat. 12 *Car.* 2. *c.* 4. If Goods and Merchandize are brought by a Merchant to a Port or Haven, and there Part thereof ſold but never put on Land, they muſt pay the *Cuſtoms*; and diſcharging them out of the Ship into another upon the Sale, amounts in Law to a putting them upon the Land, ſo that if the *Cuſtom* Duties are not paid, the Goods will be forfeited. *Hill.* 24 *Eliz.* 12 *Co. Rep.* 18. Ships and Veſſels outward-bound, are not to take in any Goods, 'till the Veſſel, *&c.* is entered with the Collector of the *Cuſtoms*; and before Departure, the Contents of the Lading is to be brought in under the Hands of the Laders, *&c.* Alſo when Ships arrive from beyond Sea, the Maſters are to make a true Entry upon Oath, of the Lading, Goods, Ship, *&c.* under the Penalty of 100 *l.* And if any concealed Goods are found after Clearing, for which the Duties have not been paid, the Maſter of the Veſſel ſhall be ſubject to the like Penalty. *Stat.* 13 & 14 *Car.* 2. Keepers of Wharfs, Keys, *&c.* landing or ſhipping Goods, without the Preſence of ſome Officer of the *Cuſtoms*, ſhall forfeit 100 *l.* And reſiſting Officers of the *Cuſtoms* in the Execution of their Office, is liable to a Fine not exceeding 100 *l.* *Stat. Ibid.* But by 6 *Geo.* 1. Where Officers of the *Cuſtoms* are hindred in the Execution of their Duty, by Perſons armed to the Number of Eight, the Offenders are to be tranſported for ſeven Years. If any Goods are put into any Veſſel to be carried beyond Sea; or be brought from beyond Sea, and unſhipped to be landed, the Duties not being paid, nor agreed for at the Cuſtom-Houſe; the ſame ſhall be forfeited, one Moiety to the King, the other to the Seiſor, *&c.* And by late Statutes, Foreign Goods taken in at Sea, by any Coaſting Veſſel, *&c.* ſhall be forfeited, and treble Value. To prevent clandeſtine running of Goods, foreign Brandy, *&c.* imported in Veſſels under 40 Tuns, the Veſſel and Brandy to be forfeited: If any Perſon conceal Run Goods, he ſhall forfeit them, and treble Value; and the like Penalty is inflicted for offering ſuch Goods to Sale. 8 *&* 11 *Geo.* 1. The Commiſſioners of the *Cuſtoms*, &c. ſhall cauſe all Goods ſeiſed for unlawful Importation, or Non-payment of Duties, to be publickly ſold; and damaged Wines for Diſtillation, *&c.* And one or more Juſtices of Peace, of the County where any Seiſure ſhall be made by Officers of Run Goods, *&c* mentioned in Informations before them, may adminiſter an Oath to any Perſon skilled in the Nature and Quality of the Goods, to view the ſame, and make a Return of the Species and Value; and after they ſhall be condemned and ſold. Stat. 12 *Geo.* 1. *cap.* 26. By the late Act, where three Perſons are aſſembled and armed with Fire-Arms, *&c.* to be aſſiſting in the Running of Goods, they ſhall be guilty of Felony and tranſported, and 50 *l.* to be paid for apprehending ſuch Offenders, alſo the like Reward to any of them for diſcovering others. All Perſons two or more in Company, found paſſing within five Miles from the Sea-Coaſts, with any Horſes, Cart, *&c.* wherein are put above ſix Pounds of Tea, or five Gallons of Brandy, or other foreign Goods of 30 *l.* Value, landed without Entry, and not having Permits, and who ſhall carry offenſive Weapons, *&c.* or Aſſault any of the Officers of the *Cuſtoms*, ſhall be adjudged Runners of Goods, and be tranſported as Felons, and all the Goods to be ſeiſed and forfeited: And ſuſpected Perſons lurking near the Coaſts, not giving a good Account of themſelves, may be ſent by a Juſtice to the Houſe of Correction for a Month; and Informers to have 20 *s.* for every Offender ſo taken. If any Perſon offers any Tea, Brandy, *&c.* to Sale, without a Permit, the Perſons to whom offered may ſeize and carry it to the next Warehouſe belonging to the *Cuſtoms* or Exciſe; and the Seiſors ſhall have a third Part, *&c.* And Watermen, Carmen, Porters, *&c.* in whoſe Cuſtody Run Goods are found, ſhall forfeit treble Value, or be committed for three Months. Ships and Veſſels from foreign Parts, having on Board Tea, or Brandy, Rum, *&c.* in Casks under ſixty Gallons, (except for the Uſe of Seamen) found at Anchor, or hovering near any Port, or within two Leagues of the Shore, and not proceeding in their Voyages, unleſs in Caſes of unavoidable Neceſſity, all ſuch Tea, *&c.* ſhall be forfeited. Perſons offering any Bribe to Officers of the *Cuſtoms*, to connive at the Running of Goods to forfeit 50 *l.* and obſtructing ſuch Officers in entering or ſearching Ships, incurs a Forfeiture of 100 *l.* And if an Officer be wounded or beaten on board any Ship, the Offenders to be tranſported, *&c.* Stat. 9 *Geo,* 2. *c.* 35. There is a *Drawback* allowed Merchants for ſome Goods and Merchandize; and they have Allowances of ſo much *per Cent.* out of the *Cuſtoms*, where Goods are defective, or receive Damage, *&c.*

By Statute, no Cuſtomer or Comptroller of the *Cuſtoms*, ſhall have any Ships of his own, or meddle with the Freight of Ships. 14 *R.* 2. *c.* 10. And no Searcher, Surveyor, *&c.* or their Clerks, Deputies, or Servants, may have any ſuch Ships of their own; nor ſhall uſe Merchandize, keep a Wharf, Inn or Tavern, or be Factor, Attorney, *&c.* to a Merchant, under the Penalty of 40 *l.* Stat. 20 *H.* 6. *c.* 5. Cuſtomers, Collectors, or Comptrollers, ſhall not conceal *Cuſtoms* duly entered and paid, in Pain to forfeit the treble Value of Merchandize ſo *cuſtomed*, and to make Fine and Ranſom to the King. 3 *H.* 6 *c.* 3. If any Perſons employed about the *Cuſtoms* and Subſidies take a Bribe, or connive at any falſe Entry, they ſhall forfeit 100 *l.* and be incapable of any Employment under the King. Stat. 13 *&* 14 *Car.* 2. *c.* 11. Alſo if any Officer of the Revenue, ſhall make any colluſive Seiſure of foreign Goods, to the Intent the ſame may eſcape Payment of the Duties, he is to forfeit 500 *l.* and be incapable of ſerving his Majeſty; and the Importer and Owner ſhall forfeit treble the Value of the Goods ſo colluſively ſeiſed, *&c.* 5 *Geo.* 1. *c.* 11. Officers of the *Cuſtoms*, *&c.* are not to trade in Brandy, Coffee, *&c.* or any exciſeable Liquor, on Pain of 50 *l.* and Forfeiture of Offices. 12 *Geo.* 1. *c.* 28. See *Information.*

Cuſtoms and Services, Belonging to Tenure of Lands, are ſuch as Tenants owe unto their Lord; which being with-held from the Lord, he may have a Writ of *Cuſtoms and Services.* See *Conſuetudinibus & Servitiis.*

Cuſtos Brevium, Is the principal Clerk belonging to the Court of *Common Pleas*, whoſe Office is to receive and keep all the Writs returnable in that Court, and put them upon Files, every Return by it ſelf; and to receive of the *Prothonotaries* all the Records of *Niſi Prius*, called the *Poſtea's*; for they are firſt brought in by the Clerk of Aſſiſe of every Circuit to the Prothonotary, who entered the Iſſue in the Cauſes, to enter the Judgment: And four Days after the Return thereof, the Prothonotary enters the Verdict and Judgment thereupon, into the Rolls of the Court; whereupon he afterwards delivers them over to the *Cuſtos Brevium*, who binds them into a Bundle. He makes Entry likewiſe of all Writs of Covenant, and the Concord upon every Fine; and maketh forth Exemplifications, and Copies of all Writs and Records in his Office, and of all Fines levied. The *Fines* after they are engroſſed, are divided between the *Cuſtos Brevium* and the *Chirographer*; the Chirographer always keeps the Writ of Covenant and the Note, and the *Cuſtos Brevium* the Concord and Foot of the Fine; upon which Foot of the Fine, the Chirographer cauſeth the Proclamations to be indorſed, when they are proclaimed. This Officer is made by the King's Letters Patent: And in the Court of *King's Bench*, there is alſo a *Cuſtos Brevium & Rotulorum*, who fileth ſuch Writs as are in that Court filed, and all Warrants of Attorney, *&c.* and whoſe Buſineſs it is to make out the Records of *Niſi prius*, *&c.*

Cuſtos Placitorum Coronæ, An Officer which ſeems to be the ſame with him we now call *Cuſtos Rotulorum.* Bract. lib. 2. c. 5.

Cuſtos Rotulorum, Is he who hath the Cuſtody of the Rolls or Records of the Seſſions of the Peace, and alſo of the Commiſſion of the Peace itſelf. He is always a Juſtice of the Peace of the *Quorum* in the County where appointed, and uſually ſome Perſon of Quality: But he is rather termed an Officer or Miniſter, than a Judge. *Lamb. Eiren. lib.* 4. *cap.* 3. *p.* 373. The *Cuſtos Rotulorum* in every County is appointed by a Writing ſigned by the King's Hand, which ſhall be a Warrant to the Lord Chancellor to put him in Commiſſion: And he may execute his Office by Deputy; and hath Power to appoint the Clerk of the Peace, *&c.* *Stat.* 37 *H.* 8. *cap.* 1. By Stat. 1 *W. & M. c.* 21. The *Cuſtos Rotulorum* is to nominate and appoint the Clerk of the Peace; but not to ſell the Place, on Pain of forfeiting the Office of *Cuſtos Rotulorum*, and other Penalties, *&c.* The *Cuſtos Rotulorum*, two Juſtices of Peace, and the Clerk of the Peace, are to inrol Deeds of Bargain and Sale of Lands of Papiſts, *&c.* by 3 *Geo.* 1. *cap.* 18.

Cuſtos of the Spiritualties, (*Cuſtos Spiritualitatis*) Is he that exerciſeth the Spiritual or Eccleſiaſtical Juriſdiction of a Dioceſe, during the Vacancy of any See; who with us in *England* is the Archbiſhop by Preſcription: But (according to *Gwin*) ſome Deans and Chapters challenge this Right by ancient Charters from the Kings of this Land. *Cowel.*

Cuſtos of the Temporalties, (*Cuſtos Temporalium*) The Perſon to whoſe Cuſtody a vacant See or Abbey was committed by the King, as ſupreme Lord; who as a Steward of the Goods and Profits, was to give an Account to the *Eſcheator*, and he into the *Exchequer*: His Truſt continued till the Vacancy was ſupplied, and the Succeſſor obtained the King's Writ *De Reſtitutione Temporalium*, which was uſually after Conſecration.

Cut-purſe, If any Perſon *clam & ſecrete* and without the Knowledge of another, cut his Purſe or pick his Pocket, and ſteal from thence to the Value of 12 *d.* it is Felony excluded Clergy. 8 *Eliz.* 3 *Inſt.* 68. See *Felony*.

Cutts, Flat-bottomed Boats, built low and commodiouſly, uſed in the Channel for tranſporting of Horſes. *Stow. Annal. p.* 412.

Cutter of the Tallies, Is an Officer of the Exchequer, to whom it belongs to provide Wood for the *Tallies*, and to cut the Sum paid upon them, *&c.*

Cuve, Is a *French* Word, in Engliſh *Keeve*, from whence comes *Keever*, a Tub or Fat for *Brewing*. Cowel.

Cyclas, A long Garment cloſe upwards, and open or large below. *Matt. Pariſ. Anno* 1236. ſpeaking of the Citizens of *London*, tells us, they were *Sericis veſtimentis ornati*, Cycladibus *auri textis circundati*.

Cynebote. This Word ſignifies the ſame with *Cenegild*. Blount.

Cyricbryce, (Sax.) *Irruptio in Eccleſiam*. Leg. Eccl. Canuti Regis.

D.

DA, (*Fr.*) A Word Affirmative for Yes. *Law Fr. Dict.*

Dag, A Gun; *un Dagg*, a ſmall Gun, or Hand-gun. See *Haque*.

Dagenham-Breach, A Duty is granted on Coals imported in *London* to repair the Walls, and Banks thereof; to be collected and diſpoſed by Truſtees, *&c.* Stat. 12 *Ann. c.* 17.

Dagus or **Dais,** The chief or upper Table in a Monaſtery; from a Cloth called *Dais*, with which the Tables of Kings were covered.

Dakir, The Stat. 51 *H* 3. *De Compoſitione Ponderum & Menſurarum* aſcertains a *Laſt* of Hides to conſiſt of twenty *Dakirs*, and every *Dakir* of ten Hides. See *Dicker*.

Dalmatica, A Garment with large open Sleeves, at firſt worn only by Biſhops, tho' ſince made a Diſtinction of Degrees; ſo called, becauſe it came originally from *Dalmatia*.

Dalus, Dailus, Daila, A certain Meaſure of Land.——— *Et totam* Dailam *Mariſci tam de reſſa quam de prato, &c. Mon. Ang. tom.* 2. *p.* 211. In ſome Places it is taken for a Ditch or *Vale*, whence comes *Dale*. The *Dali prati* have been eſteemed ſuch narrow Slips of Paſture, left between the ploughed Furrows in arable Land; which in ſome Parts of *England* are called *Doles*: The preſent *Welch* uſe this Word for low Meadow by the River Side. And this ſeems to be the original Name and Nature of *Deal* in *Kent*, where *Cæſar* landed, and fought the *Britains*: Cæſar *ad* Dole *Bellum pugnavit* Nennius.

Damage, (*Damnum*) Signifies generally any Hurt or Hindrance that a Man receives in his Eſtate: But particularly, a Part of what the Jurors are to enquire of and bring in, when an Action paſſeth for the Plaintiff: For after Verdict given of the principal Cauſe, the Jury are asked touching *Coſts* and *Damages*, which comprehend a Recompence for what the Plaintiff hath ſuffered, by Means of the Wrong done him by the Defendant. *Co. Lit.* 257. This Word *Damage* is taken in the Law, in two ſeveral Significations, the one *Properly* and *Generally*, the other *Relatively*: *Properly*, as it is in Caſes wherein *Damages* are founded upon the Statute of 2 *H.* 4. *c.* 1. and 8 *H.* 6. *c.* 9. where *Coſts* are included within the Word *Damages*, and taken as *Damages*: But when the Plaintiff declares for the Wrong done to him, to the *Damage* of ſuch a Sum, this is to be taken *relatively* for the Wrong which paſſed before the Writ brought, and is aſſeſſed by Reaſon of the foregoing Treſpaſs, and cannot extend to Coſts of Suit, which are future and of another Nature. 10 *Rep.* 116, 117. Greater Coſts may be given in ſome Caſes, than the *Damages* laid in the Plaintiff's Declaration; for the Plaintiff's Declaration is only for the *Damage* done him by the Defendant: But the Coſts are given in Reſpect of the Plaintiff's Suit to recover his *Damages*, which may be ſometimes greater than the *Damage*. 1 *Lill. Abr.* 384. Where the Plaintiff ſhall have no more Coſts than *Damages*, unleſs the Jury finds more than 40 *s.* in Actions of Treſpaſs, on the Caſe, *&c.* See Stat. 43 *Eliz. c.* 6. 21 *Jac.* 1. *cap.* 16. In Action upon the Caſe, the Jury may find leſs *Damages* than the Plaintiff lays in his Declaration; though they cannot find more than is laid therein; if they do, it is Error; but Coſts may be increaſed beyond the Sum mentioned in the Declaration for *Damages*: Alſo the Plaintiff may releaſe Part of the *Damages*, upon entering up his Judgment. 10 *Rep.* 115. In Actions upon any Bond, *&c.* for Non-performance of Covenants, the Jury ſhall aſſeſs *Damages* for thoſe the Plaintiff proves broken; and the Plaintiff may aſſign as many Breaches as he thinks fit. 8 & 9 *W.* 3. *c.* 11. *Damages* are not to be given for that which is not contained in the Plaintiff's Declaration; and only for what is materially alledged. 1 *Lill.* 381. In perſonal and mixed Actions, *Damages* were recovered at Common Law: But in real Actions, no *Damages* were recoverable, becauſe none were demanded by the Count or Writ: Whereas in Actions Perſonal, the Plaintiff counts *Ad Dampnum* for the Injury; and if he recovers no *Damages*, he hath no Coſts. 10 *Rep.* 111, 117. In a perſonal Action, the Plaintiff ſhall recover *Damages* only for the Tort done before the Action brought; and therein he counts for his *Damage*: In a real Action, he recovers his *Damages* pending the Writ; and therefore never counts for his *Damages*. 10 *Rep.* 117. By the Stat. of *Glouc.* 6 *Ed.* 1. *cap.* 1. *Damages* are given in real Actions, Aſſiſes of *Novel Diſſeiſin, Mort d' Anceſtor, &c.* and ſhall be recovered againſt the Alienee of a Diſſeiſor, as well as againſt the Diſſeiſor himſelf; and the Demandant ſhall have of the Tenant likewiſe Coſts of Suit; but not Expences for Trouble and Loſs of Time. 2 *Inſt.* 288. If the Diſſeiſor make a Feoffment in Fee, and the Diſſeiſee dieth, the Heir of the Diſſeiſee ſhall not recover *Damages* againſt the Alienee, becauſe that Branch of the Stat. 6 *Ed.* 1. only provides for the Diſſeiſee's Remedy againſt the Alienee, and not for his Heirs; though if a Perſon be diſſeiſed, and the Diſſeiſee dies, his Heirs ſhall recover *Damages* againſt the Diſſeiſor, from the Death of his Anceſtor. 2 *Inſt.* 286. And it is a Rule upon this Statute, that in none of the Writs or Actions therein mentioned, the Demandant ſhall recover *Damages* but from the Death of his next immediate Anceſtor. *Ibid.* 288. For the Inſufficiency of the Diſſeiſor, the Tenant ſhall Anſwer the *Damages* by this Act: And if the Diſſeiſor be able to yield Part and not the whole *Damages*, both the Diſſeiſor and Tenant ſhall be charged; and Judgment is given againſt the Diſſeiſor and againſt the Tenant generally. 2 *Inſt.* 284. 2 *Danv. Abr.* 448. When *Damages* double or treble are given in an Action newly created by Statute; if no *Damages* were formerly recoverable, there the Demandant or Plaintiff ſhall recover thoſe *Damages* only, and ſhall not have Coſts, being a new Creation in Recompence where there was none before: As upon the Stat. 1 & 2 *P.* & *M.* for driving of Diſtreſſes out of the Hundred, &c. whereby *Damages* are given, the Plaintiff ſhall recover no Coſts, only his *Damages*, becauſe this Action is newly given. But in an Action upon the Stat. 8 *H.* 6. of Forcible Entry, which giveth treble *Damages*, the Plaintiff ſhall recover his *Damages* and his Coſts to the Treble, by Reaſon he was entitled to ſingle *Damages* before by the Common Law; and the Statute, as Part of the *Damages*, encreaſes the Coſts to treble; and when a Statute increaſes *Damages*, Coſts ſhall likewiſe be increaſed. 2 *Inſt*. 289. 10 *Rep.* 116. In ſome Caſes double treble *Damages*, &c. are allowed: For not ſetting forth Tithes; Diſtreſſes wrongfully taken; Reſcous, &c. Treble *Damages* are incurred by Statute. Though if it be not found by the Jury that the Plaintiff hath ſuſtained ſome *Damage* in Caſes where treble *Damages*, &c. are inflicted by Law, no *Damages* can be awarded. 2 *Danv. Abr*. 449. And no *Damages* could be recovered at the Common Law, but againſt the Wrong-doer, and by him to whom the Wrong was done. 2 *Inſt*. 284. *Damages* ſhall be recovered in Writ of Admeaſurement of Dower; but not in a Writ of Admeaſurement of Paſture. 2 *Danv*. 457. In Writ of Partition, by one Coparcener againſt another, 'tis ſaid no *Damages* ſhall be had: In a Formedon, no *Damages* ſhall be recovered; ſo in a *Nuper Obiit*, Writ of Account, Writ of Execution, &c. *Ibid*. 455, 456. *Damages* and Coſts are due in a Writ of Annuity; and if the Jury find for the Plaintiff, and do not aſſeſs *Damages*, it will be Error; though he may after Verdict releaſe the *Damages*, and take Judgment for the Annuity. 11 *Rep*. 56. *Dyer* 320, 369. Where *Damages* are awarded for Delay of Execution, and being kept out of the Money, they are uſually aſſeſſed by allowing the Party what lawful Intereſt he might have. 1 *Salk*. 208 In real Actions, *Damages* are aſſeſſed by Writ of Enquiry: When the Jury find the Iſſue for the Plaintiff, they are to aſſeſs the *Damages*. And in Actions upon the Caſe, &c. where *Damages* are uncertain, it is left to the Jury to enquire of and tax them: In Debt, which appears certain to the Court what it is, the *Damages* aſſeſſed by the Jury are ſmall, and the Maſter in *B. R.* taxeth the Coſts; which is added thereto, and called *Damages*. 1 *Lill*. 390. When Judgment is given by Default, in Action of Debt, the Court is to aſſeſs the *Damages*, and not the Jury: So if Judgment by *Nil dicit*, in Action of Debt. And if on Demurrer for taking Goods, &c. it is adjudged for the Plaintiff, though *Damages* are found by Writ of Enquiry, the Court may increaſe or mitigate the *Damages*, becauſe the Court might have awarded them without ſuch Writ. 2 *Danv*. 452. In Writ of Treſpaſs *de Clauſo fracto*, and when there is a Writ to enquire of *Damages* in Treſpaſs; in Action on the Caſe for Slander, where the Jury tax *Damages*, or in an Aſſiſe, the Judges cannot increaſe nor abridge the *Damages*: 'Tis otherwiſe on a Writ of Enquiry in Debt, Detinue, Covenant, Mayhem and Battery; the Court may increaſe or diminiſh the *Damages*. *Fitz. Damage* 28. *Dyer* 105. *Jenk. Cent*. 68. In Batteries and Wounding, the Court may increaſe *Damages* given by the Jury, on View of the Wound, or upon Affidavits made thereof, &c. But it is ſaid the Courts at *Weſtminſter* only can increaſe *Damages* in Action of Aſſault and Wounding on View, &c. and not Juſtices of *Niſi prius*; tho' they may endorſe the Evidence on the *Poſtea*, and on ſuch Evidence the *Damages* may be increaſed in the Courts above. 3 *Salk*. 115. If *Damages* are too ſmall, the Court hath Power to increaſe them: Or if the Jury aſſeſs no *Damages*, where Verdict is found for the Plaintiff in Action of Debt on Bond, &c. the Court may tax the *Damages*; though it is otherwiſe in Action on the Caſe, &c. 2 *Inſt*. 200. 2 *Danv*. 449. It hath been holden that the Judges may increaſe, but not decreaſe *Damages*; and this is, becauſe the Party may have an Attaint. 2 *Danv*. 452. But where exceſſive *Damages* have been given, or there hath been any Miſdemeanor in executing a Writ of Enquiry; the Court hath ſometimes relieved the Defendant by a new Writ of Enquiry. 2 *Danv*. 464. And where *Damages* are exceſſive, on Motion the Defendant may have a new Trial. *Style* 465 1 *Nelſ. Abr*. 587. In Battery, Impriſonment, and taking of Goods, againſt three Perſons; one commits the Battery, another the Impriſonment, the Third takes the Goods, all at one Time, all are guilty of the Whole, and to be charged in *Damages*. 3 *Lev*. 324. See 10 *Rep*. 66, 69. In Treſpaſs againſt two, one comes and pleads Not guilty, and it is found againſt him; and afterwards another comes and pleads the like, and is found Guilty by another Inqueſt; in this Caſe, the firſt Jury ſhall aſſeſs all the *Damages* for the Treſpaſs. *New. Nat. Br*. 236. Treſpaſs againſt divers Defendants, they plead Not guilty ſeverally, and the Jury finds them all Guilty: The Jury muſt aſſeſs the *Damages* jointly, for it is but one entire Treſpaſs, and made joint by the Declaration: But if in Treſpaſs againſt two, the Jury finds one Guilty of the Treſpaſs at one Time, and the other Guilty thereof at another Time, there ſeveral *Damages* may be aſſeſſed. If the Plaintiff himſelf confeſſes that they committed the Treſpaſs ſeverally, then the Writ ſhall abate. 11 *Rep*. 5. *Damages* may be ſeveral, where one Action of Treſpaſs is brought for two ſeveral Treſpaſſes: And in Action on the Caſe, *Damages* are diviſible, and may be apportioned according to the Wrong. 1 *Saund*. 268. Alſo in an Action on the Caſe upon two Promiſes, entire *Damages* may be given; though it be inſiſted that *Damages* ſhould be ſeveral upon each Promiſe. 1 *Roll. Rep*. 423. But if Action is brought for two ſeveral Cauſes of Action, one of which is not actionable, if entire *Damages* are given, the Verdict is void: *Contra* if the *Damages* are ſevered. And where *Damages* are entirely aſſeſſed, and they ought not to be given for ſome Part; no Judgment can be given on the Verdict. 10 *Rep*. 130.

Damage-cleer, (*Damna Clericorum*) Was a Fee aſſeſſed of the tenth Part in the *Common Pleas*, and the twentieth Part in the *King's Bench* and *Exchequer*, out of all *Damages* exceeding five Marks, recovered in thoſe Courts, in Actions upon the Caſe, Covenant, Treſpaſs, Battery, &c. wherein the *Damages* were uncertain; which the Plaintiff was obliged to pay to the *Prothonotary*, or the Chief Officer of the Court wherein recovered, before he could have Execution for the *Damages*: This was originally a Gratuity given to the *Prothonotaries* and their Clerks, for drawing ſpecial Writs and Pleadings; but it is taken away by Statute, and if any Officer in the King's Courts, take any Money in the Name of *Damage-cleer*, or any Thing in Lieu thereof, he ſhall forfeit Treble the Value. *Stat*. 17 *Car*. 2. *c*. 6.

Damage-feſant, or *Faiſant*, Is when a Stranger's Beaſts are found in another Perſon's Ground without his Leave or Licence, and there doing *Damage*, by Feeding or otherwiſe, to the Graſs, Corn, Woods, &c. In which Caſe, the Tenant whom they *damage*, may diſtrain and impound them, as well by Night as in the Day, leſt the Beaſts eſcape before taken; which may not be done for Rent, Services, &c. only in the Day-time. *Stat*. 51 *H*. 3. 1 *Inſt*. 142. If a Man takes my Cattle, and puts them into the Land of another, the Tenant of the Land may take theſe Cattle *Damage-feſant*, though I who was the Owner, was not privy to the Cattle's being there *Damage feſant*; and he may keep them againſt me till Satisfaction of the *Damages*. 2 *Danv*. *Abr*. 634. But if one comes to diſtrain *Damage-feſant*,

feſant, and to ſeiſe the Cattle, and the Owner drives them out before they are taken, he cannot diſtrain them *Damage-feſant*, but is put to his Action of Treſpaſs; for the Cattle ought to be actually upon the Land *Damage-feſant*, at the Time of the Diſtreſs. 1 *Inſt.* 161. 9 *Rep.* 22. He that hath but the Poſſeſſion of, and no Title to the Land, may juſtify taking a Diſtreſs *Damage feſant.* *Plowd.* 431. If a Man puts Cattle to Paſture at ſo much a Week with another, who after gives Notice that he will not have them there any longer; in this Caſe, the Owner of the Ground may diſtrain them *Damage-feſant*, though the Cattle be in lawfully at firſt: So where a Leſſee holds after his Eſtate is ended. 43 *E.* 3. *Kelw.* 69. Beaſts belonging to the Plough, or Beaſts of Husbandry, Sheep, Horſes join'd to a Cart, and 'tis ſaid a Horſe with a Rider on it, may be diſtrained *Damage-feſant*, though not for Rent. 1 *Sid.* 422, 440. But the Owner may tender Amends, before the Cattle are impounded; and then the Detainer is unlawful: Alſo if when impounded the Pound-door is open, the Owner may take them out. 5 *Rep.* 76. A Greyhound may be taken *Damage-feſant*, running after Conies in a Warren: So a Man may take a Ferret that another hath brought into his Warren, and taken Conies with. If a Perſon bring Nets and Gins though my Warren, I cannot take them out of his Hands. 2 *Danv.* 633. But if Men are rowing upon my Water, and endeavouring with Nets to catch Fiſh in my ſeveral Piſcary, I may take their Oars and Nets, and detain them as *Damage-feſant*, to ſtop their further Fiſhing; though I cannot cut their Nets. *Cro. Car.* 228.

Dam, A Boundary, or Confinement; as to *dam* up, or *dam* out: *Infra damnum ſuum*, within the Bounds or Limits of his own Property or Juriſdiction. *Bract. lib.* 2. *c.* 37.

Damiſella, A light Damoſel or Miſs. *Stat.* 12 *Ed.* 1. See *Pimp-Tenure.*

Damnum abſque injuria. If one Man keeps a School in ſuch a Place, another may do ſo likewiſe in the ſame Place, though he draw away the Scholars from the other School; and this is *Damnum abſque injuria*; but he muſt not do any Thing to diſturb the other School. 3 *Salk.* 10.

Dan. Anciently the better Sort of Men in this Kingdom had the Title of *Dan*; as the *Spaniards Don*, from the Lat. *Dominus.*

Danegelt, or **Dane-geld**, (*Danegildum*) Is compounded of the Words *Dane* and *Gelt*, the latter in *Dutch* ſignifying Money; and was a Tax or Tribute of 1 *s.* and after of 2 *s.* upon every Hide of Land through the Realm, laid upon our Anceſtors the *Saxons* by the *Danes*, when they lorded it here. *Camd. Brit.* 83, 142. According to ſome Accounts, this Tax was levied for clearing the Seas of *Daniſh* Pirates; which heretofore greatly annoyed our Coaſts: But King *Etheldred* being much diſtreſſed by the continual Invaſions of the *Danes*, to procure his Peace, was compelled to charge his People with very heavy Payments called *Danegelt*, which he paid to the *Danes* at ſeveral Times. *Hoveden par. poſt. Annal.* 344. *Ingulph.* 510. *Selden's Mare Clauſ.* 190. This *Danegelt* was releaſed by St. *Edward the Confeſſor*; but levied again by *William* the Firſt and Second: Then it was releaſed again by King *Henry* the Firſt, and finally by King *Stephen.* It is probable that this ancient Tax might be a Precedent for our *Land-Tax* of 3 *s.* and 4 *s.* in the Pound, when firſt granted.

Danelage, Was the Law of the *Danes* when they governed a third Part of this Kingdom. See *Merchenlage.*

Dangeria, A Payment in Money made by Foreſt Tenants, that they might have Liberty to Plough and Sow in Time of *Pannage* or Maſt-feeding. *Manw. For. Laws.*

Dapifer, (*à Dapes ferendo*) Was at firſt a Domeſtick Officer, like unto our *Steward of the Houſhold*; or rather *Clerk of the Kitchen:* But by Degrees it was uſed for any fiduciary Servant, eſpecially the Chief Steward or Head Bailiff of an Honour or Manor. There is Mention made in our ancient Records of *Dapifer Regis*; which is taken for Steward of the King's Houſhold. *Cowel.*

Dardus, i. e. A Dart: In *Wales* an Oak is called a *Dar.*

Dare ad Remanentiam, To give away in Fee, or for ever. *Glanv. lib.* 7. *cap.* 1. This ſeems to be only of a *Remainder.*

Darrein, Is a Corruption from the Fr. *Dernier*, *viz. Ultimus*; in which Senſe we uſe it: As *Darrein Continuance*, &c.

Darrein Preſentment, (*Ultima Præſentatio*) See *Aſſiſe of Darrein Preſentment.*

Date of a Deed, Is the Deſcription of the Time, *viz.* the Day, Month, Year of our Lord, Year of the Reign, &c. in which the Deed was made. 1 *Inſt.* 6. But the *ancient* Deeds had no *Dates*, only of the Month and the Year; to ſignify that they were not made in Haſte, or in the Space of a Day, but upon longer and more mature Deliberation. *Blount.* If in the *Date* of a Deed, the Year of our Lord is right, though the Year of the King's Reign be miſtaken, it ſhall not hurt it. *Cro. Jac.* 261. A Deed was *dated* 30th *March* 1701. without *Anno Domini* and *Anno Regni*; and it was adjudged that both the Year of the Lord and of the King were implicitly in the Deed. 2 *Salk.* 658. A Deed is good, though it hath no *Date* of the Day or Place, or if the *Date* be miſtaken, or though it hath an impoſſible *Date*, as the 30th of *February*, &c. But he that doth plead ſuch a Deed, without any *Date*, or with an impoſſible *Date*, muſt ſet forth the Time when it was delivered. 2 *Rep.* 5. 1 *Inſt.* 46. If no *Date* of a Deed be ſet forth, it ſhall be intended that it had none; and in ſuch Caſe 'tis good from the Delivery; for every Deed or Writing hath a *Date* in a Law, and that is the Day on which it is delivered: And a Deed is no Deed till the Delivery, and that is the *Date* of it. *Mod. Ca.* 244. 1 *Nelſ. Abr.* 525. An impoſſible *Date* of a Bond, &c. is no *Date* at all; but the Plaintiff muſt declare on the Bond as made at a certain Time: And if the expreſs *Date* be inſenſible, the real *Date* is the Delivery. 2 *Salk.* 463. Where there is none, or an impoſſible *Date*, the Plaintiff may count of any *Date.* 1 *Lill. Abr.* 393. If there be a miſtaken *Date*, or a *Date* be impoſſible, &c. the Plaintiff may ſurmiſe a legal *Date* in the Declaration, whereupon the Defendant is to anſwer to the Deed, and not to the *Date.* *Yelv.* 194. If a Deed bears *Date* at a Place out of the Realm, it may be averred that the Place mentioned in the Deed, is in ſome County in *England*; and here the Place is not traverſable; without this the Deed cannot be tried. 1 *Inſt.* 261. A Deed may be *dated* at one Time, and ſealed and delivered at another: But every Deed ſhall be intended to be delivered on the ſame Day it bears *Date*, unleſs the contrary is proved. 2 *Inſt.* 674. Though there can be no Delivery of a Deed before the Day of the *Date*; yet after there may. *Yelv.* 138. So that a Deed may be *dated* back on a Time paſt, but not at a Day to come. See *Deed.*

Dative or **Datif**, (*Dativus*) Signifies that may be given or diſpoſed of at Will and Pleaſure. *Stat.* 9 *R.* 2. *c.* 4.

Davata terræ, **Dawach**, A Portion of Land ſo called in *Scotland.* Skene.

Day, (*Dies*) Is a certain Space of Time, containing twenty-four Hours; and if a Fact be done in the Night, you muſt ſay in Law Proceedings *in Nocte ejuſdem Diei. Dierum alii ſunt* Naturales, *alii* Artificiales: *Dies* Naturalis *conſtat de* 24 *horis, & continet Diem Solarem & Noctem, & eſt ſpatium in quo* *ſol progreditur ab Oriente in Occidentem, & ab occidente iterum in Orientem: Dies* Artificialis, *ſive ſolaris, incipit in ortu ſolis & deſinit in occaſu.* 1 *Inſt.* 135. By this Deſcription, the *natural Day* conſiſts of twenty-four Hours, and contains the ſolar *Day* and the Night: And the *artificial Day* begins from the Riſing of the Sun, and ends when it ſets. *Day* in legal Underſtanding, is the *Day of Appearance* of the Parties, or Continuance of the Suit where a *Day* is given, &c. And there is a *Day* of Appearance in Court by the Writ, and by the Roll; by Writ, when the Sheriff returns the Writ; by Roll, when he hath a Day by the Roll, and the Sheriff returns not the Writ, there the Defendant to ſave his Freehold, and prevent Loſs of Iſſues, Impriſonment, &c. may appear by the *Day* he hath by the Roll. 1 *Inſt.* 135. In real Actions there are *Dies communes*, common *Days*; and in all Summons there muſt be 15 *Days* after the Summons before the Appearance: And before the Statute of *Articuli ſuper Chartas*, in all Summons and Attachment in Plea of Land, there ſhould be contained 15 *Days.* 1 *Inſt.* 134. As to Offences in *B. R.* if the Offence be committed in another County than where the Court ſits, and the Indictment be removed by *Certiorari*, there muſt be fifteen *Days* between every Proceſs and the Return thereof; but if it be committed in the ſame County where the Bench ſits, they may ſit *de Diem in Diem*; but this they will very rarely do. *Ibid.* There is a *Day* called *Dies ſpecialis*, as in an Aſſiſe in the King's Bench or Common Pleas, the Attachment need not be fifteen *Days* before the Appearance; otherwiſe it is before Juſtices aſſigned: But generally in Aſſiſes the Judges may give a ſpecial *Day* at their Pleaſure, and are not bound to the common *Days*; and theſe *Days* they may give as well out of Term as within. There is alſo a *Day* of Grace, *Dies Gratiæ*, and generally this is granted by the Court at the Prayer of the Demandant or Plaintiff, in whoſe Delay it is: But it is never granted where the King is Party, by *Aid Prier* of the Tenant or Defendant; nor where any Lord of Parliament, or Peer of the Realm is Tenant or Defendant. And ſometimes the *Day* that is *quarto Die poſt*, is called *Dies Gratiæ*; for the very *Day* of Return is the *Day* in Law, and to that *Day* the Judgment hath Relation, but no Default ſhall be recorded till the fourth *Day* be paſt; unleſs it be in a Writ of Right, where the Law alloweth no *Day* but the *Day* of the Return. 1 *Inſt.* 135. There are ſeveral *Return-Days* in the Terms; and if either of them happen upon a *Sunday*, the *Day* following is taken inſtead of it: For *Sunday* is *Dies non Juridicus*; and ſo is *Aſcenſion-Day* in *Eaſter* Term, St. *John Baptiſt* in *Trinity* Term, *All Saints* and *All-Souls* in *Michaelmas* Term, and the *Purification* of the Virgin *Mary* in *Hillary* Term. 2 *Inſt.* 264 *Days in Bank* are *Days* ſet down by Statute, or Order of the Court, when Writs ſhall be returned, or when the Party ſhall appear upon the Writ ſerved. *Stat.* 51 *Hen.* 3. 32 *H.* 8. *c.* 21. And by the Statute *de Anno Biſſextili* 21 *H.* 3. the *Day* increaſing in the Leap-Year, and the *Day* next going before are to be accounted but one *Day*. It is commonly ſaid that the *Day* of *Niſi prius*, and the *Day in Bank*, is all one *Day*; but this is to be underſtood as to Pleading, not to other Purpoſes. 1 *Inſt.* 135. If a Defendant appears, and the Court gives a *Day* to another Term; at which *Day* he makes Default, no Judgment ſhall be given, but Proceſs ſhall be awarded in this Caſe. 2 *Danv. Abr.* 476. But after Iſſue found for the Plaintiff at the *Niſi prius*, if a *Day* be given *in Banco*, and the Defendant makes Default, Judgment ſhall be given againſt him. *Ibid.* 477. To be diſmiſſed *without Day*, is to be finally diſmiſſed the Court: And when the Juſtices before whom Cauſes were depending, do not come on the *Day* to which they were continued, whether ſuch Abſence be occaſioned by Death or otherwiſe, they are ſaid to be *put without Day*: But may be revived or re-continued by Re-ſummons, Reattachment, &c. 2 *Hawk. P. C.* 300. Alſo by the Common Law, all Proceedings upon any Indictment, &c. whereon no Judgment had been given, were determined by the Demiſe of the King, and nothing remained but the Indictment, Original Writ, &c. which were put *without Day*, 'till re-continued by Re-attachment to bring in the Defendants to plead *de novo*: Tho' this is remedied by Stat. 4 & 5 *W.* 3. *c.* 18. and 1 *Ann. c.* 8. by which ſuch Proceſs, &c. are to continue in the ſame Force after the King's Demiſe, as they would have done if he had lived.

Day-light. In Reſpect to *Day-light*, before *Sun-riſing* and after *Sun-ſetting*, is accounted Part of the Day by the Common Law; as to *Robberies* committed in the Day-time, when the *Hundred* is liable. 7 *Rep.* 6. The Law regularly rejects all Fractions and Diviſions of a *Day*, for the Incertainty. 5 *Rep.* 1. 1 *Inſt.* 135. See *Computation.*

Days-man. In the North of *England*, an Arbitrator or elected Judge is uſually termed a *Dies-man* or *Days-man*: And Dr. *Hammond* ſaith, that the Word *Day* in all Idioms ſignifies Judgment.

Dayeria, *Dairy*, from *Day*, *Deie*, Sax. *Dag*, was at firſt the *Daily* Yield of Milch-Cows, or Profit made of them. In *Lorrain* and *Champaign* they uſe the Word *Dayer*, for the Meeting of the *Day*-labouring People to give an Account of their daily Work, and receive the Wages of it. A *Dairy* in the *North* is called *Milkneſs*; as the *Dairy-maid* is in all Parts a *Milk-maid*: She is term'd *Androchia* by *Fleta*, *lib.* 2. *cap.* 87. —— *Compotus* Henrici D. & Johannæ *uxoris ſuæ de omnibus Exitibus & Proventibus de* Dayri *Domini Prioris de* Burnceſtre. *Paroch. Antiq.* 548.

Daywere of Land. As much arable Land as could be plough'd up in one Day's Work; or one *Journey*, as the Farmers ſtill call it. Hence any young Artificer who aſſiſts a Maſter Workman in *Daily* Labour, is called a *Journey-man.* —— *Confirmavi Abbati & Conventui de* Rading, *tres Acras & ſexdecim* Daywere, *de terra Arabili.* Cartular. Rading. MS. f. 90.

Deadly Feud, Is a Profeſſion of an irreconcileable Hatred, 'till a Perſon is revenged even by the Death of his Enemy. It is mentioned in Stat. 43 *Eliz. c.* 13. And ſuch Enmity and Revenge were allowed by the old *Saxon* Laws; for where any Man was killed, if a pecuniary Satisfaction was not made to the Kindred of the Slain, it was lawful for them to take up Arms againſt the Murderer, and revenge themſelves on him: And this is called *Deadly Feud*; which 'tis conjectured was the Original of an *Appeal. Blount.* Vide *Feud.*

Dead Pledge, (*Mortuum vadium*) A Pledge of Lands or Goods. See *Mortgage.*

Deafforeſted, This Word ſignifies *diſcharged* from being *Foreſt*; or that is freed and exempted from the Foreſt Laws. 17 *Car.* 1. *c.* 16. —— Johannes *Dei Gratia, &c. Volumus & firmiter præcipimus quod* Foreſta *de* Brerewood *& homines in illa manentes & hæredes eorum ſint* Deafforeſtati *imperpetuum, &c. Dat.* 13 Martii *Anno Regni noſtri* 5. —— There is likewiſe *Deawarrenata*, as well as *Deafforeſtata*; which is when a *Warren* is *diſwarrened*, or broke up and laid in Common. King *Henry* the Third, in a Charter to the Citizens of *London*, grants to them, —— *Quod tota Warrena de* Stanes *cum pertin. ſuis ſit* Dewarrenata & Deafforeſtata *in perpetuum.* Placit. temp. Ed. 1. *and* Ed. 2. MS. fol. 144.

Dean, (*Decanus*, from the *Greek* Δέκα *Decem*) Is an Eccleſiaſtical Governor or Dignitary, ſo called as he preſides over ten Canons or Prebendaries at the leaſt. And we call him a *Dean*, that is next under the Biſhop, and Chief of the Chapter, Ordinarily in a Cathedral Church, the Reſt of the Society being called *Capitulum*, the Chapter. As there are two Foundations of Cathedral Churches in *England*, the Old and the New, the New erected by K. *Henry* VIII. ſo there are two Means of creating thoſe *Deans:* For thoſe of the old Foundation, as the *Dean of St. Paul's, York, &c.* are exalted to their Dignity much like Biſhops; the King firſt ſending out his *Conge d' Eſlire* to the Chapter to chuſe ſuch *Dean*, and the Chapter then chuſing, the King afterwards yielding his Royal Aſſent, and the Biſhop confirming him, and giving his Mandate to inſtal him: Thoſe of the new Foundation, whoſe Deaneries were tranſlated from Priories and Convents, to *Dean* and Chapter, as the *Deans* of *Canterbury, Durham, Ely, Norwich, Wincheſter,* &c. are donative, and inſtalled by a ſhorter Courſe, by Virtue of the King's Letters Patent, without either Election or Confirmation; and are viſitable only by the Lord Chancellor, or by ſpecial Commiſſion from the King: But the Letters Patent are preſented to the Biſhop for Inſtitution, and a Mandate for Inſtalment goes forth. 1 *Inſt.* 95. *Davis* 46, 47. There are ſome Cathedral Churches which never had a *Dean*; as that of *St. David* and *Landaff*, where the Biſhop is Head of the Chapter, and in his Abſence the Archdeacon: And there is alſo a *Dean* without a Chapter, ſuch as the *Dean* of *Battel* in *Suſſex:* Then there is a *Dean* without a Juriſdiction, as the *Dean* of the *Chapel Royal*, &c. In which Senſe this Word is applied to the Chief of certain *peculiar* Churches or Chapels. *Spelm.* There are four Sorts of *Deans*; a *Dean* who hath a Chapter, ſuch as the *Dean* of *Canterbury*, &c. A *Dean* without a Chapter, as the *Dean* of *Bocking*, who hath a Court and Juriſdiction to hold Plea of all Eccleſiaſtical Matters ariſing in ſeveral Pariſhes within his Peculiar; and who is conſtituted by Commiſſion from the Archbiſhop of *Canterbury*, like to the *Dean of the Arches.* The *Dean* of *Battel*, founded by *William* the Firſt, ſtiled the Conqueror, who hath Eccleſiaſtical Juriſdiction within the Liberty of *Battel*, and is preſentable by the Duke of *Montague*, and inſtituted and inducted by the Biſhop of *Chicheſter*; but not ſubject to his Viſitation. And *Rural Deans*, who had firſt Juriſdiction over Deaneries, as every Dioceſe is divided into Archdeaconries and Deaneries; but afterwards their Power was diminiſhed, and they were only the Biſhops Subſtitutes to grant Letters of Adminiſtration, Probate of Wills, &c. And now their Office is wholly extinguiſhed, for the Archdeacons and Chancellors of Biſhops execute the Authority which rural *Deans* had through all the Dioceſes of *England.* 1 *Nelſ. Abr.* 596, 597. There are likewiſe *Deputy Deans*; and *Commendatory Deans*, who cannot confirm any Grants, &c. But a Commendatory *Dean* may with the Chapter chuſe a Biſhop. And if a *Dean* be elected Biſhop, and before Conſecration doth obtain Diſpenſation to hold his Deanery *in Commendam*, ſuch *Dean* may well confirm, &c. for his old Title remains, and therefore Confirmations, and other Acts done by him as *Dean*, are good in Law. *Latch* 237, 250. *Palm. Rep.* 460. A *Dean* and Chapter are the Biſhop's Council, to aſſiſt him in the Affairs of Religion, &c. to conſult in deciding difficult Controverſies, and conſent to every Grant which the Biſhop ſhall make to bind his Succeſſors, &c. A *Dean* that is ſolely ſeiſed of a diſtinct Poſſeſſion, hath an abſolute Fee in him as well as a Biſhop. 1 *Inſt.* 325. A Deanery is a ſpiritual Promotion, and not a temporal one, tho' the *Dean* be appointed by the King: And the *Dean* and Chapter may be in part Secular, and in Part regular. *Dyer* 10. *Palm* 500. As a Deanery is a ſpiritual Dignity, a Man cannot be *Dean* and Prebendary in the ſame Church. *Dyer* 273. See *Chapter.*

Death of Perſons. There is a *natural* Death of a Man, and a *civil* Death: Natural, where Nature itſelf expires and extinguiſhes; and Civil, is where a Man is not actually Dead, but is adjudged ſo by Law; as where he enters into Religion, &c. If any Perſon for whoſe Life any Eſtate hath been granted, remain beyond Sea, or is otherwiſe abſent ſeven Years, and no Proof made of his being Living, ſuch Perſon ſhall be accounted naturally dead; though if the Party be after proved living at the Time of Eviction of any Perſon, then the Tenant, &c. may re-enter, and recover the Profits. *Stat.* 19 *Car.* 2. *c.* 6. And Perſons in Reverſion or Remainder, after the *Death* of another, upon Affidavit that they have Cauſe to believe ſuch other dead, may move the Lord Chancellor to order the Perſon to be produced; and if he be not produced, he ſhall be taken as dead; and thoſe claiming may enter, &c. 6 *Ann. c.* 18. A Man ſeiſed in Fee of Lands, made a Leaſe in Reverſion to *L. D.* for 99 Years, to commence after the *Deaths* of *J. D.* and *E. D.* who had then a Leaſe in Poſſeſſion for the like Term, if they or either of them ſo long lived: The Plaintiff poſitively proved the *Death* of *J. D.* but as to the *Death* of *E. D.* the Proof was that he had been reputed dead, and no-body had heard of him for fifteen Years paſt, and the Defendant not being able to prove that he was alive at any Time within ſeven Years, this Caſe was adjudg'd within the Act 19 *Car.* 2. *Carthew* 246. In Law Proceedings, the Death of either Party, between the Verdict and Judgment, ſhall not be Error; ſo as Judgment be entered in two Terms. 17 *Car.* 2. *c.* 8. Where on the Death of Parties to a Suit, the Writ, &c. ſhall abate, ſee 8 & 9 *W.* 3. *c.* 10. and *Abatement: Death* of Judges, &c. Vide *Day.*

De bene eſſe. To take or do any Thing *de bene eſſe*, is in Law Signification to accept or allow it as *well* done for the Preſent; but when it comes to be more fully examined or tried, to ſtand or fall according to the Merit of the Thing in its own Nature. As in *Chancery*, upon Motion to have one of the leſs principal Defendants in a Cauſe examined as a Witneſs, the Court (not then thoroughly examining the Juſtice of it, or not hearing what may be objected on the other Side) will often order ſuch a Defendant to be examined *de bene eſſe, viz.* That his Depoſitions ſhall be taken, and allowed or ſuppreſſed at the Hearing of the Cauſe, upon the full Debate of the Matter, as the Court ſhall think fit; but in the Interim they have a *Well-being*, or conditional Allowance. 3 *Cro.* 68. Where a Complainant's Witneſſes are aged, or ſick, or going beyond Sea, whereby the Plaintiff thinks he is in Danger of loſing their Teſtimony, the Court of Chancery will order them to be examined *de bene eſſe*; ſo as to be valid, if the Plaintiff hath not an Opportunity of examining them afterwards; as if they die before Anſwer, or do not return, &c. In either of which Caſes, the Depoſitions taken may be made Uſe of in the Court of Chancery, or at Law: But if Parties are alive and well, or do return, &c. after Anſwer, theſe Depoſitions are not to be of Force, for the Witneſſes muſt be re examined. *Practiſ Attorn. Edit.* 1. *p.* 232.

Debenture. A Soldier's *Debenture* (*Stipendia Debita*) is in the Nature of a Bond or Bill, to charge the Government to pay the *Soldier Creditor*, or his Aſſigns, the Sum due upon the auditing the Account of his Arrears; it was firſt ordained by an Act made during *Oliver's* Uſurpation, *Anno* 1649. and is mentioned in the Act of Oblivion, 12 *Car.* 2. *cap.* 8. They uſe *Debentures* likewiſe in the *Exchequer*; and *Debentures* are given to the *King's Servants*, for the Payment of their Wages, Board-Wages, &c. Alſo there are *Cuſtom-houſe Debentures*, &c.

Debet & Detinet, Are *Latin* Words uſed in the Bringing of Writs and Actions. And an Action ſhall be always in the *Debet & Detinet*, when he who makes a Bargain or Contract, or lends Money to another, or he to whom a Bond is made, bringeth the Action againſt him who is bounden, or Party to the Contract and Bargain, or unto the Lending of the Money, *&c.* But if a Man ſells to another a Horſe, *&c.* if he brings Debt for the Horſe, the Writ muſt be in the *Detinet* only. *New Nat. Br.* 265. In Debt againſt Husband and Wife, for a Debt due from the Wife before Coverture, the Writ ſhall be in the *Debet & Detinet:* So in Debt againſt or for Succeſſors, in Reſpect of Obligations made to the Predeceſſor, *&c. Ibid.* Debt againſt an Heir, is to be in the *Debet & Detinet*, or it will be naught; if an Heir be to bring Debt, it ſhall be in the *Detinet:* And if a Man be bound to another, and makes his Executor and dies, if the Money due in the Time of the Teſtator be refuſed to be paid by the Executor, the Action muſt be brought againſt him only in the *Detinet*; and ſo in all Actions brought by Executors as Executors, though the Duty accrued in their own Time. But *Debet & Detinet* lies by an Executor on his own Contract: And if Leſſee for Years makes his Executor and dies, for Rent due after the Teſtator's Death, there the Action ſhall be in the *Debet & Detinet.* It is the like Law in Caſes of Adminiſtrators, as it is not certain what ſhall be recovered, only according to the Aſſets. 5 *Rep.* 31. An Executor upon a *Devaſtavit* ſhall be charged in the *Debet & Detinet*, the Action being upon a Judgment. 1 *Lill. Abr.* 399. In Action grounded on Privity of Contract; or Action of Eſcape, it muſt be brought in the *Detinet.* Cro. Jac. 545, 685. See *Executor.*

Debet & ſolet, Are alſo formal Words made Uſe of in Writs: And ſome Writs have theſe Words in them, which ought not to be omitted. Likewiſe according to the Diverſity of the Caſe, both *Debet* and *ſolet* are uſed, or *Debet* alone: As a *Quod permittat* may be in the *Debet & ſolet*, or in the *Debet* only, as the Demandant claims. And if a Perſon ſues to recover any Right, whereof his Anceſtor was diſſeiſed by the Tenant or his Anceſtor, then he uſeth the Word *Debet* alone in his Writ, becauſe his Anceſtor only was diſſeiſed, and the Eſtate diſcontinued: But if he ſue for any Thing that is now firſt of all denied him, then he uſeth *Debet & ſolet*, by Reaſon his Anceſtor before him, and he himſelf uſually enjoyed the Thing ſued for, until the preſent Refuſal of the Tenant. *Reg. Orig.* 140. The Writ of *Secta Molendini* is a Writ of Right, in the *Debet & ſolet*, *&c. F. N. B.* 98.

Debt, (*Debitum*) Is an Action which lieth where a Man oweth another a certain Sum of Money, by Obligation, or Bargain for a Thing ſold, or by Contract, *&c.* and the Debtor will not pay the *Debt*, at the Day agreed; then the Creditor ſhall have Action of *Debt* againſt him for the ſame. And if Money be due upon any Specialty, Action of *Debt* only lies; for no other Action may be brought for it: If a Man contract to pay Money for a Thing which he hath bought; and the Seller takes Bond for the Money, the Contract is diſcharged, ſo that he ſhall not have Action of *Debt* upon the Contract, but on the Bond. *New Nat Br.* 268. If one binds himſelf in a ſingle Obligation, or with Condition, to pay Money at a Day; or to deliver Corn, or the like, and do not perform it accordingly, the Obligee may bring Action of *Debt* for it. *F. N. B.* 120. A Man acknowledges by Deed, that he hath ſo much of the Money of *J. S.* due to him in his Hands; here *Debt* may be brought: And *Debt* will lie on a Talley ſealed. *F. N. B.* 122. 1 *H.* 6. 55. *A.* delivers 20*l.* to B. to buy Goods, and B. gives a Receipt to *A.* teſtifying the Delivery and Receipt of the 20*l.* but doth not promiſe to deliver the Goods, *&c.* *A.* may maintain Debt upon this Deed. *Dyer* 20. 2 *Bulſt.* 256. If a Man be bound by Bond to pay 20*l.* in Manner following, *viz.* 10*l* at one Day, and 10*l.* at another Day; Action of *Debt* will not lie till after the laſt Day, it being an entire Duty: But if one binds himſelf to pay *A.* B. 10*l.* at one Day, and 10*l.* at another, after the firſt Day Action of *Debt* lies for 10*l.* being a ſeveral Duty. 2 *Danv. Abr.* 501. On a Bond, *Debt* lies againſt the Heir of an Obligor, who has Lands by Deſcent, if the Executors have not ſufficient; and the Obligee may bring his Action againſt the Heir or Executor, although the Executor have Aſſets. *Anderſ.* 7. An Heir mediate may be ſued in *Debt* as if he were immediate Heir, *&c.* Though the Heir may not bring Action of *Debt* for a Debt due to his Anceſtor; if it be by Specialty, by which the Party is bound to pay it to him and his Heirs, the Executor ſhall nevertheleſs have the Action. *Dyer* 368. *F. N. B.* 120. Action of *Debt* lies not againſt Executors, upon a ſimple Contract made by the Teſtator. 9 *Rep.* 87. But *Debt* will lie for the Arrearages of an Account againſt Executors, of Receipts by the Teſtator. 2 *Danv.* 497. Before the Statute 32 *H.* 8. *c.* 37. the Heirs, or Executors of a Man ſeiſed of a Rent-ſervice, Rent-charge, *&c.* in Fee-ſimple, or Fee-tail, had no Remedy for the Arrearages incurred in the Life-time of the Owner of ſuch Rents: But by that Statute, the Executors and Adminiſtrators of Tenants in Fee-ſimple, Fee-tail, or for Life, of any Rent, ſhall have Action of *Debt* for all Arrearages of Rent due in the Life of the Teſtator. 1 *Inſt.* 162. 2 *Danv.* 492. A Feme Sole ſeiſed of a Rent in Fee, *&c.* which is behind and unpaid, takes Husband, and the Rent is behind again, and then the Wife dieth; the Husband by the Common Law ſhould not have the Arrearages before the Marriage, but for the Arrears becoming due during the Coverture, he might have Action of *Debt.* Now by the Stat. 32 *Hen.* 8. the Husband ſhall have the Arrears due before Marriage, and he hath a double Remedy for the ſame. 1 *Inſt.* 162. At the Common Law, *Debt* lies not for Rent upon a Leaſe for Life, (though it doth on a Leaſe for Years) but the Remedy is Aſſiſe, if the Plaintiff have Seiſin, or by Diſtreſs. 3 *Rep.* 65. But by Stat. 8 *Ann. cap.* 17. any Perſon having Rent in Arrear upon any Leaſe for Life or Lives, may bring Action of Debt for ſuch Rent, as where Rent is due on a Leaſe for Years. Action of *Debt* will lie againſt a Leſſee, for Rent due after the Aſſignment of the Leaſe; for the perſonal Privity of Contract remains, notwithſtanding the Privity of Eſtate is gone. 3 *Rep.* 22. But after the Death of the Leſſee, it is then a real Contract, and runs with the Land. *Cro. Eliz.* 555. When a Leaſe is ended, the Duty in Reſpect of the Rent remains, and *Debt* lieth by Reaſon of Privity of Contract between Leſſor and Leſſee. 2 *Cro.* 227. 1 *Nelſ. Abr.* 604. If *Debt* be brought by an Executor for Arrears of Rent ended, it is local ſtill, and muſt be laid where the Land lies. *Hob.* 37. Action of *Debt* may be had againſt the Leſſee in any Place; but if it be brought againſt an Aſſignee, it muſt be where the Land lieth: And upon the Privity of Contract, it is to be brought againſt the Leſſee where the Land is. *Latch* 197, 271. 2 *Leon. c.* 28. In ſome Caſes Action of *Debt* will lie, although there be no Contract betwixt the Party that brings the Action, and him againſt whom brought; for there may be a Duty created by Law, for which Action will lie. 2 *Saund.* 343, 366. *Debt* lieth againſt a Sheriff, for Money levied in Execution. 1 *Lill. Abr.* 403. Action of *Debt* lies againſt a Gaoler for permitting a Priſoner committed in Execution to eſcape; becauſe thereupon the Law makes the Gaoler Debtor: But where the Party is not in Execution, there Action on the Caſe only lies for Damages ſuffered by the Eſcape. 1 *Saund.* 218. 1 *Lill Abr.* 402. If I agree with a Taylor for a certain Price to make me a Suit of Clothes, the Taylor may have a general Action of *Debt* againſt me for the Money; though if the Price is not agreed on, there lies Action of the Caſe only, or ſpecial Action of *Debt* upon the ſpecial Contract, which the Law may imply on a *Quantum Meruit.* *Wood's Inſt.* 544. And *Debt* may be made Action on the Caſe, by proving Money lent, or Goods delivered, *&c.* whereupon Promiſe of Payment is implied in Law. A Man owes another a Sum of Money, and hath his Note under Hand, without Seal, Action of *Debt* on a *Mutuatus* lies; but the Defendant may wage his Law: In Action of the Caſe brought upon Promiſe of Payment, the Defendant cannot wage his Law. 4 *Rep.* 93. Action of *Debt* lies upon a parol Contract, and ſo doth Action on the Caſe. 1 *Lill.* 403. If Goods or Money are delivered to a third Perſon for my Uſe, I may have Action of *Debt* or Account for them. 2 *Danv* 404. Where Money is delivered to a Perſon, to be redelivered again, the Property is altered, and *Debt* lies: But where a Horſe, or any Goods are thus delivered, there Detinue lies, becauſe the Property is not altered; and the Thing is known, whereas Money is not. *Owen* 86 1 *Nelſ. Abr.* 603. *Debt* will lie againſt him that lodges or tables with another; by an Inn-keeper for the Lodging and Victuals of his Gueſt, *&c.* A Servant for his Wages, tho' he do his Service beyond Sea. 9 *Rep.* 87. *Debt* lieth not againſt a Maſter upon the Buying of the Servant, unleſs it come to the Maſter's Uſe, or be by his Agreement. *Doct. & Stud.* 137. Action of *Debt* lies againſt the Husband, for Goods which were delivered or ſold to the Wife, if they come to the Uſe of the Husband. 1 *Lill.* 400. If one delivers Meat, Drink, or Clothes, to an Infant, and he promiſes to pay for them, Action of *Debt* or on the Caſe, will lie againſt the Infant. Tho' *Debt* may not be brought on an Account ſtated with an Infant: And what is deliver'd, muſt be averr'd to be for the neceſſary Uſe of the Infant. 1 *Lill. Abr.* 401. An Attorney ſhall have Action of *Debt* againſt his Client, for Money, which he hath paid to any Perſon for the Client, for Coſts of Suit, or unto his Counſel, *&c.* A Perſon may have *Debt* upon an Arbitrament; but not for *Debt* referred to Arbitration, which muſt be Action on the Caſe: Alſo *Debt* lies for Money recovered upon a Judgment, *&c.* And upon a Recovery in *C. B.* he muſt bring the Action in *Middleſex*, the Record being there; but a *Sci. fac.* to execute Judgment, muſt be where the Original was, and follow it. *New Nat. Br* 267, 268, *&c.* When Judgment is had in the *King's Bench*, and a Writ of Error brought in the *Exchequer* Chamber, or in Parliament; yet an Action of *Debt* will lie on the Judgment: In this Caſe, if the Plaintiff levies Part of his Money by *Elegit*; he may likewiſe bring Debt for the Reſidue. 1 *Sid.* 236, 184. If a Man recovers *Debt* or Damages in *London*, on Action brought there by the Cuſtom of the City, which lies not at Common Law; when it is become a *Debt* by the Judgment, Action of *Debt* lies in the Courts at *Weſtminſter* upon this Judgment. 2 *Danv* 499. Action of *Debt* will lie for Breach of a By-Law; or for Amercement in a Court-Leet, *&c.* 1 *Lill.* 400. And Action of *Debt* is ſometimes grounded on an Act of Parliament; as upon the 2 *Ed.* 6. *c.* 13. for not ſetting out Tithes; the 27 *El. c.* 13. againſt the Hundred for a Robbery, *&c.* Againſt Phyſicians in *London*, for practiſing without Licence, by 14 *H.* 8. By Aſſignees of a Commiſſion of Bankrupt. 1 *Jac.* 1. *c.* 15, *&c.* A College ſhall have Action of *Debt* for Commons of any Student, adjudged *Paſch.* 9 *Jac. B. R.* For *Debt* to a Biſhop, or Parſon, after his Death, his Executors ſhall have the Action: But of a Dean and Chapter, Mayor and Commonalty, *&c.* the Succeſſors are intitled to the Action of *Debt. F. N. B.* 120. Action of *Debt* lies on a Recognizance; ſo upon a Statute Merchant, it being in Nature of a Bond or Obligation: But it is otherwiſe in Caſe of a Statute Staple. 2 *Danv.* 497. In bringing this Action, it is the general Rule, that the Party himſelf to whom the *Debt* is originally due, whilſt he doth live muſt bring the Action; and after his Death, his Executors, *&c.* And the Action muſt be brought againſt the Party himſelf that doth originally owe the *Debt*, whilſt he is living; and after his Death, it may be brought againſt his Executor, if he make any; or otherwiſe againſt the Adminiſtrator; and if the Ordinary appoint none, againſt the Ordinary himſelf; and if he die poſſeſs'd of the Goods, againſt his Executor, *&c.* And alſo againſt Executors of Executors *in infinitum. Dyer* 24, 471. 3 *Rep.* 9 2 *Brownl.* 207. In *Debt*, if it be demanded by Original, the Proceſs is Summons, Attachment and Diſtreſs; and upon a Default of Sufficiency, on a *Nihil* return'd, Proceſs to the Outlawry, *&c.* And the Judgment in *Debt*, where the Demand is in the *Debet & Detinet*, is to recover the Debt, Damages and Coſts of Suit; and the Defendant *in Miſericordia:* But if a Defendant denies his Deed, then a *Capias pro Fine* iſſues. 1 *Shep. Abr.* 523. The Defendant in *Debt* pleads a Releaſe, if at the Trial he makes Default, the Plaintiff ſhall have Judgment for his Debt, without a Verdict: *Contra*, if Dureſs, or Payment had been pleaded. *Jenk. Cent.* 68. Where the Plaintiff in *Debt*, declares on ſome Specialty, or Contract for a Sum of Money, it muſt be certainly demanded, and no other; and the Demand can't be of a leſſer Sum, but it muſt be ſhewn how the Remainder was ſatisfy'd: But in an *Action* upon a *Statute*, that gives a certain Sum for the Penalty; tho' leſs be recovered than the Plaintiff lays, it will be good. *Cro. Jac.* 498. If Action of *Debt* is brought on a Specialty, Bill, Bond, Leaſe, *&c.* the ſeveral Writings muſt be well conſidered by which the Plaintiff warrants his Action, and the Sum due is to be rightly ſet forth; and if it be *Debt* for Rent, the Time of Commencement, and Ending, *&c.* Alſo in *Debt* on Account, the Attorney muſt know when the Accounts were made up, and before whom, what the Party was to account for, and Time when, which are to be laid in the Declaration, *&c. Comp. Attorn.* 28. In *Debt* on ſingle Bill the Defendant may plead Payment (before the Action brought) in Bar: And pending an Action, on Bond, *&c.* the Defendant may bring in Principal, Intereſt and Coſts; and the Court ſhall give Judgment to diſcharge the Defendant. *Stat.* 4 & 5 *Ann. c* 16

Debt to the King. Under this Word *Debitum*, all Things due to the King are comprehended; as all Rents, Fines, Iſſues, Amercements, and other Duties received or levied by the Sheriff; for *Debt* in the larger Senſe, ſignifies whatever any Man owes. 2 *Inſt.* 198. The *King's Debt* is to be ſatisfied before that of a Subject; and until his *Debt* be paid, he may protect the *Debtor* from the Arreſt of others. 1 *Inſt.* 130. But by Statute, notwithſtanding the *King's* Protection, Creditors may proceed to Judgment againſt his *Debtor*, with a *ceſſet Executio* till the *King's Debts* be paid. 25 *Ed.* 3. Lands, *&c.* of the *King's Debtor* and Accountant, may be ſold as well after his Death, as in his Life-time: But if the Accountant or *Debtor to the King* had a *Quietus* during his Life, his Heir ſhall be diſcharg'd of the *Debt.* 27 *Eliz. cap.* 3. A Perſon being in *Debt* to the King, purchaſes a Leaſe to him and his Wife, and dies; the Term in the Wife's Hands is liable to the *Debt.* 2 *Roll. Abr.* 157. Though it is ſaid if he purchaſe Lands to him and his Wife for Life, and to their Heirs; ſuch Lands in the Hands of the Wife, are not extendible after the Husband's Death, for the *King's Debt. Dyer* 255. If a Tenant in Tail, becomes *indebted* to the King, by Receipt of the *King's Money*, or otherwiſe; unleſs it be by Judgment, Recognizance, Obligation, or other Specialty originally due to the King, or ſome other to his Uſe; and then dies, the Land in the Hands of the Iſſue in Tail ſhall not be extended: But it may, in either of thoſe four Caſes. 7 *Rep.* 21, 22. By the Common Law, the *King* for his *Debt* had Execution of the Body, Lands, and Goods of the *Debtor:* By *Magna Charta*, 9 *H.* 3. *c.* 8. the *King's Debt* ſhall not be levied on Lands, where the Goods and Chattels of the *Debtor* are ſufficient to levy the *Debt*; for in ſuch Caſe, the Sheriff ought not to extend the Lands and Tenements of the *King's Debtor*, or of his Heir, &c. 2 *Inſt.* 19. Alſo Pledges ſhall not be diſtrained, when the Principal is ſufficient: Though in both Caſes it muſt be made appear to the Sheriff; in the one, that there are Goods and Chattels enough, and in the other, that the Sheriff may levy the *King's Debt* on the Principal. *Ibid.* Sheriffs having received the *King's Debts*, upon their next Account are to diſcharge the *Debtors*, on Pain to forfeit treble Value; and the Sheriffs are to give Tallies to the *King's Debtors* on Payment. *Stat.* 3 *Ed.* 1. See *Execution.*

Debtors. It is here held, that Debt follows the Perſon of the *Debtor*, being on ſimple Contract; and not of the Creditor, as to Actions brought, &c. 3 *Keb.* 163. Where a *Debtor* is made *Executor* of a Will, the Debt is ſaid to be Aſſets, becauſe it is extinguiſhed not by Releaſe, but in the Way of Legacy. 1 *Salk.* 303. By Statute 8 & 9 *W.* 3. *c.* 18. Two Thirds in Number and Value of Creditors might make Compoſitions with *Debtors*, and bind all the reſt; making Oath before a Maſter in Chancery how their *Debts* became due, &c. But this Act was repealed by 9 & 10 *W.* 3. And there have been ſeveral Statutes for diſcharging poor *Inſolvent Debtors* out of Priſon, where they have had no Eſtate or Effects to pay their Creditors, &c. See *Priſoners.*

Deceit, (*Deceptio*) Is a ſubtle Trick or Device, whereunto may be drawn all manner of Craft and Colluſion, uſed to deceive and defraud another, by any Means whatſoever, which hath no other or more proper Name than *Deceit* to diſtinguiſh the Offence. *Weſt. Symb. Sect.* 68. And there is a Writ called *Breve Deceptione*, that lies for one that receives Injury or Damage from him that doth any Thing *deceitfully* in the Name of another Perſon: Which Writ is either original or judicial. *Reg. Orig.* 112. *Old Nat. Br.* 50. *Deceit* is an Offence at Common Law, and by Statute: And all Practices of defrauding or endeavouring to defraud another of his Right, are puniſhable by Fine and Impriſonment; and if for Cheating, Pillory, &c. Serjeants, Counſellors, Attornies and others, doing any Manner of *Deceit*, are to be impriſoned a Year and a Day; Alſo Pleaders by *Deceit* ſhall be expelled the Court. *Stat.* 3 *Ed.* 1. *cap.* 29. If a Fine be levied by *Deceit*; or if one recover Land by *Deceit*, the Fine, and the Recovery, ſhall be void. 3 *Rep.* 77. And if a Man be Attorney for another in a real Action againſt the Demandant, and afterwards by Covin between ſuch Attorney and the Demandant, the Attorney makes Default, by which the Land is loſt, the Tenant who loſt the Land ſhall have a Writ of *Deceit* againſt the Attorney. *F. N. B.* 96. In a *Præcipe quod reddat*, if the Sheriff return the Tenant ſummoned, where he was not ſummoned, by which the Defendant loſeth his Land by Default at the Grand *Cape* returned; the Tenant ſhall have a Writ of *Deceit* againſt him who recover'd, and againſt the Sheriff for his falſe Return; and by that Writ the Tenant ſhall be reſtored unto his Land again: And the Sheriff ſhall be puniſhed for his Falſity. *Ibid.* 97. If a Man bring a Writ of *Deceit* againſt him that recovers in the firſt Action, and the Sheriff return him ſummoned, upon which for Non-ſummons in that Action on finding the ſame the Recovery is reverſed; in this Caſe the Defendant ſhall not have Writ of *Deceit* to recover the Land again, if he were not ſummoned: But he ſhall have his Remedy againſt the Sheriff. *Roll Abr.* 621. And where *Debt* was brought, and the Defendant pleaded in Abatement, and the Plea was over-ruled; the Attornies on both Sides by *Deceit* between them, to the End the Plaintiff might recover his Debt, entered another Judgment when it ſhould have been a *Reſpondeas Ouſter*; and it was held that the Writ of *Deceit* would not lie to reverſe the Record, but only to recover Damages. *Ibid.* 622. If in a Suit or Action, another Perſon ſhall come into Court and pretend he is Party to the Suit, and ſo let Judgment be had, or ſome other Damage done to the Party himſelf; or if I have Cauſe to have an Action, and another brings it in my Name, and lets Judgment go againſt me by Nonſuit, or the like; I may have this Writ of *Deceit* againſt him. *F. N. B.* 96. *March* 48. If any one forge a Statute, &c. in my Name, and ſueth a *Capias* thereupon, for which I am arreſted; I ſhall have a Writ of *Deceit* againſt him that forged it, and againſt him who ſued forth the Writ of *Capias*, &c. *Ibid.* And if a Perſon procure another to ſue an Action againſt me to trouble me, I ſhall have a Writ of *Deceit.* There are many Frauds and *Deceits* provided againſt by Statute, relating to Artificers, Bakers, Brewers, Victuallers, falſe Weights and Meaſures, &c. which are liable to Penalties and Puniſhment in Proportion to the Offence committed. And Writ of *Deceit* lies in various Caſes, for not performing a Bargain; or not ſelling good Commodities, &c. 1 *Inſt.* 357. See *Action on the Caſe.* This *Writ* for ſuing out a falſe Proceſs runs thus: *If* A. B. *ſhall ſecure you*, &c. *then put*, &c. C. D. *to anſwer as well to us as the ſaid* A. *why a certain Writ or Proceſs be fraudulently and maliciouſly obtained*, &c. *in the Name of the ſaid* A. *whereof he was altogether ignorant, in Deceit of our Court, and to his great Damage*, &c.

Decem Tales, Is when a full *Jury* doth not appear at a Trial at Bar; then a Writ goes to the Sheriff *Apponere Decem Tales*, &c. whereby a Supply is made of Jurymen to proceed in the Trial.

Decies tantum, Is a Writ that lies againſt a *Juror*, who hath taken Money of either Party for giving his Verdict; ſo called, becauſe it is to recover ten Times as much as he took: And every Perſon that will may bring this Writ and recover the ſame, one half whereof ſhall be to the Proſecutor, and the other to the King. This Writ alſo lies againſt *Embraceors* that procure ſuch an Inqueſt; who ſhall be further puniſhed by Impriſonment for a Year. *Reg. Orig.* 188. *F. N. B.* 171. *Stat.* 38 *Ed.* 3. *cap.* 13. But *Decies tantum* doth not lie againſt the Embraceor, if he embrace and take no Money; for he ought to take Money, and alſo embrace. Yet it lies againſt the *Jurors*, although they do not give a Verdict, if they take Money; and ſo, 'tis ſaid, if they give a true Verdict, *Decies tantum* lies, if they take Money. *Dyer* 95. *New Nat. Br.* 380.

Decimation, (*Decimatio*) The puniſhing every *tenth Soldier* by Lot, was termed *Decimatio Legionis*: It likewiſe ſignifies Tithing, or Paying a tenth Part. There was a *Decimation* during the Time of the *Uſurper* 1655. which by the Loyal Party will not eaſily be forgotten.

Deciners, Decenniers, or **Doziners,** (*Decennarii*) Derived from the Fr. *Dizeine*, *i. e. Decas*, *Ten*, ſignify in our ancient Law, ſuch as were wont to have the Overſight of the *Friburghs*, or Views of *Frank-Pledge*, for the Maintenance of the King's Peace; and the Limits or Compaſs of their Juriſdiction was called *Decenna*, becauſe it commonly conſiſted of ten Houſholds; as every Perſon bound for himſelf and his Neighhours to keep the Peace, was ſtiled *Decennier*. *Bract. lib.* 3. *Tract.* 2. *cap.* 15. Theſe ſeemed to have large Authority in the Time of the *Saxons*, taking Knowledge of Cauſes within their Circuits, and redreſſing Wrongs by Way of Judgment and compelling Men thereunto, as appears in the Laws of King *Edward the Confeſſor*, publiſhed by *Lambard*, *Numb* 32. But of late Times *Decennier* is not uſed for the chief Man of a *Dizein*, or *Dozein*; but he that is ſworn to the King's Peace, and by Oath of Loyalty to his Prince, is ſettled in the Society of a *Dozein.* A *Dozein* ſeemed to extend ſo far as a Leet extendeth; becauſe in Leets the Oath of

Loyalty is adminiſtred by the Steward, and taken by all ſuch as are twelve Years old, and upwards, dwelling within the Precinct of the Leet where they are ſworn. *F. N. B.* 161. There are now no other *Dozeins* but Leets; and there is a great Diverſity between the ancient and theſe modern Times, in this Point of Law and Government. 2 *Inſt.* 73.

Declaration, (*Declaratio, Narratio*) Is a Shewing in Writing the Cauſe of Complaint of the Plaintiff in an Action againſt the Defendant, wherein the Party is ſuppoſed to have received ſome Wrong. And this ought to be plain and certain, becauſe it impeacheth the Defendant, and compels him to anſwer thereunto; it muſt ſet forth the Plaintiff's and Defendant's Names, the Nature and Cauſe of the Action, the Manner thereof, *&c.* and the Damage received. 1 *Inſt.* 17. A Count or *Declaration* ought to contain *Demonſtration, Declaration,* and *Concluſion:* In Demonſtration, are included three Things; *Quis queritur, contra quem, & pro qua Cauſa:* In *Declaration,* there ought to be compriſed, *Quomodo inter partes Actio accrevit, quando & qua die, anno & loco, & cui dabitur:* And in the Concluſion, ſhould be averred and offered to prove the Suit and Damage, *&c.* ſuſtained. *Terms de Ley* 222. A *Declaration* is an Expoſition of the Writ, with the Addition of Time, Circumſtances, *&c.* and muſt be true and clear, for the Court is not to take Things in it by Implication: But it is not neceſſary to ſet forth Matters of Fact, as in a Bill in Chancery, becauſe they are to be tried by a Jury. *Wood's Inſt.* 582. The Law requires four Things in *Declarations* and Pleadings, *viz.* 1. Truth 2. Certainty. 3. Order. 4. Congruity. In perſonal Actions; the Day, Year, and Place ought to be expreſſed in the *Declaration*; but not in real Actions: And if in Treſpaſs the Plaintiff declares, that it was committed ſuch a Day, *&c.* and continued *Diverſis diebus & vicibus,* without ſhewing the Days of the Continuance of it, this is good: For that is to be proved in Evidence, for the Increaſe of Damages. *Jenk. Cent.* 124. In Action of Debt, upon a Bond, the Plaintiff in his *Declaration* muſt alledge a Place where the Bond was made, becauſe the Jury ſhould come from that Place; and if this be omitted, the *Declaration* is ill. *Dyer* 15, 39. 1 *Nelſ. Abr.* 619. In Action of Covenant, no more of the Deed need be mentioned in the *Declaration,* than the Covenant where the Breach is aſſigned: And if a Defendant pleads *Non eſt factum* to a Deed, he allows a Covenant therein to be broken, as laid in the *Declaration,* and makes the *Declaration* good, though the Breach be too generally aſſigned. 2 *Cro.* 369. In Slander there ſhould be no more Inducement than is neceſſary: The like is to be obſerved in Actions upon general Statutes, concluding *contra formam Statuti, &c.* But in *Declarations* for Words, the Words ſpoke are to be laid expreſly and poſitively; not with an *hæc verba vel conſimilia,* nor with a *Quorum tenor ſequitur, &c. Cro. Eliz.* 645, 857. 5 *Mod.* 72. And where the Plaintiff declares on, and recites a Statute, he muſt recite it truly, and 'tis erroneous to miſrecite it; though as to the Subſtance of the *Declaration,* the Plaintiff might have omitted to recite it all. 1 *Nelſ.* 616. In Action on the Caſe upon *Aſſumpſit,* the Plaintiff is to declare upon the whole Promiſe made, and not on a Part of it; or on Trial he will be nonſuited. 1 *Danv. Abr.* 266, &c. It is good to lay large and ſufficient Damages in *Declarations*; in *Debt* it is uſual to double the Sum, *&c.* And Damages ſhall not be given for that which is not contained in the *Declaration,* and only for what is materially alledged. 10 *Rep.* 115. 1 *Lill. Abr.* 381. If one declare upon an Obligation, with an *hic in Curia Prolat',* he muſt on *Oyer* pray'd of it, ſhew the Obligation, or the *Declaration* will not be good. And a Plaintiff declaring as Executor or Adminiſtrator, ought to ſet forth the Probate of the Will, and Letters of Adminiſtration granted, with a *Profert in Curia*; or the *Declaration* will be naught. 2 *Lill. Abr.* 412. Where there are two Counts in a *Declaration,* for Things of the ſame Kind, and not averred to be different, it is not good; for the Defendant is twice charged, for the ſame Thing: But on Arreſt of Judgment in ſuch a Caſe, it was adjudged good after Verdict, and the Court will not intend them to be the ſame. 1 *Salk.* 213. If a *Declaration* is bad, and the Defendant demurs, the Plaintiff may ſet it right in a ſecond Action; but if the Defendant do not take Advantage of it, but pleads in Bar, and the Plaintiff proceeds to Iſſue thereon, if the Right is found for the Defendant, the Plaintiff is eſtopp'd by the Verdict from bringing a new Action: And ſo it is if he had demurred to the Plea in Bar. 1 *Mod.* 20, 207. Where a *Declaration* is defective, it is ſometimes aided by the Statutes of *Jeofails, &c.* but they help only Matters of Form, not Matters of Subſtance; for Uncertainty in a *Declaration,* which is Matter of Subſtance, is not aided by Statute after Verdict, as in Caſe of Treſpaſs for taking Fiſh, where their Number or Nature are not ſet forth. 5 *Rep.* 35. The Plaintiff, after the Return of the Writ, hath two Terms to exhibit his *Declaration* againſt the Defendant, that Term being reckoned one wherein the Writ was returnable: And if no *Declaration* comes in before the Riſing of the Court, the laſt Day of the ſecond Term, on a Rule of Court given, the Plaintiff ſhall be nonſuited, and the Defendant ſign a *Non. Proſ.* whereupon he ſhall have Coſts. If the Defendant appears in Perſon, the Plaintiff is to declare in three Days after Appearance in *B. R.* and in other Courts, at the next Court, by Stat. 8 *El. c.* 2. The Plaintiff's Attorney is to file his Warrant the Term wherein he declares. *Stat.* 4 & 5 *Ann.* If one be in Cuſtody of the Marſhal of the Court, any Plaintiff may file a *Declaration* againſt him, and he is obliged to plead thereto; it is the ſame when he is out upon Bail, any other may declare againſt him: For when a Man is in Cuſtody of the Law, he is bound to anſwer every one's Suit; and on *Hab. Corp.* a Stranger to the Writ by which the Priſoner is arreſted, may take Notice of the Priſoner when he is turned over to the Marſhal, though at the Suit of another, and declare againſt him, without taking out Proceſs. 1 *Lill.* 413. By Statute, when a Defendant is taken or charged in Cuſtody, upon any Writ out of the Courts at *Weſtminſter,* or impriſoned for Want of Sureties for Appearance, the Plaintiff muſt declare againſt him before the End of the next Term, and cauſe a Copy to be delivered to the Priſoner or Gaoler; to which *Declaration* the Priſoner is to plead, or the Plaintiff ſhall have Judgment. 4 & 5 *W. & M. cap.* 21. But if the *Declaration* be not enter'd, or left in the Office, before the End of the next Term; and *Affidavit* is made thereof, and filed, before the End of twenty Days after, *&c.* the Priſoner, on entering his Appearance, ſhall be diſcharged by *Superſedeas.* 8 & 9 *W.* 3. If a Perſon is in Cuſtody of the Marſhal, *&c.* and the Plaintiff would charge him either with an Action or Execution, (if in Term-time) he muſt file a Bill againſt him, and deliver a *Declaration* to the Turnkey, *&c.* and he ſhall lie in Cuſtody two Terms, *&c.* but if in Vacation, the Plaintiff is to go to the Marſhal's Book in the Office, and make an Entry *quod Defenden. remaneat in Cuſtodia ad ſectam* A. B. *&c.* 1 *Salk.* 213. And in *Declarations* againſt Priſoners by Virtue of any Proceſs out of *B. R.* it ſhall be alledged in Cuſtody of what Sheriff, Bailiff, *&c.* ſuch Priſoner is at the Time of the *Declaration* delivered; which Allegation ſhall be as effectual as if the Priſoner was in Cuſtody of the Marſhal. 4 & 5 *W. & M.* All *Declarations* are to be filed; for 'tis filing makes them Authentick, as the Foundation of the Cauſe depending; and before filed, they are not of Record to warrant a Judgment:

And if the Plaintiff's Attorney cannot find the Defendants's Attorney to deliver him the *Declaration*, filing it in the Office, will be a good Delivery; but Notice thereof muſt be given either to the Defendant or his Attorney, when they are to be found; and if the Defendant do not plead, Judgment ſhall be had againſt him. *Paſch.* 13 *Car. B. R.* On filing *Declarations*, Copies thereof are ſerved on the Defendants, or their Attornies, *&c.* And by an Order of all the Judges, *Anno* 12 *W.* 3. the Plaintiff's Attorney is not obliged to deliver the Defendant's Attorney the original *Declaration*; but inſtead of it, is to deliver a true Copy of the *Declaration*; upon Delivery or Tender whereof, the Defendant's Attorney ſhall pay for ſuch Copy after the Rate of 4 *d. per* Sheet, *&c.* and if any Perſon refuſe to pay for the Copy tender'd, the ſaid Copy is to be left in the Office, with the Clerk that keeps the Files of *Declarations*, and thereupon the Plaintiff's Attorney giving Rules to plead, may for Want of a Plea ſign Judgment; and before any Plea ſhall be received, the Defendant's Attorney is to pay for the Copy of the *Declaration.* 1 *Lill.* 417. And by a late Order, in every Cauſe where ſpecial or common Bail is filed, and Notice given to the Plaintiff, a Copy of the *Declaration* ſhall be delivered to the Attorney for the Defendant, who ſhall pay for it according to the uſual Rate; but if the Defendant's Attorney, or his Clerk in his Abſence, refuſes to pay for ſuch Copy; or if it happens the Habitation of the Attorney for the Defendant, be unknown to the Attorney for the Plaintiff; then it ſhall be lawful to leave the Copy, with the Officer of the Court appointed for filing *Declarations*, which ſhall be good, giving Notice, *&c. Ord. Cur. Trin.* 2 *Geo.* 2. On the firſt Day of the following Term after Delivery of the *Declaration*, the Paper of Rules is to be made up, writing on the Top the Attorney's Name and the Term, and under that the Names of the Plaintiff and Defendant, as *A. B. againſt C. D* &c. and the Paper of Rules muſt be carried to the Secondary, who will give one peremptory Rule to plead in eight Days, *&c.* A Plaintiff's Attorney, may amend his *Declaration* in *B. R.* in Matter of Form, after the General Iſſue pleaded, before Entry thereof, without paying Coſts, or giving Imparlance: But if he amend in Subſtance, he is to pay Coſts, or give Imparlance: And if he amend in Subſtance, after a ſpecial Plea pleaded, tho' he would give Imparlance, he muſt pay Coſts. 1 *Lill. Ab.* 409. A Miſtake in a *Declaration* the Plaintiff may amend in *C. B.* on Notice before the Eſſoin-Day, and the Defendant ſhall have no Advantage of it: Alſo before Demurrer, or Iſſue joined, the Plaintiff may amend, paying 13 *s.* 4 *d.* Coſts; and force the Defendant to plead preſently, or give him a further Imparlance without paying Coſts: But after Demurrer, or Iſſue joined, and when the Pleadings are entered on the Roll, the Plaintiff cannot amend his *Declaration*; but is to enter a Diſcontinuance, and proceed *de novo. Practiſ. Attorn. Edit.* 1. *p.* 147. On a *Latitat* in *B. R.* you may declare againſt the Defendant in as many Actions as you think fit; but you muſt have one Original, for every Action in *C. B.* The *Declaration* is grounded upon the Writ in the Common Pleas, and Bill of *Middleſex* in the King's Bench: And in *C. B.* it is uſual to declare in Actions on *Quare clauſum fregit*, as is practiſed on a *Latitat* in *B. R.* 2 *Ventr.* 259. One may not regularly declare in *B. R.* againſt a Perſon that is not *in Cuſtodia Mareſchalli*, or hath not filed Bail; unleſs he be a privileged Perſon. 21 *Car. B. R.* If a *Declaration* begins *Queritur de Placito Tranſg. pro eo quod, &c.* it may be a *Declaration* in Caſe, or it will ſerve for either Treſpaſs, or Caſe. *Cro. Car.* 325. The Plaintiff's Attorney is not obliged to ſet his Hand to his *Declaration*; for the Defendant's Attorney muſt receive it without, if he knows him to be the Attorney in the Cauſe. By Statute, no Man ſhall be prejudiced by the ancient Forms; ſo that the Matter of the Action be fully ſhewn in the *Declaration, &c.* which ſhall be good, tho' the Terms are not perfectly proper. 35 *E.* 3. *c.* 15. *Vide* 4 *Geo.* 2.

Form *of a* Declaration *in Debt in* B. R.

Midd. ſſ. A. B. *Complains of* C. D. *otherwiſe called* C. D. *of the Pariſh of St.* Clement's Danes *in the County of* Middleſex, *Gentleman, in the Cuſtody of the Marſhal of the* Marſhalſea *of our Sovereign Lord the King, before the King himſelf, of a Plea, that he render to the ſaid A. twenty Pounds of good and lawful Money of* Great Britain, *which he owes to him, and unjuſtly detains; for that, to wit, That whereas the ſaid* C. *the tenth Day of* September *in the fifth Year of the Reign of the Lord* George *the Second, now King of* Great Britain, *and ſo forth, at the aforeſaid Pariſh of St.* Clement Danes *in the County aforeſaid, by his certain Writing Obligatory, ſealed with the Seal of the ſaid* C. *and here ſhewn to the Court of the ſaid Lord the King, the Date whereof is the ſame Day and Year abovementioned, acknowledged himſelf to be held and firmly bound to the aforeſaid* A. *in the aforeſaid twenty Pounds, to be paid to the ſaid* A. *whenever afterwards he ſhould be thereto required: Nevertheleſs the ſaid* C. *altho' often required to pay the ſame, hath not paid to the ſaid* A. *the ſaid twenty Pounds, or any Part thereof; but hath hitherto refuſed, and ſtill doth refuſe ſo to do: Whereupon the ſaid* A. *ſaid, that he is injured, and hath Damage to the Value of ten Pounds; And therefore he brings his Suit,* &c.

Form *of a* Declaration *in Caſe on an* Aſſumpſit.

Som. ſſ. A. B. *Complains of* C. D. *being in the Cuſtody of the Marſhal,* &c. *for that, to wit, That whereas the ſaid* A. *on the Day,* &c. *in the Year of the Reign,* &c. *at the Pariſh of* G. *in the ſaid County of* Somerſet, *at the ſpecial Inſtance and Requeſt of the ſaid* C. *hath ſold and delivered to the ſaid* C. *to the proper Uſe of him the ſaid* C. *one Damask Bed,* &c. *at the Price of ten Pounds of lawful Money of* Great Britain; *he the ſaid* C. *then and there, that is to ſay, the Day and Year aforeſaid, at,* &c. *aforeſaid, in Conſideration thereof, aſſumed upon himſelf, or undertook, and to the ſaid* A. *then and there faithfully promiſſed, that he the ſaid* C. *would well and truly pay and content to the ſaid* A. *the aforeſaid ten Pounds, whenever after he ſhould be thereunto required: Yet the ſaid* C. *not regarding his Promiſe and Aſſumption aforeſaid, but contriving and fraudulently intending, craftily and ſubtilly, to deceive and defraud the ſaid* A. *in this Behalf, the aforeſaid ten Pounds, or any Penny thereof, hath not paid to the ſaid* A. *although the ſaid* C. *was afterwards thereto required by the ſaid* A. *to wit, on the Day and in the Year,* &c. *and often after that Time, at,* &c. *aforeſaid, but he hath hitherto always refuſed, and ſtill doth refuſe to pay the ſame to him; by Reaſon whereof he ſays that he is the worſe, and hath Damage to the Value of,* &c. *And therefore he brings his Suit.*

Form *of a* Declaration *in Treſpaſs in* B. R.

Wilts, ſſ. A. B. *Complains of* C. D. *in Cuſtody,* &c. *of that, That he the ſaid* C. *the Day,* &c. *in the Year of the Reign,* &c. *with Force and Arms, to wit with Clubs, Staves,* &c. *the Cloſe of him the ſaid* A. *called* M. *Cloſe, at,* &c. *in the County aforeſaid, broke and entered, and the Graſs of the ſaid* A. *to the Value of one hundred Shillings, then and there growing, with certain Beaſts, that is to ſay, with Horſes, Oxen, Cows and Sheep, eat up, trod down and conſumed; and continued the ſaid Treſpaſs at divers Days and Times, in ſo eating up, treading down and conſuming the Graſs* *of the aforeſaid* A. *there growing, from the ſaid Day of,* &c. *in the Year aforeſaid, until the Day,* &c. (*or between ſuch Day, and the ſaid Day*) *then next following; and other Injuries then and there did to the ſaid* A. *againſt the Peace of our ſaid Sovereign Lord the King, and to the Damage of him the ſaid* A. &c. *And therefore he brings his Suit,* &c.

Decretals, (*Decretales*) Are a Volume or Books of the *Canon Law,* ſo called, containing the *Decrees* of ſundry *Popes*; or a Digeſt of the Canons of all the Councils that pertained to one Matter under one Head. See *Canon Law.*

Decuriare, Signifies to bring into Order. *Mon. Ang. Tom.* 1. *p.* 243.

Dedbana, *Dead-bane, Sax.* An actual Homicide, or Manſlaughter. *Leg. H.* 1. *c.* 85.

Dedi, Is a Warranty in Law; as if it be ſaid in a *Deed* or Conveyance, That *A. B.* hath *Given, &c.* to *C. D.* it is a Warranty to him and his Heirs. *Co. Lit.* 304. Alſo *Dedi* imports a Power of giving any Thing. *Hob.* 12.

Dedication-Day, (*Feſtum Dedicationis*) The Feaſt of *Dedication* of *Churches,* or rather the Feaſt-*Day* of the Saint and Patron of a Church; which was celebrated not only by the Inhabitants of the Place, but by thoſe of all the neighbouring Villages, who uſually came thither; and ſuch Aſſemblies were allowed as lawful: It was uſual for the People to feaſt and drink on thoſe *Days*; and in many Parts of *England,* they ſtill meet every Year in Villages for this Purpoſe, which Days are called *Feaſts* or *Wakes.*

Dedimus Poteſtatem, Is a Writ or Commiſſion given to one or more private Perſons, for the ſpeeding ſome Act appertaining to a Judge, or ſome Court: And it is granted moſt commonly upon Suggeſtion, that the Party who is to do ſomething before a Judge, or in Court, is ſo weak that he cannot travel; as where a Perſon lives in the Country, to take an Anſwer in *Chancery*; to examine Witneſſes in a Cauſe depending in that Court; to levy a Fine in the *Common Pleas, &c.* F. N. B.

Dedimus Poteſtatem de Attornato faciendo. As the Words of Writs do command the Defendant to appear, *&c.* antiently the Judges would not ſuffer the Parties to make Attornies in any Action or Suit, without the King's Writ of *Dedimus Poteſtatem,* to receive their Attornies: But now by Statutes, the Plaintiff or Defendant may make Attornies in Suits without ſuch Writs. *New Nat. Br.* 55, 56.

Deed, (*Factum*) Is an Inſtrument in Parchment or Paper, but chiefly in Parchment, comprehending a Contract or Bargain, between Party and Party; or an Agreement of the Parties thereto, for the Matters therein contained: And it conſiſts of three principal Points, *Writing, Sealing,* and *Delivery*; Writing, to expreſs the Contents; Sealing, to teſtify the Conſent of the Parties; and Delivery, to make it binding and perfect. *Terms de Ley.* The Word *Scriptum* or Writing doth not import a *Deed*; for a Contract may be in Writing, and not by *Deed,* and if ſo, it is but a parol Agreement: But a *Deed* may be effectual, although it does not mention, in the Beginning, by or to whom it is made. 1 *Ld. Raym.* 28. Of *Deeds* there are two Sorts, *Deeds indented,* and *Deeds Poll*; which Names principally ariſe from the Form of them, the one being cut in and out at Top, dentwiſe, and the other plain: And a *Deed indented* is defined to be a *Deed* conſiſting of two Parts, or more, for there are *Deeds Tripartite, Quadripartite, Sextipartite, &c.* in which it is expreſſed, that the Parties have to every Part thereof interchangeably ſet their ſeveral Seals; and for that it contains more Parts than one, each Part is *indented,* or cut one of them into the other, that thereby it may appear they belong to one Buſineſs or Contract. *Weſt. Symb. Sect.* 47. A *Deed Poll* is a *Deed* teſtifying that only one of the Parties to the Agreement hath put his Seal to the ſame, where ſuch Party is the Principal or only Perſon, whoſe Conſent or Act is neceſſary to the *Deed*: And it is therefore a plain *Deed,* without indenting, and is uſed when the Vendor, for Example, only ſeals, and there is no need of the Vendee's Sealing a Counterpart, becauſe the Nature of the Contract is ſuch, as it requires no Covenant from the Vendee, *&c. Co. Lit.* 55. The ſeveral Parts of *Deeds* by Indenture, are belonging to the Feoffor, Grantor, or Leſſor, who have one; the Feoffee, Grantee, or Leſſee, who have another; and ſome other Perſons, as Truſtees, a third, *&c.* and the *Deed Poll* which is ſingle, and of but one Part, is delivered to the Feoffee, or Grantee, *&c.* All the Parties of a *Deed indented,* in Judgment of Law make but one entire *Deed*; but every Part is of as great Force, as all the Parts together, and they are eſteemed the mutual Acts of either Party, who may be bound by either Part of the ſame, and the Words of the Indenture are the Words of either Party, *&c.* But a *Deed Poll* is the ſole *Deed* of him who makes it, and the Words thereof ſhall be ſaid to be his Words, and bind him only. *Plowd.* 134, 421. *Lit. Sect.* 370. And there are other Diviſions of *Deeds*; ſome are *Abſolute,* and ſome *Conditional*; ſome *inrolled,* and others not inrolled; ſome concerning the *Realty,* ſome the Perſonalty, *&c.* and ſome have in them Matter of *Gift,* or *Grant*; and others Matter of *Diſcharge.* Alſo in every *Deed* well made, there muſt be Writing in Parchment or Paper; Form and Method in the Writing; it muſt be ſealed and delivered; the Parties to the *Deed* are to be able to make and take; and the Thing to be paſſed muſt be a Thing paſſable for the Matter and Manner, *&c.* 1 *Inſt.* 225. There are ſeveral Kinds of *Deeds,* by which Lands paſs from one Man to another; as *of Bargain and Sale, Feoffment, Leaſe and Releaſe, Indentures to lead the Uſes of Fines and Recoveries, Settlements, Leaſes, Aſſignments, Exchanges, Mortgages, &c.* And *Deeds* have ſeveral formal Parts, *viz. The Premiſſes,* Habendum, Reddendum, *Condition, Covenants, Warranty, Date, Sealing, &c.* The *Premiſſes* ſet forth the proper Names of the Parties, with their Additions of Place and Quality; and comprehend the Certainty of the Lands and Tenements to be conveyed, with the Conſideration of the *Deed,* as Money, Natural Love, *&c.* the Premiſſes alſo contain the *Exceptions,* if there be any out of the Land granted; as of Timber, Mines, *&c.* and in many *Deeds* there may be an Occaſion of a *Recital* of former *Deeds* in the Premiſſes, particularly in Aſſignments of Leaſes, Mortgages, *&c.* The *Habendum* names the Certainty of the Eſtate granted, for what Time the Grantee is to have it, and to what Uſe: And it ſometimes qualifies the Eſtate, ſo that the general Implication of it, which by Conſtruction of Law paſſes in the Premiſſes, by the *Habendum* may be controlled; but not if the Eſtate is expreſſed in the Premiſſes. Likewiſe an *Habendum* may explain the Premiſſes, to prevent Wrong; and ſometimes the Premiſſes are thereby inlarged. A Freehold cannot be granted by *Deed* with *Habendum* at a Day to come: And a *Deed* or Leaſe, *Habendum* from henceforth, includes the Day on which it was dated: But *Habendum à Die Datus* excludes it. The *Reddendum* is that Clauſe in the *Deed,* which reſerveth ſome new Thing to the Grantor; as Rent, Suit, Service, *&c.* and is uſually made by the Words *Yielding, Paying, Doing, &c.* A Leſſor cannot reſerve to any but himſelf, his Heirs and Executors, *&c.* nor can he reſerve to himſelf Parcel of the annual Profits, ſuch as the Herbage of the Land; for that would be repugnant to the Grant, it being a Part thereof. *Conditions* and *Covenants* in *Deeds,* are for the Holding or not holding of the Eſtate,

Eſtate granted, on Performance of ſome Act: And a Condition relating to a real Eſtate, is a Quality annexed by him that hath the Eſtate, Intereſt or Right in the ſame, whereby the Eſtate granted may be defeated, inlarged, or created, upon an uncertain Event. Conditions are expreſſed by theſe Words, *viz.* upon *Condition*, *provided*, *ſo that*, *&c.* and *provided* always, and it is *covenanted*, is a Condition, by Force of the *Proviſo*, and a Covenant, by Virtue of the other Words; tho' ſometimes a Proviſo ſhall amount to a *Covenant*, and ſometimes be taken for a *Limitation*, *Exception*, *Reſervation*, *Explanation*, *&c.* The *Warranty* in *Deeds*, is to ſecure the Eſtate to the Grantee and his Heirs, *&c.* and is a Covenant real, annexed to the Land granted, by which the Grantor and his Heirs are bound to warrant the ſame to the Grantee and his Heirs, and that they ſhall quietly hold and enjoy it; or upon Voucher, *&c.* the Grantor ſhall yield other Lands, to the Value of what ſhall be evicted. Where a Feoffor grants away all his Eſtate in the Land, and is not bound to warrant the Title, but the Feoffee is to defend it at his Peril; the Feoffee ſhall have all the *Deeds*, as Incidents to the Land, although not granted in expreſs Words: But where the Feoffor warrants the Land, it is otherwiſe, the Feoffor ſhall have them to defend the Title; and the Feoffee muſt truſt to his Warranty, and have only ſuch *Deeds* as concern the Poſſeſſion, *&c.* *In Witneſs, whereof, &c.* aſcertains the *Date* of the *Deed*; and is as well Part of it as what is written before. 1 *Inſt.* 6, 47, 201, 365. *Plowd.* 152. *Wood's Inſt.* 224, 225, *&c.* 1 *Nelſ. Abr.* 624, *&c.* *Deeds* of Bargain and Sale, are to be *inrolled* by Stat. 27 *Hen.* 8. And all *Deeds* are to be *regiſtred* in the Counties of *York*, and *Middleſex*. *Stat.* 2 *&* 6 *&* 7 *Ann.* A *Deed* may be good without all the orderly and formal Parts; but without *Delivery* by the Party himſelf, or his Attorney lawfully authorized, to the Party to whom made, or ſome other to his Uſe, it is no *Deed:* And the Delivery may be either abſolute or on Condition. 1 *Inſt.* 35. 2 *Rep.* 5. If a *Deed* ſealed lieth on the Table, and the Grantor ſaith to the Grantee, *Take that as my Deed*, or *this will ſerve*, *&c.* it is a good Delivery: But if it be thus left when ſealed, and tho Party to whom made takes it up, this is no Delivery, without ſome Words. Tho' where Parties have come for that Purpoſe, and done every Thing but Delivery; it has been adjudged a good Delivery in Law. *Cro. El.* 7. 1 *Leon.* 140. A *Deed ſealed and delivered*, 'tis ſaid may be good without ſigning; for the Seal is the eſſential Part of the *Deed:* But 'tis uſual to have *Deeds* ſigned; and there muſt be Witneſſes to the Sealing and Delivery, who are to indorſe or under-write their Names thereon: 1 *Inſt.* 7. 10 *Rep.* 93. If a Writing is not ſealed, it cannot be a *Deed:* And if the Print of the Seal be utterly defaced, the *Deed* is inſufficient, ſo that it cannot be pleaded; but it may be given in Evidence. 3 *Inſt.* 169. 5 *Rep.* 23. If any *Deed* be read falſe to an illiterate Perſon, tho' he ſign, ſeal, and deliver it, it ſhall not be his *Deed*, to bind him: Tho' if he does not require the *Deed* to be read, and ſeal and deliver it, he is bound by the ſame. 2 *Rep.* 3. 2 *Rol. Abr.* 28. And if he that is to ſeal the *Deed*, cauſe a Stranger covinouſly to read it falſe, to make the ſame void; this will not hurt the *Deed.* 12 *Rep.* 90. *Hob.* 96. If another Perſon ſeal my *Deed*, and I take it after ſealed and deliver it as my *Deed*; it is held to be good. *Perk. Sect.* 130. But if a Man *ſeal and deliver* a Piece of blank Paper, altho' he alſo command that a *Deed* be written in it, and this is done, it is no good *Deed. Co. Lit.* 171. Regularly there may not be two Deliveries of a *Deed*, for where the Firſt doth take Effect, the Second is void: Unleſs it be where the *Deed* is delivered to a Stranger as an Eſcrow; or when a *Deed* good at firſt, becomes void afterwards by the Breach of the Seal; or a Feme Covert ſeals a *Deed*, and after being ſole delivers it again, *&c.* *Perk. Sect.* 154. *Co. Lit.* 48. 5 *Rep.* 119. The Delivery of any *Deed* may be alledged at any Time after the Date; but not before. *Dyer* 315. In *Deeds*, the *Conſideration* is a principal Thing to give them Effect: And the Foundation of *Deeds* ought always to be honeſt. *Falſe Latin* or falſe *Engliſh*, will not make a *Deed* void: But *Raſure* or *Interlineation* in a material Part, will render the ſame void; unleſs ſome *Memorandum* be made thereof on the Back of the *Deed*, teſtifying its being done before Sealing. 1 *Rol. Rep.* 40. If Words are blotted out in a *Deed*, by a Grantee or Leſſee himſelf, although it be not in a Place material, it will make the *Deed* void. *Dyer* 261. It has been adjudg'd, where an Eſtate cannot have its Eſſence without a *Deed*, there if the *Deed* is raſed in any material Part, after the Delivery, it makes the Eſtate void: But if the Eſtate may have Eſſence without a *Deed*, then notwithſtanding it is created by *Deed*, and that *Deed* is raſed, it ſhall not deſtroy the Eſtate, but the *Deed.* 1 *Nelſ. Abr.* 625. When a Choſe in Action is created by *Deed*, the Deſtruction of ſuch *Deed* is the Deſtruction of the Duty itſelf; as in Caſe of a Bond, Bill, *&c.* though it is not ſo, where an Eſtate or Intereſt is created by a *Deed.* 3 *Salk.* 120. If a *Deed* be ſuppreſs'd, on Proof made that it came to the Party's Hands, and of its Contents, the Perſon injured will have the ſame Benefit to hold the Eſtate, as if the *Deed* could be produced. 2 *Vern. Rep.* 280. A Perſon committed for burning a Deed. See 2 *Vern.* 561. *Abr. Caſ. Eq.* 169. An Indorſement on a *Deed*, at the Time of the Sealing and Delivery, is a Part of the ſame: But if an Indorſement be after the Delivery, it is a new *Deed. Mod. Caſ.* 237. *Deeds*, if *fraudulently* made; when got by *Corrupt Agreement*, as on uſurious Contract; and when made by *Force* or *Dureſs*, *&c.* are void: So they are for Uncertainty, and by Reaſon of Infancy, Coverture, or other Diſability in the Makers, *&c.* 2 *Rol. Abr.* 28. 1 *Inſt.* 253. 11 *Rep.* 27. A *Deed* may be good in Part, and void in Part; or good againſt one Perſon, and void as to another: If all the Parts of a *Deed* may by Law ſtand together, no one Part ſhall make the Whole void. And if a *Deed* by any *Conſtruction* of Law can be conſtrued to have legal Operation, the Law will not make it utterly void, tho' it may not operate according to the Purport of the *Deed:* Alſo the Law will tranſpoſe and marſhal Clauſes in *Deeds*, to come at their true Meaning; but not to confound them. Where the Words of a *Deed* may have a double Intendment, one ſtanding with Law, and the other contrary to it; the Intendment that ſtandeth with Law ſhall be taken. 1 *Lill. Abr.* 421. 1 *Inſt.* 42, 217. 1 *Shep. Abr.* 540. There are four Grounds for the *Expoſition of Deeds.* 1. That they may be beneficial to the Taker. 2. That where the Words may be imployed to ſome Intent, they ſhall never be void. 3. That the Words be conſtrued according to the Intention of the Parties, and not otherwiſe; and the Intent of the Parties ſhall take Effect, if it may poſſibly ſtand with Law. 4. That they are to be conſonant to the Rules of the Law. And *Deeds* ſhall have a reaſonable Expoſition, without Injury againſt the Grantor, to the greateſt Advantage of the Grantee. They are to be expounded upon the Whole, and if the ſecond Part contradicts the firſt, ſuch ſecond Part ſhall be void; but if the latter Part expounds or explains the former, which it may do, both of them ſhall ſtand. *Plowd.* 160. *Raym.* 142. 6 *Rep.* 36. 1 *Inſt.* 313. 1 *Rol. Rep.* 375. The firſt *Deed* of a Perſon, and laſt Will, ſtand in Force. In *Deeds* indented, all Parties are eſtopped, or concluded, to ſay any Thing againſt what is contained in the *Deed.* 1 *Inſt.* 45. And where a *Deed* is by Indenture between Parties none can have an Action upon that *Deed*, but he who is a Party to it; but where 'tis a *Deed* Poll, one may covenant with another who is not a Party to it, to do certain Acts, for the Non-performance whereof he may bring an Action. 2 *Lev* 74. Where a Man juſtifies Title under a *Deed*, he is to produce the *Deed:* If a *Deed* is alledged in Pleading, it muſt be ſhewed to the Court, that the Court may judge of the Validity of it, and whether there are ſufficient Words to make a good Contract; and when it is ſhewn to the Court, the *Deed* ſhall remain in Court all the Term, in the Hands of the *Cuſtos Brevium*; but at the End of the Term, it ſhall be delivered to the Party. If the *Deed* is denied, it muſt remain in Court 'till the Plea is determined. 10 *Rep.* 88. *Wood* 235. A *Deed* ſet forth with a *Profert hic in Curia*, remains in Court in Judgment of Law all that Term; and any Perſon may during that Term, have Benefit by it, though he hath it not ready to ſhew; the adverſe Party may take any Advantage by the *Deed* that it will afford him. 5 *Rep.* 74. 1 *Nelſ.* 625. *Deeds* ſealed and delivered cannot be pleaded, &c. if not ſtamped according to Law. 5 & 6 *W.* & *M. cap.* 21. Every *Deed* that is pleaded, ſhall be intended to be a *Deed* Poll; except it be alledged to be indented: And if it begins, *This Indenture made*, &c. though it be not indented, it may be a good *Deed* Poll. 5 *Rep* 20. A *Deed* Poll commonly begins thus: *To all People to whom theſe Preſents ſhall come*, &c. Or, *Know all Men by theſe Preſents*, &c. See *Accompliſh'd Conveyancer*, Vol. 1. Edit. 2.

Deemſters, From the Sax. *Dema*, a Judge of Umpire, are a Kind of Judges in the *Iſle of Man*, who without Proceſs, or any Charge to the Parties decide all Controverſies in that Iſland; and they are choſen from among themſelves. *Camb. Brit.*

Deer-feld, A Park or *Deer fold*; Sax. *Deer*, *Fera*, and *Fald*, *Stabulum. Cowel.*

Deer-Hays, Are Engines, or great Nets made of Cords to catch Deer; and no Perſon not having a Park, &c. ſhall keep any of theſe Nets, under the Penalty of 40*s.* a Month. *Stat.* 19 *H.* 7. *cap.* 11.

Deer-ſtealers, There are ſeveral Laws, for the Puniſhment of *Deer-ſtealers*; as by 3 *Jac.* 1. *cap.* 13. None ſhall kill or chaſe any *Deer*, in any Park or incloſed Ground, on Pain of ſuffering three Months Impriſonment, and to pay treble Damages: And Perſons not having 40*l.* *per Ann.* in Lands, or worth 200*l.* in Goods, &c. are not to uſe any Gun, Bow, Dog, &c. to kill *Deer*; and their Guns, &c. may be taken from them. By the 13 *Car.* 2. *cap.* 10. It is ordained, that whoever ſhall courſe, kill, hunt, or take away any Red, or Fallow *Deed*, from any Parks, &c. ſhall be liable to a Penalty of 20*l.* And the Stat. 3 & 4 *W.* & *M.* *c.* 10. inflicts a Penalty of 20*l.* for unlawful Hunting and Courſing of any *Deer*; and 30*l.* for Taking, Wounding, or Killing, to be levied by Diſtreſs; which is to be divided into three Parts; one whereof to go to the Informer, another to the Poor, and the other to the Owner of the *Deer*; and if no Diſtreſs can be had, the Offenders ſhall be impriſon'd a Year, and ſet on the Pillory, &c. Pulling down Pales or Walls of Parks, &c. where *Deer* are incloſed, by this Act is puniſhed with three Months Impriſonment: And the Offences are determined by Juſtices of Peace of the County where committed. Alſo by 5 *Geo.* 1. *c.* 15 & 28. Perſons guilty of *Deer-ſtealing*, may be indicted before a Judge of Gaol-Delivery, and in that Caſe be tranſported to the Plantations for ſeven Years: And Perſons otherwiſe convicted before they are diſcharged, are to enter into Bond of 50*l.* Penalty to the Perſon injured for future good Behaviour. Keepers of Parks, killing *Deer* without Conſent of the Owners, incur a Forfeiture of 50*l.* and others pulling down Walls and Fences of Parks, are liable to the Penalties inflicted by 3 & 4 *W.* & *M.* for killing of *Deer*. Thus ſtood our Laws till the great Inſolencies of the *Waltham-Blacks* made a further Proviſion neceſſary, when by Statute 9 *Geo.* 1. *c.* 22. it was enacted, that if any Perſons armed with Swords, Fire-Arms, or other Weapons, and having their Faces *blacked*, or being otherwiſe diſguiſed, ſhall appear in any Foreſt, Park, &c. and unlawfully hunt or kill any *Deer*; rob any Warren, &c. or ſhall ſet Fire to any Houſe, or ſhoot at any Perſon in a Dwelling-houſe, or other Place; or ſend any Letter without a Name ſubſcribed, or with a fictitious Name, demanding Money of any Perſon, &c. they ſhall be guilty of Felony without Benefit of Clergy: And 50*l.* Reward is given for the Apprehenſion of the Offenders. This Statute is continued for five Years, by 12 *Geo.* 1. *cap.* 30. Perſons convicted a ſecond Time, of hunting or taking away *Deer* in unincloſed Foreſts, &c. or coming armed with an Intent to hunt or or take them, who ſhall beat or wound any Keeper, &c. ſhall be tranſported for ſeven Years. 10 *Geo.* 2. *c.* 32. Before the *Charta de Foreſta*, 9 *H.* 3. to hunt the King's *Deer*, in any Foreſt or Park was Felony; but that Charter ordained that none ſhould loſe either Life or Member for killing the King's *Deer* 2 *Roll. Rep.* 120. And the Hunting in any Foreſt, &c. with Vizors or painted Faces in the Day-time; or in the Night with or without ſuch Vizors, if the Party conceal the ſame, it is Felony by Stat. 1 *H* 7. So that we may obſerve there is ſome Agreement between our ancient Laws and modern Statutes. A Perſon was convicted on the Statute of *Deer ſtealing*, and it appearing by the Conviction, that the *Deer* were not in a Park incloſed, &c. upon Motion in B. *R.* the Conviction was quaſhed. *Mich.* 9 *W.* 3. *Mod Juſt* 161. A Conviction of *Deer ſtealing* may be removed by *Certiorari* into B. *R* but the Party doing it, is to give Bond in the Penalty of 60*l.* to the Juſtice of Peace before whom convicted, to proſecute ſuch *Certiorari*, and pay the Forfeiture due by the Conviction, or render his Perſon in a Month after the Conviction confirmed, &c. 5 *Geo.* 1.

Form of an *Indictment* for Hunting and Taking *Deer.*

Midd. ſſ. T*HE Jurors*, &c. *That* A. B. *of*, &c *in the County aforeſaid, Yeoman, on the Day, and in the Year*, &c. *about Twelve of the Clock in the Night of the ſame Day, being aſſembled with divers other Malefactors and Diſturbers of the Peace of our Lord the King yet unknown, with Force and Arms, that is to ſay, with Staves, Swords, Daggers, and Knives, and other Arms, the Cloſe and Park of* T. D. *Eſquire, at*, &c. *in the ſaid County, unlawfully broke and entered, and the* Deer *of him the ſaid* T. D. *then and there grazing, and lying down in the ſaid Park, with two Hare-Dogs or* Greyhounds *hunted; and with a Net called a* Buckſtal, *that the ſaid* A. B. *in the Park aforeſaid then had, and the Dogs aforeſaid then and there did take, kill, and carry away two Fallow* Deer, *againſt the Peace*, &c. *to the great Damage of him the ſaid* T. D. *and againſt the Form of the Statute*, &c.

De eſſendo quietum de Tolonio, Is a Writ that lies for thoſe who are by Privilege free from the Payment of *Toll*; on their being moleſted therein. *F. N. B.* 226.

De Expenſis militum, A Writ commanding the Sheriff to levy the Expences of a *Knight of the Shire* for Attendance in *Parliament*, being 4*s.* *per Diem*, by Statute: And there is a like Writ *De Expenſis Civium & Burgenſium*, to levy 2*s.* *per Diem*, for the Expences of every *Citizen* and *Burgeſs* of *Parliament.* Stat. 23 Hen. 6. cap. 11. 4 Inſt. 46.

De facto, Signifies a Thing actually done; that is done indeed. A King *de facto* is one that is in actual Poſſeſſion of a Crown, and hath no lawful Right to the ſame; in which Senſe it is oppoſed to a King *de Jure*, who hath Right to a Crown, but is out of Poſſeſſion. 3 *Inſt.* 7.

Default, (Fr. *Defaut*) Is commonly taken for *Non-appearance* in Court, at a Day aſſigned; though it extends to any Omiſſion of that which we ought to do. *Bract. lib.* 5. *Tract.* 3. *Co. Litt.* 259. If a Plaintiff makes *Default* in Appearance in a Trial at Law, he will be nonſuited; and where a Defendant makes *Default*, Judgment ſhall be had againſt him by *Default*. In Action of Debt upon Bond, if the Defendant pleads a Releaſe, and Iſſue is thereupon joined, if at the Trial the Defendant makes *Default*, the Plaintiff may pray Judgment by *Default*; becauſe by the Plea the Duty is confeſſed, and therefore no Inqueſt need be taken by *Default*: But if the Defendant plead *Non eſt factum*, by that Plea the Duty is denied, and therefore if he make *Default*, Inqueſt muſt be taken by *Default*. In Treſpaſs, if the Defendant plead a Releaſe, and then make *Default*, the Plaintiff cannot pray Judgment by *Default*; but an Inqueſt is to be taken, becauſe Damages are incertain. 1 *Salk.* 216. Tenant in Tail, Tenant in Dower, by the Curteſy, or for Life loſing their Lands by *Default*, in a *Præcipe quod Reddat* brought againſt them; they are to have Remedy by the Writ *Quod ei deforciat*, &c. *Stat. Weſtm.* 2. *cap.* 4. And in a *Quod ei deforciat*, where the Tenant joined Iſſue upon the mere Right, and the Jury appearing, the Defendant made *Default*; it was adjudged, that in ſuch Caſe final Judgment ſhall be given: But if the Tenant had made *Default*, it would be otherwiſe, for then a *Petit Cape* muſt iſſue againſt him, becauſe it may ſo happen that he may ſave his *Default*. 1 *Nelſ. Abr.* 627. By *Default* of a Defendant, he is ſaid to be generally out of Court to all Purpoſes, but only that Judgment may be given againſt him: And no Judgment can be afterwards given for the Defendant. *Ibid.* 628. When two are to recover a perſonal Thing, the *Default* of one is the *Default* of the other: *Contra*, where they are to diſcharge themſelves of a Perſonalty; there the *Default* of the one is not the *Default* of the other. 6 *Rep.* 25. 1 *Lill. Abr.* 425. In an Action againſt two, if the Proceſs be determined againſt one, and the other appears; he ſhall be put to anſwer, notwithſtanding the *Default* of his Companion. 2 *Danv. Abr.* 480. Where the Baron is to have a Corporal Puniſhment for a *Default*, there the *Default* of the Wife ſhall not be the *Default* of the Husband: But otherwiſe it is where the Husband is not to have any Corporal Puniſhment by the *Default*. *Ibid.* 472, 473. If a Defendant imparl to another Day in the ſame Term, and make *Default* at the Day, this is a Departure in Deſpite of the Court: And when the Defendant after Appearance, and being preſent in Court, upon Demand makes Departure, it is in Deſpite of the Court, and the Entry is, *Et præd. Tenens, licet ſolemniter exactus, non revenit, ſed in contemptum Curiæ receſſit, &* Defaltum *fecit, &c. Co. Litt.* 139. Before a Verdict is taken by *Default*, the Cryer of the Court calls the Defendant three Times; and if he doth not appear, the Plaintiff's Counſel prays, that the Inqueſt may be taken by *Default*: He is called three Times, to ſhew if he hath any Challenge to the Jurors; and if he doth not appear upon the Cryer's Calling, then the *Capiatur per Default* is indorſed on the Back of the Panel. 1 *Lill.* 425. *Default*, and Saver of *Default*, made a large Title in the old Books of Law.

Default in Criminal Caſes. An Offender indicted appears at the *Capias*, and pleads to Iſſue, and is let to Bail to attend his Trial, and then makes *Default*; here the Inqueſt in caſe of Felony, ſhall never be taken by *Default*, but a *Capias ad audiendam juratam* ſhall iſſue, and if the Party is not taken an *Exigent*; and if he appeared on that Writ, and then make *Default*, an *Exigi facias de novo* may be granted: But where upon the *Capias* or *Exigent* the Sheriff returns *Cepi Corpus*, and at the Day hath not his Body, the Sheriff ſhall be puniſhed, but no new *Exigent* awarded, becauſe in Cuſtody of Record. 2 *Hale's Hiſt. P. C.* 202.

Default of Jurors. If *Jurors* make *Default* in their Appearance for trying of Cauſes, they ſhall loſe and forfeit *Iſſues*, unleſs they have any reaſonable Excuſe proved by Witneſſes, in which Caſe the Juſtices may diſcharge the Iſſues for *Default*. Stat. 35 H. 8. c. 6.

Defamation, (*Defamatio*) Is when a Perſon ſpeaks ſcandalous Words of another, or of a Magiſtrate, &c. whereby they are injured in their Reputation; for which the Party offending ſhall be puniſh'd according to the Nature and Quality of his Offence; ſometimes by Action on the Caſe at Common Law, ſometimes by Statute, and ſometimes by the Eccleſiaſtical Laws. But *Defamation* is properly puniſhable by the Spiritual Courts; in which Courts, it ought to have three Incidents, *viz. Firſt*, It is to concern Matters Spiritual, and determinable in the Eccleſiaſtical Courts; as for calling a Man Heretick, Schiſmatick, Adulterer, Fornicator, &c. *Secondly*, That it be a Matter Spiritual only; for if the *Defamation* concern any Thing determinable at the Common Law, the Eccleſiaſtical Judges ſhall not have Conuſance thereof. And *Thirdly*, Altho' ſuch *Defamation* be merely Spiritual, yet he that is defamed cannot ſue for Damages in the Eccleſiaſtical Courts; but the Suit ought to be only for Puniſhment of the Fault, by Way of Penance. *Terms de Ley* 224, 225. See *Action of the Caſe for Words*, alſo *Prohibition*.

Defeaſance, (from the Fr. *Defaire*, to defeat) Signifies a Condition relating to a Deed, which being performed, the Deed is *defeated*, and render'd void, as if it never had been made. The Difference between a common *Condition* and a *Defeaſance* is, that the Condition is annexed to, or inſerted in the Deed; and a *Defeaſance* is a Deed by itſelf, concluded and agreed on between the Parties, and having Relation to another Deed. To make a good *Defeaſance*, it muſt be, 1. By Deed, for there cannot be a *Defeaſance* of a Deed without Deed; and a Writing under Hand doth not imply it to be a Deed. 2. It muſt recite the Deed it relates to, or at leaſt the moſt material Part thereof. 3. It is to be made between the ſame Perſons that were Parties to the firſt Deed. 4. It muſt be made at the Time, or after the firſt Deed, and not before. 5. It ought to be made of a Thing *defeaſible*. 1 *Inſt.* 236. 3 *Lev.* 234. Inheritances executed by Livery, ſuch as Eſtates in Fee, or for Life, cannot be ſubject to *Defeaſance* afterward, but at the Time of making the Feoffment &c. only: But executory Inheritances, ſuch as Leaſes for Years, Rents, Annuities, Conditions, Covenants, &c. may be defeated by *Defeaſance* made after the Things granted. And it is the ſame of Obligations, Recognizances, Statutes, Judgments, &c. which are moſt commonly the Subject of *Defeaſance*, and uſually made after the Deed whereto they have Relation. *Plowd.* 137. 1 *Rep.* 113. If a Man acknowledge a Statute to another, and enters into a *Defeaſance*, that if his Lands in ſuch a County ſhould be extended, the Statute ſhould be void; the *Defeaſance* will be good, and not repugnant, becauſe it is by another Deed: But the Condition of a Bond not to ſue the Obligation, is void for Repugnancy, being in the ſame Deed. *Moor* 1035. Although the Condition of an Obligation, where it is repugnant to it, be void; 'tis otherwiſe in Caſe of a *Defeaſance*, made after the Bond, for this ſhall be good notwithſtanding: As where the Obligee afterwards grants by Deed to the Obligor, that he will not ſue thereon at all; or not till ſuch a Time, or that it ſhall be diſcharged, &c. 20 *H.* 7. 24. *Fitz. Bar.* 71. If *A.* be bound in a Bond to *B.* in 20 *l.* and he makes a *Defeaſance* to *C.* that if he pay him the like Sum, the Obligation made by *A.* ſhall be void; this is no good *Defeaſance*,

ſance, becauſe it is not made between the ſame Parties: Though if a Statute be entered into to Huſband and Wife, and the Huſband alone make a *Defeaſance*, it may be good. 14 *H.* 8. 101, 2 *Shep. Abr.* 488. It has been held, that if a Diſſeiſee releaſe his Right to the Tenant of the Land, and after there is a *Defeaſance* between them, that if the Releſſor ſhall pay ſo much, the Releaſe to be void; by this it will not be *defeated:* And yet ſuch a Releaſe may be avoided by a Condition or *Defeaſance* made at the Time of making it. *Bro. Defeaſ.* 6. *Plowd.* 137. 1 *Inſt.* 236. A Statute, &c. may be *defeaſanced* on Condition of performing a Will, and paying Legacies to other Perſons. 1 *Cro.* 837. If a *Defeaſance* of a Statute be made, and after another *Defeaſance* is made by the *ſame Parties*, the firſt *Defeaſance* becomes void thereby; and the ſecond only is in Force, as in a Will. 2 *Danv. Abr.* 481. Where a Statute is acknowledged to two Perſons, and one of them makes a *Defeaſance*, it is ſaid to be a good Diſcharge. *Ibid.* 480. If Execution be ſued out before the Time in a *Defeaſance* is paſt, it ſhall be ſet aſide in *B. R.* 1 *Lill.* 426. In a *Defeaſance* of a *Deed of Lands*, the Perſon to whom made, *covenants* that on Payment of a certain Sum, on ſuch a Day, he will transfer and reconvey the Eſtate back again; and that the Maker ſhall enjoy till Default, &c. If the *Defeaſance* be of a Judgment, he covenants that on Payment of the Money, he will enter Satisfaction on Record: If of a *Statute* or *Bond*, that on Payment it ſhall be void, &c. *Law of Securities* 144, 146, 148, &c. Vide *Mortgage.*

Defence, In a legal Signification is applicable to a Plea, and is that which the Defendant ought to make immediately after the Count or Declaration, *viz.* That he defends all the *Wrong*, *Force*, and *Damages*, where and when he ought, &c. And by defending the Force and Wrong, he excuſes himſelf of the Wrong ſurmiſed againſt him, and makes himſelf Party to the Plea; and by defending the Damage, he affirms the Plaintiff able to be anſwered unto: So that if he will ſhew any Diſability in the Plaintiff then he ought to omit the *Defence* of the Damage, and demand Judgment if the Party ſhall be anſwered unto: For the Reſidue of the *Defence*, the Defendant accepts the Power of the Court to hear and determine their Pleas. *Terms de Ley* 227. A *Defence* is ſometimes a full *Defence*, and that is where the Plea begins with theſe Words, *Venit &* Defendit *vim & injuriam quando*, &c. and this is uſual in perſonal Actions: But there is another *Defence* in real Actions, where the Plea begins *Venit & dicit*, &c. In every *Præcipe*, where Land is demanded, the *Defence* muſt be *Venit &* Defendit *jus ſuum*, &c. As in a *Writ of Intruſion*, *Writ of Formedon*, &c. 1 *Nelſ. Abr.* 629. A Defendant cannot plead any Plea, before he hath made a *Defence*; tho' this muſt not be intended abſolutely, for in a *Scire facias* a *Defence* is never made. 3 *Lev.* 182.

Defend, (*Defendere*) In our ancient Laws and Statutes ſignifies to forbid: And there is a Statute intituled, *Statutum de* Defenſione *portandi Arma*, &c. 7 *Ed.* 1. In divers Parts of *England*, we commonly ſay *God defend*, inſtead of *God forbid.* Blount.

Defendant, (*Defendens*) Is the Party that is ſued in a *Perſonal Action*; as Tenant is he that is ſued in an *Action Real.*

Defendemus, Is an ordinary Word uſed in Grants and Donations; and hath this Force, that it binds the Donor and his Heirs to *defend* the Donee, if any one go about to lay any Incumbrance on the Thing given, other than what is contained in the Deed of Donation. *Bract. lib.* 2. *c.* 16. See *Warranty.*

Defender of the Faith, (*Fidei Defenſor*) Is a peculiar Title belonging to the *King of England*; as *Catholicus*, to the *King of Spain*; and *Chriſtianiſſimus*, to the *King of France*, &c. Theſe Titles were given by the *Popes of Rome*; and that of *Defenſor Fidei* was firſt conferred by *Pope Leo* the Tenth, on King *Henry* the Eighth, for Writing againſt *Martin Luther*, and the Bull for it bears Date *Quinto Idus Octob.* 1521. Lord *Herbert's Hiſt. Hen.* 8. 105. But the *Pope*, on King *Henry*'s ſuppreſſing the Houſes of Religion, at the Time of the *Reformation*, not only depoſed him of his Title, but his Crown alſo; though in the 35th Year of his Reign, his Title, &c. was confirmed by *Parliament*; which hath continued to be uſed by all ſucceeding Kings to this Day. *Lex Conſtitutionis* 47, 48.

Defendere ſe *per Corpus ſuum*, To offer Duel or Combat, as a Legal Trial and Appeal. *Bract. lib.* 3. *cap.* 26.

Defendere unica manu, Words ſignifying to Wage Law, and a Denial of the Accuſation upon Oath. See *Manus.*

Defenſa, A Park or Place fenced in for Deer, and *defended* as a Property for that Uſe and Service. —— *Idem Dux facit inſtaurare prædictum Parcum de feris* Defenſæ *Leiceſtrenſis.* H. Knighton, ſub ann. 1352.

Defenſiva, The Lords or *Earls* of the *Marches*, who were the Wardens or *Defenders* of their Country, had the Title of *Defenſiva.* Cowel.

Defenſo. That Part of any open Field or Place that was allotted for Corn and Hay, and upon which there was no Common or Feeding, was anciently ſaid to be *in Defenſo:* So of any Meadow Ground, that was laid in for Hay only. It was likewiſe the ſame of a Wood, where Part was incloſed and fenced up, to ſecure the Growth of the Underwood from the Injury of Cattle. *Mon. Angl. Tom.* 3. *p.* 306.

Defenſum, An Incloſure of Land, or any fenced Ground. *Mon. Angl. Tom.* 2. *p.* 114.

Deficiencies. Act for making good the *Deficiencies*, and preſerving the publick Credit, &c. *Stat.* 1. *Ann. c.* 13.

Deforcement, (*Deforciamentum*) Is where any one is caſt out of his Lands or Poſſeſſions by Force: Or it is a With-holding Lands or Tenements by Force from the Right Owner. *Co. Litt.* 331. A *Deforceor* is one that overcomes and caſts forth by Force and Violence, and differs from *Diſſeiſor*; firſt, becauſe a Man may diſſeiſe another with Force; and next, for that a Perſon may *deforce* another, who never was in Poſſeſſion; as if ſeveral have Right to Lands as common Heirs, and one entering keeps out the reſt, the Law ſaith he *deforceth*, not diſſeiſeth them. And (according to *Littleton*) he who is enfeoffed by Tenant in Tail, and put in Poſſeſſion, by keeping out the Heir of him in Reverſion who hath Right to the Land, the Tenant in Tail being dead, doth *deforce* the Heir, though not diſſeiſe him, becauſe he entered during the Life of the Tenant in Tail, when the Heir had no preſent Right. Alſo a *Deforceor* differs from an *Intruder*, by Reaſon a Man is made an Intruder by a wrongful Entry only into Land void of a Poſſeſſor: And a *Deforceor* is he that holds out againſt the right Heir. *Bract. lib.* 4. *cap.* 1. *Britt. cap.* 33. *Litt.* 138. *F. N. B.* 118. As *Force* and Violence are oppoſite to the Peace and Juſtice of the Kingdom; and 'tis a Diſgrace to the Law, that any Perſon ſhould preſume to enter forcibly into the Poſſeſſion of another, before the Law hath decided his Title therein; therefore divers Statutes have been made for Reformation of theſe Abuſes, as among others the Stat. 5 *R.* 2. *cap.* 7. See *Forcible Entry.*

Deforciant, Mentioned in the Stat. 23 *El. c.* 3. is the ſame with a *Deforceor.*

Deforciatio, Is uſed for a Diſtreſs, or Holding of Goods for Satisfaction of a Debt. *Paroch. Antiq.* 293.

Degradation, (*Degradatio*) Is an Eccleſiaſtical Cenſure, whereby a Clergyman is deveſted of his Holy Orders, and there are two Sorts of *degrading*, by the *Canon Law*; one *Summary*, by Word only:

the other *Solemn*, by ſtripping the Party *degraded* of thoſe Ornaments and Rights, which are the Enſigns of his Order or Degree. *Selden*'s *Titles of Hon.* 787. *Degradation* is otherwiſe called *Depoſition*; and in former Times, the *Degrading* a Clerk was no more than a Diſplacing or Suſpenſion from his Office: But the *Canoniſts* have ſince diſtinguiſh'd between a Depoſition and a *Degradation*; the one being now uſed as a greater Puniſhment than the other, becauſe the Biſhop takes from the Criminal all the Badges of his Order, and afterwards delivers him to the ſecular Judge, where he cannot purge himſelf of the Offence, whereof he is convicted, &c. There is likewiſe a *Degradation* of a *Lord*, or a *Knight*, &c. at *Common Law*; when they are attainted of Treaſon; as *Hill.* 18 *Ed.* 2. *Andrew Harcla, Earl of Carſlile*, who was alſo a Knight, was *degraded*, and when Judgment of Treaſon was pronounced againſt him, his Sword was broken over his Head, and his Spurs hewn off his Heels, &c. And there is a *Degrading* by *Act of Parliament*; for by Stat. 13 *Car.* 2. *cap.* 15. *William Lord Monſon*, Sir *Henry Mildmay*, and others, were *degraded* from all Titles of Honour, Dignities, and Preheminences, and none of them to bear or uſe the Title of Lord, Knight, Eſquire, or Gentleman, or any Coat of Arms for ever after.

Dehors, (*Fr.*) A Word uſed in ancient Pleading, when a Thing is without the Land, &c. or out of the Point in Queſtion. Vide *Hors de ſon fee*.

De Injuria ſua propria, *Abſque tali Cauſa*, Are Words uſed in Replications, in Actions of Treſpaſs, or on the Caſe. 1 *Lill. Abr.* 427. *De Injuria ſua propria* is a good Plea, where it comes in Excuſe of an *Injury* alledged to be done to the Perſon of the Plaintiff; or where a Defendant juſtifies in Defence of his Poſſeſſion, if the Title doth not come in Queſtion. 8 *Rep.* 86. When one juſtifies by Command or Authority deriv'd from another; or if a Defendant juſtifies by Authority at Common Law, as a Conſtable by Arreſt for Breach of the Peace; or if he juſtifies by Act of Parliament, &c. *De Injuria ſua propria* is a good Replication. *Cro. Eliz.* 539. 2 *Salk.* 628. See *De ſon Tort Demeſne*.

Dei Judicium. The old *Saxon* Trial by *Ordeal* was ſo call'd; becauſe they thought it an *Appeal to God*, for the Juſtice of a Cauſe, and verily believed that the Deciſion was according to the Will and Pleaſure of Divine Providence. *Domeſd.*

Deis, The high Table of a Monaſtery. See *Dagus*.

Delatura, A *Saxon* Word ſignifying an Accuſation: And ſometimes it hath been taken for the Reward of an Informer. *Leges H.* 1. *c.* 64. *Leges Inæ* 20. *apud Bromton.*

Delegates, Are Commiſſioners of Appeal appointed by the King under the Great Seal; in Caſes of Appeals from the Eccleſiaſtical Court, &c. by Stat. 25 *Hen.* 8. *c.* 19. See *Court of Delegates*.

Delf, (from the Sax. *Delfan*, to dig, or delve) Is a Quarry or Mine, where Stone, or Coal, &c. are dug. *Stat.* 31 *Eliz. cap.* 7. We ſtill retain the Word *Delve* for dig, in ſome Parts of this Kingdom.

Deliverance. When a *Criminal* is brought to Trial, and the Clerk in Court asks him whether he is *Guilty*, or *Not guilty*, to which he replies Not guilty, and puts himſelf on God and his Country, the Clerk wiſhes him a *Good Deliverance*.

Delivery of Deeds, On executing them, to give them Perfection, &c. See *Deed*

Demand, (Fr. *Demande*, Lat. *Poſtulatum*) Signifies a Calling upon a Man for any Thing due. And there are two Manner of *Demands*, the one in *Deed* the other in *Law*: In Deed, as in a *Præcipe quod Reddat*, there is an expreſs *Demand*: In Law, every Entry on Land, Diſtreſs for Rent, Taking of Goods, &c. which may be done without Words, is a *Demand* in Law. 8 *Rep.* 153. Mr. *Nelſon*, in his *Abridgment of the Law, Vol.* 1. *pag.* 630. ſays, there are three Sorts of *Demands*; one in Writing, without ſpeaking, and that is in every *Præcipe*; one without Writing, being a verbal *Demand* of the Perſon, who is to do or perform the Thing; and another made without either Word or Writing, which is a *Demand* in Law, in Caſes of Entries on Lands, &c. And as Entry on Land, and taking a Diſtreſs, are a *Demand* in Law of the Land and Rent; ſo the Bringing an Action of Debt for Money due on an Obligation, is a *Demand* in Law of the Debt. 1 *Lill.* 432. Debts, Claims, &c. are to be *demanded* and made in Time, by the Statute of Limitations, 21 *Jac.* 1. *c.* 16. and other Statutes; or they will be loſt by Law. Where there is a Duty, which the Law makes payable on *Demand*, no *Demand* need be made; but if there is no Duty 'till *Demand*, in ſuch Caſe there muſt be a *Demand* to make the Duty. *Trin.* 3 *Ann.* 1 *Lill.* 432. Debt on Bond, to be paid preſently upon *Demand*, is a Duty preſently, and requires no *Demand*. *Cro. Eliz.* 548. And upon a Penalty, the Party need not make a *Demand*, as he muſt in the Caſe of a *Nomine Pœnæ*; for if a Man be bound to pay 20 *l.* on ſuch a Day, and in Default thereof to pay 40 *l.* the 40 *l.* muſt be paid without *Demand*. 1 *Mod.* 89. If a Man leaſes Land by Indenture for Years, reſerving a Rent payable at certain Days, and the Leſſee covenants to pay the ſaid Rent at the Days limited; the Leſſor is intitled to his Rent, without *Demand*, for the Leſſee is obliged to pay it at the Days, by Force of his Covenant. 2 *Danv. Abr.* 101. But if a Leſſor makes a Leaſe rendring Rent, and the Leſſee covenants to pay the Rent, being lawfully *demanded*, the Leſſee is not bound to pay the Rent, without a *Demand*. *Ibid.* 102. A Perſon makes a Leaſe for Life, or Years, reſerving a Rent upon Condition, that if the Leſſee doth not pay the Rent at the Day, that then without any *Demand* it ſhall be lawful for the Leſſor to re-enter; by this ſpecial Agreement of the Parties, the Leſſor may enter on Non-payment of the Rent, without any *Demand*. *Ibid.* 100. A Leaſe for Years, with Condition to be void, on Non-payment of the Rent, is not void unleſs the Rent be *demanded*, and an Entry made: And an Intereſt ſhall not be determined, without an actual *Demand*. *Hob.* 67, 331. 2 *Mod.* 264. A *Demand* is to be legal, and made in ſuch Manner as the Law requires: If it be for Rent of a Meſſuage and Lands, it ought to be made at the Meſſuage, at the fore Door of the Houſe, the moſt notorious Place: Where Lands and Wood are let together, the Rent is to be *demanded* on the Land, as the moſt worthy Thing, and on the moſt publick Part thereof: If Wood only be leaſed, the *Demand* muſt be at the Gate of the Wood, &c. 1 *Inſt.* 201. *Poph.* 58. For Re-entry, the *Demand* is to be on the Day of Payment of the Rent, and it muſt be exactly obſerved: But a *Demand* at any Time after due, is ſufficient to warrant a Diſtreſs. *Dyer* 51. If a Leſſor in a *Demand* of Rent for Re-entry, *demand* a Penny more or leſs than due, or doth not ſhew the Certainty of the Rent, and the Day of Payment, and when due, the *Demand* will not be good: If the *Demand* be of all the Rent due, without ſhewing what Rent, and for what Time, &c. it is not good. 1 *Leon.* 425. *Cro. Eliz.* 209. In Order to Re-entry for Non-payment of Rent on a Leaſe, the Leſſor or ſome other Perſon by his Direction, is to go on the laſt Day of Payment, a little before Sunſet, and make the *Demand* thus: *I do here* demand *the Sum of* 10 l. *for Half a Year's Rent for this Meſſuage due and ending at*, &c. *and yet unpaid*, &c. And after the *Demand*, continue at the Place till it be dark. He that would *enter* for a Condition broken, which tends to the Deſtruction of an Eſtate, muſt 1. *Demand* the Rent. 2. Upon the Land, if there is no Houſe. 3. If there is a Houſe, at the fore Door; though it is not material whether any Perſon be in the Houſe or no. 4. If the Appointment is at any other Place off from the Land, the *Demand* muſt be at that Place. 5. The Time of the *Demand* is to be certain, that the Tenant may be there, if he will, to pay the Rent: And the laſt Time of *Demand* of the Rent, muſt be ſuch a convenient Time before the Sun ſetting of the laſt Day of Payment, as the Money may be number'd. Alſo the Leſſor or his ſufficient Attorney is to remain upon the Land, the laſt Day on which the Rent due ought to be paid, until it be ſo dark that he cannot ſee to tell the Money: And if the Money thus *demanded* is not paid, this is a Denial in Law, though there are no Words of Denial; upon which a Re-entry may be made, *&c.* 1 *Inſt.* 201, 202. 4 *Rep* 73 A *Demand* ought to be in the Preſence of Witneſſes: And *Demands* are releaſed by a Releaſe of all *Demands*; which diſcharges all Freeholds, Rights of Entry, Actions, *&c.* 8 *Rep.* 153.

Demandant, (*Petens*) All civil Actions are proſecuted either by *Demands* or *Plaints*, and the Purſuer is called *Demandant*, in Actions Real; and *Plaintiff*, in Perſonal Actions: In a real Action, Lands, *&c.* are *demanded* Co. Lit. 127.

Demeſne, or **Demain**, (*Dominicum*, *Domanium*) Is a *French* Word otherwiſe written *Domaine*, and ſignifieth *Patrimonium Domini*. *Demains*, according to common Speech, are the Lord's chief Manor-Place, with the Lands thereto belonging; which he and his Anceſtors have from Time to Time kept in their own manual Occupation, for the Maintenance of themſelves and their Families: And all the Parts of a Manor, except what is in the Hands of Freeholders, are ſaid to be *Demains*. Copyhold Lands have been accounted *Demains*, becauſe they that are the Tenants thereof are judged in Law to have no other Eſtate but at the Will of the Lord; ſo that it is ſtill reputed to be in a Manner in the Lord's Hands: But this Word is oftentimes uſed for a Diſtinction between thoſe Lands that the Lord of the Manor hath in his own Hands, or in the Hands of his Leſſee demiſed at a Rack Rent, and ſuch other Land appertaining to the Manor, which belongeth to Free or Copyholders. *Bract. lib.* 4. *tract.* 3. *cap.* 9. *Fleta, lib* 5. *cap.* 5. As *Demains* are Lands in the Lord's Hands manually occupied, ſome have thought this Word derived from *De manu*; but it is from the Fr. *Demaine*, which is uſed for an Inheritance, and that comes from *Dominium*, becauſe a Man has a more abſolute Dominion over that which he keeps in his Hands, than of that which he lets to his Tenants. *Blount.* *Domanium* properly ſignifies the King's Lands in *France*, appertaining to him in Property: And in like Manner do we in ſome Sort uſe it here in *England*; for all Lands 'tis ſaid are either mediately or immediately from the Crown; and when a Man in Pleading would ſignify his Land to be his Own, he ſaith, that he is ſeiſed thereof in his *Demain, as of Fee*; whereby is meant, that although his Land be to him and his Heirs, it depends upon a ſuperior Lord, and is held by Rent or Service, *&c.* *Litt. lib.* 1. *cap.* 1. From this it hath been obſerved, that Lands in the Hands of a common Perſon, cannot be *true Demains*: And certain it is, that Lands in the Poſſeſſion of a Subject are called *Demains* in a different Senſe from the *Demain* Lands of the Crown. For *Demains* or *Domains* in the Hands of a Subject, have their Derivation *à Domo*, becauſe they are Lands in his Poſſeſſion for the Maintaining of his Houſe: But the *Domains* of the Crown are held of the King, who is abſolute Lord, having proper *Dominion*; and not by any feudal Tenure of a ſuperior Lord, as of Fee. *Wood's Inſt.* 139. *Demain* is ſometimes taken in a *ſpecial* Signification, as oppoſite to Frank Fee: For Example, thoſe Lands which were in the Poſſeſſion of *King Edward the Confeſſor*, are called *Ancient Demains*, and all others *Frank Fee*; and the Tenants which hold any of thoſe Lands are called *Tenants in Ancient Demain*, and the others *Tenants in Frank Fee*, *&c.* Kitch. 98. See *Ancient Demeſne.*

Demiſe, (*Demiſſio*) Is applied to an Eſtate either in Fee, for Term of Life, or Years, but commonly the latter: It is uſed in Writs for any Eſtate. 2 *Inſt.* 483. The Word *Demiſi* in a Leaſe for Years, implies a Warranty to the Leſſee and his Aſſignee; and upon this Word Action on the Covenant lies againſt the Heir of the Leſſor, if he ouſt the Leſſee: It binds the Executors of the Leſſor, who has Fee-Simple, or Fee-Tail; where any Leſſee is evicted, and the Executor hath Aſſets; but not the Leſſor for Life's Executors, without expreſs Words, that the Leſſee ſhall hold his whole Term. *Dyer* 257. *Jenk. Cent.* 35. The King's Death is in Law termed the *Demiſe of the King*, to his Royal Succeſſor, of his Crown and Dignity, *&c.*

Demiſe and Redemiſe. The Conveyance by *Demiſe* and *Redemiſe*, is where there are mutual *Leaſes* made from one to another on each Side of the ſame Land, or ſomething out of it; and is proper upon the Grant of a Rent-charge, *&c.*

Demurrer, (in Latin *Demorare*, from the Fr. *Demeurer*) Is a Kind of Pauſe or Stop, put to any Action, upon a Point of Difficulty, which muſt be determined by the Court, before any farther Proceedings can be had therein: For in every Action, the Controverſy conſiſts either in Fact or in Law; if in Fact, that is tried by the Jury; but if in Law, the Judge with his Aſſociates proceeds to Judgment; and whatever they conclude ſtands firm without any Appeal. *Smith de Repub. Ang. lib.* 2. *c.* 13. This *Demurrer* is in our Records expreſſed *in Latin* by *Moratur in Lege*: And when any Action is brought, and the Defendant ſaith that the Plaintiff's Declaration is not ſufficient for him to anſwer unto; or when the Defendant pleads, and the Plaintiff ſays, that it is not a ſufficient Plea in Law, and the Defendant ſays, that it is a good Plea; and thereupon both Parties ſubmit to the Judgment of the Court: This is a *Moratur in Lege.* 1 *Lill. Abr.* 435. So that a *Demurrer* is an Iſſue joined upon Matter of Law, to be determined by the Judges; and is an Abiding in Point of Law, and a Referring to the Judgment of the Court, whether the Declaration or Plea of the adverſe Party is ſufficient in Law to be maintained. *Finch, lib.* 4. *cap.* 40. 1 *Inſt.* 71. And a *Demurrer* may be to the Writ, Count, or Declaration, or to any Part of the Pleadings: Alſo a *Demurrer* may be to a *Demurrer*, as where the *Demurrer* is double, and he that demurs aſſigns one Error in Fact and another in Law, which is ill, and may be demurred unto on the other Side. 1 *Lill.* 438. *Demurrers* to Pleas, *&c.* are *General*, without ſhewing any particular Cauſe; or *Special*, where the Cauſes of *Demurrer* are particularly ſet down: And the Judgment of the Court is not to be prayed upon an inſufficient Declaration or Plea, otherwiſe than by *Demurrer*; when the Matter comes judicially before the Court. If in Pleadings, *&c.* a Matter is inſufficiently alledged, that the Court cannot give certain Judgment upon it, a general *Demurrer* will ſuffice; and for Want of Subſtance, a general *Demurrer* is good: But for Want of Form, there muſt be a ſpecial *Demurrer*, and the Cauſes ſpecially aſſigned. *Pract. Attorn. Edit.* 1. *p.* 84. And as he that *demurs* generally, confeſſeth all Matters of Fact that are well and ſufficiently pleaded; ſo he that makes a ſpecial *Demurrer*, can take no Advantage of any other Matter of Form, but what is expreſſed in his *Demurrer*; tho' he may take Advantage of Matter of Subſtance, if the *Demurrer* be Special, and the Cauſes not ſet down. 10 *Rep.* 88. By Statute, Judges are to proceed to give Judgment in Actions, according to the Right of the Cauſe, after *Demurrer* joined, without Regard to Defects of Proceedings, except ſuch as are expreſſed with the *Demurrer*; but this not to extend to Indictments,

dictments, &c. in criminal Proſecutions. *Stat.* 27 *Eliz. cap.* 5. And by 4 & 5 *Ann. cap.* 16. the Cauſes of *Demurrer* are to be ſpecially ſet down, or the Judges ſhall give Judgment without regarding any Imperfections in Writs, Declarations, Pleadings, &c. A Defendant is to *demur* where he may do it; for if the Defendant pleads in any Caſe, where he can *demur*, he ſhall not afterwards take Advantage in Arreſt of Judgment, Writ of Error, &c. *Plowd.* 182. If any ſpecial Matter is pleaded, which hath the Colour of a Plea but amounts to the General Iſſue; 'tis no Cauſe of *Demurrer.* 5 *Mod.* 18. There cannot be a *Demurrer* in Abatement; and where a Defendant *demurs* only in Abatement, the Court may give final Judgment: But it may be to a Plea in Abatement. 1 *Salk.* 220. 1 *Nelſ. Abr.* 634. After the Plaintiff and Defendant have join'd Iſſue, which goes to the Whole, neither of them can *demur*, without Conſent of the other: But one may *demur* to one Part of a Declaration, and plead to the other Part thereof, with a *Quoad*, &c. And where there is an Iſſue to Part of the Defendant's Plea, and a *Demurrer* to other Part of it, the Plaintiff before or after Judgment given on the *Demurrer*, may try the Iſſue; though 'tis uſual to give Judgment on the *Demurrer* firſt. 1 *Lill. Abr.* 437. 1 *Inſt.* 71. 1 *Saund.* 80. If a Defendant pleads to Part, and *demurs* to Part; the *Demurrer* ſhall firſt be determined, and the Iſſue laſt; becauſe upon the Trial of the Iſſue, the Jury may aſſeſs Damages as to both. *Palm.* 517. Where there is a *Demurrer* in Part, and Iſſue is joined upon the other Part, and the Plaintiff hath Judgment on the *Demurrer*; here he may enter a *Non. Proſ.* as to the Iſſue, and proceed to a Writ of Inquiry upon the *Demurrer:* But otherwiſe he cannot have ſuch Writ of Inquiry. 1 *Salk.* 219. A *Demurrer* is to be ſigned, and argued on both Sides by Counſel; and if a Party be delay'd in his Proceedings by *Demurrer*, he may move the Court to appoint a ſhort Day after to hear Counſel on the *Demurrer*, and the Court will grant it. *Trin.* 23 *Car. B. R.* After a *Demurrer* is joined, the Plaintiff having enter'd it in the Roll, delivers the Roll to the Secondary, and makes a Motion for a *Conſilium* or Day to argue it, which the Court grants of Courſe, on the Secondary's reading the Record; then the *Demurrer* muſt be entered by the Plaintiff in the Court-Book with the Secondary, who on his Rule ſets down the Day appointed for Argument, at leaſt four Days before the *Demurrer* is argued: And Paper-Books are made and delivered to the Judges. The *Demurrant* argues firſt, and the Court will hear but two Counſel on a Day, *viz.* one of a Side, and ſeldom give Judgment the ſame Day; and if deſired on either Side, (unleſs the Caſe be very plain) the Court will hear further Arguments the next Term. The whole Record is not to be read, on opening the *Demurrer*; except the ſame be to the Declaration only: But where it appears to be for Delay, the whole Record will be heard by the Court, tho' there be a Plea, &c. And if it be found meerly for Delay, Judgment ſhall be given preſently. If the major Part of the Judges of the Court can't determine the Matter on the *Demurrer*, it is to be ſent into the Exchequer Chamber to be determined by all the Judges of *England.* 1 *Inſt.* 71. *Practiſ. Attorn. Edit.* 1. *p.* 154. When the Court gives Judgment on *Demurrer* in Debt for the Plaintiff in the Action, the Judgment is for the Plaintiff to recover his Debt, Coſts and Damages, but if it be in Action of the Caſe, a Writ of Inquiry of Damages muſt be awarded, before Judgment on the *Demurrer.* If Judgment on the *Demurrer* is for the Defendant in the Action, the Judgment is, that the Plaintiff *Nihil Capiat per Breve*, or *per Billam*, and that the Defendant *eat ſine die. Wood's Inſt.* 603. A *Demurrer*, being entered, it cannot be afterwards waved. And the general formal Words of a *Demurrer* are, *Quod Breve vel Nar. vel Placitum, &c. Materiaque in eodem content. minus ſufficiens in Lege exiſt', &c.* 1 Lill. 435.

Form of a *Demurrer* to a Declaration in *Engliſh.*

AND *the ſaid* C. D. *by,* &c. *his Attorney, comes & defends the Force, Injury, and Damages, and whatever elſe he ought to defend, when and where the Court will conſider thereof; and the ſaid* C. *prays Judgment of the Declaration of the ſaid* A. *becauſe he ſaith, that the ſaid Declaration, and the ſubject Matter therein contained, are inſufficient in Law for him the ſaid* A. *to maintain his ſaid Action againſt the ſaid* C. *To which Declaration the ſaid* C. *is under no Neceſſity, or in any wiſe bound by the Law of the Land to anſwer; and this he is ready to verify: Whereupon for Want of a ſufficient Declaration in this Caſe, the ſaid* C. *prays Judgment of the ſaid Declaration, and that the ſame may be quaſh'd,* &c.

Form of the *Joinder* in *Demurrer.*

AND *the ſaid* A. *ſaith, that notwithſtanding any Thing above alledged by the ſaid* C. *the ſaid Declaration ought not to be quaſh'd; becauſe he ſaith, that the ſaid Declaration, and the Subject Matter therein contained, are good and ſufficient in Law, for him the ſaid* A. *to maintain his ſaid Action againſt the ſaid* C. *which ſaid Subject Matter contained in the ſaid Declaration, the ſaid* A. *is ready to verify and prove in ſuch Manner as the Court ſhall think fit: And becauſe the ſaid* A. *hath made no Anſwer thereto, nor hitherto in any Manner denied the ſame, the ſaid* A. *prays Judgment, and that his Damages occaſioned by the Premiſſes may be awarded to him,* &c.

Demurrer to Evidence, Is where a Queſtion of Law doth ariſe thereupon: As if the Plaintiff produces in Evidence, any Records, Deeds, Writings, &c. upon which a Queſtion of Law ariſes, and the Defendant offers to *demur* upon it; and then the Plaintiff muſt join in *Demurrer*, or waive his Evidence. So if the Plaintiff brings Witneſſes to prove a Fact, and a Matter of Law ariſeth upon it; if the Defendant admits their Teſtimony to be true, there alſo the Defendant may *demur* in Law: And ſo may the Plaintiff *demur* upon the Defendant's Evidence. And in theſe Caſes, the Counſel for the Plaintiff and Defendant agree the Matter of Fact in Diſpute; and the Jury are diſcharged; and the Matter of Law is referred to the Judges to determine. But where Evidence is given for the King, in an Information or other Suit, and the Defendant offers to *demur* upon it, the King's Counſel are not obliged to join therein; but the Court ought to direct the Jury to find the ſpecial Matter. And indeed becauſe Juries of late uſually find a doubtful Matter ſpecially, *Demurrers upon Evidence* are now ſeldom uſed. 5 *Rep.* 104. 1 *Inſt.* 72. 2 *Inſt.* 426. If the Court doth not agree to a *Demurrer to the Inſufficiency of Evidence* in a Civil Cauſe; they ought to ſeal a *Bill of Exceptions,* &c. 9 Rep. 13.

Demurrer to Indictments, If a Criminal joins Iſſue upon a Point of Law in an Indictment or Appeal, allowing the Fact to be true, as laid therein, this is a *Demurrer* in Law: And if the Indictment or Appeal proves good in Law, in the Opinion of the Judges, they proceed to Judgment and Execution, as if the Party had been convicted by Confeſſion or Verdict. And tho' by the Criminal's Demurrer, he refuſeth to put himſelf upon Trial by Jury, yet he ſhall not as in other Caſes, be put under the *Pain fort & dure*; for a Demurrer is allowed to be tried by the Judges, and not by the Inqueſt. And he that is condemned on Demurrer, is ſaid to be convict; for whoever is adjudged, is convicted by Law. 2 *Inſt.* 178. *H. P. C.* 243. *S. P. C.* 150. 1 *Hawk. P. C.* 14. But ſee 2 *Hawkins* 334.

Demy Sangue, Is the Half Blood: Where a Man marries a Woman, and hath Iſſue by her a Son, and the Wife dying he marries another Woman, by whom he hath alſo a Son; now theſe two Sons, though they are called *Brothers*, are but *Brothers of the Half-Blood*, becauſe they had not both one Father and Mother: And therefore by Law they cannot be Heirs to one another; for he that claims as Heir to another by Diſcent, muſt be of the whole Blood to him from whom he claimeth. *Terms de Ley* 234.

Den. The Names of Places ending in *Den*, as *Biddenden*, *&c.* ſignify the Situation to be in a Valley, or near Woods; from the Sax. *Den*, i. e. *Vallis*, *Locus Sylveſtris*. Blount.

Den and Strond, Is a Liberty for Ships or Veſſels to run or come aſhore: And K. *Ed.* 1. by Charter granted this Privilege to the Barons of the *Cinque Ports*. Placit. temp. Ed. 1.

Dena terræ, A hollow Place between two Hills; and the Word *Dena* is uſed for a little Portion of woody Ground, commonly called a Copice. —— *Et una parva* Dena *Sylvæ*. Domeſd.

Denarii, A general Term for any Sort of *Pecunia numerata*, or ready Money. *Paroch. Antiq.* 320.

Denarii de Caritate, Cuſtomary Oblations made to *Cathedral Churches* about the Time of *Pentecoſt*, when the Pariſh-Prieſts and many of their People went in Proceſſion to viſit their Mother Church; This Cuſtom was afterwards changed into a ſettled Due, and uſually charged upon the Pariſh-Prieſt; though at firſt it was but a Gift of *Charity*, or Preſent, to help maintain and adorn the Biſhop's See. *Cartular. Abbat. Glaſton. MS. f.* 15.

Denarius, An *Engliſh* Penny: It is mentioned in the Stat. *Ed.* 1. *De compoſitione menſurarum*, *&c.*

Denarius Dei, God's Penny, or *Earneſt* Money given and received by the Parties to Contracts, *&c.* *Cart. Ed.* 1. This Earneſt Môney is called *Denarius Dei*, or *God's Penny*, becauſe in former Times, the Piece of Money ſo given to bind the Contract, was given to God, *i. e.* To the Church, or the Poor.

Denarius S. Petri, A annual Payment of one Penny from every Family to the *Pope*, during the Time that the *Roman* Catholick Religion prevailed in this Kingdom, paid on the Feaſt of St. *Peter*. Stat. 25 H. 8. c. 25. See *Peter-Pence*.

Denarius tertius Comitatus. Of the *Fines* and other Profits of the *County-Courts*, originally when thoſe Courts had ſuperior Juriſdiction before other Courts were erected, two Parts were reſerved to the King, and a *third Part* or *Penny* to the *Earl of the County*; who either received it in Specie at the Aſſizes and Trials, or had an equivalent Compoſition for it out of the *Exchequer*. Paroch. Antiq. 418.

Denbera, (From the Sax. *Den*, a Vale, and *Berg*, a *Barrow* or Hog) A Place for the Running and Feeding of Hogs, wherein they are penn'd; by ſome called a *Swinecomb*. Cowel.

Denizen, (Fr. *Donaiſon*) Is an Alien enfranchiſed, and made a Subject by the King's Letters Patent; and is called *Donaiſon*, becauſe his Legitimation proceeds *ex donatione Regis*, from the King's Gift. Such a one is enabled in many Reſpects, to do as the King's native Subjects do, to purchaſe and poſſeſs Lands, enjoy any Office or Dignity; and when he is thus enfranchiſed, he is ſaid to be under the King's Protection, or *Eſſe ad fidem Regis Angliæ*; before which Time he can poſſeſs nothing in *England*. But notwithſtanding this, it is ſhort of *Naturalization*; for a Stranger naturalized may inherit Lands by Diſcent, which a *Denizen* cannot: And in the Charter, whereby a Perſon is made a *Denizen*, there is commonly contained ſome Clauſe that expreſly abridges him of that full Benefit which natural Subjects enjoy. *Bract. lib.* 5. *tract.* 5. *cap.* 25. 2 *Inſt.* 741. When the King makes a *Denizen* by Letters Patent, he may purchaſe Lands, and his Iſſue born afterwards may inherit them; but thoſe he had before ſhall not: And though a *Denizen* is enabled to purchaſe, he cannot inherit the Lands of his Anceſtors; but as a Purchaſor he may enjoy them; and he may take Lands by Deviſe. 1 *Inſt.* 8. 11 *Rep.* 67. 5 *Rep.* 52. Aliens made *Denizens* are incapable of Offices in the Government, to be Members of Parliament, *&c.* by Stat. 12 *W.* 3. *cap.* 2. 1 *Geo.* 1. *c.* 4. It is ſo high a Prerogative to make Aliens Subjects and *Denizens*, that the King cannot grant this Power over to any other. 7 *Rep. Wood's Inſt.* 22.

Denſhiring of Land, Is the Caſting Parings of Earth, Turf, and Stubble into Heaps, which when dried are burnt into Aſhes, for a Compoſt on poor barren Land. This Method of Improvement is uſed on taking in and incloſing Common and Waſte Ground; and in many Parts of *England* is called *Burn-beating*, but in *Staffordſhire* and other Counties, they term it *Denſhering of Land*.

De non Decimando, To be diſcharged of Tithes. See *Modus Decimandi*.

De non Reſidentia Clerici Regis, Is an ancient Writ where a Parſon is employed in the King's Service, *&c.* to excuſe and diſcharge him of *Non-reſidence*. 2 Inſt. 624.

Dentrix, A Fiſh with many Teeth. *Chart. H.* 6. *Monaſt. Ramſey*.

Deodand, (*Deo-dandum*) Is a Thing given as it were to God, to appeaſe his Wrath, where a Perſon comes to a violent Death by Miſchance, not by any reaſonable Creature; and is forfeited to the King, or Grantee of the Crown; and if to the King, his Almoner diſpoſes of it by Sale, and the Money ariſing thereby he diſtributes to the Poor: Alſo if forfeited to the Lord of a Liberty, it ought to be thus diſtributed. 3 *Inſt.* 57. 5 *Rep.* 110. 1 *Nelſ.* 636. The Original of *Deodands* is ſaid to come from the Notion of *Purgatory*; for when a Perſon came to a ſudden and untimely Death, without having Time to be *ſhrieved* by a Prieſt, and to have the Extream Unction adminiſtred to him, the Thing which had been the Occaſion of his Death, became *Deodand*; that is, was given to the Church, to be diſtributed in Charity, and to pray for the Soul of ſuch deceaſed Perſon out of Purgatory. 1 *Lill.* 443. There are ſeveral Examples of Forfeitures in Caſes of *Deodands*; as if a Man in driving a Cart, falls ſo as the Cart-wheel runs over him, and preſſeth him to Death; the Cart-wheel, Cart, and Horſes are forfeited to the Lord of the Liberty: For *Omnia quæ movent ad mortem ſunt* Deodanda. *Bract. lib.* 3. *tract.* 2. *cap.* 5. But it hath been obſerved, that at this Day, if a Man be killed by the Wheel of a Cart drawn with Horſes, the Jury find that only *Deodand* which was the immediate Cauſe of his Death, *viz.* the Wheel; which is then ſeiſed by the Lord of the Manor, and converted to his own Uſe. 1 *Nelſ.* 639. If a Man riding over a River, is thrown off his Horſe by the Violence of the Water, and drown'd, his Horſe is not *Deodand*; for the Death was cauſed *per Curſum Aquæ*. 2 *Co.* 483. Where one under fourteen Years of Age, falls from a Cart, Horſe, *&c.* they are not *Deodand*; but if a Horſe ſtrikes and kills ſuch a Perſon, it is *Deodand*. 3 *Inſt.* 57. And if a Perſon wounded by any Accident, as of a Cart, Horſe, *&c.* die within a Year and a Day after, what did it is *Deodand*: So that if a Horſe ſtrikes a Man, and afterwards the Owner ſells the Horſe, and then the Party that was ſtricken dies of the Stroke, the Horſe, notwithſtanding the Sale, ſhall be forfeited as *Deodand*. *Plowd.* 260. 5 *Rep.* 110. If one falls out of a Veſſel in Salt Water, the Veſſel is not *Deodand*, and Accidents at Sea are frequently happening; but if one fall out of a Veſſel in freſh Water, it is ſaid to be otherwiſe. *Wood's Inſt.* 212.

Things fixed to the Freehold; as a Bell hanging in a Steeple, a Wheel of a Mill, *&c.* unleſs ſevered from the Freehold, cannot be *Deodands.* 2 *Inſt.* 281. And there is no Forfeiture of a *Deodand,* till the Matter is found of Record, by the Jury that finds the Death; who ought alſo to find and appraiſe the *Deodand.* 5 *Rep.* 110. 1 *Inſt.* 144. After the Coroner's Inquiſition, the Sheriff is anſwerable for the Value, where the *Deodand* belongs to the King; and he may levy the ſame on the Town, *&c.* Wherefore the Inqueſt ought to find the Value of it. 1 *Hawk.* 67. *Deodands* were likewiſe the Goods and Chattels of *Felo de ſe, &c.* 1 Lill 443.

De onerando pro rata Portionis, Is a Writ that lies where a Perſon is diſtrained for Rent, that ought to be paid by others proportionably with him. *F. N. B.* 234. If a Man hold twenty Acres of Land, by Fealty and twenty Shillings Rent; and he aliens one Acre to one Perſon, and another Acre to another, *&c.* the Lord ſhall not diſtrain one Alienee for the whole Rent, but for the Rate and Value of the Land he hath purchaſed, *&c.* And if he be diſtrained for more, he ſhall have this Writ. *New Nat. Br.* 586.

Departure, Is a Word in our Law properly applied to a Defendant, who firſt Pleading one Thing in Bar of an Action, and being replied unto in his Rejoinder, he quits that and ſhews another Matter, contrary to, or not purſuing his firſt Plea, which is called a *Departure from his Plea:* Alſo where a Plaintiff in his Declaration ſets forth one Thing, and after the Defendant hath pleaded, the Plaintiff in his Replication ſhews new Matter different from his Declaration, this is a *Departure*; as in *Coke's Inſtitutes, The Defendant demurred, becauſe it was a* Departure *from the Declaration.* Plowd. 7, 8. 2 Inſt. 147. But if a Plaintiff in his Replication *depart* from his Count, and the Defendant takes Iſſue upon it; if it be found for the Plaintiff, the Defendant ſhall take no Advantage of that *Departure:* Though it would have been otherwiſe, if he had demurred upon it. *Raym.* 86. 1 *Lill. Abr.* 444. If a Man plead a general Agreement in Bar, and in his Rejoinder alledge a ſpecial One, this is a *Departure* in Pleading: And if an Action is brought at Common Law, and the Plaintiff by his Replication would maintain it by Virtue of a Cuſtom, *&c.* it hath been held a *Departure.* 1 *Nelſ. Abr.* 638. Where a Matter is omitted at firſt, it is a *Departure* to plead it afterwards. *Ibid.* If in Covenant, the Defendant pleads Performance; and after rejoins that the Plaintiff ouſted him, it is a *Departure* from his Plea. *Raym.* 22. In Debt upon Bond for Performance of Covenants in a Leaſe, the Defendant pleaded Performance; and afterwards in his Rejoinder ſet forth that ſo much was paid in Money, and ſo much in Taxes, *&c.* upon Demurrer it was adjudged a *Departure* from the Plea; becauſe he had pleaded Performance, and afterwards ſets forth other Matter of Excuſe, *&c.* 1 *Salk.* 221. Debt upon Bond for Performance of an Award, made for Payment of Money; if the Defendant plead Performance, and the Plaintiff having replied and aſſigned a Breach of Non-payment, *&c.* the Defendant rejoins that he is ready to pay the Money at the Day, *&c.* this is a *Departure* from his Plea; for Performance is Payment of the Money, and Payment and ready to pay are different Iſſues. *Sid.* 10. 4 *Leon.* 79. In Debt upon Bond for Non-performance of an Award; the Defendant pleads that the Award was, that he ſhould releaſe all Suits to the Plaintiff, which he had done; the Plaintiff replies that ſuch an Award was made, but that the Award was further, that the Defendant ſhould pay to the Plaintiff ſuch a Sum, *&c.* the Defendant rejoins that true it is, that by the Award he was to pay the Plaintiff the ſaid Sum, but that the Award was alſo, that the Plaintiff ſhould releaſe to the Defendant all Actions, *&c.* which he had not done; on Demurrer this was held a *Departure* from the Plea, being all new Matter. 2 *Bulſt.* 39. *Godb.* 155. 1 *Nelſ.* 637. After *Nullum fecerunt Arbitrium,* the Defendant cannot plead that the Award is void, without being a *Departure* from the former Plea: And if where *Nul tiel* Award is pleaded; then the Award is ſet forth, and a Joinder that it was not tendered, it is a *Departure.* 1 *Lev* 133. *Lut.* 385. A *Departure* muſt be always from ſomething that is material; or it will not be allowed: If in Treſpaſs for taking Goods, the Plaintiff reply, that after the Taking, the Defendant converted them to his own Uſe, this being an Abuſe makes a Treſpaſs; and the Converſion is either Trover or Treſpaſs at the Plaintiff's Election, ſo that by his Replication he may make it Treſpaſs, and be no *Departure.* 1 *Salk.* 221, 222. In Circumſtances of Time, *&c.* laid as to Promiſes, the Plaintiff is not tied to a preciſe Day; for if the Defendant by his Plea, force the Plaintiff to vary, it is no *Departure* from his Declaration. 1 *Nelſ.* 640, 641. And if another Place be mentioned in the Replication, in Action of Debt; as this is a perſonal Thing, 'tis no *Departure,* becauſe he who is indebted to another in one Place, is ſo in every Place. *Sid* 228. A *Departure* being a Denial of what is before admitted, is a Saying and Unſaying, and for that one Iſſue cannot be joined upon it, 'tis naught for the Uncertainty. 1 *Lill.* 444

Departure in Deſpite of the Court, and Entry of it. See *Default*

Departers of Gold and Silver, The *Parters* or Dividers of thoſe *Metals,* from others that are coarſer. *Stat.* 4 *H.* 7.

Depopulation, (*Depopulatio*) Is a Waſting or Deſtruction; a Deſolation or Unpeopling of any Place, by Fire, Sword, Peſtilence, *&c.* 12 *Rep.* 30.

Depopulatores Agrorum. Theſe were great Offenders, by the ancient Common Law; ſo called, becauſe by Proſtrating and Ruining of Houſes of Habitation of the King's People, they as it were *depopulated* Towns and Villages, leaving them without Inhabitants. *Stat.* 4 *Hen.* 4. *cap.* 2. 3 *Inſt.* 204.

Depoſition, (*Depoſitio*) Is the Teſtimony of a Witneſs, otherwiſe called a *Deponent,* put down in Writing by Way of Anſwer to Interrogatories exhibited for that Purpoſe, in *Chancery, &c.* Proof in the High Court of Chancery is by *Depoſitions* of Witneſſes; and the Copies of ſuch regularly taken and publiſhed, are read as Evidence at the Hearing: And *Depoſitions* taken in one Cauſe, may be uſed at the Hearing of another Cauſe, when they are between the ſame Parties, *&c.* without Motion; but in a Cauſe between other Parties, though touching the ſame Matters, this will not be allowed, without ſpecial Order of Court; neither will *Depoſitions* in other Courts be permitted to be read, without ſuch Order. *Practiſ. Attorn. Edit.* 1. *p.* 233, 234 *Depoſitions* in the Chancery after a Cauſe is determined, may be given in Evidence in a Trial at Bar in *B. R.* in a Suit for the ſame Matter, between the ſame Parties, if the Party that *depoſed* be dead; but not otherwiſe, for if he be living, he muſt appear in Perſon in Court to be examined, *&c.* 1 *Lill. Abr.* 445. And where Witneſſes in a Cauſe are going to Sea, or long Journies, the Court of *B. R.* will give Leave to examine them on Interrogatories, at a Judge's Chamber, in the Preſence of the Attornies on both Sides; which *Depoſitions* in ſuch Caſe ſhall be admitted to be good Evidence. *Ibid.* *Depoſitions* of Informers, *&c.* taken upon Oath before a Coroner, upon an Inquiſition of Death; or before Juſtices of Peace on a Commitment or Bailment of Felony, may be given in Evidence at a Trial for the ſame Felony, if it be proved on Oath that the Informer is dead, or unable to travel, or kept away by the Procurement of the Priſoner; and Oath muſt be made that the *Depoſitions* are the ſame that were ſworn before the Coroner or Juſtice, without any Alteration. 2 *Hawk. P. C.* 429. But the *Depoſitions* taken before a Coroner, cannot be given in Evidence upon an Appeal for the ſame Death; becauſe it is a different Proſecution from that wherein they were taken: And it has been adjudged, That the Evidence given by a Witneſs at one Trial, could not in the ordinary Courſe of Juſtice be made Uſe of againſt a Criminal, on the Death of ſuch Witneſs, at another Trial. *Ibid.* 430. It was adjudged in the Earl of *Strafford*'s Trial, that where Witneſſes could not be produced, by Reaſon of Sickneſs, *&c.* their *Depoſitions* might be read, for or againſt the Priſoner on a Trial of High Treaſon; but not where they could be produced in Perſon: And that *Depoſitions* by a Witneſs before a Juſtice of Peace, might, at the Priſoner's Deſire, be read at the Trial; in order to take off the Credit of the Witneſs, by ſhewing a Variance between ſuch *Depoſitions* and the Evidence given in Court. *Ibid.* *Depoſition* is uſed in the Law in another Senſe, *viz.* To ſignify the *Depriving* a Perſon of ſome Dignity: And *Depoſition* is alſo taken for *Death*; and *Dies Depoſitionis*, the Day of one's Death. *Littleton's Dict.*

Deprivation, (*Deprivatio*) Is a Depriving or Taking away; as when a Biſhop, Parſon, Vicar, *&c.* is depoſed from his Preferment. Of *Deprivations* there are two Sorts, *Deprivatio à Beneficio*, and *ab Officio*; the *Deprivation à Beneficio* is when for ſome great Crime, *&c.* a Miniſter is wholly *deprived* of his Living: And *Deprivation ab Officio* is where a Miniſter is for ever *deprived* of his Orders, which is alſo called *Depoſition* or *Degradation*; and is commonly for ſome heinous Offence meriting Death, and performed by the Biſhop in a ſolemn Manner. *Blount.* *Deprivation à Beneficio* is an Act of the Spiritual Court, grounded upon ſome Crime or Defect in the Perſon *deprived*, by which he is diſcharged from his Spiritual Promotion or Benefice, upon ſufficient Cauſe proved againſt him. 1 *Nelſ. Abr.* 641. *Deprivation* may alſo be by a particular Clauſe in ſome Act of Parliament: The *Deprivation* of Biſhops, *&c.* is declared lawful by Statute 39 *Eliz. c.* 8. And by the King's Commiſſion, as he hath the Supremacy lodged in him, a Biſhop may be *deprived*; for ſince a Biſhop is veſted with that Dignity by Commiſſion from the King, 'tis reaſonable he ſhould be *deprived*, where there is juſt Cauſe, by the ſame Authority: But the Canons direct, that a Biſhop ſhall be *deprived* in a Synod of the Province; or if that cannot be aſſembled, by the Archbiſhop, and twelve Biſhops at leaſt, not as his Aſſiſtants, but as Judges: Though I think this Canon was never received in *England. Young Clergyman's Lawyer* 105. It has been adjudged, that an Archbiſhop may *deprive* a Biſhop for Simony, *&c.* for he hath Power over his Suffragans, who may be puniſhed in the Archbiſhop's Court for any Offence againſt their Duty. 1 *Salk. Rep.* 134. The Cauſes of *Deprivation* are many: If a Clerk obtains a Preferment in the Church, by Simoniacal Contract; if he be an Excommunicate, a Drunkard, Fornicator, Adulterer, Infidel, Schiſmatick or Heretick; or guilty of Murder, Manſlaughter, Perjury, Forgery, *&c.* If a Clerk be an Illiterate, and not able to perform the Duty of his Church; if he is a ſcandalous Perſon in his Life and Converſation; or Baſtardy is objected againſt him; if one be a mere Layman, and not in Holy Orders; or under Age, *viz.* the Age of twenty-three Years; be diſobedient and incorrigible to his Ordinary; or a Nonconformiſt to the Canons; if a Parſon refuſe to uſe the Common Prayer, or preach in Derogation of it; do not adminiſter the Sacraments, or read the Articles of Religion, *&c.* If any Parſon, Vicar, *&c.* have one Benefice with Cure of Souls, and take Plurality, without a Faculty or Diſpenſation: Or if he commit Waſte in the Houſes and Lands of the Church, called Dilapidations; all theſe have been held good Cauſes for *Deprivations* of Prieſts. *Degg's Parſon's Counſellor*, 98, 99, *&c.* 3 *Inſt.* 204. And refuſing to uſe the Common Prayers of the Church; Plurality of Livings, *&c.* are Cauſes of *Deprivation ipſo facto*, in which Caſe the Church ſhall be void, without any Sentence declaratory; And Avoidances by Act of Parliament need no declaratory Sentence: But in other Caſes there muſt be a declaratory Sentence. *Dyer* 275 Where a Benefice is only voidable, but not void before Sentence of *Deprivation*, the Party muſt be cited to appear; there is to be a Libel againſt him, and a Time aſſigned to anſwer it, and alſo Liberty for Advocates to plead, and after all a ſolemn Sentence pronounced: Though none of theſe Formalities are required, where the Living is made *ipſo facto* void. *Can.* 122. If a *Deprivation* be for a Thing merely of Eccleſiaſtical Cognizance, no Appeal lies; but the Party has his Remedy by a Commiſſion of Review, which is granted by the King of mere Grace. 26 *H.* 8. *Moor* 781.

Deputy, (*Deputatus*) Is he that exerciſes an Office, *&c.* in another Man's Right; whoſe Forfeiture or Miſdemeanor, ſhall cauſe him, whoſe *Deputy* he is, to loſe his Office. The Common Law takes Notice of *Deputies* in many Caſes, but it never takes Notice of Under-Deputies; for a *Deputy* is generally but a Perſon authoriſed, who cannot authoriſe another. 1 *Lill. Abr.* 446. A Man cannot make his *Deputy* in all Caſes; except the Grant of the Office juſtify him in it, as where it is to one, to execute by *Deputy*, *&c. Litt.* 379. Judges cannot act by *Deputy*, but are to hold their Courts in Perſon; for they may not transfer their Power over to others. 2 *Hawk. P. C.* 3. But it has been adjudged, that Recorders may hold their Courts by *Deputy*. 1 *Lev.* 76. 1 *Nelſ.* 643. The Office of *Cuſtos Brevium* and Chirographer in *C. B.* cannot be executed by *Deputy*. 1 *Nelſ. Abr.* 644. A Steward of a Court may make a *Deputy*; and Acts of an Under-Steward's *Deputy* have been held good in ſome Caſes. *Cro. Eliz.* 534. A Sheriff may make a *Deputy*; it is incident to his Office, though no expreſs Power is given by his Patent; and he hath equal Power with the High Sheriff. 9 *Rep.* 49. A Coroner ought not to execute his Office by *Deputy*, it being a judicial Office of Truſt; and judicial Offices are annexed to the Perſon. 1 *Lill.* 446. If the Office of Parkerſhip be granted to one, he may not grant this to another; becauſe it is an Office of Truſt and Confidence. *Terms de Ley* 239. A Bailiff of a Liberty, may make a *Deputy*. *Cro. Jac.* 240. And a Conſtable may make a *Deputy*, who may execute the Warrant directed to the Conſtable, *&c.* 2 *Danv.* 482. When an Office deſcends to an Infant, Ideot, *&c.* ſuch may make a *Deputy* of Courſe. 9 *Rep.* 47. Where an Office is granted to a Man and his Heirs, he may make an Aſſignee of that Office; and by Conſequence a *Deputy*. 9 *Rep.* A *Deputy* of an Office, hath no Intereſt therein, but doth all Things in his Maſter's Name, and his Maſter ſhall be anſwerable; but an Aſſignee hath an Intereſt in the Office, and doth all Things in his own Name, for whom his Grantor ſhall not anſwer, unleſs in Special Caſes. *Terms de Ley* 239, 240. A ſuperior Officer muſt anſwer for his *Deputy* in Civil Actions, if he is not ſufficient: But in Criminal Caſes it is otherwiſe, where *Deputies* are to anſwer for themſelves. 2 *Inſt.* 191, 466. *Doct. & Stud. c.* 42.

De quibus ſur Diſſeiſin, Is a Writ of *Entry*, mentioned in our Books treating of Writs. *F. N. B.* 191.

Der, (From Sax. *Deor*, *Fera*) The Names of Places beginning with this Word, ſignify that formerly wild Beaſts herded there together.

Deraign or **Dereyn,** (*Diſrationare*) Seems to be derived literally from the Fr. *Deſrayer*, i. e. To confound and diſorder, or to turn out of Courſe or diſplace;

place; as *Deraignment* or Departure out of Religion. *Stat.* 31 *H.* 8. *cap.* 6. And *Deraignment* and Diſcharge of their Profeſſion. 33 *H.* 8. *c.* 29. Which is ſpoken of thoſe religious Men that forſook their Orders or Profeſſion; and ſo doth *Kitchen* uſe it, where he ſays the Leſſee entered into Religion, and afterwards was *deraigned*, *p.* 152. In our *Common Law* this Word is uſed diverſly; but generally to *prove* any Thing, *viz.* to *deraign* that Right, *Deraign* the Warranty, &c. *Glanv lib.* 2. *cap.* 6. *F. N.* B. 146. If a Man hath an Eſtate in Fee with Warranty, and enfeoffs a Stranger with Warranty, and dies; and the Feoffee vouches the Heir, the Heir ſhall *derain* the firſt Warranty, &c. *Plowd.* 7. And Jointenants and Tenants in Common ſhall have Aid, to the Intent to *deraign* the Warranty paramount. 31 *H.* 8. *cap.* 1. See *Bracton, lib.* 3. *tract.* 2. *cap.* 28. *Britton* applieth this Word to a Summons that they be challenged as defective, or not lawfully made, *cap.* 21. And *Skene* confounds it with our Waging and Making of Law. See *Lex Deraiſnia.*

Derelict, (*Derelictus*) Is any Thing forſaken and left; or wilfully caſt away. *Derelict* Lands left by the Sea belong to the King. 2 *Nelſ. Abr.* 903.

Deſcent of Lands, Tenements, &c. See *Diſcent.*

Deſcription, (*Deſcriptio*) In Deeds and Grants there muſt be a *certain Deſcription* of the *Lands* granted, the *Places* where the *Lands* lie, and of the *Perſons* to whom granted, &c. to make them good. But Wills are more favoured than Grants as to thoſe *Deſcriptions*; and a wrong *Deſcription* of the Perſon will not make a Deviſe void, if there be otherwiſe a ſufficient Certainty what Perſon was intended by the Teſtator. 1 *Nelſ. Abr.* 647. If there are *ſeveral Deſcriptions* of one Perſon in a Will, they muſt all agree at the Time of the Will executed, in Name, Circumſtances, &c. or the Deviſe to ſuch is void *Ibid.* And where a firſt *Deſcription* of Land, &c. is falſe, though the ſecond is true, a Deed will be void: *Contra* if the firſt be true, and ſecond falſe. 3 *Rep.*

De ſon tort Demeſne, Are certain Words of Form uſed in Actions of Treſpaſs, &c. by Way of Replication to the Defendant's Plea: For Example, *A.* ſues B. in Action of Treſpaſs. *B.* anſwers for himſelf, that he did that which is alledged againſt him by the Command of *C.* his Maſter; to which *A.* replies, that *B.* did it *De ſon tort Demeſne, ſans ceo que* C. *luy command, modo & forma, viz.* That B did it of his own Wrong, without that, that *C.* commanded him, in ſuch Form, &c. When the Defendant *in jure proprio*, or as a Servant to another, claims any Intereſt in a Common, or to a Way, &c. *De ſon tort* generally is not good: But if the Defendant juſtifies as Servant, there it may be good, with a Traverſe of the Commandment, it being material; for the general Replication *De ſon Tort* is properly when the Defendant's Plea conſiſts merely of Matter of Excuſe, and no Matter of Intereſt. 8 *Rep.* 67. 1 *Lill. Abr.* 428. There ought to be a Concluſion to the Country, in a Replication of *De ſon Tort*; becauſe the Replication ſhould make an Iſſue of it. 3 *Lev.* 65. But there cannot be Variety of Matter put in Iſſue; as Matter of Record, and Matter of Fact, &c. 3 *Lev.* 65. 2 *Leon.* 108.

Deſpitus, Signifies in our ancient Law-Books a contemptible Perſon. *Fleta, lib.* 4. *cap.* 5. *par.* 4.

Deſubito, To weary a Perſon with continual Barkings, and then to bite; which is provided againſt by old Laws.——*Si Canis hominem* Deſubitet, *aut mordeat tacitus, in prima culpa reddantur ſex ſol'*. Leg. Alured. 26.

Detachiare, To ſeize or take into Cuſtody another Perſon's Goods, &c. by *Attachment* or other Courſe of Law. *Cowel.*

Detinet, A Word uſed in Writs, which is neceſſary in the Writ of *Detinue*, &c. See *Debet & Detinet.*

Detinue, (*Detinendo*) In the Common Law is like *Actio Depoſiti* in the Civil Law, and is a Writ which lies againſt him, who having Goods or Chattels delivered to keep, refuſeth to redeliver them. In this Action the Thing detained is generally to be recovered, and not Damages; but if one cannot recover the Thing itſelf, he ſhall recover Damages for the Thing, and alſo for the *Detainer. Wood's Inſt.* 542. *Detinue* lies for any Thing certain and valuable, wherein one may have a Property or Right; as for a Horſe, Cow, Sheep, Hens, Dogs, Jewels, Plate, Cloth, Bags of Money, Sacks of Corn, &c. It muſt be laid ſo certain, that the Thing *detained may* be known and recovered; and therefore for Money out of a Bag, or Corn out of a Sack, &c. it lies not; for the Money or Corn cannot in this Caſe be known from other Money or Corn; ſo that the Party muſt have an Action on the Caſe, &c. 1 *Inſt.* 286. *F. N. B.* 138. Yet *Detinue* may be brought for a Piece of Gold, of the Price of 22*s.* tho' not for 22*s.* in Money; for here is a Demand of a certain particular Piece. 2 *Danv. Abr.* 510 If a Man receiving Money from a Banker, put Part thereof into his Bag, and while he is telling the reſt the Bag is ſtolen; no Action of *Detinue*, &c. lies, becauſe by putting up the Money, he had appropriated it to his own Uſe. *Comber.* 475. A Man lends a Sum of Money to another, *Detinue* lies not for it, but Debt: But if *A.* bargains and ſells Goods to *B.* upon Condition to be void if *A.* pays *B.* a certain Sum of Money at a Day; now if *A.* pays the Money, he may have *Detinue* againſt *B.* for the Goods, though they come not to the Hands of *B.* by Bailment, but by Bargain and Sale. *Cro. Eliz.* 867. 2 *Danv.* 510. If a Man delivers Goods to *A.* to deliver to *B. B.* may have *Detinue*, for the Property is in him: And where he delivers them to *B.* and after grants them to *D.* he ſhall not have *Detinue* after the Grant, but the Grantee ſhall have it. *Yelv.* 241. 1 *Bulſt.* 69. When Goods are delivered to one, and he delivers them over to another, Action of *Detinue* may be had againſt the ſecond Perſon, and if he delivers them to one that has a Right threto, yet 'tis ſaid he is chargeable: Alſo if a Perſon to whom a Thing is delivered dieth, *Detinue* lieth againſt his Executors, &c. or againſt any Perſon to whom the Thing comes. 2 *Danv. Abr.* 511. A Man may have a general *Detinue* againſt another that finds his Goods: Though if I deliver any Thing to *A.* to re-deliver, and he loſes it, if *B.* finds it and delivers it to *C.* who has a Right to the ſame, he is not chargeable to me in *Detinue*, becauſe he is not privy to my Delivery. 7 *H.* 6. 22. 9 *H.* 6 58. In Actions of *Detinue*, the Thing muſt be once in the Poſſeſſion of the Defendant; which Poſſeſſion is not to be altered by Act of Law, as Seizure, &c. And the Nature of the Thing muſt continue, without Alteration, to entitle this Action. *F. N. B.* 138. If I find Goods, and before the Owner brings his Action, I ſell them; or they are recovered out of my Hands upon an Execution, or Outlawry againſt the Owner, &c. he cannot have *Detinue* againſt me. 12 *E.* 4. 8. 27 *H.* 8. 13. But Action of *Detinue* will lie againſt him that finds Goods, if they are waſted by wilful Negligence. *Dr. & Stud.* 129. A Man buys Cloth or other Things of another, on a good and perfect Contract; if the Seller keeps the Things bought, *Detinue* lieth. *Dyer* 30, 203. Where one takes my Goods into his Cuſtody to keep them for me, and refuſes to reſtore them; although he have nothing for the keeping of them, this Action will lie. 4 *Rep.* 84. 29 *Aſſ. pl.* 28. If I deliver to one a Trunk that is locked with Things in it, and keep the Key myſelf, and ſomething be taken out of it, Writ of *Detinue* lieth not for this: But if the Trunk and all that is in it be taken away, there it lies. 11 *Rep* 89. 4 *E.* 3. This Action will not lie, where a Man delivers Goods to me, and I bid him take them again, if he refuſes to do it: Or where one takes my Goods or Cattle by Wrong as a Treſpaſſer; or by Way of Diſtreſs for Rent, or as Damage feaſant, *&c.* Nor for a Horſe ſick, when it is taken or lent; if it dies of that Sickneſs. *Bro. Detin.* 242. 43 *E.* 3. 21. 21 *E.* 4. And if it be a Ring that is deliver'd to another, and he breaks it, 'tis doubted whether Action of *Detinue* may lie; becauſe the Thing is altered, and cannot be returned as it was: But Action of the Caſe lieth. And altho' where Goods are found, and ſold, *&c. Detinue* lies not; yet Action upon the Caſe of *Trover and Converſion* may be brought. 12 *E.* 4. 8. 18 *E.* 4. 22. To bring *Detinue*, the Plaintiff is to ſet forth the Time and Thing delivered, to what Uſe the ſame was delivered, and the Time appointed for the Redelivery thereof, with its Value, *&c.* If for a Thing bought, he muſt ſhew when he bought it, and what he paid, and the Time for Delivery: Alſo in *Trover*, the Nature and Value of the Things are to be ſhewn, the Time and Place when and where the Plaintiff was poſſeſs'd of them, and how they came to the Defendant's Hands, with the Converſion, *&c. Practiſ. Solic.* Actions of *Detinue* are not ſo frequently brought as formerly; for Actions of *Trover and Converſion* are had in their Stead, where the Converſion changes the *Detinue* to *Action of the Caſe*; and thereby the tedious Proceedings as to Garniſhment, *&c.* are now out of Uſe. 10 *Rep.* 57. 1 *Inſt.* 286.

Detinue of Charters. A Man may have Detinue for Deeds and Charters concerning Land; but if they concern the Freehold, it muſt be in *C. B.* and no other Court. Action of Detinue lies for Charters which make the Title of Lands; and the Heir may have a *Detinue of Charters*, altho' he hath not the Land: If my Father be diſſeiſed, and dieth, I ſhall have Detinue for the Charters, notwithſtanding I have not the Land; but the Executors ſhall not have the Action for them. *New Nat. Br.* 308. If a Man keep my Charters from me, concerning the Inheritance of my Land, and I know the Certainty of them, and the Land; or if they be in a Cheſt locked, *&c.* and I know not their Certainty, I may recover them by this Writ: So where Lands are given to me and *J. S.* and my Heirs, and he dies, if another gets the Deeds; and if Tenant in Tail give away the Deed of Entail, and then die, his Iſſue may bring a Writ of *Detinue of Charters. Co. Litt.* 286. 1 *Rep.* 2. *F. N. B.* 138. But if the Tenant in Fee-ſimple, do give away his Deeds of the Land, his Heir may not have this Action: And in Caſe a Woman great with Child by her deceaſed Husband, keeps the Charters from his Daughter and Heir that Concern the Land, during the Time ſhe is with Child; this Writ will not lie againſt her. 41 *E.* 3. 11. Detinue was brought for a Deed, and the Plaintiff had a Verdict, that the Defendant detained the Deed, and the Jury gave 20*l.* Damages, but did not find the Value of the Deed; and then there iſſued out a *Diſtringas* to deliver the Deed, or the Value, and afterwards a Writ of Inquiry was awarded for the Value; whereupon the Jury found a different Value from what the firſt Verdict found; and it was adjudged good. *Ray.* 124. 1 *Nelſ. Abr.* 649. In *Detinue of Charters*, if the Iſſue be upon the Detinue, and it is found that the Defendant hath burnt the Charters, the Judgment ſhall not be to recover the Charters, which it appears cannot be had; but 'tis ſaid it ſhall be for the Plaintiff to recover the Land in Damages. 2 *Roll. Abr.* 101. 2 *Danv. Abr.* 511. For Detaining of Deeds and Charters concerning the Inheritance of Lands, or an Indenture of Leaſe, the Defendant ſhall not wage Law; but in a common Action of *Detinue* he may do it. 1 *Inſt.* 295.

Detinue of Goods in Frank-marriage, Is on a Divorce betwixt a Man and his Wife; after which, the Wife ſhall have this Writ of *Detinue* for the *Goods* given with her in Marriage. *Mich.* 35 *E.* 1. *New Nat. Br.* 308.

Detractare, Signifies a Puniſhment to be torn in Pieces with Horſes.——*Apoſtatæ, Sacrilegi, & hujuſmodi,* detractari *debent & comburi.* Fleta, lib. 1. cap. 37.

Detunicare, To diſcover or lay open to the World. *Matth. Weſtm.* 1240.

Devadiatus, Is where an Offender is without Sureties or Pledges. *Si homo in Villa delinquit &* Devadiatus *fuerit, nil inde habet Præpoſitus Regis.* Domeſday.

Devaſtavit, or Devaſtaverunt bona Teſtatoris, Is a Writ that lies againſt Executors or Adminiſtrators, for paying Debts upon ſimple Contract, before Debts on Bonds and Specialties, *&c.* for in this Caſe they are as liable to Action as if they had ſquandered away the Goods of the Deceaſed, or converted them to their own Uſe; and are compellable to pay ſuch Debts by Specialty out of their own Goods, to the Value of what they ſo paid illegally. *Dyer* 232. But if an Executor pays Debts upon ſimple Contract, before he hath any Notice of Bonds, it is no *Devaſtavit*; and regularly this Notice is by an Action commenced againſt him, for the Law doth not oblige him to take Notice of it himſelf, nor of a Judgment againſt his Teſtator, becauſe he is not privy to Acts done either by or againſt him. 1 *Mod.* 175. 3 *Lev.* 115. Where an Executor, *&c.* payeth Legacies before Debts, and hath not ſufficient to pay both, 'tis a *Devaſtavit.* Alſo where an Executor ſells the Teſtator's Goods at an Undervalue, it is a *Devaſtavit*; but this is underſtood where the Sale is fraudulent; for if more Money could not be had, it is otherwiſe. *Kelw.* 59. 1 *Nelſ. Abr.* 649. Executors keeping the Goods of the Deceaſed in their Hands, and not paying the Teſtator's Debts; or ſelling them, and not paying off Debts, *&c.* or not obſerving the Law which directs them in the Management thereof; or doing any Thing by Negligence or Fraud, whereby the Eſtate of the Deceaſed is miſemployed, are a *Devaſtavit*, or Waſte; and they ſhall be charged for ſo much *de bonis propriis*, as if for their own Debt. 8. *Rep.* 133. But the Fraud or Negligence of one Executor is not chargeable on the Reſt, where there are ſeveral Executors. 1 *Roll. Abr.* 929. There are ſome Caſes in the old Books, in which it hath been held, if an Executor waſtes the Goods of the Teſtator, and afterwards makes his Executor, and dies, leaving Aſſets, that an Action of Debt will not lie againſt the Executor of the waſting Executor, upon a Suggeſtion of a *Devaſtavit* or Waſte by the firſt Executor; becauſe 'tis a perſonal Wrong which died with him. 3 *Leon.* 241. But in this Caſe there is a Difference between a lawful Executor, and an Executor *de ſon tort*; for as an Executor *de ſon tort* poſſeſſes himſelf of the Goods wrongfully, if he afterwards waſtes them, and dies, leaving Aſſets, his Executor ſhall be charged upon the Suggeſtion of a *Devaſtavit* in his Teſtator, becauſe he came wrongfully by the Goods, and therefore the Wrong ſhall not die with his Perſon. 2 *Lev.* 133. And before the Statute 30 *Car.* 2. *c.* 7. it has been decreed in Equity againſt the Executor of a lawful Executor, who had waſted the Goods, and died, that ſuch Executor ſhould be liable to make good to the Creditors of the Teſtator, ſo much as the firſt Executor had waſted, and ſo far as he had Aſſets of the ſaid firſt Executor. 1 *Ch. Rep.* 257. By that Statute 'tis enacted, that if an Executor *de ſon tort* waſtes the Goods, and dies, his Executors ſhall be liable in the ſame Manner as their Teſtator would have been if he had been living. And it has been ſince adjudged, that a rightful Executor who waſtes the Goods of the Teſtator, is in Effect an Executor *de ſon tort* for abuſing his Truſt; and therefore his Executor or Adminiſtrator may be liable to a *Devaſtavit.* 3 *Mod.* 113.

113. Debt lies againſt an Executor in the *Debet* and *Detinet*, where there is a Judgment againſt his Teſtator, upon a Suggeſtion only, that he had waſted the Goods; and this is a more expeditious Way than the old Method of *Sci. fac. Inquiry* which was iſſued to ſhew Cauſe why the Plaintiff ſhould not have Execution againſt the Executor *de bonis propriis*, and thereupon the Sheriff returned a *Devaſtavit*, *&c.* 1 *Lev.* 147. 1 *Nelſ.* 653. A Husband is to be charged for Waſte done by his Wife *Dum ſola:* But the Husband is not chargeable after the Death of a Wife Executrix, on Suggeſtion of a *Devaſtavit* in a Declaration againſt him. *Cro. Car.* 603. *Lutw.* 672. And it has been adjudged, that a Feme Covert Executrix cannot do any Waſte during the Coverture; though for Waſte done by the Husband ſhe ſhall be charged, if ſhe ſurvives him; but then it muſt be on a Judgment obtained againſt him, and not on a bare Suggeſtion of a *Devaſtavit*, *&c.* 2 Lev. 145. See *Debet & Detinet.*

Devenerunt, A Writ heretofore directed to the Eſcheator on the Death of the Heir of the King's Tenant, under Age and in Cuſtody, commanding the Eſcheator that by the Oaths of good and lawful Men he enquire what Lands and Tenements by the Death of the Tenant *came to the King*. *Dy.* 360. This Writ is now diſuſed: But ſee Stat. 14 *Car.* 2. *c.* 11. for preventing Frauds and Abuſes in his Majeſty's *Cuſtoms.*

Deveſt, (*Deveſtire*) Is oppoſite to *inveſt*. As *Inveſt* ſignifies to deliver the Poſſeſſion of any Thing to another; ſo *Deveſt* ſignifieth the Taking it away. *Feud. lib.* 1. *cap.* 7.

Deviſe, (from the Fr. *Deviſer*, to divide or ſort into Parcels) Is properly where a Man gives away any Lands or Tenements by Will in Writing. And he who gives away his Lands in this Manner, is called the *Deviſor*; and he to whom the Lands are given, the *Deviſee.* A *Deviſe* in Writing is, in Law Conſtruction, no Deed; but an Inſtrument by which Lands are conveyed. And anciently where Lands were deviſeable, it was by Cuſtom only; for at Common Law, in Favour of Heirs, no Lands or Tenements in Fee ſimple were deviſeable by Will; nor could they be transferred from one to another but by ſolemn Livery and Seiſin; Matter of Record, or ſufficient Deed or Writing. 1 *Inſt.* 111. 2 *Inſt.* 386, *&c.* But now it is otherwiſe by Statute 32 *Hen.* 8. 'Tis ſaid that Words of Recommendation and Deſire in a Will, are always held to be a *Deviſe*; as where the Teſtator gives a Legacy to one, willing him to do ſuch a Thing, *&c.* *Preced. Canc.* 201, 202. See *Will.*

Devoires of Caleis, Were the Cuſtoms due to the King, for Merchandize brought into or carried out of *Calais*, when our Staple remained there. 2 *R.* 2. *Stat.* 1. *c.* 3. *Devoir* in *French* ſignifies a Duty; *paying their Cuſtom and* Devoires *to the King.* Stat. 34 Ed. 1. c. 18.

Dextrarius, Is underſtood to take the *Right Hand* of another. And the Word *Dextrarios*, has been uſed for light Horſes, or Horſes for the great Saddle; from the Fr. *Deſtrier*, a Horſe for Service.—— Willielmus *de* B. *dedit Regi tres* Dextrarios, *quinque Chacuros*, *&c. pro habenda ſeiſina Caſtr. de* Groſmunt, *&c.* *Rot. Chart. in Tur.* London, *Anno* 7 Joh. *n.* 38.

Dextras dare, Shaking of Hands in Token of Friendſhip; or a Man's giving up himſelf to the Power of another Perſon. *Walſingh. p.* 332.

Diarium, Is taken for daily Food; or as much as will ſuffice for the Day. *Du Cange.*

Diaſperatus, Stained with many Colours. *Mon. Tom.* 3 *pag.* 314.

Dica, A Tally for Accounts, by Number of *Taillees*, Cuts or Notches. —— *Et præter hoc debet Magiſter Mariſcalſiæ habere* Dicas *de donis & Liberationibus quæ fuerint in Theſauro Regis*, *&c.* Lib. Rub. Scaccar. fol. 30. And in an ancient Record, —— *Inſtitutum eſt ut diligenter per* Dicam *notetur quantum ex omni genere Bladi vel Leguminis expendetur in ſemine* —— *Et* Dica *illa dividatur in duo, & una pars deputabitur Cuſtodiæ Hoſpitalis Fratris, &c. altera Grangiario.* Statut. Ord. de Semplingham, pag. 748.

Dickar or Dicker of Leather, Is a certain Quantity conſiſting of ten Hides, by which Leather is bought and ſold: There are alſo *Dickers* of *Iron* containing ten Bars to the *Dicker.* This Word is thought to come from the *Greek* δεκὰς which ſignifies Ten. *Domeſday.*

Dictores and Dictum: The one ſignifies an Arbitrator; and the other the Arbitrament —— *Protulit* Dictum *ſuum & ſententiam pro Rege Angliæ.* Malmſ. p. 384.

Dictum de Kenelworth, An Edict or Award, between King *Henry* the Third and his Barons and others, who had been in Arms againſt him; ſo called, becauſe it was made at *Kenelworth Caſtle* in *Warwickſhire*, *Anno* 51 *Hen.* 3. It contained a Compoſition of thoſe who had forfeited their Eſtates in that Rebellion, which Compoſition was five Years Rent of the Lands and Eſtates forfeited.

Diem clauſit extremum, Was a Writ iſſued out of the Court of *Chancery* to the Eſcheator of the County, upon the Death of any of the King's Tenants *in Capite*, to enquire by a Jury of what Lands he died ſeiſed, and of what Value, and who was the next Heir to him; and the ſame ought to be granted at the Suit of the next Heir, *&c.* for upon that, when the Heir came of Age, he was to ſue Livery of his Lands out of the King's Hands. *F. N. B.* 251.

Dies. There are ſeveral Sorts of Days, *i. e.* Days *natural*, *artificial* and *legal*; and *Sunday* is not only *Dies non Juridicus* as to *legal* Proceedings, but alſo as to Contracts. 2 *Inſt.* 264. See *Day.*

Dies datus, Is a Day or Time of Reſpite given to the Defendant in a Suit by the Court. *Broke.*

Dies Marchiæ, Was the Day of Congreſs or Meeting of the *Engliſh* and *Scotch*, appointed annually to be held on the *Marches* or Borders, to adjuſt all Differences between them, and preſerve the Articles of Peace. —— *Convenerunt ad* Diem Marchiæ, *& conventum fuit inter eos pro commodo pacis*, *&c.* Tho. Walſingham, in Ric. 2. p. 307.

Dicta, A Day's Journey. — *Omnis rationabilis* Dicta *conſtat ex viginti Miliaribus.* Fleta, lib. 4. c. 28. And in this Senſe it is uſed by *Bracton*, *lib.* 3. *tract.* 2. *c.* 16.

Diet, (*Conventus*) An Aſſembly; as the *Diet* of the *Empire*, of *Ratisbon*, &c.

Dieu & mon Droit, God and my Right, the *Motto* of the *Royal Arms*, intimating that the King of *England* holds his Empire of none but God; firſt given by King *Rich.* 1.

Dieu ſon Act, Are Words often uſed in our old Law: And it is a Maxim in Law, That the *Act of God* ſhall prejudice no Man. Therefore, if a Houſe be blown down by Tempeſt, Thunder or Lightning, the Leſſee or Tenant for Life or Years, ſhall be excuſed in Waſte: Likewiſe he hath by the Law a ſpecial Intereſt to take Timber, to build the Houſe again for his Habitation. 4 *Rep.* 63. 11 *Rep.* 82. So when the Condition of a Bond conſiſts of two Parts in the Disjunctive, and both are poſſible at the Time of the Obligation made, and afterwards one of them becomes impoſſible by the Act of God, the Obligor is not bound to perform the other Part. 5 *Rep.* 22. And where a Perſon is bound to appear in Court, at a certain Day, if before the Day he dieth, the Obligation is ſaved, *&c.* See *Bond.*

Diffacere, To deſtroy: And *Diffactio* is a Maiming any one. *Leg. H* 1. *c.* 64 92.

Difforciare Rectum, To take away, or deny Juſtice. *Mat. Pariſ. Anno* 1164.

Digeſt, The Book of Pandects of the Civil Law; which hath its Name from its containing *Legalia præcepta excellenter* Digeſta. *Du Cange.*

Dignity, (*Dignitas*) Signifies Honour and Authority; Reputation, &c. And *Dignity* may be divided into Superior and Inferior: As the Titles of Duke, Earl, Baron, &c. are the higheſt Names of *Dignity*; and thoſe of Baronet, Knight, Serjeant at Law, &c. the loweſt. Nobility only can give ſo high a Name of *Dignity*, as to ſupply the Want of a Surname in legal Proceedings: And as the Omiſſion of a Name of *Dignity*, may be pleaded in Abatement of a Writ, &c. ſo it may be where a Peer who has more than one Name of *Dignity*, is not named by the moſt Noble. 2 *Hawk. P. C.* 185, 230. No Temporal *Dignity* of any Foreign Nation can give a Man a higher Title here than that of Eſquire. 2 *Inſt.* 667. See *Addition* and *Diſcent.*

Dignity Eccleſiaſtical, (*Dignitas Eccleſiaſticalis*) Is defined by the Canoniſts to be *Adminiſtratio cum Juriſdictione & Poteſtate aliqua conjuncta*; of which there are ſeveral Examples in *Duarenus, de Sacris Eccleſ. &c. lib.* 2. *c.* 6. *Dignities Eccleſiaſtical* are mentioned in the Stat. 26 *H.* 8. *cap.* 31 & 32. And of Church *Dignities*, *Camden* in his *Britannia*, *p.* 161. reckons in *England* 544.

Dignitaries, (*Dignitarii*) Are thoſe who are advanced to any Dignity Eccleſiaſtical; as a Biſhop, Dean, Archdeacon, Prebendary, &c. But there are ſimple Prebendaries, without Cure or Juriſdiction, which are not *Dignitaries.* 3 Inſt. 155.

Dilapidation, (*Dilapidatio*) Is where an Incumbent on a Church Living, ſuffers the Parſonage-Houſe or Outhouſes to fall down, or be in Decay, for Want of neceſſary Reparation: Or it is the pulling down or deſtroying any of the Houſes or Buildings, belonging to a Spiritual Living, or deſtroying of the Woods, Trees, &c. appertaining to the ſame; for it is ſaid to extend to the Committing or Suffering any wilful Waſte, in or upon the Inheritance of the Church. *Degg's Parſ. Counſ.* 89. 'Tis the Intereſt of the Church in general to preſerve what belongs to it for the Benefit of the Succeſſors; and the old Canons, and our own provincial Conſtitutions, require the Clergy ſufficiently to repair the Houſes belonging to their Benefices; which if they neglect or refuſe to do, the Biſhop may ſequeſter the Profits of the Benefice for that Purpoſe, &c. *Rights Clerg.* 143. And by the Canon Law, *Dilapidations* are made a Debt, which is to be ſatisfied out of the Profits of the Church; but the Common Law prefers Debt on Contracts, &c. before Debt for *Dilapidations. Hern.* 136. The Proſecution in theſe Caſes, may be brought either againſt the Incumbent himſelf, or againſt his Executors or Adminiſtrators; and the Executor or Adminiſtrator of him in whoſe Time it was done or ſuffered, muſt make Amends to the Succeſſor: And if you proceed againſt the Incumbent, then it is proper in the Spiritual Court: Likewiſe you may proceed in that Court againſt an Executor, or the Succeſſor may have an Action of the Caſe or Debt at the Common Law, in which Action he ſhall recover Damages in Proportion to the *Dilapidations.* 1 *Nelſ. Abr.* 656. By Statute, if any Parſon, &c. ſhall make a Gift of his Goods and perſonal Eſtate to defraud his Succeſſor, as to *Dilapidations*, ſuch Succeſſor may have the ſame Remedy in the Spiritual Court againſt the Perſon to whom ſuch Gift is made, as he might have againſt the Executors of the deceaſed Parſon. 13 *Eliz. cap.* 10. And Money recovered for *Dilapidations*, is to be employed in the Reparations of the ſame Houſes ſuffered to be in Decay; or the Party recovering ſhall forfeit double the Value of what he receives, to the King, by Stat. 14 *Eliz. cap.* 11. Where in our Books 'tis ſaid, that *Dilapidations* are ſuable for only in the Eccleſiaſtical Court, that is to be intended when the Suit is grounded upon the Canon Law; for an Action of the Caſe might have been brought at Common Law by the Succeſſor againſt the Executors of the *Dilapidator. Parſ. Counſ.* 97, 98. If a Parſon ſuffers *Dilapidations*, and afterwards takes another Benefice, whereby his former Benefice becomes void, his Succeſſor may have an Action againſt him, and declare that by the Cuſtom of the Kingdom he ought to pay him *Tantas Denariorum ſummas quantæ ſufficient ad Reparandum*, &c. 3 *Lev.* 268. In Caſe a Parſon comes to a Living, the Buildings whereof are in Decay by *Dilapidations*, and his Predeceſſor did not leave a ſufficient perſonal Eſtate to repair them, ſo that he is without Remedy; he is to have the Defects ſurvey'd by Workmen, and atteſted under their Hands in the Preſence of Witneſſes, which may be a Means to ſecure him from the Incumbrance brought upon him by the Fault of his Predeceſſor. *Country Parſon's Companion* 60.

Dilatory Pleas, Are ſuch as are put in merely for *Delay*; and there may be a Demurrer to a *Dilatory Plea*, or the Defendant ſhall be ordered to plead better, &c. 6 *Mod.* The Truth of *Dilatory Pleas* is to be made out by Affidavit of the Fact, &c. by Stat. 4 & 5 *Ann.* See *Plea.*

Diligiatus, Outlawed, *i. e. De Lege ejectus.* Leg. Hen. 1. c. 45.

Dilligrout, Pottage formerly made for the *King's Table*, on his *Coronation* Day: And there was a Tenure in Serjeanty, by which Lands were held of the King, by the Service of finding this Pottage, at that great Solemnity. 39 *H.* 3.

Dimidietas, Is uſed in our Records for a Moiety, or one Half.—— *Sciant quod Ego* Matilda *Filia* Willielmi le F. *dedi* Waltero *de* S. Dimidietatem *illius Burgagii*, &c.—— *Sine dat.* Ex libro Chart. Priorat. de Leominſter.

Diminution, (*Diminutio*) Is where the Plaintiff or Defendant in a Writ of Error alledges to the Court that Part of the Record is omitted and remains in the inferior Court not certified; whereupon he prays that it may be certified by *Certiorari. Co. Ent.* 232, 242. Of courſe *Diminution* is to be certified on a Writ of Error; tho' if Iſſue be join'd upon the Errors aſſigned, and the Matter is entered upon Record, which is made a *Conſilium*, in this Caſe there muſt be a Rule of Court granted for a *Certiorari* to certify *Diminution.* 1 *Lill. Abr.* 245. *Diminution* cannot be alledged of a Thing which is fully certified; but in ſomething that is wanting, as Want of an Original, or a Warrant of Attorney, &c. 2 *Lev.* 206. 1 *Nelſ. Abr.* 658. And if on *Diminution* alledged, the Plaintiff in Errors certify one Original, &c. which is wrong; and the Defendant in Errors certifies another that is true; the true one ſhall ſtand. *Cro Jac.* 597. *Cro. Car.* 91. After a Writ of Error brought, and the Defendant hath pleaded *In nullo eſt Erratum*, he cannot afterwards alledge *Diminution*; becauſe by that Plea he affirmeth or alloweth the Record to be ſuch as is certified upon the Writ of Error. *Godb.* 266. But in ſome Caſes, *Diminution* hath been alledged, after *In nullo eſt Erratum* pleaded, *ex gratia Curiæ*; though not *ex rigore juris.* Palm. 85. And there is an Inſtance that the Court in ſuch a Caſe hath awarded a *Certiorari*, to inform their Conſcience of the Truth of the Record in *C. B.* where the Defendant in Error had not joined *In nullo eſt Erratum.* 1 Nelſ. 658.

Dimiſſory Letters, (*Literæ Dimiſſoriæ*) Are ſuch as are uſed where a Candidate for Holy Orders has a Title in one Dioceſe, and is to be ordained in another: The proper Dioceſan ſends his *Letters Dimiſſory* directed to ſome other ordaining Biſhop, giving Leave that the Bearer may be ordained, and have ſuch a Cure within his Diſtrict. *Cowel.*

Dioceſe, (*Diœceſis*) Signifies the Circuit of every Biſhop's Juriſdiction. For this Realm hath two Sorts of Diviſions; one into Shires or Counties, in Reſpect to the *Temporal State*; and another into *Dioceſes*, in Regard to the *Eccleſiaſtical State*, of which we reckon twenty-one in *England*, and four in *Wales*. 1 *Inſt.* 94. Alſo the Kingdom is ſaid to be divided in its Eccleſiaſtical Juriſdiction into two *Provinces* of *Canturbury* and *York*; each of which Province is divided into *Dioceſes*, and every *Dioceſe* into Archdeaconries, and Archdeaconries into Pariſhes, &c. *Wood's Inſt* 2.

Diſability, (*Diſabilitas*) Is when a Man is diſabled, or made incapable to inherit any Lands, or take that Benefit which otherwiſe he might have done: Which may happen four Ways; by the Act of an Anceſtor, or of the Party himſelf, by the Act of God, or of the Law. 1. *Diſability* by the Act of the Anceſtor, is where the Anceſtor is attainted of Treaſon, &c. which corrupts the Blood of his Children; ſo that they may not inherit his Eſtate. 2. *Diſability* by the Act of the Party, is where a Man binds himſelf by Obligation, that upon Surrender of a Leaſe, he will grant a new Eſtate to the Leſſee; and afterwards he grants over the Reverſion to another, which puts it out of his Power to perform it. 3. *Diſability* by the Act of God, is where a Perſon is *Non ſanæ Memoriæ*, whereby he is incapable to make any Grant, &c. So that if he paſſeth any Eſtate out of him, it may after his Death be made void; but it is a Maxim in Law, *That a Man of full Age ſhall never be received to diſable his own Perſon*. 4. *Diſability* by the Act of the Law, is where a Man by the ſole Act of the Law, without any Thing by him done, is rendered incapable of the Benefit of the Law; as an Alien born, &c. *Terms de Ley* 256. 5 *Rep.* 21. 4 *Rep.* 123, 124. 8 *Rep.* 43. There are alſo other *Diſabilities*, by the Common Law, of Ideocy, Infancy and Coverture, as to Grants, &c. And by Statute in many Caſes; as Papiſts are diſabled to make any Preſentation to a Church, &c. Officers not taking the Oaths, are incapable to hold Offices; Foreigners, though naturalized, to bear Offices in the Government, &c. 11 *Rep.* 77. *Stat.* 11 & 12 *W.* 3. 1 *Geo.* 1. A Perſon ſhall not be admitted to *Diſable* himſelf to avoid an Office of Charge, &c. no more than a Man ſhall be allowed to ſay that he was and *Ideot*, &c. to avoid an Act done by himſelf. *Carthew's Rep.* 307. And the Statutes do not exempt and *Diſable* Diſſenters from bearing Offices; but they muſt ſubmit to a Fine, if they do not Qualify themſelves. *Hill.* 6 *Will.* 3. *Skinner* 576, 577. See *Capacity*.

Diſadvocare, To deny or not acknowledge a Thing: It is mentioned in *Hengham Magna*, *cap* 4.

Diſagreement, Will make a Nullity of a Thing, that had Eſſence before: And *Diſagreement* may be to certain Acts, to make them void, &c. *Co. Lit* 380. See *Agreement*.

Diſalt, According to *Littleton*, is to diſable a Perſon. *Lit.* Tit. *Diſcontinuance*.

Diſboſcatio, A Turning Wood Ground into Arable or Paſture.

Diſcarcare, (from *Dis* and *Cargo*) Is to unlade a Ship or Veſſel by taking out the Cargo or Goods. ——— *Et prædictus*, &c. Carcare & Diſcarcare *fecit ibidem Merchandiſas & Denariatas quaſcunque*. Placit. Parl. 18 Ed. 1.

Diſceit, A Writ or Action for Fraud and Deceit. See *Deceit*.

Diſcent, (Lat. *Deſcenſus*, Fr. *Deſcent*) Is an Order or Means whereby Lands or Tenements are derived unto any Man from his Anceſtors: And is either by *Common Law*, *Cuſtom*, or *Statute*: By *Common Law*, as where one hath Land of Inheritance in Fee-ſimple, and dieth without diſpoſing thereof in his Lifetime, and the Land goes to the eldeſt Son and Heir of Courſe, being caſt upon him by Law. 1 *Inſt.* 13, 237. *Diſcent* of Fee ſimple by *Cuſtom*, is ſometimes to all the Sons, or to all the Brothers, where one Brother dieth without Iſſue; as in *Gavelkind*: Sometimes to the youngeſt Son, as in *Borough Engliſh*; and ſometimes to the eldeſt Daughter, or the Youngeſt, &c. according to the Cuſtoms of particular Places. 1 *Inſt.* 110, 140, 175. *Litt.* 210, 211. And *Diſcent* by *Statute* of Fee-tail, is as directed by the Manner of the Settlement or Limitation, purſuant to the Stat. *Weſtm.* 2. 13 *Ed.* 1. *cap.* 1. *Diſcent* at Common Law, is *Lineal*, or *Collateral*: *Lineal* is a *Diſcent* downwards in a right Line, from the Grandfather to the Father, the Father to the Son, Son to Grandſon, &c. and the lineal Heirs ſhall firſt inherit. *Collateral* is a *Diſcent* which ſpringeth out of the Side of the whole Blood, as another Branch thereof; ſuch as the Grandfather's Brother, Father's Brother, and ſo downward. 1 *Inſt.* 10, 11. Therefore if a Man purchaſeth Lands in Fee-ſimple, and dies without Iſſue, for Default of the right Line, he which is next of Kin in the collateral Line of the whole Blood, though never ſo remote, comes in by *Diſcent* as Heir to him; for there is a next of Kin by Right of *Repreſentation*, and by Right of *Propinquity* or Nearneſs of Blood. *Litt.* 2. 1 *Ventr.* 415. 3 *Rep.* 40. To have Land in Fee ſimple by *Diſcent*, a Perſon muſt be Heir of the *whole Blood*; he is to be the *next*, and *moſt worthy* of Blood, to the Anceſtor; and he ought to be Heir to him that was laſt *actually ſeiſed*. Where Lands deſcend to the Son from the Father, and he enters on the Lands, and dies ſeiſed thereof, without having any Iſſue, this Land will deſcend to the Heirs of the Part of the Father, who are of the whole Blood; and if there are none ſuch, the Land ſhall eſcheat: So where Lands deſcend on the Part of the Mother. *Litt. Sect.* 4. 1 *Inſt.* 13. And there is a Maxim in Law, that where Lands deſcend on the Part of the Father, the Heirs of the Mother ſhall never inherit; and when Lands deſcend on the Part of the Mother, the Heirs of the Father ſhall never inherit. 1 *Inſt.* 14. But it has been reſolved, that a *Fine* and *Render* of Lands, claimed by a Party, as Heir at Law *ex parte materna*, will alter the Quality of the Eſtate; ſo that it ſhall deſcend to the Heir *ex parte paterna*. 6 *Rep.* 63. *Carthew* 141. Alſo if a Man ſeiſed of Land, as Heir of the Part of his Mother, make a Feoffment, and take back an Eſtate to him and his Heirs; this as a Purchaſe alters the *Diſcent*, and if he die without Iſſue, the Heir of the Part of the Father ſhall inherit it. 1 *Inſt.* 12. There is a Difference between *Diſcents* from Father and Mother to their Children, and *Diſcents* between Brothers and Siſters; for a Son or a Daughter need be only of the Blood of either the Father or Mother, which hath the Inheritance, to inherit them: Tho' the Brothers and Siſters muſt be of the ſame Father and Mother, to inherit one another. *Noy* 68. The next and *moſt Worthy of Blood* are the Male, and all Deſcendants from him, before the Females; and the Female on the Part of the Father, before the Male or Female of the Part of the Mother: And the eldeſt Brother, and his Poſterity, ſhall have Lands in Fee-ſimple before any younger Brother: Alſo a Siſter of the whole Blood ſhall be preferred, and take before the younger Brother, which is of the Half Blood; but ſuch a younger Brother, tho' he may not be Heir to a Brother, for Want of the whole Blood, yet he may be Heir to his Father, or his Uncle. 1 *Inſt.* 14. 3 *Rep.* 41. All the Deſcendants from a Perſon who by our Laws might have been Heir to another, hold the ſame Right as that common Root from whom they are derived; ſo that the Son, or Grandchild, whether Son or Daughter of the eldeſt Son, takes before the younger Son; and a Son or Grandchild of the eldeſt Brother, before the youngeſt Brother: And ſo it is through all Degrees of *Diſcents*; by Repreſentation, the Proximity is transferred from the Root to the Branches, and gives them the ſame Preference, as next and worthieſt of Blood. *Hale's Hiſt. L.* 237. The great Grandchild of the elder Brother, whether it be a Son or a Daughter, ſhall here be prefered as the Heir before the younger Brother; for though a Female be leſs worthy than the Male, yet ſhe ſtands in Right of Repreſentation of the elder Brother, who was more worthy than the younger. *Hale's Hiſt. L.* 237. As to being Heir to him that was laſt *ſeiſed:* If Tenant in Fee-ſimple hath a Son and a Daughter by one Woman or Venter, and a Son by another Venter, and dies ſeiſed, and the elder Son dies without Iſſue, before actual Seiſin, the younger Brother as Heir to the Father ſhall have the Eſtate; but if the elder Brother had entered on the Lands, the Siſter would have it as Heir to him. 1 *Inſt.* 11, 15. *Lit.* 8. None can inherit any Lands as Heir, but only the Blood of the *firſt Purchaſer*; as if the Father make a Purchaſe, the Blood of the Mother ſhall not have the Eſtate: But if a Son purchaſes, and there is no Heir on the Side of the Father, the Land ſhall go to the Heirs on the Side of the Mother; for they are of the Blood of the Son the firſt Purchaſer, and he had the Blood of both Father and Mother. *Lit.* 4. 1 *Inſt.* 12. So that there is a Difference where the Son purchaſeth Lands in Fee-ſimple, and where he cometh to them by *Diſcent.* Land thus purchaſed may go to the Heirs of the Father and Mother of the Purchaſer; unleſs it be once attached in the Heir of the Part of the Father, for then the Heirs of the Mother cannot have it, becauſe they are not of the Blood of him who was laſt ſeiſed. 49 *E.* 3. 12. *Finch* 119. Where for want of Heirs of a Purchaſer, of the Part of his Father, or when ſuch Heir had not entered, the Lands *deſcend* to the Line of the Mother; there the Heirs of the Mother of her Father's Side, ſhall take in Succeſſion, before her Heirs of the Part of her Mother. *Hale's Hiſt. L.* 247. *Plowd.* 444. If a Man hath Iſſue two Sons by divers Venters, the younger Brother of the Half Blood ſhall not have Land purchaſed by the elder Brother, on his dying without Iſſue; but the elder Brother's Uncle, or next Couſin ſhall have it. 1 *Inſt.* 14. The *elder Brother* of the whole Blood ſhall have Land by *Diſcent*, purchaſed by a middle or younger Brother, if ſuch die without Iſſue; (for as to *Diſcents* between Brethren, the Eldeſt is the moſt worthy of Blood to inherit to them as well as to the Father.) And if there be no Brother or Siſter, the Uncle ſhall have it as Heir, and not the Father: And yet it may afterwards come to the Father, as Heir to the Uncle; likewiſe if the Father hath Iſſue another Son or Daughter, after the *Diſcent* to the Uncle, that Iſſue may enter upon the Uncle, and hold the Eſtate. *Litt.* 3. 3 *Rep.* 40. The Law takes no Notice of the *Diſability* of the Father in Caſe of *Diſcent*, but only of the immediate Relation of Brothers and Siſters, as to their Eſtates; ſo that the Inability of the Father doth not hinder the *Diſcent* between them: For Example, A Man had Iſſue a Son and a Daughter, and was attainted of Treaſon, and died; the Son purchaſed Lands, and died without Iſſue; and it was adjudged that notwithſtanding the Attainder of the Father, the Daughter ſhall take by *Diſcent* from her Brother, becauſe the *Diſcent* between them was immediate, and the Law doth not regard the Diſability of the Father. 4 *Leon.* 5. 1 *Nelſ. Abr.* 645 If there be Father and Son, and the Son is attainted of Treaſon or Felony in the Father's Life-time, and yet outlive his Father, the Land by *Diſcent* ſhall not come to ſuch Son, nor any of his Iſſues; but if he die before the Father, it will deſcend to his other Children. 4 *Rep.* 31, 124. And where a Perſon ſeiſed of Lands, hath Iſſue two Daughters, if one of them commits Felony, after the Father's Death both Daughters being alive, a Moiety ſhall *deſcend* to one Daughter, and the other ſhall Eſcheat. 1 *Inſt.* 163. Inheritances may *deſcend* but not aſcend: And in the right Line, Children inherit their Anceſtors without Limitation; but the Anceſtors may not take from their Children, for the Father can never come to the Lands which his Son hath purchaſed, by lineal Aſcent; though he may by collateral Aſcent, where the Son's Lands come to his Uncle, and then to the Father. In the collateral Line, the Uncle inherits the Nephew, and the Nephew the Uncle. *Litt.* 3. 3 *Rep.* 40. *Vaugh.* 244. Lands and Tenements in Fee-ſimple *deſcend*, firſt, to the eldeſt Son as Heir, and to his Iſſue; the Sons firſt, in Order of Birth; and for Want of Sons, to the Daughters equally, who inherit as one Heir; if the eldeſt Son hath no Iſſue, then to his next eldeſt Brother of the whole Blood, and his Heirs, and for Want of a Brother, to his Siſter or Siſters of the whole Blood, and their Iſſue; if there be no Brother or Siſter, to the Uncle and his Iſſue; and for Want of an Uncle, to an Aunt or Aunts, and their Iſſue; and if there be none ſuch, then to Couſins in the neareſt Degree of Conſanguinity. *Bacon's Elem.* And in Caſe of Lands purchaſed by Brethren; after Uncles and Aunts, the Lands ſhall deſcend to the Father, and the Half Blood, and their Iſſue, (who come in after the Father, being of the whole Blood to him, though not to one another) and for Want of Uncle, Father, and Half Blood, to the next of Kin in the collateral Line. *Wood's Inſt.* 218. In *Diſcent* of Eſtates-tail, Half Blood is no Hindrance; becauſe the Iſſue are in *per formam Doni*, and always of the whole Blood to the Donee. 3 *Rep.* 41. A Man hath Iſſue an elder Son, born out of the King's Allegiance, and after hath another Son within the Realm; the younger Son ſhall have Lands by *Diſcent* from his Father in this Caſe, and not the Elder who had never any inheritable Blood in him. 1 *Co. Inſt.* 8. If one die ſeiſed of Land, in which another has Right to enter, and it deſcends to his Heir; ſuch *Diſcent* ſhall take away the other's Right of Entry, and put him to his Action for Recovery thereof. *Stat.* 32 *Hen.* 8. *cap.* 33. *Co Litt.* 237. But a *Diſcent* of ſuch Things as lie in Grant, as Advowſons, Rents, Commons in groſs, &c. puts not him that hath Right to his Action. 1 *Inſt.* 237. 2 *Danv. Abr.* 561. And a *Diſcent* ſhall not take away the Entry of an Infant; nor of a Feme Covert, where the Wrong was done to her during the Coverture. 2 *Danv.* 563. See *Kindred*, and *Heir.*

Diſcent being created *by Law*, and the moſt antient Title, an Heir is in by that, before a Grant, or Deviſe, &c. 'Tis a Rule in Law, that a Man cannot raiſe a Fee-ſimple to his own right Heirs, by the Name of Heirs, as a *Purchaſe*, either by Conveyance or Deviſe; for if he deviſe Lands to one who is Heir at Law, the Deviſe is void, and he ſhall take by *Diſcent. Dyer* 54, 126. And 'tis the ſame where the Lands will come to the Heir, either in a direct or collateral Line; or where the Heir comes to an Eſtate by way of Limitation, when the Word *Heirs* is not a Word of *Purchaſe. Ibid.* A Father hath two Sons by ſeveral Venters, and deviſes his Land to his Wife for Life, and after her Deceaſe to his eldeſt Son; tho' the Son doth not take the Eſtate preſently on the Death of his Father, he ſhall be in by *Diſcent*, and not by Purchaſe, and the Deviſe ſhall be void as to him. *Style* 148. 1 *Nelſ. Abr.* 645. A Man being ſeiſed of Lands which he had by the Mother's Side deviſed them to his Heirs on the Part of his Mother; and it was adjudged that the Deviſee ſhall take by *Diſcent.* 3 *Lev.* 127. And when the Heir takes that which his *Anceſtor* would have taken if living, he ſhall take it by *Diſcent*, and not by Purchaſe. 2 *Danv.* 557. But generally where an Eſtate is deviſed to the Heir at Law, attended with a *Charge*, as to pay Money, Debts, &c. in ſuch Caſe he takes by Purchaſe, and not by *Diſcent.* Though Conditions to pay Money have been conſtrued only a Charge in Equity; and that they do not alter the *Diſcent* at Common-Law. 1 *Lut.* 593.

593. 1 *Salk.* 241. A Man can have Lands no other Way than by *Diſcent* or Purchaſe. And *Diſcent* is the worthieſt Means whereby Land can be acquired.

Diſcent of Crown-Lands. All the Lands whereof the King is ſeiſed *in Jure Coronæ*, ſhall *ſecundum jus Coronæ* attend upon and follow the Crown; ſo that to whomſoever the Crown deſcends, thoſe Lands and Poſſeſſions deſcend alſo. And if the Heir to the Crown be attainted of Treaſon; yet ſhall the Crown deſcend to him, and without any Reverſal the Attainder is avoided. *Plowd.* 247. *Co. Lit.* 15. The Dignity of the Crown of *England*, for Want of Heirs Male, is deſcendible immediately to the eldeſt Daughter, and her Poſterity; and ſo it has been declared by Act of Parliament: And by Stat. 25 *H.* 2. *cap.* 22. *Regnum non eſt Diviſibile.* The eldeſt Siſter of a King, as well as the eldeſt Daughter, ſhall inherit all his Fee-ſimple Lands by *Diſcent:* And Half Blood is no Impediment to the *Diſcent* of Lands of the Crown. *Co. Litt.* 15, 165. But a Daughter of the Whole Blood ſhall not inherit where there is a Son of the Half Blood; as where the King hath Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and purchaſes Lands, and dies; afterwards the eldeſt Son enters and dies alſo without Iſſue, the Daughter ſhall not have theſe Lands, or any other Fee-ſimple Lands of the Crown, but they ſhall deſcend to the younger Brother. *Plowd.* 245. 34 *H.* 6. A Perſon coming to be King by *Diſcent* of the Part of his Mother, makes a Purchaſe of Land to him and his Heirs, and dies without Iſſue, this Land ſhall deſcend to the Heir on the Part of the Mother; contrary to the Caſe of a Subject, where the Heir on the Father's Side ſhall enjoy it. *Ibid. Co. Lit.* 16. As the whole Kingdom hath an Intereſt in the *Diſcent of the Crown*, the King cannot ſurrender or alien it, *&c.* See *Crown.*

Diſcent of Dignities. A Dignity alſo differs from common Inheritances, and goes not according to the Rules of the Common Law; for it deſcends to the Half Blood, and there is no Coparcenerſhip in it, but the eldeſt takes the Whole. *Co. Lit.* 27. The Dignity of Peerage is perſonal, annexed to the Blood, and ſo inſeparable that it cannot be tranſferred to any Perſon, or ſurrendered even to the Crown; it can move neither forward or backward, but only downward to Poſterity; and nothing but Corruption of Blood, as if the Anceſtor be attainted of Treaſon or Felony, can hinder the *Diſcent* to the right Heir. *Lex Conſtitutionis, p.* 85.

Diſcharge, On Writs and Proceſs, *&c.* is where a Man confined by ſome legal Writ or Authority, doth that which by Law he is required to do; whereupon he is releaſed or *diſcharged* from the Matter for which he was confined. And if one be arreſted by a *Latitat* out of *B R.* and the Plaintiff do not file a Declaration againſt the Defendant in Priſon in two Terms, he ſhall be *diſcharged* on common Bail. 1 *Lill. Abr.* 470. Alſo where a Defendant on Arreſt is admitted to *Bail*; if the Bail bring in the Principal before the Return of the ſecond *Scire facias* iſſued out againſt them, they ſhall be *diſcharged. Mich.* 24 *Car. B. R.* If an *Obligee* diſcharges one joint Obligor, where ſeveral are jointly bound; it *diſcharges* the others. *March* 129. And a Man may *diſcharge* a *Promiſe* made to himſelf, *&c. Cro. Jac.* 483. See *Acquittal*, and *vide Habeas Corpus.*

Diſclaimer, (*Diſclamium*, From the Fr. *Clamer*, with the Privative *Dis*) Is a Plea containing an expreſs Denial, or Renouncing of a Thing; as if a Tenant ſue a *Replevin*, upon the Diſtreſs of the Lord, and the Lord avows the Taking, ſaying the Tenant holds of him as of his Lord, and that he diſtrained for the Rent not paid, or Service not performed: Now if the Tenant ſay he doth not hold of him, this is called a *Diſclaimer*, and the Lord proving the Tenant to hold of him, on a Writ of Right brought, the Tenant ſhall loſe his Land. *Terms de Ley* 263. And if a Writ of *Præcipe* be brought againſt two Perſons for Land, and one of them the Tenant ſaith that he is not Tenant, nor claims any Thing in the Lands; this is a *Diſclaimer* as to him, and the other ſhall have the whole Land. *Ibid.* And when a Tenant hath *diſclaimed*, upon Action brought againſt him, he ſhall not have Reſtitution on Writ of Error, *&c.* againſt his own Act; but is barred of his Right to the Land *diſclaimed.* 8 *Rep.* 62. But a verbal *Diſclaimer*, ſhall not take Place againſt a Deed of Lands: Nor ſhall the *Diſclaimer* of a Wife during the Coverture, bar her Entry on her Lands. 3 *Rep.* 26. Baron and Feme may diſclaim for the Wife; though if the Husband hath nothing but in Right of his Wife, he cannot *diſclaim.* 2 *Danv. Abr.* 569. Such Perſon as cannot loſe the Thing perpetually in which he *diſclaims*, ſhall not be permitted to *diſclaim;* A Biſhop, *&c.* may not *diſclaim*, for he cannot deveſt the Right out of the Church. Though in a *Quo Warranto*, at the Suit of the King, againſt a Biſhop or others for Franchiſes and Liberties, if the Biſhop, *&c. diſclaims* them, this ſhall bind their Succeſſors. *Co. Lit.* 102, 103. If a Man be vouched becauſe of a Reverſion on a Leaſe made by himſelf, he cannot *diſclaim:* But an Heir may *diſclaim*, being vouched upon a Leaſe made by his Anceſtor. 2 *Danv.* 569. A Perſon may not *diſclaim* in the Principal, and not in the Incident; as he that is vouched becauſe of a Reverſion, cannot *diſclaim* in the Reverſion, ſaving the Seigniory. 40 *Ed.* 3. 27. If the Lord *diſclaims* his Seigniory, in a Court of Record, it is extinct; and the Tenant ſhall hold of the Lord next paramount to the Lord *diſclaiming. Lit. Sect.* 146. It is ſaid not to be neceſſary, that the *Writ of Right ſur Diſclaimer* ſhould be brought againſt the Perſon that *diſclaims;* for if it be only againſt him that is found Tenant of the Land, though he be a Stranger, it is not material. 2 *Danv.* 570. By Plea of *Non-tenure*, nothing is diſowned but the Freehold, which may be good where the Tenant hath the Reverſion in Fee, and not the Freehold; but when ſuch Tenant *diſclaims*, or pleads Non-tenure and *diſclaims*, the Demandant ſhall have the Whole, as the Whole is *diſclaimed. Ibid.* Beſide theſe *Diſclaimers* by Tenants of Lands, there are *Diſclaimers* in divers other Caſes: For there is a *Diſclaimer of Blood*, where a Perſon denies himſelf to be of the Blood or Kindred of another in his *Plea.* F. N. B. 102. And a *Diſclaimer of Goods*, as well as Lands; as if a Man *diſclaimeth* Goods, on Arraignment of Felony, when he ſhall loſe them, tho' he be cleared. *Staundf. P. C.* 186. In the *Chancery*, if a Defendant by his Anſwer renounces the having any Intereſt in the Thing in Queſtion, this is likewiſe a *Diſclaimer.* And there is a *Deed* of *Diſclaimer* of *Executorſhip* of a Will, *&c.* where an Executor refuſes, and throws up the ſame.

Form of a *Diſclaimer* of Executorſhip.

THIS Indenture tripartite, *made the Day*, &c. Between A. B. *of*, &c. *of the firſt Part*, C. D. *of*, &c. *of the ſecond Part, and* L. B. *of*, &c. *of the third Part:* Whereas T. B. *late of*, &c. *duly made and publiſhed his laſt Will and Teſtament in Writing, bearing Date*, &c. *And thereby deviſed (amongſt other Things) all that Meſſuage*, &c. *to the ſaid* L. B. *and alſo gave and bequeathed*, &c. *and made the ſaid* A. B. *and* C. D. *Executors and Truſtees of his ſaid Will, as in and by the ſaid Will may more fully appear.* And whereas *the ſaid* T. B *ſoon after the Making and Publiſhing of the ſaid Will, died; And the ſaid* A. B. *hath refuſed to accept the ſaid Executorſhip and Truſt, and never acted therein, nor ever received any of the Rents and*

Profits of the ſaid Meſſuage, or of the Goods and Chattels of the Teſtator T. B. *But the ſaid* C. D. *alone proved the ſaid Will, and took upon him the Execution thereof:* Now this Indenture witneſſeth, *That the ſaid* A. B. *as a farther Declaration of his not acting in the Executorſhip aforeſaid, and to free himſelf from the ſame, doth by theſe Preſents renounce and diſclaim the ſaid Executorſhip, and all the Truſts repoſed in him by the ſaid recited Will: And doth alſo by theſe Preſents remiſe and releaſe unto the ſaid* C. D. *his Executors and Adminiſtrators, all the Eſtate, Right, Title and Intereſt of him the ſaid* A. B. *in and to the ſaid Premiſſes, by Virtue of the ſaid recited Will, or otherwiſe howſoever.* In Witneſs, &c.

Diſcontinuance, (*Diſcontinuatio*, Derived from the Fr. *Diſcontinuer*, i. e. *Ceſſare*) Signifies an Interruption or Breaking off; and is twofold, *Diſcontinuance of Poſſeſſion*, and *Diſcontinuance of Proceſs:* The Effect of *Diſcontinuance of Poſſeſſion* is, that a Man may not enter upon his own Lands or Tenements alienated, whatever his Right be to it, of his own Authority, but muſt bring his Writ, and ſeek to recover Poſſeſſion by Law. *Co. Lit.* 325. *F. N. B.* 191. Where a Tenant in Tail, or a Man ſeiſed in Right of his Wife, &c. by Feoffment, Gift in Tail, or Leaſe for Life, by Fine or Livery, not warranted by the Statute 32 *H.* 8. aliens the Eſtate; ſuch Alienations are called *Diſcontinuances:* Whereby the Wife after her Husband's Death, and the Iſſue in Tail after the Death of Tenant in Tail, and thoſe in Remainder and Reverſion are driven to their Action, and cannot enter. 1 *Inſt.* 325. But a *Diſcontinuance* taketh away an Entry only: And to every *Diſcontinuance* it is neceſſary there ſhould be a Deveſting or Diſplacing of the Eſtate, and turning the ſame to a Right; for if it be not turned to a Right, they that have the Eſtate cannot be driven to an Action. *Co Lit* 327. And an Eſtate-tail cannot be *diſcontinued*, but where he that makes the *Diſcontinuance*, was once ſeiſed by Force of the Intail, where the Eſtate tail is executed; unleſs by Reaſon of a Warranty. *Lit. Sect.* 637, 641. Alſo if Tenant in Tail levies a Fine, &c. this is no *Diſcontinuance*, 'till the Fine is executed; becauſe if he dies before Execution, the Iſſue may enter. *Co Lit.* 33. 2 *Danv. Abr.* 572. A *Diſcontinuance* may be five Ways, *viz.* by Feoffment, Fine, Recovery, Releaſe, and Confirmation with Warranty. 1 *Rep.* 44. A Grant without Livery; or a Grant in Fee without Warranty, are no *Diſcontinuances:* An Exchange will not make a *Diſcontinuance*; as if Tenant in Tail exchanges Land with another, that is not any *Diſcontinuance*, by Reaſon no Livery is requiſite thereon. 2 *Danv.* 57. It is the ſame of a Bargain and Sale, &c. And an Alteration of ſuch Things as lie in Grant, and not in Livery, works no *Diſcontinuance*; for ſuch Grant does no Wrong either to the Iſſue in Tail, or him in Reverſion or Remainder, becauſe nothing paſſeth but during the Life of Tenant in Tail, which is lawful; and every *Diſcontinuance* worketh a Wrong. *Co. Lit.* 332. If Tenant in Tail of a Copyhold Eſtate, ſurrenders to another in Fee, this makes not any *Diſcontinuance*, (except there be a Cuſtom for it) but the Heir in Tail may enter; though this hath been a great Queſtion. 1 *Leon.* 95. 2 *Danv.* 571. If there be Tenant for Life, Remainder in Tail, and Remainder in Tail, &c. And Tenant for Life, and he in the firſt Remainder in Tail levy a Fine, this is no *Diſcontinuance* of either of the Remainders. 1 *Rep.* 76. But if there be Tenant in Tail, Remainder in Tail, &c. And Tenant in Tail, enfeoffs him in Reverſion in Fee: Or where there is Tenant for Life, Remainder in Tail, Reverſion in Fee, and Tenant for Life enfeoffs the Reverſioner; theſe are *Diſcontinuances*, becauſe there is a mean or immediate Eſtate. 1 *Rep.* 140. *Co. Lit.* 335. 3 *Danv.* 575. If there be Tenant in Tail, Remainder to his right Heirs, and he makes Feoffment in Fee, this is a *Diſcontinuance*; though ſuch Tenant that made the Feoffment, hath the Fee in him. 2 *Danv.* 572. A Man is Tenant for Life, the Remainder in Tail, Remainder in Fee, and the Tenant for Life makes a Feoffment to him in Remainder in Fee; this is ſuch a *Diſcontinuance* of the Eſtate-Tail, as produceth a Forfeiture. 3 *Rep.* 59. If a Tenant in Tail be diſſeiſed, and after Releaſe with Warranty to the Diſſeiſor, it will be a *Diſcontinuance:* So if he releaſe or confirm to Tenant for Life. *Lit. Sect.* 135. 1 *Rep.* 44. And if where there is a Tenant for Life, and Remainder in Tail, the Tenant for Life levies a Fine to his own Uſe; and after Tenant for Life, and he in Remainder join in a Feoffment by Letter of Attorney, this is a *Diſcontinuance* of the Eſtate Tail and the Fee. *Dyer* 327. If Tenant in Tail makes a Feoffment in Fee upon Condition, and the Condition is broken, the Iſſue may enter notwithſtanding this *Diſcontinuance. Lit.* 632. Tenant in Tail grants all his Eſtate to another, though with Livery and Seiſin; and if that other Perſon make a Feoffment in Fee, it will not be a *Diſcontinuance* to take away the Entry of him in Reverſion or Remainder. *Lit.* 145. 1 *Rep.* 46. 10 *Rep.* 97. A Leaſe is made for Life, Remainder in Tail; and he in Remainder in Tail diſſeiſes the Tenant for Life, and makes a Feoffment in Fee, and dies without Iſſue, and then Tenant for Life dieth; this is no *Diſcontinuance* to him in Reverſion. *Lit.* 146. 1 *Brownl.* 36. And if Tenant in Tail of a Rent, Common, Advowſon, or the like, grant it in Fee, it is not a *Diſcontinuance:* Nor where ſuch Tenant granteth any Thing out of Land, &c. *Lit.* 138. *Finch's Law* 193. Where a Tenant in Tail of a Manor makes a Leaſe for Life, not warranted by Stat. 32 *Hen.* 8. of Part of the Demeſnes, this is a *Diſcontinuance* of this Parcel; and 'tis ſaid makes it no Parcel of the Manor. 2 *Rol. Abr.* 58. By Statute, a Husband is reſtrained from Alienation, and diſcontinuing of the Wife's Land. 32 *Hen.* 8. *cap.* 28. And a Wife Tenant in Tail with the Husband; or having an Eſtate in Dower, &c. from making any *Diſcontinuance* of the Lands of the Husband, after his Death. 11 *H.* 7. *cap.* 20. Likewiſe Eccleſiaſtical Perſons, as Biſhops, Deans, &c. from aliening or diſcontinuing their Eſtates. 13 *Eliz. cap.* 10. 1 *Jac.* 1. *cap.* 3. And ſome *Diſcontinuances* at Common Law are now made Bars as to the Iſſue in Tail; though ſtill *Diſcontinuances* in ſome Caſes, to him in Remainder, &c. ſuch as Fines, with Proclamations by Statute 4 *H.* 7. *cap.* 24. 32 *H.* 8. *cap.* 36. If the Husband levy a Fine with Proclamations, and dieth, the Wife muſt enter, or avoid the Eſtate of the Conuſee within five Years, or ſhe is barred for ever, by the Stat. 4 *Hen.* 7. For the Stat. 32 *Hen.* 8. *cap.* 28. doth help the *Diſcontinuance*, but not the Bar. 1 *Inſt.* 326. Husband and Wife Tenants in ſpecial Tail, the Husband alone levied a Fine to his own Uſe, and afterwards he deviſed the Land to his Wife for Life, the Remainder over, rendring Rent, &c. The Husband dies, the Wife enters and pays the Rent, and dies: In this Caſe it was adjudged, that the Fine had barred the Iſſue in Tail, but not the Wife. *Dyer* 351. The Entry of the Wife in this Caſe, was a Diſagreement to the Eſtate of Inheritance, and an Agreement to the Eſtate for Life: But if the Wife had not waved the Inheritance, the Eſtate-tail as to the Wife had remained. 9 *Rep.* 135. If Lands be given to the Husband and Wife, and to the Heirs of their two Bodies, and the Husband maketh a Feoffment in Fee, and dieth; the Wife is helped by the Statute 32 *H.* 8. and ſo is the Iſſue of both their Bodies. 1 *Inſt.* 326. The Husband is Tenant in Tail, the Remainder to the Wife in Tail, the Husband makes a Feoffment in Fee; by this the Husband by the Common Law did not only diſcontinue his own Eſtate-tail, but his Wife's Remainder: But by Statute 32 *Hen.* 8. after the Death of the Husband without Iſſue, the Wife may enter by the ſaid Act. Though if the Husband hath Iſſue, and maketh a Feoffment in Fee of his Wife's Land, and his Wife dieth; the Heir of the Wife ſhall not enter during the Husband's Life, neither by the Common Law, nor by the Statute. *Ibid.* A *Diſcontinuance* may be defeated, where the Eſtate that worked it is defeated; as if a Husband make a Feoffment of the Wife's Land upon Condition; and after his Death, his Heir enters on the Feoffee for the Condition broken; now the *Diſcontinuance* is defeated, and a Feme may enter upon the Heir. 1 *Inſt.* 336. The Titles of *Diſcontinuance* of Eſtates and *Remitter*, were formerly large Titles in our Books; but they are abridged by Statute.

Diſcontinuance of Proceſs, Is when the Opportunity of Proſecution is loſt for that Time; or the Plaintiff is diſmiſſed the Court, *&c.* And every Suit, whether Civil or Criminal, and every Proceſs therein, ought to be properly continued from Day to Day, *&c.* from its Commencement to its Concluſion; and the Suffering any Default or Gap herein, is called a *Diſcontinuance:* The Continuance of the Suit by improper Proceſs, or by giving the Party an illegal Day, is properly a *Miſcontinuance.* 2 *Hawk.* 298. Where an Action is long depending, and continued from one Term to another, the *Continuances* muſt be all entered, otherwiſe there will be a *Diſcontinuance*; whereupon a Writ of Error may be brought, *&c.* 1 *Nelſ. Abr.* 660. If the Plaintiff in a Suit doth nothing, it is a *Diſcontinuance*, and he muſt begin this Suit again: And where 'tis too late to amend a Declaration, *&c.* or the Plaintiff is adviſed to proſecute in another Court, he is to diſcontinue his Suit, and proceed *de novo. Com. Law Com. Plac.* 171. But a *Diſcontinuance* of an Action, is not perfect till it is entered on the Roll, when 'tis of Record. *Cro. Car.* 236. The Plaintiff cannot diſcontinue his Action after a Demurrer joined, and entered; or after a Verdict, or a Writ of Enquiry, without Leave of the Court. *Cro. Jac.* 35. 1 *Lill. Abr.* 473. In Actions of Debt or Covenant, after a Demurrer joined, the Court will give Leave to diſcontinue, if there be an apparent Cauſe; as if the Plaintiff through his own Negligence, is in Danger of loſing his Debt: But if the Demurrer be argued, then he ſhall not have Leave to diſcontinue; nor where he brings another Action for the ſame Cauſe, and this is pleaded in Abatement of the firſt Action. *Sid.* 84. It has been ruled, upon a Motion to diſcontinue, that the Court may give Leave after a ſpecial Verdict; which is not compleat and final; but never after a general Verdict. 1 *Salk.* 178. 1 *Nelſ.* 663. An Appeal may as well be diſcontinued by the Defect of the Proceſs or Proceeding in it, as it may be by the Inſufficiency of the Original Writ, *&c.* For by ſuch Defect, the Matter depending is as it were out of Court. 1 *Lill.* 473. A *Diſcontinuance* or Miſcontinuance, at Common Law reverſes a Judgment given by Default; and *Diſcontinuance* upon a Demurrer is Error; but a Miſcontinuance after Appearance is not ſo. 8 *Rep.* 156. 46 *E.* 3. 30. *Diſcontinuance* of Proceſs is helped at Common Law by Appearance: And by Stat. 32 *H.* 8. *cap.* 30. all *Diſcontinuances*, Miſcontinuances and Negligences therein, of Plaintiff or Defendant, are cured after Verdict. 2 *Danv.* 352. The Death of the King is not a *Diſcontinuance* of any Suit; and no Suit before Juſtices of Aſſiſe, or Juſtices of Peace, *&c.* will be diſcontinued by a new Commiſſion. *Stat.* 1 *Ed.* 6. *c.* 3. 4 *&* 5 *W. & M. &c.* On the *Diſcontinuance* of Suits, it is uſual to give the Defendant Coſts. See *Continuance.*

Diſcontinuance of Plea, Is where divers Things ſhould be pleaded to, and ſome are omitted; this is a *Diſcontinuance.* 1 *Nelſ. Abr.* 660, 661. If a Defendant's Plea begin with an Anſwer to Part, and anſwers no more, it is a *Diſcontinuance*; and the Plaintiff may take Judgment by *Nil dicit*, for what is not anſwered: But if the Plaintiff plead over, the whole Action is diſcontinued. 1 *Salk.* 139. Debt upon Bond of 500 *l.* the Defendant as to 225 *l.* Part of it, pleads Payment, *&c.* And upon Demurrer to this Plea, it was adjudged that there being no Anſwer to the Reſidue, 'tis a *Diſcontinuance* as to that, for which the Plaintiff ought to take Judgment by *Nil dicit.* 1 *Salk.* 180. Where no Anſwer is given to one Part, if the Plaintiff pleads thereto, he cannot have Judgment according to his Declaration; for which Reaſon it may be a *Diſcontinuance* of the Whole. 1 *Nelſ.* 660. But this is helped after Verdict by 32 *H.* 8. *c.* 30.

Diſcovert, Is uſed in the Law for a Woman unmarried or Widow, one not within the Bands of Matrimony. *Law Fr. Dict.*

Diſcretion, (*Diſcretio*) When any Thing is left to any Perſon to be done according to his *Diſcretion*, the Law intends it muſt be done with ſound *Diſcretion*, and according to Law: And the Court of *B. R.* hath a Power to redreſs Things that are otherwiſe done, notwithſtanding they are left to the *Diſcretion* of thoſe that do them. 1 *Lill. Abr.* 477. *Diſcretion* is to diſcern between Right and Wrong; and therefore whoever hath Power to act at *Diſcretion*, is bound by the Rule of Reaſon and Law. 2 *Inſt.* 56, 298. And tho' there be a Latitude of *Diſcretion* given to one, yet he is circumſcribed that what he does be neceſſary and convenient; without which no Liberty can defend it. *Hob.* 158. The Aſſeſſment of Fines on Offenders committing Affrays, *&c.* And the Binding of Perſons to the good Behaviour, are at the *Diſcretion* of our Judges and Juſtices of the Peace. 1 *Hawk. P. C.* 132, 138. And in many Caſes, for Crimes not capital, the Judges have a diſcretionary Power to inflict corporal Puniſhment on the Offenders. 2 *Hawk.* 445. Infants, *&c.* under the Age of *Diſcretion*, are not puniſhable for Crimes; and want of *Diſcretion*, is a good Exception againſt a Witneſs. *Ibid.* 434.

Disfranchiſe, Is to take away one's Freedom or Privilege: It is the contrary to *Enfranchiſe.* And Corporations have Power to *disfranchiſe* Members, for doing any Thing againſt their Oaths; but not for Contempts, *&c.* 11 *Rep.* 98. See *Corporation.*

Diſheriſon, Is an old Word which ſignifies as much as *Diſinheriting*; mentioned in the Stat. 20 *Ed.* 1. and 8 *R.* 2.

Diſheritor, One that *diſinheriteth*, or puts another out of his Inheritance. *Stat.* 3 *Ed.* 1. *cap.* 39.

Diſmes, (*Decimæ*) Are *Tithes*, or the *Tenth* Part of all the Fruits of the Earth, and of Beaſts, or Labour due to the Clergy. It ſignifieth alſo the *Tenths* of all *Spiritual Livings* given to the Prince, which is called a *Perpetual Diſm. Stat.* 2 *&* 3 *Ed.* 3. *cap.* 35. And formerly this Word ſignified a *Tax* or Tribute levied of the *Temporality. Hollingſh. in H.* 2. *f.* 111. The Laws of *Diſmes* or *Tithes*; ſee *Tithes.*

Diſparagement, In a legal Senſe was uſed for matching an Heir in Marriage under his Degree, or againſt Decency. *Co. Lit.* 107. *Magn. Chart. c.* 6.

Diſpauper. When a Perſon by Reaſon of his Poverty, is admitted to ſue *in Forma pauperis*; if afterwards, before the Suit is ended, the ſame Party have any Lands or perſonal Eſtate fallen to him, or be guilty of any Thing whereby he is liable to have this Privilege taken from him, then he is put out of the Capacity of ſuing *in Forma Pauperis*, and is ſaid to be *diſpaupered.* See *Forma Pauperis.*

Diſpenſation. By the 25 *H.* 8. *cap.* 21. The *Archbiſhop of Canterbury* has Power of *diſpenſing* in any Caſe, wherein *Diſpenſations* (not contrary to the Law of God) were formerly granted by the See of *Rome*; and may grant *Diſpenſations* to the King, as well as to his Subjects: But ſuch *Diſpenſations* ſhall not be granted out of the Realm, *&c.* And during the Vacancy of the See of *Canterbury*, the Guardian of the Spiritualties may grant *Diſpenſations.* The

Archbiſhop of *Canterbury* grants *Diſpenſations*, not only in his own Province, but in the Province of *York*; and the Archbiſhop of *York*, and other Biſhops, diſpenſe as they were wont to do, by the Common Law and Cuſtom of the Realm. *Wood's Inſt.* 26. Every Biſhop of common Right has the Power of Inſtitution into Benefices, and of Diſpenſing in common Caſes, &c. *Ibid.* 505. *Diſpenſations* to hold *Pluralities*; ſee *Chaplains*.

Diſpenſations of the King. If a *Diſpenſation* by the *Archbiſhop* of *Canterbury*, is to be in extraordinary Matters, or in a Caſe that is new, the *King* and his Council are to be conſulted; and it ought to be confirmed under the Broad Seal. The *King*'s Authority to grant *Diſpenſations* remains as it did at Common Law; notwithſtanding the Stat. 25 *H.* 8. 1 *Cro.* 542, 601. The *Diſpenſation* of the *King*, &c. makes a Thing prohibited, lawful to be done by him who hath it: But *Malum in ſe* will not admit of a *Diſpenſation*. *March Rep.* 213. Where the Subject hath an immediate Intereſt in an Act of Parliament, the *King* cannot *diſpenſe* with it; but where the *King* is intruſted with the Management thereof, and the Subject intereſted by Way of Conſequence only, he may. *March* 214, 216. When an Offence wrongs none but the *King*; or if the Suit is only the *King*'s for the Breach of a Penal Law, that is not to the Damage of a third Perſon, the *King* may *diſpenſe*: But in Caſe the Suit is the *King*'s, for the Benefit of another, he cannot. *Vaugh.* 344, 334, 339, &c.

Diſpenſation by non obſtante. If any Statute tends to reſtrain ſome *Prerogative* incident to the Perſon of the *King*, as the Right of Pardoning, or of Commanding the Service of the Subject for the publick Weal, &c. which are inſeparable from the King; by a *Clauſe* of *Non obſtante*, he may diſpenſe with it. 2 *Hawk.* 390. But as in the Reign of King *James* II. the *diſpenſing* Power was carried ſo high as to render the Execution of our neceſſary Laws in a Manner dependent on the Pleaſure of the Prince; by Stat. 1 *W.* & *M. Seſſ.* 2. *cap.* 2. It is enacted, That no *Diſpenſation by Non obſtante* of, or to any Statute, or any Part thereof, ſhall be allowed; but that the ſame ſhall be held void, and of none Effect, except a *Diſpenſation* be allowed in ſuch Statute. The *Diſpenſation* by *Non obſtante* was brought into this Kingdom by the *Pope*; and firſt uſed by *Hen.* 3. Pryn's Animadver. on 4 Inſt. fol. 129.

Diſperſonare, Is to ſcandalize or diſparage. *Blount.*

Diſſignare, To break open a Seal. —— *Sepulto patre Teſtamentum* diſſignatum *eſt*. Neubrigenſis, lib. 2. c. 7.

Diſſeiſin, (from the Fr. *Diſſaiſin*) Signifies an unlawful Diſpoſſeſſing a Man of his Right. As where a Perſon enters into Lands or Tenements, and his Entry is not lawful, and keeps him that hath the Eſtate from the Poſſeſſion thereof. *Bract. lib.* 4. *c.* 3. And *Diſſeiſin* is of two Sorts; either *Single Diſſeiſin*, committed without Force of Arms; or *Diſſeiſin by Force*, but this latter is more properly *Deforcement*. *Brit. cap.* 42, 43. By *Magna Charta*, 9 *Hen.* 3. *c.* 29. No Man is to be *diſſeiſed* or put of his Freehold, but by lawful Judgment of his Peers, or the Law: And by Statute, the Dying ſeiſed of any *Diſſeiſor* of or in any Lands, &c. having no Right therein, ſhall not be a Diſcent in Law, to take away an Entry of a Perſon having lawful Title of Entry; except the *Diſſeiſor* hath had peaceable Poſſeſſion five Years, without Entry or Claim by the Perſon having lawful Title. 32 *H.* 8. *cap.* 33. But if a *Diſſeiſor* having expelled the right Owner, hath ſuch Peaceable Poſſeſſion of the Lands five Years without Claim, and continues in Poſſeſſion ſo as to die ſeiſed, and the Land deſcends to his Heirs, they have a Right to the Poſſeſſion thereof till the Perſon that is Owner recovers at Law; and the Owner ſhall loſe his Eſtate for ever, if he do not proſecute his Suit within the Time limited by the Statute of Limitations. *Bac. Elem.* And if a *Diſſeiſee* levy a Fine of the Land whereof he is *diſſeiſed*, unto a Stranger, the *Diſſeiſor* ſhall keep the Land for ever; for the *Diſſeiſee* againſt his own Fine cannot claim, and the Conuſee cannot enter, and the Right which the *Diſſeiſee* had being extinct by the Fine, the *Diſſeiſor* ſhall take Advantage of it. 2 *Rep.* 56. But this is to be underſtood, where no Uſe is declared of the Fine by the *Diſſeiſee*; when it ſhall enure to the Uſe of the *Diſſeiſor*, &c. by *Bridgman*, C. J. 1 *Lev.* 128. If a Feme Sole be ſeiſed of Lands in Fee, and is *diſſeiſed*, and then taketh Husband; in this Caſe, the Husband and Wife, as in Right of the Wife, have Right to enter, and yet the Dying ſeiſed of the *Diſſeiſor*, ſhall take away the Entry of the Wife, after the Death of the Husband. 1 *Inſt.* 246. If a Perſon *diſſeiſes* me, and during the *Diſſeiſin*, he or his Servants cut down the Timber growing upon the Land, and afterwards I re-enter into the Lands, I ſhall have Action of Treſpaſs againſt him; for the Law, as to the *Diſſeiſor* and his Servants, ſuppoſes the Freehold to have been always in me: But if the *Diſſeiſor* be *diſſeiſed*, or if he makes a Feoffment, Gift in Tail, Leaſe for Life or Years, I ſhall not have an Action againſt the ſecond *Diſſeiſor*, or againſt thoſe who come in by Title: For all the meſne Profits ſhall be recovered againſt the *Diſſeiſor* himſelf. 11 *Rep.* 51. *Keilw.* 1. A *Diſſeiſor* in Aſſiſe, where Damages are recovered againſt him, ſhall recover as much as he has paid in Rents chargeable on the Lands before the *Diſſeiſin*. *Jenk. Cent.* 189. But if the *Diſſeiſor* or his Feoffee ſows Corn on the Land, the *Diſſeiſee* may take it whether before or after Severance. *Dyer* 31, 173. 11 *Rep.* 46. Where a Man hath a Houſe in Fee, &c. and locks it, and then departs; if another Perſon comes to his Houſe, and takes the Key of the Door, and ſays that he claims the Houſe to himſelf in Fee, without any Entry into the Houſe, this is a *Diſſeiſin* of the Houſe. 2 *Danv. Abr.* 624. If a Feoffor enters on the Land of the Feoffee, and makes a Leaſe for Years, &c. it is a *Diſſeiſin*, tho' the Intent of the Parties to the Feoffment, was that the Feoffee ſhould make a Leaſe to the Feoffor for Life. 2 *Rep.* 59. If Leſſee for Years is ouſted by his Leſſor; this is ſaid to be no *Diſſeiſin*. *Cro. Jac.* 678. A Man enters on another's Lands, claiming a Leaſe for Years, who hath not ſuch Leaſe, is a *Diſſeiſor*: Though if a Man enters into the Houſe of another by his Sufferance, without claiming any Thing, it will not be a *Diſſeiſin*. 9 *H.* 6. 21, 31. 2 *Danv.* 625. If a Perſon enters on Lands by Virtue of a Grant or Leaſe, that is void in Law; he is a *Diſſeiſor*. 2 *Danv.* 630. A Leſſee at Will makes a Leaſe for Years, it is a *Diſſeiſin*, at the Election of the Leſſor at Will: But it is the *Diſſeiſin* of the Leſſee at Will, not of the Leſſee for Years. *Hill.* 7 *Car. B. R.* If a Man enters into the Land of an Infant, though by his Aſſent; this is a *Diſſeiſin* to the Infant, at his Election. 11 *Ed.* 3. *Aſſ.* 87. And if a Perſon commands another to enter upon Lands, and make a *Diſſeiſin*, the Commander is a *Diſſeiſor*, as well as ſuch other; unleſs the Command be conditional, when it may be otherwiſe. 22 *Aſſ.* 99. 2 *Danv.* 631. If a Man forces another to ſwear to ſurrender his Eſtate to him, and he doth ſo, it will be a *Diſſeiſin* of the Eſtate. So forcibly hindring a Perſon from tilling his Land, is a *Diſſeiſin* of the Land. 1 *Inſt.* 161. But if one enter wrongfully into the Lands of another, and he accepts Rent from ſuch Perſon, he ſhall not afterwards be taken for a *Diſſeiſor*. *Dyer* 173. Where any Perſon is diſturb'd from entring on Land, it is a *Diſſeiſin*: A Denial of a Rent, when lawfully demanded, is a *Diſſeiſin* of the Rent. 1 *Inſt.* 153. Alſo hindring a Diſtreſs for Rent, by Force; or making Reſcous of a *Diſtreſs*, are a *Diſſeiſin* of the Rent. 2 *Danv.* 624, 624, 625. An Infant, or Feme Covert, may be a *Diſſeiſor*, but it muſt be by actual Entry on Lands, &c. A Feme Covert ſhall not be a *Diſſeiſoreſs*, by the Act of the Baron: If he *diſſeiſes* another to her Uſe, ſhe is not a *Diſſeiſoreſs*; nor if the Wife agrees to it during the Coverture: Yet if after his Death, ſhe agrees to it, ſhe is a *Diſſeiſoreſs*. *Ibid.* 626, 627. Aſſiſes that lie againſt *Diſſeiſors* are called *Writs of Diſſeiſin*; and there are ſeveral Writs of Entry *ſur Diſſeiſin*, of which ſome are in the *Per*, and others in *le Poſt*, &c. But Writs of *Aſſiſe* on *Diſſeiſins*, are now diſuſed; and the feigned Action of Ejectment is introduced in their Place. See *Aſſiſe of Novel Diſſeiſin*, and *Entry*.

Diſſeiſor, Is in general he that *diſſeiſeth* or puts another out of his Land, without Order of Law: And a *Diſſeiſee* is he that is ſo put out. 4 *H.* 4. As the King in Judgment of Law can do no Wrong, he cannot be a *Diſſeiſor*. 1 *E.* 5. 8. A *Diſſeiſor* is to be fined and impriſoned; and the *Diſſeiſee* reſtored to the Land, &c. by Stat. 20 *H.* 3. *cap* 3. Where a *Diſſeiſor* is *diſſeiſed*, it is called *Diſſeiſin* upon *Diſſeiſin*.

Diſſenters, Are Separatiſts from the Church, and the Service and Worſhip thereof. At the *Revolution* a Law was enacted, That the Statutes of Qu. *Eliz.* and K. *James* I. concerning the Diſcipline of the Church, ſhould not extend to *Proteſtant Diſſenters*: But the Perſons diſſenting, are to ſubſcribe the Declaration of 30 *Car.* 2. *cap.* 1. and take the Oaths, or the Declaration of Fidelity, &c. And they muſt not hold their Meetings, till their Place of Worſhip is certified to the Biſhop, &c. or to the Juſtices at their Quarter-Seſſions, and regiſtred there; alſo they are not to keep the Doors of their Meeting houſes locked, &c. If any Perſon diſturbs them in their Worſhip, on Conviction at the Seſſions, he ſhall forfeit 20*l.* Stat. 1 *W.* & *M.* And there are a great many Statutes relating to *Diſſenters* beſides the Toleration Act: As the 5 & 6 *Ed.* 6. *c.* 1. 23 *Eliz. c.* 1. 3 *Jac.* 1. *c.* 4. 13 *Car.* 2. *c.* 1. 17 *Car.* 2. *c.* 2. and 22 *Car.* 2. *c.* 1. 1 *W.* & *M. c.* 18. 10 *Ann. c.* 2. 1 *Geo.* 1. *c.* 6, &c. See *Church*, &c.

Diſtillers, Of Strong Waters and Spirits, ſetting up any Tun, Caſk, &c. or uſing any private Warehouſe or Cellar, without Notice given to the Officer of Exciſe, ſhall forfeit 20*l.* and 10*l.* for working Stills but at ſuch appointed Hours, to be levied by Warrant of two Juſtices of Peace. *Stat.* 1 & 3 *W.* & *M.* 7 *W* 3. *c.* 30. If any *Diſtiller* ſhall uſe a private Pipe for Conveyance of diſtilled Liquor, he forfeits 100*l.* And private Stills to be ſeiſed, for which a Search may be made by Officers of Exciſe by Virtue of a Juſtice's Warrant. 10 & 11 *W.* 3. *c.* 4. *Diſtillers*, &c. are to make an Entry of all Warehouſes, for keeping Brandy, on Pain of 20*l.* and Forfeiture of the Liquors; and Brandy ſhall not be ſold but in Warehouſes and Places entered, under the Penalty of 40*s.* *per* Gallon, by Stat. 6 *Geo.* 1. *c.* 20. All Mixed or Compound Waters or Spirits, commonly called *Geneva*, &c. in the Poſſeſſion of *Diſtillers*, are liable to a Duty of 5*s.* *per* Gallon; and Entries to be made of Stills, &c. under Penalty of 20*l.* And none of the ſaid mixed Liquors ſhall be expoſed to Sale, but in ſome Place that is entered, on Pain of Forfeiting 40*s.* a Gallon; and if any *Diſtiller diſtils* or ſells any Spirits, not of full Proof he ſhall pay the like Forfeiture: Alſo Sellers or Retailers of any Compound Liquors, in leſs Quantities than a Gallon, are to take out a Licenſe at the Exciſe-Office for the ſame, and pay down 20*l.* and ſelling without ſuch Licence, to forfeit 50*l.* Selling Brandy about Streets, in any Wheelbarrow or on a Shed, or other Place, incurs a Penalty of 10*l.* leviable by Juſtices of Peace: But this Act ſhall not extend to Arrack, Rum, Citron Water, Iriſh Uſquebaugh, &c. *Stat. Geo.* 2. *cap.* 17. The Duty on Compound Waters or Spirits, and *French* Brandy, &c. taken off, and Duties granted of 1*s.* and 2*s.* *per* Gallon, to be raiſed in the ſame Manner as Exciſe upon Beer, and Ale, &c. And *Diſtillers* or other Perſons may export Spirits, drawn from Corn of *Great Britain*, on Oath, and that Duties are paid, and ſhall be allowed a Drawback of 4*l.* 18*s.* *per* Ton, &c. Cyder uſed in Diſtillation, is exempted from Duty; but *Diſtillers* uſing it otherwiſe, ſhall forfeit 5*l.* Stat. 6 *Geo.* 2. *c.* 17. No *Diſtillers* or others, ſhall retail any Brandy, Rum, Arrack, Geneva, &c. by any Name, in any leſs Quantity than two Gallons, without taking out a Licenſe, and paying 50*l.* to the next Office of Exciſe, &c. on Pain of forfeiting 100*l.* and ſhall pay 20*s.* *per* Gallon: And the Retailers to make a true Entry of all their Warehouſes, Shops, Cellars, &c. and the Liquors therein, under the Penalty of 20*l.* and 40*s.* for every Gallon concealed, or making any clandeſtine Increaſe, &c. Officers for the Duties may enter Warehouſes, &c. and take an Account of Liquor, and Perſons refuſing them Entrance ſhall forfeit 50*l.* None may contract with any Workman or Servant, to pay him his Wages, ſo much in Money, and the reſt in Brandy, &c. And Hawkers and Sellers of Brandy about the Streets, &c. to forfeit 10*l.* or be committed for two Months. But Phyſicians and Apothecaries, may uſe Spirituous Liquors in Medicines for Sick Perſons; and *Diſtillers* may exerciſe any other Trade. 9 *Geo.* 2. *c.* 23. The Forfeitures impoſed on unlawful Retailers of Spirituous Liquors, &c. to be recovered and mitigated, as directed by the Act 12 *Car.* 2. And where any Perſons are not able to pay the Fines, Commiſſioners of Exciſe to advance the Rewards for Information out of Money in their Hands; and the Offenders to be committed to the Houſe of Correction, and there ſtript naked from the Middle and whipped, &c. Stat. 10 *Geo.* 2. *c.* 17. Occupiers of any Houſe or Place, where any Spirituous Liquors ſhall be ſold leſs than two Gallons, if privy thereto, are to be deemed Retailers thereof, and forfeit 100*l.* And if any Perſons to the Number of five or more, in a riotous Manner aſſemble to reſcue Offenders, or to aſſault, beat or wound Informers, they ſhall be adjudged guilty of Felony, and be tranſported. 11 *Geo.* 2. *c.* 26. By a late Act the great Duties laid on Spirituous Liquors by former Statutes, and on Licences for retailing the ſame, are repealed, and other Duties granted; and no Perſons ſhall retail any *diſtilled* Spirituous Liquors, or Strong Waters, in Publick or Private, without taking out a Licence from the Commiſſioners of the Exciſe, &c. and paying 20*s.* yearly, on Pain of forfeiting 10*l.* or to be committed to the Houſe of Correction, and there kept to Hard Labour two Months. Theſe Licences are not granted to any Perſons, but thoſe only that keep Taverns, Inns, Alehouſes or Coffee-Houſes; and they muſt be firſt Licenſed to ſell Ale or Spirituous Liquors by two or more Juſtices of Peace, to be enabled to retail ſuch Liquors: But none ſhall be deem'd a Retailer, who does not ſell it to be drank in any Place belonging to him, or ſend it abroad, in leſs Quantities than a Pint. Stat. 16 *Geo.* 2. *cap.* 8.

Diſtreſs, (*Diſtrictio*) Signifies moſt commonly any Thing which is taken and *diſtrained* for Rent behind, or other Duty: And by the Common Law, *Diſtreſſes* for Rent were not to be ſold, but only detained for inforcing Payment of the Rent; but this is altered by Statute. A Man may take a *Diſtreſs* for Homage, Fealty, or any Services; for Fines and Amercements; and for Damage-feaſant, &c. And the Effect of it is to compel the Party either to *replevy* the *Diſtreſs*, and conteſt the Taking in Action of Treſpaſs againſt the Diſtrainer; or, which is more uſual, to compound and pay the Debt or Duty, for which he was diſtrained. There are likewiſe *Diſtreſſes* in Actions compulſory to cauſe a Man to appear in Court: And of theſe there is a *Diſtreſs*

Perſonal, of a Man's moveable Goods, and Profits of his Lands. *&c.* for Contempt in not appearing after ſummoned; and *Diſtreſſes Real*, upon immoveable Goods. And none ſhall be diſtrained to anſwer for any Thing touching their Freeholds, but by the King's Writ. 52 *Hen.* 3. *Diſtreſs* is alſo divided into *finite* and *infinite*: *Finite*, is that which is limited by Law, how often it ſhall be made to bring the Party to Trial of the Action, as once, twice, *&c.* And *infinite*, is without Limitation, until the Party appears; which is likewiſe applicable to Jurors not appearing: Then it hath had a further Diviſion into a *Grand Diſtreſs*, and *Ordinary Diſtreſs*; the former whereof extends to all the Goods and Chattels which the Party hath within the County. *F. N. B.* 904. *Old Nat. Br.* 43, 113. *Brit. c.* 26. *f.* 52. Of common Right a Perſon may diſtrain for Rents, and all Manner of Services; and for Rent reſerved upon a Gift in Tail, Leaſe for Life, Years, *&c.* though there be no Clauſe of *Diſtreſs* in the Deed, ſo as the Reverſion be in himſelf: But on a Feoffment in Fee, a *Diſtreſs* may not be taken, unleſs expreſly reſerved in the Deed. 1 *Inſt.* 57, 205. *Doctor and Student, cap.* 9. If a Leſſee for Years grant away all his Term to another, rendring Rent, he cannot diſtrain for this Rent; but Debt will lie for it as a Sum in groſs. 2 *Lev.* 80. If one make a Leaſe rendring Rent at *Michaelmas*, provided if it be behind twenty Days after, he ſhall diſtrain; in this Caſe the Leſſor may not diſtrain till the twenty Days be paſt: But the Opinion of ſome Judges is againſt it, where a *Diſtreſs* is incident; and the Words are Affirmative, that he may diſtrain at any Time after the Day. *Co. Litt.* 204. *Trin.* 14 *Jac.* 1. A Man grants a Rent out of the Manor of *D.* and further, that if the Rent be behind, the Grantee ſhould diſtrain for it in the Manor of *S.* this is a Rent of the Manor of *D.* and only a Penalty on the other Manor. 1 *Shep. Abr.* 567. If a Perſon ſeiſed of Land in Fee, demiſe it to one upon Condition to pay his Wife 5*l.* a Year Rent, and if it be behind and in Arrear, that ſhe ſhall diſtrain for it; the Wife may take a *Diſtreſs* for the Rent. *Dyer* 3, 48. There is a Lord and Tenant by 3*l.* Rent and Fealty, the Lord dies, and his Wife is endowed of the Thirds of the Seigniory; here ſhe may diſtrain for one Pound, and the Heir for two Pounds: So if a Rent be divided amongſt Parceners, each of them may have a *Diſtreſs* for her Part; but this may not be till Partition is made. *Bro.* 45. If one Jointenant make a Gift in Tail, of the Land, reſerving a certain Rent, and the Rent be arrear; he may not diſtrain the Beaſts of the other Jointenant. 33 *H.* 6. 35. But if *A.* and B. are Tenants in Common, and *A.* leaſes his Moiety to *C.* for Years, rendring Rent, and *C.* leaſe it to B. if the Rent is behind, *A.* may take a *Diſtreſs* of the Cattle of B. his fellow Tenant in Common. 7 *Rep.* 23. *Moor* 558. To juſtify taking a *Diſtreſs*, the Party muſt ſee he hath good Cauſe to Diſtrain; that he have Power to take the *Diſtreſs*, and from the Perſon from whom he takes it; that the Thing for the Quality of it be Diſtrainable, and he diſtrain it in due Time and Place, *&c.* He who takes a *Diſtreſs* for another, ought to have good Warrant for the doing of it; and muſt do it in his Name: And a Bailiff or Servant, may diſtrain for his Maſter. 1 *Cro.* 748. 2 *Cro.* 436. *Godb.* 110. A *Diſtreſs* ought to be made of ſuch Things whereof the Sheriff may make Replevin, and deliver again in as good Plight and Condition as they were at the Time of the Taking. 1 *Inſt.* 47. And *Diſtreſſes* for Rent are to be reaſonable, and not exceſſive; and not to be taken in the King's Highway, or the common Street; or in the ancient Fees of the Church. 51 *H.* 3. 52 *H.* 3. *c.* 15. 9 *Ed.* 2. And where a *Diſtreſs* is taken, it may be replevied in five Days; if the Tenant and Owner of the Goods do not in that Time after taken, and *Notice* given, and of the Cauſe left at the Dwelling-houſe, *&c.* replevy the ſame according to Law; then the Perſon diſtraining may with the Under-Sheriff of the County, or Conſtable of the Place, *&c.* (who are required to be aſſiſting) cauſe the Goods to be appraiſed by two ſworn Appraiſers, and ſold to ſatisfy the Rent, *&c.* leaving the Overplus in the Conſtable's Hands for the Uſe of the Owner. *Stat.* 2 *W. & M. c.* 5. All *Diſtreſſes* for Rent muſt be made on the Premiſſes, by the Common Law: But by Statute, if any Tenant fraudulently removes Goods from off the Premiſſes, the Landlord may in five Days ſeiſe ſuch Goods whereſoever found, as a *Diſtreſs* for the Rent in Arrear; unleſs the Goods are ſold for a valuable Conſideration before the Seiſure. 8 *Ann. c.* 17. And whereas before that Statute, for Rent due the laſt Day of the Term, the Leſſor could not diſtrain; becauſe the Term ended before the Rent was due; (and the Leſſee had the whole Day to pay it) and it was the ſame, where the Leſſee held over his Term, for Rent incurred during the Term. *Co. Litt.* 47. Now by the Stat. 8 *Ann.* where Leaſes are expired, a *Diſtreſs* may be taken, provided it be done within ſix Months, and during the Landlord's Title and Tenant's Poſſeſſion. *Diſtreſſes* for Services, are to be on the Land: But for an Amercement in a Leet, the *Diſtreſs* may be taken any where within the Hundred, as well out of the Land, as on it, where-ever Cattle are of him that is amerced; for the Amercement charges only the Perſon, and not the Land; and for this a *Diſtreſs* may be taken in the high Street. 2 *Danv. Abr.* 644, 645. The Lord cannot diſtrain for Amercements in a Court-Baron, without a Preſcription; though he may in the Leet: And the Goods and Cattle of another, may not be taken in *Diſtreſs* on my Ground, for an Amercement, *&c.* ſet upon me in a Court-Leet or Court-Baron. 11 *Rep.* 44. 12 *H.* 7. 13. For Services a *Diſtreſs* cannot be taken but where the Services are certain; or may be reduced to a Certainty. *Co. Litt.* 96. A *Diſtreſs* for Rent cannot be made in the Night: Nor may Gates, *&c.* be broke open to make a *Diſtreſs*; or the Landlord enter into the Tenant's Houſe for that Purpoſe, unleſs the Doors are open. 1 *Inſt.* 142, 161. One may break an inner Door of a Houſe, *&c.* to take the *Diſtreſs*; if the outer Doors be open. *Comb.* 17. *Diſtreſſes* are to be of a Thing valuable, whereof ſome Body hath a Property; Things *Feræ Naturæ*, as Dogs, Conies, *&c* may not be diſtrained. 1 *Roll. Abr.* 664, 666. It is the ſame of Cattle of the Plough, Beaſts of Husbandry, Sheep, or Horſes joined to a Cart, with a Rider upon it. 1 *Vent.* 36. But it has been adjudged that Horſes may be taken from a Cart loaded; though it has been a diſputed Caſe, whether they could be ſeparated. *Sid.* 422 *Raym.* 18. A Horſe with a Rider upon his Back; or a Horſe in an Inn, or put into a Common; an Ax in a Man's Hand, cutting down Wood; or any Thing a Perſon carries about him; Utenſils and Inſtruments of a Man's Trade or Profeſſion, or the Books of a Scholar; Corn in a Mill, or Goods in a Market to be ſold for the Uſe of the Publick; Materials in a Weaver's Shop, for making of Cloth; another Perſon's Garment in the Houſe of a Taylor, *&c.* are not diſtrainable: Nor is any Thing that is fixed to the Freehold of a Houſe, as a Furnace, Doors, Windows, Boards, *&c.* 1 *Sid.* 422, 440. 1 *Inſt.* 47. 2 *Danv. Abr.* 641. But Goods, Cattle, not of the Plough, *&c.* Sheaves of Corn; Corn in the Straw, or thraſhed; and Carts with Corn, (but not Victuals) Hay in a Barn, or Ricks of Hay, Money in a Bag ſealed, though not out of a Bag, *&c.* may be diſtrained for Rent: And ſo may Cattle or Goods driving to Market, if put into Paſture by the Way; and Beaſts of a Stranger, in the Landlord's Ground, being *Levant and Couchant*, and having well reſted themſelves there. 1 *Inſt.* 47. 1

Lutw. 214. *Mod.* 385. 2 *W.* & *M.* If a Driver of Cattle asks Leave of the Leſſor to put his Cattle into Ground for a Night, and he gives Leave, as well as the Leſſee; yet 'tis ſaid he is not concluded from diſtraining them for Rent. 2 *Ventr.* 59. 2 *Danv.* 642. Relief given in Equity in theſe Caſes. See *Chancery.* 2 *Vern.* 129. But the Goods of a Carrier are privileged, and cannot be diſtrained for Rent, though the Waggon wherein loaded is put into the Barn of a Houſe, &c. on the Road. 1 *Salk.* 249. If the Fences of another Man's Ground be out of Repair, and the Neighbour's Cattle eſcape there, and are *Levant and Couchant*, without any freſh Purſuit after them, they may be diſtrained for Rent; for the Land is Debtor for the Rent, and the Landlord muſt reſort thither, and is not to inquire whoſe Cattle they are which he finds therein. 1 *Rol. Rep.* 124. 1 *Nelſ. Abr.* 667. But if the Owner freſhly purſues the Cattle, they are not diſtrainable; becauſe they are ſuppoſed to be always in his View and Poſſeſſion. If the Owner of the Cattle is to maintain the Fences, in ſuch Caſe, if they eſcape into another's Ground, they may be diſtrained before *Levant and Couchant*, and notwithſtanding freſh Purſuit. 1 *Nelſ. Ibid.* Where a Landlord comes to diſtrain Cattle, which he ſees on the Tenant's Ground, if the Tenant, or any other, to prevent the *Diſtreſs*, drives the Cattle off the Land, the Landlord may make freſh Purſuit, and diſtrain them: Tho' if before the *Diſtreſs*, the Owner of the Cattle tenders his Rent, and a *Diſtreſs* is taken afterwards, it is wrongful. 2 *Inſt.* 160. 2 *Inſt.* 107. Two *Diſtreſſes* cannot be taken for one Rent, if there were ſufficient Goods when the firſt *Diſtreſs* was made; but if there were not then a ſufficient *Diſtreſs*, there may. *Cro. El.* 13; *Lutw.* 1536. But by Stat. 17 *Car.* 2. *cap.* 1. When the Value of Cattle diſtrained ſhall be found not to be of the Value of the Arrears of Rent, for which the *Diſtreſs* was taken, the Perſon diſtraining, his Executors, &c. may take further *Diſtreſſes*, for ſuch Arrears. 1 *Nelſ.* 670. A *Diſtreſs* of Cattle muſt be brought to the common *Pound*, or be kept in an open Place; and if they are put into a common Pound, the Owner is to take Notice of it at his Peril; but if in any other open Place, Notice is to be given the Owner, that he may feed them; and then if the Cattle die for Want of Food, the Tenant ſhall bear the Loſs; and the Landlord may diſtrain again for his Rent. 5 *Rep.* 90. 1 *Inſt.* 47, 96. Where one impounds Cattle diſtrained, he cannot juſtify the Tying them in the Pound; if he ties a Beaſt, and it is ſtrangled, he muſt anſwer it in Damages. 1 *Salk.* 248. If the Perſon diſtraining put the *Diſtreſs* in a broken Pound, and the *Diſtreſs* eſcapes, he can have no Action for the ſame: 'Tis otherwiſe if from another Pound, without his Default, when he may have Action of Treſpaſs. *Salk. Ibid.* By Statute, none ſhall drive a *Diſtreſs* out of the County, on Pain to be fined and amerced: And no *Diſtreſs* of Cattle ſhall be driven out of the Hundred where taken to any Pound, except to a Pound overt in the ſame County, and not above three Miles diſtant; nor ſhall any *Diſtreſs* be impounded in ſeveral Places, under the Penalty of 5*l.* and treble Damages. 52 *H.* 3 *c.* 4. 1 *P.* & *M. cap.* 12. After a *Diſtreſs* is in the Pound, it is ſaid to be *in Cuſtodia Legis*, ſo that the Owner of it hath no abſolute Property therein; and therefore he cannot ſell or forfeit it, nor may the ſame be taken in Execution, &c. but it muſt be as a Pledge or Means to help the Party diſtraining to his Debt or Duty. *Co. Litt* 190. *Finch's Ley* 135. Cattle diſtrained may not be uſed, becauſe by Law they are only as a Pledge; unleſs it be for the Owner's Benefit, by milking, &c. 2 *Cro.* 148. When a *Diſtreſs* is taken of Houſhold Goods, or other dead Things, they are to be impounded in a Houſe, or other Pound Covert, &c. And if the *Diſtreſs* is damaged, the Diſtrainer muſt anſwer it. *Wood's Inſt.* 191. And they are to be removed immediately; except Corn or Hay, by Stat. 2 *W.* & *M. cap.* 5. If a Landlord doth not remove Goods immediately, but quits them till another Day, during which Time they are taken away, it is not a Reſcous, for want of Poſſeſſion. *Mod Ca.* 215. 1 *Nelſ.* 672. Where Goods are unlawfully diſtrained, the Owner may reſcue them, before they are impounded; but not afterwards. 1 *Inſt.* 47. If Lands lie in ſeveral Counties, a *Diſtreſs* may be made in one County, for the whole Rent. 1 *Inſt.* 154. And if a Landlord comes into a Houſe, and ſeiſes upon ſome Goods as a *Diſtreſs*, in the Name of all the Goods in the Houſe; this is a good Seiſure of all. 6 *Mod.* 215. But if any Perſon ſhall diſtrain another, on Purpoſe to injure him, or put him to Expence, &c. he ſhall pay treble Damages. *Stat.* 13 *Ed.* 1. And if any *Diſtreſs* and Sale be made where there is no Rent due, the Owner of the Goods diſtrained ſhall recover double the Value of the Goods, and full Coſts, by 2 *W.* & *M.* Alſo by the Common Law, if a Lord or other Perſon ſhall diſtrain ſeveral Times for his Service or Rent, when none is in Arrear, the Tenant may have an *Aſſiſe de ſovent Diſtreſs*, &c. F. *N.* B. 176. See *Recaption*, *Replevin*, and *Reſcous.*

Diſtreſs for Rent by the late Act, which has much altered our Law in this Caſe: If any Tenant of Lands or Tenements, ſhall fraudulently carry away his Goods, to prevent *Diſtreſs*, the Landlord may within thirty Days after, diſtrain them whereever they ſhall be found, as if they had been on the Premiſſes; but no ſuch Goods ſhall be diſtrained, if ſold *bona fide* for valuable Conſideration before Seizure, to any Perſon not privy to the Fraud. Tenants committing ſuch Fraud, or others aſſiſting, ſhall forfeit double the Value of the Goods carried off, to be recovered by Action of Debt, &c. And where they ſhall not exceed 50*l.* Value, the Landlord may exhibit a Complaint before two Juſtices of Peace, who are to examine the Fact, and inquire into the Value of the Goods, and thereupon order the Offender to pay double Value, leviable by *Diſtreſs* and Sale; or for want thereof, commit the Offender to the Houſe of Correction for ſix Months. Landlords, or their Agents, may with the Aſſiſtance of a Conſtable, ſeize any Goods fraudulently concealed in any Houſe, Outhouſe, &c. And in Caſe of a Dwelling-houſe, on Oath firſt made to ſome Juſtice of Reaſon to ſuſpect that ſuch Goods are therein, may break open the ſame, and diſtrain them: They may alſo diſtrain for Rent any Cattle, or Stock of their Tenants, feeding in any Common; or Corn, Graſs, Hops, Fruits, &c. growing on the Land, which they ſhall cut, gather, cure and lay up when ripe, in any proper Place, giving Notice to the Tenant within a Week where lodged, and diſpoſe thereof towards the Satisfaction of the Rent and Charges; the Appraiſement to be taken when cut or cured: But if after a *Diſtreſs* ſo taken, before the Product be ripe and gathered, the Tenant ſhall pay the Rent, and Charges of the *Diſtreſs*, the ſaid *Diſtreſs* ſhall ceaſe. Perſons may ſecure *Diſtreſſes* lawfully taken, and ſell them upon the Premiſſes, in like Manner as may be done off the ſame by 2 *W.* & *M.* And any Perſons may go to and from the Premiſſes, to view, appraiſe, buy, or take away the Goods of the Purchaſer; and if a Reſcous be made for the *Diſtreſs*, the Perſons aggrieved ſhall have the Remedy given by the ſaid Statute. *Diſtreſſes* made for Rent juſtly due, ſhall not be unlawful, nor Diſtrainers Treſpaſſers *ab initio*, for any Irregularity in the Diſpoſition thereof; but the Parties grieved to have Satiſfaction for ſpecial Damage, in an Action of the Caſe, &c. But no Tenant ſhall recover by ſuch Action, if Tender of Amends hath been made before the Action brought. And in all

Actions of Treſpaſs, or on the Caſe relating to the Entry, *Diſtreſs*, or Sale, made by Landlords for Rents, the Defendants may plead the General Iſſue, and if the Plaintiffs become nonſuit, *&c.* ſhall recover double Coſts of Suit. Stat. 11 *Geo.* 2. *c.* 19. See *Leaſe.* Vide the *Statute.*

Diſtreſs of the King. By the Common Law, no Subject can diſtrain out of his Fee or Seigniory; unleſs Cattle are driven to a Place out of the Fee, to hinder the Lord's *Diſtreſs*, *&c.* But the *King* may diſtrain for Rent-Service, or Fee Farm, in all the Lands of the Tenant whereſoever they be; not only on Lands held of himſelf, but of others; where his Tenant is in actual Poſſeſſion, and the Land manured with his own Beaſts, *&c.* 2 *Inſt.* 132. 2 *Danv. Abr.* 643.

Diſtreſs of a Town. If a Town be aſſeſſed to a certain Sum, a *Diſtreſs* may be taken in any Part, ſubject to the whole Duty. 2 *Danv.* 643.

Diſtribution of Inteſtates Eſtates, according to the 22 *&* 23 *Car.* 2. may be ſued for as well in the Chancery, as in the Eccleſiaſtical Court: And if the Perſons appointed to have it, die before a *Diſtribution* made, their Shares go to their Executors, *&c.* 2 *Chan. Rep.* 374. Where the Remainder or Surplus of an Eſtate, not diſpoſed of by Will, ſhall go and remain to the next of Kin, by the Statute of *Diſtributions.* 2 *Vern.* 361, 676. See *Adminiſtrator*, alſo *Executor*, and *Inteſtates.*

Diſtrictione Scaccarii, A *Statute* ſo called. 51 H. 3.

Diſtrict, (*Diſtrictus*) A Territory, or Place of Juriſdiction; the Circuit wherein a Man may be compelled to appear; alſo the Place in which on hath the Power of diſtraining: And where we ſay *Hors de ſon fee*, out of the Fee; it has been uſed for *Extra* Diſtrictum *ſuum.* Brit. c. 120.

Diſtringas, Is a Writ directed to the Sheriff, or other Officer, commanding him to diſtrain a Man for a Debt to the King, *&c.* Or for his Appearance at a Day. There is a great Diverſity of this Writ; which was ſometimes of old called *Conſtringas.* F. N. B. 138.

Diſtringas Juratores, Is a Writ directed to the Sheriff, to diſtrain upon a *Jury* to appear; and return Iſſues on their Lands, *&c.* for Non-appearance. Where an Iſſue in Fact is joined to be tried by a *Jury*, which is returned by the Sheriff in a Panel upon a *Venire facias* for that Purpoſe; thereupon there goes forth a Writ of *Diſtringas Jurator'*, to the Sheriff, commanding him to have their Bodies in Court, *&c.* at the Return of the Writ. 1 *Lill. Abr.* 483. And the Writ of *Diſtringas Jur'* ought to be delivered to the Sheriff ſo timely, that he may warn the *Jury* to appear four Days before the Writ is returnable, if the *Jurors* live within forty Miles of the Place of Trial; and eight Days if they live farther off. *Ibid.* 484. There may be an *Alias*, or *Pluries Diſtringas Jur'* where the *Jury* do not appear.

Dividend in the Exchequer, Is taken for *one Part* of an *Indenture.* Stat. 10 Ed. 1. c. 11.

Dividend in the Univerſity, Is that Part or Share which every one of the Fellows do juſtly and equally *divide* among themſelves of their annual *Stipend.*

Dividend in Law Proceedings, A *Dividing* of *Fees* and Perquiſites between Officers ariſing from Writs, *&c. Practiſ. Solic.*

Dividend of Merchants, Is where a juſt Share of Profits in *Trade* is aſſigned to any one.

Dividend in Stocks, A *dividable* proportionate Share of the *Intereſt* of *Stocks*, erected on publick Funds; as the *South-Sea*, *India*, *Bank*, and *African* Stocks, *&c.* Payable to the Adventurers half-yearly.

Diviſa, Hath various Significations: Sometimes it is uſed for a *Device*, Award or Decree: Sometimes for *Deviſe* of a Portion or Parcel of Lands, *&c.* by Will: And ſometimes it is taken for the Bounds or Limits of Diviſion of a Pariſh, or Farm, *&c.* As *Diviſas perambulare*, to walk the Bounds of a Pariſh; in which Senſe, it has been extended to the Diviſion between Countries, and given Name to Towns, as to the *Deviſes*, a Town in *Wiltſhire*, ſituate on the Confines of the Weſt *Saxon* and *Mercian* Kingdoms. *Leg. H.* 2. *cap.* 9. *Leg. Inæ*, *c.* 44. *Leg. H.* 1. *c.* 57. Cowel.

Divil on the Neck. A tormenting Engine made of Iron, ſtraitning and winching the *Neck* of a Man with his Legs together, in a horrible Manner, ſo that the more he ſtirreth in it the ſtraiter it preſſeth him, formerly in Uſe among the Perſecuting *Papiſts.* *Fox's Acts ſub R. H.* 8.

Divorce, (*Divortium, à Divertendo*) Is a Separation of two, *de facto* married together, made by Law: It is a *Judgment Spiritual*; and therefore if there be Occaſion, it ought to be reverſed in the Spiritual Court. *Co. Lit* 335. And beſides Sentence of *Divorce*; in the old Law, the Woman *divorced* was to have of her Husband a Writing called a *Bill of Divorce*, which was to this Effect, *viz. I Promiſe that hereafter I will lay no Claim to Thee, &c.* There are many *Divorces*, mentioned in our Books; as *Cauſa Præcontractus*; *Cauſa Frigiditatis*; *Cauſa Conſanguinitatis*; *Cauſa Affinitatis*; *Cauſa Profeſſionis*, *&c.* But the uſual *Divorces* are only of two Kinds, *i. e. à Menſa & Thoro*, from Bed and Board; and *à Vinculo Matrimonii*, from the very Bond of Marriage. A *Divorce à Menſa & Thoro*, diſſolveth not the Marriage; for the Cauſe of it is ſubſequent to the Marriage, and ſuppoſes the Marriage to be lawful: This *Divorce* may be by Reaſon of Adultery in either of the Parties, for Cruelty of the Husband, *&c.* And as it doth not diſſolve the Marriage, ſo it doth not debar the Woman of her Dower; or baſtardize the Iſſue; or make void any Eſtate for the Life of Husband and Wife, *&c.* 1 *Inſt.* 235. 3 *Inſt.* 89. 7 *Rep.* 43. The Woman under Separation by this *Divorce*, muſt ſue by her next Friend; and ſhe may ſue her Husband in her own Name for Alimony. *Wood's Inſt.* 62. A *Divorce à Vinculo Matrimonii*, abſolutely diſſolves the Marriage, and makes it void from the Beginning, the Cauſes of it being precedent to the Marriage; as *Præcontract* with ſome other Perſon, Conſanguinity or Affinity, within the *Levitical* Degrees, Impotency, Impuberty, *&c.* On this *Divorce* Dower is gone; and if by Reaſon of *Præcontract*, Conſanguinity, or Affinity, the Children begotten between them are Baſtards. 1 *Inſt.* 335. 2 *Inſt.* 93. 687. But in theſe *Divorces*, the Wife 'tis ſaid ſhall receive all again that ſhe brought with her, becauſe the Nullity of the Marriage ariſes thro' ſome Impediment; and the Goods of the Wife were given for her Advancement in Marriage, which now ceaſeth: But this is where the Goods are not ſpent; and if the Husband give them away during the Coverture, without any Colluſion, it ſhall bind her: If ſhe knows her Goods unſpent, ſhe may bring Action of Detinue for them; and as for Money, *&c.* which cannot be known, ſhe muſt ſue in the Spiritual Court. *Dyer* 62. 1 *Nelſ. Abr.* 675. Where Lands were formerly given to Husband and Wife, and the Heirs of their Bodies in *Frank Marriage*; if they had been afterwards *divorced*, the Wife was to have her whole Lands; and by *Divorce* an Eſtate-Tail of Baron and Feme, 'tis ſaid may be extinct. *Godb.* 18. After a Sentence of *Divorce* is given in the Spiritual Court *Cauſa Præcontractus*, the Iſſue of that Marriage ſhall be Baſtards, ſo long as the Sentence ſtands unrepealed; and no Proof ſhall be admitted at Common Law to the contrary. 1 *Inſt.* 235. 1 *Nelſ.* 674. And Iſſue of a ſecond Marriage in ſuch Caſe, may inherit until the Sentence is repealed. 2 *Leon.* 207. Though it is not ſo where the *Diverce* is *à Menſa & Thoro*, for Adultery, *&c.* in which Caſe the Marriage ſtill continues. *Cro. Car.* 462. And if after a *Divorce à Menſa & Thoro*, either of the Parties marry again, the other being Living, ſuch Marriage is a mere Nullity; and by Sentence to confirm the firſt Contract, ſhe and her firſt Husband become Husband and Wife to all Intents, without any formal *Divorce* from the ſecond. 1 *Leon.* 173. Alſo on this *Divorce*, as the Marriage continues, marrying again while either Party is living, hath been held within the Statute 1 *Jac.* 1. of Felony, for having married a ſecond Husband or Wife, the former being alive; where a Woman was *divorced*, and inhibited by the Statute not to marry during her Husband's Life. *Cro. Car.* 333. 1 *Nelſ.* 674. On a *Divorce à Vinculo Matrimonii*, by Reaſon of *Præcontract*, &c. the Parties may marry again: And in *Divorces* for Adultery, ſeveral Acts of Parliament have allowed the innocent Party to marry again. Sentence of *Divorce* muſt be given in the Life of the Parties, and not afterwards: But it may be repealed in the Spiritual Court, after the Death of the Parties. 1 *Inſt.* 33, 244. 7 *Rep.* 44. 5 *Rep* 98. Upon the *Divorce* of a Man and his Wife, Equity will not aſſiſt the Wife in recovering Dower, at the Husband's Death, but ſhall leave her to the Law; neither ought the Spiritual Court to grant her Adminiſtration, ſhe not being ſuch a Wife as is intitled to it; nor will the Chancery Decree her a Diſtributive Share. *Preced. Canc.* 111, 112. A *Divorce* ſhall be tried by the Biſhop's Certificate; and not by a Jury.

Diurnalis, Signifies as much Land as can be ploughed in a Day, with one Ox; in ſome Authors, it is writ *Diuturna*. Blount.

Docket, or **Dogget,** Is a Brief in Writing on a ſmall Piece of Paper or Parchment, containing the Effect of a greater Writing. 2 & 3 *P.* & *M. cap.* 6. *Weſt. Symbol. par.* 2. *ſect.* 106. And when Rolls of *Judgments* are brought into *C. B.* they are *docketted*, and entered on the *Docket* of that Term; ſo that upon any Occaſion you may ſoon find out a Judgment, by ſearching theſe *Dockets*, if you know the Attorney's Name. Exemplification, of *Decrees in Chancery* are alſo *docketted*: And Attornies keep *Docket-Books*, wherein are entered Judgments, &c. *Practiſ. Attorn. Edit.* 1. *p.* 155, 166.

Dogs, The Law takes Notice of a Greyhound, Maſtiff *Dog*, Spaniel and Tumbrel; for Trover will lie for them. 1 *Cro.* 125. 2 *Cro.* 44. A Man hath a Property in a Maſtiff: And where a Maſtiff falls on another *Dog*, the Owner of that *Dog* cannot juſtify the Killing the Maſtiff; unleſs there was no other Way to ſave his *Dog*, as that he could not take off the Maſtiff, &c. 1 *Saund.* 84. 3 *Salk.* 139. The Owner of a *Dog* is bound to muzzle him if miſchievous, but not otherwiſe: And if a Man doth keep a *Dog*, that uſeth to bite Cattle, &c. if after Notice given to him of it, his *Dog* ſhall do any Hurt, the Maſter ſhall anſwer for it. *Ibid.*

Dog-Days, (*Dies caniculares*) Are the hotteſt Time of the Year, by Reaſon the Sun is then in *Leo*: They are reckoned ſixty-four in all, *à tertio Idus* Julii *uſque in Idus* Septembris.

Dog-draw, Is a manifeſt Deprehenſion of an Offender againſt Veniſon in a *Foreſt*, when he is found *drawing* after a Deer by the Scent of a Hound, led in his Hand: Or where a Perſon hath wounded a Deer, or wild Beaſt, by ſhooting at him, or otherwiſe, and is caught with a *Dog drawing* after him to receive the ſame. *Manwood, par.* 2. *cap.* 18.

Dogger, A light Ship or Veſſel; as a *Dutch Dogger*, &c. Stat. 31 Ed. 3. cap. 1.

Dogger-fiſh, Are *Fiſh* brought in thoſe Ships *Stat. Ibid.*

Dogger-Men, Fiſhermen that belong to *Dogger-Ships*. 25 H. 8. c. 2.

Doitkin, or *Doit*, Was a baſe Coin of ſmall Value, prohibited by the Stat. 3 *H.* 5. *c.* 1. We ſtill retain the Phraſe, in common Saying, when we would undervalue a Man, *That he is not worth a* Doit.

Do Law, (*Facere Legem*) Is the ſame with to make Law. *Stat.* 23 *H* 6. *c.* 14.

Dole, (*Dola*) A *Saxon* Word ſignifying as much as *Pars* or *Portio* in the *Latin*; and anciently where a Meadow was divided into ſeveral Shares, it was called a *Dole Meadow*. 4 Jac. cap. 11. See *Dalus*.

Dolefiſh, ſeems to be the Share of *Fiſh*, which the *Fiſhermen*, yearly employed in the *North* Seas, do cuſtomarily receive for their Allowance. *Stat.* 35 *H.* 8. *c.* 7.

Dolg-bote, (*Sax.*) A Recompence or Amends, for a Scar or Wound. *Sax. Dict. LL. Aluredi Reg. c.* 23.

Dollar, A Piece of Foreign Coin, going for about 4 *s.* 6 *d.* *Lex Mercat.*

Dom-boc, (*Sax.*) Signifies *Liber Judicialis*, as appears by the Laws of K. *Ed.* 1. This 'tis conjectured was a Book of *Statutes* of the *Engliſh Saxons*, wherein the Laws of the antient *Saxon* Kings were contained. *Leg. Inæ, c.* 29.

Dome, or **Doom,** (from the Sax. *Dom*) A Judgment, Sentence, or Decree. And ſeveral Words end in *Dom*; as *Kingdom*, *Earldom*, &c. from whence they may be applied to a Juriſdiction of a Lord, or a King. *Mon. Ang. Tom.* 1. *fol.* 284. Alſo there is a *Dome of a Church*; ſuch as St. *Paul's*, &c.

Domeſday, (*Liber Judiciarius, vel Cenſualis Angliæ*) Is a moſt antient Record, made in the Time of *William* I. called the *Conqueror*, and now remaining in the *Excheqùer* fair and legible, conſiſting of *two Volumes*, a Greater and a Leſs; the greater containing a *Survey* of all the *Lands* in *England*, except the Counties of *Northumberland*, *Cumberland*, *Weſtmoreland*, *Durham*, and Part of *Lancaſhire*, which 'tis ſaid were never ſurveyed, and excepting *Eſſex*, *Suffolk*, and *Norfolk*; which three laſt are comprehended in the leſſer Volume. There is alſo a *third Book*, which differs from the others in Form more than Matter, made by the Command of the ſame King. And there is a *fourth Book* kept in the Exchequer which is called *Domeſday*; and though a very large Volume, is only an Abridgment of the others. Likewiſe a *fifth Book* is kept in the *Remembrancer's* Office in the Exchequer, which has the Name of *Domeſday*, and is the very ſame with the fourth before mentioned. Our Anceſtors had many *Dome-Books*: King *Alfred* had a Roll which he called *Domeſday*; and the *Domeſday* Book made by *Will.* 1. referred to the Time of *Edward* the Confeſſor, as that of King *Alfred* did to the Time of *Ethelred*. The fourth Book of *Domeſday* having many Pictures, and gilt Letters in the Beginning, relating to the Time of King *Edward* the Confeſſor, this led him who made Notes on *Fitzherbert's Regiſter* into a Miſtake in *p.* 14. where he tells us, that *Liber* Domeſday *factus fuit tempore Regis Edwardi*. The Book of *Domeſday* was begun by five Juſtices, aſſigned for that Purpoſe in each County, in the Year 1081, and finiſhed *Anno* 1086. And it is generally known, that the Queſtion whether Lands are *Antient Demeſne*, or not, is to be decided by the *Domeſday* of *Will* 1. from whence there is no Appeal: And 'tis a Book of that Authority, that even the Conqueror himſelf ſubmitted ſome Caſes wherein he was concerned to be determined by it. The Addition of *Day* to this *Dome*-Book, was not meant with any Alluſion to the *final Day of Judgment*, as moſt Perſons have conceited; but was to ſtrengthen and confirm it, and ſignifieth the judicial deciſive Record or Book of *dooming* Judgment and Juſtice. *Hammond's Annot*. *Camden* calls this Book *Gulielmi Librum Cenſualem*, the *Tax-Book* of King *William*; and it was further called *Magna Rolla Winton*. The Dean and Chapter of *York* have a Regiſter ſtiled *Domeſday*; ſo hath the Biſhop of *Worceſter*; and there is an antient Roll in *Cheſter Caſtle*, called *Domeſday* Roll. *Blount.*

Domes-men, Judges, or Men appointed to doom, and determine Suits and Controverſies: Hence *agdeme, I deem*, or Judge. Vide *Days Man.*

Domicellus, Is an old obſolete *Latin* Word, anciently given as an Appellation or Addition to the King's natural Sons in *France*, and ſometimes to the eldeſt Sons of Noblemen there; from whence we borrow'd theſe Additions: As ſeveral natural Children of *John of Gaunt*, Duke of *Lancaſter*, are ſtiled *Domicelli* by the Charter of Legitimation. 20 *R.* 2. But according to *Thorn*, the *Domicelli* were only the better Sort of Servants in Monaſteries.——Domicellus *Abbatis* & Domicelli & *Servientes Monaſterii*, *p* 1748, 1990.

Domigerium, Is ſometimes uſed to ſignify Danger; but otherwiſe, and perhaps more properly, it is taken for Power over another; *ſub* Domigerio *alicujus vel manu eſſe.* Bract. lib. 4. Tract. 1. cap. 19.

Domina, A Title given to honourable Women, who anciently in their own Right of Inheritance held a Barony. *Paroch. Antiq.*

Dominica in Ramis Palmarum, *Palm Sunday.* Anno 23 Ed. 1.

Dominium, Signifies Right or Regal Power. *Paroch. Antiq.* 498.

Dominus. This Word prefix'd to a Man's Name, in ancient Times uſually denoted him a Knight, or a Clergyman; and ſometimes a Gentleman, not a Knight, eſpecially a Lord of a Manor.

Domo Reparanda, Is a Writ that lies for one againſt his Neighbour, by the Fall of whoſe Houſe he fears Damage and Injury to his own. *Reg. Orig.* 153.

Domus Converſorum, Was an antient Houſe built or appointed by King *Hen.* 3. for ſuch *Jews* as were *converted* to the Chriſtian Faith: But King *Ed.* 3 who expulſed the Jews from this Kingdom, deputed the Place for the Cuſtody of the Rolls and Records of the *Chancery.* See *Rolls.*

Domus Dei, The Hoſpital of Saint *Julian* in *Southampton*, ſo called. *Mon. Angl Tom.* 2. 440.

Donative, (*Donativum*) Is a Benefice meerly given and collated by the Patron to a Man, without either Preſentation to, or Inſtitution by the Ordinary, or Induction by his Order. *F. N. B.* 35. And *Donatives* are ſo term'd, becauſe they began only by the Foundation and Erection of the *Donor. Clergym. Law.* 120. The King might of ancient Time found a Church or Chapel, and exempt it from the Juriſdiction of the Ordinary: So he may by his Letters Patent give Licence to a common Perſon to found ſuch a Church or Chapel, and make it *Donative*, not preſentable; and that the Incumbent or Chaplain ſhall be depriv'd by the Founder and his Heirs, and not by the Biſhop; which ſeems to be the Original of *Donatives* in *England. Gwin's Readings.* When the King founds a Church, &c. *Donative*, it is of Courſe exempted from the Ordinary's Juriſdiction, tho' no particular Exemption is mentioned, and the Lord Chancellor ſhall viſit the ſame: And where the King grants a Licence to any common Perſon to found a Church or Chapel, it may be *Donative*, and exempted from the Juriſdiction of the Biſhop, ſo as to be viſited by the Founder, &c 1 *Inſt.* 134. 2 *Roll. Abr.* 230. The Reſignation of a *Donative* muſt be to the Donor or Patron and not to the Ordinary; and *Donatives* are not only free from all ordinary Juriſdiction, but the Patron and Incumbent may charge the Glebe to bind the Succeſſor: And if the Clerk is diſturbed, the Patron may bring *Quare Impedit*, &c. Alſo the Patron of a *Donative* may take the Profits thereof, when it is vacant. 1 *Inſt* 344. *Cro Jac.* 63. If the Patron of a *Donative* will not nominate a Clerk, there can be no Lapſe: But the Biſhop may compel ſuch Patron to nominate a Clerk by Eccleſiaſtical Cenſures; for though the Church is exempt from the Power of the Ordinary, the Patron is not exempted: And the Clerk muſt be qualified like unto other Clerks of Churches, no Perſon being capable of a *Donative*, unleſs he be a Prieſt lawfully ordained, &c. *Yelv.* 61. Stat. 14 *Car.* 2. *cap.* 4. 1 *Lill.* 488. There may be a *Donative* of the King's Gift with Cure of Souls, as the Church of the *Tower* of *London* is: And if ſuch *Donative* be procured for Money, it will be within the Statute of Simony. *Mich.* 9 *Car. B. R.* A Parochial Church may be *Donative*, and exempt from the Ordinary's Juriſdiction. *Godolph.* 262. The Church of *St. Mary le Bone* in *Middleſex* is *Donative*, and the Incumbent being cited into the Spiritual Court, to take a Licence from the Biſhop to preach, pretending that it was a Chapel, and that the Parſon was a Stipendiary; it was ruled in the King's Bench that it was a *Donative*; and if the Biſhop viſit, the Court of *B. R.* will grant a Prohibition. 1 *Mod.* 90. 1 *Nelſ. Abr.* 676. If a Patron of a *Donative*, doth once preſent his Clerk to the Ordinary, and the Clerk is admitted, inſtituted and inducted, then the *Donative* ceaſeth; and it becomes a Church preſentative. 1 *Inſt.* 344. But when a *Donative* is created by Letters Patent, by which Lands are ſettled upon the Parſon and his Succeſſors, and he is to come in by the *Donation* of the King, and his Succeſſors; in this Caſe, tho' there may be a Preſentation to the *Donative*, and the Incumbent come in by Inſtitution and Induction, yet that will not deſtroy the *Donative.* 2 *Salk.* 541. All Biſhopricks, being of the Foundation of the King; they were in antient Time *Donative.* 3 *Rep.* 75. A Parſon is put in Poſſeſſion of a *Donative* by Gift in Writing of the following Form:

Form of a *Donation* of a Church.

TO all *to whom theſe Preſents ſhall come, I the Right Honourable* T. *Lord* B. *Baron of*, &c. *ſend Greeting.* Whereas *the Church or free Chapel of*, &c. *in the Dioceſe of*, &c. *is now void, and of Right doth belong and appertain to my Gift.* Know ye therefore, *That I the ſaid* T. *Lord* B. *in Conſideration of the known Abilities, Learning and Honeſty of* T. D. *Clerk of*, &c. Have *given and granted unto him the ſaid* T. D. *the ſaid Church or Chapel of*, &c. *aforeſaid with all Rights, Benefits, Advantages and Appurtenances whatſoever to the ſame belonging; and by theſe Preſents I the ſaid* T. *Lord* B. *do induct the ſaid* T. D. *to the Poſſeſſion of the ſaid Church or Chapel, with all its Rights and Appurtenances.* In Witneſs, &c.

Donor and **Donee.** *Donor* is he who gives Lands or Tenements to another in Tail, &c. And the Perſon to whom given is the *Donee.*

Dorture, (*Dormitorium*) Is the common Room or Chamber, where all the *Fryers*, or Religious of one *Convent* ſlept and lay all Night. *Stat.* 25 *H.* 8. *c.* 11.

Doſſale, A Word uſed for Hangings or Tapeſtry. ——*Doſſale ſive Tapeſium.* Mat. Par.

Dote Aſſignanda, Is a Writ that lay for a Widow, where it was found by Office, that the King's Tenant was ſeiſed of Lands in Fee, or Fee-tail, at the Day of his Death, and that he held of the King in chief, &c. In which Caſe, the Widow came into the *Chancery*, and there made Oath, That ſhe would not marry without the King's Leave; whereupon ſhe had this Writ to the Eſcheator, to aſſign her *Dower*, &c. But it was uſual to make the Aſſignment of the Dower in the Chancery, and to award a Writ to the Eſcheator, to deliver the Lands aſſigned unto her. *Stat.* 15 *Ed.* 3. *cap.* 4. *Reg. Orig.* 297. *F. N. B.* 263.

Dote unde nihil habet, Is a Writ of *Dower*, that lies for the Widow againſt the Tenant who bought Land of her Husband in his Life-time, whereof he was ſolely ſeiſed in Fee ſimple, or Fee-tail, and of which ſhe is dowable. *F. N. B.* 147.

Dotis Admenſuratione, *Admeaſurement* of *Dower*, where the Widow holds more than her Share, *&c.* See *Admeaſurement*.

Double Plea, (*Duplex placitum*) Is where a Defendant alledgeth for himſelf two ſeveral Matters in Bar of the Plaintiff's Action, when one of them is ſufficient, which ſhall not be admitted: As if a Man plead ſeveral Things, the one not depending upon the other, the Plea is accounted *Double*, and will not be allowed; but if they mutually depend on each other, and the Party may not have the laſt Plea without the firſt, then it ſhall be received. *Kitch.* 223. And where a *Double Plea* that is wrong, is pleaded; if the Plaintiff reply thereto, and take Iſſue of one Matter; if that be found againſt him, he cannot afterwards plead in Arreſt of Judgment; for by the Replication it is allowed to be good. 18 *Ed.* 4. 17. If a Man pleads two or more Matters, when he is compelled to ſhew them, it makes not the *Plea double*; ſo it is where two diſtinct Things are pleaded, which require but one Anſwer: And in Caſe a Man pleads two ſeveral Matters or Things, and only one is material, the other being Surpluſage, or but Matter of Inducement, and needing no Anſwer, the Plea is not *double*. *Hob.* 197. Where there are ſeveral Inducements to a Plea, they ſhall not make the *Plea double*: And *Double Pleas* are allowable in Aſſiſes of *Novel Diſſeiſin*, *&c.* but not in other Actions. *Jenk. Cent.* 75. All Pleas ought to be ſingle, that the Jury may not be troubled and perplexed with over many Things at once. *Smith's Rep. Ang. lib.* 2. *c.* 13.

Double Quarrel, (*Duplex Querela*) Is a Complaint made by any Clerk, or other to the Archbiſhop of the Province, againſt an inferior Ordinary, for delaying or refuſing to do Juſtice in ſome Cauſe Eccleſiaſtical; as to give Sentence, inſtitute a Clerk, *&c.* and ſeems to be termed a *Double Quarrel*, becauſe it is moſt commonly made againſt both the Judge, and him at whoſe Suit Juſtice is denied or delayed: The Effect whereof is, That the Archbiſhop taking Notice of the Delay, directs his Letters under his authentical Seal to all Clerks of his Province, commanding them to admoniſh the Ordinary within a certain Number of Days to do the Juſtice required, or otherwiſe to appear before him or his Official, and there alledge the Cauſe of his Delay: And to ſignify to the Ordinary, that if he neither perform the Thing enjoin'd, nor appear and ſhew Cauſe againſt it, he himſelf in his *Court of Audience* will forthwith proceed to do the Juſtice that is due. *Cowel.*

Doubles, (*Fr.*) Signify as much as Letters Patent. *Stat.* 14 *H.* 6. *c.* 6.

Douzen Peers, Were *twelve Peers*, aſſigned at the Inſtance of the *Barons* in the Reign of K. *H.* 3. to be Privy Counſellors to the King, or rather *Conſervators* of the *Kingdom*.

Dover-Caſtle. The Conſtable of *Dover Caſtle*, ſhall not hold Plea of any foreign County within the Caſtle Gates, except it concern the Keeping of the Caſtle; nor ſhall he diſtrain the Inhabitants of the Ports, to plead elſewhere or otherwiſe than as they ought, according to their Charters, *&c. Stat.* 28 *Ed.* 1. *c.* 7.

Dow, To give or *endow*, from the *Latin* Word *Do*.

Dowager, (*Dotata*, *Dotiſſa*) A Widow endowed; applied to the Widows of Princes, Dukes, Earls, and other great Perſonages.

Dower, (*Dotarium*) Is a Portion which a Widow hath of the Lands of her Husband after his Deceaſe, for the Suſtenance of her ſelf, and Education of her Children. 1 *Inſt.* 30. And there were formerly five Kinds of *Dower* in this Kingdom. 1. *Dower by the Common Law*, which is a third Part of ſuch Lands or Tenements whereof the Husband was ſole ſeiſed in Fee-ſimple, or Fee-tail, during the Coverture; and this the Widow is to enjoy during her Life. 2. *Dower by Cuſtom*, which is that Part of the Husband's Eſtate to which the Widow is entitled after the Death of her Husband, by the *Cuſtom* of any Manor or Place, ſo long as ſhe lives Sole and Chaſte; and this is more than one third Part, for in ſome Places ſhe ſhall have Half the Land, as by the Cuſtom of *Gavelkind*; and in divers Manors the Widow ſhall have the whole during her Life, which is called her *Free-Bench*: But as Cuſtom may inlarge; ſo it may abridge *Dower* to a 4th Part. 1 *Inſt.* 33. 3 *Dower ad Oſtium Eccleſiæ*, made by the Husband himſelf immediately after the Marriage, who named ſuch particular Lands of which his Wife ſhould be endowed; and in ancient Time, it was taken that a Man could not by this *Dower* endow his Wife of more than a third Part, though of leſs he might: And as the Certainty of the Land was openly declared by the Husband, the Wife after his Death might enter into the Land of which ſhe was endowed without any other Aſſignment. 1 *Inſt.* 34. *Lit. Sect.* 39. 4. *Dower ex aſſenſu Patris*, which likewiſe was of certain Lands named by a Son who was the Husband, with the Conſent of his Father, and always put in Writing as ſoon as the Son was married: And if a Woman thus endowed, or *Ad Oſtium Eccleſiæ*, after the Death of her Husband enter'd into the Land allotted her in *Dower*, and agreed thereto, ſhe was concluded to claim any *Dower* by the Common Law. *Lit. Sect.* 41. 5. *Dower de la pluis Belle*, which was where the Wife was endowed with the faireſt Part of her Husband's Eſtate; but of all theſe Writs of *Dower*, the two firſt are now only in uſe. 1 *Nelſ. Abr.* 679. By our Law, all the Goods and Chattels of the Wife, are the Husband's; and if ſhe be an Inheritrix, the Husband holds her Land during her Life; alſo if he hath Iſſue by her, he ſhall hold it for his own Life, by the *Curteſy of England*: And if he have any Land in Fee, whereof he is poſſeſſed during the Marriage, ſhe is to have a third Part thereof for her Life as her *Dower*; though ſhe bring nothing to the Husband, and whether ſhe have Iſſue by him or not. *Litt.* 36. There are three Things to entitle *Dower*, *viz.* Marriage, Seiſin, and Death of the Husband; the Marriage, muſt be good and lawful; and continue to the Husband's Death; and a Wife ſhall be endow'd of a Seiſin in Law, as well as of a Seiſin in Deed; as where Lands and Tenements deſcend to the Husband, before Entry, he hath but a Seiſin in Law, and yet the Wife ſhall be endow'd altho' it be not reduc'd to an actual Poſſeſſion. 1 *Inſt.* 31, 32, *&c.* And it is not neceſſary that Seiſin ſhould continue during the Coverture; for if the Husband aliens the Lands, *&c.* the Wife ſhall be nevertheleſs endow'd. *Ibid.* 32, 35. If Lands are exchang'd by the Husband for other Lands, the Wife may be endow'd of which Lands ſhe will, as the Husband was ſeiſed of both; though ſhe may not be endow'd of the Lands given and taken in Exchange. 1 *Inſt.* 31. Where the Eſtate, which the Husband hath during the Marriage, is ended, there the Wife ſhall loſe her *Dower*. *New Nat. Br.* 335. But of an Eſtate-tail in Lands determined, a Woman ſhall be endow'd; in like Manner as a Man may be Tenant by the Curteſy of her Lands. 1 *Inſt.* 31. And if a Wife be endowed of her third Part, and afterwards evicted by an elder Title; ſhe ſhall have a new Writ of *Dower*, and be endowed of the other Lands. 2 *Danv. Abr.* 670. Though this is where it is the immediate Eſtate deſcended to the Heir; and not when it is the Eſtate of an Alienee. 9 *Rep.* 17. The Wife is *dowable* where Lands were recovered againſt the Husband by Default or Covin: And a Woman deforc'd of her *Dower*, ſhall recover Damages, *viz.* the Value of her *Dower* from her Husband's Death. 15 *E.* 1. 20 *H.* 3. If the Husband doth not die ſeiſed, after Demand and Refuſal to aſſign *Dower* to her, ſhe ſhall have Damages from the Time of the Refuſal. *Jenk. Cent.* 45. The Wife of a Man who is baniſh'd, ſhall have *Dower* in his Life-time; 'tis held otherwiſe, if he is profeſs'd in Religion: And a Jointreſs of a baniſh'd Husband, ſhall enjoy her Jointure in his Life. 1 *Inſt.* 133. *Perk.* 5, 307. If a Man leaſes Land for Life, rendring Rent; his Wife ſhall not be endow'd of this Rent; for this is but an Eſtate for Life in the Rent; tho' it deſcends to the Heir. 2 *Danv.* 656. But ſhe ſhall be endowed of a Reverſion, expectant on a Term of Years; and of a Rent reſerved thereon. *Lutw* 729. If the Husband hath only an Eſtate for Life, Remainder to another in Tail, though the Remainder over is to his Heirs, the Wife ſhall not be endow'd. 2 *Danv* 656. A Woman ſhall not be endow'd of the Goods of her Husband; nor of a Caſtle, or capital Meſſuage: But of all other Lands and Tenements ſhe may. 1 *Inſt.* 35. Where there are three Manors, one of them may be aſſign'd to the Wife in *Dower* in Lieu of all three; tho' it is ſaid that a third Part of every Manor ought to be aſſign'd. *Moor* 12, 47. The Sheriff may aſſign a Rent out of the Land in Lieu of *Dower*; and her Acceptance of the Rent will bar *Dower* out of the ſame Land, but not of other Lands. 2 *And.* 31. *Dyer* 91. 1 *Nelſ. Abr* 680. A Grantee of a Rent in Fee or Tail, dies without Heir, his Wife ſhall be endowed: But not where the Rent ariſes upon a Reſervation to the Donor and his Heirs, on a Gift in Tail, and the Donee dies without Iſſue; for this is a collateral Limitation. *Plowd.* 156. *F. N. B.* 149. If during the Coverture, the Husband doth extinguiſh Rents by Releaſe, &c. yet ſhe ſhall be endowed of them; for as to her *Dower*, in the Eye of the Law, they have Continuance. 1 *Inſt.* 32. And where a Rent is deſcended to the Husband, but he dies before any Day of Payment; notwithſtanding the Wife ſhall be endowed of it. 1 *H.* 7. 17. When a Jointure is made of Lands after Marriage, the Wife may wave it, and demand her *Dower:* But it is otherwiſe when made before Marriage, according to the Statute 27 *Hen.* 8. And if Lands are given to the Husband and Wife in Tail, and after the Death of the Husband, the Wife diſagrees, ſhe may recover her *Dower*; for by her waiving her Eſtate, her Husband in Judgment of Law was ſole ſeiſed *ab initio.* 3 *Rep.* 27. If Lands are improved, the Wife is to have one Third according to the improved Value. 1 *Inſt.* 32. And if the Ground deliver'd her be ſowed, ſhe ſhall have the Corn. 2 *Inſt.* 81. A Widow may recover her *Dower*, with a *Ceſſat Executio*, in Caſe there be any Thing objected againſt precedent the Title of *Dower*, &c. till that is determined. 1 *Nelſ.* 684, 687. 1 *Salk.* 291. Judgment in *Dower* is to recover a third Part of Lands and Tenements *per Metas & Bundas*; but this may not be of a Mill; for if it were, neither of the Parties could uſe their Parts. 1 *Lev.* 182. When no Diviſion can be made of what the Wife is *dowable*, *Dower* is to be aſſigned in a ſpecial Manner; as of the third Preſentation to a Church, the third Toll Diſh of a Mill; Common certain, a third Year; the third Part of the Profits of an Office, Fair, Market, &c. 1 *Rol. Abr.* 678. And *Dower* is much favoured in Law, being for the Benefit of Widows: Wherefore the Wife of one *Non Compos Mentis*, of an Ideot, Outlaw, or one attainted of Felony, may be endowed: But not of a Perſon attainted of Treaſon; nor the Wife of an Alien, Jew, &c. 1 *Inſt.* 33, 37. *Stat.* 1 *Ed.* 6. *cap.* 12. 5 *Ed.* 6. *cap.* 11. At Common Law, *Dower* is aſſigned by the Sheriff, by the King's Writs, or by the Heir, &c. by Agreement among themſelves: And the Wife cannot enter otherwiſe into her *Dower* 1 *Bulſt.* 35. By the antient Law of *England*, till *Magna Charta*, a Woman was to continue a whole Year in her Husband's Houſe, for the Aſſignment of her *Dower.* 2 *Inſt.* 17. By that Statute, a Widow ſhall immediately after her Husband's Death have her Marriage Inheritance; and remain in his chief Houſe forty Days, within which Time *Dower* is to be aſſign'd her of the third Part of all his Lands, &c. 9 *H.* 3. The Aſſigment of the Lands is to be for her Life; and if Lands are aſſign'd to a Woman for Years, in Recompence of *Dower*; this is no Bar of *Dower*; for it is not ſuch an Eſtate therein as ſhe ſhould have. 2 *Danv. Abr.* 668. Alſo where other Land is aſſigned to the Woman, that is no Part of the Lands wherein ſhe claims *Dower*; that Aſſignment will not be good or binding: And there muſt be Certainty in what is aſſigned; otherwiſe tho' it be by Agreement, it may be void. 4 *Rep.* 2. 1 *Inſt.* 34. If a Wife accept and enter upon leſs Land than the third of the Whole, on the Sheriff's Aſſignment, ſhe is barred to demand more. *Moor* 679. But if where a Wife is intitled to *Dower* of the Lands of her firſt Husband; her ſecond Husband accepts for this *Dower* leſs than her third Part, after his Death ſhe may refuſe the ſame, and have her full third Part. *Fitz. Dower*, 121. If a Wife having Right of *Dower* in the Land, accept of a Leaſe for Years thereof after the Death of her Husband, it ſuſpends the *Dower*; tho' not ſuch Acceptance of a Leaſe, before the Husband's Death, &c. for then the Wife has only a Title to have *Dower*, and not an immediate Right of *Dower*. *Bro. ca.* 372. *Jenk. Cent.* 15. A Widow accepting of *Dower* of the Heir, againſt common Right, ſhall hold it ſubject to the Charges of her Husband; but otherwiſe it is, if ſhe be endowed againſt common Right by the Sheriff. 2 *Danv.* 672. By Proviſion of Law, the Wife may take a third Part of the Husband's Lands, and hold them diſcharged. *Ibid.* If *Dower* be aſſign'd a Woman on Condition, or with an Exception; the Condition and Exception are void. *Cro. Eliz.* 541. Detaining of Charters concerning the ſame Land of which the Widow demands her *Dower*, is a good Plea by the Heir in Delay of her *Dower:* But if ſhe delivers up the Evidences, ſhe ſhall have Judgment; though if ſhe denies the Detainer, and it is found againſt her, ſhe loſes her *Dower.* *Hob.* 199. 9 *Rep.* 19. If a Wife levies a Fine with her Husband, ſhe debars herſelf of her *Dower:* And if a common Recovery be had againſt the Husband and Wife, of the Husband's Lands, it ſhall bar the Wife of her *Dower.* 2 *Rep.* 74. *Plowd.* 514. Where a Woman releaſes her Right to him in Reverſion, her *Dower* may be extinguiſh'd. 8 *Rep.* 151. If a Wife commits Treaſon or Felony; or if ſhe elope from her Husband, and live with the Adulterer willingly, without being reconciled to the Husband, ſhe ſhall loſe and forfeit her *Dower*; but if the Husband be reconciled to her, and ſhe lives with him again, ſhe ſhall be endow'd. 2 *Inſt.* 453. *Dyer* 106. And if after Elopement of the Wife, her Husband and ſhe demean themſelves as Husband and Wife, it is Evidence of Reconciliation. *Dyer* 196. If a Man grants his Wife with her Goods to another, and the Wife by Virtue of the Grant lives with the Grantee during the Life of the Husband, this ſhall forfeit her *Dower*; for ſhe lived in Adultery, notwithſtanding the Grant. 1 *Inſt.* 135. 2 *Danv.* 662. If a Woman be of the Age of nine Years, at the Death of her Husband, ſhe ſhall be endowed of whatſoever Age he is; becauſe after the Death of the Husband, the Marriage is adjudged lawful. 1 *Inſt.* 33. And *Dower* is an inſeparable Incident to an Eſtate in Tail or Fee that cannot be taken away by Condition: If one ſeiſed in Fee of Lands make a Gift in Tail, on Condition that the Wife ſhall not have *Dower*, the Condition is void. 6 *Rep.* 41. If Tenant in Tail die without Iſſue, ſo that the Land reverts to the Donor; or in Caſe he covenants to ſtand ſeiſed to Uſes, and dies, his Wife will be endowed: And a Deviſe of Land by the Husband to his Wife by Will, is no Bar of her *Dower*, but a Benevolence. 8 *Rep.*

34. *Yelv.* 51. *Bro. Dower* 69. It is held, that Land deviſed to a Man's Wife, who is entitled to *Dower* of his Lands; it not being mentioned in Satisfaction of her *Dower*, ſhall be taken as a voluntary Gift, and not any Recompence or Bar of *Dower:* And in this Caſe the Widow brought a Writ and recover'd, againſt which the Heir could have no Relief. *Preced. Canc.* 133. A Perſon grants and conveys Land to *D.* and his Heirs, on Condition, to redemiſe the ſame back, *&c.* which afterwards he does, and dies; here *D* 's Widow may nevertheleſs be *endow'd. Abr. Caſ.* 217. *A.* is Tenant in Tail of Lands, the Remainder to *B.* in Tail, Remainder to *A.* in Fee; if *A.* bargains and ſells the Land to *C.* and his Heirs, the Wife of the Bargainee ſhall have *Dower*, determinable upon the Death of the Tenant in Tail. 10 *Rep.* 96. And if a Feoffment be made upon Condition to reinfeoff, and the Feoffee take a Wife, ſhe may have her *Dower* 'till Reinfeoffment, or an Entry made for not doing it: And ſo 'tis of other defeaſible Eſtates. 2 *Rep.* 59. *Perk. Sect.* 420. If one be diſſeiſed, and after doth marry, if he die before Entry, his Wife ſhall not have *Dower:* And where a Perſon recovers Land in a real Action, and before his Entry or Execution made he dieth, the Wife ſhall not be endowed of this Land. 2 *Rep.* 56. *Perk.* 377. Where the Husband's Eſtate is ſuch, that by no Poſſibility Iſſue begotten on his Wife might inherit as Heir to him; there the Wife may not be endow'd: As if Lands are given to a Man and the Heirs he ſhall beget on his preſent Wife, and ſhe dies; and then he takes another Wife, ſhe ſhall not have *Dower:* But in Caſe Land be given to the Husband and Wife in Tail, the Remainder in Tail to the Husband, and the firſt Wife dying without Iſſue, he marries another Wife; this ſecond Wife will be entitled to *Dower*, after his Death. *Lit. Sect.* 53. 40 E. 3. 4. 2 *Shep. Abr.* 63. The Wife of a Tenant in Common, but not a Jointenant, ſhall have *Dower*; and ſhe ſhall hold her Part in Common with the Tenants in Common. *Kitch.* 160. A Wife may have her *Writ of Dower* againſt an Heir, an Alienee, a Diſſeiſor, *&c.* or againſt any one that has Power to aſſign *Dower*; if the Lord enters on the Land for an Eſcheat, ſhe may bring it againſt him, but to the King ſhe muſt ſue by Petition. 9 *Rep.* 10. *Plowd.* 141. *Dyer* 263. 1 *Inſt.* 59. This Writ was brought againſt eight Perſons Feoffees of the Husband after Marriage, two confeſſed the Action, and the other ſix pleaded to Iſſue; here the Demandant had Judgment to recover the third Part of two Parts of the Land, in eight Parts to be divided: And after the Iſſue being found for the Demandant againſt the ſix, ſhe recovered againſt them the third Part of ſix Parts of the ſame Land, as her *Dower. Dyer* 187. 1 *Co. Inſt.* 32. The Wife is, as ſoon as ſhe can after the Deceaſe of her Husband, to demand her *Dower*, leſt ſhe loſe the Value from the Time of his Death: And in Action of *Dower*, the firſt Proceſs is *Summons* to appear: And if the Tenant or Defendant do not appear, nor caſt an Eſſoin, a Grand *Cape* lies to ſeiſe the Lands, *&c.* But on the Return of the Writ of Summons, the Attorney for the Tenant or Defendant may enter with the Filizer that the Tenant appears, and prays *View, &c.* Then a Writ of View goes out, whereby the Sheriff is to ſhew the Tenant the Land in Queſtion, upon the Return of which Writ of View, the Tenant's Attorney takes a Declaration, and puts in a Plea; the moſt general one is, *Ne unques ſeizie, &c. viz.* that the Husband was never ſeiſed of any Eſtate, whereof the Wife can be endowed; and when Iſſue is join'd, you muſt proceed to Trial, as in other Actions: Upon Trial, the Jury are to give Damages for the mean Profits from the Death of the Husband (if he die ſeiſed) for which Execution ſhall be made out; and then you have a Writ to the Sheriff to give Poſſeſſion of a third Part of the Lands. *Pract. Solic. p.* 335, 336.

Form of a *Writ of Dower*, &c.

GEORGE *the Second*, &c. *To the Sheriff of* S *Greeting: Command* A. B. *that juſtly*, &c. *he render to* C. D. *who was the Wife of* T. D. *her reaſonable* Dower, *which is come unto her, of the free Tenement (or Freehold) that was of, and belonging to the ſaid* T. *ſome Time her Husband, in*, &c. *whereof ſhe hath nothing, as ſhe ſaith; and whereof ſhe complains, that the ſaid* A. *deforceth her*, &c. *And unleſs*, &c.

As in great Eſtates *Jointures* of Lands are uſually made in Lieu and Satisfaction of *Dower*, theſe *Actions of Dower* are not ſo frequently brought as they were formerly.

Dowry, (*Dos Mulieris*) Was in ancient Time applied to that which the Wife brings her Husband in Marriage; otherwiſe called *Maritagium*, or Marriage Goods: But theſe are termed more properly, Goods given in Marriage, and the Marriage Portion. 1 *Inſt.* 31. This Word is often confounded with *Dower*; though it hath a different Meaning from it.

Dowry Bill. Among the Jews, the Bridegroom at the Time of the Marriage, gave his Wife a *Dowry Bill.* Blount.

Dozein, A Territory or Juriſdiction mentioned in the Stat. of *View and Frank-pledge.* 18 Ed. 4. See *Deciners.*

Draco Regis, The Standard *Enſign*, or military Colours, bore in War by our ancient Kings, having the Figure of a *Dragon* painted on them. ——*Rex Angliæ fixiſſet ſignum ſuum in medio, & tradidiſſet* Draconem *ſuum Petro de P. ad portandum, &c.*——Rog. Hoved. ſub ann. 1191.

Dragium, *Drag*; A coarſer Sort of Bread-Corn; In *Staffordſhire* they uſe a Kind of Malt, made of Oats mixed with Barley, which they call *Dreg*, or *Drag Malt*; and in *Eſſex, &c.* they have a Grain called *Dreg.* Tuſſer's Husband. p. 32.

Drags, Seem to be floating Pieces of Timber ſo joined together, that by ſwimming on the Water they may bear a Burden or Load of other Things down a River. 6 *H.* 6. *c.* 5.

Drana, A Drain or Water-courſe; ſometimes writ *Drecca.* Cartular. Abb. Rad. MS.

Drapery, (*Pannaria*) Is uſed as a Head in our old Statute Books, extending to the Making and Manufacturing of all Sorts of Woollen Cloths. *Stat.* 25 *Ed.* 3. 4 *E.* 4. 1 *R.* 3. 27 *H.* 8, *&c.* See *Clothiers.*

Draw-gere, Signifies any Harneſs belonging to Cart-Horſes, for drawing a Waggon, or other Carriage. *Paroch. Antiq. p.* 549.

Draw-latches, Were Thieves and Robbers: *Lambert* in his *Eiren. lib.* 1. *cap.* 6. calls them *Thieves, Waſters*, and *Roberdſmen*; Words grown out of Uſe. They are mentioned in 5 *E.* 3. *c.* 14. and 7 *R.* 2. *cap.* 5.

Dredgermen, Are Fiſhers for Oyſters, *&c.* *Stat.* 2 *Geo.* 2.

Dreit-Dreit, or *Droit*, Are Words ſignifying formerly a double Right, *viz.* of Poſſeſſion, and of Property or Intereſt. *Bract. lib.* 4. *c.* 27. *Co. Lit.* 266.

Drenched, An old Word, uſed where a Perſon was overcome, from the *Germ.*

Drenches, or **Drenges**, (*Drengi*) Are Tenants *in Capite*, ſays an an ancient MS. *Mon. Angl. Tom.* 2. *fol.* 598. And according to *Spelman*, they are ſuch as at the Coming of *Will.* 1. called the *Conqueror*, being put out of their Eſtates, were afterwards reſtored thereunto; on their making it appear that they were Owners thereof, and neither *in Auxilio*, or *Conſilio* againſt him. *Spelm.*

Drengage, (*Drengagium*) The Tenure by which the *Drenches* or *Drenges* held their Lands. *Trin.* 21 *Ed.* 3 *Ebor. & Northumb.* Rot. 191.

Drift of the Foreſt, (*Agitatio Animalium in Foreſta*) Is a View or Examination of what Cattle are in the *Foreſt*, that it may be known whether it be ſurcharged or not; and whoſe the Beaſts are, and whether they are commonable, *&c.* Theſe *Drifts* are made at certain Times in the Year by the Officers of the *Foreſt*; when all the Cattle of the *Foreſt* are *driven* into ſome Pound or Place incloſed, for the Purpoſes afore-mentioned; and to the End it may be diſcovered whether any Cattle of Strangers be there, which ought not to common. *Manw. par.* 2. *c.* 15. *Stat.* 32 *H.* 8. *c.* 13. 4 *Inſt.* 309.

Drinklean, (in ſome Records *Potura Drinklean*) Was a Contribution of Tenants, in the Time of the *Saxons*, towards a *Potation* or Ale, provided to entertain the Lord, or his Steward.

Drofdenne, Signified with our *Saxon* Anceſtors a Grove, or woody Place, where Cattle were kept; and the Keeper of them was called *Droſman.* Domeſday.

Drofland, or **Dryfland**, Another *Saxon* Word, ſignifying a Tribute or yearly Payment made by ſome Tenants to the King, or their Landlords, for driving their Cattle thro' a Manor to Fairs or Markets. *Cowel.*

Droit, *Right*, Is the higheſt Writ of all other real Writs whatſoever, and hath the greateſt Reſpect, and the moſt aſſured and final Judgment; and therefore is called a *Writ of Right*, and in the old Books *Droit. Co. Lit.* 158. There are divers of theſe Writs uſed in our Law, ſuch as the following.

Droit de Advowſon.
Droit de Dower.
Droit de Garde.
Droit Patent.
Droit Rationabili parte.
Droit ſur Diſclaimer.

All theſe ſeveral *Writs of Right*, and their various Uſes, ſee *Recto.*

Dromones, **Dromos**, **Dromunda**, Signified at firſt high Ships of great Burden, but afterwards thoſe which we now call Men of War. *Walſing. Anno* 1292.——— *Tres Majores Naves ſubſequentur, quos vulgo* Dromones *appellant.* ——— Mat. Pariſ. ſub ann. 1191.

Drovers, Are thoſe that buy Cattle in one Place to ſell in another: They are to be married Men and Houſholders, and be licenced by Statute, 5 *Eliz. c.* 12. And if they drive their Cattle on the *Lord's Day*, they ſhall forfeit 20*s.* by 1 *Car.* 1. *c.* 1.

Druggeria, A Place of *Drugs*, or *Drugſters* Shop: And *Druggiſts* and their Wares. *Vide Coffee.*

Drunkenneſs, Is an Offence for which a Man may be puniſhed in the Eccleſiaſtical Court; as well as by Juſtices of Peace by Statute: And by 4 *Jac.* 1. *c.* 5. And 21 *Jac.* 1. *c.* 7. If any Perſon ſhall be convicted of *Drunkenneſs* by the View of a Juſtice, Oath of one Witneſs, *&c.* he ſhall forfeit five Shillings for the firſt Offence, to be levied by Diſtreſs and Sale of his Goods; and for want of a Diſtreſs ſhall ſit in the Stocks ſix Hours: And for the ſecond Offence, he is to be bound with two Sureties in ten Pounds each, to be of the good Behaviour, or be committed. And he who is guilty of any Crime through his own voluntary *Drunkenneſs*, ſhall be puniſhed for it as if he had been ſober. *Co. Lit.* 247. 1 *Hawk. P. C.* 2. It has been held, that *Drunkenneſs* is a ſufficient Cauſe to remove a Magiſtrate: And the Proſecution for this Offence, by the Statute of 4 *Jac.* 1. was to be, and ſtill may be before Juſtices of Peace in their Seſſions, by way of Indictment, *&c.*

An *Indictment* againſt a common *Drunkard.*

THE *Jurors*, &c. *That* A. B. *late of*, &c. *on the Day*, &c. *in the Year of the Reign*, &c. *and on many Days and Times, as well before as afterwards, at*, &c. *in the ſaid County, and elſewhere in divers other Places within the ſaid County, was and yet is a common* Drunkard, *and common Diſturber of the Peace of our Sovereign Lord the King, to the bad Example of other Subjects of our ſaid Lord the King, and againſt the Peace*, &c.

Dry Exchange, (*Cambium Siccum*) Is a Term invented in former Times for the Diſguiſing and Covering of *Uſury*; in which ſomething was pretended to paſs on both Sides, whereas in Truth nothing paſſed but on one Side, in which Reſpect it was called *Dry.* Stat. 3 H. 7. c. 5.

Dry Rent, A Rent reſerved without Clauſe of Diſtreſs. See *Rent ſeck.*

Duces tecum, Is a Writ commanding a Perſon to appear at a certain Day in the Court of *Chancery*, and to bring with him ſome Writings, Evidences, or other Things which the Court would view. *Reg. Orig.*

Duces tecum licet Languidus, A Writ directed to the Sheriff, upon a Return that he cannot bring his Priſoner without Danger of Death, he being *adeo Languidus*; then the Court grants a *Habeas Corpus* in Nature of a *Duces tecum licet Languidus.* Book Entr.

Duel, (*Duellum*) In our ancient Law is a Fight between Perſons in a doubtful Caſe, for the Trial of the Truth. *Fleta.* But this Kind of *Duel* is diſuſed; and what we now call a *Duel* is, a Fighting between Two, upon ſome Quarrel precedent: Wherein, if a Perſon is killed, both the Principal and his Seconds are guilty of Murder, and whether ſuch Seconds fight, or not. *H. P. C.* 47, 51. And 'tis ſaid by ſome, that the Seconds of the Perſon killed are equally guilty, by Reaſon of the Encouragement which they gave by joining with him: But this is contradicted by others. 1 *Hawk.* 82. Wherever two Perſons in cool Blood meet and fight upon a precedent Quarrel, and one of them is killed, the other is guilty of Murder; and cannot excuſe himſelf by alledging that he was firſt ſtruck by the Deceaſed, or that he had declined to meet him, was prevailed upon to do it by his Importunity, or that it was not his Intent to kill, but only to vindicate his Reputation, *&c.* 1 *Hawk. P. C.* 81. If two Perſons quarrel over Night, and appoint to fight the next Day; or quarrel in the Morning, and agree to fight in the Afternoon; or ſuch a conſiderable Time after, by which it may be preſumed the Blood was cooled; and then they meet and fight a *Duel*, and one kill the other, it is Murder. 3 *Inſt.* 51. *H. P. C.* 48. *Keyl.* 56. And whenever it appears that he who kills another in a *Duel* or Fighting on a ſudden Quarrel, was Maſter of his Temper at the Time, he is guilty of Murder; as if after the Quarrel he fall into another Diſcourſe, and talk calmly thereon; or alledge that the Place where the Quarrel happens is not convenient for Fighting; or that his Shoes are too high, if he ſhould fight at preſent, *&c. Kel.* 56. 1 *Lev.* 180. If one *challenge* another, who refuſes to meet him, but tells him that he ſhall go the next Day to ſuch a Place about Buſineſs, and then the Challenger meets him on the Road, and aſſaults the other; if the other in this Caſe kill him, it will be only Manſlaughter; for here is no Acceptance of the Challenge, or Agreement to fight: And if the Perſon challenged refuſeth to meet the Challenger, but tells him that he wears a Sword, and is always ready to defend himſelf; if then the Challenger attack him, and is killed by the other, it is neither Murder nor Manſlaughter, if neceſſary in his own Defence. *Kel.* 56. It is a very high Offence to challenge another, either by Word or Letter, to fight a *Duel*; or to be the Meſſenger of ſuch a Challenge; or even barely to endeavour to provoke another to ſend a Challenge, or to fight, as by diſperſing Letters for that Purpoſe, full of Reflection, &c. 1 *Sid.* 186. 3 *Inſt.* 158. And Perſons convicted of barely ſending a Challenge, have been adjudged to pay a Fine of 100 *l.* to be impriſoned for a Month, and make a publick Acknowledgment of their Offence, and to be bound to their good Behaviour. 1 *Hawk. P. C.* 135, 138.

Duke, (Lat. *Dux*, Fr. *Duc*, *à Ducendo*) Signified among the ancient Romans, *Ductorem exercitus*, ſuch as led their Armies; ſince which they were called *Duces*, and were Governors of Provinces, &c. In ſome Nations, the Sovereigns of the Country are called by this Name; as the *Duke* of *Savoy*, &c. In *England*, the Title of *Duke* is the next Dignity to the Prince of *Wales*: And the firſt *Duke* we had in *England* was *Edward* the *Black Prince*, ſo fam'd in our *Engliſh* Hiſtories for Heroick Actions; who was created *Duke of Cornwall* in the 11th Year of King *Edw.* 3. After which, there were more made in ſuch Manner as their Titles deſcended to their Poſterity; and during the late Reigns their Number hath been greatly increaſed. They are created with Solemnity, *per Cincturam Gladii, Cappaque & Circuli aurei in Capite impoſitionem.* Camd. Brit. p. 166.

Dum fuit infra ætatem, Is where an Infant maketh a Feoffment of his Lands; when he cometh of full Age, he may have this Writ to recover thoſe Lands or Tenements which were ſo aliened: And within Age, he may enter into the Land and take it back again, and by his Entry he ſhall be remitted to his Anceſtor's Right. *New. Nat. Br.* 426. If the Husband and Wife alien the Wife's Land, during the Nonage of both of them, the Wife at her full Age after the Death of the Husband, ſhall have a Writ of *Dum fuit infra ætatem.* M. 14 F. 3. By this *Writ* to the Sheriff, he ſhall command *A.* that he render to B. who is of full Age, two Meſſuages and Lands, &c. which *B.* demiſed to him, *while he was within Age*, as he ſaith; or into which the ſaid *A.* hath not entered, but by *C.* to whom the ſaid *B.* thoſe demiſed; and unleſs, &c. *F. N. B.* 477.

Dum non fuit Compos Mentis, Is a Writ that lies where a Man who is not of ſound Memory aliens any Lands or Tenements, then he ſhall have this Writ againſt the Alienee. And he ſhall alledge that he was not of *Sane Memorie*, but being viſited with Infirmity, loſt his Diſcretion for a Time, ſo as not to be capable of making a Grant, &c. *New Nat. Br.* 449. But ſee *Diſability*.

Dun, *Down*, In which Termination it hath varied into *Don*, ſignifies a Mountain or high open Place; ſo that the Names of thoſe Towns which end in *Dun* or *Don*, as *Aſhdon*, &c. were either built on Hills, or near them in open Places. *Domeſday*.

Dunſetts, Thoſe who dwell on Hills or Mountains.

Dunum and **Duna**, A Down or Hill: And *Dunnarium* is uſed in the ſame Senſe. *Chart. dat.* 29 *Ed.* 3. *Penes Decan. & Cap. Eccl. Cath. Chriſti Oxon.*

Duodena, A Jury of twelve Men. —— *Tunc Juſticiar. convocata ſeorſim alia* Duodena. *Walſing.* 256.

Duodena manu, Twelve Witneſſes to purge a Criminal of an Offence. See *Jurare duodecima manu.*

Duplex Querela, A Proceſs Eccleſiaſtical; *Double Quarrel.*

Duplicate, Is uſed for ſecond Letters Patent, granted by the Lord Chancellor, in a Caſe wherein he had before done the ſame; which were therefore thought void. *Cromp. Juriſd. fol.* 215. But it is more commonly a Copy or Tranſcript of any Deed or Writing, Account, &c. or a ſecond Letter, written and ſent to the ſame Party and Purpoſe as a former, for Fear of Miſcarriage of the Firſt, or for other Reaſons: This Word is mentioned in the Stat. 14 *Car.* 2. *c.* 10.

Durden, A Thicket of Wood in a Valley. *Cowel.*

Dureſs, (*Duritia*) Is where one is wrongfully impriſoned or reſtrained of his Liberty contrary to Law, 'till he ſeals a Bond or other Deed to another; or threatned to be killed, wounded, or beaten if he doth not do it: And a Bond or Deed ſo obtained is void in Law. *Broke*, in his Abrigment, joins *Dureſs* and *Minas* together, *i. e.* Hardſhip and Threatnings: If one under a juſt Fear of being impriſoned, killed, &c. enters into a Bond to him that threatens him, it is *Dureſs per Minas*; and may be pleaded to avoid the Bond: But it muſt be a Threatning of Life or Member, or of Impriſonment; and not of a Battery only; or to take away Goods, &c. 1 *Inſt.* 162, 253. 2 *Inſt.* 483. But it has been adjudged, that if a Man makes a Deed by *Dureſs* done to him by Taking of his Cattle, though there be no *Dureſs* to his Perſon, yet this ſhall avoid the Deed. 2 *Danv. Abr.* 686. If a Perſon threaten another to make a Deed to a third Perſon, it is by *Dureſs*, and void; as if ſuch third Perſon had made the Threatning. 2 *Inſt.* 482. 3 *Inſt.* 92. 4 *Inſt.* 97. And where a Man is impriſoned until he makes a Bond at another Place; if afterwards he doth it when at large, the Bond is by *Dureſs*, and void: But if a Perſon be arreſted upon an Action at the Suit of another, and the Cauſe of Action is not good, if he make a Bond to a Stranger, it is not *Dureſs*; though if he make it to the Plaintiff, it is, and being ſued upon the Bond, he may plead it was made by *Dureſs*, and ſo avoid it: Alſo the Party ſhall have an Action for the falſe Impriſonment itſelf. 1 *Rep.* 119. *Perk. Sect.* 16. *Crompt. Jur.* 296. 1 *Lill. Abr.* 494. If one impriſoned make an Obligation by *Dureſs*, and after he is at large takes a Defeaſance upon it; this will eſtop him to ſay it was made *per Dureſs.* And where *A.* and B. by *Dureſs* to B. Seal a Bond or Deed, it may be good for *A.* that was never threatned. 3 *H.* 6. 16. *Bro.* 17. *Mich.* 7 *Jac.* 1. If a Man be lawfully in Priſon, and makes an Obligation againſt his Agreement and Will, he may avoid it by *Dureſs*: Though it is otherwiſe if he do it of his good Will. 43 *E.* 3. 10. 2 *Danv.* 686. A Man ſhall not avoid a Deed by *Dureſs* to a Stranger: For it hath been held that none ſhall avoid his own Bond for the Impriſonment or Danger of any other than of himſelf only. *Cro. Jac.* 187. And yet a Son ſhall avoid his Deed by *Dureſs* to the Father: And the Husband ſhall avoid a Deed made by *Dureſs* to the Wife; though a Servant ſhall not avoid a Deed made by *Dureſs* to his Maſter, or the Maſter the Deed ſealed by *Dureſs* of his Servant. 2 *Danv.* 686. If a Man is taken by Virtue of a Proceſs iſſuing out of a Court that hath not Power to grant it; or in Cuſtody on a falſe Charge of Felony, &c. and for this Enlargement and Diſcharge gives Bond, &c. this may be avoided, as taken by *Dureſs*. *Cro. El.* 646. 4 *Inſt.* 97. *Allen* 92. A Statute-Merchant may be avoided by *Audita Querela*, becauſe it was made by *Dureſs* or Impriſonment. A Will ſhall be avoided by *Dureſs* or Menace of Impriſonment. A Feoffment made by *Dureſs* is voidable; but not void. But no Averment ſhall be taken againſt a Deed inrolled that it was made by *Dureſs*. 1 *Rol. Abr.* 862. 2 *Danv.* 685. A Marriage had by *Dureſs* is voidable: And by Statute, Obligations, Statutes, &c. obtained of Women by Force, to marry the Perſons to whom made, or otherwiſe, unleſs for a juſt Debt, are declared void. 31 *H.* 6. *c.* 9. If a Perſon executes a Deed by *Dureſs*, he cannot plead *Non eſt factum*, becauſe it is his Deed; though he may avoid it by ſpecial Pleading, and Judgment *Si actio*, &c. 5 Rep. 119. Records may not regularly be ſaid to be made by *Dureſs*, and therefore ſhall not be avoided by this Plea or Pretence. 2 *Shep. Abr.* 319.

Durham. The Biſhoprick of *Durham* was diſſolved, and the King to have all the Lands, &c. by Stat. 7 *Edw.* 6. But this Act was afterwards repealed, and the Biſhoprick new erected, with all

Juriſdiction Eccleſiaſtical and Temporal annexed to the County Palatine. The Juſtices of the County Palatine of *Durham* may levy Fines of Lands in the County: And Writs upon Proclamations, *&c.* are to be directed to the Biſhop. 5 *Eliz. c.* 27. 31 *Eliz. c.* 2. Alſo Writs to elect Members of Parliament in the County Palatine of *Durham* ſhall go to the Biſhop or his Chancellor, and be returned by the Sheriff, *&c.* Stat. 25 *Car.* 2. *c.* 9.

Durſley, Signifies *Blows* without Wounding or Bloodſhed, vulgo *Dry Blows.* Blount.

Duſty Foots, *Duſty Foots*; Pedlers or Traders who have no ſettled Habitation, and they have their Name from their Feet being cover'd with *Duſt*, by their continual Travelling. See *Piepowder Court.*

Dutchy Court of Lancaſter, Is a Court of the *Dutchy Chamber of Lancaſter* held at *Weſtminſter* before the Chancellor, for Matters concerning the Lands and Franchiſes of the *Dutchy:* And the Proceedings in this Court are by *Engliſh Bill*, as in Chancery. 4 *Inſt.* 204. The Original of it was in *Henry the Fourth's* Days, who obtaining the Crown of *England* by depoſing *Richard* II. and having the *Dutchy of Lancaſter* by Diſcent, in Right of his Mother, was ſeiſed thereof as *King*, and not as *Duke:* But at length by Authority of Parliament he paſſed a Charter, whereby the Poſſeſſions, Liberties, *&c.* of the ſaid *Dutchy* were ſevered from the Crown, and ſo left to Poſterity. Of this Court *Gwin* (in his Preface to his *Readings*) ſays thus: The Court of the Dutchy of *Lancaſter* grew out of the Grant of King *Edward* III. who gave that *Dutchy* to his Son *John of Gaunt*, and endowed it with Royal Rights and Privileges; and for as much as it was afterwards extinct in the Perſon of King *Henry* IV. by Reaſon of the Union thereof with the Crown, the ſame King (ſuſpecting himſelf to be more rightfully *Duke of Lancaſter*, than *King of England*) determined to ſave his Right in the *Dutchy*, whatever ſhould befal the Kingdom; and therefore he ſeparated the *Dutchy* from the Crown and ſettled it in the natural Perſons of himſelf and his Heirs, as if he had been no King: In which Eſtate it continued during the Reigns of *Hen.* 5. and *Hen.* 6. But when *Edw.* 4. recovered the Crown, and recontinued the Right of the *Houſe of York*, he appropriated that *Dutchy* to the Crown again, yet ſo that he ſuffered the Court and Officers to remain as he found them; and in this Manner it came together with the Crown to *Hen.* 7. who approving the Policy of *Hen.* 4. and by whoſe Right he obtained the Kingdom, made a like Separation of the *Dutchy*, and ſo left it. It is now only a ſuperior *County Palatine.* Vide *Lancaſter. Officers* of this *Court*, ſee *Chancellor of the Dutchy of* Lancaſter.

Duty. Any thing that is known to be due by Law, and thereby recoverable, is a *Duty* before it is recovered; becauſe the Party intereſted in the ſame hath a Power to recover it. 1 *Lill.* 495.

Dwined, Signifies any Thing conſumed; from whence comes the Word *Dwindle.*

Dyers. By an ancient Statute *Dyers* ſhall dye both the Cloth and the Liſt, of one and the ſame Colour, or forfeit it. 1 *R.* 3. *c.* 4 No *Dyer* may dye any Cloth with Orchel; or with Brazil, to make a falſe Colour in Cloth, Wool, *&c.* in Pain of 20 *s. Stat.* 3 *&* 4 *E.* 6. *c.* 2. *Dyers* are to fix a Seal of Lead to Cloths, with the Letter M, to ſhew that they are well mathered, *&c.* or forfeit 3 *s.* 4 *d.* and not to uſe Logwood in Dying, on Pain of forfeiting 20 *l.* Stat. 23 *Eliz. c.* 9. And Penalties are inflicted on *Dyers*, who dye any Cloths deceitfully, and not being dyed throughout with Woad, Indico and Mather; alſo Marks ſhall be put to the Cloths dyed, *&c. Dyers* in *London* are ſubject to the Inſpection of the *Dyers Company*, who may appoint Searchers; and out of their Limits, Juſtices of Peace in Seſſions to appoint them: Oppoſing the Searchers, incurs 10 *l.* Penalty, by Stat. 13 *Geo.* 1. *cap.* 24.

Dyke-reeve, An Officer that hath the Care and Overſight of the *Dykes* and *Drains* in Fenny Countries; as of *Dieping Fens*, *&c.* mentioned in the Stat. 16 *&* 17 *Car* 2. *c.* 11.

Dyrge or **Dirge**, A mournful Song over the Dead; from the Teutonick *Dyrke* Laudare, to praiſe and extol, whence it is a laudatory Song. *Cowel.*

Dytenum, A Ditty or Song. —— *Venire cum toto ac pleno* Dyteno, to ſing Harveſt home. *Paroch. Antiq.* 320..

E.

Eahalus, (from the Sax. *Eale*, Cerviſia, & *Hus*, Domus) An Ale-houſe: In the Law of King *Alfred* we often find this Word.

Ealhorda, The Privilege of Aſſiſing and Selling *Ale and Beer:* It is mentioned in a Charter of King *Hen.* 2. to the Abbot of *Glaſtonbury.*

Ealderman, Among the *Saxons* was as much as *Earl* with the *Danes. Camd. Brit.* 107. Alſo an *Elder*, Senator, *&c. Ealdermen* or *Aldermen*, are now thoſe that are aſſociated to the Mayor or Chief Officer in the Common Council of a City or Borough Town. *Stat.* 24 *H.* 8. *c.* 13 See *Alderman.*

Earl, (*Sax. Eorle*, Lat. *Comes*) This 'tis ſaid was a great Title among the *Saxons*, and is the moſt ancient of the *Engliſh* Peerage, there being no Title of Honour uſed by our preſent Nobility that was likewiſe in Uſe by the *Saxons*, except this of *Earl*; which was uſually applied to the Firſt in the Royal Line. *Verſtegan* deriveth this Word from the Dutch *Ear, i. e.* Honour, and *Ethel*, which ſignifies Noble: But whenceſoever it is derived, the Title *Earl* was at length given to thoſe who were Aſſociates to the King in his Councils and Martial Actions; and the Method of Inveſtiture into that Dignity was *Per Cincturam Gladii Comitatus*, without any formal Charter of Creation. *Dugdale's Warwickſh.* 302. *William* the Firſt, called the *Conqueror*, gave this Dignity in Fee to his Nobles, annexing it to this or that County or Province; and allotting them for the Maintenance of it a certain Portion of Money ariſing from the Prince's Profits, for the Pleadings and Forfeitures of the Provinces. *Camd.* And formerly one *Earl* had divers Shires under his Government, and had Lieutenants under him in every Shire, ſuch as are now *Sheriffs*; as appears by divers of our old Statutes. *Cowel.* But about the Reign of King *John* and ever ſince, our Kings have made *Earls* of Counties, *&c.* by Charter; and giving them no Authority over the County, nor any Part of the Profits ariſing out of it; only ſometimes they have had an annual Fee out of the Exchequer, *&c.* An *Earl, Comes*, was heretofore correlative with *Comitatus*; and anciently there was no *Earl*, but had a Shire or County for his *Earldom*; but of late Times the Number of *Earls* very much increaſing, ſeveral of them have choſen for their Titles ſome eminent Part of a County, conſiderable Town, Village, or their own Seats, *&c.* Then, beſides theſe local *Earls*; there are ſome perſonal and honorary; as *Earl Marſhal* of *England*; and others nominal, who derive their Titles from the Names of their Families. *Lex Conſtitutionis, pag.* 78. Their Place is next to a Marqueſs, and before a Viſcount: And as in very ancient Times, thoſe who were created *Counts* or *Earls*, were of the Blood Royal; our *Britiſh* Monarchs to this Day call them in all publick Writings, Our moſt dear Couſin: They alſo originally did, and ſtill may uſe the Style of *Nos.* See *Countee.*

Eaſement, *Aiſiamentum*, (from the Fr. *Aiſe, i. e.* Commoditas) Is defined to be a Service or Convenience, which one Neighbour hath of another, by Charter or Preſcription, without Profit, as a Way through his Land, a Sink, or ſuch like. *Kitch.* 105. A Perſon may preſcribe to an *Eaſement* in the Freehold of another, as belonging to ſome ancient Houſe, or to Land, &c. And a Way over the Land of another; a Gate-way, Water-courſe, or Waſhing-place in another's Ground, may be claimed by *Preſcription* as *Eaſements:* But a Multitude of Perſons cannot preſcribe; though for an *Eaſement* they may plead Cuſtom. *Cro. Jac.* 170. 3 *Leon.* 254. 3 *Mod.* 294. To alledge an *Eaſement* by *Conſuevit* only is the beſt Way: And Things of Neceſſity ſhall not be extinguiſhed by Unity of Poſſeſſion; but a Way of *Eaſe* may be thus extinguiſhed. 1 *Lill. Abr.* 496. See *Preſcription.*

Eaſter, Was the Name of a Goddeſs which the *Saxons* worſhipped in the Month of *April*, and ſo called, becauſe ſhe was the Goddeſs of the *Eaſt. Blount.* But in our Church it is the Feaſt of the *Paſſover*, in Commemoration of the Sufferings of our Saviour *Chriſt.*

Eaſtintus, (Sax. *Eaſt-Tyne*) Is an eaſterly Coaſt or Country; alſo the *Eaſt-Street*, *Eaſt* Side of a River, &c.——*Si ſit* Eſtintus, & *ſi ſit* Northtintus *amendet.*——Leg. K. Edw. 1.

Eaſt-India Company of Merchants and their Privileges, began in the Reign of Queen *Elizabeth*, when they obtained divers Grants and Charters to carry on their Trade. 20 *Eliz. c.* 9. And for raiſing a Sum not exceeding two Millions, and ſettling the *Eaſt-India* Trade, 160,000 *l. per Ann.* ariſing by the Duties on Salt, ſtamp'd Vellum, &c. was made a Fund for Payment of Annuities of 8 *per Cent.* to Subſcribers, who were incorporated by Letters Patent: The Company to have the ſole Trade to the *Eaſt-Indies*; and others trading thither without Licence, ſhall forfeit their Ships and Goods, and double Value: Members of this Company are to Trade only in their Joint-Stock; and the Company not to owe more than their Capital Stock undivided, which is liable for Debt. And an additional Duty of 5 *l. per Cent.* is laid on *Eaſt-India* Goods, for the Company to maintain Forts, &c. Stat. 9 & 10 *W.* 3. *c.* 44. The two *Eaſt-India* Companies are United by Statute; they ſhall advance and pay into the Exchequer One million two hundred thouſand Pounds, and may borrow 1,500,000 *l.* more than they could before this Act. 6 *Ann. c.* 17. This Company may enter Goods and Merchandize imported by Bills at Sight, and give Security for Payment of the Cuſtoms under their common Seal. *Stat.* 10 *Ann. c.* 9. *Eaſt-India* Goods and Merchandize are not to be imported in *Ireland* or the Plantations, but from *Great Britain* only, on Pain of forfeiting the ſame. And illegal Traders to pay Cuſtoms to the King, and 30 *l. per Cent.* Damages to the Company, on a Bill exhibited by the Attorney General; Perſons abroad trading, may be ſeiſed and brought into *England*, &c. by Stat. 5 & 7 *Geo.* 1. *c.* 21. Subjects of *England* ſhall not ſubſcribe to any foreign Company of Trade to the *Eaſt-Indies*, under the Penalty of forfeiting their Shares of Stocks, &c. 9 *G.* 1. *c.* 26. The Intereſt at 8 *l. per Cent.* paid by the Government, is ſunk to 6 and 5, by ſubſequent Acts: And a late Statute was made for reducing the Fund of this Company; and continuing the Corporation, &c. But on repaying the whole Capital Stock, after ſo many Years, the excluſive Trade to ceaſe. 3 *Geo.* 2. *c.* 14. See *Merchant.*

Ebdomadarius, An *Ebdomary* or Officer appointed *Weekly* in Cathedral Churches, to ſuperviſe the regular Performance of Divine Service, and preſcribe the particular Duties of each Perſon attending in the Choir, as to Reading, Singing, Praying, &c. To which Purpoſe the *Ebdomary* at the Beginning of his Week drew in Form a Bill or Writing of the reſpective Perſons and their ſeveral Offices, called *Tabula*; whereupon the Perſons there entered were ſtiled *Intabulati:* This is manifeſted in the Statutes of the *Cathedral Church of St. Paul's*, digeſted by Dr. *Ralph Baldock*, Dean of *St. Paul's*, *Anno* 1295, MS. penes Joh. Epiſc. Norw.

Eberemorth, or **Eberemors**, (*Sax.*) Bare, or downright Murder. *Leg. H.* 1. *c.* 12.

Eberemurder, (*Apertum Murdrum*) Was one of thoſe Crimes, which by King *Henry* the Firſt's Laws, *cap.* 13. *Emendari non poſſunt*; *hoc ex ſcelerum genere fuit nullo pretio expiabilium*, &c. Spelm.

Eccleſia, (*Lat.*) Is commonly uſed for that Place where God is ſerved, which is called a Church: But in *Law Proceedings*, according to *Fitzherbert*, this Word intends a Parſonage; for ſo he expreſſes it in a Queſtion, whether a Benefice was Eccleſia, *ſive* Capella, &c. *F. N. B.* 32. 2 *Inſt.* 363.

Eccleſiæ Sculptura. The Image or Sculpture of a Church in ancient Times, which was often cut out or caſt in Plate or other Metal, and preſerved as a religious Treaſure or Relique; and to perpetuate the Memory of ſome famous Churches. *Mon. Ang. tom.* 3. *p.* 309.

Eccleſiaſtical, Denotes ſomething belonging to, or ſet apart for the Church; as diſtinguiſhed from *Civil* or *Secular*, which regard the World.

Eccleſiaſtical Perſons or **Eccleſiaſticks**, (*Eccleſiaſtici*) Are Church-men, Perſons whoſe Functions conſiſt in performing the Service, and keeping up the Diſcipline of the Church. See *Clergy.*

Eccleſiaſtical Juriſdiction. The Doctors of the Civil Law, although they be Laymen, &c. may exerciſe *Eccleſiaſtical Juriſdiction*, by Stat. 37 *H.* 8. *c.* 17.

Eccleſiaſtical Laws, See *Canon*, and *Courts Eccleſiaſtical.*

Edeſtia, From *Ædes*, uſed for Buildings.——*Sciant quod Ego* Adam de M. *conceſſi* Johanni de B. *pro ſervitio ſuo totam terram cum* Edeſtiis, & *omnibus pertin'*, &c. Ex Regiſt. Priorat. de Wormley.

Edia, Aid or Help: Thus *Du Freſne* interprets it; but *Cowel* ſays it ſignifies *Eaſe.*

Edict, (*Edictum*) An Ordinance or Command; a Statute. *Lat. Law Dict.*

Eel-fares, Are a Fry or Brood of Eels. *Stat.* 25 *H.* 8.

Efforcialiter, Is uſed for military Force.——*Tu ita* Efforcialiter *venis cum Equis & Armis.* Mat. Pariſ. Anno 1213.

Effractores, (*Lat.*) Breakers, applied to *Burglars*, that Break open Houſes to ſteal.—— *Qui furendi cauſa Domos* effringunt, &c. *MS.*

Efters, (*Sax.*) Ways, Walks or Hedges. *Blount.*

Effuſio Sanguinis, The Mulct, Fine, or Penalty impoſed by the old *Engliſh* Laws for the Shedding of Blood; which the King granted to many Lords of Manors: And this Privilege, among others, was granted to the Abbot of *Glaſtonbury.* Cartular. Abbat. Glaſton. MS. fol. 87.

Egyptians, (*Egyptiani*) Commonly called *Gypſies*, are by our Laws and Statutes a counterfeit Kind of Rogues, who diſguiſing themſelves in ſtrange Habits, ſmearing their Faces and Bodies, and framing to themſelves a Canting unknown Language, wander up and down; and under Pretence of telling Fortunes, curing Diſeaſes, and ſuch like, abuſe the ignorant common People, by Stealing and Pilfering from them every Thing that is not to heavy for their Carriage, and which they may go off with undiſcovered. There are ſeveral Statutes for ſuppreſſing thoſe Impoſters; as by Stat. 22 *H.* 8. *c.* 10. *Egyptians* coming into *England*, are to depart the Realm in fifteen Days, or be impriſoned. And by 1 & 2 *P.* & *M.* If any Perſon ſhall import any *Egyptians* into this Kingdom, he ſhall forfeit 40 *l.* And if the *Egyptians* remain in *England* above a Month, they ſhall be guilty of Felony. Alſo conſorting with *Egyptians* is made Felony by 5 *Eliz. c.* 20.

Eia, (from the Saxon *Eig*) ſignifies an Iſland. *Mat. Pariſ. Anno* 833. See *Ey*.

Ejecta, A Woman raviſhed or deflowr'd; or caſt forth from the Virtuous: *Ejectus*, a Whoremonger. *Blount.*

Ejectione Cuſtodiæ, (*Ejectment de Garde*) Is a Writ which lieth againſt him that caſteth out the *Guardian* from any Land during the Minority of the Heir. *Reg. Orig.* 162. *F. N. B.* 139. There are two other Writs not unlike this; the one termed *Raviſhment de Gard*, and the other *Droit de Gard.*

Ejectione firmæ, or Ejectment, Is a Writ or Action that lies for the Leſſee for Years, who is *ejected* before the Expiration of his Term, either by the Leſſor, or a Stranger: Alſo *Ejectment* may be brought by a Leſſor againſt the Leſſee, for Rent in Arrear, or holding over his Term, *&c. Reg. Orig.* 227. A Copyholder may not bring Action of *Ejectment*; but the Leſſee of a Copyholder for one or more Years, may bring it. 4 *Rep.* 26. And the Executors of a Leſſee, ſhall have this Writ. *Lib. Intr.* 195. In theſe Caſes, *Ejectment* is either an actual *Ejectment*, as when the Leſſee is actually put out of Land let unto him; or it is an *Ejectment* by Implication of Law, *viz.* where ſuch an Act is done by one which doth amount to an *Ejectment*, although he doth not really enter upon the Land let, and ouſt the Leſſee. 1 *Lill. Abr.* 496. But *Ejectment* is now become an Action in the Place of many *Real Actions*, as Writs of Right, *Formedons*, *&c.* which are very difficult as well as tedious and chargeable: And this is the common Action for trying of Titles, and recovering of Lands, *&c.* illegally kept from the right Owner; tho' where Entry is taken away by Diſcents, Fines and Recoveries, Diſſeiſins, *&c. Ejectment* may not be brought; ſo that all Titles cannot be tried by this Action. *Wood's Inſt.* 547, 548. Anciently *Writs of Entry* and *Aſſiſe* were the uſual Means of Recovery of the Poſſeſſion of Lands, and lay only againſt Freeholders; but *Anno* 14 *H.* 7. it was reſolved, that an *Habere facias Poſſeſſionem* would lie to recover the Term in *Ejectment*, and the Land itſelf. *Attorn. Compan.* 170. The Action of *Ejectione firmæ* was never known to remove a Poſſeſſion till the Reign of King *Hen.* 8. before which Time an Action of Treſpaſs *Quare clauſum fregit*, *&c.* was made uſe of: Tho' in Action of Treſpaſs, Damages were only to be recovered; whereas in *Ejectione firmæ*, the Thing or Term itſelf is recovered, as well as Damages. 3 *Leon.* 49. *Ejectment* ought to be brought for a Thing that is certain; and if it be of a Manor, *Manerium de A. cum Pertenentiis*; if of a Rectory, *Rectoriam de* B. *&c.* And ſo many Meſſuages, Cottages, Acres of arable Land, Meadow, *&c. cum pertin. in Paroch. &c.* For Land muſt be diſtinguiſhed, how much of one Sort, and how much of another, *&c. Cro. El.* 339. 3 *Leon.* 13. *Ejectment* lies of a Church, as *De uno Domo* vocat. *The Pariſh Church of*, &c. And a Church is a Meſſuage, by which Name it may be recovered; and the Declaration is to be ſerved on the Parſon who officiates Divine Service. 11 *Rep.* 25. 1 *Salk.* 256. It lies not of Tithes only; but may be of a Rectory, Chapel, *&c.* and the Tithes thereto belonging. 2 *Danv. Abr.* 752. And *Ejectment* will lie of ſo many Loads of Tithe Corn, ſevered from the nine Parts, or where certainly expreſſed; tho' it will not lie for Tithes generally. 1 *Nelſ. Abr.* 688. It lies *De uno Meſſuagio ſive Burgagio*; but not *De uno Meſſuagio ſive Tenemento*, unleſs it have a *Vocat.* A. *&c.* to make it good, becauſe of the Uncertainty of the Word *Tenement.* 1 Sid. 295. It will lie of a Meſſuage and a Tenement: For a Moiety; or third Part, of a Manor or Meſſuage, *&c.* And for a Chamber or Room of a Houſe well ſet forth. 11 *Rep.* 55, 59. 3 *Leon.* 210. It lieth *de Domo*, which hath convenient Certainty for the Sheriff to deliver Poſſeſſion, *&c. Cro. Jac.* 654. It lies of a Cottage or Curtilage; of a Coal-mine, *&c.* but not of a Common, Piſcary, *&c. Cro. Jac.* 150. For Underwood it lies, though a *Præcipe* doth not. 2 *Roll. Rep.* 482, 483. But for *uno Clauſo*, or *una pecia Terræ*, *&c.* without Certainty of the Acres, and their Nature, it doth not lie. 11 *Rep.* 55. 4 *Mod.* 1. It lieth of a Cloſe, containing three Acres of Paſture, *&c.* Alſo of ſo many Acres of Land covered with Water; though not *de Aquæ curſu.* 2 *Cro.* 435. 1 *Brownl.* 242. The Method of Proceeding in *Ejectment*, is made more eaſy than formerly; when a Leaſe was to be ſealed and delivered on the Premiſſes to the Leſſee, *&c.* In ancient Times, the *Ejector* in Law was any Perſon that came upon any Part of the Land, *&c.* mentioned in the Leaſe of *Ejectment*, though he were there without any Intent to diſturb the Leſſee of the Poſſeſſion, after the Sealing of the *Ejectment* Leaſe; and ſuch *Ejector* was a good *Ejector* againſt whom an Action of *Ejectione firmæ* might be brought to try the Title of the Land in Queſtion: But now the Law is altered, for there is no Occaſion for a Leaſe to be made and ſealed upon the Premiſſes to the Leſſee, who hath a Mind to try the Title, and to leave the Leſſee in Poſſeſſion to be ouſted and *ejected* by the Tenants in Poſſeſſion, *&c.* As the Plaintiff could not proceed to recover his Lands againſt the caſual *Ejector*, without delivering to the Tenant in Poſſeſſion a Declaration, and making him a proper Defendant, if he thought fit: After this, the Lord Ch. Ju. *Rolls* invented the Rule now in uſe; which is, that if the Defendant comes in the Room of ſuch *Ejector*, he ſhould enter into a Rule to confeſs Leaſe, Entry, and actual Ouſter, and inſiſt on the Title only. See *Attorn. Compan.* 170, 173. The uſual Courſe at this Time is to draw a Declaration, and therein feign a Leaſe for three, five, or ſeven Years, to him that would try the Title, and alſo feign a caſual *Ejector* or Defendant in the Declaration, and then deliver the Declaration to the *Ejector*, who ſerves the ſame by delivering a Copy thereof on the Tenant in Poſſeſſion, or his Wife, (for a Delivery to a Son or Servant, *&c.* is not good) and gives Notice in Writing at the Bottom for him to appear and defend his Title; which muſt be read to the Tenant, and the Perſon ſerving it, is to tell him, that if he do not procure ſome Attorney to appear for him and defend his Title, in Default thereof, that he, (the Defendant) will ſuffer a Judgment to be had againſt him, whereby he (the Tenant) will be turned out of Poſſeſſion: The Declaration being thus ſerved, the Tenant is to appear the Beginning of the next Term by his Attorney, and conſent to a Rule to be made Defendant inſtead of the caſual *Ejector*, and take upon him the Defence; wherein he may confeſs a *Leaſe, Entry, and Ouſter*, and at the Trial ſtand upon the Title only: But if the Tenant in Poſſeſſion doth not appear and enter into the aforementioned Rule in Time, after the Declaration ſerved; then on Affidavit made of the Service of the Declaration, with Notice to appear as aforeſaid, the Court will order that Judgment be entered againſt the caſual *Ejector* by Default; and the Tenant in Poſſeſſion will, by an *Habere facias Poſſeſſionem* upon ſuch Judgment, be turned out of Poſſeſſion. 1 *Lill.* 499. If at the Trial the Defendant will not appear and confeſs Leaſe, Entry and Ouſter, it is uſual to call him or his Attorney, and then call the Plaintiff and nonſuit him; and upon Return of the *Poſtea*, Judgment will be given againſt the caſual *Ejector.* 1 *Salk.* 259, But in this Caſe, though the Plaintiff be nonſuit, he ſhall not pay any Coſts; for the Rule for confeſſing Leaſe, Entry, and Ouſter is to be carried to the Secondary, who taxes Coſts upon it to be paid by the Defendant; and if the ſame are not paid, the Court on Affidavit and Motion will grant an Attachment againſt the Defendant; but this is where the Defendant appears, and not where it goes wholly againſt him by Default.

fault. 1 *Lill.* 503, 504. If the Tenant doth appear, having by his Attorney filed common Bail, and entered into the Rule abovementioned, he is made Defendant in the Declaration, and put into the ſame in the Place of the caſual *Ejector*; and then the Defendant's Attorney muſt plead *Not Guilty*; And the Plaintiff's Attorney draws up the Iſſue, a Copy whereof and of the Declaration is to be delivered to the Attorney for the Defendant; whereupon Notice is given of Trial: In order to which the *Venire*, &c. is to be made out and returned, and the *Record* made up by the Plaintiff's Attorney, beginning with the Declaration; which being ſealed, the *Breviate* is to be prepared, in which after a ſhort Recital of the Declaration and Plea, the Plaintiff's Title is to be ſet forth from the Perſon laſt ſeiſed in Fee of the Premiſſes, under whom the Leſſor claims down to the Client, the Plaintiff proving the Deeds, &c. And after Trial the Proceedings are as in other Caſes. And here it is to be obſerved, that if the Declaration is delivered the firſt or ſecond Day of *Eaſter* or *Michaelmas* Terms, the Tenant muſt plead the ſame Term, or the Plaintiff will have Judgment; and this is by Reaſon of the Length of thoſe Terms. *Practiſ. Solic.* 328, 329. The Plaintiff is not allowed to amend his Declaration in *Ejectment* after Delivery; he muſt ſtand by it, or deliver a new Declaration. As many Demiſes may be laid in a Declaration, as ſhall be thought fit; and if the Plaintiff recovers upon one, it is ſufficient for the Whole. 3 *Lev.* 117, 334. Where one brings *Ejectment* of Land in two Pariſhes, and the Whole lies in one, he ſhall rocover: Alſo if a Perſon brings *Ejectment* of one Acre in *B.* and Part of it lies in *A.* he ſhall recover for ſuch Part as lies in B. And if one having Title to a Part only of Lands, bringeth an *Ejectment* for the Whole, he ſhall recover his Part of the Lands. *Plowd.* 429. 3 *Cro.* 13. A Plaintiff ſhall recover only according to the Right which he hath at the Time of bringing his Action: And one who hath Title to the Land in Queſtion, may on Motion be made a Defendant in the Action with the Tenant in Poſſeſſion, to defend his Title; and a Landlord may be made a Defendant by the Tenant, with the Conſent of ſuch Landlord, &c. 1 *Nelſ. Abr.* 694. 1 *Lill.* 497, &c. As the Poſſeſſion of the Land is primarily in Queſtion, and to be recovered, that concerns the Tenant; and the Title of the Land, which is tried collaterally, that is concerning ſome other, who may be admitted to be a Defendant with a Tenant: But none other is to be admitted a Defendant, but he that hath been in Poſſeſſion, or receives the Rents, &c. When there is a Recovery in *Ejectment* by Verdict; Action of Treſpaſs may be brought to recover the meſne Profits of the Lands, from the Time of the Defendant's Entry laid in the Declaration: And this Action may be brought either by the Plaintiff in *Ejectment*, or by the Leſſor of the Plaintiff; though where the Plaintiff brings it, he need only at the Trial to produce his *Poſtea* of his Recovery; but where the Leſſor brings it he muſt prove his Title over again, if it be inſiſted on by the other Side, otherwiſe he will be nonſuited. 1 *Lill.* 499. The Plaintiff in *Ejectment* is a meer nominal Perſon, and a Truſtee for the Leſſor; and if he releaſe the Action, the Court may ſet aſide the Releaſe, and he ſhall be committed for a Contempt; ſo likewiſe if he releaſe an Action brought in his Name for the meſne Profits. 1 *Salk.* 260. *Skinn.* 247. It has been held a great Abuſe, that nominal Leſſees in *Ejectment* were Perſons not in Being, or not known to the Defendant; and Attornies who have made ſuch Leſſees, have been ordered to pay Coſts, and put to anſwer on Interrogatories, &c. *Mod. Ca.* 309. If a Man is made Plaintiff in *Ejectment* without his Knowledge, and the Defendant appearing the Plaintiff thereupon becomes nonſuit, after which Execution is ſued out againſt him; if it appears by his Oath, that he was made Plaintiff without his Knowledge or Order, he ſhall be diſcharged. 34 *Car. B. R.* 5 *Ann.* 1 *Lill.* 500. In *Ejectment*, if the Plaintiff was *ejected* after the Leaſe made, it is ſufficient; though no certain Day be alledged in which he was *ejected*, for the Day is not material, being before the Action brought. *Cro. Jac.* 311. But the Time of Entry of the Plaintiff muſt be ſhewn that it may appear, he was not a Diſſeiſor, by Entring on the Lands before the Commencement of his Term, &c. If it appears that the Leſſor of the Plaintiff had not any Title at the Time of the Demiſe, upon which the Plaintiff declared, this will be fatal; And the Court will not give Leave to alter the Declaration as to the Time of the Demiſe, which would make it a new Demiſe. *Carth.* 179. Where Lands in the Leaſe and Declaration, &c. are different, and not exactly the ſame, or the Term is different from that in the Declaration, though the Plaintiff hath a Verdict, he cannot have Judgment. *Yelv.* 166. 2 *Lutw.* 963. The Declaration muſt aſſign a Place where the Leaſe was made: It is a good Plea in Abatement, that the Plaintiff hath another *Ejectione firmæ* depending in another Court for the ſame Land; but as this Action is only as Treſpaſs, the Death of a Defendant when there are two, will not abate the Suit. One may in *Ejectment* as in Treſpaſs, juſtify by Command of him who hath Title; and Accord with Satisfaction is a good Bar in the Action. *Moor, ca.* 710, 673. 1 *And.* 283. 9 *Rep.* 78. If there be a Verdict and Judgment againſt the Plaintiff, he may bring another Action of Treſpaſs and *Ejectment* for the Land, it being only to recover the Poſſeſſion, &c. wherein Judgment is not final; and it is not like a Writ of Right, &c. where the Title alone is tried. *Wood's Inſt.* 547. *Trin.* 23 *Car. B. R.* And an *Ejectment* being a mixed Action, after a Judgment therein has lain ſome conſiderable Time, Execution may not be had upon it without a *Scire fac.* for the Tenant may be changed, &c. But formerly it was held otherwiſe. *Sid.* 351. *Comberb.* 250. No Arreſt is to be made in this Action, as now uſually proſecuted. But if there be no Tenant in Poſſeſſion; as where a Houſe or Land is empty, and the Perſon that was laſt in Poſſeſſion is run away, ſo that you cannot find any Perſon to deliver the Declaration to, then the Proceſs muſt be in the old Way, by ſealing a Leaſe upon the Ground; and an Original is to be ſued out againſt the Perſon who *ejected* the Leſſee, and then Ouſter and *Ejectment*, &c. And herein Rules are to be given to plead; though there cannot be Judgment againſt the caſual *Ejector*, without a Motion for that Purpoſe, after the Rules for Pleading are out. 1 *Lill.* 498. In *Ejectment* for empty Houſes, a Leaſe was ſealed on the Land, and a Declaration delivered to the caſual *Ejector*, and Judgment and Execution had; yet becauſe the Plaintiff did not move for a peremptory Rule to plead, the Judgment was ſet aſide: And in this Caſe there muſt be an Affidavit of the Sealing the Leaſe and the Entry. 1 *Salk.* 255. 1 *Nelſ. Abr.* In *C. B.* the common Rule is, that the Defendant ſhall forthwith appear, and receive a Declaration, and therefore this *ſuperſedes* the Neceſſity of an *Original* Writ; and no Advantage can be taken for want thereof, unleſs it be in a Writ of *Error*; but when Error is brought, an Original muſt be filed; And as in the *Common Pleas* there needs no Original, ſo in the *King's Bench* there need not be a *Latitat*; but the Party is to file a Bill of *Ejectment*, beſides the Plea-Roll, if a Writ of Error be brought before the Errors are aſſigned; and he muſt file Bail before he can proceed, &c. In *Ejectment*, where there are divers Defendants for the ſame Premiſſes, and one appears, and confeſſes Leaſe, Entry, &c. and the other does not, the Plaintiff cannot proceed a-

againſt

gainſt the reſt, but muſt be nonſuited. Though where Freeholds are ſeveral, no Defendant may defend for more than is in his own Poſſeſſion; and the Plaintiff may take Judgment againſt his *Ejector* for what remains. 1 *Vent.* 355. 2 *Keb.* 531, 524. And if there are ſeveral Defendants in *Ejectment*, that are ſeverally concerned in Intereſt, to whom the Plaintiff delivers Declarations; if he moves to join them all in one Declaration, the Court will not agree to it, for ſeveral Declarations muſt be delivered to each of the Defendants; becauſe if any are found Not guilty, each of them muſt have a Remedy for his Coſts. 2 *Keb.* 524. In Lord *Raymond*'s Reports, it is held if there are two Defendants in *Ejectment*, and one of them appears and confeſſes Leaſe, Entry, and *Ouſter*, but the other doth not appear; in that Caſe the Plaintiff may enter a *Non pros.* or *Retraxit* againſt him, and go to Trial and have Judgment againſt the other Defendant. 1 *Ld. Raym.* 717, 718. Alſo if an *Ejectment* be brought againſt two Perſons, and after Iſſue joined, one dies, and a *Venire* is awarded as to the two Defendants, and a Verdict againſt two; here upon Suggeſtion of the Death of one of them upon the Roll, Judgment ſhall be given for the Plaintiff againſt the other for the whole: For 'tis ſaid this Action is grounded upon Torts, which are ſeveral in their Nature, and one may be found guilty and the other acquitted. *Ibid.* An *Ejectment* was brought for Non-payment of Rent; and the Court was moved to ſtay Proceedings, upon Payment of the Rent and Coſts, to be adjuſted by a Secondary, which the Court granted: And alſo ordered a new Leaſe to be made at the Defendant's Charge. *Mich.* 8 *W.* 3. 1 *Lill.* 501. And by a late Statute, in all Caſes between Landlord and Tenant, when half a Year's Rent ſhall be in Arrear, the Landlord having lawful Right to re-enter for Non-payment, may ſerve a Declaration in *Ejectment* on the Tenant, without a formal Demand or Re entry; or he may affix ſuch Declaration on the Door of the demiſed Meſſuage, or notorious Place of the Lands, which ſhall be deemed a legal Service: And upon Proof that half a Year's Rent was due before the Declaration was ſerved, and no ſufficient Diſtreſs on the Premiſſes, the Leſſor ſhall have Judgment and Execution; which if the Leſſee ſuffer, without paying the Arrears and Coſts, and without filing a Bill in Equity to be relieved within ſix Months, he ſhall be barred from all Relief, other than by Writ of Error; and the Leſſor ſhall hold the Premiſſes diſcharged from the Leaſe: But if the Tenant or Leſſee tender to the Leſſor, or bring into Court the Rent in Arrear, together with Coſts, all further Proceedings ſhall ceaſe; and if the Leſſee be relieved in Equity, he ſhall enjoy the demiſed Premiſſes, according to his Leaſe, without obtaining a new one. Stat. 4 *Geo.* 2. *c.* 28. Tenants to whom Declarations in *Ejectment* are generally delivered for any Lands, *&c.* ſhall give their Landlords, or their Bailiffs, Notice thereof, under the Penalty of three Years Rack Rent, to be recovered by Action of Debt, *&c.* And the Court where ſuch *Ejectment* ſhall be brought, ſhall ſuffer the Landlord to make himſelf Defendant, by joining with the Tenant, unto whom the Declaration is delivered, if he appears; but if not, Judgment ſhall be ſigned againſt the caſual *Ejector*, for want of ſuch Apppearance: But if the Landlord ſhall deſire to appear by himſelf, and conſent to enter into the like Rule that the Tenant, if he had appeared, ought to have done; the Court may permit him ſo to do, and order a Stay of Execution, till they make a further Order therein. 11 *Geo.* 2. *c.* 19.

If an *Original* in Ejectment is required, it is thus:

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: If* A. B. *ſhall make you ſecure*, &c. *then put* C. D. *late of*, &c. *in your County, to find Pledges and ſufficient Sureties, that he be before our Juſtices at* Weſtminſter, *on the Day*, &c. *to anſwer to the ſaid* A. B. *in a Plea, wherefore he with Force and Arms into one Meſſuage, twenty Acres of Land, ten Acres of Meadow, and ſix Acres of Paſture, with the Appurtenances, in*, &c. *in your County, which* T. E. *hath demiſed to the ſaid* A. *for a Term not yet paſt, hath entered, and him from his Farm aforeſaid ejected, and other Wrongs to him done, to the great Damage*, &c. *And againſt the Peace*, &c.

Form *of a* Declaration *in* Ejectment *in* B. R.

South'ton, ſſ. A. B *Complains of* C. D. *in Cuſtody of the Marſhal*, &c. *For that whereas* T. E. *Gentleman, on the Tenth Day of* May *in the ſixth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, King of* Great Britain, &c. *at the Pariſh of*, &c. *in the County aforeſaid, had demiſed, granted, and to Farm let to the ſaid* A. *one Meſſuage, ten Acres of Meadow, and ſix Acres of Paſture*, &c. *with the Appurtenances, ſituate, lying and being in*, &c. *in the County aforeſaid*; To have and to hold *the ſaid Tenements, with the Appurtenances, to the ſaid* A. *and his Aſſigns, from the Twenty-ninth Day of* September *then laſt paſt, unto the full End and Term of five Years from thence next enſuing, and fully to be compleat and ended: By Virtue of which ſaid Demiſe, he the ſaid* A. *entered into the ſaid Tenements, with the Appurtenances, and was thereof poſſeſſed, until the ſaid* C. *afterwards, that is to ſay, the ſame tenth Day of* May *in the Year aforeſaid, with Force and Arms*, &c. *entered into the ſaid Tenements, with the Appurtenances, in and upon the Poſſeſſion of the ſaid* A. *and him the ſaid* A. *from his ſaid Farm, his ſaid Term therein not being yet expired, ejected, expelled and removed; and the ſaid* A. *being ſo ejected, expelled and removed, the ſaid* C. *hitherto hath with-held from him, and ſtill doth with hold the Poſſeſſion thereof, and other Injuries then and there did to him, againſt the Peace of our ſaid Sovereign Lord the King, and to the Damage of the ſaid* A. *Twenty Pounds; And thereupon he brings his Suit*, &c.

Notice *to the* Tenant in Poſſeſſion *to appear*, &c.

Mr. E. F.

I *Am informed that you are in Poſſeſſion of, or claim Title to the Meſſuage and Premiſſes mentioned in this Declaration of* Ejectment, *or to ſome Part thereof; And I being ſued in this Action as a caſual* Ejector, *and having no Title to the ſame, do adviſe you, (or give you Notice) to appear on the firſt Day of next* Hillary Term, *in his Majeſty's Court of* King's Bench *at* Weſtminſter, *by ſome Attorney of that Court, and then and there, by a Rule to be made of the ſame Court, to cauſe yourſelf to be made Defendant in my Stead, and make your Defence; otherwiſe I ſhall ſuffer a Judgment to be had againſt me, and you will be turned out of Poſſeſſion.*

Your Loving Friend,
C. D.

Affidavit of *Service of the Declaration* and Notice.

In the King's Bench. Between *A. B.* Plaintiff and *C. D.* Defendant.

T. B. *of*, &c. *maketh Oath, That he this Deponent on*, &c. *laſt paſt, did deliver to* E. F. *Tenant in Poſſeſſion of the Meſſuage and Premiſſes in Queſtion*,

Queſtion, a true Copy of the Declaration in Ejectment *hereto annexed; at the Foot of which Declaration is a Notice for the ſaid* E. F. *to appear on the firſt Day of the then next, and now preſent* Hillary Term, *in this Court, and defend his Title; otherwiſe Judgment would be entered againſt him by Default: And this Deponent farther ſaith, That he told the ſaid* E. F. *that if he did not appear, and defend his Title, the then next and now preſent* Hillary Term, *he would be turned out of Poſſeſſion.*

Sworn the Day, &c.
before me.

T. B.

The *Common Rule* by Conſent in *Ejectment.*

Michaelmas Term in the Seventh Year of the Reign of King *George* the Second.

South'ton, ſſ. I*T is ordered by the Court, with the Conſent of the Attornies for both Parties, that* E. F. *be admitted Defendant inſtead of the now Defendant* C. D. *And that he forthwith appear at the Suit of the Plaintiff, and put in common Bail, and receive a Declaration in a Plea of Treſpaſs and* Ejectment *for the Meſſuage and Premiſſes in Queſtion, and plead thereunto Not Guilty; and that upon the Trial of the Iſſue, he confeſs Leaſe, Entry, and actual Ouſter, and inſiſt upon the Title only; otherwiſe Judgment ſhall be entered by the Plaintiff againſt the now Defendant* C. *by Default: And if upon the Trial of the ſaid Iſſue, the ſaid* E. F. *ſhall not confeſs Leaſe, Entry, and actual Ouſter, by which the Plaintiff will not be able further to proſecute his Bill againſt the ſaid* E. *then no Coſts ſhall be awarded upon ſuch Nonſuit; but the ſaid* E. *ſhall pay to the Plaintiff the Coſts and Charges to be taxed thereupon. And it is further ordered, that if on the Trial of the ſaid Iſſue, a Verdict ſhall be given for the Defendant, or if it happen the Plaintiff ſhould not further proſecute his ſaid Bill, for any other Cauſe than for not confeſſing the ſaid Leaſe, Entry, and actual Ouſter; that then the Plaintiff's Leſſor, ſhall pay to the ſaid* E. *his Coſts and Charges, in that Caſe to be awarded to him.*

By the Court. { *G. H.* for the Plaintiff,
J. K. for the Defendant.

Form of a *Plea* and *Iſſue* in *Ejectment.*

A*ND the ſaid* E. F. *(the new Defendant) by*, &c. *his Attorney, comes and Defends the Force and Injury*, &c. *and whatſoever*, &c. *when and where the Court will conſider thereof, and ſaith, that he is in no wiſe guilty of the Treſpaſs and Ejectment aforeſaid, ſo as the ſaid* A. B. *hath above againſt him complained; and of this he puts himſelf upon the Country, and the ſaid* A. *doth likewiſe*, &c. *It is therefore commanded to the Sheriff, that he cauſe to come before our Lord the King at* Weſtminſter, *on the Day, &c. twelve honeſt*, &c. *and who neither*, &c. *to recognize and make a Jury*, &c. *becauſe as well the ſaid* A. *as the ſaid* E. *have thereof ſubmitted themſelves to the Jury: The ſame Day is given to the ſaid Parties here*, &c.

Judgment in *Ejectment* for the Plaintiff after Verdict.

T*Herefore it is conſidered, (adjudged) that the ſaid* A. *do recover againſt the ſaid* E *his Term yet to come of and in the ſaid Tenements, with the Appurtenances, and the Damages aſſeſſed by the ſaid Jury in Form aforeſaid: And alſo eight Pounds and ten Shillings for his Expences and Coſts awarded to the ſaid* A. *with his Aſſent, by the Court of the Lord the now King here, by way of Increaſe; which ſaid Damages and Coſts, in the whole amount to*, &c. *And be the ſaid* E. *amerced*, &c.

Ejectum, *Ejectus Maris, Quod è Mari ejicitur:* Jet, Jetſom, Wreck, *&c.* See *Wreck.*

Eigne, (Fr. *Aiſne*) Eldeſt or Firſt-born; as Baſtard *eigne*, and Mulier *Puiſne*, are Words uſed in our Law, for the Elder a Baſtard, and the Younger lawful born.

Einecia, (from the Fr. *Aiſne*, i. e. Primogenitus) Signifies Elderſhip. Statute of *Ireland*, 14 Hen. 3. See *Eſnecy.*

Eire or **Eyre**, (Fr. *Eire*, viz. *Iter*, as a *Grand Eire*, that is, *Magnis Itineribus*) Is the Court of Juſtices *Itinerant*; and *Juſtices in Eyre* are thoſe whom *Bracton* in many Places calls *Juſticiarios Itinerantes.* Theſe Juſtices in antient Time, were ſent with a general Commiſſion into divers Counties to hear ſuch Cauſes as were termed *Pleas of the Crown*: And this was done for the Eaſe of the People, who muſt elſe have been hurried to the King's Bench, if the Cauſe were too high for the County-Court: 'Tis ſaid they were ſent but once in every ſeven Years. *Bract. lib.* 3. *c.* 11. *Horn's Mirror, lib.* 2. The *Eyre of the Foreſt* is the Juſtice-Seat; which by antient Cuſtom was held every Three Years by the Juſtices of the Foreſt, *Journeying* up and down for that Purpoſe. *Bract. lib.* 3. *tract.* 2. *c.* 1 *&* 2. *Brit. c.* 2. *Cromp. Juriſd.* 156. *Manw. par.* 1. *pa.* 121.

Election, (*Electio*) Is when a Man is left to his own Free-will to take or do one Thing or another, which he pleaſes. And if it be given of ſeveral Things, he who is the firſt Agent, and ought to do the firſt Act, ſhall have the *Election:* As if a Perſon make a Leaſe, rendring Rent, or a Garment, *&c.* the Leſſee ſhall have the *Election*, as being the firſt Agent, by Payment of the one, or Delivery of the other. *Co. Lit.* 144. And if *A.* covenant to pay *B.* a Pound of Pepper or Sugar, before *Eaſter*; it is at the *Election* of *A.* at all Times before *Eaſter*, which of them he will pay: But if he pays it not before the ſaid Feaſt, then afterwards it is at the *Election* of B. to demand and have which he pleaſeth. *Dyer* 18. 5 *Rep.* 59. 11 *Rep.* 51. If I give to you one of my Horſes in my Stable, there you ſhall have the *Election*; for you ſhall be the firſt Agent, by Taking or Seiſure of one of them. *Co. Lit.* 145. If Things granted are Annual, and to have Continuance, the *Election* (where the Law gives it him) remains to the Grantor, as well after the Day as before: But 'tis otherwiſe when to be perform'd at once. *Ibid.* When nothing paſſes to the Feoffee or Grantee before *Election* to have the one Thing or the other, the *Election* ought to be made in the Life of the Parties; and the Heir or Executor cannot make the *Election:* But where an Eſtate or Intereſt paſſes immediately to the Feoffee, Donee, *&c.* there *Election* may be made by them, or their Heirs or Executors. 2 *Rep.* 36, 37. And when one and the ſame Thing paſſeth to the Donee or Grantee, and ſuch Donee or Grantee hath *Election* in what Manner he will take it, there the Intereſt paſſeth immediately, and the Party, his Heirs, *&c.* may make *Election* when they will. *Co. Litt.* 145. 2 *Danv. Abr.* 761. Where the *Election* creates the Intereſt, nothing paſſes 'till *Election*; and if no *Election* can be made no Intereſt will ariſe. *Hob.* 174. If the *Election* is given to ſeveral Perſons, there the firſt *Election* made by any of the Perſons ſhall ſtand: As if a Man leaſes two Acres to *A.* for Life, Remainder of one Acre to *B.* and of the other Acre to *C.* Now *B.* or *C.* may *elect* which of the Acres he will have, and the firſt *Election* by one binds the other. *Co. Litt.* 145 2 *Rep.* 36. If a Man leaſes two Acres for Life, the Remainder of one in Fee to the ſame Perſon; and after licenſes the Leſſee to cut Trees in one Acre, this is an *Election* that he ſhall have the Fee in the other Acre. 2 *Danv.* 762. A *Real Election* concerning Lands is deſcendible; and *Election* of a Tenant in Tail, may prejudice his Iſſue. He in Remainder may make an *Election*, after the Death of Tenant for Life; but if the Tenant for Life do make *Election*, the Remainder-Man is concluded. *Moor ca.* 247, 832. A Perſon grants a Manor, except one Cloſe called *N.* and there are two Cloſes called by that Name, one containing nine Acres, and the other but three Acres; the Grantee ſhall not in this Caſe chuſe which of the ſaid Cloſes he will have, but the Grantor ſhall have *Election* which Cloſe ſhall paſs. 1 *Leon.* 268. But if one grants an Acre of Land out of a Waſte or Common, and doth not ſay in what Part, or how to be bounded, the Grantee may make his *Election* where he will. 1 *Leon.* 30. If a Man hath three Daughters, and he covenants with another that he ſhall have one of them to diſpoſe of in Marriage; it is at the Covenantor's *Election* which of his Daughters the Covenantee ſhall have, and after Requeſt ſhe is to be delivered to him. *Moor* 72. 2 *Danv.* 762. Where there are three Coparceners of Lands, upon Partition the eldeſt Siſter ſhall have *Election*: Though if ſhe herſelf make the Partition, ſhe loſeth it, and ſhall take laſt of all. *Co. Lit.* 166. In Conſideration that a Perſon had ſold another certain Goods, he promiſed to deliver him the Value in ſuch Pipes of Wine as he ſhould chuſe; the Plaintiff muſt make his *Election* before he brings his Action. *Style* 49. An *Election* which of two Things ſhall be done, ought not to be made merely by bringing an Action; but before, that the Defendant may know which he is to do, and 'tis ſaid he is not bound to tender either before the Plaintiff hath made his Choice which will be accepted. 1 *Mod.* 217. 1 *Nelſ. Abr.* 697. A Condition of a Bond is, that the Obligor ſhall pay 30 *l.* or twenty Kine, at the Obligee's *Election*, within ſuch a Time; the Obligee at his Peril is to make his *Election* within the Time limited. 1 *Leon.* 69. Though in Debt upon Bond to pay 10 *l.* on ſuch a Day, or four Cows, at the then *Election* of the Obligee, it was adjudged, that it was not enough for the Defendant to plead that he was always ready, &c. if the Obligee had made his *Election*; for he ought to tender both at the Day, by Reaſon the Word *then* relates to the Day of Payment. *Moor* 246. 1 *Nelſ.* 694, 695. If a Man hath an *Election* to do one of two Things, and he cannot by any Default of a Stranger, or of himſelf, or the Obligee, or by the Act of God, do the one; he muſt at his Peril do the other. 1 *Lill. Abr.* 506. Where the Law allows a Man two Actions to recover his Right, it is at his *Election* to bring which he pleaſeth: And when a Man's Act may work two Ways, both ariſing out of his Intereſt, he hath *Election* given him to uſe it either Way. *Dyer* 20. 2 *Roll. Abr.* 787. Action of Treſpaſs upon the Caſe, or Action of Treſpaſs *Vi & Armis*, may be brought againſt one that reſcues a Priſoner, at the *Election* of the Party damnified by the Reſcous. And an Action of the Caſe, or an Aſſiſe lies againſt him that ſurcharges a Common, at the *Election* of him that is injured thereby. 1 *Lill.* 504, 505. Alſo for a Rent-charge out of Lands, there may be Writ of Annuity or Diſtreſs, at the *Election* of the Grantee; but after the Death of the Grantor, if the Heir be not charged, the *Election* to bring Annuity ceaſeth. *Dyer* 344. A Man was indicted of Felony for Entring an Houſe and taking away Money, and found guilty, and burnt in the Hand; after which, the Perſon who loſt the Money brought an Action of Treſpaſs againſt the other for Breaking his Houſe, and taking away his Money; and it was held that the Action would lie; for tho' it was at his *Election* at firſt, either to prefer an Indictment to bring an Action, yet by the Indictment he had made no *Election*, becauſe that was not the Proſecution of the Party, but of the Crown. *Style* 347. If a Bargain and Sale be made of Lands, which is inrolled, and at the ſame Time the Bargainor levies a Fine thereof to the Bargainee, he hath his *Election* to take by one or the other. 4 *Rep.* 72. A Wife hath her *Election* which to take, of a Jointure made after Marriage, or her Dower, on the Death of the Huſband, and not before. *Dyer* 358. When a Leſſor hath *Election* to charge the Leſſee, or his Aſſignee, for Rent; if he accepts the Rent of the Aſſignee, he hath determined his *Election*. 3 *Rep.* 24. If a Perſon hath *Election* to pay or perform one of two Things at a Day, and he do neither of them at that Day, his *Election* is gone: And where a Grant is made of two Acres of Land, the one for Life, the other in Fee, or in Tail, and before any *Election* the Feoffee makes a Feoffment of both; in this Caſe the *Election* will be gone, and the Feoffor may enter upon which he will for the Forfeiture. 2 *Rep.* 37. If Money on a Mortgage be to be paid to a Man, his Heirs, or Executors, the Mortgagor hath *Election* to pay it to either: And if in a Feoffment, it be to pay it to the Feoffee, his Heirs or Aſſigns, and he enfeoff another, the Feoffor may pay the Money to the firſt, or ſecond Feoffee, &c. *Co. Lit.* 210. In ſome Caſes, where one hath Cauſe of Suit, he may ſue one Perſon or another at his *Election*; for there is an Election of Perſons, as well as of Things. *Dyer* 204, 207. A Man by Deed binds himſelf and his Heirs to pay Money, and dies; the Obligee may chuſe to ſue the Heir, or the Executors, although both of them have Aſſets. *Poph.* 151. One may have *Election* when he hath recovered a Debt, to have his Execution by *Elegit*, *Fieri facias*, or *Cap. ad Satisfaciendum*; but where he takes an *Elegit*, and hath no Fruit of it, he may reſort to another Writ, though the *Election* be entered on Record. *Hob.* 57. *Dyer* 60, 369. There is no *Election* againſt the King in his Grants, &c. 1 *Leon* 30. And an Act becoming void, will determine an *Election*. *Hob.* 152.

Election of a Clerk of Statutes-Merchant, Is a Writ that lies for the Choice of a *Clerk* aſſign'd to take Bonds called *Statutes Merchant*; and is granted out of the *Chancery*, upon Suggeſtion that the Clerk formerly aſſign'd is gone to dwell at another Place, or is under ſome Impediment to attend the Duty of his Office, or hath not Lands ſufficient to anſwer his Tranſgreſſions, if he ſhould act amiſs, &c. *F. N. B.* 164.

Election of Eccleſiaſtical Perſons. There is to be a free *Election* for the *Dignities* of the *Church*, by 9 *Ed* 2. *c.* 14. And none ſhall diſturb any Perſon from making free *Election*, on Pain of great Forfeiture. If any Perſons that have a Voice in *Elections*, take any Reward for an *Election* in any Church, College, School, &c. the *Election* ſhall be void: And if any of ſuch Societies reſign their Places to others for Reward, they incur a Forfeiture of double the Sum; and the Party giving it, and the Party taking it is uncapable of ſuch Place. *Stat.* 31 *Eliz. c.* 6. *Election* of *Biſhops*. Vide *Biſhops*.

Election of a Verderor of the Foreſt, (*Electione Viridariorum Foreſtæ*) Is a Writ which lies for the Choice of a *Verderor*, where any of the Verderors of the Foreſt are dead, or removed from their Offices, &c. It is directed to the Sheriff; and, as appears by the antient Writs of this Kind, the Verderor is to be elected by the Freeholders of the County, in the ſame Manner as Coroners. *New Nat. Br.* 366.

Election of Members of Parliament. See *Parliament*.

Eleemoſyna, Alms: *Dare in puram & perpetuam* Eleemoſynam, to give in pure and perpetual Alms, or *Frank-almoigne*; as Lands were commonly given in antient Times to Religious Uſes. *Cowel.*

Eleemoſyna Regis, or *Eleemoſyna Aratri*, Is a Penny which King *Æthelred* ordered to be paid for every *Plough* in *England*, towards the Support of the *Poor:* It is called *Eleemoſyna Regis*, becauſe it was at firſt appointed by the *King*. Leg. Æthelred. cap. 1.

Eleemoſynaria, The Place in a Religious Houſe where the common *Alms* were repoſited, and thence by the Almoner diſtributed to the Poor.

Eleemoſynarius, The Almoner or peculiar Officer who received the *Eleemoſynary* Rents and Gifts, and in due Method diſtributed them to pious and charitable Uſes. There was ſuch a chief Officer in all the *Religious Houſes:* And the greateſt of our Engliſh *Biſhops* had antiently their Almoners, as now the King hath. *Linwood's Provincial*, *lib.* 1. *tit.* 12. See *Almoner*.

Eleemoſynæ, Hath been uſed for the Poſſeſſions belonging to Churches. *Blount*.

Elegit, (from the Words in it, Elegit *ſibi Liberari*) Is a Writ of Execution that lies for him who hath recovered Debt or Damages, or upon a Recognizance in any Court, againſt one not able in his Goods to ſatisfy the ſame; directed to the Sheriff, commanding him to make Delivery of a Moiety of the Party's Lands, and all his Goods, Beaſts of the Plough excepted. And the Creditor ſhall hold the ſaid Moiety of the Land ſo delivered unto him, until his whole Debt and Damages are paid and ſatisfied; and during that Term he is *Tenant* by *Elegit*. *Reg. Orig.* 299. *Co. Lit.* 289. Upon an *Elegit*, the Sheriff is to deliver one Half of all Houſes, Lands, Meadows and Paſtures, Rents, Reverſions, and Hereditaments wherein the Defendant had any ſole Eſtate in Fee, or for Life, into whoſe Hands ſoever the ſame do afterwards come; but not of a Right only to Land, an Annuity, Copyhold Lands, *&c. Dyer* 206. 7 *Rep.* 49. *Plowd.* 224. This Writ is given by the Statute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 18. And by it the Plaintiff, *&c.* elects *omnia bona & catalla* of the Defendant, *præter boves & Afros de Caruca ſua*; and alſo a Moiety of all the Lands which the Defendant had at the Time of the Judgment recovered: But it ought to be ſued within a Year and a Day after the Judgment; and Inquiſition is to be made by a Jury ſummoned by the Sheriff of what Land the Defendant had, *&c. F. N. B.* 267. All Writs of Execution may be good, though not return'd, except in *Elegit*; but that muſt be returned, becauſe an Inquiſition is to be taken upon it, and that the Court may judge of the Sufficiency thereof. 4 *Rep.* 65, 74. It has been ruled, that if more than a Moiety of the Lands is delivered on an *Elegit* by the Sheriff, the ſame is void for the Whole. *Sid.* 91. 2 *Salk.* 563. And the Sheriff cannot ſell any Thing but what is found in the Inquiſition; and therefore if he ſell a Term for Years, *&c.* miſrecited in the Inquiſition as to the Commencement thereof, the Sale is void. 4 *Rep.* 74. In Debt upon Bond, the Defendant before the Trial conveyed his Lands to another, *&c.* but he himſelf took the Profits; notwithſtanding this Conveyance a Moiety of his Lands were extended on an *Elegit*. *Dyer* 294. 3 *Rep.* 78. If two Perſons have each of them a Judgment againſt one Debtor, and he who hath the firſt Judgment brings an *Elegit*, and hath the Moiety of the Lands delivered to him in Execution; and then the other Judgment-Creditor ſues out another *Elegit*, he ſhall have only a Moiety of that Money which was not extended by the firſt Judgment. *Cro. Eliz.* 483. But this is contrary to the Year-Book 10 *Ed.* 2. where 'twas held, that the entire Moiety left ſhould be delivered in Execution. 1 *Nelſ Abr.* 698. When Lands are once taken in Execution on an *Elegit*, and the Writ is returned and filed, the Plaintiff ſhall have no other Execution. 1 *Lev.* 92. And if the Defendant hath Lands in more Counties than one, and the Plaintiff awards an *Elegit* to one County, and extends the Lands upon the *Elegit*, and afterwards files the Writ, he cannot after that ſue out an *Elegit* into the other Counties: But he may immediately after Entry of the Judgment upon the Judgment-Roll award as many *Elegits* into as many Counties as he thinks fit, and execute all or any of them at his Pleaſure. 1 *Lill. Abr.* 509. *Cro. Jac.* 246. And it has been held, that a Perſon may have ſeveral *Elegits* into ſeveral Counties, for the entire Sum recovered; or that he may divide his Execution, and have it for Part in one County, and Part in another. *Moor* 24. A Man had Lands in Execution, upon *Elegit*, and afterwards moved for a new *Elegit*, upon Proof that the Defendant had other Lands not known to the Creditor at the Time when the Execution was ſued out; and it was adjudged, that if he had accepted of the firſt by the Delivery of the Sheriff, he could not afterwards have a new *Elegit*; but when the Sheriff returns the Writ, he may wave it, and then have a new Extent. *Cro. Eliz.* 310. 1 *Nelſ. Abr.* 699. If the Defendant dies in Priſon, ſo that there is no Execution with Satisfaction, the Plaintiff ſhall have an *Elegit* afterwards. 5 *Rep.* 86. And if all the Lands extended on an *Elegit* be evicted by better Title, the Plaintiff may take out a new Execution. 4 *Rep.* 66. Where one having Land by *Elegit*, is wholly evicted out of it, he may have a further Execution, either againſt the Defendant's Lands or Goods, as he might have had at firſt; ſave only he muſt have a *Scire fac.* againſt the Defendant, or him that comes in under him: But if the Eviction be of Part of the Land, or for a Time only, ſo that the Plaintiff may take his full Execution by holding it over; there he cannot have any new Execution by the Statute. 32 *H.* 8. *c.* 5. 2 *Shep. Abr.* 115. After a void *Elegit* ſued out and filed, a new Writ may be had: And if one ſue an *Elegit* upon a Recovery, and the Sheriff returns that he hath made Inquiſition of the Lands of the Defendant by twelve Jurors; but he cannot deliver the Moiety to the Party according to the Writ, for that all the Land is extended to another on a Statute; the Plaintiff ſhall have a *Cap. ad Satisfaciend.* Roll. Abr. 905. Where an *Elegit* is ſued upon a Judgment, the levying of Goods thereon for Part only, is no Impediment, but the Plaintiff may bring another *Elegit pro Reſiduo*, and take the Lands. 1 *Lev.* 92. On a *Nihil* returned upon an *Elegit*, there may be brought a *Capias ad ſatisfaciend.* or *Fieri facias*. 1 *Leon.* 176. And an *Elegit* may be ſued, after a *Fieri facias* returned *Nulla bona*, or where Part is levied by it; and after a *Capias ad ſatisfaciend.* returned *Non eſt Inventus*. *Hob* 57. If on Recovery by Writ of Debt, a *Fieri facias* is ſued out, and the Sheriff return *Nulla bona*; then the Plaintiff ſhall have a *Capias* or *Elegit*, *&c.* And if the Sheriff return, that the Defendant hath nothing whereof he may make Satisfaction, he ſhall be ſent to the Priſon of the *Fleet*, *&c.* there to remain 'till he have made Agreement with the Party: And if the Sheriff in ſuch Caſe return *Non eſt Inventus*, there ſhall go forth an *Exigent* againſt him. *Terms de Ley* 289. There is another Sort of *Elegit* upon adjudging Execution againſt Tertenants, whereon only a Moiety of the Lands, againſt which Execution is awarded, is extended by the Sheriff; and nothing is mentioned therein of any Goods and Chattels. *Ibid.* A Perſon in Execution was ſuffered to eſcape, and then he died; the Land which he had at the Time of the Judgment may be extended by *Elegit* upon a *Scire facias* brought againſt his Heir as Tertenant. *Dyer* 271. A Man may have an Aſſiſe of the Land which he hath in Execution by *Elegit*, if he be deforced thereof. *Stat. Weſtm* 2. *c.* 18. And if Tenant by *Elegit* alien the Land in Fee, *&c.* he who hath Right ſhall have againſt him and the Alienee an Aſſiſe of *Novel Diſſeiſin*. *Ibid.* At a Trial at Bar in *C. B.* the Court delivered for Law, that where Lands are actually extended and delivered upon an *Elegit*, a Fine levied on thoſe Lands, and Nonclaim, will bar the Intereſt of the Tenant by *Elegit*; and upon the Inquiſition found, the Party is in Poſſeſſion before actual Entry, for in ſuch Caſe he may bring an Ejectment, or Treſpaſs, *&c.* 1 *Mod.* 217. If Tenant by *Elegit* be put out of Poſſeſſion before he hath received Satisfaction for his Debt, by the Heir at Law, *&c.* he may bring Action of Treſpaſs, or re-enter and hold over 'till ſatisfied: But after Satisfaction received, the Defendant may enter on the Tenant by *Elegit*. 4 *Rep.* 28, 67. Tenants by *Elegit*, Statutes-Merchants, *&c.* are not puniſhable for Waſte by Action of Waſte; but the Party againſt whom Execution is ſued is to have a Writ of *Venire facias ad computandum, &c.* and there the Waſte ſhall be recovered in the Debt: Though 'tis ſaid there is an old Writ of Waſte in the Regiſter for him in Reverſion againſt Tenant by *Elegit* committing Waſte on Lands which he hath in Execution. 6 *Rep.* 37. *New. Nat. Br.* 130. On Tenant by *Elegit*'s Accounting, if the Money recovered by the Plaintiff is levied out of the Lands, the Defendant ſhall recover his Land; and if more be received by Waſte, *&c.* he ſhall have Damages. *Terms de Ley* 288. See *Extent*, *Execution.*

Form *of a* Writ of Elegit *in* Engliſh.

GEORGE *the Second,* &c. *to the Sheriff of* S. *Greeting: Whereas* A. B. *lately in our Court, before us at* Weſtminſter, *by Bill without our Writ, and by the Judgment of the ſame Court, hath recovered againſt* C. D. 100 l. *of Debt, and alſo* 50 s. *for his Damages, which he hath ſuſtained, as well by Occaſion of the Detention of that Debt, as for his Expences and Coſts laid out by him about his Suit in that Behalf, whereof the ſaid* C. D. *is convicted, as appears to us of Record: And afterwards the ſaid* A. *came into our Court before us, and hath* elected *to be delivered to him all the Goods and Chattels of the ſaid* C. *except the Oxen and Heifers of his Cart, (Beaſts of his Plough) and in like Manner one Moiety of all and ſingular the Lands and Tenements of the ſaid* C. *in your Bailiwick, according to the Form of the Statute in this Caſe made and provided, until the Debt and Damages aforeſaid ſhall be fully levied thereof: Therefore we command you, that all the Goods and Chattels of the ſaid* C. *within your Bailiwick, except the Oxen and Heifers of his Cart, (Plough) and likewiſe a Moiety of all the Lands and Tenements of the ſaid* C. *in your Bailiwick, whereof the ſaid* C. *the Day,* &c. *in the Year of our Reign,* &c. *on which Day the Judgment aforeſaid was rendered, or at any Time afterwards was ſeiſed, you cauſe to be delivered without Delay to the ſaid* A. *by a reaſonable Price and Extent; to hold to him the ſaid Goods and Chattels as his own proper Goods and Chattels, and alſo to hold the ſaid Moiety of the Lands and Tenements aforeſaid as his Freehold, to him and his Aſſigns, according to the Form of the Statute aforeſaid, until the Debt and Damages aforeſaid ſhall be thereof levied: And how this Writ you ſhall have executed, make certainly known to us at* Weſtminſter, *on the Day,* &c. *(after ſuch a Return) under your Seal, and the Seals of thoſe by whoſe Oath you ſhall have made that Extent and Appraiſement; And have you then there this Writ.* Witneſs, *&c.*

Elf-Arrows, Were *Flint-Stones* ſharpened on each Side in Shape of *Arrow-heads*, made uſe of in War by the antient *Britains*; of which ſeveral have been found in *England*, and greater Plenty in *Scotland*, where 'tis ſaid the common People imagine they drop from the Clouds.

Eliſors, To impanel Juries, *&c.* See *Eſliſors.*

Elke, A Kind of Yew to make Bows of. *Stat.* 32 *H* 8. *cap.* 9. Alſo the Name of the wild Beaſt ſomewhat like a Deer.

Eloine, (From the Fr. *Eſloigner*) Signifies to remove or ſend a great Way off: In this Senſe it is uſed by Statute; if ſuch as be within Age be *eloined*, ſo that they cannot come to ſue perſonally, their next Friends ſhall be admitted to ſue for them. 13 *Ed.* 1. *cap.* 15.

Elongata, Is a Return of the Sheriff that *Cattle* are not to be found, or removed ſo that he cannot make Deliverance, *&c.* in *Replevin.* 2 Lill. Abr. 454, 458.

Elopement, (Derived from the Belg. *Ee, viz. Matrimonium &* Loopen, *currere*) Is where a married Woman of her own Accord, goes away and departs from her Husband, and lives with an Adulterer. A Woman thus leaving her Husband, is ſaid to *elope*; and in this Caſe, her Husband is not obliged to allow her any *Alimony* out of his Eſtate; nor ſhall he be chargeable for Neceſſaries for her, as wearing Apparel, Diet, Lodging, *&c.* And where the ſame is notorious, whoever gives her Credit, doth it at his Peril: But on *Elopement*, the Putting a Wife in the *Gazette*, or other News-Paper, is no legal Notice to Perſons in general not to truſt her; though perſonal Notice to particular Perſons given by the Husband, will be good not to be chargeable to them. 1 *Roll.* 350. 1 *Vent.* 42. By Stat. 13 *Ed.* 1. *cap.* 34. If the Wife goes away from the Husband, and tarrieth with the Adulterer, without returning and being reconciled to her Husband, this continual *Elopement* forfeits her Dower; according to theſe old Verſes:

Sponte Virum Mulier fugiens, & Adultera *facta,*
Dote ſua careat, niſi ſponſo ſponte retracta.

Action lies againſt the Adulterer for carrying away another Perſon's Wife, and *detaining* her; and large Damages are uſually given in theſe Caſes to the injured Husband.

Ely, A Royal Franchiſe or County Palatine. See *County.*

Embargo, A Prohibition upon Shipping, not to go out of any Port, on a War breaking out, *&c.*

Emblements, (From the Fr. *Emblavence de Bled, viz.* Corn ſprung or put up above Ground) Signifie properly the Profit of Land ſown: But the Word is ſometimes uſed more largely, for any Products that ariſe naturally from the Ground, as Graſs, Fruit, *&c.* In ſome Caſes he which ſowed the *Corn* ſhall have the *Emblements*; and in others not: A Leſſee at Will ſows the Land, he ſhall have the *Emblements*; though if the Leſſee determines the Will himſelf, he ſhall not have them, but the Leſſor. 5 *Rep.* 116. If Leſſee at Will ſows the Land with Grain, or other Thing yielding annual Profit, and the Leſſor enters before Severance; yet the Leſſee ſhall have it: But where the Leſſee plants young Fruit-Trees, or other Trees, or ſows the Land with Acorns, *&c.* he ſhall not have theſe: And if ſuch Tenant by good Husbandry make the Graſs to grow in greater Abundance; or ſow the Land with Hay-ſeed, by which Means it is encreaſed, if the Leſſor enters on the Leſſee, the Leſſee ſhall not have it, becauſe Graſs is the natural Profit of the Soil. *Co. Lit.* 55, 56. Where Tenant for Life ſows the Land, and dies, his Executors ſhall have the *Emblements*, and not the Leſſor or him in Reverſion; by Reaſon of the Uncertainty of the Eſtate. *Cro. Eliz.* 463. And if a Tenant for Life plants Hops, and dies before Severance, he in Reverſion ſhall not have them, but the Executors of Tenant for Life. *Cro. Car.* 515. If Tenant for Years, if he ſo long live, ſow the Ground, and die before Severance; the Executor of the Leſſee ſhall have the Corn: And where Leſſee for Life leaſes for Years, if the Leſſee for Years ſow the Land, and after Leſſee for Life dies before Severance, the Executor of Leſſee for Years ſhall have the *Emblements.* 2 *Danv. Abr.* 765. But if Tenant for Life ſows his Land with Corn, and afterwards grants over all his Eſtate and Right to another; if the

Grantee dies before Severance, it is ſaid his Executors ſhall not have the Corn, but he in Reverſion. *Cro. Eliz.* 464. If Tenant for Years ſows Ground, and before his Corn is ſevered, the Term which is certain expires; the Leſſor or he in Reverſion ſhall have the *Emblements*; but he muſt firſt enter on the Lands. 1 *Lill. Abr.* 511. A Leſſee for Life or Years ſows the Land, and after ſurrenders, *&c.* before Severance, the Leſſor ſhall have the Corn. 2 *Danv.* 764. If there be Leſſee for Years upon Condition that if he commit Waſte, *&c.* his Eſtate ſhall ceaſe; if he ſows the Ground with Corn, and after doth Waſte, the Leſſor ſhall have the Corn. *Co. Lit.* 55. And where a Lord enters on his Tenant for a Forfeiture, he ſhall have the Corn on the Ground. 4 *Rep.* 21. A Feme Copyholder for her Widowhood ſows the Land, and before Severance takes Huſband, ſo that her Eſtate is determined, the Lord ſhall have the *Emblements.* 1 *Lill.* 511. Though if ſuch a Feme Copyholder *durante viduitate*, leaſes for one Year according to Cuſtom, and the Leſſee ſows the Land, and afterwards the Copyholder takes Huſband, the Leſſee ſhall have the Corn. 2 *Danv.* 764. If a Huſband hold Lands for Life, in Right of his Wife, and ſow the Land, and after ſhe dies before Severance, he ſhall have the *Emblements. Dyer* 316. 1 *Nelſ. Abr.* 701. And where the Wife hath an Eſtate for Years, Life, or in Fee, and the Huſband ſows the Land, and dieth, his Executors ſhall have the Corn. 1 *Nelſ.* 702. But if the Huſband and Wife are Jointenants, though the Huſband ſow the Land with Corn, and dies before Ripe, the Wife and not his Executor ſhall have the Corn, ſhe being the ſurviving Jointenant. *Co Lit.* 199. When a Widow is endowed of Lands ſown, ſhe ſhall have the *Emblements*, and not the Heir. 2 *Inſt.* 81. And a Tenant in Dower may diſpoſe of Corn ſown on the Ground; or it may go to her Executors, if ſhe die before Severance. Stat. 20 *Hen.* 3. 2 *Inſt.* 80, 81. And if a Parſon ſows his Glebe, and dies, his Executors ſhall have the Corn: Likewiſe ſuch Parſon may by Will diſpoſe thereof. 1 *Roll Abr.* 655. *Stat.* 28 *Hen.* 8. *cap.* 11. If Tenant by Statute-Merchant ſows the Land, and before Severance a caſual Profit happens, by which he is ſatisfied, yet he ſhall have the Corn. *Co. Lit.* 55. Lands ſown are delivered in Execution upon an Extent, the Perſon to whom delivered ſhall have the Corn on the Ground. 2 *Leon.* 54. And Judgment was given againſt a Perſon, and then he ſowed the Land, and brought a Writ of Error to reverſe the Judgment; but it was affirmed; and adjudged that the Recoveror ſhould have the Corn. 2 *Bulſt.* 213. If a Diſſeiſor ſows the Land, and afterwards cuts the Corn, but before 'tis carried away, the Diſſeiſee enters; the Diſſeiſee ſhall have the Corn. *Dyer* 31. 11 *Rep.* 52. A Perſon ſeiſed in Fee of Land dies, having a Daughter, and his Wife *Priviment enſient* with a Son; the Daughter enters and ſows the Land, and before Severance of the Corn, the Son is born; in this Caſe the Daughter ſhall have the Corn, her Eſtate being lawful and defeated by the Act of God; and it is for the publick Good that the Land ſhould be ſowed. *Co. Lit.* 55. A Man ſeiſed in Fee-ſimple ſows Land, and then deviſes the Land by Will, and dies before Severance; the Deviſee ſhall have the Corn; and not the Deviſor's Executors *Winch* 52. *Cro. Eliz.* 61. If a Perſon deviſes his Land ſown, and ſays nothing of the Corn, the Corn ſhall go with the Land to the Deviſee: And when a Man ſeiſed of Land, ſows it, and dies without Will, it goes to the Executor, and not the Heir. 1 *Lill.* 512. A Deviſee for Life dies, he in Remainder ſhall have the *Emblements* with the Land. *Hob.* 132. Tenant in Fee ſows the Land, and deviſes it to *A.* for Life, Remainder to B. for Life, and dies; *A.* dies before Severance, *B.* in Remainder ſhall have the Corn, and not the Executor of the firſt Tenant for Life. *Cro. Eliz.* 61, 464. Where there is a Right to *Emblements*, Ingreſs, Egreſs and Regreſs are allowed by Law, to enter, cut and carry them away, when the Eſtate is determined, *&c.* 1 *Inſt.* 56.

Emblers de Gentz, (*Fr.*) A Stealing from the People: The Word occurs in our old Rolls of Parliament.——Whereas divers Murders, *Emblers des Gentz*, and Robberies are committed, *&c. Rot. Parl.* 21 *Ed.* 3. *n.* 62.

Embraceor, (Fr. *Embraſour*) Is he that when a Matter is in Trial between Party and Party comes to the Bar with one of the Parties having received ſome Reward ſo to do, and ſpeaks in the Caſe; or privately labours the Jury, or ſtands in Court to ſurvey and overlook them, whereby they are awed or influenced, or put in Fear or Doubt of the Matter. *Stat.* 19 *H.* 7. *cap.* 13. And the Penalty of this Offence is 20 *l.* and Impriſonment, at the Diſcretion of the Juſtices, by the ſaid Statute: Alſo a Perſon may be puniſhed by Fine, *&c.* on Indictment at Common Law, as well as by Action on the Statute. *Com. Law Com. Plac'd* 186. But Lawyers, Attornies, *&c.* may ſpeak in the Caſe for their Clients, and not be *Embraceors*: Alſo the Plaintiff may labour the Jurors to appear in his own Cauſe; but a Stranger muſt not do it: For the bare Writing a Letter to a Perſon, or Parol Requeſt for a Juror to appear, not by the Party himſelf, hath been held within the Statutes againſt Embracery and Maintenance. 1 *Inſt* 369. *Hob.* 294. 1 *Saund.* 301. If the Party himſelf inſtruct a Juror, or promiſe any Reward for his Appearance, then the Party is likewiſe an *Embraceor.* And a Juror may be Guilty of Embracery, where he by indirect Practices gets himſelf ſworn on the *Tales*, to ſerve on one Side. 1 *Lill.* 513. There are divers Statutes relating to this Offence and *Maintenance*, as 5 *Ed.* 3. *cap.* 10. 34 *Ed.* 3. *c.* 8. 32 *H.* 8. *c.* 9, *&c.*

Embracery, Is the Act or Offence of *Embraceors*: And to attempt to influence a Jury, or any Way incline them to be more favourable to the one Side than the other, by Promiſſes, Threatnings, Money, Treats, *&c.* whether the Jurors on whom any ſuch Attempt is made, give any Verdict or no, or whether the Verdict paſs on his Side or not; this is *Embracery.* 1 Inſt. 369. Noy's Rep. 102.

Embring Days, (From *Embers, Cineres*) So called either becauſe our Anceſtors, when they *faſted* ſat in Aſhes, or ſtrewed them on their Heads, are thoſe which the antient Fathers called *Quatuor Tempora jejunii*, and of great Antiquity in the Church: They are obſerved on *Wedneſday*, *Friday* and *Saturday* next after *Quadrageſima Sunday*, (or the firſt *Sunday* in *Lent*) after *Whitſunday*, *Holyrood-day* in *September*, and St. *Lucy's Day* about the Middle of *December.* Theſe Days are mentioned by *Briton*, *cap.* 53. and other Writers; and particularly in the Stat. 2 & 3 *Ed.* 6. *c.* 19. And are kept with great Zeal by the *Roman* Catholicks: Our Almanacks call them the *Ember Weeks.*

Emendals, (*Emenda*) Is an old Word ſtill made Uſe of in the Accounts of the Society of the *Inner Temple*; where ſo much in *Emendals* at the Foot of an Account, on the Balance thereof, ſignifies ſo much Money in the Bank or Stock of the Houſes, for Reparation of Loſſes or other emergent Occaſions: *Quod in Reſtaurationem Damni tribuitur.* Spelm.

Emendare, *Emendam ſolvere*, to make *Amends* for any Crime or Treſpaſs committed. *Leg. Edw. Confeſſ. cap.* 35. Hence a capital Crime, not to be atoned by Fine, was ſaid to be *inemendabile.* Leg. Canut. pag. 2.

Emendatio, Hath been uſed for the Power of *Amending* and Correcting Abuſes, according to ſtated Rules and Meaſures: As *Emendati Panni*, the Power of looking to the Aſſiſe of Cloth, that it be of juſt Meaſure; *Emendatio Panis & Cerviſiæ*, the Aſſiſing of Bread and Beer, *&c.* a Privilege granted to Lords of Manors, and executed by their Officers appointed in the Court-Leet, *&c. Ad nos ſpectat* Emendatio *Panni & Panis & Cerviſiæ, & quicquid Regis eſt, Excepto murdredo & Latrocinio, &c.*——— Paroch. Antiq. 196.

Empanel A Jury. *Ponere in Aſſiſis & Juratis, &c.* See *Impanel.*

Emperor, (*Imperator*) The higheſt Ruler of large Kingdoms and Territories, a Title anciently given to renowned and victorious Generals of Armies, who acquired great Power and Dominion. And this Title, is not only given to the *Emperor* of *Germany*, as *Emperor of the Romans*; but was formerly belonging to the *Kings of England*, as appears by a Charter of King *Edgar, viz. Ego* Edgarus Anglorum Baſileus, *omniumque Regum Inſularum Oceani quæ Britanniam circumjacent, &c.* Imperator *& Dominus.*

Enbrever, (*Fr.*) To write down in ſhort. *Brit.* 56.

Encheſon, A *French* Word uſed in our Law Books and Statutes, ſignifying as much as Occaſion, or the Cauſe or Reaſon wherefore any Thing is done. Stat. 5 *Ed.* 3. *c.* 3.

Endeavour. Where one who has the Uſe of his Reaſon *endeavours* to commit a Felony, *&c.* he ſhall be puniſhed by our Laws, but not to that Degree as if he had actually committed it: As if a Man aſſault another on the Highway, in order to a Robbery, but takes nothing from him, this is not puniſhed as Felony, becauſe the Felony was not accompliſhed; though as a Miſdemeanor, it is liable to Fine and Impriſonment. 3 *Inſt.* 68, 69, 161. 11 *Rep.* 98. And in this Caſe, the Offender ſhall be tranſported, by a late Statute. 7 *Geo.* 2. *cap.* 21. Vide *Intendment.*

Endowment, Signifies the Beſtowing or Aſſuring of *Dower* on a Woman: But it is ſometimes uſed metaphorically for the Settling a Proviſion upon a Parſon, or Building of a *Church* or Chapel; and the Severing a ſufficient Portion of Tithes, *&c.* for a Vicar, towards his perpetual Maintenance, when the Benefice is appropriated. *Stat.* 15 *R.* 2. *c.* 6. 4 *H.* 4. *cap.* 12.

Enemy, (*Inimicus*) Is properly an Alien or Foreigner, who in a publick Capacity and hoſtile Manner, invades any Kingdom or Country; and whether ſuch Perſons come hither by themſelves, or in Company with *Engliſh* Traitors, they cannot be puniſhed as Traitors, but ſhall be dealt with by Martial Law. *H. P. C.* 10, 15. 1 *Hawk.* 35. But the Subjects of a Foreign Prince coming into *England*, and living under the Protection of the King, if they take up Arms, *&c.* againſt the Government, they may be puniſhed as Traitors, not as Alien Enemies. 1 *Hawk. Ibid.* If a Priſoner be reſcued by Enemies, the Gaoler is not guilty of an Eſcape; as he would have been if Subjects had made the Reſcue, when he might have a legal Remedy againſt them. 2 *Hawk.* 130. Adhering to and Succouring the King's Enemies. See *Treaſon.*

Enfranchiſe, (Fr. *Enfranchir*) To make Free, or incorporate a Man in any Society, *&c.* It is alſo uſed where one is made a free *Denizen*, which is a Kind of Incorporation in the *Commonwealth.*

Enfranchiſement, (*Fr.* from *Franchiſe*, i. e. *Libertas*) Is when a Perſon is incorporated into any Society or Body Politick, and ſignifies the Act of Incorporating. He that by Charter is made a *Denizen*, or Freeman of *England*, is ſaid to be *enfranchiſed*, and let into the general Liberties of the Subjects of the Kingdom: And he who is made a Citizen of *London*, or other City, or free Burgeſs of any Town Corporate, as he is made Partaker of thoſe Liberties that appertain to the Corporation, is in the common Senſe of the Word a Perſon *enfranchiſed.* So a Villein was *enfranchiſed*, when he was made free by his Lord, and rendered capable of the Benefits belonging to Freemen. And when a Man is *enfranchiſed* into the Freedom of any City or Borough, he hath a Freehold in his Freedom during Life; and may not, for endeavouring any Thing only againſt the Corporation, loſe and forfeit the ſame. 11 *Rep.* 91.

Englecery or **Engleſchire,** (*Engleceria*) Is an old Word ſignifying the being an *Engliſhman.* When *Canutus* the *Dane* came to be King of *England*, he at the Requeſt of the Nobility ſent back his Army into *Denmark*, but kept ſome *Danes* behind to be a Guard to his Perſon; and he made a Law for the Preſervation of his *Danes*, (who were often privately made away by the *Engliſh*) that if an *Engliſhman* killed a *Dane*, he ſhould be tried for the Murder; or if he eſcaped, the Town or Hundred where the Fact was done, was to be amerced ſixty-ſix Marks to the King: So that after this Law, whenever a Murder was committed, it was neceſſary to prove the Party ſlain to be an *Engliſhman*, that the Town might be exempted from the Amercement; which Proof was called *Englecery* or *Engleſchire* And whereas if a Perſon were privily ſlain, he was in ancient Time accounted *Francigena*, which Word comprehended every Alien, eſpecially the *Danes*: It was therefore, that where any Perſon was murdered, he ſhould be adjudged *Francigena*, unleſs *Englecery* were proved, and that it was made manifeſt he was an *Engliſhman.* The Manner of proving the Perſon killed to be an *Engliſhman*, was by two Witneſſes who knew the Father and Mother, before the Coroner, *&c. Bract. lib.* 3. *tract.* 2. *cap.* 15. *Fleta, lib.* 1. *cap.* 30. 7 *Rep.* 16. This *Englecery*, by Reaſon of the great Abuſes and Trouble that afterwards were perceived to grow by it, was utterly taken away by Stat. 14 *Ed.* 3. *c.* 4.

Engliſhmen, The Names of, to be certified into the *Chancery* who are abroad in *Holland* and *Flanders*, *&c.* and ſhall pay ſuch Impoſitions as *Aliens* do. Stat. 14 & 15 *H.* 8. *c.* 4.

Engravers, That ſhall Invent, Deſign and *Engrave* Prints, to have the ſole Right of printing them for fourteen Years, which ſhall be *engraved* with the Name of the Proprietors; and others copying, and ſelling ſuch Prints, though by varying, *&c.* without their Conſent, ſhall forfeit 5*s.* for every Print, and alſo the Plates and Sheets, *&c.* Stat. 8 *Geo.* 2. *c.* 13.

Enhance, To raiſe the Price of Goods or Merchandize. See *Foreſtaller.*

Enpleet, Was anciently uſed for *Implead.*——— They may *enpleet* and be *enpleeted* in all Courts. *Mon. Ang. Tom.* 2. *f.* 412.

Enſient, Is the being with Child. *Law. Fr. Dict.*

Enſienture, Of any Woman condemned for a Crime, is no Ground to ſtay Judgment; but it may be afterwards alledged againſt Execution. 2 *Hale's Hiſt. P. C.* 413.

Entail, (Fr. *Entaille*, i. e. *Inciſus*) Is Fee entailed, *viz.* abridged, limited, and tied to certain Conditions, at the Will of the Donor; where Lands are given to, or ſettled on others. See *Fee* and *Tail.*

Enterpleader, (Fr. *Enterplaider*, Lat. *Interplacitare*) Signifies to diſcuſs or try a Point incidentally happening as it were between, before the principal Cauſe can be determined. And *Enterpleader* is allowed that the Defendant may not be charged to two ſeverally, where no Default is in him: As if one brings Detinue againſt the Defendant upon a Bailment of Goods, and another againſt him upon a Trover, there ſhall be *Enterpleader*, to aſcertain who hath Right to his Action. 2 *Danv. Abr.* 779. If two bring ſeveral Detinues againſt *A.* B for the ſame Thing, and the Defendant acknowledges the Action of one of them, without a Prayer of *Enterpleader*, they ſhall not interplead on the Requeſt of the other; for the *Enterpleader* is given for the Security of the Defendant, that he may not be twice charged, and he hath waived that Benefit. 18 *Ed.* 3. 22. If one brings Detinue againſt *B.* and counts upon a

Delivery of Goods, *&c.* to redeliver to him, and another brings Detinue againſt him alſo, and counts ſo likewiſe; if there be not any Privity of Bailment between them, yet they ſhall *interplead*, to avoid the double Charge of the Defendant; and alſo becauſe the Court cannot know to whom to deliver the Thing detained, if both ſhould recover. *Br. Enterplead* 3. And upon ſuch ſeveral Detinues, if the Defendant ſays that he found it, and traverſes the Bailment, they ſhall *interplead*; for then he is chargeable as well to the one as the other: So if he ſays that they deliver'd it jointly, *abſque hoc*, that they delivered it as they have counted: But it is otherwiſe if the Defendant doth not traverſe the Bailment, becauſe if there was a Bailment, he is chargeable only to the Bailor, and may plead in Bar againſt the others. 2 *Danv.* 782. Where two bring ſeveral Detinues for one Thing, and the Defendant prays that they may *interplead*, and delivers the Thing to the Court, and before the Award of the *Enterpleader*, one diſcontinues the Suit, the other ſhall not have Judgment; but if he diſcontinues his Suit after the *Enterpleader*, the other may have Judgment. 11 *H.* 6. 19. If a Recovery be had upon an *Enterpleader*, Judgment ſhall be given to recover the Thing demanded againſt the Defendant; and not againſt the Garniſhee, in Caſe of Garniſhment, *&c.* 2 *Danv.* 783. When two have *enterpleaded* in Detinue, he that recovers ſhall recover Damage againſt the other. *Br. Damage* 68. There was formerly *Enterpleader* relating to Delivery of Lands by the King to the right Heir, where two Perſons out of Wardſhip were found Heirs, *&c.* 7 *Rep.* 45. *Staund. Prer. cap.* 17. *Bro.* Tit. *Enterplead.* And antiently the Head *Enterpleader* made a great Title in the Law.

Entiertie, (from the Fr. *Entierete*, Entireneſs) Is a Contradiſtinction in our Books to Moiety, denoting the Whole: And a Bond, Damages, *&c.* are ſaid to be *entire*, when they cannot be divided or apportioned.

Entire Tenancy, Contrary to *ſeveral Tenancy*, and ſignifying a ſole Poſſeſſion in one Man; whereas the other is a joint or common Poſſeſſion in more. *Brook.*

Entry, (*Ingreſſus*, Fr. *Entree*, i.e. *Introitus*) Signifies the taking Poſſeſſion of Lands or Tenements, where a Man hath Title of *Entry*: And it is alſo uſed for a *Writ of Poſſeſſion.* This *Entry* into Lands, is where any Man enters into or takes Poſſeſſion of any Lands, *&c.* in his proper Perſon: And is an actual *Entry* when made by a Man's ſelf, or by Attorney by Warrant from him that hath the Right; or it is an *Entry in Law*, for a *continual Claim* is an *Entry* implied by Law, and has the ſame Force with it. *Litt. Sect.* 419. There is a Right of *Entry*, when the Party claiming may for his Remedy either enter into the Land, or have an Action to recover it: And a *Title of Entry*, where one hath lawful *Entry* given him in the Lands which another hath, but has no Action to recover till he hath entered. *Plowd.* 558. 10 *Rep.* 48. *Finch's Law* 105. The *Writs of Entry* concern the Right of Property, and are of divers Kinds, diſtinguiſhed into four Degrees, according to which the Writs are varied. The firſt Degree is a Writ of *Entry ſur Diſſeiſin*, that lieth for the Diſſeiſee againſt a Diſſeiſor, upon a Diſſeiſin done by himſelf; and this is called a Writ of *Entry* in the Nature of an Aſſiſe. Second, a Writ of *Entry ſur Diſſeiſin in le Per*, for the Heir by Diſcent, who is ſaid to be in the *Per* as he comes in by his Anceſtor; and ſo it is if a Diſſeiſor make a Feoffment in Fee, Gift in Tail, *&c.* the Feoffee and Donee are in the *Per* by the Diſſeiſor. Third, A Writ of *Entry ſur Diſſeiſin in le Per & Cui*, where the Feoffee of a Diſſeiſor maketh a Feoffment over to another, when the Diſſeiſee ſhall have this Writ of *Entry ſur Diſſeiſin*, *&c.* of the Lands in which ſuch other had no Right of *Entry*, but by the Feoffee of the Diſſeiſor, to whom the Diſſeiſor demiſed the ſame, who unjuſtly and without Judgment diſſeiſed the Demandant. Fourth, A Writ of *Entry ſur Diſſeiſin in le Poſt*, which lieth when after a Diſſeiſin the Land is removed from Hand to Hand beyond the Degrees, in Caſe of a more remote Seiſin, whereunto the other three Degrees do not extend. 1 *Inſt.* 238. In theſe four Degrees, are comprehended generally all Manner of Writs of *Entry*. And the Writ of *Entry in le Poſt* is ſo called, becauſe the Words of the Writ are, *Poſt Diſſeiſinam quam* B. *injuſte & ſine Judicio fecit*, *&c.* *Briton* obſerves, that the Words *In le Per, In le Per & Cui*, and *In le Poſt*, ſignify nothing but divers Forms of this Writ, applied to the Caſe whereupon it is brought; and each Form taking its Name from the Words contained in the Writ. *F. N. B.* 193. But if any Writ of *Entry* be conceived out of the right Cauſe, ſo that one Form is brought for another, it is abateable. A Writ of *Entry* in the *Per* and *Cui*, ſhall be maintained againſt none, but where the Tenant is in by Purchaſe or Diſcent; for if the Alienation or Diſcent be put out of the Degree upon which no Writ may be made in the *Per* and *Cui*, then it ſhall be made in the *Poſt*. *Terms de Ley* 299. And there are five Things which put the Writ of *Entry* out of the *Degrees*, *viz.* Intruſion; Diſſeiſin upon Diſſeiſin; Succeſſion where the Diſſeiſor was a Perſon of Religion, and his Succeſſor enters; Judgment, when a Perſon hath had Judgment to recover againſt the Diſſeiſor; and Eſcheat, on the Diſſeiſor's dying without Heir, or committing Felony, *&c.* on which the Lord enters, *&c.* In all theſe Caſes, the Diſſeiſee or his Heir, ſhall not have a Writ of *Entry* within the Degrees of the *Per*, but in the *Poſt*; becauſe they are not in by Diſcent, or Purchaſe. *Ibid.* Degrees as to *Entries* are of two Sorts, either by Act in Law, as in Caſe of a Diſcent; or by Act of the Party by lawful Conveyance; and by the Common Law, if the Lands were conveyed out of the Degrees, the Demandant was driven to his *Writ of Right*, in Reſpect of ſuch long Poſſeſſion, and ſo many Alterations in different Hands; wherefore by the Statute of *Marlbridge*, 52 *Hen.* 3. *cap.* 29. the Writ of *Entry in le Poſt* is given. But no Eſtate gained by Wrong doth make a Degree; ſo that Abatement, Intruſion, *&c.* work not a Degree; nor doth every Change by lawful Title, or an Eſtate of Tenant by the Curteſy, by Judgment, *&c.* or of any others that come in the *Poſt*; though a Tenancy in Dower by Aſſignment of the Heir doth work a Degree, becauſe ſhe is in by her Huſband; and ſo doth not Aſſignment of Dower by a Diſſeiſor, by Reaſon ſhe is in the *Poſt.* 1 *Inſt.* 239. *Entry on Lands* is taken away by Diſcent on Diſſeiſins, or Diſcontinuance, *&c.* But a Diſcent ſhall not take away the *Entry* of Leſſee for Years, nor of Tenant by *Elegit*, *&c.* who have but a Chattel, and no Freehold; otherwiſe it is of an Eſtate for Life, or any higher Eſtate. 1 *Inſt.* 249. Where a Diſſeiſor dieth ſeiſed, and the Law caſteth the Lands upon his Heir; this is a Diſcent which tolls an *Entry* at Common Law: By Statute, it is only where the Diſſeiſor had peaceable Poſſeſſion five Years; for if he had not Poſſeſſion peaceably during that Time, the Diſcent to his Heir ſhall not take away an *Entry*. 32 *H.* 8. *cap.* 33. If a Diſſeiſor leaſes for Years, and dies ſeiſed of the Reverſion, the *Entry* of the Diſſeiſee is taken away, becauſe he died ſeiſed of the Fee and Freehold: But if he had leaſed for Life, *&c.* the *Entry* of the Diſſeiſee would not be taken away. 1 *Inſt.* 239. Where the Diſſeiſor of an Infant dies ſeiſed, and after the Infant comes of Age, and the Heir of the Diſſeiſor dies before *Entry*; though he died not ſeiſed of an actual Seiſin, but a Seiſin in Law; yet his Dying ſeiſed takes away the *Entry* of the Diſſeiſee. *Ibid.* If a Diſſeiſor makes a Feoffment upon Condition, and the Feoffee dies ſeiſed, and the Feoffor enters upon the Heir for the Breach of the Condition, the Diſſeiſee may enter upon him; for by the *Entry* of the Diſſeiſor, the Diſcent is utterly defeated. *Litt. Sect.* 409. The Title of *Entry* in a Feoffor, *&c.* that hath but a Condition, cannot be taken away by any Diſcent, becauſe he has no Remedy by Action to recover the Land; ſo that if a Diſcent ſhould take away his *Entry*, it would bar him of his Right for ever: And the Condition remains, and cannot be deveſted and put out of Poſſeſſion, as the Lands, *&c.* 1 *Inſt.* 240. If a Man recovers Lands, and after a Stranger to the Recovery dies ſeiſed, this ſhall not take away the *Entry* of the Recoveror; as it was but a Title. 2 *Danv. Abr.* 561. But where a Perſon recovers againſt another, and enters and ſues Execution, and after the Recoveree diſſeiſes him, and dies ſeiſed; this Diſcent ſhall take away the *Entry* of the Recoveror, for the Recovery was executed. *Ibid.* If after Recovery againſt Tenant for Life, he dies, and he in Remainder enters before Execution, and dies ſeiſed, the *Entry* of the Recoveror is not taken away. 1 *Inſt* 238. The *Entry* of the Tenant for Life, ſhall be good for him in Remainder: And if Tenant for Life make a Feoffment in Fee, and a Stranger enters for the Forfeiture in the Name of the Reverſioner; this will be good to veſt the Reverſion in him. *Lit.* 128. 9 *Rep.* 106. If an Infant under Age, makes a Deed of Feoffment, and after his full Age the Feoffee die ſeiſed; or a Leſſee for Life aliens the Land, and the Alienee dies ſeiſed thereof; or a Deviſe be of Lands upon Condition, and the Heir of the Diſſeiſor enters and dies ſeiſed: In theſe Caſes the *Entry* is gone, and the Parties ſhall be put to their Action. *Lit.* 96. 9 *H.* 6. 25. If there be Tenant for Life, Remainder to the right Heirs of *J. S.* and the Tenant for Life is diſſeiſed; a Diſcent is caſt, and after *J. S.* dies, and Tenant for Life alſo dies: By this the *Entry* of the Heir of *J. S.* is not taken away, for his Remainder was *in Cuſtodia Legis.* 1 *Rep.* 134. Where an Infant has Cauſe of *Entry*, and the Diſcent happens while he is within Age, it will not bar him of his *Entry*: He that hath the Right of *Entry*, muſt be of Age, within the four Seas, of ſound Memory, and if it be a Woman ſhe muſt be ſole; and if the Party be under Age, beyond the Seas, *Non compos Mentis*, in Priſon, or a Feme Covert, at the Time of the Diſcent, it ſhall not bar. *Lit.* 402, 147. 21 *H.* 6. 17. The whole Time from a Diſſeiſin is conſiderable; as where Feme Covert is diſſeiſed, and her Husband dieth, and ſhe takes another Husband, and then a Diſcent is caſt; or if one *ultra Mare* be diſſeiſed, and he return into *England*, and then go beyond Sea again, and there is a Diſcent; here the Diſcents will bar the *Entry*, becauſe of the *Interim.* 9 *H.* 7. 24. *Dyer* 143. 32 *H.* 8. *c.* 33. A Woman Tenant in Tail took Husband, who made a Feoffment in Fee, and died, and the Wife without *Entry* made a Leaſe for Years; and it was held, that the Freehold was not reduced by the Leaſe, without an *Entry* made 1 *Leon. ca.* 165. The *Entry* of a Diſſeiſee when he duly makes it, ſhall avoid all the meſne Charges by the Diſſeiſor upon the Land: But Right of *Entry* may be loſt divers Ways; as by Acceptance of Rent, by him who hath it, and the like. 1 *Anderſ.* 333. *Noy Rep.* 7. If a Man is diſſeiſed of Land whereunto a Common is appendant, the Diſſeiſee cannot uſe the common 'till he enters on the Land to which the Common is appendant; for if the Diſſeiſee might uſe it, ſo might the Diſſeiſor, which would be a double Charge on the Common: Yet if a Perſon be diſſeiſed of a Manor, to which an Advowſon is appendant, he may preſent to the Advowſon before *Entry* on the Manor. 1 *Inſt.* 122. A Diſſeiſee enters into the Land, and continues therein with the Diſſeiſor, and manures it with him, claiming nothing of his firſt Eſtate; or if the Diſſeiſee enters, and takes the Profit as Leſſee, *&c.* of the Diſſeiſor, 'tis ſaid theſe will be an *Entry* that will reduce the firſt Eſtate. 2 *Danv.* 790. If the Diſſeiſee commands a Stranger to put in the Cattle of ſuch Stranger in the Land to feed there; this is an *Entry* in Law on the Land. 1 *Inſt.* 245. And if a Perſon enters by Command of him who hath Title, he by Virtue thereof may gain a Title to himſelf. 1 *Nelſ. Abr.* 705. Where *Entry* may be made into Land, or any Thing, it ſhall not be in the Party before *Entry*: If *Entry* cannot be made, but only Claim, then it ſhall be in him by Claim; and when neither *Entry* nor Claim can be made, it ſhall be in him by Act of Law. 1 *Plowd.* 133. In Caſe the Poſſeſſion of Land is in no Man, but the Freehold in Law is in the Heir that enters, his general *Entry* into one Part reduces all into his actual Poſſeſſion: But if an *Entry* is to deveſt an Eſtate, a general *Entry* into Parcel, is good only for that Part. 1 *Inſt.* 15 Where an *Entry* is in any Parts, it muſt be in the Name of all: If I enfeoff a Perſon of an Acre of Ground upon Condition, and of another Acre on Condition, and both Conditions are broken; here *Entry* into one in Name of both Acres is not good to reduce both: But if a Man make a Feoffment of divers Parcels upon Condition that is broken, there *Entry* into Part in the Name of all the reſt is ſufficient. *Co Lit.* 252. 9 *H.* 7. 25. A Man hath Right to enter into Lands in divers Villages in one County, if he enter upon Part of it in one Village in the Name of all in that County; by this he ſhall have Poſſeſſion of the whole. 1 *Inſt.* 252. *Dyer* 227, 337. If a Man diſſeiſe me of one Acre at one Time, and another Acre at another Time in the ſame County, my *Entry* into one of them in the Name of both is good: Though it will not be good, if the Diſſeiſin be by two ſeveral Perſons, or if the Acres lie in ſeveral Counties, when there ought to be ſeveral *Entries* and Actions. 1 *Inſt.* 252. If he who hath Right of *Entry* into a Freehold, enters into Part of it, it ſhall be adjudged an *Entry* into all poſſeſſed by one Tenant; but if there be ſeveral Tenants poſſeſſed of the Freehold, there muſt be ſeveral *Entries* on the ſeveral Tenants. 1 *Lill. Abr.* 515, 516. Special *Entry* into a Houſe with which Lands are occupied, claiming the Whole, is a good *Entry* as to the whole Houſe and Lands. *Ibid.* If a Husband enters to the Uſe of his Wife; or a Man enters to the Uſe of an Infant, or any other, where the *Entry* is lawful; this ſettles the Poſſeſſion before Agreement of the Parties: Though it is otherwiſe where a Perſon enters to the Uſe of one whoſe *Entry* is not lawful; for this veſts nothing in him 'till Agreement, and then he ſhall be a Diſſeiſor. 2 *Danv.* 787. If two Jointenants are diſſeiſed, and the Diſſeiſor aliens, and one Jointenant enters upon the Alienee to the Uſe of both; this ſettles the Freehold in both of them. *Ibid.* 788. But if one Coparcener, *&c.* enters ſpecially claiming the whole Land, ſhe gains the Part of her Companion by Abatement; and it ſhall not ſettle any Poſſeſſion in the other. 1 *Inſt.* 243. The Heir is to enter into Lands deſcended to him, to entitle him to the Profits. 1 *Inſt.* 214. If a younger Son enters on Lands in Fee, where the eldeſt Son dies having Iſſue; though many Diſcents are caſt in his Line, yet the Heirs of the eldeſt Son may make an *Entry* on the Lands; but if the youngeſt Son convey away the Lands in Fee, and the Feoffee dies ſeiſed, they may not enter; nor may they enter where the youngeſt Son diſſeiſes the Eldeſt, and dies ſeiſed. 1 *Inſt.* 237, 244. *Litt. Sect.* 397. A Tenant in Tail hath Iſſue two Sons, and the Eldeſt dies, leaving his Wife *priviment enſient* of a Son, and the younger Brother enters, and then the Wife of the Eldeſt is delivered of a Son, he may enter upon the younger Brother. 2 *Danv.* 557. If a Baſtard being the eldeſt Son, enters on Land, and enjoys it during his Life; his *Entry* and dying ſeiſed may make a Title to his Heir againſt the lawful Children. 1 *Inſt. Ibid.* An Eſtate of Freehold will not ceaſe, without *Entry* or Claim: Alſo a Remainder of an Eſtate of Freehold cannot ceaſe without *Entry*, *&c.* no more than Eſtate of Freehold in Poſſeſſion. *Cro. Eliz.* 360. A Right of *Entry* preſerves a Contingent Remainder. 2 *Lev.* 35. And a Grantee of a Reverſion may enter for a Condition broken. *Plowd.* 176. If a Perſon will take Advantage of a Condition, he muſt either enter, or make a Claim: And for a Condition broken, there muſt be actual *Entry*, to bring Ejectment for Recovery of the Eſtate; but where a Man is entitled to enter by Diſcent, or for Non-payment of Money due on a Mortgage, *&c.* *Entry* and Ouſter confeſſed in the Rule in Ejectment, without actual *Entry*, is ſufficient to make the Leaſe to entitle the Action. 1 *Lill. Abr.* 516. When a Man hath Title to Land, and is out of Poſſeſſion, he cannot make a Leaſe of it to a Tenant, but by Entering and Sealing the Leaſe on the Land; or impowering others by Letters of Attorney to do it. *Daliſ. Rep.* 81. A Leſſee muſt enter into Lands demiſed to him; and though the Leſſor dies before the Leſſee enters, yet he may enter: And if the Leſſee dies before *Entry*, his Executors or Adminiſtrators may enter. The Leſſee may aſſign over his Term before *Entry*, having *Intereſſe termini*; but he may not take a Releaſe to enlarge his Eſtate, or bring Treſpaſs, *&c.* till actual *Entry*. Though if there be Words *Bargain and Sell* in a *Leaſe*, *&c.* for Conſideration of Money, the Leſſee or Bargainee is in Poſſeſſion on Executing the Deed, to make a Releaſe, *&c.* *Lit.* 59, 454. 1 *Inſt.* 46, 57, 270. Where a Leſſor enters on his Leſſee for Years, the Rent is ſuſpended. 1 *Leon.* 110. But without *Entry* and Expulſion, the Leſſee is not diſcharged of his Rent to the Leſſor; unleſs it be where the Leſſor is attainted of Treaſon, *&c.* that the Rent is to be paid to the King, who is in Poſſeſſion without *Entry*. *Sid.* 399. 1 *Nelſ. Abr.* 706. There is no need of *Entry* to avoid an Eſtate in Caſe of a Limitation, becauſe thereby the Eſtate is determined without *Entry* or Claim; and the Law caſts it upon the Party to whom it is limited. If *A.* deviſes Lands to *B.* and his Heirs, and dies, 'tis in the Deviſee immediately; but 'till *Entry* he cannot bring a poſſeſſory Action: And where a Poſſeſſion veſts without *Entry*, a Reverſion will veſt without Claim. 2 *Mod. Rep.* 7, 8. A bare *Entry* on another, without an Expulſion, makes only a Seiſin; ſo that the Law will adjudge him in Poſſeſſion who hath the Right. 3 *Salk.* 135. If a Perſon who hath Title of *Entry*, finds an Houſe open with no Body in it, and enters into it, and keeps Poſſeſſion; this is no forcible *Entry*: *Contra* if any Body is in it. *Common Law Com. Plac'd* 186. Where a Perſon is in a Houſe with Goods, *&c.* the Houſe may be enter'd when the Doors are open, to make Execution. *Cro. Eliz.* 759. But it muſt be averred that the Goods were in the Houſe. *Lutw.* 1434, 1428. And a Man cannot enter into a Houſe, the Doors being open, to demand a Debt, unleſs he aver that the Debtor is within the Houſe at the ſame Time. *Cro El.* 876. *Entry* may be made on a Tenant where Rent is in Arrear, to take a Diſtreſs, *&c.* In Order to regain Poſſeſſion of Lands by *Entry*, *&c.* the Manner of *Entry* is thus: If it be a Houſe, and the Door is open, you go into it, and ſay theſe Words. —— *I do here enter, and take Poſſeſſion of this Houſe*: But if the Door be ſhut, then ſet your Foot on the Groundſel, or againſt the Door, and ſay the before Words: And if it be Land, then go upon the Land, and ſay, *I here enter, and take Poſſeſſion of this Land*, *&c.* If another do it for you, he muſt ſay, *I do here enter*, *&c.* *to the Uſe of* A. B. And it is neceſſary to make it before Witneſſes, and that a *Memorandum* be made of it. *Lit.* 385. 1 *Inſt.* 237, 238. In Actions for Recovery of Lands, *&c.* *Entry* is to be made within twenty Years after the Title accrued. *Stat.* 21 *Jac.* 1. *cap.* 16. But where a Fine of Lands is paſſed, the *Entry* is to be in five Years. 1 *R.* 3. 4 *H.* 7. Alſo an Action is to be commenced in one Year after the *Entry*. 4 & 5 *Ann.* *Demand* how made of Rent, *&c.* to entitle *Entry*, ſee *Demand*. See alſo *Claim*.

Form of a *Writ of Entry*.

GEORGE *the Second*, &c. *To the Sheriff of* G. *Greeting: Command* A. B. *that juſtly*, &c. *he render to* C. D. *one Meſſuage*, &c. *which he claims to be his Right and Inheritance, and into which the ſaid* A. *hath not an* Entry, *but by* E. *that was the Wife of* T. D. *who that Meſſuage to him demiſed*; *and who held the ſame in Dower of the Gift of the ſaid* T. *ſometime her Husband, Father of the ſaid* C. D. *whoſe Heir he is, as he ſaith*, &c. *And unleſs*, &c.

Entry ad Communem Legem, Is the Writ of *Entry* which lies where Tenant for Term of Life, or for Term of another's Life, or by the Curteſy, *&c.* aliens and dies, when he in the Reverſion ſhall have this Writ againſt whomſoever is in Poſſeſſion of the Land. *New Nat. Br.* 461.

Entry ad terminum qui preteriit, A Writ of *Entry* brought againſt a Tenant for Years, who holdeth over his Term, and thereby keeps out the Leſſor: And if the Husband and Wife leaſe the Wife's Land for Years, and the Husband dieth, and the Termor holds over his Term, the Wife may have a Writ of *Entry ad terminum qui preteriit*, *&c.* but ſhe muſt count that ſhe and her Husband leaſed the Land, *&c.* Alſo the Grantee in Reverſion may have this Writ againſt the Leſſee, or his Aſſignee, *&c.* *New Nat. Br.* 447, 448.

Entry in caſu conſimili, Is a Writ that lies where Tenant for Life, or Tenant by the Curteſy, aliens in Fee, *&c.* he in Reverſion may have this Writ, by Stat. *Weſtm.* 2. *cap.* 24. See *Caſu Conſimili*.

Entry in caſu Proviſo, Lies where Tenant in Dower aliens in Fee, or for Term of Life, or of another's Life; then he in the Reverſion ſhall have this Writ, provided by the Stat. of *Glouc.* 6 *Ed.* 1. *cap.* 7. By which Statute it is enacted, That if a Woman alien her Dower in Fee, or for Life, the next Heir, *&c.* ſhall recover by Writ of *Entry*. And the Writ may be brought againſt the Tenant of the Freehold of the Land, on ſuch Alienation, during the Life of the Tenant in Dower, *&c.* *New Nat. Br.* 456. Theſe Writs of *Entry* may be all brought either in the *Per*, or in the *Cui* or *Poſt*.

Entry ſine aſſenſu Capituli, Is a Writ of *Entry* that lies where a Biſhop, Abbot, *&c.* aliens Lands or Tenements of the Church, without the *Aſſent* of the *Chapter* or Convent. *F. N. B.* 195.

Enure, Signifies in the Law to take Place, or be available; and is as much as *effectum*: As for Example; A Releaſe made to Tenant for Life, ſhall *enure*, and be of Force and Effect to him in the Reverſion. *Litt.*

Eodorbrice, (from the Sax. *Eodor*, a Hedge, and *Brice ruptura*) Hath been uſed for Hedge-breaking: In which Senſe it is mentioned in the Laws of King *Alfred*, *cap.* 45.

Eorle, Sax. for *Earl*, *&c.* though made Uſe of by the *Danes* for *Barons*. See *Earl*.

Epimenia, A Word ſignifying Expences or Gifts. *Blount*.

Epiphany, The Day when the Star appeared to the Wiſe-men at *Chriſt*'s Nativity, generally called *Twelfth-Day*.

Epiſcopalia, Synodals, or other cuſtomary Payments from the Clergy to their *Biſhop* or Dioceſan: Which were formerly collected by the rural Deans, and by them tranſmitted to the Biſhop, —— Epiſcopalia *reddat, vel reddere faciat de Eccleſiis Decanatus ſui, &c. Mon. Angl. Tom.* 3. *pag.* 61. Theſe cuſtomary Payments have been otherwiſe called *Onus Epiſcopale*; and were remitted by ſpecial Privilege to free Churches and Chapels of the King's Foundation, which were exempt from Epiſcopal Juriſdiction. *Kennet's Gloſſ.*

Epiſcopus Puerorum. It was a Cuſtom in former Times, that ſome Lay Perſon about a certain Feaſt ſhould plait his Heir, and put on the Garments of a *Biſhop*, and in them to exerciſe Epiſcopal Juriſdiction, and do ſeveral ludicrous Actions, for which Reaſon he was called *Biſhop of the Boys:* And this Cuſtom obtained here long after ſeveral Conſtitutions were made to aboliſh it. *Mon. Angl. Tom.* 3. *pag.* 169.

Equality, The Law delights in *Equality*; ſo that when a Charge is laid upon one, and divers ought to bear it, he ſhall have Relief againſt the Reſt. 2 *Rep.* 25. And where a Man leaves a Power to his Wife, to give an Eſtate among three Daughters, in ſuch Proportions, as ſhe ſhall think fit: It has been held ſhe muſt divide it *equally*; unleſs good Reaſon be given for doing otherwiſe. *Preced. Canc.* 256. See *Contribution.*

Eques Auratus, (*Lat.*) Is taken for a *Knight*; becauſe anciently none but Knights were allowed to beautify and gild their Armour with *Gold:* But this Word is rather uſed by the *Heralds* than Lawyers; for *Eques Auratus* is not a Word in our Law for Knight, but *Miles*, and formerly *Chevalier.* 4 Inſt. 5.

Equity, (*Æquitas, quaſi Æqualitas*) Is defined to be a Correction, or Qualification, of the Law generally made, in that Part wherein it faileth, or is too ſevere. And likewiſe ſignifies the Extenſion of the Words of the Law to Caſes unexpreſſed, yet having the ſame Reaſon; ſo that where one Thing is enacted by Statute, all other Things are enacted that are of the like Degree: For Example; The Statute of *Glouc.* gives Action of Waſte againſt him that holds Lands for Life or Years; and by the Equity thereof, a Man ſhall have Action of Waſte againſt a Tenant that holds but for one Year, or Half-Year, which is without the Words of the Act, but within the Meaning of it; and the Words that enact the one, by *Equity* enact the other. *Terms de Ley* 303, 304. So that *Equity* is of two Kinds; the one doth abridge and take from the Letter of the Law; and the other inlarge and add thereto. *Æquitas eſt perfecta quædam Ratio, quæ Jus ſcriptum Interpretatur & Emendat.* 1 *Inſt.* 24. And Statutes may be conſtrued according to *Equity*; eſpecially where they give Remedy for Wrong, or are for Expedition of Juſtice, &c. 1 *Inſt.* 24, 54, 76. 2 *Inſt.* 106, 107, &c. *Equity* ſeems to be the Interpoſing *Law of Reaſon*, exerciſed by the *Lord Chancellor* in extraordinary Matters, to do *equal Juſtice*, and by ſupplying the Defects of the Law, give Remedy in all Caſes. See *Chancery.*

Equity of Redemption, on *Mortgages.* If where Money is due on a Mortgage, the Mortgagee is deſirous to bar the *Equity of Redemption*, he may oblige the Mortgagor either to pay the Money, or be forecloſed of his *Equity*; which is done by Proceedings in the Court of Chancery. But the Chancery cannot ſhorten the Time of Payment of the Mortgage Money, where it is limited by expreſs Covenant; though it may lengthen it: And then upon Non-payment, the Practice is to foreclose the *Equity of Redemption*, of the Mortgagor. 2 *Ventr.* 364. To foreclose the *Equity*, a *Bill in Chancery* is exhibited; to which an Anſwer is put in, and a Decree being obtained, a Maſter in Chancery is to certify what is due for Principal, Intereſt and Coſts, which is to be paid at a Time prefixed by the Decree, whereupon the Premiſſes is to be reconveyed to the Mortgagor; or in Default of Payment, the Mortgagor is ordered to be forecloſed from all *Equity of Redemption*, and to convey the Premiſſes abſolutely to the Mortgagee. *Law of Securities, pag.* 129, 133. A Fine and Nonclaim will bar *Equity of Redemption:* But in a common Mortgage, a Covenant to reſtrain it ſhall not be regarded in Chancery. 2 *Vent* 365. If the Condition of a Mortgage is, that the Mortgagor only ſhould redeem during Life, or that he and the Heirs of his Body ſhall do it; yet the general Heir ſhall have the *Equity of Redemption*, for if the Principal and Intereſt be offered, the Land is free. 1 *Vern.* 33, 190. And it is held tho' a Bond be conditioned, that if the Money be not paid at ſuch a Time, then for a further Sum, the Mortgagee ſhall have the Land abſolutely, as a Purchaſer, &c. in ſuch Caſe a Man may alſo *redeem. Ibid.* 488. A Perſon who has Mortgaged Lands to one Man, in Caſe he Mortgages the ſame Land with ſome others to another, and this appears to be a Contrivance to evade the *Statute*, the Mortgagee ſhall not take Advantage thereof. 2 *Vern. Rep.* 589. See *Barnardiſt.* 101. Where Perſons having once mortgaged Lands, mortgage the ſame a ſecond Time, without diſcovering the firſt Mortgage, they forfeit their *Equity of Redemption*, and the ſecond Mortgagee may redeem, &c. And it is the ſame where any Perſons borrowing Money, enter a Judgment, &c. for Security, and afterwards borrow more Money, and mortgage Lands to the ſecond Lender, without giving Notice of the Judgment, or paying the ſame off in ſix Months, &c. by Stat. 4 & 5 *W. & M. c.* 16.

Equivalent, Commiſſioners are appointed by Statute to Examine and State the Debts due to *Scotland* on the Union by way of *Equivalent*; and Proviſion is made for Payment of the ſame by a yearly Annuity, &c. 1 *Geo.* 1. *c.* 27. 5 *Geo.* 1. Vide *Scotland.*

Equus Coopertus, A Horſe equipp'd with Saddle and Furniture.—*Inveniendo pro quolibet Feodo unum* Equum Coopertum, *vel duos* Diſcoopertos, &c. Inq. 16 E. 1.

Ermins, (From the Fr. *Ermine*) A Fur of great Value, much uſed in *Robes* of *State.*

Ern, The Names of Places ending in *Ern*, is ſaid to ſignify a melancholy Situation; from the Sax. *Ern*, i. e. *Locus Secretus.*

Ernes, The looſe ſcattered Ears of Corn, that are left on the Ground, after the Binding or Cocking of it: It is derived from the old *Teuton. Ernde*, Harveſt; *Ernden*, to cut or mow Corn: Hence to *ern* is in ſome Places to *glean.* Kenner's Gloſſ.

Errant, (*Itinerant*) Is applied to Juſtices of the Circuit, and Bailiffs at large, &c. See *Eyre.*

Erraticum, A Waif, or Stray; *Erring* or wandering Beaſt. *Conſtit. Norman. A. D.* 1080.

Error, (Fr. *Erreur*) Signifies an *Error* in Pleading, or Proceſs, &c. whereupon the Writ which is brought for Remedy of this Overſight, is called a *Writ* of *Error*, in Lat. *De Errore Corrigendo.* And a *Writ* of *Error* is a Writ which iſſues out of *Chancery*, and lies where any one is grieved by the Proceedings and Judgment in any Court of Record, having Power to hold Plea of Debt, or Treſpaſs above 40 *s.* It is returnable in the *King's Bench*; and if upon the Tranſcript of the Record into *B. R.* it appears to the Court that there is *Error* in the Record or Proceſs, or in giving of Judgment, then the Judgment is reverſed: But if there appear to be none, then is the Judgment affirmed with double Coſts. 1 *Lill. Abr.* 518. This is borrowed from the *French* Practice, which is called *Propoſition de Erreur*, and lies in great Diverſity of Caſes: Alſo there is a Writ of *Error* to reverſe a Fine, &c. Erroneous Judgments given in the Court of *B. R.* were only reformed by the Parliament till the Stat. 27 *Eliz. cap.* 8. By that Statute, a Writ of *Error* lies out of the Chancery upon all Judgments given in the *King's Bench*, when the Suit is by Bill, (except the King is a Party to the Suit) returnable in the *Exchequer Chamber*, before the Judges of the Common Pleas, and Barons of the

Exchequer, &c. who may examine the *Errors*, and reverſe or affirm the Judgment; other than for *Errors* concerning the Juriſdiction of the Court, or Want of Form in Writs, Pleadings, &c. and after the *Errors* are examined, and Judgment affirmed or reverſed, the Record is ſent back to the King's Bench, to proceed and award Execution: But if the Suit is by Original Writ, or on *Qui tam*, &c. where the King is Party, Writ of *Error* lies only to the Parliament. *Stat. Ibid.* To reverſe a Judgment given in the Court of *Common Pleas*, the Writ of *Error* is made returnable in the King's Bench; and *Error* is not to be brought in Parliament: Tho' where a Writ of *Error* is brought in *B. R.* upon a Judgment given in *C. B.* and the Judgment is reverſed or affirmed in *B. R.* the Party grieved may have Writ of *Error* returnable in Parliament. 31 *Eliz. c.* 1. 1 *Lill. Abr.* 519, 521. Erroneous Judgment in the Court of *Exchequer*, is to be examined by the Lord Chancellor, &c. with ſome of the Juſtices, and ſuch other ſage Perſons as they think fit; and if any *Error* be found, they ſhall correct the Rolls, and ſend them into the Exchequer, in order to make Execution, &c. *Stat.* 31 *Ed.* 3. *cap.* 12. Not only on reverſing or affirming a Judgment, the Exchequer Chamber is to ſend back the Record into *B. R* but alſo if the Plaintiff in the Writ of *Error* is nonſuit, or if the Suit is diſcontinued in the Court of Exchequer Chamber, the Record ſhall be ſent back; and the Court of Exchequer ſhall give Coſts and Damage to the Plaintiff in the original Action for his Delay, &c. though if the Plaintiff in *Error* was Plaintiff in the original Action, there no Coſts ſhall be given. 2 *And.* 122. 2 *Nelſ. Abr.* 707. Where a Writ of *Error* determines in the Exchequer Chamber, by Abatement or Diſcontinuance, the Judgment is not again in *B. R.* till a *Remittitur* is entred. 1 *Salk.* 261. Writ of *Error* will not lie in the Exchequer Chamber upon a Judgment in *B. R.* but in Actions of Debt, Detinue, Treſpaſs on the Caſe, Covenant and Ejectment; which are the Actions mentioned in the Stat. 27 *Eliz.* A Writ of *Error* lies not in the Exchequer Chamber on Judgment in Replevin in *B. R.* nor on Judgment in Action of *Scandalum Magnatum.* 2 *Nelſ.* 708, 709. But on Judgment in Replevin in *C. B.* there may be Writ of *Error* brought in *B. R.* The Stat. 27 *Eliz. c.* 8. is only to relieve on the Merits of the Cauſe, as it ſtood on the firſt Judgment, and there can be no new Writ of *Error* after that Judgment is affirmed or reverſed; ſo that if the Merits of the firſt Judgment be examined before a *Scire facias* brought, the Exchequer Chamber having executed their Power, can do nothing in it. 1 *Salk.* 263. The Exchequer Chamber doth not award a *Sci. fac. ad audiend. Errores*; but Notice is given to the Parties concerned. 1 *Vent.* 34. And the Court of Exchequer Chamber have not any Authority, but to reverſe or affirm the Judgment, &c. for they cannot make Execution. *Cro. El.* 108. But where Judgment is given for the Defendant, and the Plaintiff brings a Writ of *Error*; if the Judgment is reverſed, the Court which reverſes the Judgment ſhall give Judgment for the Plaintiff, as the other Court ought to have done. *Yelv.* 117, 118. In the Exchequer Chamber, after Reverſal of a Judgment, &c. in *B. R.* the Court gave Judgment, *quod Quer. recuperet*, &c. but becauſe they wanted Power to award a Writ of Enquiry which was neceſſary, being on a Demurrer, therefore it was ſent back into *B. R.* for the Execution of that Writ, and thereupon to give final Judgment: But if the Judgment is againſt the Plaintiff in *B. R.* upon a ſpecial Verdict, and that Judgment is reverſed in the Exchequer Chamber, there being no Writ of Enquiry requiſite, the Court of Exchequer Chamber doth not only give Judgment of Reverſal, but a compleat Judgment for the Plaintiff in the Action. *Carthew* 181. If erroneous Judgment be had by Conſent of Parties, it may be reverſed in the Exchequer Chamber; for Conſent of Parties may not change the Law; but if the Conſent is entered upon and made Part of the Record, it may be good. *Hob.* 5. *Cro. El.* 664. The Reverſal in the Exchequer Chamber, is *res Judicata*: No Writ of *Error* lies upon ſuch Judgment, except in Parliament; and it is by ſix Judges at leaſt, by the Statute 27 *Eliz. c.* 8. and 31 *Eliz.* It has been held, that an *Error* in Fact cannot be aſſign'd in the Exchequer Chamber: Though by ſome Authorities, *Errors* in Fact may be aſſigned as *Errors* in Law. 2 *Mod.* 194. 2 *Nelſ. Abr* 708. Error *de Recordo quod coram vobis Reſidet* lies in the Court of *B. R.* for *Errors* in Fact in the Judgment of the ſame Court; as Nonage of the Parties, want of an Original, &c. which doth not proceed from the *Error* of the Judges, and this Writ is allowed without Bail: But a Writ of this Kind doth not lie for *Error* in Matter of Law, when it would be reverſing their own Judgments. *Cro Jac.* 254. And *Errors* in Fact may be corrected in *C. B.* the ſame Term, without this Writ, which lies not in the Exchequer Chamber. *Ibid* 620. If Judgment is given in *B. R.* in civil Actions, a Writ of *Error* will not lie in the ſame Court, only for *Errors* in Fact triable by a Jury; but upon a Judgment in Criminal Caſes, *Error* will lie in *B. R.* whether the *Error* be in Fact or in Law; though it lies alſo in Parliament. 3 *Salk.* 147. Where a Judgment in *C. B.* is affirmed upon a Writ of *Error* in B. R. and afterwards a *Scire fac.* is brought on that Judgment, and the Plaintiff hath Judgment thereon; no Writ of *Error* lieth in the Exchequer Chamber, becauſe the Record was not in *B. R.* by Bill, but by Writ of *Error.* 1 *Roll. Rep.* 264. 3 *Salk.* 148. On Judgment given in the Court of King's Bench in *Ireland*, even after *Error* brought and determined there, Writ of *Error* may be ſued in the King's Bench in *England.* 2 *Nelſ* 730. When Judgment is given in *B. R.* for the Plaintiff in *Errors*, there ſhall be only a *Judicium Revocetur*, &c. entered with Coſts: If for the Defendant in *Errors*, that the Plaintiff *Nil capiat per Breve ſuum de* Errore. The Chief Juſtice of *B. R.* &c. or the eldeſt Judge ought to allow a Writ of *Error*; which is in Judgment of Law a *Superſedeas* until the *Errors* are examined, and the Judgment affirmed or reverſed. *Cro. Jac.* 534. As a Plaintiff having erroneous Judgment, may reverſe it; and new Judgment may be given for him: So if a Judgment is reverſed, the Plaintiff may bring a new Action for the ſame Cauſe. 1 *Lev.* 310. Where a Judgment is pleaded, in Bar of another Action, &c. and Judgment given on that Plea; Writ of *Error* may be had to reverſe the ſecond Judgment. *Cro. Eliz.* 503. *Jenk. Cent.* 259. And Debt lies upon a Judgment in *B. R.* after a Writ of *Error* brought; which is only a *Superſedeas* to the Execution. 1 *Lev.* 153. Writ of *Error* cannot be brought on any Record which is not a Judgment. 1 *Salk.* 145. And *Error* lies not on an interlocutory Judgment; it muſt be a final Judgment after Verdict, &c. A Writ of *Error* may not be brought to reverſe a Judgment by Default, before a Writ of Inquiry of Damages iſſues and is executed, that the Verdict of the Jury and interlocutory Judgment may be made a perfect final Judgment, upon which alone a Writ of *Error* muſt be brought. 1 *Lill.* 522. But on Judgment by Default in Ejectment, it lies before a Writ of Inquiry of Damages, and Judgment thereupon; becauſe in this Caſe the Judgment already is perfect to recover the Term. *Latch* 212. When a Writ of *Error* is brought to reverſe a Judgment in an inferior Court, though the Record is not certified as it ought, yet Execution cannot be ſued; but on Certificate of the Neglect, &c. a Writ of *Executione Judicii* may be iſſued. 1 *Lill Abr.* 526. Upon a Writ of *Error*, if the Clerk below will certify the Record wrong, Action of the

Caſe lies againſt him; and if he make no Return, the Plaintiff may have the Writ *Executione Judicii* out of Chancery. *Mod. Caſ.* 245. If erroneous Judgment be for the Defendant in an inferiour Court, and it is reverſed in *B. R.* and the Merits appear for the Plaintiff, he ſhall have Judgment, but if the Merits be againſt the Plaintiff, the Defendant ſhall have new Judgment, in like Manner as in the Exchequer Chamber; for the Judges are to reform, as well as to affirm or reverſe. *Fareſt. Rep.* 2, 3. If a Writ of *Error* to reverſe a Judgment be diſcontinued for Want of Proſecution; Execution cannot be had upon the Judgment, until the Diſcontinuance is certified from the Court where diſcontinued. 1 *Lill.* 518. The Want of a Bill in *B. R* is *Error* upon a Judgment by Confeſſion, or Default, (but not after a Verdict) becauſe the Bill is the original Proceſs there. *Ibid.* For Variance between the original Writ and Declaration; or Want of an Original: And where Proceedings are ſo erroneous, as not to be amended; for Faults in Verdicts, Executions, *&c.* And when any Thing material is omitted in a Judgment, Writ of *Error* lies, and the Judgment ſhall be reverſed: So where the Stiles of inferior Courts are wrong or inſufficiently named, *&c.* their Judgments may be reverſed. But where Faults are ſmall, they ſometimes paſs as *Vitium Clerici.* 2 *Nelſ. Abr.* 714, 715, 721, *&c.* 728. After *In nullo eſt Erratum* pleaded, the Party affirms the Record to be perfect, and he is foreclosed to ſay there is *Error* in it: Though the Court is not reſtrained from examining into it. 1 *Salk.* 270. The Judges are not bound to ſearch for *Errors* in the Record, which were not aſſigned; but may if they will; and if they find *Error*, they ought to reverſe the Judgment. *Jenk. Cent.* 159. If a Writ of *Error* is brought to remove a Record of a Judgment given in *C. B.* and the Plaintiff in *Error* leaves the Record there, without removing it before the Return of the Writ; or in Caſe there be a longer Return-Day than is convenient in the Writ of *Error*, as if it is purchaſed the Beginning of *Michaelmas* Term, and made returnable in *Hillary* Term; the Court may award Execution, although the Writ of Error be delivered. *Jenk. Cent.* 180. *Dyer* 245. In Writ of *Error*, when the Record comes into Court, if the Plaintiff all that Term do not aſſign his *Errors*; or if he do it, and omit to ſue a *Scire facias ad audiendum Errores*, againſt the Defendant in *Errors*, returnable the ſame Term, or the next, all the Matter is diſcontinued; and the next Term a new Writ of *Error* is to be ſued out upon the Record directed to the ſame Juſtices, *&c. F. N. B.* 20. If he that brings Writ of *Error*, diſcontinues before the Defendant in the Writ of *Error* pleads to it, he may have a new Writ of *Error*; but if he diſcontinue after the Defendant hath pleaded *In nullo eſt Erratum*, he may not have a new Writ. 1 *Lill.* 522. The Parties upon the Removal of the Record by the Writ of *Error*, have no Day in Court given to either of them; ſo that if the Plaintiff in *Error* delay to ſue forth his *Sci. fac. ad audiend. Errores*, the Defendant hath no Way to compel him, but by ſuing out a *Sci. fac. quare Executionem non*, *&c.* And if thereupon the Plaintiff in *Error* doth not plead that his *Errors* are aſſigned, but ſuffer Judgment to paſs upon two *Nihils*, no *Errors* afterwards aſſigned ſhall prevent Execution. *Carthew*'s *Rep.* 41. But 'tis ſaid the uſual Practice is, that the Defendant in the Writ of *Error*, by Conſent doth voluntarily take Notice of the Aſſignment of *Errors*, and this Conſent is teſtified by his Pleading *In nullo eſt Errat.* and then there is no Occaſion for a *Sci. fac. ad audiend Error'*. *Ibid.* *Errors* are to be aſſigned in the Term, or the Writ of *Error* will be quaſhed. 1 *Lill. Abr.* 524. When the Record is in Court by Writ of *Error*, the Plaintiff in *Errors* is to aſſign his *Errors*; and may have a *Scire facias* before the Record is entered: And the Manner of aſſigning *Errors*, according to the antient Practice, is to put a Bill into the Court, and ſay in the Bill, *in hoc Erratum eſt*, *&c.* ſhewing in certain in what Things. *F. N. B.* 20. The Aſſignment of *Error*, *in Omnibus Erratum* is not good; for the Judgment is founded upon the original Writ, Count, Pleading, Iſſue, Proceſs, Trial, and ſo is manifold. *Jenk. Cent.* 84. *Errors* not aſſigned in the Record, may be aſſigned after a *Sci. fac. ad audiend. Errores*; as the Record is in Court; but 'tis not ſo of a Warrant of Attorney, which is in an *Error* in Fact, and not upon Record. *Ibid.* 140. 5 *Rep.* 37. If one in Execution brings *Error*, he ought to aſſign the *Errors* in his proper Perſon; And in Caſes of Outlawry for Felony, *Errors* ſufficient muſt be certainly alledged in Writing, before the Writ of *Error* is allowed. *Jenk. Cent.* 179, 165. Where a Recovery is had and *Error* brought, if the original Writ doth not abate by Death; but is abateable only, as by Entry into the Land pending the Writ, or Coverture, Acquiſition of a Dignity, a partial Array returned, Aid denied, *&c.* that ſhould have been pleaded, and were not: Theſe ſhall not be aſſigned for *Error*; for they are waved, becauſe no Exception was taken to the Writ. 9 *Rep.* 47. 21 *H.* 6. 29. The Party bringing a Writ of *Error* is to cauſe the Roll where the Judgment is entered to be marked with the Word *Error* in the Margin, that the other Party may have Notice on the Record that the Writ of *Error* is brought, and this Marking of the Roll, on giving Notice thereof, is as it were a *Superſedeas* in it ſelf to hinder Execution: Though a *Superſedeas* is to be made out, allowed with the Sheriff of the County: And the Plaintiff's Attorney is not obliged to ſearch the Record, whether Writ of *Error* is brought or not; but may make out Execution upon the Judgment, if no *Superſedeas* be taken forth, or he have no Notice of the Writ of *Error*. *Trin.* 24 *Car. B. R.* The Aſſigning general *Errors* is to ſay that the Declaration, *&c.* is not ſufficient in Law; and that Judgment was given for the Plaintiff, where it ought to have been for the Defendant: And the *Errors* of a Judgment are now to be aſſign'd on the Record, to appear with it to the Court. It muſt appear in the Record, that Judgment was given for a Matter out of the Juriſdiction of the Court, for the Plaintiff in *Error* to aſſign that for *Error*. And that ſhall never be aſſigned for *Error* which might have been pleaded to the Action. *Roll. Rep.* 50, 88. 1 *Lill.* 523. A Judgment can't be reverſed in Part, and ſtand good as to other Part; or be reverſed as to one Party, and remain good againſt the Reſt: Tho' if there be *Error* in awarding Execution, the Execution only ſhall be reverſed, and not the Judgment. *Hob.* 90. The Judgment is an entire Thing, and therefore it cannot be reverſed in Part, and affirm'd in Part; but if 'tis Erroneous as to any Part, the entire Judgment muſt be reverſed. *Carth. Rep.* 235. If Judgment is entered againſt joint Defendants, when one of them is dead, the Judgment ſhall be reverſed for *Error* as to all of them; for in ſuch Caſe the Plaintiff ought to make a ſpecial Entry of the Death of the Party, with *Nihil ulterius verſus eum fiat*, and then take Judgment only againſt the others. *Ibid.* 149. Any Perſon damnified by *Error* in a Record, or that may be ſuppoſed to be injured by it, may bring Writ of *Error* to reverſe it, whether he be Party or no; but Principal and Bail cannot join in a Writ of *Error*: And where there are ſeveral Defendants, if one of them releaſe the *Errors*, he may be ſummoned and ſevered, and the others may reverſe the Judgment. 6 *Rep.* 26. *Hob.* 72. By Statute, he that brings Writs of *Error* to reverſe a Judgment in a ſuperior Court, in all Caſes after a Verdict, or in any Action of Debt, upon Bond for Payment of Money only, or on a Contract, muſt put in good Sureties to proſecute his Writ of

Error with Effect, and pay the Debt and Damages if Judgment be affirmed: But inferior Courts, as well upon Verdicts as other Judgments by Default, &c. have their Writs of *Error* allowed without putting in Bail, they being omitted in the Statute 3 *Jac* 1. *c.* 8. If Bail be not put in, on the Writ of *Error* brought upon a Judgment in the Courts at *Weſtminſter*, the Writ of *Error* is no *Superſedeas* to the Execution; though ſuch Writ is in Being until a *Nolle proſequi* is entered, or Judgment affirmed, &c. And it is the ſame where inſufficient Bail is given, on Rule to put in better Bail, or juſtify thoſe put in; which if the Plaintiff doth not do, Execution is ordered upon the Judgment, with a *Non obſtante* to the Writ of *Error*, &c. *Mich.* 9 *W.* B. R. A Plaintiff in *Error* is, in the Time appointed by the Rule for that Purpoſe, to certify the Record into B. R or the Court will grant a *Nolle Proſequi* on the Writ of *Error*. *Mich.* 22 *Car. B. R.* A Writ of *Error* is a Commiſſion, 'tis not an Action: *Error* in Proceſs by the Fault of Clerks in *B. R.* is not reverſible though in the ſame Term, without Writ of *Error*; it is otherwiſe in *C. B.* But Writs of *Error* remove only the Record and Proceſs; not the Original, which remains filed with the *Cuſtos Brevium*. Jenk. Cent. 116, 25. In *Error* it was ſaid that *B. R* could not reverſe a Judgment given in another Court, unleſs they could give the ſame Judgment that Court ſhould have given; which in this Caſe they might not, by Reaſon the Plaintiff in the original Action was dead: But by *Holt*, C. J. If this Court cannot give like Judgment, as that below ſhould have done, 'tis becauſe the Suit by the Death of the Plaintiff there is abated; but the Judgment may nevertheleſs be reverſed here, and by Reverſal the Executor is reſtored to his Action. *Trin.* 5 *Ann.* The Court will not let the Plaintiff in *Errors* quaſh his own Writ of *Error*; though they may grant Leave to diſcontinue it. 5 *Mod.* 67. If a Verdict is for a Defendant in *Errors*, and Judgment is affirm'd, Coſts are allow'd by Stat. 3 *H.* 7. *c.* 10. *occaſione dilationis Executionis.* And by 4 & 5 *Ann. c.* 16. Upon quaſhing Writs of *Error*, for Defect or Variance from the Record, &c. the Defendant is to have Coſts as if Judgment were affirm'd. When Writ of *Error* is not *in dilatione Executionis*, as where it is brought after the Execution is executed, the Plaintiff ſhall not have Damages and Coſts. *Cro. Jac.* 636. No Perſon can reverſe a Thing for *Error*, unleſs the *Error* be to his Prejudice. 5 *Rep.* 38. One in Remainder may have Writ of *Error* upon Judgment given againſt Tenant in Tail: But he in Reverſion or Remainder ſhall not have Writ of *Error*, in the Life-time of Tenant for Life, on Judgment given againſt ſuch Tenant becauſe they cannot be Parties grieved in his Time. 2 *Nelſ. Abr.* 712. Where a Plaintiff in *Error* dies, the Writ abates; but 'tis ſaid not where the Defendant dies. *Yelv.* 112. By 30 *Car.* 2. *c.* 6. In Actions real, perſonal, and mix'd, the Death of either Party between Verdict and Judgment, ſhall not be alledged for *Error*. No Fine or Recovery, nor any Judgment in a real Action, &c. ſhall be reverſed for *Error*, except the Writ of *Error* be commenced within twenty Years, ſaving the Right of Infants, &c. 10 & 11 *W.* 3. *c.* 14. Writ of *Error* lies in *B. R.* to reverſe a *Fine* levied in the *Common Pleas*, and to cancel the ſame if it be erroneous: And if there be not an Original; or not proper Writs of Covenant, or if there be any Fraud, &c. Writ of *Error* may be brought to make the Fine void. 1 *Inſt.* 9. By Stat. 5 *Geo.* 1. *c.* 13. it is enacted, That all Writs of *Error*, wherein there ſhall be any Variance from the original Record, or other Defect may be amended by the Court, and made agreeable to the Record: And where any Verdict hath been given, in any Action, Suit, &c. in any of his Majeſty's Courts at *Weſtminſter*, or other Court of Record, the Judgment thereon ſhall not be ſtayed or reverſed for any Defect or Fault in Form or Subſtance, in any Bill, Writ, &c. or for Variance in any ſuch Writs from the Declaration or other Proceedings: But this is not to extend to any Appeal of Felony, or Proceſs on Indictments, Informations, &c. See *Judgment*.

Error in the King's Bench is thus proſecuted: The Curſitor of the County makes out the Writ of *Error*, from a *Præcipe* or Copy of the Declaration left with him; which is to be allowed with the Clerk of the *Errors*, who has a Fee of 2 *l.* 2 *s.* 6 *d* and a Certificate of the Allowance of the Writ muſt be ſerved on the Defendant's Attorney in *Error*; alſo the Plaintiff's Attorney in the Action, is to procure an Original to warrant his Judgment; and Warrants of Attorney, muſt be filed, and Bail put in, where required, &c. And then the Proceedings are by *Sci. fac. ad audiend. Errores* againſt the Plaintiff in the Action, whereon Judgment was obtained; and the Writ of *Error* being received by the Sheriff to whom directed, he is to give Notice to the Plaintiff in *Error* to ſhew Cauſe why Execution ſhould not be on the Judgment, and make a Return to that Purpoſe; then a Rule is to be given with the Clerk of the Rules for the Plaintiff in *Error* to aſſign his Errors by ſuch a Day, which if he ſhall not do before the Rule is out, the Plaintiff in the original Action may take out Execution againſt him. If the Plaintiff in *Error* aſſign *Errors* in the Record, then the Defendant muſt plead *In nullo eſt Erratum*, and thereupon enter the Cauſe with the Clerk of the Papers, for the *Errors* to be argued; and Paper Books for the Counſel and Judges, are to be made out, &c. If ſome Part of the Record be not returned, a *Certiorari* muſt be prayed to bring it into Court; and if Matters of Fact are alledged in *Error*, as Nonage, Death of the Plaintiff, &c. a proper Plea muſt be made thereto, and Iſſue thereupon taken and tried as in any other Iſſue: But if only Matters of Law are aſſign'd, the *Errors* are argued by Counſel on both Sides, and the Judgment is either reverſed or affirmed: And when Judgment is affirmed, the Defendant in *Error* may proceed againſt the Defendant in the Action, by taking out Execution on the *Affirmetur*, or bringing Action of Debt on the Judgment; or he may proſecute the Bail by *Sci. fac.* upon their Recognizance. 2 *Vol. Mod. Ent. Eng.* 373, 378. When a Judgment is reverſed or affirmed in the *Exchequer Chamber*, the Tranſcript of the Record thereof will be remitted back to this Court, to be entered up at the End of the Judgment here: And if ſuch Judgment ſhall be affirmed in the Exchequer Chamber, yet a Writ of *Error* may be brought thereupon returnable in Parliament. *Practiſ. Solic.* 252, 253. If you would bring a *Writ of Error in Parliament* to reverſe a Judgment in *B. R.* there muſt be a Petition to the King for his Warrant, which Petition has the Allowance of the Attorney General, and then the King writes on the Top of it *Fiat Juſtitia*; whereupon a Writ of *Error* is made out by the Clerk of the *Errors*, (who hath 4 *l.* Fee, and the King's Warrant coſts 5 *l.*) And then the Lord Chief Juſtice of this Court carries the Record, and a Tranſcript thereof, up to the Houſe of Lords in full Parliament, and after they are examined there, leaves the Tranſcript with the Lords, but brings back the Record: And this being done, the Attorney for the Defendant in *Errors*, gets ſome Lord to move that the Plaintiff in *Errors* may aſſign his *Errors*; but if for the Plaintiff, Motion is to be made that upon his aſſigning *Errors*, the Defendant may appear and make his Defence, and Counſel be heard on both Sides: Then after the Judgment is either affirmed or reverſed, the Clerk of the Parliament remands the Tranſcrip of the Record into *B. R.* with the Affirmation or Reverſal thereof, to be entered upon the Record of the ſaid Court, which Court, if affirmed, awards

Execution, *&c.* *Dyer* 385. *Practiſ. Attorn. Edit.* 1. *p.* 117. A Writ of *Error* in Parliament, is made returnable immediately; or on a Prorogation, *ad proximum Parliamentum:* And it doth not determine by a Prorogation. But if a Parliament is diſſolved before the *Errors* are heard, it is otherwiſe: And on Motion, Execution hath been granted in *B. R.* on a Judgment in ſuch a Caſe, the Record being never out of the Court. *Raym.* 5. 2 *Nelſ. Abr.* 731. To bring a Writ of *Error* in the King's Bench here in *England* to reverſe a Judgment given in the *King's Bench* in *Ireland*, a Writ muſt be procured from the Curſitor, directed to the Chief Juſtice of the Court of *B. R.* in *Ireland*, requiring him to ſummon the Plaintiff in the Action there, to appear here in this Court, to Anſwer the *Errors*; whereupon a Tranſcript of the Record is ſent over, (not the Record itſelf of the Judgment which remains in *Ireland*) and when the *Errors* are argued, if the Judgment is reverſed, there muſt go a Writ to the Chief Juſtice of *Ireland* to reverſe it; ſo that the Judgment is not actually reverſed here, but there. And where the Judgment in *Ireland* is affirmed here, there can be no Writ of Execution granted here; but on Affirmance of the Judgment, a Writ goes, reciting all the Proceedings, directed to the Judges of *B. R.* in *Ireland* commanding them to iſſue Proceſs of Execution. *Cro. Car.* 368. 1 *Salk.* 321. In *Wales* at the Great Seſſions there, a Writ of *Error* lies for perſonal Actions to the Council of the Marches of *Wales*; and if they give an erroneous Judgment, it is final, for the Statute 34 *H.* 8. *c.* 26. ordains this Writ to the *Council there*; and ſince that Act, no Writ of *Error* has been granted of ſuch erroneous Judgment: Upon *Errors* in real or mix'd Actions in *Wales*, Writ of *Error* lieth into the King's Bench. *Jenk. Cent.* 71. And ſo in perſonal Actions, now by a late Statute, 1 *W. & M. c.* 27.

Form *of a* Writ of Error *brought in* B. R. and Judgment *thereupon.*

THE *Lord the King hath given in Charge to his beloved and faithful* Robert Eyre, *Knt. his Chief Juſtice of the Bench, his Writ cloſed in theſe Words, to wit;* George *the Second, by the Grace of God, of* Great Britain, France, *and* Ireland, *King, Defender of the Faith,* &c. *To our beloved and faithful,* &c. *Greeting: Becauſe in the Record and Proceſs, and alſo in giving Judgment of the Plea which was in our Court before you and your Companions, our Juſtices of the Bench, by our Writ between* A. B. *and* C. D. *of a certain Treſpaſs on the Caſe, done to the Damage of the ſaid* A. B. *one hundred Pounds, as 'tis ſaid,* Error *manifeſt hath intervened, to the great Damage of the ſaid* A. B. *as by his Complaint we are informed; We willing that the* Error, *if there be any, ſhould be corrected in due Manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid in this Behalf, Command you, that if Judgment be thereupon given, then that Record and Proceſs of the Plea aforeſaid, with all Things concerning them, to us under your Seal diſtinctly and openly you ſend and this Writ; ſo that thoſe we may have, the Day,* &c *to the End, that looking into the Record and Proceſs aforeſaid farther, we may cauſe to be done thereupon for correcting that* Error, *what of Right, and according to the Laws of our Kingdom ought to be done in the Premiſſes,* &c. (*the* Writ of Error *is to be thus entered and returned, and the whole* Record *annexed*). *Afterwards, to wit, on* Staturday *next after the* Octaves *of St.* Hillary *in this ſame Term, before the Lord the King at* Weſtminſter, *came the ſaid* A. B. *by,* &c. *his Attorney, and ſaith, That in the Record and Proceſs aforeſaid, and alſo in giving the Judgment in the Plaint aforeſaid, there is manifeſt* Error, (*or it is manifeſtly erred, in this, to wit, that by the Record aforeſaid it appears, that the Judgment aforeſaid in Form aforeſaid given, was for the ſaid* C D. *againſt the ſaid* A. B. *when by the Law of the Land, that Judgment ought to have been given for the ſame* A. B. *againſt the ſaid* C. D. *therefore in that it is manifeſtly erred; alſo it is erred in this, that where by the Record and Proceſs aforeſaid it appears,* &c. *yet the ſaid,* &c. *and therefore in that it is manifeſtly erred: And the ſaid* A. B. *prays the Writ of the ſaid Lord the King, to provide for the ſaid* C. D. *being before the ſaid Lord the now King, to hear the Record and Proceſs aforeſaid; and it is granted to him,* &c. *By which it is commanded to the Sheriff aforeſaid, that by honeſt and lawful,* &c. *he cauſe the ſaid* C. D. *to know, that he may be before the Lord the King, in fifteen Days from the Day of* Eaſter, *wheresſoever,* &c. *to hear the Record and Proceſs aforeſaid, if,* &c. *and further,* &c. *The ſame Day is given to the ſaid* A. B. &c. *At which Day, before the ſaid Lord the King at* Weſtminſter *came the ſaid* A. B. *by his Attorney aforeſaid, and the Sheriff hath not thereof ſent the Writ; and the ſaid* C. D. *being ſolemnly required to come at the ſame Day, likewiſe by,* &c *his Attorney came; upon which the ſaid* A. B. *as at firſt ſaith, That in the Record and Proceſs aforeſaid, and alſo in the rendering of the Judgment aforeſaid, it is manifeſtly erred, alledging the* Errors *aforeſaid by him in Form aforeſaid alledged; and prays, that the Judgment aforeſaid for theſe* Errors, *and others in the Record and Proceſs aforeſaid, may be reverſed, annulled, and for nothing eſteemed; And that he may be reſtored to all Things, which he loſt by Occaſion of the Judgment aforeſaid; and that the Court of the ſaid Lord the King here, may proceed as well to the Examination of the Record and Proceſs aforeſaid, as the Matters aforeſaid above aſſigned for* Errors; *and that the ſaid* C. D. *may rejoin to the* Errors, &c. *Upon which the ſame* C. D. *ſaith, that neither in the Record and Proceſs aforeſaid, nor in giving of the Judgment aforeſaid, in any Thing it is erred; and prays, that the Court of the Lord the King here, may proceed as well to Examination of the Record and Proceedings aforeſaid, as the Matters aſſigned for* Errors *aforeſaid; and that the Judgment aforeſaid may be affirmed in all Things. But becauſe the Court of the ſaid Lord the King now here, is not yet adviſed of rendring their Judgment of and upon the Premiſſes, a Day is therefore given to the Parties aforeſaid before the Lord the King at* Weſtminſter, *until in the Morrow of the Holy* Trinity, &c. *At which ſaid Day before the ſaid Lord the King at* Weſtminſter, *came the Parties aforeſaid, by their Attornies aforeſaid; on which having ſeen, and by the Court of the Lord the King now here, fully underſtood all and ſingular the Premiſſes, and diligently examined and viewed as well the Record and Proceedings aforeſaid, and the Judgment given upon the ſame, as the Cauſes and Matters by the ſaid* A. B. *above aſſigned for* Error; *for that it appears to the Court of the Lord the King here, that neither in the Record and Proceſs aforeſaid, nor in the rendering of the Judgment aforeſaid, there is any Thing vicious or defective, and that that Record was in nothing erred, it is conſidered, that the Judgment aforeſaid ſhall in all Things be affirmed, and ſtand in all Force and Effect, notwithſtanding the ſaid Cauſes and Matters above for* Error *aſſigned: And further it is conſidered by the Court of the Lord the King now here, that the ſaid* C. D. *ſhall recover againſt the ſaid* A. B. *ten Pounds, adjudged to the ſame* C. D. *by the Court of the Lord the King here, according to the Form of the Statute in the like Caſe lately made and provided, for his Coſts, Charges and Damages which he hath ſuſtained by Occaſion of the Delay of Execution of the Judgment aforeſaid, on Pretence of the Proſecution of the Writ of* Error *aforeſaid; and that the ſaid* C. D. *may have thereof Execution,* &c.

If the Judgment be reverſed, *then it is thus:*

FOR *that it appears to the Court of the Lord the King now here, that in the Record and Proceſs aforeſaid, and alſo in obtaining the Judgment aforeſaid, it is manifeſtly erred; it is conſidered, that the Judgment aforeſaid for that* Error, *and others in the Record and*

Proceedings aforeſaid, ſhall be reverſed, annulled, and utterly for nothing had; and that the aforeſaid A. B. *ſhall be reſtored to all Things which he hath loſt by Occaſion of the ſaid Judgment.*

Erthmiotum, An antient Word for a Meeting of the Neighbourhood to compromiſe Differences among themſelves; which was cuſtomary in former Days; it is mentioned in *Leg. H.* 1. *c.* 57.

Esbrancatura, (From the Fr. *Esbrancher*) Cutting off Branches or Boughs in Foreſts, *&c. Hoved.* 784.

Eſcaldare, To Scald: *Eſcaldare Porcos*, Was one of our antient *Tenures* in *Serjeanty*; as appears by the Inquiſition of the Serjeancies and Knights Fees in the 12th and 13th Years of King *John*, within the Counties of *Eſſex* and *Hertford*. Lib. Rub. Scaccar', MS. 137.

Eſcambio, (Derived from the Span. *Cambier* to change) Was a Licence granted to make over a Bill of *Exchange* to another beyond Sea: For by the Stat. 5 *R.* 2. *c.* 2. No Merchant ought to exchange or return Money beyond Sea, without the King's Licence. *Reg. Orig.* 194. See *Exchange*.

Eſcape, (*Eſcapium*, From the Fr. *Eſchapper*, i. e. *Effugere* to fly from) Signifies a violent or privy Evaſion out of ſome lawful Reſtraint; as where a Perſon is arreſted or impriſoned, and gets away before delivered by due Courſe of Law. *Staundf. P. C. cap.* 26, 27. And there are two Kinds of *Eſcapes*; *voluntary* and *negligent*: *Voluntary* is when one arreſts another for Felony, or other Crime, and lets him go by Conſent; in which Caſe the Party that Permits the *Eſcape* is eſteem'd guilty of the Crime committed, and muſt anſwer for it: *Negligent Eſcape* is when one is arreſted, and afterwards *eſcapes* againſt the Will of him that arreſted him, or had him in Cuſtody; and is not purſued by freſh Suit, and taken again before the Party purſuing hath loſt Sight of him. *Cromp. Juſt.* 36. And for theſe negligent *Eſcapes*, the Gaoler, *&c.* is to be fined. The Sheriff is not anſwerable for the Gaoler, only in Civil Caſes; and none ſhall ſuffer capitally for the Crime of another, ſo that a principal Gaoler is only finable for a voluntary *Eſcape* ſuffered by his Deputy. 2 *Hawk. P. C.* 135. The Crime of the Priſoner *eſcaping*, for which the Gaoler is anſwerable, muſt be ſuch as it was at the Time of the *Eſcape*; as where a Perſon is committed for dangerouſly wounding another, it is Treſpaſs only, and not Felony, 'till the Party wounded is dead: And he who ſuffers another to *eſcape* who was in Cuſtody for Felony, cannot be araigned for ſuch *Eſcape* as for Felony, until the Principal is attainted, but he may be indicted and tried for Miſpriſion before the Attainder of the Principal. And in High Treaſon 'tis ſaid the *Eſcape* is immediately puniſhable, whether the Party *eſcaping* be ever convicted, or not. 2 *Hawk. Ibid.* If an Officer who hath the Cuſtody of a Priſoner charged with, and guilty of a capital Crime, doth knowingly give him his Liberty, with an Intent to ſave him from Trial, *&c.* he is guilty of a voluntary *Eſcape*. *Cro. Car.* 492. *S. P. C.* 32. One negligent *Eſcape* will not amount to a Forfeiture of a Gaoler's Office, as one voluntary one will; but many negligent *Eſcapes* will do it: And the Fine for ſuffering a negligent *Eſcape* of a Perſon attainted, was by the Common Law of Courſe 100*l.* and in other Caſes at the Diſcretion of the Court. 3 *Lev.* 288. 2 *Lev.* 81. A Gaoler cannot excuſe himſelf by Killing a Priſoner in a Purſuit, as to the Fine, tho' he could not poſſibly retake him; but ſhall be fined for the negligent *Eſcape*, and becauſe the publick Juſtice is not ſo well ſatisfied by ſuch a Killing. 2 *Hawk.* 130. As voluntarily permitting a Felon to *eſcape* out of Priſon, is Felony; ſo is the Breaking of a Priſon by a Priſoner and *eſcaping*: If one be committed only on Suſpicion of Felony, if a Felony is done, it is Felony to break the Priſon and *eſcape*: And if the Offence appears on Record, as when a Perſon is committed by the Court, or taken by Virtue of a *Capias* out of *B. R.* it is Felony to break the Priſon and make an *Eſcape*, though the Party is innocent. But if any one by the General Authority which the Law gives him arreſts an innocent Perſon, ſuch Perſon may reſcue himſelf. 2 *Inſt.* 592. 3 *Inſt.* 221. *H. P. C.* 109. And a Man muſt be committed to Priſon by lawful *Mittimus*, or Breach of Priſon and *Eſcaping* is not Felony. If a Party is committed for Treaſon, to break Priſon and *eſcape* is but Felony; but if a Priſoner let out Traitors, it will be Treaſon. *H. P. C.* 109. 2 *Inſt* 590. Where one is impriſoned for Petit Larceny, or Killing a Man *ſe Defedendo, &c.* to break Priſon and *Eſcape* is not Felony: And if a Priſon be ſet on Fire, not by the Privity of the Priſoner, he may break Priſon for the Safety of his Life. 2 *Inſt.* 590. A Gaoler refuſing to receive a Perſon arreſted by the Conſtable for Felony, whereby he is let go is guilty of an *Eſcape*: But there muſt be an actual Arreſt, which Arreſt muſt be juſtifiable, to make an *Eſcape*; for if it be for a ſuppoſed Crime, where no Crime was committed, and the Party is neither indicted nor appealed, *&c.* it is no *Eſcape* to ſuffer a Perſon to go at large. *Fitz. Coron.* 224. *Bro. Eſca.* 27, 28. If a private Perſon arreſt another for Suſpicion of Felony, he is to deliver him to a publick Officer, who ought to have the Cuſtody of him; or if he let him go, it will be an *Eſcape*. 2 *Hawk.* 138. And if no Officer will receive him, he is to deliver him to the Townſhip where Arreſted; or get him bailed. *A.* a meer private Man knows *B.* to have committed Felony, and thereupon arreſts him, he is lawfully in Cuſtody of *A.* 'till he be diſcharged, by delivering him to a Conſtable or common Gaol; and therefore if he voluntarily ſuffer ſuch Perſon to *eſcape*, tho' he were no Officer, nor *B.* indicted, it is Felony in *A.* But 'tis otherwiſe if he never takes him nor attempts it, and lets him go. 1 *Hale's Hiſt. P. C.* 594. Juſtices of Peace in their Seſſions are impowered to inquire of *Eſcapes* of Perſons arreſted, and impriſoned for Felony. *Stat.* 1 *R.* 3. *c.* 3. To bail a Perſon not bailable by Law is a negligent *Eſcape*. *Plowd.* 476. And it is ſaid that the Crime is equal in a Juſtice of Peace, for taking a Felon out of Priſon, without Bail; or ſuffering him to go at large without Commitment, *&c.* where the Offender confeſſeth the Felony, as it is in the Caſe of a Gaoler's permitting an *Eſcape*. *Dalt.* 382. A late Statute ordains, that Perſons who any ways aſſiſt a Priſoner, committed for Treaſon, or Felony, to attempt his *Eſcape* from any Gaol, ſhall be adjudg'd guilty of Felony and be tranſported; and if the Priſoner be committed for any other Crime; or upon Proceſs for 100*l.* Debt, *&c.* the Offenders are liable to Fine and Impriſonment. 16 *Geo.* 2. *c.* 31. And where any Perſon conveys any Arms, Inſtrument or Diſguiſe, to a Priſoner in Gaol for Felony, *&c.* or for his Uſe, in order to an *Eſcape*, 'tis likewiſe Felony and Tranſportation. Alſo if one aſſiſts any Priſoner to *eſcape* from any Conſtable, or other Officer or Perſon in whoſe Cuſtody he is, by Virtue of a Warrant of Commitment for Felony, it is declared to be the like Offence. *Ibid.* In *Civil Actions* the Sheriff is to anſwer for the *Eſcape* of his Bailiff; as the Bailiff is his Servant: And Action of the Caſe lies againſt the Sheriff for an *Eſcape* upon meſne Proceſs, becauſe the Plaintiff is prejudiced in his Suit by it. *Cro. Eliz.* 623, 625. 1 *Danv. Abr.* 183. But if he is arreſted and reſcued before brought to Gaol, the Sheriff is not chargeable: Though if a Defendant in Execution is reſcued, the Sheriff is liable for the whole Debt; and is to have his Remedy againſt the Reſcuer. 2 *Cro.* 419. *Dyer* 241. Where a Perſon is in Cuſtody on meſne Proceſs, and being outlawed after Judgment at the Suit of another, the Judgment Creditor brings a Warrant on a *Capias Utlagatum*, and delivers it to the Sheriff's Officer, who hath him in Cuſtody; if the Officer afterwards permits the Perſon to *eſcape*, though he refuſe to execute the Warrant, the Sheriff is chargeable in Action of the Caſe. 5 *Rep.* 89. And a Sheriff ſhall not take Advantage of Error in ſuing out a proper Proceſs where a Perſon is arreſted, *&c.* As if a *Ca. ſa.* iſſue after a Year and a Day, without ſuing out a *Scire facias*, this Error will not excuſe the Sheriff in an *Eſcape.* 2 *Cro.* 288. 1 *Salk* 273. But though a Sheriff may not take Advantage of an erroneous Proceſs; yet he ſhall of a void Proceſs, on which it is no *Eſcape* to let a Priſoner go. It will not be a good Plea, for the Sheriff in Action upon an *Eſcape*, that the Priſoner reſcued himſelf, *&c.* for the Sheriff may command the *Poſſe Comitatus* to help him: But this has been held to be only in Caſe of Executions. 6 *Rep.* 51. 1 *Cro.* 868. Where two Perſons are in Execution for Debt, if one of them *eſcape*; Debt will lie. 34 *H.* 6. And if any Priſoner *eſcapes* who was in Execution, his Creditor may retake him by *Capias ad Satisfac.* or bring Action of Debt on the Judgment, or a *Sci. fac.* againſt him, *&c.* 1 *Vent.* 269 3 *Salk.* 160. A Priſoner taken in Execution makes a tortious *Eſcape*, the Party at whoſe Suit he was taken in Execution ſhall have an *Alias Ca. ſa,* to take him in Execution again; or Action on the Caſe againſt the Sheriff: But if the Sheriff voluntarily permit the *Eſcape*, Action of Debt is to be brought againſt the Sheriff; and on ſuch a voluntary *Eſcape*, the Plaintiff may have a new Execution. 1 *Lill. Abr.* 536. 8 *Lev.* 211. If a Man *eſcapes*, with the Conſent of the Gaoler in a Civil Caſe, he cannot retake him. 3 *Rep.* 32. For 'tis ſaid the Execution is diſcharged, ſo as the Party may not be taken again, or judg'd in Execution by Law. *Hob.* 202. And if he be allowed to go with a Keeper into another County, it is ſuch an *Eſcape* and Diſcharge, that if he be there detained, out of the Power of the Sheriff, it will be falſe Impriſonment. *Plowd.* 36. *Dyer* 166. Though if a Perſon be permitted to *eſcape* by the Sheriff, he may be taken by the Party; for it may be the Sheriff is inſufficient to anſwer. 1 *Vent.* 4. If the Plaintiff permit the Priſoner to *eſcape*, he cannot afterwards retake him: And if the Body and Goods, *&c.* of a Conuſor are taken in Execution upon a Statute-Merchant, if the Conuſee agree that he ſhall go at large, it is a Diſcharge of the whole Execution, and the Conuſor ſhall have his Lands again: 'Tis otherwiſe if the Sheriff had permitted him to *eſcape*, the Execution on the Lands would not be diſcharged. 2 *Nelſ. Abr.* 737. If there be an *Eſcape* by the Plaintiff's Conſent, when he did not intend it, the Law is hard that the Debt ſhould be thereby diſcharged; as where one was in Execution in *B. R.* and ſome Propoſals being made to the Plaintiff in Behalf of the Priſoner, ſeeing there was ſome Likelihood of an Accommodation, the Plaintiff conſented to a Meeting in a certain Place in *London*, and deſired the Priſoner might be there, who came accordingly: This was held to be an *Eſcape*, with the Plaintiff's Conſent, and he could never after be in Execution at his Suit for the ſame Matter. 2 *Mod.* 136. When a Priſoner tortiouſly *eſcapes* from the Cuſtody of the Gaoler, he may be retaken: And the Sheriff, *&c.* may purſue a Perſon *eſcaping* into that or any other County; and if he retakes the Priſoner on freſh Purſuit before Action brought, it ſhall excuſe the Sheriff, for there the Priſoner ſhall be ſaid to be in Execution ſtill. 3 *Rep.* 44. And where the Sheriff is to anſwer the Debt and Damages for ſuch *Eſcape*, he ſhall have his Counter-remedy againſt the Party *eſcaping*; and may take him at any Time and Place, and impriſon him, 'till he hath ſatisfied the Sheriff as much as he hath paid to the Plaintiff; or he may bring an Action upon the Caſe againſt the Priſoner, and ſo relieve himſelf. 5 *Rep.* 52. 3 *Rep.* 52. *Cro. Eliz.* 393. It hath been adjudged no *Eſcape* to let a Priſoner go where the Sheriff hath the Priſoner in Cuſtody, if it be before the Return of the Writ: 'Tis ſufficient if the Officer have the Party at the Return of the Writ, *&c.* *Moor* 299. 1 *Salk.* 401. 2 *Nelſ.* 739. 740. Yet it hath been held, that where a *Habeas Corpus* is granted to bring a Perſon into Court, if the Sheriff on the Way let him go at large in the County, or carry him round about a great Way, *&c.* it will be an *Eſcape.* 1 *Mod.* 116. And an *Eſcape* in one Place is an *Eſcape* in all Places; for a Priſoner being once *eſcaped*, and at large, it ſhall be intended he is confined to no Place, ſo that for *Eſcape* Action may be brought againſt the Priſoner in any County. 1 *Lill. Abr.* 537. Action of *Eſcape* will not lie againſt the Executor or Adminiſtrator of a Sheriff, *&c.* for an *Eſcape*, becauſe it was perſonal, and *Moritur cum Perſona:* But it may be otherwiſe if there be a Judgment recovered againſt the Sheriff before he died. *Dyer* 322. A Priſoner in Execution ſhould not be allowed to go out of the Gaol; for if he goes out, though he returns again, it is an *Eſcape.* 3 *Rep.* 43, 44 2 *Inſt.* 260. 2 *Inſt.* 381. If a Sheriff or Gaoler ſuffer his Priſoner in Execution to go abroad, unleſs it be by Licence of the *Lord Chief Juſtice*, and of the Plaintiff; this will be an *Eſcape* in Law, although he come to Priſon again. *Plowd.* 37. And yet in *London*, by ſpecial Cuſtom there, in ſome Caſes the Priſoner may go abroad with his Keeper, and it will be no *Eſcape. Ibid.* See *Hol.* 202. Where the Juſtice of the Court, and Plaintiff in the Suit, agree that the Priſoner ſhall be at Liberty, and he go out and return at his Time; it is no *Eſcape:* But this may not be without the Sheriff's Conſent. *Dyer* 275. If a Plaintiff by Word Licence the Sheriff to deliver the Priſoner, no Action will lie for this as an *Eſcape.* 27 *H.* 8. 24. If the King, or any great Man ſhall require a Sheriff, *&c.* to ſet his Priſoner at Liberty, or threaten him if he do not ſo; if he do it accordingly, it will be an *Eſcape* in him. *Dyer* 278, 297. But where there is no good Impriſonment at the Time of the *Eſcape*; as if a Man be impriſoned by a Court that hath not Power to impriſon him, *&c.* there can be no *Eſcape.* 14 *H.* 7. 1. *Dyer* 66, 306. 2 *Bulſt.* 237. A Plaintiff having Judgment, it was ruled that the Defendant ſhould pay ſo much Money, before ſuch a Day, and if he failed, then the Plaintiff to take him in Execution; on Failure of Payment, he was taken, and then ſued an *Audita Querela* in the *Chancery*, where on a Suggeſtion he had an Injunction and *Superſedeas*, and was bailed and ſet at large, the Plaintiff not being paid his Debt: As this was done after Judgment and Execution, it was ſaid to be an *Eſcape* in Law. *Mich.* 11 *Jac.* 1. 2 *Bulſt.* 120. 2 *Shep. Abr.* 318. If a Perſon that hath the Fee of a Priſon, make a Leaſe of it for Life or Years to another, who ſuffers an *Eſcape*; the Party grieved thereby muſt proſecute the Leſſee for it, and if he be not ſufficient to anſwer, he may ſue the Leſſor. 4 *Rep.* 98. A Priſoner *eſcapes* out of the *King's Bench*, or *Marſhalſea*, or the *Fleet*; the Keeper of the Priſon out of which he *eſcaped*, is to be charged with it; but if the *Eſcape* be from either of the *Counters*, the Action muſt be brought againſt the Sheriffs of *London* for this. *Dyer* 278. 3 *Rep.* 52. If a Man is in Execution upon a Judgment in *C. B.* and there is a Judgment before againſt him in *B. R.* In this Caſe, he ſhall be in Execution for both in the *King's Bench*; And if the *Marſhal* there ſuffer him to *eſcape*, he is chargeable with both Debts. *Dyer* 152, 153. Committing the *Marſhal* of the *Marſhalſea* to Priſon, where an *Eſcape* in Law of all the Priſoners there, See *Style* 375. Perſons in the *King's Bench* and *Fleet* Priſons, are to be actually detained within the ſaid Priſons: And if they *eſcape*, Action of Debt lies againſt the Warden, *&c.* 1 *R.* 2. *c.* 12. Keepers of thoſe Priſons ſuffering Priſoners to be out of the

Rules, (except on Rule of Court, *&c.*) is an *Eſcape*; and Perſons conniving at an *Eſcape* ſhall forfeit 500 *l.* *&c.* by 8 & 9 *W.* 3. *c.* 26. And by this Statute where any Priſoner in Execution *eſcapes*, the Creditor may have any other new Execution againſt him. By Stat. 5 *Ann. c.* 9. If any Perſon in Cuſtody for not performing any Decree in Chancery, *&c.* *eſcape*, the Party for whom the Money is decreed may have the ſame Remedy againſt the Sheriff, as if the Priſoner had been in Cuſtody on Execution. An old Sheriff omits turning over a Priſoner in Execution to the new Sheriff, is ſaid to be an *Eſcape*; ſo where there are two Executions againſt a Man, and in the Indenture of Turning over Mention is made but of one, *&c.* 3 *Rep.* 71. See *Sheriff.*

Eſcape-Warrant. If any Perſon committed or charged in Cuſtody in the *King's Bench* or *Fleet Priſon*, in Execution, or on meſne Proceſs, *&c.* go at large: On Oath thereof before a Judge of the Court where the Action was brought, an *Eſcape Warrant* ſhall be granted, directed to all Sheriffs, *&c.* throughout *England*, to retake the Priſoner, and commit him to Gaol where taken, there to remain till the Debt is ſatisfied: And a Perſon may be taken on a *Sunday* upon an *Eſcape Warrant*. *Stat.* 1 *Ann. c.* 6. And the Judges of the reſpective Courts may grant Warrants, upon Oath to be made before Perſons commiſſioned by them to take Affidavits in the Country, (ſuch Oath being firſt filed) as they might do upon Oath made before themſelves. 5 *Ann. c.* 9. A Sheriff ought not to receive a Perſon taken on *Eſcape Warrant*, *&c.* from any but an Officer; not from the Rabble, *&c.* which is illegal. *Paſch.* 3 *Ann.* 3 *Salk.* 149. A Perſon being arreſted and carried to *Newgate* by Virtue of an *Eſcape-Warrant*, moved to be diſcharged, becauſe he ſaid he was abroad by a Day-Rule when taken; but it appearing by *Affidavit*, that he was took upon the *Eſcape-Warrant* before the Court of *B. R.* ſat that Morning, they refuſed to ſet him at Liberty. 2 *Ld. Raym.* 927.

Eſcapio Quietus, Is on Eſcape of Beaſts in a Foreſt; and he that by Charter is *Quietus de Eſcapio*, is delivered from that Puniſhment which by the Laws of the Foreſt lieth upon thoſe whoſe Beaſts are found within the Land where forbidden. *Crompt. Juriſd.* 196.

Eſcapium. Hath been uſed for what comes by Chance or Accident. *Cowel.*

Eſceppa, A *Scepp* or Meaſure of Corn. *Mon. Ang. Tom.* 1. *p.* 823. See *Sceppa.*

Eſcheat, (*Eſchaeta*, from the Fr. *Eſcheoir*, i. e. *Accidere*) Signifies any Lands or Tenements that caſually fall to a *Lord* within his *Manor*, by Way of Forfeiture; or by the Death of his Tenant, leaving no Heir general or ſpecial. *Magn. Chart. cap.* 31. *Eſcheat* is alſo uſed ſometimes for the Places or Circuit, in which the King, or other Lord, hath *Eſcheats* of his Tenants. *Bract. lib.* 3. *tract.* 2. *cap.* 2. And it is likewiſe applied to a Writ, which lies where the Tenant having an Eſtate in Fee ſimple in any Lands or Tenements holden of a ſuperior Lord, dies without Heir; in which Caſe the Lord brings this Writ againſt him that is in Poſſeſſion of the Lands after the Death of his Tenant, and ſhall thereby recover the ſame in Lieu of his Services. *F. N. B.* 144. In our Law *Eſcheats* were of two Sorts: 1. *Regal*, Thoſe Forfeitures which belong to our Kings by the ancient Rights and Prerogative of the Crown. 2. *Feodal*, which accrue to every Lord of the Fee as well as the King, by Reaſon of his Seigniory. Where a Perſon commits Treaſon, his *Eſtate* ſhall *eſcheat* and be forfeited to the King: And when a Tenant in Fee-ſimple committeth Felony, and is attainted, the King ſhall have Year, Day, and Waſte in his Lands, (or rather Year and Day in lieu of Waſte) and afterwards it comes to the Lord by *Eſcheat*. And the Lord may compound with the King, and have the Eſtate preſently. 3 *Inſt.* 111. It has been holden, that a Saving againſt the *Corruption of Blood* in a Statute concerning Felony, doth by Conſequence ſave the Land to the Heir, ſo as not to *eſcheat*; becauſe the *Eſcheat* to the Lord for Felony is only *pro defectu Tenentis*, occaſioned by the Corruption of Blood: But it hath been adjudged, that a Saving againſt the Corruption of Blood in a Statute concerning Treaſon, doth not ſave the Land to the Heir; for in Treaſon the Land goes to the King by Way of immediate Forfeiture. 3 *Inſt.* 47. 1 *Salk.* 85. Inheritances of Things not lying in Tenure, as of Rents, Commons, *&c.* cannot *eſcheat* to the Lord, becauſe there is no Tenure; nor deſcend, by Reaſon the Blood is corrupted: Though they are forfeited to the King by an Attainder of Treaſon, and the Profits of them ſhall be alſo forfeited to the King on Attainder of Felony, during the Life of the Offender; and after his Death 'tis ſaid the Inheritance ſhall be extinguiſhed. 2 *Hawk. P. C.* 449. A Perſon is ſeiſed of Lands in Fee holden of a Lord, his Son is attainted of Treaſon, and the Father dieth, the Land ſhall *eſcheat* to the Lord, and not to the King; who cannot have the Land, becauſe the Son who was attainted never had any Thing to forfeit: But the King ſhall have the *Eſcheat* of all the Lands whereof the Perſon attainted of High Treaſon was ſeiſed, of whomſoever they were holden. 1 *Inſt.* 13. Husband and Wife, Tenants in ſpecial Tail; the Husband is attainted of Treaſon and executed, leaving Iſſue; on the Death of the Wife the Lands ſhall *eſcheat*, becauſe the Iſſue in Tail ought to make his Conveyance by Father and Mother, and from the Father he cannot by Reaſon of the Attainder. *Dyer* 322. If Tenant in Fee-ſimple is attainted of Treaſon, and executed, upon his Death the Fee is veſted in the King, without Office found; yet he muſt bring a *Scire facias* againſt the Tertenants: Lands ſhall never *eſcheat* to a Lord of whom they are holden, until Office found. 3 *Rep.* 10. *Eſcheat* ſeldom happens to the Lord for Want of an Heir to an Eſtate; but when it doth, before the Lord enters, the Homage Jury of the Lord's Court ought to preſent it. 2 *Inſt.* 36. Land ſhall *eſcheat* to the Lord, where Heirs are born after Attainder of Felony. 3 *Rep.* 40. Though if the King pardons a Felon before Conviction, the Lord ſhall not have his Lands by *Eſcheat*; for the Lord hath no Title before Attainder. *Owen* 87. 2 *Nelſ. Abr.* 744. If on Appeal of Death or other Felony, Proceſs is awarded againſt the Party, and hanging the Proceſs he conveyeth away the Land, and after is outlawed, the Conveyance is good to defeat the Lord of his *Eſcheat*: But if where a Perſon is indicted of Felony, hanging the Proceſs againſt him, he conveys away his Land, and afterwards is outlawed, the Conveyance ſhall not prevent the Lord of his *Eſcheat*. 1 Inſt. 13. See *Corruption of Blood.*

Form *of a Writ of* Eſcheat.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: Command* A. B. *that he render to* C. D. *Eſquire, twenty Acres of Land, with the Appurtenances, in*, &c. *which* W. B. *of him held, and which to the ſaid* C. D. *ought to revert and come as his* Eſcheat, *becauſe the ſaid* W. B. *died without Heir*; Or, *becauſe the ſaid* W. *hath Felony committed, for which he was executed, or outlawed*, &c. *as he ſaith. And unleſs*, &c.

Eſcheator, (*Eſchaetor*) Was an Officer appointed by the *Lord Treaſurer*, *&c.* in every County, to make Inqueſts of Titles by *Eſcheat*; which Inqueſts were to be taken by good and lawful Men of the County, impanelled by the Sheriff. *Stat.* 14 *Ed.* 3. *c.* 8. 34 *Ed.* 3. *c.* 13. 8 *H.* 6. *c.* 16. Theſe *Eſcheators* found Offices after the Death of the King's Tenant's, who held by Knight-Service, or otherwiſe of the King; and certified their Inquiſitions into the Exchequer, and *Fitzherbert* called them Officers of Record. *F. N. B.* 100. No *Eſcheator* could continue in his Office above one Year: And whereas before the Statute of *Weſtm.* 1. *cap.* 24. *Eſcheators*, Sheriffs, *&c.* would ſeiſe into the King's Hands the Freehold of the Subjects, and thereby diſſeiſe them; by this Act it is provided that no Seiſure can be made of Lands or Tenements into the King's Hands, before Office found. 2 *Inſt.* 206. And no Lands can be granted before the King's Title is found by Inquiſition. 18 *H.* 6. *c.* 6. The *Office of Eſcheator* is an antient Office, and was formerly of great Uſe to the Crown; but having its chief Dependance on the *Court of Wards*, which is taken away by Act of Parliament, it is now in a Manner out of Date. 4 *Inſt.* 225. There was anciently an Officer called *Eſcheator of the Jews.* Clauſ. 4 Ed. 1. m. 7.

Eſcheccum, A Jury or Inquiſition. *Matt. Pariſ. Anno* 1240.

Eſchipare, To build or equip——*Naves bene* Eſchipatas *bonis & probis Marinellis.* Du Cange. See *Eskippamentum.*

Eſcrow, Is a Deed delivered to a third Perſon, to be the Deed of the Party making it, upon a future Condition, when ſuch a Thing is performed; and then it is to be delivered to the Party to whom made. It is to be delivered to a Stranger, mentioning the Condition; and has Relation to the firſt Delivery. 2 *Roll. Abr.* 25, 26. 1 *Inſt.* 31.

Eſcuage, (*Scutagium*, from the Fr. *Eſcu*, a Shield) Is a Kind of Knight-Service, called *Service of the Shield*, whereby the Tenant was bound to follow his Lord into the Wars at his own Charge. Alſo it has been ſometimes taken for that Duty or Payment, which they who held Lands under this Tenure, were bound to make to the Lord, when they neither went to the Wars, nor provided any other in their Place; being in Lieu of all Services. And ſometimes *Eſcuage* ſignified a reaſonable Aid, demanded and levied by the Lord of his Tenants who held in Knight-Service, *&c.* *Stat.* 12 *Car.* 2. *c.* 24. *F. N. B.* 8. See *Chivalry.*

Eſcurare, To ſcour or cleanſe.——*Purgare vel* Eſcurare *totam Aquam Foſſatorum, &c.* Carta Tho. Epiſcop. B. W. dat. 29 Oct. 4 Ed. 4.

Eſgliſe, (Fr.) A Church, in the old Books a Law Head. *L. Fr. Dict.*

Eſingæ, The *Kings of Kent*, ſo called from the firſt King *Ochta*, who was ſurnamed *Eſe:* He was Grandfather of King *Ethelbert.*

Eskectores, (from the Fr. *Eſcher*) Robbers or Deſtroyers of other Men's Lands and Fortunes. ————*Juratores dicunt etiam quod Latrones, &* Eskectores *de Terra de, &c. Intraverunt, &c.* Plac. Parl. 20 Ed. 1.

Eskipper, (Fr.) to ſhip, and *eskipped* is uſed for ſhipp'd. *Crompt. Jur. Cur.*

Eskippamentum, *Skippage*, Tackle, or Ship Furniture: The Sea-port Towns were to provide certain Ships, *Sumptibus propriis & duplici* Eskippamento. *Sir Rob. Cott.*

Eskippeſon, Shipping, or Paſſage by Sea. Humphrey *Earl of Bucks*, in a Deed dated 13 *Feb.* 22 *H.* 6. covenants with Sir *Philip Chetwind*, his Lieutenant of the Caſtle of *Calais*, to give him Allowance for his Soldiers, *Skippeſon* and *Re-skippeſon, viz.* Paſſage and Re-paſſage by Ship.

Eſnecy, (*Æſnecia, Dignitas primogeniti*) Is a private Prerogative allowed to the eldeſt *Coparcener*, where an Eſtate is deſcended to Daughters for Want of Heir Male, to chuſe firſt after the Inheritance is divided. *Fleta, lib.* 5. *cap.* 10. *Jus Æſneciæ* is *Jus Primogenituræ*; in which Senſe it may be extended to the eldeſt Son, and his Iſſue, holding firſt: In the Statute of *Marlebridge, cap.* 9. it is call'd, Initia *pars Hæreditatis.* Co. Litt. 166.

Eſperons, Spurs, *Eſperons de Or*, Gilt Spurs. 7 *Co. Rep.* 13.

Eſpervarius, (Fr.) *Eſpervier*) A Spar-Hawk, *Chart. Foreſt, cap.* 4.——*Reddit. ſolut.* Willielmo T. *ad Manerium ſuum de, &c. pro omnibus ſervitiis unum* Eſpervarium *ad Feſtum, &c.* Anno 35 H. 6.

Eſplees, (*Expletiæ*, from *Expleo*) Are the Products which Ground or Land yield; as the Hay of the Meadows, the Herbage of the Paſture, Corn of the Arable; Rent and Services, *&c.* And of an Advowſon, the Taking of Tithes in Groſs by the Parſon; of Wood, the Selling of Wood; of an Orchard, the Fruits growing there; of a Mill, the Taking of Toll, *&c.* Theſe and ſuch like Iſſues are termed *Eſplees.* And it is obſerved, that in a Writ of Right of Land, Advowſon, *&c.* the Demandant ought to allege in his Count, that he or his Anceſtors took the *Eſplees* of the Thing in Demand; otherwiſe the Pleading will not be good. *Terms de Ley* 310. Sometimes this Word hath been applied to the Farm, or Lands, *&c.* themſelves.—*Dominus* E. *habebit omnia* Expletias *& Proficua de* Corona *emergentia.* Plac. Parl. 30 Ed. 1.

Eſpouſals, (*Sponſalia*) Are a Contract or mutual Promiſe between a Man and a Woman to marry each other; and where Marriages may be conſummated, *Eſpouſals* go before them. Marriage or Matrimony is ſaid to be an *Eſpouſal de præſenti*, and a Conjunction of Man and Woman in a conſtant Society. *Wood's Inſt.* 57. See *Matrimony.*

Eſquire, (from the Fr. *Eſcu*, and the Lat. *Scutum*, in Greek Σκύτος) which ſignifies an Hide of which *Shields* were anciently made, and afterwards covered: For here in the Time of the *Saxons*, the Shields had a Covering of Leather; ſo that an *Eſquire* was originally he who attending a Knight in Time of War, did carry his *Shield*, whence he was called *Eſcuier* in *French*, and *Scutifer* or *Armiger*, (*i. e.* Armour-bearer) in *Latin.* *Hotoman* ſaith, that thoſe which the *French* call *Eſquires*, were a military Kind of Vaſſals, having *Jus Scuti, viz.* Liberty to bear a Shield, and in it the Enſigns of their Family, in Token of their Gentility or Dignity: But this Addition hath not of long Time had any Relation to the Office or Employment of the Perſon to whom it hath been attributed, as to carrying of Arms, *&c.* but been merely a Title of Dignity, and next in Degree to a Knight. Thoſe to whom this Title is now of Right due, are all the younger Sons of Noblemen, and the eldeſt Sons of ſuch younger Sons; the eldeſt Sons of Knights, and their eldeſt Sons: The Officers of the King's Courts, and of the King's Houſhold; Counſellors at Law; Juſtices of Peace, *&c.* But theſe latter, are *Eſquires* in Reputation; and he who is a Juſtice of Peace, has this Title only during the Time he is in Commiſſion, and no longer, if he be not otherwiſe qualified to bear it. A Sheriff of a County being a ſuperior Officer, retains the Title of *Eſquire* during his Life; in Reſpect of the great Truſt he hath in the Commonwealth. The chief of ſome ancient Families are *Eſquires* by Preſcription; and in late Acts of Parliament for Poll-Money, many wealthy Perſons (commonly reputed to be ſuch) were rank'd among the *Eſquires* of this Kingdom. *Blount.*

Eſquires of the King, Are ſuch who have the Title by *Creation:* Theſe, when they are created, have put about their Necks a Collar of *SS*, and a Pair of *Silver Spurs* is beſtowed on them: And they were wont to bear before the Prince in War, a *Shield* or Lance. There are four *Eſquires of the King's Body*, to attend on his Majeſty's Perſon. *Camb.* 111.

Eſſendi quietum de Tolonio, A Writ to be quit of *Toll*; and lies for Citizens and Burgeſſes of any

City or Town that by Charter or Preſcription ought to be exempted from *Toll*, where the ſame is exacted of them. *Reg. Orig.* 258.

Eſliſors, Are Perſons appointed by a Court of Law, to whom a Writ of *Venire facias* is directed to impanel a *Jury*, on *Challenge* to the *Sheriff* and *Coroners*; who return the Writ in their own Names, with a Panel of the Jurors Names. 15 *Ed.* 4. 24 *pl.* 4.

Eſſoin, (*Eſſonium*, Fr. *Eſſoine*) Signifies an Excuſe for him that is ſummoned to appear and anſwer to an Action, or to perform Suit to a Court-Baron, *&c.* by Reaſon of Sickneſs and Infirmity, or other juſt Cauſe of Abſence. It is a Kind of Imparlance, or craving of a longer Time, that lies in Real, Perſonal and Mix'd Actions: And the Plaintiff as well as the Defendant ſhall be *eſſoined*, to ſave his Default. 1 *Inſt.* 138. The Cauſes that ſerve to *Eſſoin*, and the *Eſſoins* are divers under theſe Heads. 1. *Eſſoin de ultra Mare*, whereby the Defendant ſhall have forty Days. 2. *De Terra Sancta*, where the Defendnnt ſhall have a Year and a Day. 3. *De malo veniendi*, which is likewiſe called the *Common Eſſoin.* 4. *De malo lecti*, wherein the Defendant may by Writ be viewed by four Knights. 5. *De ſervitio Regis. Bract. lib.* 5. *Britton, cap.* 122. *Fleta, lib.* 6. And beſides the common *Eſſoin, de malo veniend. i. e.* by falling ſick in coming to the Court, and other *Eſſoins* abovementioned; there were ſeveral other Excuſes, to ſave a Default in real Actions; as Conſtraint of Enemies, the falling among Thieves, Floods of Water, and breaking down of Bridges, *&c.* 2 *Co. Inſt.* 125. After Iſſue joined in Dower, *Quare Impedit, &c.* one *Eſſoin* only ſhall be allowed. *Stat.* 52 *H.* 3. *c.* 13. And in Writs of Aſſiſe, Attaints, *&c.* after the Tenant hath appeared, he ſhall not be *eſſoined*; but the Inqueſt ſhall be taken by Default. 3 *Ed.* 1. *c.* 42. *Eſſoin ultra Mare* will not be allowed, if the Tenant be within the four Seas; but it ſhall be turned to a Default, *c.* 44. There is no *Eſſoin* permitted for an Appellant. 13 *Ed.* 1. Nor doth *Eſſoin* lie where any Judgment is given; or the Party is diſtrained by his Lands; the Sheriff is commanded to make him appear; after the Party is ſeen in Court, *&c.* 12 *E.* 2. And *Eſſoin de ſervitio Regis* lieth not when the Party is a Woman; in a Writ of Dower; where the Party hath an Attorney in his Suit, *&c. Ibid.* The *Eſſoin Day* in Court is regularly the firſt Day of the Term; but the fourth Day after is allowed of Favour. 1 *Lill.* 540.

An *Eſſoin* is entered thus: A. B. *offers himſelf on the fourth Day againſt* C. D. *in a Plea or Action of*, &c. *and he did not appear, and was ſummoned, &c. Therefore let him be attached, that he be here on the Day*, &c. *And be it known, that the ſaid* A. *hath the ſame Day to appear by his Eſſoin*, &c. Raſt. 520.

Eſſoin de Malo Villæ, Is when the Defendant is in Court the firſt Day; but gone without Pleading, and being afterwards ſurpriſed by *Sickneſs, &c.* cannot attend, but ſends two *Eſſoiners*, who openly proteſt in Court that he is detained by Sickneſs in ſuch a *Village* that he cannot come, *pro lucrari & pro perdere*; and this will be admitted, for it lieth on the Plaintiff to prove whether the *Eſſoin* is true or not.

Eſſoins and Proffers, Words uſed in the Statute 38 *H.* 8. *c.* 21. See *Profer.*

Eſtabliſhment of Dower, Is the Aſſurance or Settlement of *Dower*, made to the Wife by the Huſband, on Marriage: And *Aſſignment of Dower*, ſignifies the Setting it out by the Heir afterwards, according to the Eſtabliſhment. *Brit. cap.* 102, 103.

Eſtache, (From the Fr. *Eſtacher*, to faſten) Is uſed for a Bridge, or Stank of Stone and Timber. *Cowel.*

Eſtandard, or *Standard*, An Enſign for Horſemen in War. See *Standard.*

Eſtate, (Fr. *Eſtat*, Lat. *Jus*) Signifies that Title or Intereſt which a Man hath in Lands or Tenements, *&c.* And *Eſtates* are acquired divers Ways, *viz.* by *Diſcent* from a Father to the Son, *&c. Conveyance*, or Grant from one Man to another; by *Gift* or *Purchaſe*; *Deed* or *Will*: And a Fee-ſimple is the largeſt *Eſtate* that can be in Law. 1 *Lill.* 541. *Eſtates* are *Real*, of Lands, *&c.* or *Perſonal*, of Goods or Chattels; otherwiſe diſtinguiſhed into *Freeholds*, that deſcend to the Heir, and *Chattels* which go to the Executors: Some *Eſtates* are made by the Words of *Deeds*, and others made by *Law*; as an *Eſtate* in *Frank-marriage* given to a Couſin, makes a Gift in Tail. Alſo there is an *Eſtate* that is *implied*, where Tenant in Tail bargains and ſells his Land to a Man and his Heirs; by this he hath an *Eſtate deſcendible*, and determinable upon the Death of the Tenant in Tail. *Co. Litt.* 10 *Rep.* 97. If I give Lands in *Dale* to a certain Perſon for Life, and after to his Heirs or right Heirs, he hath the *Fee ſimple*; and if it be to Heirs Males, he will have an *Eſtate-tail.* 1 *Rep.* 66. A Man grants to one and his Heirs and Aſſigns for his Life, and a Year over; this is an *Eſtate* for Life only. 39 *E.* 3. 25. *Litt.* 46. If a Leaſe be made, and not expreſſed for what number of Years, it is an *Eſtate* at *Will.* 2 *Shep. Abr.* 81. The Word *Eſtate* generally in *Deeds*, Grants, and Conveyances, comprehends the whole in which the Party hath an Intereſt or Property, and will paſs the ſame. 3 *Mod.* 46. A Perſon in Poſſeſſion of an *Eſtate*, Mortgaged in *Fee*, by Will gave it to his two Daughters, and their Heirs; one of them married, and then died: And it being a Queſtion, whether her Share ſhould be held *Real* or *Perſonal Eſtate*, and go to the Heir, or her Husband Adminiſtrator? It was adjudged for the Heir; for here the Mortgaged Land ſhall deſcend as other Lands of Inheritance, and be Subject to the ſame Rules. *Preced. Canc.* 265. In ſuch Caſe, if the Mortgage in *Fee* be paid off, the Money ſhall be conſider'd as Land, and belong to Heirs, as the *Eſtate* in the Land would have done. *Ibid. Perſonal Eſtate* was deviſed by a Man to his Wife for Life, and what ſhe left at her Death, to be divided between his Kindred: He died; and the Widow married again; this Deviſe over was held good in Equity, on a Bill brought to have an Inventory taken of the *Eſtate*, and Security given not to imbezil it. But if the ſame were of ſmall Value, that the Widow could not live thereupon, without ſpending the Stock, it would be otherwiſe. *Ibid.* 71, 72. One by Will gives to his Wife, all his Goods and Furniture at ſuch a Place; the Goods that are there, at the Time of his Death ſhall paſs, tho' they were not there on making of the Will; for the perſonal *Eſtate* is fluctuating until the Teſtator's Death. 2 *Vern.* 688. Some hold, that where Goods of a Houſe or Chamber are deviſed, there ought to be a particular *Inventory* of them, to make thoſe paſs as were there when the *Will* was made.

Eſtoppel, (From the Fr. *Eſtouper*, i. e. *Oppilare, obſtipare*) Is an Impediment or Bar of an Action ariſing from a Man's own Fact: Or where he is forbidden by Law, to ſpeak againſt his own Deed; for by his Act, or Acceptance, he may be *eſtopped* to alledge or ſpeak the Truth. *F. N. B.* 142. *Co. Litt.* 352. If a Perſon is bound in an Obligation by the Name of *A. B.* and is afterwards ſued by that Name on the Obligation; now he ſhall not be received to ſay in Abatement, that he is miſnamed, but ſhall anſwer according to the Obligation, though it be wrong; and foraſmuch as he is the ſame Perſon that was bound, he is *eſtopped* and forbidden in Law to ſay contrary to his own Deed; and otherwiſe he might take Advantage of his own Wrong, which the Law will not ſuffer. *Terms de Ley* 314. If a Man enter into Bond, with Condition to give to another all the Goods which are deviſed to him by his Father; in this Caſe the Obligor is eſtopped to plead that the Father made no Will, but he may plead that he had not any Goods deviſed to him by his Father. 1 *Nelſ. Abr.* 751. In a Deed, all the Parties are eſtopped to ſay any Thing againſt what is contained in it: It eſtops a Leſſee, to ſay that the Leſſor had nothing in the Land, *&c.* And Parties and Privies are bound by *Eſtoppel. Litt.* 58. 1 *Inſt* 352. 4 *Rep.* 53. None but Privies and Parties ſhall regularly have Advantage by *Eſtoppels:* But if a Man makes a Leaſe of Part of a Term whereby he is eſtopped; and after aſſign away the Term, the Aſſignee will be eſtopped alſo. 30 *H.* 6. 2. 4 *Rep.* 56. In *Eſtoppels*, both Parties muſt be eſtopped; and therefore where an Infant or Feme Covert, make a Leaſe, they are not eſtopped to ſay that 'tis not their Deed, becauſe they are not bound by it; and as to them it is void. *Cro. Eliz.* 36. And tho' *Eſtoppels* conclude Parties to Deeds to ſay the Truth; yet Jurors are not concluded, who are ſworn *ad veritatem de & ſuper præmiſſis dicendam:* For they may find any Thing that is out of the Record; and are not eſtopped to find Truth in a ſpecial Verdict. 4 *Rep.* 53. *Lut.* 570. An *Eſtoppel* ſhall bind only the Heir, who claims the Right of him to whom the *Eſtoppel* was. 8 *Rep.* 53. Acceptance of Rent from a Diſſeiſor by the Diſſeiſee, may be an *Eſtoppel:* And a Widow accepting leſs than her Thirds for Dower, is *Eſtoppel*, &c. 2 *Danv. Abr.* 130, 671. Our Books mention three Kinds of *Eſtoppel, viz.* By Matter of *Record*, by Matter in *Writing*, and by Matter in *Pais.* Co. Lit. 352. If a Feoffment be made to two, and their Heirs, and the Feoffor afterwards levies a Fine to them two and the Heirs of one of them; this will be an *Eſtoppel* to the other to Demand Fee-ſimple according to the Deed; for the Fine ſhall enure as a Releaſe. 6 *Rep.* 7. 44. Tenant in Tail ſuffers a Recovery, that his Iſſues may avoid; he himſelf ſhall be eſtopped and concluded by it, and may not demand the Land againſt his own Recovery. 3 *Rep.* 3. The taking of a Leaſe by Indenture of a Man's own Land, whereof he is ſeiſed in Fee, is an *Eſtoppel* to claim the Fee during the Term. *Moor, ca.* 323. *And.* 121. A Leaſe is made to one Man for eighty Years, and then to another by Deed-indented for the ſame Term, this ſecond Leaſe may be good by Way of *Eſtoppel:* And if the firſt determine by Surrender, Forfeiture, *&c.* the ſecond Leſſee will have the Land. But if the ſecond Leaſe be by Deed Poll, it will be void. 1 *Co. Rep.* 155. If a Leſſor at the Time of making the Leaſe, hath nothing in the Land, but after he gets it by Purchaſe or Diſcent, it is a good Leaſe by *Eſtoppel. Dyer* 256. *Plowd.* 344. 1 *Inſt.* 47. A Recital in a Deed ſhall not eſtop a Perſon, unleſs it be of a particular Fact, or where it is material, when it may be *Eſtoppel. Cro. Eliz.* 362. The Lord by Deed indented, reciting that his Tenant holds of him by ſuch Services, whereas he doth not, confirms to the Tenant, ſaving his Services; 'tis no *Eſtoppel* to the Tenant. 35 *H.* 6. 33. *Plowd.* 130. If one do make a Deed by *Dureſs* of Impriſonment, and when he is at large makes a Defeaſance to it; he is eſtopped to ſay it was *per Dureſs. Bro. Defeaſ.* 17. Where the Condition of a Bond is in the Particularity, as to enfeoff *J. S.* of the Manor of *D.* or to pay ſuch a Sum of Money as he ſtands bound to pay to *W. S.* or to ſtand to the Sentence of *J. S.* in a Matter of Tithes in Queſtion between them; here the Party is eſtopped to deny any of theſe Things, which in the Condition he did grant: But if a Condition be in the Generality, to enfeoff one of all his Lands in *D.* or to be nonſuit in all Actions, *&c.* it is no *Eſtoppel. Dyer* 196. 18 *Ed.* 4. 54. If a Man in pleading confeſs the Thing he is charged with, he cannot afterwards deny it: Though a Plaintiff ſhall not be eſtopped to alledge any Thing againſt that which before he hath ſaid in his Writ, or Declaration; and one may not be eſtopped by the Record upon which he was nonſuited. 21 *H.* 7. 24. 2 *Leon.* 3. 17. An *Eſtoppel* ought to be certain and Affirmative, and a Matter alledged that is not traverſable, ſhall not eſtop; one may not be eſtopped by Acceptance, before his Title accrued; an *Eſtoppel* muſt be inſiſted and relied upon; and where there is *Eſtoppel* againſt *Eſtoppel*, it puts the Matter at large. 1 *Inſt.* 352. *Hob.* 207. *Eſtoppels* are to be pleaded relying on the *Eſtoppel*; without demanding Judgment *ſi Actio, &c.* 4 *Rep.* 53.

Eſtovers, (Fr. *Eſtover*, from the Verb *Eſtoffer*) Signifies to ſupply with Neceſſaries; and is generally uſed in the Law for Allowances of Wood made of Tenants, comprehending *Houſe-bote, Hedge-bote* and *Plough-bote*, for Repairs, *&c.* And in ſome Manors, the Tenants pay a certain ſmall annual Rent, for *Eſtovers* out of the Lord's Woods *Weſtm.* 2. *cap.* 25. 20 *Car.* 2. *cap.* 3. This Word hath been taken for Suſtenance; as *Bracton* uſes it, for that Suſtenance or Allowance, which a Man committed for Felony is to have out of his Lands or Goods for himſelf and his Family during his Impriſonment. *Bract. lib.* 3. *tract.* 2. *cap.* 18. And the Stat. 6 *Ed.* 1. *cap.* 3. applies it to an Allowance in Meat, Clothes, *&c.* In which Senſe, it has been uſed for a Wife's Alimony. See *Common of Eſtovers.*

Eſtray, (*Extrahura*, from the old Fr. *Eſtrayeur*) Is any Beaſt that is not wild, found within a Lordſhip, and not owned by any Man; *pecus quod elapſum à cuſtode campos pererrat, ignoto Domino:* In which Caſe if it be tried and proclaimed according to Law in the two next Market-Towns on two Market-Days, and is not claimed by the Owner within a Year and a Day, it belongs to the Lord of the Liberty. *Brit. cap.* 17. And Swans may be *Eſtray*, as well as Beaſts; and are to be proclaimed, *&c.* 1 *Roll. Abr.* 878. If the Beaſt ſtray to another Lordſhip within the Year, after it hath been an *Eſtray*, the firſt Lord cannot retake it, for until the Year and Day be paſt, and Proclamation made as aforeſaid, he hath no Property; and therefore the Poſſeſſion of the ſecond Lord is good againſt him. *Wood's Inſt.* 213. *Cro. Eliz.* 716. If the Cattle were never proclaimed, the Owner may take them at any Time: And where a Beaſt is proclaimed as the Law directs, if the Owner claims it in a Year and a Day, he ſhall have it again; but muſt pay the Lord for Keeping. 1 *Rol. Abr* 879. *Finch* 177. An Owner may ſeiſe an *Eſtray*, without telling the Marks, or proving the Property, (which may be done at the Trial, if conteſted) and tendering Amends generally is good in this Caſe, without ſhewing the particular Sum; becauſe the Owner of the *Eſtray* is no Wrong Doer, and knows not how long it has been in the Poſſeſſion of the Lord, *&c.* which makes it different from Treſpaſs, where a certain Sum muſt be tendered. 2 *Salk* 686. In Caſe of an *Eſtray*, the Lord ought to make a Demand of what the Amends ſhould be for the Keeping; and then if the Party thinks the Demand unreaſonable, he muſt tender ſufficient Amends; but if what he tenders is not enough, the Lord ſhall take Iſſue, and 'tis to be ſettled by the Jury. *Noy* 144. *Trin.* 5 *Ann.* A Beaſt *Eſtray* is not to be uſed in any Manner, except in Caſe of Neceſſity; as to milk a Cow, or the like; but not to ride an Horſe. *Cro. Jac.* 148. 1 *Roll.* 673. *Eſtrays of the Foreſt* are mentioned in the Statute of 27 *H.* 8. *cap.* 7. The *King's Cattle* cannot be *Eſtrays* or forfeited, *&c.*

Eſtreat, (*Extractum*) Is uſed for the true Copy or Note of ſome original Writing or Record, and eſpecially of *Fines, Amercements*, &c. impoſed in the Rolls of a Court, to be levied by the Bailiff or other Officer. *F. N. B.* 57, 76. *Stat. Weſtm. c.* 8. Juſtices, Commiſſioners, *&c.* are to deliver their *Eſtreats* into the *Exchequer* yearly after *Michaelmas:*

And Fines to have Writs, which ſhall be entered in the *Eſtreat*, in Order as they are entered in the Chancery-Rolls, *&c.* 51 *H.* 3. 15 *E.* 2. *c.* 2. Theſe *Eſtreats* relate to Fines for Crimes and Offences, Defaults and Negligences, of Parties in Suits and Officers, Non-appearance of Defendants, and Jurors, *&c.* And all forfeited Recognizances are to be firſt *eſtreated* into the Exchequer, by Sheriffs of Counties; on which Proceſs iſſues to levy the ſame to the Uſe of the King. *Stat.* 22 *&* 23 *Car.* 2. *cap.* 22. *Eſtreats* are to be levied on the right Perſons: And Sheriff's *Eſtreats* muſt be in two Parts, indented and ſealed by the Sheriff, and two Juſtices of the Peace; who are to view them, and one of them is to remain with the Sheriff, and the other with the Juſtices. 11 *H* 7. *c.* 15. The *Eſtreats* of Fines, at the Quarter-Seſſions, are to be made by the Juſtices; and to be double, one whereof is to be delivered to the Sheriff by Indenture. 14 *R.* 2. *cap.* 11. Fines, Poſt-Fines, Forfeitures, *&c.* muſt be *eſtreated* into the Exchequer twice a Year, on Pain of 50 *l.* And Officers are to deliver in their Returns of *Eſtreats* upon Oath. 22 *&* 23 *Car.* 2. 4 *&* 5 *W. & M.* 'Tis the Courſe of the Court of B. *R.* to ſend the *Eſtreats* twice a Year into the Exchequer, *viz.* on the laſt Day of the two iſſuable Terms; but in extraordinary Caſes there may be a Rule to *eſtreat* them ſooner. 1 *Salk.* 55. Amercements are not uſually diſcharged on Motion, and there ought to be a *Conſtat* of the *Eſtreat*; though the Court may give Leave to the Sheriff to compound them. *Ibid.* 54. 1 *Nelſ. Abr.* 207.

Eſtreciatus, Is a Word ſignifying Streightened. —— *Inquirendum eſt de viis Domini Regis* Eſtrechiatis. *R. Hoveden*, *p.* 783.

Eſtrepe, (Fr. *Eſtropier*) To make Spoil in Lands to the Damage of another, as of the Reverſioner, *&c.*

Eſtrepement (*Eſtrepamentum*, from the Fr. *Eſtropier*, *Mutilare*, or from the Lat. *Extirpare*) Is where any Spoil is made by Tenant for Life, upon any Lands or Woods, to the Prejudice of him in Reverſion; and alſo ſignifies to make Land barren by continual Ploughing. *Stat.* 6 *Ed.* 1. *cap.* 13. It ſeems by the Derivation, that *Eſtrepement* is the unreaſonable Drawing away the Heart of the Ground, by Ploughing and Sowing it continually, without Manuring or other good Husbandry, whereby it is impaired: And yet *Eſtropier* ſignifying *Mutilare*, may no leſs be applied to the cutting down Trees, or lopping them farther than the Law allows. In ancient Records, we often find *Vaſtum & Eſtrepamentum facere:* And this Word is uſed for a Writ, which lies in two Caſes; the one, when a Perſon having an Action depending, as a *Formedon*, Writ of Right, *&c.* ſues to prohibit the Tenant from making Waſte, during the Suit; the other is for the Demandant, who is adjudged to recover Seiſin of the Land in Queſtion, before Execution ſued by the Writ *Habere facias Poſſeſſionem*, to prevent Waſte being made till he gets into Poſſeſſion. *Reg. Orig.* 76. *Reg. Judic.* 33. *F. N. B* 60, 61. The Writ of *Eſtrepement* lies properly where the Plaintiff in a real Action, ſhall not recover Damages by his Action; and it as it were ſupplies Damages, for Damages and Coſts may be recovered for Waſte, after the Writ of *Eſtrepement* is brought. A Writ of *Eſtrepement* was delivered to the Tenant in Formedon, who notwithſtanding committed Waſte, and thereupon the Demandant counted upon this Writ; the Tenant pleaded *Non fecit Vaſtum contra Prohibitionem*; and it was found by Verdict that he did, whereupon the Demandant the Plaintiff, had his Damages and Coſts. *Moor* 100. This Writ may be ſued out with the Original in the Action; and in ſome Caſes may be brought as well after, as before Judgment, where Execution is not had; but is uſually before Judgment. 2 *Inſt.* 328. If Tenants commit Waſte in Houſes aſſigned a Feme for Dower, on her bringing Action of Dower, Writ of *Eſtrepement* lies. 5 *Rep.* 115. It alſo lies in Caſes of Diſſeiſins: And where a Writ of Error is brought to reverſe a Common Recovery, whilſt the Writ is depending, *Eſtrepement* may be awarded to the Tenant; likewiſe on a *Scire facias* brought againſt the Tertenants, in Reverſal of a Recovery, it will lie. *Cro. Eliz.* 114. *Moor* 622. But pending a Writ of Partition between Coparceners, if the Tenant commit Waſte, this Writ will not be granted; becauſe there is equal Intereſt between the Parties, and the Writ will not lie, but where the Intereſt of the Tenant is to be diſproved. *Goldsb.* 50. 2 *Nelſ. Abr.* 754. Writ of *Eſtrepement* is directed to the Tenant and his Servants, or to the Sheriff: And if it be directed to the Tenant and his Servants, and they are duly ſerved with it, if they afterwards commit Waſte, they may be committed to Priſon: But it is ſaid not to be ſo, when directed to the Sheriff, becauſe he may raiſe the *Poſſe Comitatus* to reſiſt them who make Waſte. *Hob.* 85. Though it hath been adjudged, that the Sheriff may likewiſe impriſon Offenders, if he be put to it; and that he may make a Warrant to others to do it. 5 *Rep.* 115. 2 *Inſt.* 329. In the Chancery, on filing of a Bill, and before Anſwer, the Court will grant an Injunction to ſtay Waſte, *&c.* 1 *Lill.* 547. The Writ of *Eſtrepement* commands the Sheriff; *That to the Meſſuage*, &c. *perſonally coming, he do Order that Waſte or Eſtrepement of the ſaid Meſſuage, againſt the Form of the Statute in this Caſe made and provided, be not made pending the Plea*, &c

Etheling or **Ætheling**, (*Sax.*) Signifies Noble, and among the Engliſh *Saxons*, it was the Title of the Prince, or the King's eldeſt Son. *Camden.* See *Adeling.*

Evaſion, (*Evaſio*) Is a ſubtle Endeavouring to ſet aſide Truth, or to eſcape the Puniſhment of the Law; which will not be endured. If a Perſon ſays to another that he will not ſtrike him, but will give him a Pot of Ale to ſtrike firſt; and accordingly he ſtrikes, the Returning of it is puniſhable; and if the Perſon firſt ſtriking be killed, it is Murder; for no Man ſhall evade the Juſtice of the Law, by ſuch a Pretence to cover his Malice. 1 *H. P. C.* 81. No one may plead Ignorance of the Law to *evade* it, *&c.*

Evenings, The Delivery at *Even* or Night of a certain Portion of Graſs, or Corn, *&c.* to a Cuſtomary Tenant, who performs the Service of Cutting, Mowing or Reaping for his Lord, given him as a Gratuity or Encouragement. *Kennet's Gloſſ.*

Evesdroppers, Are ſuch Perſons as ſtand under the *Eves* or Walls or Windows of a Houſe, by Night or by Day, to harken after News, and carry it to others, and thereby cauſe Strife and Contention in the Neighbourhood. *Terms de Ley* 317. They are called evil Members of the Common-wealth; and by the Statute of *Weſtm.* 1. *c.* 33. they may be puniſhed, either in the *Court-Leet* by Way of Preſentment, and Fine; or in the *Quarter-Seſſions* by Indictment, and binding to the good Behaviour. *Kitch.* 11.

Eviction, (From *Evinco* to overcome) Is a Recovery of Land, *&c.* by Law. If Land is evicted, before the Time of Payment of Rent on a Leaſe, no Rent ſhall be paid by the Leſſee. 10 *Rep.* 128. Where Lands taken on Extent are evicted or recover'd by better Title, the Plaintiff ſhall have a new Execution. 4 *Rep.* 66. If a Widow is evicted of her Dower or Thirds, ſhe ſhall be endowed in the other Lands of the Heir. 2 *Danv. Abr.* 670. And if on an Exchange of Lands, either Party is evicted of the Lands given in Exchange, he may enter on his own Lands. 4 *Rep.* 121.

Evidence, (*Evidentia*) Is uſed in the Law for ſome *Proof*, by Teſtimony of Men on Oath, or by Writings or Records. It is called *Evidence*, becauſe thereby the Point in Iſſue in a Cauſe to be tried, is to be made *evident* to the Jury; for *Probationes debent eſſe* Evidentes & *Perſpicuæ*. Co. Lit. 283. The *Evidence* to a Jury ought to be upon the Oaths of Witneſſes; or upon Matters of Record, or by Deeds proved, or other like authentical Matter. 1 *Lill. Abr.* 547. And *Evidence* containeth Teſtimony of Witneſſes, and all other Proofs to be given and produced to a Jury for the Finding of any Iſſue joined between Parties. 1 *Inſt.* 283. As to Proof by Witneſſes, they cannot teſtify a Negative; and the Common Law required no certain Number of Witneſſes, though they are required by Statute in ſome Caſes: The Teſtimony of one ſingle *Evidence* is ſufficient for the King in all Cauſes, except for Treaſon; where there muſt be two Witneſſes to the ſame Overt-Act, &c. In all other criminal Matters, one *Evidence* is enough; and to a Jury one Witneſs is ſufficient. 3 *Inſt.* 20. *Mich.* 23 *Car. B. R. Stat.* 7 *W.* 3. *cap.* 3. And ſometimes violent Preſumption will be admitted for *Evidence*, without Witneſſes; as where a Perſon is run through the Body in a Houſe, and one is ſeen to come out of the Houſe with a bloody Sword, &c. But on this the Court ought not to judge haſtily. 1 *Inſt.* 6, 673. And though preſumptive and circumſtantial *Evidence* may be ſufficient in Felony; it is not ſo in Treaſon. *State Trials*, *Vol.* 4. *p.* 307. Where Neceſſity requires, Witneſſes may be examined apart in Court, 'till they have given all they had to ſay in *Evidence*; ſo that what one has depoſed, may not induce another to give his *Evidence* to the ſame Effect. *Forteſc.* 54. The King cannot be a Witneſs under his Sign Manual, &c. 2 *Rol. Abr.* 686. Though it has been allowed he may, in Relation to a Promiſe made in Behalf of another. *Hob.* 213. A Peer produced as an *Evidence*, ought to be ſworn. 3 *Keb.* 631. It is no Exception to an *Evidence* that he is a Judge, or a Juror, to try the Perſon; for a Judge may give *Evidence* going off from the Bench. 2 *Hawk. P. C.* 432. And a Juror may be an *Evidence* as to his particular Knowledge; but then it muſt be on Examination in open Court, not before his Brother Jurors. 1 *Lill.* 552. Members of Corporations ſhall be admitted or refuſed to give *Evidence* in Actions brought by Corporations, as their Intereſt is ſmall or great; whereby it may be judged whether they will be partial or not. 2 *Lev.* 231, 241. But they will not generally be admitted; though Inhabitants not free of the Corporation may be good Witneſſes for the Corporation, as their Intereſt is not concerned; and Members may be disfranchiſed on theſe Occaſions. *Ibib.* 236. In Actions againſt Church-wardens and Overſeers of the Poor for Recovery of Money Miſpent on the Pariſh Account, the *Evidence* of the Pariſhioners, not receiving Alms, ſhall be allowed. *Stat.* 3 & 4 *W.* & *M. cap.* 11. And in Informations or Indictments for not repairing Highways and Bridges, the *Evidence* of the Inhabitants of the Town, Corporation, &c. where ſuch Highways lie ſhall be admitted. 1 *Ann. cap.* 18. A Party intereſted in the Suit; or a Wife for or againſt her Husband, a Husband againſt the Wife, (except in Caſes of Treaſon) may not be Witneſſes. 4 *Inſt.* 279. Yet it has been adjudged that a Wife may be admitted as an *Evidence* for the Husband on her being ſeduced to live with an Adulterer, againſt the Adulterer; and ſhe may be a Witneſs to prove a Cheat upon her and her Husband. *Sid.* 431. Kinſmen, though never ſo near, Tenants, Servants, Maſters, Attornies for their Clients, and all others that are not infamous, and which want not Underſtanding or are not Parties in Intereſt, may give *Evidence* in a Cauſe; tho' the Credit of Servants is left to the Jury. 2 *Rol. Abr.* 685. 1 *Vent.* 243. A Counſellor, Attorney, or Solicitor, is not to be examined as an *Evidence* againſt their Clients, becauſe they are obliged to keep their Secrets; but they may be examined, as to any Thing of their own Knowledge before retained, not as Connſel or Attorney, &c. 1 *Ventr.* 97. The Bail cannot be an *Evidence* for his Principal. *State Tr.* If the Plaintiff makes one a Defendant in the Suit, on Purpoſe to impeach his Teſtimony, under a Pretence of his being a Party in Intereſt, he may nevertheleſs be examined *de bene eſſe*; and if the Plaintiff prove no Cauſe of Action againſt him, his *Evidence* ſhall be allowed in the Cauſe. 2 *Lill. Abr.* 701. Alſo if where a Man makes himſelf a Party in Intereſt, after a Plaintiff or Defendant has an Intereſt in his *Evidence*, he may not by this deprive them of the Benefit of his Teſtimony. *Skinner's Rep.* 586. One that hath a Legacy given him by Will, is not a good Witneſs to prove the Will; but if he releaſe his Legacy, he may be a good *Evidence*. *Ibid.* 704. It is the ſame of a Deed, he that claims any Benefit by it, may not be an *Evidence* to prove that Deed, in Regard of his Intereſt: And a Perſon any Ways concerned in the ſame Title of Land in Queſtion, will not be admitted as *Evidence*. *Ibid.* 705. But it has been held that an Heir apparent may be a Witneſs concerning a Title of Land; and yet a Remainder-man, who hath a preſent Intereſt, cannot. 1 *Salk.* 385. A Legatee cannot be a Witneſs to the Will, becauſe the Legacy is deviſed to him; though if ſuch Legatee be permitted to be ſworn and examined, the Counſel cannot afterwards except againſt his *Evidence*. 1 *Ld. Raym.* 730. The Son of a Legatee, is no Witneſs to a Will in the Spiritual Court; nevertheleſs it is held, he may be a good *Evidence* to prove a nuncupative Will, within the Intent of the Statute of Frauds. *Ibid.* 85. A Grantee, who is a bare Truſtee, 'tis ſaid is a good Witneſs to prove the Execution of the Deed made to himſelf. 1 *P. Williams* 290. If an Action is brought againſt many Perſons for taking of Goods, one of them concerned may be admitted as an *Evidence* againſt the Reſt. *Comberb.* 367. See 1 *Mod.* 282. In criminal Caſes, as of Robbery on the Highway, in Action againſt the Hundred; in Rapes of Women, or where a Woman is married by Force, &c. a Man or a Woman may be an *Evidence* in their own Cauſe. 1 *Vent.* 243. And in private notorious Cheats, a Perſon may give *Evidence* in his own Cauſe, where no Body elſe can be a Witneſs of the Circumſtances of the Fact, but he that Suffers. 1 *Salk.* 286. Upon an Information on the Statute againſt Uſury, he that borrows the Money, after he hath paid it, may be an *Evidence*; but not before. *Raym.* 191. An Alien Infidel, may not be an *Evidence*; but a *Jew* may, and be ſworn on the *Old Teſtament*. 1 *Inſt.* 6. A Quaker ſhall not be permitted to give *Evidence* in any criminal Cauſe: Though on other Occaſions, his ſolemn Affirmation ſhall be accepted inſtead of an Oath. *Stat.* 7 & 8 *W.* 3. *cap.* 34. Perſons *non ſanæ Memoriæ*; thoſe that are attainted of Conſpiracy, or in a *Præmunire* upon the Statute 5 *Eliz.* *Popiſh* Recuſants convict, on the Stat. 3 *Jac.* 1. *c.* 5. are diſabled to give *Evidence*. So Perſons convicted of Felony, Perjury, &c. And if one by Judgment hath ſtood in the Pillory, or been whipp'd; for this Infamy he ſhall not be admitted to give *Evidence*, whilſt the Judgment is in Force: But the Record of Conviction muſt be produced, on objecting againſt his Teſtimony; and the Witneſs ſhall not be asked any Queſtion to accuſe himſelf, though his Credit may be impeached by other *Evidences*, as to his Character in general, ſo as not to make Proof of particular Crimes, whereof he hath not been convicted. 3 *Inſt.* 108, 219. 3 *Lev.* 426. If after a Man hath ſtood in the Pillory, &c. he be pardoned, he may be an *Evidence*: And notwithſtanding Judgment of the Pillory infers Infamy at Common Law; by the Civil and Canon Law it imports no Infamy, unleſs the Cauſe for which the Perſon was convicted was infamous; and therefore ſuch may be a good Witneſs to a Will, if not convicted of any infamous Act.

3 *Lev.* 426, 427. It has been held, that 'tis not ſtanding in the Pillory, diſables a Perſon to give *Evidence*; but ſtanding there upon a Judgment for an infamous Crime, as Forgery, *&c.* If for a Libel, a Man may be a Witneſs. 5 *Mod.* 74. 3 *Nelſ. Abr.* 557. A Man is convicted of Felony, and afterwards pardoned, he may be a good *Evidence. Raym.* 369. So where burnt in the Hand, which is *quaſi* a Statute-Pardon; and 'tis ſaid 'tis Burning in the Hand reſtores the Offender to his Credit. *Ibid.* 330. A Perſon who was condemned to be hanged for Burglary, but having a Pardon for Tranſportation, hath been allowed to be a good *Evidence.* 5 *Mod.* 18. One outlawed for Treaſon and pardoned, may be an *Evidence. State Trials, Vol.* 3, 515. Perſons acquitted, or guilty of the ſame Crime, (while they remain unconvicted) may be *Evidence* againſt their Fellows. *Kel.* 17. Though no *Evidence* ought to be given of what an Accomplice hath ſaid, who is not in the ſame Indictment. *State Trials, Vol* 2. 414. An Informer may be a Witneſs, though he is to have Part of the Forfeiture, where no other Witneſſes can be had. *Wood's Inſt.* 598. A Witneſs ſhall not be examined where his *Evidence* tends to clear or accuſe himſelf of a Crime. *State Trials, Vol.* 1. 557. And a Witneſs ſhall not be croſs examined till he hath gone through the *Evidence* on the Side wherein produced. *Ibid. Vol.* 2. 772. The Court is to examine the Witneſſes, and not the Priſoner or Proſecutors. *Ibid. Vol.* 1. 143. An *Evidence* ſhall not be permitted to read his *Evidence*; but he may look on his Notes to refreſh his Memory. *Ibid. Vol.* 4 45. An *Evidence* may not recite his *Evidence* to the Jury, after gone from the Bar, and he hath given his *Evidence* in Court; if he doth, the Verdict may be ſet aſide. *Cro. Eliz.* 159. One that is to be an *Evidence* at a Trial, ought not to be examined before the Trial, but by the Conſent of both Parties, and a Rule of Court for that Purpoſe: But if a Witneſs is not able to attend the Trial, a Judge may excuſe his Non-appearance, and certify his Examination; though an Examination ought not to be read, where the *Evidence* himſelf may be produced. *State Trials, Vol.* 1. 526. If a Perſon who gave *Evidence*, in a former Trial, be dead; upon Proof of his Death, any Perſon who heard him give *Evidence*, may be admitted to give the ſame *Evidence* between the ſame Parties; but a Copy of the Record of the Trial when the *Evidence* was given ought to be produced. 3 *Inſt.* 2. *Lill. Abr.* 705. A Witneſs by Hearſay of a Stranger, ſhall not be allowed; except perhaps to confirm the *Evidence* of a Witneſs that ſpoke of his Knowledge. *Wood's Inſt.* 644. And *Evidence* given at one Trial, has been held not to be *Evidence* at another's Trial. *State Trials, Vol.* 2. 308, 337. No *Evidence* is neceſſary in paſſing a *Bill of Attainder*, but private Satisfaction to every one's Conſcience is ſufficient. *Ibid. Vol.* 1. 676. But the ſame *Evidence* is requiſite on an Impeachment in Parliament, as in private Courts. *Ibid. Vol.* 4. 311, 318. Members of either Houſe of Parliament may be Witneſſes on Impeachments. *Ibid. Vol.* 2. 632. *Evidence* cannot ſupply a Defect in the Charge againſt a Criminal. *Ibid. Vol.* 720. No *Evidence* ought to be produced againſt a Man in a Trial for his Life, but what is given in his Preſence. *Ibid. Vol.* 4. 227. And *Evidence* ſhall not be given againſt the Priſoner for any other Crime than that for what proſecuted. *Ibid. Vol.* 3. 947. A Priſoner may bring *Evidence* to prove that the Witneſſes gave a different Teſtimony before a Juſtice of Peace, or at another Trial: Though he may not call Witneſſes to diſprove what his own *Evidences* have ſworn. *Ibid. Vol.* 2. 623, 792. And no Objection can be made to the *Evidence* after Verdict given. *Vol.* 4. 35. It is juſtifiable to maintain or ſubſiſt an *Evidence*; but not to give him any Reward, for this, if proved, will avoid his Teſtimony. *Ibid. Vol.* 2. 470. A Witneſs ſhall not be examined to any Thing that does not relate to the Matter in Iſſue. *Ibid Vol.* 2. 343. And where an Iſſue is not perfect, no *Evidence* can be applied, nor can the Juſtices proceed to Trial. *Brownl.* 2. 47, 435. If *Evidence* doth not warrant and maintain the ſame Thing that is in Iſſue, the *Evidence* is defective, and may be demurred upon; but proving the Subſtance is ſufficient. *Trials per pais* 425. *Evidence* may be given of Facts before and after the Time they are laid in the Indictment. And where a Place is laid only for a *Venue* in an Indictment or Appeal, (and not made Part of the Deſcription of the Fact) Proof of the ſame Crime may be made at any other Place in the ſame County; and after a Crime hath been proved in the County where laid, *Evidence* may be given of other Inſtances of the ſame Crime in another County, to ſatisfy the Jury. 2 *Hawk. P. C.* 436. But where a certain Place is made Part of the Deſcription of the Fact againſt the Defendant, the leaſt Variation as to ſuch Place between the *Evidence* and Indictment is fatal. *Ibid.* 435. It hath been alſo adjudged, that where an Indictment ſets forth all the ſpecial Matter in Reſpect whereof the Law implies Malice, Variance between the Indictment and *Evidence* as to the Circumſtances of the Fact doth not hurt; ſo that the Subſtance of the Matter be found by the *Evidence.* 2 *Hawk.* 438. An *Evidence* againſt the King in Treaſon, or Felony, for the Criminal, was not to be examined on Oath by the Common Law: But by Statute, Witneſſes for a Priſonear are to be ſworn, as in Caſe for the King, and Proceſs for their Appearance is to be taken out. 3 *Inſt.* 79. *Stat.* 7 *W.* 3. 1 *Ann.* If a Witneſs ſerved with Proceſs in a Civil Cauſe refuſe to appear, being tendered reaſonable Charges, and having no lawful Excuſe, Action on the Caſe lies againſt him, whereon 10*l.* Damages, and other Recompence to the Party ſhall be recovered; and a Feme Covert not appearing, Action may be brought againſt the Huſband and her. *Stat.* 5 *Eliz. cap.* 9. 1 *Leon.* 112. Where any Witneſs accepts of a Shilling, and has a Promiſe of the Payment of his Charges, ſuch Acceptance is ſufficient to maintain any ſuch Action: But without that the Party cannot ſupport an Action upon the Statute, for not giving *Evidence*, but muſt tender the Witneſs his reaſonable Charges, at a reaſonable Time before the Trial. *W. Jones* 430. In a criminal Cauſe, if a Witneſs refuſe to appear and give *Evidence*, being ſerved with Proceſs, the Court will put off the Trial, and grant Attachment againſt him; and as refuſing to give *Evidence* is a great Contempt, the Party may be committed and fined. 1 *Salk.* 278. Preventing *Evidence* to be given againſt a Criminal, is puniſhable by Fine and Impriſonment; and a Perſon was fined one thouſand Marks in ſuch a Caſe. *Hill.* 1663. *B. R.* Perſons diſſuading a Witneſs from giving *Evidence*, &c. And Jurors or others diſcloſing *Evidence* given, are likewiſe Offences puniſhed by Fine and Impriſonment. 1 *Hawk.* 59. The Burthen of proving lies on the Plaintiff; and the Preſumption ſhall ſtand, until the contrary appears: Tho' that which plainly appeareth, need not be given in *Evidence.* 7 *Rep.* 40. 1 *Inſt.* 233. The Defendant's Counſel is to conclude by Way of Anſwer to the *Evidence* given to the Jury by the Plaintiff's Counſel: But he who doth begin to maintain the Iſſue to be tried, ought to conclude and ſum up the *Evidence* given, which is no more than to put the Jury in Mind how he hath proved his Cauſe. 1 *Lill.* 551.

Evidence by Records and Writings, Is where Acts of Parliament, Statutes, Judgments, Fines and Recoveries, Proceedings of Courts, and Deeds, *&c.* are admitted as *Evidence.* A general Act of Parliament may be given in *Evidence*, and need not be pleaded; and of theſe the printed Statute-Book is good *Evidence:* But in the Caſe of a private Act, a Copy of it is to be examined by the Records of Parliament, and it is to be pleaded. *Trials per pais* 117, 232. The Statute of Limitations, &c. may be given in *Evidence.* 1 *Salk.* 278. On *Nil debet* pleaded, this Statute may be given in *Evidence*; but 'tis ſaid not upon *Non Aſſumpſit.* 3 *Salk.* 154. Journals and other Proceedings in the Houſe of Commons have been held to be no *Evidence. State Trials, Vol.* 3. 470. Though it is otherwiſe, *Vol.* 3. 800. A Hiſtory of *England*, or printed Trial, may not be read as *Evidence.* 1 *Lill.* 557. *Camden's Britannia* was not allowed as *Evidence:* But it has been held, that an Hiſtory may be *Evidence* of the general Hiſtory of the Realm, though not of a particular Cuſtom, &c. *Mich.* 7 *W.* 3. *B. R. Skinner's Rep.* 623. An Exemplification of the Inrolments of Letters Patent under the Great Seal, may be pleaded in *Evidence.* 3 *Inſt.* 173. Records and Inrolments prove themſelves; and a Copy of a Record or Inrolment ſworn to, may be given in *Evidence.* 1 *Inſt.* 117, 262. A Tranſcript of a Record in another Court, may be given in *Evidence* to a Jury. 1 *Lill Abr.* 551. There is a Difference between Pleading a Record, and giving the Record in *Evidence*; if it be pleaded, it muſt be *ſub pede Sigilli*, or the Judges cannot judge thereof: Tho' where it is given in *Evidence*, if it be not under Seal, the Jury may find the ſame, if they have other good Matter of Inducement to prove it. *Style's Rep.* 22. A Fine or Recovery may be given in *Evidence*, without vouching the Roll of the Recovery; for the Part indented is the uſual *Evidence* that there is ſuch a Fine: But it is ſaid the Fine ought to be ſhewed with the Proclamations under Seal. 10 *Rep.* 92. 2 *Roll. Abr.* 574. A Record of an inferior Court, hath been rejected in *Evidence*, and the Party put to prove what was done: And Proceedings of County-Courts, Courts-Baron, &c. may be tried by a Jury; for it hath been adjudged that they cannot be proved by the Rolls, but by Witneſſes. *Lit.* 75. But Court-Rolls of a Court-Baron, when ſhewn are good *Evidence*; and in ſome Caſes, Copies of the Court-Rolls have been allowed as *Evidence*; and in others not. *Trials per pais* 178, 228. A Copy of Copyhold Lands may be given in *Evidence*, where the Rolls are loſt. *Mich.* 15 *Car. B. R.* Inrolment of a Deed is proved on certifying it by an examined atteſted Copy; though Inrolment of a Deed which needs no Inrolment, or the Eſtate doth not paſs by it, is only *Evidence* to ſome Purpoſes. 3 *Lev.* 387. An ancient Deed proves itſelf, where Poſſeſſion has gone accordingly: But later Deeds muſt be proved by Witneſſes. 1 *Inſt.* 6. If all the Witneſſes to a Deed are dead, continual and quiet Poſſeſſion is preſumptive *Evidence* of the Truth of it; yet it may receive farther Credit by Compariſon of Hands and Seals. *Wood's Inſt.* 599. When Witneſſes to Deeds are dead, their Hand-writing muſt be proved. 2 *Inſt.* 118. And where there are ſeveral Witneſſes to a Deed, and they are all dead but one, a *Subpœna* muſt be taken out againſt the living Man, and ſtrict Enquiry made after him, and Affidavit is to be made that he cannot be found; before the dead Men's Hands are to be proved. 1 *Lill.* 556. An old Deed proved to have been found among Deeds and *Evidences* of Land, may be given in *Evidence* to a Jury; tho' the executing of it cannot be proved and made out. *Trin.* 9 *W.* 3. *B. R.* 3 *Salk.* 153. A Deed may be good *Evidence*, though the Seal is broken off: And where a Deed is burnt, &c. the Judges may allow it to be proved by Witneſſes, that there was ſuch a Deed, and this be given in *Evidence.* 1 *Lev.* 25. But the Court will not allow the Jury on a Trial at Bar to carry Deeds, Writings or Books with them out of Court, as *Evidence* to conſider of, but ſuch as are under Seal, and have been proved: Though by the Aſſent of Parties, or by Aſſent of the Court without the Parties, they may be delivered to the Jurors. *Cro. Eliz.* 421. All Deeds or Writings under Seal, and given in *Evidence*, they may have; and nothing which was not given in *Evidence*, for the Court gives their Direction to the Jury upon the *Evidence* given in Court. 1 *Lill.* 313. It is dangerous to ſuffer any who by Law ought to ſhew forth any Deed, to prove in *Evidence*, that there was ſuch a Deed, which they had ſeen or read, &c. For there might be Imperfections in the Deed, or it may be on Condition, with Limitation, &c. 10 *Rep.* 92. A Deed tho' ſealed and delivered, if not ſtamp'd according to Act of Parliament, cannot be pleaded or given in *Evidence* in any Court. *Stat.* 5 & 6 *W.* & *M. cap.* 21. A Deed cannot be proved by a Counterpart of it or Copy, if the Original is in Being, and may be had though it may be when the Original cannot be procured. 1 *Inſt.* 225. 10 *Rep.* 92. The Counterpart of an ancient Deed hath been allowed to be given in *Evidence. Mod. Caſ.* 225. But it hath been held that the Counterpart of a Deed, without other Circumſtances, is not ſufficient *Evidence*; unleſs in Caſe of a Fine, when a Counterpart is good *Evidence* of itſelf. 1 *Salk.* 287. Where a Deed was cancelled by Practice, that being proved, it was allowed to be *Evidence* in an Action under the Deed. *Hetl.* 138. The Recital of a Deed is no *Evidence* without ſhewing the Deed; or proving that there was ſuch a Deed, and it is loſt. 1 *Inſt.* 352. *Vaugh.* 74. Recital of a Leaſe, in a Deed of Releaſe is good *Evidence* that there was ſuch a Leaſe againſt the Releſſor, and thoſe claiming under him; but not againſt others, except there be Proof that there was ſuch Leaſe. 1 *Salk.* 286. A Settlement ſet forth in a Bill in Chancery, and admitted in the Anſwer; and where it was proved that the Deed was in the Poſſeſſion of ſuch a one, &c. hath been judged a good *Evidence* of the Deed of Settlement, where not to be found. 5 *Mod.* 384. The Probat of a Will, when it concerns perſonal Eſtate only, may be given in *Evidence:* But where Title of Lands is claimed under a Will, the Will muſt be ſhewn, not the Probate: Though if the Will be proved in the Chancery, Copies of the Proceedings there will be *Evidence.* 2 *Roll. Abr.* 678. *Trials per pais* 234. A Bill in Chancery has been admitted as ſlight *Evidence* againſt the Complainant: An Anſwer in Chancery is *Evidence* againſt the Defendant himſelf, though not againſt others. 1 *Vent.* 66. *Trials per pais* 167. But when a Party gives an Anſwer in Chancery in *Evidence* at a Trial, though he inſiſt to read only ſuch a Part of it; yet the other Side may require to have the whole read. 5 *Mod.* 10. As in Caſe of a Writing permitted to be read to prove one Part of an *Evidence*, which may be read to prove any other Part of the *Evidence* given to the Jury. Depoſitions of Witneſſes in Chancery between the ſame Parties, may be given in *Evidence* at Law, eſpecially if the Witneſſes are dead, and the Bill and Anſwer proved. *Trials per pais* 167, 207, 234. Regularly Depoſitions in Chancery of a Witneſs may not be given in *Evidence*, if he be alive; unleſs he be in *France*, or in another Kingdom, not ſubject to the Dominion of our King. *Ibid.* 359. But Depoſitions in Chancery, after Anſwer, between the ſame Parties, may be read as *Evidence*, though the Witneſſes are not dead, if they cannot be found on Search. *Shower* 3. 3. 1 *Salk.* 278. Depoſitions in Chancery *in perpetuam Rei Memoriam*, are not to be given in *Evidence* ſo long as the Parties are living. 1 *Salk.* 286. And it hath been adjudged that theſe Depoſitions to perpetuate Teſtimony, on a Bill exhibited, ſhall not be admitted as *Evidence* at a Trial at Law, except an Anſwer be put in. *Raym.* 335. If Depoſitions are taken out of the Realm, he who makes them is ſuppoſed there ſtill, and they ſhall be read as *Evidence*; but if it appears he is in *England*, they cannot be read, but he muſt come in Perſon. 1 *Lill.* 555. Things done beyond Sea may be given in *Evidence* to a Jury; and the Teſtimony of a publick Notary of Things done in a Foreign Country, will be good *Evidence*. 6 *Rep.* 47. Depoſitions in the Eccleſiaſtical Courts, may not be given in *Evidence* to a Jury at a Trial; but a Sentence may in a Cauſe of Tithes, *&c.* And the Sentence of the Spiritual Court is concluſive *Evidence* in Cauſes within their Juriſdiction. 1 *Salk.* 290. 2 *Nelſ.* 761. Depoſitions taken before Commiſſioners of Bankrupt, 'tis ſaid ſhall not be uſed as *Evidence* at a Trial. *Paſ.* 18 *Car.* 2. *B. R.* Depoſitions before a Coroner, are admitted as *Evidence*, the Witneſſes being dead. 1 *Lev.* 180. Likewiſe they have been admitted where a Witneſs hath gone beyond Sea. 2 *Nelſ. Abr.* 760. The Confeſſion of a Priſoner before a Magiſtrate, *&c.* may be given in *Evidence* againſt him: And the Examination of an Offender need not to be on Oath, but muſt be ſubſcribed by him, if he confeſſes the Fact; and then be given in *Evidence* upon Oath by the Juſtices of the Peace who took the ſame. The Examination of others muſt be on Oath, and proved by the Juſtice or his Clerk, *&c.* as to their *Evidence*, if they are dead, unable to travel, or kept away by the Priſoner. *H. P. C.* 19, 262. *Kel.* 18, 55. *Wood's Inſt.* 647. The Examination of an Informer before a Juſtice, taken on Oath, and ſubſcribed, may be given in *Evidence* on a Trial, if he be dead, or not able to travel, *&c.* which is to be made out on Oath. 2 *Hawk. P. C.* 429. A Verdict againſt one under whom either the Plaintiff or Defendant claims, may be given in *Evidence* againſt the Party ſo claiming; but not if neither claim under it. *Mich.* 1656. *B. R.* In Ejectment where the Plaintiff hath Title to ſeveral Lands, and brings Action of Ejectment againſt ſeveral Defendants, if he recovers againſt one, he ſhall not give that Verdict in *Evidence* aginſt the Reſt. 3 *Mod.* 141. In a Court of Common Law, a Decree in Chancery is no *Evidence*: Affidavits are not *Evidence*. Letters may be produced as *Evidence* againſt a Man, in Treaſon, *&c.* Similitude of Hands ſworn to, has been allowed as *Evidence*: But ſince the Attainder of *Algernoon Sidney*, it hath not been admitted in any criminal Caſe. 2 *Hawk.* 431. Although a Witneſs ſwear to the Hand and Contents of a Letter, if he never ſaw the Party write, it ſhall not be allowed as *Evidence*. *Mich.* 8 *W.* 3. *Skinn.* 673. Since no Witneſſes are preſent when Goldſmiths Notes are given, ſuch Notes are allowed as *Evidence* of the Receipt of Money, or other Thing. 1 *Salk.* 283. A Shop-Book is *Evidence*; but it may not be given in *Evidence* for Goods ſold, *&c.* after one Year, before the Action brought; unleſs there be a Bill, *&c.* for the Debt; though this extends not to any Buying or Selling, or Trading between Tradeſman and Tradeſman. *Stat.* 7 *Jac.* 1. *c.* 2. To make theſe Books *Evidence*, there ought to be the Hand of the Perſon to the Books that delivered the Goods, which muſt be proved. 1 *Salk.* 285. A Church-Book ſome Writers ſay is not to be admitted as *Evidence*; tho' others ſay it may. 1 *Cro.* 411. 'Tis ſaid Copies of publick Books of Corporations, *&c.* ſhall be *Evidence*. 1 *Lev.* 25. 1 *Lill.* 551. But as to Books of Corporations where Things are entered not of Record, the Originals are to be produced as *Evidence*. A Pedigree drawn by a Herald at Arms, will not be admitted for *Evidence*, without ſhewing the Records or antient Books from whence taken; for the Entries in the Herald's Office are no Records, but only circumſtantial *Evidence*: But a Copy of an Inſcription on a Grave Stone, has been given in *Evidence* in ſuch a Caſe. 2 *Roll. Abr.* 686, 687. An Almanack wherein the Father had writ the Day of the Nativity of his Son, was allowed as *Evidence* to prove the Nonage of the Son. *Raym.* 84. Matter in Law ought not to be given in *Evidence* at a Trial, but only Matters of Fact, unleſs it be in Caſe of a ſpecial Verdict: Matter in Law is diſputable, and reſerved to be ſpoken to in Arreſt of Judgment. *Vaugh.* 143, 147. In Debt the Defendant may give in *Evidence* that he paid Money on an Obligation before the Day, *&c.* 2 *Nelſ. Abr.* 755. And a Releaſe may be given in *Evidence* on *Nil debet*. 5 *Mod.* 18. Though in *Indebitatus Aſſumpſit* the Plaintiff ſhall not give any Specialty in *Evidence* to prove his Debt, as a Bond, Indenture, *&c.* becauſe he may bring Action of Debt upon that Specialty. *Moor* 340. Entry and Expulſion may be given in *Evidence* in Debt for Rent: Coverture may be given in *Evidence* to avoid a Deed, *&c.* *Mod. Caſ.* 230. Uſurious Contracts, *&c.* may be given in *Evidence*. 2 *Nelſ.* 756. Fraud may be given in *Evidence*, on the General Iſſue: And Tampering with Witneſſes may be given in *Evidence* againſt a Party, *&c.* 5 *Rep.* 60. But many Things are to be pleaded; as Juſtifications without Title, in Treſpaſſes, *&c.* and cannot be given in *Evidence* upon Not guilty. *Trials per pais* 404. If in Treſpaſs, *Not guilty* be pleaded, a Licence may not be given in *Evidence* to excuſe the Treſpaſſor; for it muſt be pleaded. *Kelw.* 59. And if the Iſſue in Detinue, is *Non detinet*, it ſhall not be given in *Evidence* that the Goods were pledged for Money, and the Money not paid; this is not good without pleading it: But a Gift of the Goods by the Plaintiff may be given in *Evidence*. 1 *Inſt.* 283. So in an Iſſue in Waſte, *no Waſte done*, the Defendant may give in *Evidence*, that it came by Lightning, Tempeſt, or Enemies; but that he repaired, before Action brought, muſt be ſpecially Pleaded, *&c.* *Ibid.* 282. If an Iſſue be taken on the Cutting of 20 Oaks, *Evidence* may be for ten; becauſe either is a Breach of Covenant not to do Waſte. 2 *Shep. Abr.* 142. In *Ejectione firmæ* the Plaintiff declares for 100 Acres of Land, and gives *Evidence* only for forty, it will be good for ſo much. 1 *Cro.* 13. The Iſſue is of Account before *R.* and *W.* and the *Evidence* and Verdict of an Account before *R.* alone: Or an Iſſue is if *J. S.* was taken by a *Capias*, and *Evidence* that he was taken by *Alias Capias*, theſe will maintain the Iſſue; alſo if it be an Agreement, a ſpecial Agreement may be given in *Evidence*, *&c.* *Hob.* 54, 55. *Plowd.* 8. But if the Point in Iſſue be the Sealing and Delivery of a Leaſe, and the Witneſſes prove ſealed and delivered, but did not know the Leſſor that ſealed it: Or where Proof is not made of *Livery and Seiſin*, on Iſſue of a Leaſe for Life; Or if on an Iſſue upon a Taking by *Capias ad Satisfaciend.* *Evidence* be of taking by *Capias Utlagatum*, *&c.* in theſe Caſes the *Evidence* will not be good to maintain the Iſſue. *Plowd.* 14. *Kelw.* 55, 59. *Hob.* 55. Iſſue was upon a Preſcription for Common Appendant to 300 Acres in four Towns, on the *Evidence* the Jury found it appendant to 240 Acres in two Towns; and a Manor was given in *Evidence* in another County, *&c.* and they were held inſufficient. *Hob.* 209, 188. Where Juſtices of Peace ſued for Things done in their Offices, may give ſpecial Matter in *Evidence*. Stat. 21 *Jac.* 1. Vide *Juſtice*. See *Copy*, *Depoſitions*, &c.

Ewage, (*Ewagium*) Is the ſame with *Aquage*, from the Fr. *Eau*, Water; and ſignifies Toll paid for Water-paſſage.——*Charta Regis* Johannis, *&c. hominibus de B. quod ſint quieti de Thelonio, Scutagio, Paſſagio, Laſtagio, & de Wrec & Lagan, de* Ewagio, *&c.* Hill. 14 Hen. 3. In Theſauro Reg. Scacc. Ebor. Rot. 15.

Ewbrice, (*Sax. Ew*, i. e. *Conjugium*, and *Bryce*, *fractio*) Adultery or Marriage-breaking: From this *Saxon* Word *Ew*, Marriage, we derive our preſent Engliſh *Woo*, to *woo* a Dame.

Ewe, (*Euva*) A *German* Word ſignifying Law; it is mentioned in *Leg. W.* 1.

Exaction, Is defined to be a Wrong done by an Officer, or one in pretended Authority, by taking a Reward or Fee for that which the Law allows not. And the Difference between *Exaction* and *Extortion*, is this: Extortion is where an Officer extorts more than his Due, when ſomething is due to him; and

Exaction is, when he wreſts a Fee or Reward, where none is due, for which the Offender is to be fined and impriſoned, and render to the Party twice as much as the Money he ſo takes. *Co. Lit.* 368. 10 *Rep.* 100.

Exactor Regis, The King's Exactor or Collector; ſometimes taken for the *Sheriff:* But generally, *Quicunque Publicas Pecunias, tributa, vectigalia &* *res fiſco debitas* exigit, *proprie nominatur* Exactor Regis. *Niger liber Scacc. par.* 1. *cap. ult.*

Examination, (*Examinatio*) A Searching after, or Cognizance of a Magiſtrate. By Stat. 2 & 3 *P. & M.* Juſtices of Peace are to *examine* Felons apprehended, and Witneſſes, before the Felon is committed; and the Accuſers muſt be bound over to appear and give Evidence at the next Aſſiſes, &c. to which the *Examinations* are to be certified. *Mod. Juſtice* 176, 177. See *Evidence*.

Examiners in the Chancery, (*Examinatores*) Are two Officers of that Court, that examine upon Oath, Witneſſes produced by either Side, in *London*, or near it, on ſuch Interrogatories as the Parties to any Suit exhibit for that Purpoſe: And ſometimes the Parties themſelves are, by particular Order, likewiſe examined by them. In the Country, Witneſſes are examined by *Commiſſioners*, (uſually Attornies not concerned in the Cauſe) on the Parties joining in Commiſſion, &c.

Exannual Roll. In the old Way of exhibiting *Sheriffs Accounts*, the illeviable Fines and deſperate Debts, were tranſcribed into a *Roll* under this Name; which was yearly read, to ſee what might be gotten. *Hale's Sher. Acco.* 67.

Excambiators, A Word uſed anciently for *Exchangers* of Land: But *Cowel* ſuppoſes them to be ſuch as we now call *Brokers*, that deal upon the *Exchange* between Merchants.

Exception, (*Exceptio*) Is a Stop or Stay to an Action; and divided into *Dilatory* and *Peremptory*. *Bract. lib.* 5. *tract.* 5. In Law Proceedings, it is a Denial of a Matter alledged in Bar to the Action: And in *Chancery* it is what is alledged againſt the Sufficiency of an Anſwer, &c. The Counſel in a Cauſe are to take all their *Exceptions* to the Record at one Time; and before the Court hath delivered any Opinion therein. 1 *Lill. Abr.* 559. And on an Indictment for Treaſon, &c. *Exception* is to be taken for Miſnaming, falſe *Latin*, &c. before any Evidence is given in Court; or the Indictment ſhall be good. *Stat.* 7 *W.* 3. *c.* 3. Where by a general Pardon, any particular Crime is excepted; if a Perſon be attainted, &c. of that Offence, he ſhall have no Benefit of the Pardon. 6 *Rep.* 13. 2 *Nelſ. Abr.* 765 And when a Pardon is with an *Exception* as to Perſons, the Party, who pleads it ought to ſhew, that he is not any of the Parties excepted. 1 *Lev.* 26. A negative Expreſſion, may be taken to enure to the ſame Intent as an *Exception*; for an *Exception* in its Nature is but a Denial of what is taken to be good by the other Party, either in Point of Law or Pleading. And *Exceptio in non Exceptis firmat regulam.* 1 Lill. 559.

Exception to Evidence, &c. If one of the Parties in a Suit, for the Inſufficiency of the Evidence on the other Side, doth offer to demur upon the ſame, and the Court will not agree to it; then the Court ought upon Requeſt to ſeal a *Bill of Exceptions* tendered to them in Writing, which upon a Writ of Error may be heard. 2 *Inſt.* 246. And where a Suit is in any Court, if the Plaintiff or Defendant alledge any *Exception* to the Judge's Opinion, praying that the ſame may be allowed; if the Judge refuſeth it, then the Party making the *Exception* is to write it, and require the Judge to ſeal the ſame; which being done, and the Bill produced ſealed in Court, the Judge that ſealed it ſhall appear at a certain Day to confeſs or deny his Seal; and if the Seal be not denied, Proceedings are had to Judgment according to the Exception. *Stat.* 13. *Ed.* 1. *cap.* 31. 2 *Inſt.* 1 *Lill. Abr.* 232. The *Exceptions* ought to be put in Writing *ſedente Curia*, in the Preſence of the Judge who tried the Cauſe, and ſigned by the Counſel on each Side; and then the Bill muſt be drawn up and tendered to the Judge that tried the Cauſe, to be ſealed by him; and when ſigned, there goes out a *Scire facias* to the ſame Judge *ad cognoſcendum ſcriptum*, and that is made Part of the Record, and the Return of the Judge with the Bill it ſelf, muſt be entered on the Iſſue-Roll; and if a Writ of Error be brought, it is to be returned as Part of the Record. 1 *Nelſ. Abr.* 573. If a Bill of *Exceptions* is drawn up and tendered to the Judge for Sealing, and he refuſes to do it, on Petition to the Lord Chancellor, he will grant a Writ for that Purpoſe. Theſe Bills of *Exception* are to be brought before a Verdict given, and extend only to Civil Actions, not to Criminal. *Sid.* 85. 1 *Salk.* 288.

Exception in Deeds and Writings, Keeps the Things from paſſing thereby, being a Saving out of the Deed, as if the ſame had not been granted: But it is to be a particular Thing out of a general One, as a Room out of an Houſe, a Ground out of a Manor, Timber out of Land, &c. And it muſt not be of a Thing expreſly granted in the Deed: Alſo it muſt be of what is ſeverable from, and not inſeparably incident to the Grant. 1 *Inſt.* 47. 1 *Lev.* 287. *Cro. El.* 244. Where an *Exception* goeth to the whole Thing granted or demiſed, the *Exception* is void. *Cro. El.* 6. A Man makes a Leaſe of a Manor, excepting all Courts, &c. the *Exception* is void as to the Courts; for having leaſed the Manor, it cannot be ſuch without Courts. *Hob.* 108. *Moor* 870. A Leaſe was made of all a Man's Lands in *L.* excepting his Manor of H. and he had no Lands in *L.* but the ſaid Manor; it was adjudged that the Manor paſſed, and that the *Exception* was void. *Hob.* 170. 2 *Nelſ. Abr.* 764. A Leaſe of an Houſe and Shops, except the Shops; though this may extend to other Shops, 'tis void as to the Shops belonging to the Houſe demiſed, becauſe 'tis repugnant to the Leaſe. *Dyer* 265. If an *Exception* croſſes the Grant, or is repugnant to it, the ſame is void: And if there be a Saving or *Exception* out of an *Exception*, it may make a particular Thing as if never excepted; as if a Leaſe be made of a Rectory, excepting the Parſonage-Houſe, ſaving to the Leſſee a Chamber; this Chamber not being excepted out of the Leaſe, ſhall paſs by the Leaſe of the Rectory. *Hob.* 72. 170. *Cro. El.* 372. *Owen* 20. By *Exception* of Trees, the Soil is not excepted, but only ſufficient Nutriment for the Trees: For the Leſſee ſhall have the Paſture growing under them; though the Leſſor ſhall have all the Benefit of the Trees, Maſt, Fruit, &c. and the Trees are Parcel of the Inheritance. 11 *Rep.* 48, 50. 5 *Rep.* 11. But it has been adjudged, that by an *Exception* of Woods, Underwood and Copices, that the Soil of the Coppices is excepted. *Poph.* 146. 2 *Cro.* 487. If a Leſſee for Years, aſſigns over his Term, excepting the Trees, &c. the *Exception* is not good; becauſe no one can have ſuch a ſpecial Property in the Trees, but the Owner of the Land. 2 *Nelſ.* 764. Though where Leſſee for Life makes a Leaſe for Years, excepting the Wood, &c. this may be a good *Exception*, although he hath not any Intereſt in it but as Leſſee, in Regard he is chargeable in Waſte, &c. and hath not granted his whole Term. *Cro. Jac.* 296. 1 *Lill Abr.* 560. Theſe *Exceptions* are commonly in Leaſes for Life and Years; and muſt be always of a Thing *in eſſe*. Co. Lit. 47.

Exchange, (*Excambium* or *Cambium*) Signifies generally as much as *Permutatio* with the Civilians; as the *King's Exchange*, which is the Place appointed by the King for *Exchange* of Plate or Bullion for the King's Coin, &c. Theſe Places have been divers heretofore; but now there is only one, *viz.* the *Mint* in the *Tower*. *Stat. H.* 6. *c.* 4. By 9 *E* 3. *c.* 7.

Exchanges are to be kept where the King pleaſes: And every Man may *exchange* Gold for Silver, or Silver for Gold, &c. but none ſhall take Profit of Money *exchanged*, but the King's *Exchangers*, on Pain of Forfeiture. 25 *Ed.* 3. *c.* 12. Alſo none ſhall give or take any more for *Exchange* of Coin than the true Value, under the Penalty of Forfeiting the Money *exchanged*, or to be fined and impriſoned, &c. 5 & 6 *Ed. c.* 19. There is a *Royal Exchange of Merchants* in *London:* And *Exchange* among Merchants, is a Commerce of Money, or a Bartering or *Exchanging* of the Money of one City or Country for that of another: Money in this Senſe, is either real or imaginary; Real, any real Species current in any Country at a certain Price, at which it paſſes by the Authority of the State, and of its own intrinſick Value: And by imaginary Money, is underſtood all the Denominations made Uſe of to expreſs any Sum of Money, which is not the juſt Value of any real Species. *Lex Mercatoria*, or *Merch. Comp.* 98. The Methods of *Exchange* for Money uſed in *England* ought to be *par pro pari*, according to Value for Value: And our *Exchange* is grounded on the Weight and Fineneſs of our own Money, and the Weight and Fineneſs of that of other Countries, according to their ſeveral Standards, proportionable in their Valuation; which being truly and juſtly made, reduces the Price of the *Exchange* of Money of any Nation or Country to a Certainty. But this Courſe of *Exchange* is of late abuſed; and Money is become a Merchandize, that riſes and falls in its Price in regard to the Plenty and Scarcity of it. *Ibid.* At *London*, all *Exchanges* are made upon the Pound *Sterling* of 20*s.* In the Low Countries, *France* and *Germany*, upon the *French* Crown; *Spain* and *Italy*, &c. upon the Ducat; and at *Florence*, *Venice*, and other Places in the *Streights*, by the Dollar and Florin. See *Bill of Exchange.*

Exchanges of Goods and Merchandize, Were the original and natural Way of Commerce, precedent to Buying; for there was no Buying till Money was invented; though in Exchanging, both Parties are as Buyers and Sellers, and both equally warrant. 3 *Salk.* 157.

Exchange of Lands, Is a mutual Grant of equal Intereſt in Lands or Tenements, the one in *Exchange* for the other: And is uſed peculiarly in our Common Law for that Compenſation which the *Warrantor* muſt make to the *Warrantee*, Value for Value, if the Land warranted be recovered from the Warrantee. *Bract. lib.* 2. *cap.* 16. *Accomp. Conv.* 1 *Vol.* 170. Alſo there is a tacit Condition of Re-entry in this Deed, on the *Lands* given in *Exchange*, in Caſe of Eviction; and on the Warranty to vouch and recover over in Value, &c. For if either of the Parties is evicted, the *Exchange* is defeated. 4 *Rep.* 121. If *A. B.* give 5 Acres of Land in *Exchange* to *C. D.* for five other Acres, and afterwards *C. D.* is evicted of one Acre, in this Caſe all the *Exchange* is defeated, and *C. D.* may enter on his own again. 4 *Rep.* 121. *Cro. El.* 903. An *Exchange* may be made of Lands in Fee-ſimple, Fee-tail, for Life, &c. The Eſtates granted are to be equal, as Fee ſimple for Fee-ſimple, &c. though the Lands need not be of equal Value, or of the like Nature: For a Rent in Fee iſſuing out of Land, may be exchanged for Land in Fee; but Annuities which charge the Perſon only, are not to be exchanged for Lands. *Litt.* 63, 64. 1 *Inſt.* 50, 51. If an *Exchange* be made between Tenant for Life, and Tenant in Tail after Poſſibility of Iſſue extinct, the *Exchange* is good; becauſe their Eſtates are equal. 11 *Rep.* 80. *Moor* 665. An *Exchange* made between Tenant in Tail, and another, of unequal Intereſt, may be good during his Life; but his Iſſue, when of full Age, ſhall avoid it. And *Exchanges* made by Infants; by Perſons *non ſanæ Memoriæ*; a Husband of the Wife's Lands, &c. are not void, but voidable only, by the Infant at his full Age, the Heir of the Perſon *non ſanæ*, and the Feme after the Death of the Husband, who may wave the Poſſeſſion and diſagree to them. *Perk. Sect.* 277, 281. Jointenants and Tenants in Common, after they have made Partition, may *exchange* their *Lands:* And by this Deed, Freeholds paſs without Livery and Seiſin; but the Word *Exchange* is to be uſed, and it ought to be by Deed indented; and there muſt be Execution of the *Exchange*, by Entry on the Lands in the Life of the Parties, or the *Exchange* will be void. 1 *Inſt.* 50. 1 *Mod.* 91. Sometimes Lands intended to paſs by *Exchange*, not having the Qualities and Incidents of exchanged Lands, may paſs by way of Gift or Grant: As if two Perſons are ſeiſed of two Acres of Land, and one of them by Deed gives his Acre to the other, and the other his Acre to him, and each of them give Livery of Seiſin upon his Acre given in *Exchange*; here the Acres will paſs from one to the other, but not in a Way of *Exchange*, becauſe there was no Word of *Exchange* in the Deed. *Litt. Sect.* 62. *Perk.* 253. A Man grants to another Lands in Fee ſimple, for Lands in Tail by Way of *Exchange*; or Land in Tail, for Lands for Life, &c. theſe Deeds will not take Effect as *Exchanges. Fitz. Exchang.* 15, 64. *Co. Litt.* 64. If Tenant in Tail give his Land in *Exchange*, for other Land of the ſame Eſtate tail; the Iſſue in Tail may make it good if he will, or avoid the *Exchange.* 1 *Rep.* 96. A Feoffment is made to *A.* and *B.* and the Heirs of *A.* and they *exchange* the Land for other Lands; this will be good, and they ſhall hold the Lands in the ſame Nature that the Land given in *Exchange* was held. *Perk. Sect.* 277. If a Lord releaſe to the Tenant his Services in Tail, in *Exchange* of Land given to the Lord in *Exchange* in Tail alſo, it is ill: But if Leſſee for Life of one Acre, give another Acre, to his Leſſor in Tail, in *Exchange* for a Releaſe from him of that Acre, *habendum* in Tail in like Manner, it is a good *Exchange. Ibid.* 283, 219, 276. In Caſe two Perſons make an *Exchange* of Land, and limit no Eſtate; each ſhall have an Eſtate for Life, by Implication: But if an expreſs Eſtate be limited to one for Life, and none to the other, it will be void. 19 *H.* 6. 27. And to make a good *Exchange*, both the Things muſt be in *Eſſe* at the Time of the *Exchange:* Therefore if I grant the Manor of *A.* to another, in *Exchange* for the Manor of B. which he is to have by Diſcent after his Father's Death, this is void, becauſe it is not in him. 1 *Inſt.* 50. 3 *E.* 4. 10. But an *Exchange* may be made to take Effect *in futuro*, as well as preſently; for if it be, that after the Feaſt of *Eaſter A. B.* ſhall have ſuch Lands in *D.* in *Exchange* for his Lands in *S.* this is good. *Perk. Sect.* 265. *Exchange* of Lands in divers Countries; and 'tis ſaid of Land in *Ireland*, for Land in *England*, may be good. *Latch* 234. By a ſpecial Kind of Agreement, an Exchange may be of unequal Eſtates. *Moor, ca.* 909. The Condition and Warranty in *Exchanges* run to the Parties in Privity; not to an Aſſignee, &c. And if after two have exchanged Lands, one of them Releaſes to the other the Warranty in Law; it will not deſtroy the *Exchange.* 4 *Rep.* 122. *Roll. Abr.* 815. The Parties themſelves, and all Privies and Strangers for the moſt part, may take Advantage of *Exchanges* void, by any Defect or Accident: *Contra* if they are voidable, &c. 1 *Rep.* 105. *Dyer* 285. See *Exchanges* of Land, *Accomp. Conveyancer, Vol.* 1. *pag.* 358.

Form *of a* Deed of Exchange *of Lands in Fee.*

THIS Indenture *made*, &c. *Between* A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *that the ſaid* A. B. *hath given and granted, and by theſe Preſents doth give and grant unto the ſaid* C. D. *his Heirs and Aſſigns*, All *that Meſſuage*, &c. *ſituate, lying and being*, &c. To have and to hold *the Meſſuage or Tenement and Premiſſes abovementioned, with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns for ever; in* Exchange *for all that Meſſuage or Tenement*, &c. *of the ſaid* C. D. *ſituate and lying*, &c. *For which Conſideration, the ſaid* C. D. *hath given and granted, and by theſe Preſents doth give and grant unto the ſaid* A. B. *his Heirs and Aſſigns*, All *that the ſaid Meſſuage or Tenement laſt above-mentioned, with the Appurtenances*; To have and to hold *the ſaid Meſſuage or Tenement and Premiſſes laſt above-mentioned, with the Appurtenances, unto the ſaid* A. B. *his Heirs and Aſſigns for ever; in* Exchange *of and for the ſaid Meſſuage and Premiſſes firſt above mentioned.* And *the ſaid* A. B. *for himſelf his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Heirs and Aſſigns, by theſe Preſents, that he the ſaid* C. D. *his Heirs and Aſſigns, ſhall or lawfully may from Time to Time, and at all Times hereafter for ever, peaceably and quietly enter into, have, hold and enjoy the ſaid Meſſuage or Tenement and Premiſſes firſt above-mentioned, or intended to be hereby given and granted by the ſaid* A. B. *with the Appurtenances, without any Let, Trouble, Challenge, Claim Diſturbance or Interruption of or by him the ſaid* A. B. *his Heirs or Aſſigns, or of or by any other Perſon or Perſons whatſoever, claiming or to claim from, by or under him, them or any of them.* And *the ſaid* C. D *for himſelf his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* A. B. &c. (*the like Covenant from* C. D. *to* A. B. *for quiet Enjoyment of the Meſſuage*, &c. *laſt abovementioned; and there may be a* Proviſo *for either Party to re enter on his former Lands, if there be an Eviction.*) *In* Witneſs, *&c.*

Exchange of Church-Livings. *Exchanges* are now ſeldom uſed except that Parſons ſometimes *exchange* their *Churches*, and reſign them into the Biſhop's Hands: And this is not a perfect *Exchange* till the Parties are inducted; for if either dies before they both are inducted, the *Exchange* is void. *Wood's Inſt.* 284. If two Parſons by one Inſtrument agree to exchange their Benefices, and in order thereto reſign them into the Hands of the Ordinary, ſuch *Exchange* being executed on both Parts, is good; and each may enjoy the other's Living: But the Patrons muſt preſent them again to each Living; and if they refuſe to do it, or the Ordinary will not admit them reſpectively, then the *Exchange* is not executed; and in ſuch Caſe either Clerk may return to his former Living, even though one of them ſhould be admitted, inſtituted and inducted to the Benefice of the other; which is expreſs'd in the *Exchange* it ſelf, and the *Proteſtation* uſually added to it. *Rights Clerg.* 2 *Co. Rep.* 74. *Roll. Abr.* 814.

Exchangeors, Are thoſe that return Money by *Bills of Exchange*. See *Excambiators*. 5 R. 2. c. 2.

Exchequer, (*Scaccarium*, from the Fr. *Eſchequier*, i. e. *Abacus, tabula luſoria*, or from the Germ. *Schatz*, viz. *Theſaurus*) Is an ancient Court of Record, wherein all Cauſes touching the Revenue and Rights of the Crown are heard and determined; and here the Revenues of the Crown are received. *Camden* in his *Britan. p.* 113. ſaith, This Court took its Name *à Tabula ad quam aſſidebant*, the Cloth which covered it being Party-coloured, or *chequered*: We had it from the *Normans*, as appears by the *Grand Cuſtumary, cap.* 56. where it is deſcribed to be an Aſſembly of High Juſticiers, to whom it appertained to amend that which the inferior Juſticiers had miſdone, and unadviſedly judged, and to do right to all as from the Prince's Mouth. Some Perſons think there was an *Exchequer* under the *Anglo-Saxon* Kings; but our beſt Hiſtorians are of Opinion, that it was erected by K. *William* the Firſt, called *The Conqueror*, its Model being taken from the tranſmarine *Exchequer*, eſtabliſh'd in *Normandy* long before that Time. *Madox's Hiſt. Excheq.* In the Reign of *Henry* the Firſt, Son of *William* the Firſt, there was an *Exchequer*, which has continued ever ſince: And the Judges of the Court were at that Time ſtiled *Barones Scaccarii*, and adminiſtred Juſtice to the Subjects. In antient Times the Barons of the *Exchequer* dealt in Affairs relating to the State, or publick Service of the Crown and Realm: And were greatly concerned in the Preſervation of the Prerogative, as well as the Revenue of the Crown; for at the *Exchequer* it was the Care of the Treaſurer and Barons to ſee that the Rights of the Crown were no Way invaded. *Lex Conſtitutionis* 198. For the Authority and Dignity of the Court of *Exchequer*, antiently it was held in the King's Palace; and the Acts thereof were not to be examined or controlled in any other of the King's ordinary Courts of Juſtice: The *Exchequer* was the great Repoſitory of Records, wherein the Records of the other Courts at *Weſtminſter, &c.* were brought to be laid up in the Treaſury there. And Writs of the Chancery were ſometimes made forth at the *Exchequer*; Writs of Summons to aſſemble Parliaments, *&c. Ibid.* The *Exchequer* has been commonly held at *Weſtminſter*, the uſual Place of the King's Reſidence; but it hath been ſometimes holden at other Places, as the King pleaſed; as at *Wincheſter, &c.* And in the *Exchequer* there are reckon'd ſeven Courts, *viz.* The Court of Pleas; the Court of Accounts; the Court of Receipts; the Court of the *Exchequer* Chamber (being the Aſſembly of all the Judges of *England* for difficult Matters in Law;) the Court of *Exchequer*-Chamber for Errors in the Court of *Exchequer*; for Errors in the King's Bench; and the Court of Equity in the *Exchequer*-Chamber. 4 *Inſt.* 119. But according to the uſual Diviſion for the Diſpatch of all common Buſineſs, the *Exchequer* is divided into two Parts; one whereof is converſant eſpecially in the judicial Hearing and Deciding of Cauſes pertaining to the Prince's Coffers, antiently called *Scaccarium Computorum*; the other is the *Receipt of the Exchequer*, which is properly employed in the Receiving and Payment of Money. And it has been obſerved, that about the Time of the Conqueſt there was very little Money in Specie in the Realm; for then the Tenants or Knights Fees anſwered their Lords by military Services: And till the Reign of K. *Hen.* 1. the Rents or Farms due to the King were generally rendered in Proviſions and Neceſſaries for his Houſhold; but in this Reign the ſame were changed into Money; and afterwards in ſucceeding Times, the Crown-Revenue was anſwered or paid into the *Exchequer* chiefly in Gold and Silver. *Lex Conſtitutionis, p.* 208. By Statute, all Sheriffs, Bailiffs, *&c.* are to account in the *Exchequer* before the Treaſurer and Barons: And annual Rolls are to be made of the Profits of Counties, *&c.* Alſo Inquiſitors ſhall be appointed in every County, of Debts due to the King. 51 *H.* 3. 10 *E.* 1. And all Fines of Counties for the whole Year are to be ſent into the *Exchequer.* 15 *Ed.* 2. Perſons impeached in the *Exchequer*, may plead in their own Diſcharge; and there ſhall be Writs for diſcharging Perſons, *&c.* 5 *R.* 2. *c.* 9, 14. Any Perſon to whom Money is due from the *Exchequer*, having an Order regiſtered for Payment, may aſſign the ſame by Indorſement. 19 *Car.* 2. *c.* 12. And the Officers of the Receipt may receive and take for their Fees 1 *d.* in the Pound for Sums iſſued out, *&c.* 5 *&* 6 *W. & M. c.* 20. Officers of the *Exchequer* are without Delay to receive Money brought thither: And the Money in the Receipt is to be kept in Cheſts under three different Locks and Keys, kept by three ſeveral Officers, *&c.* 8 *&* 9 *W.* 3. *c.* 28. The Tellers of the *Exchequer* allowed 15,144*l.* to make good the Deficiency in their Offices by the Reduction of Guineas. Stat. 10 *Geo.* 1. *c.* 5. See 2 *Geo.* 2. *c.* 16. In the lower Part of the *Exchequer*, called the *Receipt*, the Debtors of the King, and their Debtors, the King's Tenants, and the Officers and Miniſters of the Court, *&c.* are privileged to ſue and implead one another, or any Stranger, and to be ſued in the like Actions as are proſecuted in the *King's Bench* and *Common Pleas*. The *judicial Part of the Exchequer* is a Court both of Law and Equity; the Court of Common Law is held in the Office of *Pleas*, after the Courſe of the Common Law, *coram Baronibus*; and here the Plaintiff ought to be a Tenant or Debtor to the King, or ſome Way accountant to him; and the leading Proceſs is either a Writ of *Subpœna*, or *Quo Minus*, which goes into *Wales*, where no Proceſs of the King's Bench or Common Pleas ought to run; except the *Capias Utlagatum*. The Court of Equity is holden in the *Exchequer*-Chamber *coram Theſaurario, Cancellario & Baronibus*, but uſually before the Barons only, the Lord Chief Baron being the Chief Judge to hear and determine all Cauſes in Law or Equity; the Proceedings here are by *Engliſh Bill* and Anſwer, agreeable to the Practice of the High Court of *Chancery*; but the Plaintiff muſt likewiſe ſet forth that he is Debtor to the King, tho' it is not material whether he be ſo or not, it being only Matter of Form. In this Court the Clergy uſually exhibit Bills for Recovery of their Tithes, *&c.* And here the Attorney General brings Bills for any Matters concerning the King; and any Perſon grieved in any Cauſe proſecuted againſt him on Behalf of the King, may bring his Bill againſt the Attorney General to be relieved in Equity; in which Caſe the Plaintiff muſt attend the King's Attorney with a Copy of the Bill, and procure him to anſwer the ſame; and Mr. Attorney may call any that are intereſted in the Cauſe, or any Officer or others, to inſtruct him in the Making of his Anſwer, ſo as the King be not prejudiced thereby, and his Anſwer is to be put in without Oath. 4 *Inſt.* 109, 112, 118. The Practice and Proceedings generally in Uſe at the *Exchequer Bar*, where anciently there was very much Buſineſs and very various, are chiefly relating to Debtors, Farmers, Receivers, Accountants, *&c.* for Debts and Duties due to the Crown: And all penal Puniſhments, Intruſions, Forfeitures upon popular Actions, *&c.* are Matters cognizable by this Court. *Practiſ. Attorn. Edit.* 1. *p.* 292, 293. The *Exchequer* is now ſaid to be the laſt of the four Courts at *Weſtminſter*; governed by the Chancellor of the *Exchequer*, the *Lord Chief Baron*, and three other *Barons*, who are the Sovereign Auditors of *England*, and the Judges of the Court, and ever give Judgment in the Term-time only: There alſo ſits in this Court a *Puiſne Baron*, who adminiſters the Oath of all High Sheriffs, Under-Sheriffs, Bailiffs, Auditors, Receivers, Collectors, Controllers, Surveyors, and Searchers of all the Cuſtoms in *England*. The *Chancellor* or *Under-Treaſurer* hath the Cuſtody of the Seal of this Court. The King's *Attorney General* is made privy to all Manner of Pleas that are not Ordinary and of Courſe, which riſe upon the Proceſs of the Court; and he puts into Court in his own Name, Informations of Concealments of Cuſtoms, Seizures, *&c.* And alſo for Intruſions, Waſtes and Incroachments upon any of the King's Lands; or upon Penal Statutes, Forfeitures, *&c.* The *Remembrancers* keep the Records of the Court betwixt the King and his Subjects, and enter the Rules and Orders there made: One is called the King's Remembrancer, and the other the Lord Treaſurer's Remembrancer; the *Remembrancer for the King* hath all Manner of Informations upon Penal Statutes uſed in his Office only; and he calls to Account, in open Court, all the great Accountants of the Crown, Collectors of Cuſtoms, *&c.* he makes out Writs of Privilege, enters Judgments of Pleas; and all Matters upon *Engliſh Bill* are remaining in his Office. The *Remembrancer for the Lord Treaſurer* makes out all Eſtreats; he ſets down in his Book the Debts of all Sheriffs, and takes their foreign Accounts; and iſſues out Writs and Proceſſes in many Caſes, *&c.* And theſe Remembrancers have ſeveral *Attornies* to do Buſineſs under them: Who by Statute are not to iſſue out of the Remembrancer's Office, any Writs upon Suppoſition, but upon juſt Grounds, *&c.* 1 *Jac* 1. *c.* 26. There are two *Chamberlains* that keep the Keys of the Treaſury, where the Records do lie, with the Book of Domeſday, *&c.* They may ſit in Court if they pleaſe, but not intermeddle with any Thing; unleſs it be relating to the Sheriffs, in the Pricking whereof they have a Vote. And beſides the Chamberlains, there is a *Clerk of the Pipe*, in whoſe Cuſtody are conveyed out of the King's and Treaſurer's Remembrancers, *&c.* as Water through a Pipe, all Accounts and Debts due to the King. The *Controller of the Pipe*; which is ſaid to be the Chancellor of the *Exchequer*. The *Clerk of the Eſtreats*, who receives the Eſtreats from the Remembrancer's Office, and writeth them out to be ſerved for the King, *&c.* The *Foreign Oppoſer* who oppoſes or makes a Charge on all Sheriffs, *&c.* of their Green Wax, *i. e.* Fines, Iſſues, Amerciaments, Recognizances, *&c* certified in Eſtreats annexed to the Writ, under the Seal in Green Wax, and delivereth the ſame to the Clerk of the Eſtreats to be put in Proceſs. The *Auditors* that take the Accounts of the King's Receivers, Collectors, *&c.* and perfect them. The four *Tellers*, whoſe Buſineſs to receive and pay all Money is well known. The *Clerk of the Pells*, from his Parchment Rolls, called *Pellis Receptorum*. The Clerk of the *Nihils*, who makes a Roll of ſuch Sums as the Sheriff upon Proceſs returns *Nihil*, *&c.* The *Clerk of the Pleas*, in whoſe Office all Officers and privileged Perſons are to ſue and be ſued; and here are divers *Under Clerks* employed in Suits commenced or depending in this Court. Then there is a *Clerk of the Summons*; *Under-Chamberlains* of the *Exchequer*; *Secondaries* in the Offices of the *Remembrancers*; *Secondaries* of the *Pipe*; the *Uſher* of the *Exchequer*, *Marſhal*, *&c.*

Exchequer Bills. By Statute 5 *Ann. c.* 13. The Lord Treaſurer may cauſe *Exchequer Bills* to be made of any Sum not exceeding 1,500,000 *l.* for the Uſe of the War; and the Duties upon Houſes were made chargeable with 4 *l.* 10 *s. per Cent. per Annum* to the *Bank* for circulating them. The Bank not paying the Bills, Actions to be brought againſt the Company, and the Money and Damages recovered: And if any *Exchequer Bills* be loſt, upon Affidavit of it before a Baron of the *Exchequer*, and Certificate from ſuch Baron, and Security given to pay the ſame if found, Duplicates are to be made out: Alſo when Bills are defaced, new ones ſhall be delivered. *Ibid.* The King, or his Officers in the *Exchequer*, by former Statutes, might borrow Money upon the Credit of *Bills*, payable on Demand, with Intereſt after the Rate of 3 *d. per Diem* for every 100 *l.* Bill. 7 & 8 *W.* 3. *c.* 31. And by 8 & 9 *W.* 3. *c.* 20. an Intereſt of 5 *d.* a Day was allowed for every 100 *l.* But 12 *W.* 3. *c.* 1. lowered the Intereſt on theſe Bills to 4 *d.* a Day *per Cent.* And by 12 *Ann c.* 11. it is ſunk to 2 *d.* a Day. Forging *Exchequer Bills*, or the Indorſements thereon, is Felony. See *Felony.*

Exciſe, (From the Belg. *Acciſſe*, Tributum) Is a Duty or Impoſition laid upon Beer, Ale, and other Liquors, which had its Beginning in the Reign of King *Charles* the Second. The 12 *Car.* 2. *c.* 23. granted to the King an *Exciſe* on Beer, Ale, Cyder, Strong-waters, *&c.* Which *Exciſe* Duty then laid upon the Beer and Ale, was 15 *d.* the Barrel, if ſold for above 6 *s.* and 3 *d.* every Barrel under that Price; ſince enlarged by other Acts of Parliament. One principal Office of *Exciſe* to be erected in *London*, *&c.* and the Commiſſioners and Sub-Commiſſioners appointed to levy this Duty, may under their Hands and Seals appoint ſo many Gaugers as ſhall be needful; who are to enter the Houſes of Brewers, Inn-keepers, *&c.* to Gage all the Coppers, Fats, and Veſſels in the ſame, and make Returns to the Commiſſioners of *Exciſe*, &c. under whoſe Office and Limits they live: And upon Refuſal, may forbid the Parties to ſell any Beer, under 5 *l.* Forfeiture, &c. by this Act. And by ſubſequent Statutes, additional Duties have been granted on Low-Wines, Spirits, or Brandy drawn from Corn; Alſo a Duty of *Exciſe* is laid upon Malt, and on Sweets, &c. which is annually continued. Brewers not making true Entries of Beer and Ale brewed, once a Week at the Office of *Exciſe*, ſhall forfeit 10 *l.* but ſubject to Mitigation, ſo as not to be leſs than double the Duy: And Retailers of Beer, Ale, Strong-waters, &c. are to make true Entries once a Month of what Liquors they retail, under the Penalty of 40 *s.* And not paying the *Exciſe* within the like Times, to pay double Duty: If any Brewer conceals any Ale or Beer, he ſhall forfeit 20 *s.* *per* Barrel: And an Officer of the *Exciſe* in the Day-time, or in the Night with a Conſtable, may enter into a Houſe or Brewhouſe, and ſtay there during the Time of Brewing, &c. Brewers erecting or altering any Back, Cooler, Copper, &c. or keeping any private Storehouſes; and Maltſters keeping any private Veſſels for ſteeping of Barley, without giving Notice to the Officers of the *Exciſe*; in either Caſe, forfeit 50 *l.* and bribing a Gauger incurs the Penalty of 10 *l.* 15 *Car.* 2. *c.* 11. 2 *W.* & *M.* 4 *W.* & *M.* 7 & 8 *W.* 3. 8 & 9 *W.* 3. *c.* 19. By 12 *Car.* 2. the *Exciſe* on Beer and Ale is granted for the Life of King *Charles* the Second. By the 1 *Jac.* 2. *c.* 11. it is granted to King *James* for Life. By 2 *W.* & *M.* *c.* 3. it is granted to King *William* and Queen *Mary* during their Lives. By 1 *Ann.* *c.* 7. it is granted to Queen *Anne* for her Life; and together with the Revenue of the Poſt-Office, &c. made chargeable with 700,000 *l.* *per Annum* for the Support of the Houſhold; and by 1 *Geo.* 1. *c.* 1. it is thus granted to King *George* the Firſt during his Life: See 1 *Geo.* 2. where 'tis among other Things, granted to King *George* the Second for Life; charged with 800,000 *l.* *per Annum* for his Houſhold. Officers of *Exciſe* may go on board Ships, and ſearch for Rum, Arrack, and other exciſeable Liquors, as Officers of the Cuſtoms may do, and ſeize Commodities forfeited, &c. Stat. 11 *Geo.* 1. *c.* 30. And three of the Commiſſioners of *Exciſe*, have Power to determine all Complaints and Informations concerning the *Exciſe* Duties; as well as Juſtices of Peace at their Seſſions, &c. Stat. 1 *Geo.* 2. *c.* 21. *Vide* 9 *Geo.* 2. *c.* 35. A Duty ſhall be paid for Sweets (or made Wines) made here for Sale, from Foreign or *Britiſh* Fruit and Sugar, &c. to be under the Management of the Commiſſioners of *Exciſe*; and Makers are to enter their Names, and Places made uſe of, &c. on Pain of 20 *l.* But Fines may be mitigated, according to the *Exciſe* Laws, &c. Stat. 10 *Geo.* 2. *c.* 17.

Excluſa, Excluſagium, A Sluice for the carrying off Water; and a Payment to the Lord for the Benefit of ſuch a Sluice. *Et duo molendina in eodem Manerio cum Aquis* Excluſagiis, &c. Mon. Angl. Tom. 1. p. 398, 587.

Excommengement, Is in *Law French* the ſame with *Excommunication* in *Engliſh*. Stat. 23 *Hen.* 8. *c.* 3.

Excommunication, (*Excommunicatio*) An Eccleſiaſtical Cenſure, by which a Perſon is excluded from the Communion of the Church, and from the Company of the Faithful. It hath been thus defined: Excommunicatio *eſt nihil aliud quam Cenſura a Canone vel Judice Eccleſiaſtico prolata & inflicta privans legitima communione Sacramentorum & quandoq; hominum.* And it is divided into *Majorem* and *Minorem*; *Minor eſt, per quam quis a Sacramentorum participatione conſcientia vel ſententia arcetur: Major eſt, quæ non ſolum à Sacramentorum, verum etiam Fidelium communione excludit, & ab omni actu Legitimo ſeparat & dividit.* Venatorius de ſent. Excom.' The Form of an *Excommunication* was of old: *Auctoritate Dei Patris omnipotentis & Filii & Spiritus Sancti, & Beatæ Dei Genetricis Mariæ, omniumque Sanctorum*, Excommunicamus, *Anathematizamus, & à limitibus Sanctæ Matris Eccleſiæ Sequeſtramus*, &c. Leg. Will. 1. Anno 38 H. 3. *Boniface* Archbiſhop of *Canterbury*, and the other Biſhops, with burning Tapers in their Hands, in *Weſtminſter Hall* before the King, and the other Eſtates of the Realm, denounced a Curſe and *Excommunication* againſt the Breakers of the Liberty of the Church: And by Stat. 9 *E.* 3. Biſhops may *excommunicate* not only all Perturbers of the Peace of the Church, but alſo Felons, and other Offenders, &c. And by the Eccleſiaſtical Laws, *excommunicated* Perſons are not permitted to have Chriſtian Burial. This *Excommunication* is generally for Contempt in not appearing, or not obeying a Decree, &c. And in other Reſpects, the Cauſes of it are many; as for Matters of Hereſy, refuſing to receive the Sacrament, or to come to Church; Incontinency, Adultery, Simony, &c. It is publiſhed in the Church, and if the Offender do not ſubmit in forty Days, then the Biſhop is to *certify* the *Excommunication* into the Temporal Courts, ſetting forth ſpecially the Cauſe of *Excommunication*, that the Judges may ſee whether the Eccleſiaſtical Court hath Cogniſance of the Matter; and thereupon the Party may be taken and impriſoned by Virtue of the Writ *Significavit* or *Capias Excommunicatum*, and is to remain in Priſon till he ſubmits and is abſolved; when the Biſhop likewiſe certifying the ſame, another Writ iſſues to the Sheriff to diſcharge him. 2 *Inſt.* 189. 8 *Rep.* 68. 2 *Nelſ. Ab* 768. None but the Biſhop is to certify *Excommunication*, unleſs the Biſhop be beyond Sea, or *in Remotis*; or except the Certificate is by one that hath ordinary Juriſdiction, &c. And if the Ordinary *excommunicates* a Perſon for any Thing where he hath not Cogniſance of the Cauſe; the Party may bring an Action againſt him, or the Ordinary 'tis ſaid may be indicted. 1 *Inſt.* 134. 2 *Inſt.* 527. *Wood's Inſt* 508. A Man may not be *excommunicated* for Matter of Defamation, &c. The Biſhop's Certificate, if he die before the Return of the Writ, ſhall not be received, for his Succeſſor ſhall certify; the *Significavit* muſt mention that the Party lived within the Dioceſe where he was *excommunicated*, and by what Biſhop; if it be pleaded, the Time when is to be ſhewed; and *Excommunication* muſt be declared in the Eccleſiaſtical Court before they proceed, &c. 8 *Rep.* 68. 2 *Cro.* 84. *Moor, ca.* 667. *Latch* 174. *Hetley* 86. In ſome Caſes Perſons incur *Excommunication ipſo facto* by Act of Parliament; but they are to be firſt convicted of the Offence by Law, and the Coviction is tranſmitted to the Ordinary. *Dyer* 275. 1 *Ventr.* 146. It hath been adjudged that the Spiritual Court hath not Power to meddle with the Body of any Perſons whatſoever, or to ſend Proceſs to take them; for if a Perſon is *excommunicate* for Contempt, &c. they ought to certify it into the Chancery, whence 'tis ſent into *B. R.* and thence iſſues Proceſs. *Cro. El.* 741. An Offender *excommunicated* is diſabled to do any judicial Act, as to ſue any Action at Law, be a witneſs, &c. though he may be ſued: But every *Excommunication* doth not diſable one; for if a Mayor and Commonalty bring an Action, an *Excommunication* of the Mayor ſhall not diſable them, becauſe they ſue and anſwer by Attorney: And if a Biſhop is Defendant, an *Excommunication* by that Biſhop ſhall not diſable the Plaintiff: And an *Excommunication* againſt an Appellant, while the Appeal is depending, is void. 1 *Inſt.* 134. 4 *Inſt.* 340. *Wood* 508. Popiſh Recuſants convict are diſabled as Perſons *excommunicate*, &c. Stat. 3 Jac. 1.

Excommunicato Capiendo, Is a Writ directed to the Sheriff for apprehending him who ſtands obſtinately *excommunicated* forty Days; for the Contempt of ſuch a Perſon, not ſeeking Abſolution, being certified or ſignified into the Chancery; this Writ iſſues for the Impriſoning him without Bail or Mainpriſe until he conforms. *F. N B.* 62. By the Stat. 5 *Eliz. c.* 23. Writs *de excommunicato Capiendo* ſhall iſſue out of the Court of Chancery in Term-time, and be returnable in *B. R. &c.* They ſhall be brought ſealed into the *King's Bench*, and there opened and delivered of Record to the Sheriff, and there muſt be twenty Days between the *Teſte* and the Return: And if the Sheriff return a *Non eſt Inventus* on the Writ, a *Capias* with Proclamation is to be granted for the Party to yield his Body to Gaol under the Penalty of 10 *l.* And if he do not appear on the firſt *Capias* and Proclamation, a ſecond is to go forth, and he is to forfeit 20 *l. &c.* But by this Statute, if in the *Excommunicato Capiendo*, the Party excommunicated hath not a ſufficient Addition, as to his Place of Dwelling, *&c.* according to 1 *H.* 5. *c.* 6. Or if in the *Significavit* it is not contained, that the Excommunication proceeds upon a Cauſe of Contempt or ſome original Matter of *Hereſy*; for refuſing to have a Child *baptized*, to receive the *Sacrament*, to come to *Divine Service*, or for *Error* in Matters of *Religion* and Doctrine, for *Incontinency*, *Uſury*, *Simony*, *Perjury* in the Eccleſiaſtical Courts, or *Idolatry*; he ſhall not incur the Penalties in this Act, for his Contempt in not rendring himſelf Priſoner upon the *Capias*, *&c.* So that the Statute doth not require the *Capias* with Proclamations, and the Penalties in other Caſes, beſides the ten Caſes mentioned. 2 *Inſt.* 661. And it has been adjudged where a Perſon has been excommunicated, and none of thoſe Cauſes were contained in the *Significavit*, that the Perſon excommunicate ſhould be diſcharged of the Penalties; but not of the Excommunication. 3 *Mod.* 89. It has alſo been held, that for any of the Cauſes expreſſed in the Statute, there ought to go a *Capias* with a Penalty, and be an Addition to the Writ: In other Caſes, it is not neceſſary; and if then the *Capias* be with a Penalty, the Court will not diſcharge the Party, but the Penalty only: But for Want of Addition, in Caſes where that is required, the Party ſhall be diſcharged upon Motion. 1 *Salk.* 294, 295.

Excommunicato deliberando, Is a Writ to the Sheriff for Delivery of an excommunicate Perſon out of Priſon, upon Certificate from the Ordinary of his Conformity to the Juriſdiction Eccleſiaſtical. *F. N. B.* 63. *Reg. Orig.* 67. And where a Man is unduly *excommunicated*, he may be delivered in ſome Caſes by the Writ *Habeas Corpus*; and ſometimes by Pleading, as well as by an *Excommunicato deliberando*: Alſo ſometimes by Prohibition, *&c.* And on a general Pardon, the Party may have a Writ to the Biſhop to abſolve him. 12 *Rep.* 76. *Latch* 205. *Godb.* 272. If a Plaintiff in an Action be excommunicate, and after he gets Letters of *Abſolution*; on ſhewing them in Court, he may have a Re-ſummons, *&c.* upon his Original. 1 *Inſt.* 133. The Writ of *Excommunicato deliberando* runs thus:

GEORGE *the Second*, &c. *to the Sheriff of* S. *Greeting: Whereas* A. B. *and* C. D. *whom at the Denunciation of the venerable Father* J. *Biſhop of*, &c. *as* excommunicate, *and the Keys contemning, by their Bodies, according to the Cuſtom of* England, *by you to be juſticed, we have commanded*, &c. *until to Holy Church, as well of the Contempt as of the Injury to it done by them ſhould be ſatisfied: And now from him the ſaid Biſhop the Benefit of Abſolution in Form, they having merited to obtain, as the ſame Biſhop by his Letters Patent to us hath ſignified: We command you that them the ſaid* A. B. *and* C. D. *from the Priſon in which they are detained, if upon that Occaſion, and no other, they be detained in the ſame, without Delay you cauſe to be delivered*, &c.

Excommunicato Recipiendo, Is a Writ whereby Perſons excommunicated, being for their Obſtinacy committed to Priſon, and unlawfully delivered, before they have given *Caution* to obey the Authority of the Church, are commanded to be ſought after and impriſoned again. *Reg. Orig.* 67.

Execution, (*Executio*) Signifies the laſt Performance of an Act, as of a Judgment, *&c.* And is the Obtaining of Poſſeſſion of any Thing recovered by Judgment of Law. 1 *Inſt.* 289. Sir *Edw. Coke*, in his Reports, makes two Sorts of Executions; one *final*, another with a *Quouſque*, tending to an End: An *Execution* final is that which makes Money of the Defendant's Goods, or extends his Lands, and delivers them to the Plaintiff, which he accepts in Satisfaction, and is the End of the Suit, and all that the King's Writ requires to be done: The other Writ with a *Quouſque*, though it tendeth to an End, is not final; as in Caſe of a *Capias ad Satisfaciendum*, which is not a final *Execution*, but the Body of the Party is to be taken, to the Intent the Plaintiff be ſatisfied his Debt, *&c.* and the Impriſonment of the Defendant not being abſolute, but until he do ſatisfy the ſame. 6 *Rep.* 87. A Man can have but one *Execution*; but it muſt be intended an *Execution* with Satisfaction, and the Body of the Defendant is no Satisfaction, only a Pledge for the Debt. 5 *Rep.* 86. When a Perſon dies in *Execution*, it is without Satiſfaction; ſo that the Plaintiff may have a *Fieri facias* againſt the Goods, or *Elegit* againſt the Lands. *Ibid.* But where a Perſon was taken on a *Capias Utlagatum*, and died in Priſon, the Plaintiff having choſen this *Execution*, which is the higheſt in Law; it has been held that the Defendant dying, the Law will adjudge it a Satisfaction. *Cro. El.* 850. By Statute, if a Perſon in *Execution* dies, a new *Execution* ſhall iſſue againſt the Lands, *&c.* as if he had never been taken in *Execution.* 21 *Jac.* 2. *c.* 13. If an *Execution* be executed and filed, the Party can have no other *Execution* upon that Judgment; becauſe there can be but one *Execution* with Satisfaction upon one Judgment. 1 *Lill. Abr.* 565. If the *Execution* be not returned and filed, another *Execution* may be had: And if only Part of the Debt be levied on a *Fieri facias*, another Writ of *Execution* may be ſued out for the Reſidue thereof. *Ibid.* But if you once charge the Body of the Defendant in *Execution* on a *Capias Satisfaciend.* you may not have any other *Execution* againſt his Goods, *&c.* except the Defendant make an Eſcape, or is privileged, or die in *Execution. Practiſ. Solic.* 248. Though if one take out any Writs of *Execution*, and they have no Effect, he may have other Writs on their Failure. *Hob.* 57. Where Goods are taken in another County, upon a *Teſtatum* that he hath not any Goods at *London*, which is falſe, the *Execution* ſhall be ſet aſide: But where a Man is taken upon a wrong Writ of *Execution*, though it be returned executed; yet becauſe he in Truth never was in *Execution*, a *Capias* ſhall iſſue out againſt him. *Yelv.* 180. 53. If a Perſon taken by *Ca. ſa.* eſcapes, the Plaintiff may have a new *Execution. Cro. Car.* 174. In Caſe any Priſoner committed in *Execution* ſhall eſcape, any Creditor, at whoſe Suit he ſtands charged, may retake him by a new *Capias ad ſatisfaciend.* or ſue forth any other Kind of *Execution*, as if the Body of ſuch Priſoner had never been taken in *Execution. Stat* 8 *&* 9 *W.* 2. *c.* 27. Where two are bound jointly and ſeverally, and Judgment is had againſt both of them, if one in *Execution* eſcape, the Creditor may take out *Execution* againſt the other: But if he go by Licenſe of the Creditor, then the other will be diſcharged. *Cro. Car.* 53. If one in *Execution* be delivered by Privilege of Parliament, when the Privilege ceaſes, the Plaintiff may ſue out a new *Execution* againſt him. 1 *Jac.* 1. *c.* 13. If where two are bound jointly, they are ſued ſeverally, and ſeveral Judgments are had againſt them, as an *Elegit* is ſued againſt one, and executed and returned, and a *Capias ſatisfaciend* againſt the other, he may bring *Audita Querela*:

For there muſt be the ſame Kind of Proceſs againſt both. *Cro Jac.* 338. 2 *Nelſ Abr.* 772. A Defendant cannot plead to any Writ of *Execution*, (tho' he may in Bar of *Execution* to a *Scire facias* brought ;) but if he hath any Matter after Judgment to diſcharge him of the *Execution*, he is to have *Audita Querela.* 1 *Inſt.* 290. If Husband and Wife are taken in *Execution* for the Debt of the Wife, the Wife ſhall be diſcharged ; for the Husband being in *Execution*, the Wife ſhall not be ſo alſo, and becauſe the Wife hath nothing liable to the *Execution*. 1 *Leo.* 51. The *Execution* of a *Liberate*, is good without being returned ; and where a Man is taken upon a *Ca. ſa.* the *Execution* is good, though the Writ is not returned : And ſo in all Caſes where no Inqueſt is to be taken, but only Lands delivered, or Seiſin had, &c. which are only Matters of Fact. 4 *Rep.* 67. 5 *Rep* 89. The Writs of *Execution* at Common Law were only a *Fi. fa.* on the Goods and Chattels ; and a *Levari facias* to levy the Debt or Damages upon the Land and Chattels : Afterwards a *Ca. ad ſatisfac.* was given by Stat. 25 *Ed* 3 *c.* 17. And an *Elegit* by Stat. *Weſtm.* 2. *c.* 18. which makes the Body liable, and the future Profit of Lands, &c. 1 *Inſt.* 154. 2 *Inſt.* 394 The Reaſon why by the Common Law, where a Subject had *Execution* for Debt or Damages, he could not have the Body of the Defendant, or his Lands in *Execution*, (unleſs it were in ſpecial Caſes) was, that the Defendant's Body might be at Liberty, not only to follow his own Affairs and Buſineſs, but alſo to ſerve his King and Country ; and taking away the Poſſeſſion of his Lands, would hinder the following of his Husbandry and Tillage. 2 *Inſt.* 394. Though neither the Body, nor Lands of the Debtor on a Judgment could be taken in *Execution* at Common Law, but only his Goods ; yet in Action of Debt againſt an Heir, upon the Bond of his Anceſtor, his Land which he had by Diſcent was ſubject to be taken in *Execution*. 3 *Rep.* 11. In Action of Debt againſt the Heir upon his Anceſtor's Bond, there was Judgment by *Nil dicit* ; and it was held that the Plaintiff ſhould have *Execution* againſt the Heir, of any of his own Lands or Goods. *Dyer* 89, 149. Judgment was had againſt the Heir by *Nil dicit*, and a *Scire facias* being brought againſt him to have *Execution*, he pleaded *Riens per Diſcent* ; it was adjudged that this Plea was too late after the Judgment by *Nil dicit*, and the Execution ſhall be on his own Lands. *Dyer* 344. But there is a Difference between a *Scire facias* and an Action of Debt brought againſt an Heir, upon a Bond of his Anceſtor, in which the Heir is named. *Poph.* 193. On a Judgment for the Debt of an Anceſtor, where the Heir hath made over Lands deſcended to him, *Execution* may be taken againſt ſuch Heir to the Value of the Land, &c. for the Debt of his Anceſtor, as if his own Debt. *Stat.* 3 & 4 *W.* & *M. c.* 14. If a Perſon have Judgment given againſt him for Debt or Damages, or be bound in a Recognizance and dieth, and his Heir be within Age, no *Execution* ſhall be ſued of the Lands during the Minority ; and againſt an Heir within Age, no *Execution* ſhall be ſued upon a Statute Merchant or Staple, &c. 1 *Inſt.* 290. There is an *Execution* on Body, Lands and Goods, upon Statutes Merchant, Staple and Recognizances. 1 *Inſt.* 289. 2 *Inſt.* 678. Writs of *Execution* bind the Property of Goods only from the Time of the Delivery of the Writs to the Sheriff ; who upon Receipt thereof indorſes the Day of the Month when received : But Land is bound from the Day of the Judgment. Stat. 29 *Car.* 2. *c.* 3. *Cro. Car.* 149. Notwithſtanding this *Statute*, if after the Writ delivered to the Sheriff, and before *Execution* is executed, the Defendant becomes Bankrupt, that will hinder *Execution*. 3 *Salk.* 159. The Plaintiff takes out *Execution* by *Fieri facias* againſt the Defendant, all the Goods and Chattels that he had at the Time of the *Execution*, will be liable to it : And where Debt or Damages are recovered, the Plaintiff ſhall have *Execution* of any Land the Defendant had at the Time of the Judgment ; nor of the Lands he had the Day when the firſt Writ was purchaſed. *Roll. Abr.* 892. Sheriffs may deliver in *Execution* all Lands whereof others ſhall be ſeiſed in Truſt for him againſt whom *Execution* is had, on a Judgment, &c. 29 *Car.* 2. *c.* 3. If there are Chattels ſufficient, the Sheriff ought not to take the Lands ; nor may Things fixed to the Freehold, Goods bought *bona fide*, Goods pawned, &c. be taken in *Execution*. 8 *Rep.* 143. And if a Defendant hides his Goods in ſecret Places, ſo that the Plaintiff cannot come at them to take them in *Execution*, it is ſaid no Action will lie againſt him. 5 *Rep.* 92, 93. The Sale of Goods for a valuable Conſideration, after Judgment, and before *Execution* awarded, is good : And if Judgment be given againſt a Leſſee for Years, and afterwards he ſelleth the Term before *Execution*, the Term aſſigned *bona fide* is not liable ; alſo if he aſſign it by Fraud, and the Aſſignee ſells it to another for a valuable Conſideration, it is not liable to *Execution* in the Hands of the ſecond Aſſignee. *Godb.* 161. 2 *Nelſ. Abr.* 783. If a Perſon has a Bill of Sale of any Goods, in Nature of a Security for Money, he ſhall be preferred for his Debt to one who hath obtained a Judgment againſt the Debtor before thoſe Goods are ſold ; for till *Execution* lodged in the Sheriff's Hands, a Man is Owner of his Goods, and may diſpoſe of them as he thinks fit, and they are not bound by the Judgment. *Preced. Can.* 286 But where a Man generally keeps Poſſeſſion of Goods after Sale, it will make the ſame void againſt others, by the Statute of fraudulent Conveyances. And where on an *Execution* the Owner of the Goods by Agreement was to have the Poſſeſſion of them upon certain Terms ; afterwards another got Judgment againſt the ſame Perſon, and took theſe Goods in *Execution* : It was here adjudged they were well liable, and that the firſt *Execution* was by Fraud and void againſt any ſubſequent Creditor ; becauſe there was no Change of the Poſſeſſion, and ſo no Alteration of Property. *Ibid.* 287. *Execution* may be made of Lands that the Defendant hath by Purchaſe after the Judgment ; although he ſell the ſame before *Execution*. *Roll.* 892. Where there is an Execution againſt Goods or Chattels, of a Tenant for Life, or Years, the Plaintiff before Removal of the Goods by the *Execution* is to pay the Landlord the Rent of the Land, &c. ſo as there be not above a Year due ; and if more be due, paying a Year's Rent, the Plaintiff may proceed in his *Execution*, and the Sheriff ſhall levy the Rent paid as well as the *Execution* Money. Stat. 8 *Ann. c.* 17. When a Judgment is ſigned, *Execution* may be taken out immediately upon it, and need not be delayed till it is entered, it being a perfect Judgment of the Court before entered. *Co Litt.* 505 And if the Judges of the Court of *B R.* ſee one againſt whom there is a Judgment of that Court walk in *Weſtminſter* Hall, they may ſend an Officer to take him up, if the Plaintiff deſire it, without a Writ of *Execution*. *Farreſt. Rep.* 52. If *Execution* be not ſued within a Year and a Day after Judgment, where there is no Fault in the Defendant, as if Writ of Error be not brought, &c. there muſt be a *Scire facias* to revive the Judgment, which in that Time may be had without moving the Court ; but if it be of longer Standing, the Court is to be moved for it. 1 *Inſt.* 290. 2 *Inſt.* 771. But if the Defendant be outlawed after Judgment, (as he may where he cannot be taken in *Execution*, or hath no Lands or Goods to pay the Debt, &c. when the Suit is commenced by Original) the Plaintiff need not renew the Judgment by *Scire facias* to obtain *Execution* after a Year. 1 *Inſt.* 290. It hath been adjudged, that by the Common Law, if a Man was outlawed after Judgment in Debt, the Plaintiff was at the End of his Suit, and he could have no other Proceſs after that perſonally; but was put to his new Original, &c. 2 *Nelſ. Abr.* 772. If the Plaintiff does not proceed upon the *Scire facias*, he may bring an Action upon the Judgment: And after Judgment againſt the Defendant, in Action where ſpecial Bail hath been given, the Plaintiff may have *Execution* againſt the Defendant, or proſecute his Bail. *Common Law Com. plac'd* 206. If one be arreſted upon Proceſs in *B. R.* and puts in Bail; and afterwards the Plaintiff recovers, and the Defendant renders not himſelf according to Law, in Safeguard of his Bail, the Plaintiff may at his Election take *Execution* againſt the Principal, or his Bail; but if he takes the Bail, he ſhall never afterwards meddle with the Principal. *Cro. Jac.* 320. *Execution* may not be ſued forth againſt the Bail, 'till a Default returned againſt the Principal. *Goldsb.* 175. If one recovers jointly againſt two in Debt, the *Execution* muſt be joint againſt them: The Court cannot divide an *Execution*, which is entire, and grounded on the Judment. *Mich.* 24 *Car. B. R.* When Judgment is given againſt three Perſons, you cannot take out *Execution* againſt one or two. 1 *Mod.* 2. A Man and his Wife recovered in an Action of Debt againſt the Defendant 100*l.* and Damages; then the Wife died, and the Huſband prayed to have *Execution* upon this Judgment: The Court at firſt inclined, That it ſhould not ſurvive to the Huſband, but that Adminiſtration ought to be committed of it, as a Thing in Action; but at laſt, they agreed that the Huſband might take out *Execution*, for that by the Judgment it became his Debt due to him in his own Right. *Cro. Car.* 608. 1 *Mod. Rep.* 179, 180. If Judgment be againſt two, on the Death of one the Plaintiff ſhall have *Execution* by *Scire facias* againſt the Survivor; and tho' he pleads, that the other Defendant has an Heir alive, &c. it will not prevent it. *Raym.* 26. And where two Perſons recover in Debt, and before *Execution* one of them dies; it has been held, that *Execution* may be ſued in both their Names by the Survivor, and it will be no Error; which may be done without a *Scire fac.* *Noy* 150. An *Execution* may be executed after the Death of the Defendant; for his Executor being privy, is bound as well as the Teſtator: And where *Execution* is once begun, it can't be delayed, unleſs there appears Irregularity; an *Audita Querela* is no *Superſedeas* to it, nor ſhall any Thing ſtop the Sheriff from Selling, &c. 2 *Cro.* 73. *Comberb.* 33, 389. As an *Execution* is an entire Thing, he who begins muſt end it; a new Sheriff may diſtrain an old one to ſell the Goods on a *Diſtringas nuper Vicecom.* and to bring the Money into Court, or ſell and deliver the Money to the new Sheriff; and the Authority of the old Sheriff continues by Virtue of the firſt Writ, ſo that when he hath ſeiſed, he is compellable to return the Writ, and liable to anſwer the Value according to the Return; likewiſe by the Seizure the Property of the Goods, &c. is deveſted out of the Defendant, and he is diſcharged, whereby no further Remedy can be had againſt him. 1 *Salk.* 322. 3 *Salk.* 159. By Releaſe of all Suits, *Execution* is gone; for no one can have *Execution* without Prayer and Suit, but the King only, in whoſe Caſe the Judges ought to award Execution *ex Officio*, without any Suit: And a Releaſe of all *Executions*, bars the King. By Releaſe of all Debts or Duties, the Defendant is diſcharged of the *Execution*, becauſe the Debt or Duty on which it is founded is diſcharged: But if the Body of a Man be taken in *Execution*, and the Plaintiff releaſe all Actions, yet he ſhall remain in *Execution*. 1 *Inſt.* 291. If where a Judgment is given in Action of Debt, and the Defendant taken in *Execution*, the Plaintiff releaſeth the Judgment, the Body ſhall be diſcharged of the *Execution*: And if the Plaintiff after Judgment releaſeth all Demands, the *Execution* is diſcharged. *Ibid.* Where one is in *Execution* at my Suit, and I bid the Sheriff let him go; this is a good Diſcharge and Releaſe both to the Party and Sheriff. *Poph.* 207. But if the Plaintiff make a Releaſe to the Defendant being in *Execution*, or other Act amounting to a Diſcharge; it will not be a Diſcharge *ipſo facto*, but by this Means he may have the ſame. 5 *Rep.* 86. *Dyer* 152. A Perſon in *Execution* ſhall not be delivered out of Priſon, but by Writ of *Superſedeas*. 1 *Lill. Abr.* 565. And if a Sheriff proceeds after a *Superſedeas* to ſtay *Execution* on Goods, &c. it is a great Contempt; and a Writ of Reſtitution may be awarded. 2 *Bulſt.* 194. An *Execution* may be ſet aſide as irregular, by *Superſedeas*; and the Party have Reſtitution, &c. *Carthew* 460, 461, 468. It hath been reſolved, that a Writ of Error is a *Superſedeas* from the Time of the Allowance: Though if a Writ of *Execution* be executed before the Writ of Error is allowed, it may be returned afterwards. 1 *Salk.* 321. No Writ of *Execution* ſhall be ſtayed by any Writ of Error or *Superſedeas*, after Verdict and Judgment, in any Action upon the Caſe for Payment of Money, Covenant, Detinue, Treſpaſs, &c. until Recognizance be entered into as directed by 3 *Jac* 1. Stat. 13 *Car.* 2. *c.* 2. And Judgment was had againſt a Perſon at *Briſtol*, and his Goods attached there; and the Court of *B. R.* being moved to ſtay the *Execution* until a Writ of Error brought ſhould be determined, they granted a *Habeas Corpus*, but nothing to ſtay the *Execution*. 1 *Bulſt.* 268. All Judgments of Courts in Debt are to be executed in the peculiar Juriſdictions where given, and cannot be removed to be executed by the ſuperior Courts. *Cro. Car.* 34. But if a Judgment given in another Court be affirmed or reverſed for Error in *B. R.* becauſe the Proceedings in the Court below are entered upon Record in the *King's Bench*, the Party ſhall have *Execution* in that Court: And ſo if a Judgment of Debt, &c. in the *Common Pleas* be affirmed in *B. R.* on a Writ of Error. 5 *Rep.* 88. Tho' where the Record of a Judgment given in *C. B.* is removed into *B. R.* the Party cannot take out *Execution* upon it, without a *Scire facias quare* Executionem *habere non debeat*. 1 *Lill. Abr.* 562. And where a Writ of Error is brought in the *Exchequer Chamber*, to reverſe a Judgment in *B. R.* if the Judgment is affirmed there, yet that Court cannot make out *Execution* upon the Judgment affirmed; but the Record muſt be tranſmitted back to the Court of *King's Bench*, where *Execution* muſt be done. 1 *Lill.* 565. A *Capias ad ſatisfaciend.* may be executed upon a Priſoner in Priſon for Felony; and if he be acquitted of the Felony, the Sheriff is to keep him. 1 *Lill. Ab.* 567. But where a Perſon is in Priſon for criminal Matters, he ought not to be charged with a Civil Action without Leave of the Court; yet if he be charged, he ſhall not be diſcharged. *Raym.* 58. Where not allowed, on a Pardon, ſee *Farreſt.* 153. A *Ca. ſa.* will lie againſt a Man who is outlawed for Felony, and he may be taken in *Execution* at the Suit of a Common Perſon. *Owen* 69. And if he was taken upon a *Capias Utlagat.* which is at the King's Suit, he ſhall be in *Execution* at the Suit of the Party, if he will. *Moor* 566. But this is not without Prayer of the Party: And if after a Judgment given, the Judges of their own Heads, or at the Requeſt of any Perſon, without Prayer of the Plaintiff, do commit the Defendant to Priſon; by this he ſhall not be ſaid to be in *Execution* for the Plaintiff. *Dyer* 297. If one arreſted be in Priſon for Debt, and Judgment is had againſt him; though it be in Arreſt on a *Latitat* or *Capias*, he ſhall not be in Execution upon the Judgment, unleſs the Plaintiff prays it of Record; or ſues a *Capias ad ſatisfaciend.* and delivers it to the Sheriff. *Dyer* 197, 306. *Jenk. Cent.* 165. A Sheriff ſhall have his Fees for *Executions*, upon Writ of *Capias ſatisfaciend.* for the whole

Debt; upon a *Fieri fac.* according to the Sum levied; and on an *Elegit* it is held by ſome, that he ſhall have Fees according to what is levied, and by others for the whole Debt recovered becauſe the Plaintiff may keep the Land till he is ſatisfied the intire Debt. 1 *Salk* 333. In *Perſonal Actions*, *Execution* is either by *Capias ad ſatisfaciend.* or *Fieri facias* againſt the Body or Goods; or *Elegit* againſt the Lands, *&c.* In *Real* and *Mixed Actions*, the Writs of *Execution* are *Habere facias Seiſinam*, to put the Party in Poſſeſſion of his Freehold recovered by Judgment of Law; and *Habere facias Poſſeſſionem*, to put him in Poſſeſſion of his Term, *&c.* And after Judgment, iſſues Proceſs of *Execution*; for it begins where the Action ends. No *Execution* for Damages recovered in a real Action, ſhall be had by *Capias ad ſatisfaciendum*: But where a Man hath Judgment to recover Land and Damages, he may have *Execution* of both together. 8 *Rep.* 141. If one have Judgment to recover Lands, and die before *Execution*, his Heir ſhall have it; and where Tenant in Tail recovers and dies before the *Execution* without Iſſue, he in Remainder may ſue out *Execution*: An Heir is to have *Execution* for Lands, and the Executor or Adminiſtrator for Damages. *Co. Litt.* 251. *Dyer* 26. The Executors of Executors may ſue out *Execution* of a Judgment; but an Adminiſtrator getting Judgment in Behalf of the Inteſtate, and then dying, neither his Executor or Adminiſtrator ſhall take out the *Execution*, but the Adminiſtrator *de bonis non Adminiſtratis* of the firſt Inteſtate. 5 *Rep* 9. In Debt, if the Defendant acknowledge the Action for Part, and as to the Remainder pleads to Iſſue, and the Plaintiff hath Judgment for that he confeſſeth; here he may not have *Execution* till the Iſſue is tried for that which he is to recover Damages: Tho' if he releaſes the Damages, he may have *Execution* preſently for the Reſt. *Rol.* 897. If a Sheriff in doing of *Execution* at the Suit of a common Perſon, break open any Man's Houſe, the *Execution* may be good; but the Party ſhall have his Action of Treſpaſs againſt him for it: And where the Sheriff hath a *Fieri fac.* or *Ca. ſa.* againſt a Man, and before *Execution*, he pays him the Money, *Execution* may not be done afterwards; if it be, Treſpaſs or falſe Impriſonment lies. 5 *Rep.* 93. 12 *Car. B. R.* By a late Statute, Perſons charged in *Execution* for any Sum not exceeding 100*l.* in any Gaol, who are willing to ſatisfy their Creditors as far as they are able, may exhibit a Petition to the Court whence the Proceſs iſſued, with an Account of their whole Eſtate upon Oath, praying to be diſcharged, *&c.* And thereupon the Court ſhall order the Priſoner to be brought up, and his Creditors ſummoned at a certain Day, when the Court in a ſummary Way is to examine into the ſame, *&c.* and order the Eſtate and Effects of the Priſoner to be aſſign'd to the Creditors by Indorſement on the Back of the Petition; whereupon the Priſoner ſhall be *diſcharged out of Priſon*; but if Creditors are diſſatisfied with the Truth of the Priſoner's Oath, he is to be remanded till another Day, and then if his Creditors cannot diſcover any Effects omitted, he ſhall be releaſed; unleſs the Creditors inſiſt on the Priſoner's being detained in Priſon, and agree by Writing to pay him 2*s.* 4*d.* a Week, *&c.* *Stat.* 2 *Geo.* 2. *c.* 22. Priſoners in Execution *ut ſupra* in any Priſon (except in *London* and *Weſtminſter*) before they Petition any of the Courts from whence the Proceſs iſſued for a Rule to be brought up, are to give Notice to their Creditors in Writing, that they deſign to petition, and alſo a true Copy of the Account or Schedule of their whole Eſtates which they intend to deliver in to the Court, *&c.* And then upon ſuch Petition, the Priſoners ſhall have a Rule of Court to be brought to the next Aſſizes for the County, at an Expence not exceeding 12*d.* a Mile, to be paid to the Officer out of the Effects of the Priſoners; *&c.* And the Creditors muſt be ſummoned to appear at the ſaid Aſſizes by Order ſerved on them or left at their Houſes thirty Days before; and at the Aſſizes, the Judges on Examination ſhall determine the Matter, and give Judgment and Relief; a Record of which Judgment is to be returned and certified to the Court whence the Proceſs iſſued, on which the Priſoners were taken in *Execution*. 3 Geo. 2. c. 27. No Perſon charged in *Execution*, ſhall be allowed to exhibit a Petition to any Court at Law to be diſcharged, purſuant to the above Acts, unleſs it be done before the End of the next Term after he is charged; and thoſe Statutes ſhall not relate to any one taken on a *Capias* for running cuſtomable Goods, *&c.* A Clauſe for ſetting mutual Debts of Plaintiff and Defendant one againſt the other, is made perpetual; and they may be pleaded in Bar, or given in Evidence, on the General Iſſue, though of a different Nature, except in Caſes of Penalties in Bonds, *&c.* And in Pleading ſhall be ſhewn, how much is juſtly due on either Side, and Judgment given for what appears for the Plaintiff, *&c.* Stat. 8 *Geo.* 2. *c.* 24.

Execution for the *King's Debt*, or *Prerogative Execution*, is always preferred before any other *Executions*. 7 *Rep.* 20. And if a Defendant is taken by *Capias ad Satisfaciendum*, and before the Return thereof a *Prerogative* Writ iſſues from the *Exchequer*, for the Debt of the King, teſted a Day before he was taken, here he ſhall be held in *Execution* for the King's Debt, and that of the Subject. *Dyer* 197. Lands *intailed* in the Hands of the Iſſue in Tail, when ſubject to the King's Extent, and where not, ſee 7 *Rep.* 21. See alſo *King.*

Execution of Criminals, Muſt be according to the Judgment; and the King cannot alter a Judgment from Hanging to Beheading, becauſe no *Execution* can be warranted unleſs it be purſuant to the Judgment. 3 *Inſt.* 52, 211. *H. P. C.* 272. But there are ancient Precedents, wherein Men condemned to be hanged for Felony, have been beheaded by Force of a ſpecial Warrant from the King. *Bract.* 104. *Staundf.* 13. And the King may pardon Part of the *Execution* in Judgment for Treaſon, *viz.* all but Beheading. The Court may command *Execution* to be done without any Writ: Though ſometimes *Execution* is commanded by Writ. 2 *Hawk. P. C.* 463. Judgment belongs to the Judge; but the *Execution* muſt be done by the Sheriff, *&c.* And an *Execution* cannot be lawfully made by any but the proper Officer; who may do it on the Precept of the Judge under his Seal: And if the Sheriff, or other Officer, alters the *Execution*, or any other executes the Offender, or if he is killed without Authority of Law, it is Felony. 2 *Hawk. Ibid.* It's ſaid by *Hale* Chief Juſtice, That there is no Warrant for the *Execution* of Perſons condemned, but a Calendar directing it left with the Sheriff under the Hand of the Juſtice that ſits; though anciently there was a Precept or Warrant, under their Hands and Seals: And where the Priſoner is in Cuſtody of the Sheriff, the open pronouncing and entering the Judgment *Suſpendatur*, is a Warrant for the *Execution*. 2 *Hale's Hiſt. P. C.* 31, 409. Subſequent Juſtices have no Power by the Stat. 1 *Ed.* 6. *c.* 7. to award *Execution* of Perſons condemned by former Judges; but if Judgment has not been paſſed on the Offenders, the other Juſtices may give Judgment, and award *Execution*, *&c.* 2 *Hawk.* 27. *Execution* ought to be in the ſame County where the Criminal was tried and convicted; except the Record of the Attainder be removed into *B. R.* which may award *Execution* in the County where it ſits. 3 *Inſt.* 31, 211, 217. Where a Perſon attainted hath been afterwards at large, if on the Court's demanding why *Execution* ſhould not be awarded againſt him, he denies he is the ſame Perſon, it ſhall be tried by a Jury for that Purpoſe, and then he is to be executed. 2 *H. P. C.* 463.

463. If upon a Record removed, an outlawed Perſon confeſs himſelf to be the ſame Perſon, *Execution* ſhall be had; but if he deny it, and the King's Attorney confeſſes he is not, he ſhall be diſcharged; though if the Attorney General take iſſue upon it, the ſame ſhall be tried. 2 *Hale's Hiſt. P. C.* 402. If a Perſon, when attainted, ſtand mute to a Demand why *Execution* ſhall not go againſt him, the ordinary *Execution*, (and not Penance) ſhall be awarded. 2 *Hawk.* 462. In Caſe a Man condemned to die, come to Life after he is hanged, as the Judgment is not executed till he is dead, he ought to be hung up again. *Finch* 389. The Body of a Traitor or Felon is forfeited to the King by the *Execution*; and he may diſpoſe of them as he pleaſes. The *Execution* of Perſons under the Age of Diſcretion is uſually reſpited, in order to a Pardon. 1 *Hawk.* 2.

Execution of Statutes. The Court of *Star-Chamber* erected in the Reign of King *Hen.* 7. was ſaid to be for the *Execution of Statutes*, &c. *Stat.* 3 *H.* 7. *c.* 1.

Executione facienda, Is a Writ commanding Execution of a Judgment, and diverſly uſed. *Reg Orig.*

Executione facienda in Withernamium, A Writ that lies for taking his Cattle, who hath conveyed the Cattle of another out of the County, ſo that the Sheriff cannot replevy them. *Reg. Orig* 82.

Executione Judicii, Is a Writ directed to the Judge of an inferior Court to do Execution upon a Judgment therein, or to return ſome reaſonable Cauſe wherefore he delays the Execution. *F. N. B.* 20. If Execution be not done on the firſt Writ, an *Alias* ſhall iſſue, and a *Pluries* with this Clauſe, *vel Cauſam nobis ſignifices quare, &c.* And if upon this Writ Execution is not done, or ſome reaſonable Cauſe returned why it is delayed, the Party ſhall have an Attachment againſt him who ought to have done the Execution returnable in *B. R.* or *C. B* *New Nat. Br.* 43. If the Judgment be in a Court of Record, this Writ ſhall be directed to the Juſtices of the Court where the Judgment was given, and not unto the Officer of the Court; for if the Officer will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may amerce him. *Ibid.* One may have a Writ *de Executione Judicii* out of the Chancery to execute a Judgment in an inferior Court, although a Writ of Error be brought to remove the Record, and reverſe the Judgment; if he that brings the Writ of Error do not take Care to have the Record tranſcribed, and the Writ of Error returned up in due Time. 1 *Lill. Abr.* 562.

Executor, (*Lat.*) Is one that is appointed by a Man's laſt Will and Teſtament, to have the Execution thereof after his Deceaſe, and the Diſpoſing of all the Teſtator's Subſtance according to the Tenor of the Will: He is as much as *Hæres deſignatus* or *Teſtamentarius* in the *Civil Law*, as to Debts, Goods and Chattels of his Teſtator. *Terms de Ley* 321, 322 An *Executor* may be appointed either by expreſs Words, or Words that amount to a direct Appointment; as if the Teſtator declares by his Will, that a certain Perſon ſhall have his Goods to pay Debts, and otherwiſe diſpoſe of, *&c.* And *Executors* may be made upon Condition; for a fixed Time; or ſome Part of the Eſtate. *Wood's Inſt.* 326. A Man that can make an *Executor*, may either make one, two, three, or more his *Executors*; and he may appoint one Perſon his *Executor* for one Year, and another Man for another Year, *&c.* If he make a Will, and appoint an *Executor* for ſeven Years; after that the Ordinary may grant Adminiſtration of the Goods; ſo till the Power of *Executors* takes Place: And where one makes an *Executor* as to Part of his Eſtate, he ſhall die Inteſtate as to the Reſidue. 4 *Shep. Abr.* 66, 67, 68. If there is no *Executor*, there is properly no Will; and where there is no Will, there can be no *Executor*: But this is underſtood of Goods; for where Lands in Fee are deviſed, this is good, though no *Executor* be named; *Executors* having nothing to do with Land, which is not Teſtamentary but by Act of Parliament. *Offic. Exec* 3, 4. *Finch* 167. All Perſons capable of making a Will, are capable of being *Executors*. 3 *Cro.* 9. And a Woman Covert may be an *Executor*, and do any lawful Act which another *Executor* may do; but ſhe may not damage her Husband thereby, by Aſſenting to a Legacy before Debts are paid, *&c.* 5 *Rep.* 27 A Feme Covert *Executrix* cannot releaſe a Debt of her Teſtator's, or give away the Goods ſhe hath as *Executrix*, without the Husband; but the Husband may do it, and yet the Goods which the Wife hath as *Executrix* are not deveſted out of her, as her own Goods are; nor if ſhe dies, ſhall they go to the Husband, but to her *Executors*, or the next of Kin, being Adminiſtrator of her Teſtator. *Offic. Exec. c.* 17. Husband and Wife muſt be named in Actions brought for Goods which the Wife is entitled to as *Executrix. Ibid.* A Woman may be *Executrix* to her Husband, and the Husband *Executor* to his Wife; and by this Means, he may recover all the Debts due to her before Marriage, *&c.* *Fitz. Executor*, 47, 87, 24. An Infant may be an *Executor*; though he cannot act 'till he is ſeventeen Years of Age; and until that Time Adminiſtration *durante Minori ætate* is to be granted. 6 *Rep.* 67. 4 *Inſt.* 335. If two are *Executors*, one whereof is under Age, he of full Age may ſolely prove the Will. 1 *Lev.* 181. A Man attainted of Felony cannot make *Executors*; becauſe he hath forfeited all that he had: But a Perſon outlawed may make *Executors*; ſo may an excommunicate Perſon, *&c.* 1 *Leon.* 326. *Cro. El.* 577. A Traitor, or Felon, Baſtard begotten in Inceſt, or a notorious Uſurer, 'tis ſaid, may not be *Executor* to another. *Swinb.* 222. A Popiſh Recuſant convict cannot be an *Executor*. 9 *Rep.* 37. A Mayor and Commonalty may be *Executors*. 1 *Rol. Abr.* 915. And if the King is made *Executor*, he appoints others to take the Execution of the Will upon them, and to take Account. 5 *Rep.* 29. Where *Executors* are appointed, they may accept of, or refuſe the *Executorſhip*; but they may not refuſe after Acceptance, nor on the other Hand accept after Refuſal. 9 *Rep* 37. When a Will with *Executors* is made the Ordinary may ſend out Proceſs againſt the *Executors* to come in and prove it; and if they do not come in, they are to be excommunicated; but if they come in and refuſe to take upon them the Execution of the Will, then the Ordinary is to commit Adminiſtration: And the Refuſal muſt be by ſome Act regiſter'd in the Spiritual Court. *Offic. Exec.* If an *Executor* hath adminiſtred, he cannot refuſe; but the Ordinary is to compel him to take upon him the *Executorſhip*. Offic. Exec. 38. *Executors* cannot refuſe for a Time, but for ever; but they may have Time to adviſe upon it, and the Ordinary is to grant Letters *ad Colligendum*, not Adminiſtration. *Cro. Eliz.* 92 An *Executor* refuſing the *Executorſhip*, where two are appoined, may not adminiſter after the Death of his Companion, for then his Election is gone; and the *Executor* of the other *Executor* who proved the Will, may alone bring an Action for Money due to the firſt Teſtator, without joining him who refuſed. *Dyer* 160. If there are many *Executors* of a Will, and one of them only proves the Will, and takes upon him the *Executorſhip*, it is ſufficient for all of them; but the reſt after may join with him, and intermeddle with the Teſtator's Eſtate: But if they all of them refuſe the *Executorſhip*, none of them will ever afterwards be admitted to prove the Will; the Ordinary in this Caſe grants Adminiſtration with the Will annexed, and the Teſtator is in Law adjudg'd to die Inteſtate, and without *Executor*. 9 *Rep.* 37. 1 *Rep.* 113 *Perk.* 485 If an *Executor* dies before Probate, it is the ſame, for ſuch an *Executor's Executor* cannot prove the Will, becauſe he is not named therein, and no one can prove a Will but he who is named *Executor* in it; but if the firſt *Executor* had proved the Will, then his *Executor* might have been *Executor* to the firſt Teſtator, there requiring no new Probate. 1 *Salk.* 299. An *Executor* of an *Executor* may be *Executor* to the firſt Teſtator; but he may take upon him the *Executorſhip* of his own Teſtator, and refuſe to intermeddle with the Eſtate of the other: And if the firſt *Executor* refuſes, or dies before Probate, his *Executor* ſhall not adminiſter to the firſt Teſtator: Nor can an *Executor* of an Adminiſtrator take Adminiſtration of the Goods of his Inteſtate. *Dyer* 372. A Teſtator having thought the *Executor* appointed a proper Perſon to be entruſted with his Affairs, the Ordinary cannot adjudge him diſabled or *Incapax*; but a *Mandamus* ſhall Iſſue from *B. R.* for the Ordinary to grant Probate of the Will, and admit the *Executor*, if he refuſe him: Neither can the Ordinary inſiſt upon Security from the *Executor*, as the Teſtator hath thought him able and qualiſhed. 1 *Salk* 299. And altho' an *Executor* becomes Bankrupt, yet 'tis ſaid the Ordinary cannot grant Adminiſtration to another: But if an *Executor* become *Non Compos*, the Spiritual Court may commit Adminiſtration for this natural Diſability. 1 *Salk.* 307. If an *Executor* take Goods of the Teſtator's, and convert them to his own Uſe; or if he either receive, or pay Debts of the Teſtator, or give Bond for Payment; make Acquittances for them, or demand the Teſtator's Debts as *Executor*; or give away the Goods of the Teſtator, &c. theſe are an Adminiſtration, ſo that he cannot afterwards refuſe the *Executorſhip*: And it has been held, that if the Wife of the Teſtator take more Apparel than is neceſſary, it is an Adminiſtration. *Offic. Exec* 39. All Goods and Chattels which belonged to the Teſtator at the Time of his Death, in any Part of the World, come to the *Executor* as Aſſets, and make him chargeable to Creditors and Legatees; and Debts, &c. recovered by the *Executor*, by Action after the Death of the Teſtator, are to be accounted as Aſſets, but not before recovered. 6 *Rep.* 47. 1 *Inſt.* 374. If an *Executor* do never recover, or get in a Debt, he ſhall never be charged, provided he hath uſed his utmoſt Endeavours to recover it, and cannot do it. 1 *Rep.* 98. And where an *Executorſhip* is controverted in the Spiritual Court by another *Executor* who ſets up another Will; an Injunction may be granted to the Teſtator's Debtors not to pay any Money till the Title to the *Executorſhip* is ſettled. *Chanc. Rep.* The Chattels real and perſonal of the Teſtator coming to the *Executor*; are Leaſes for Years, Rent due, Corn growing and cut, Graſs cut and ſevered, &c. Cattle, Money, Plate, Houſhold Goods, &c. *Co. Litt.* 118. *Dyer* 130, 537. An *Executor* having a Leaſe for Years of Land in Right of the Deceaſed, if he purchaſe the Fee, whereby the Leaſe is extinct; yet this Leaſe ſhall continue to be Aſſets, as to the Creditors and Legatees. 1 *Rep.* 87. *Bro. Leaſ.* 63. Though a Plantation be an Eſtate of Inheritance, yet being in a foreign Country, it is a Chattel in the Hands of *Executors* to pay Debts. 1 *Vent.* 358. The *Executor* is not only intitled to all perſonal Goods and Chattels of the Teſtator, of what Nàture ſoever they are; but they are alſo accounted to be in his Poſſeſſion, though they are not actually ſo; for he may maintain an Action againſt any one who detains them from him: He is likewiſe entitled to Things in Action; as Right of Execution on a Judgment, Bond, Statute, &c. Alſo to Money awarded on Arbitration, where the Party dies before the Day, &c. 1 *Inſt.* 209. 2 *Vent.* 249. 1 *Danv. Abr.* 549. If Goods of the Teſtator are kept from the *Executor*, he may ſue for them in the Spiritual Court, or at Common Law; and if one ſeiſed of a Meſſuage in Fee, &c. hath Goods in the Houſe, and makes a Will and *Executors*, and dies, the *Executors* may enter into the Houſe, and carry away the Goods. *Lit.* 69. An *Executor* may in convenient Time after the Teſtator's Death, enter into a Houſe deſcended to the Heir, for removing and carrying away the Goods; ſo as the Door be open, or the Key be in the Door. *Offic. Exec.* 8. He may take the Goods and Chattels to himſelf, or give Power to another to ſeize them for him. 9 *Rep* 38. An *Executor* with his own Goods redeems the Goods of the Teſtator; or pays the Teſtator's Debts, &c. the Goods of the Teſtator ſhall, for ſo much, be changed into the proper Goods of the *Executor*. *Jenk. Cent.* 188. *Executors* having their Power wholly by the Will, may releaſe an Action, Debt, or Duty, or do any Thing as *Executors* before Probate of the Will, ſo as afterwards they prove it; except it be bringing Actions for Debts, &c. But to maintain theſe they muſt ſhew the Teſtament prov'd, and the Probate is to be brought into Court before the Defendant will be bound to plead. *Plowd.* 277. 1 *Inſt.* 292. 1 *Roll Abr.* 917, 926. For the Goods of the Teſtator, taken from them, or for Treſpaſs upon the Land, &c. *Executors* may before the Will prov'd bring Action of Treſpaſs, Detinue, &c. And if they ſell Cattle, or other Goods of the Teſtator, before the Will is proved, they may have Actions for the Money payable, before the ſame is proved: And an *Executor* may be ſued for the Debts of the Teſtator before Probate of the Will, if he be *Executor* by his own Act of Adminiſtring, which makes him liable to Actions. *Offic. Exec.* 35. It has been ruled, that an *Executor* may commence an Action before Probate; but he cannot declare upon it, without producing in Court the Letters teſtamentary: He is not like an Adminiſtrator, who hath no Right till Adminiſtration committed; for his Right is the ſame before as after Probate of the Will, and the not proving it is only an Impediment to the Action. 1 *Salk.* 303. *Executors* may maintain Action of Trover for Goods converted in the Life of the Teſtator. *Cro. Eliz.* 377. And by Statute, *Executors* ſhall have a Writ of Account, and the like Action and Proceſs, as the Teſtator might have had, if he had lived 13 *Ed.* 1. *c.* 23. The *Executors* may bring Actions for Treſpaſs done to their Teſtator, as for Goods and Chattels carried away in his Life, and ſhall recover their Damages, in the ſame Manner as he ſhould have done. *Stat.* 4 *Ed.* 3. *c.* 7. Alſo *Executors* of *Executors* ſhall have Actions of Debt, Account, and of Goods taken away of the firſt Teſtator's; and have Execution of Statutes, &c. and ſhall Anſwer to others, ſo far as they recover Goods of the firſt Teſtator, as the firſt *Executors.* 25 *Ed.* 3. *c.* 5. The Word *Executor* is a Word collective, and doth comprehend in it the *Executor* of an *Executor*; for he is accountable for the firſt Teſtator's Goods, and is as it were his *Executor* for ſuch Goods as remain unadminiſtred by the firſt *Executor.* 1 *Lill. Abr.* 568. Formerly, if an *Executor* waſted Goods, and left an *Executor*, and died, leaving Aſſets, his *Executor* ſhould not be chargeable, becauſe it was a perſonal Tort. 2 *Lev.* 110. But now it is otherwiſe by the Statute 30 *Car.* 2. *cap.* 7. made perpetual by 4 & 5 *W.* & *M.* *c.* 24. As the Law gives to *Executors* all Chattels, &c. of the Teſtator, ſo it ſubjects the *Executors* to every Perſon's Claim and Action, which he had againſt the Teſtator; for which Reaſon the *Executor* is ſaid to be the Teſtator's Aſſignee, and to repreſent the Perſon of the Teſtator: But for perſonal Wrongs done by the Teſtator to the Perſon or Goods, &c. of another, the *Executor* doth not repreſent him; becauſe perſonal Actions die with the Perſon. 1 *Inſt.* 209. 9 *Rep.* 89. Nothing can be Debt in the *Executor*, which was not Debt in the Teſtator; and if a Man covenants that his *Executor* ſhall pay 10*l.* no Action lies againſt him for it. *Cro. El.* 232. So a Promiſe to pay to an *Executor*, when the Teſtator is not named, is not good. *Cro. Jac.* 570. But a Teſtator may bind his *Executors* as to his Goods, though he himſelf is not bound. *Ibid.* And an *Executor* may recover a Duty due to the Teſtator, tho' he be not named. *Dyer* 14. Action lies againſt an *Executor* upon a collateral Promiſe made and broke by the Teſtator. *Cro. Jac.* 663. The Teſtator's *Aſſumpſit* to do any collateral Thing, as to build an Houſe, &c. which is not a Debt, binds *Executors:* And *A.* brings *Aſſumpſit* againſt the *Executor* of *B.* on a Promiſe of the Teſtator to pay a certain Sum of Money, which neither he nor his *Executor* hath paid; reſolved by all the Judges, that the Action well lieth. *Jenk. Cent.* 290, 336. *Aſſumpſit* lies upon a Contract of the Teſtator; and the Reaſon is the ſame upon a Promiſe, where the Teſtator had a valuable Conſideration. *Palm.* 329. Though a Debt upon a ſimple Contract of the Teſtator, cannot be recovered of the *Executor* by Action of Debt; yet it may by *Aſſumpſit.* 1 *Lev* 200. Where the Teſtator might have waged his Law, his *Executors* ſhall not be charged. 9 *Rep.* 87. If two Perſons are bound jointly, and one of them dies, the Survivor only ſhall be charged, and not the other's *Executor. Paſch.* 16 *Car.* 2. Alſo when there are two *Executors*, if one of them dies, Debt is to be brought againſt the ſurviving *Executor*, and not the *Executor* of the Deceaſed: But in Equity, the Teſtator's Goods are liable in whoſeſoever's Hands they are. 1 *Leon.* 304. *Chanc. Rep.* 57. Bills in Equity for Debts without Specialty, have been allowed to be brought againſt *Executors*, with an Averment that they had Aſſets; and no Difference has been made where the Party ſeeks for Relief either before or after a Judgment given againſt him at Law. *Moor* 566. Aſſets ſhall be always intended, till the *Executors* alledge the Want of them in Excuſe. 9 *Rep.* 90, 94. If an Obligee makes the Obligor *Executor*, this is a Releaſe in Law of the Debt; but it ſhall be Aſſets in his Hands; if there be not Aſſets beſide to pay other Creditors. 8 *Rep.* 136. 2 *Roll. Abr.* 920. When an Obligor is made *Executor* by the Obligee, by Adminiſtring ſome of the Goods, he hath accepted the *Executorſhip*, and 'tis that which makes the Releaſe; becauſe by being *Executor* he is the Perſon who is to receive the Money due on the Bond, and he is likewiſe the Perſon to pay it; and the Rule is, that where the ſame Hand is to receive and pay, that amounts to an Extinguiſhment. 1 *Salk.* 305 But a Perſon who owed the Teſtator 400*l.* was made *Executor*, where Debts, Legacies, and a reſiduary Eſtate were deviſed; and though it was inſiſted that the Debt was diſcharged by the Debtor's being made *Executor*, and that there was ſufficient to pay the Debts and Legacies, yet it was decreed in Equity againſt the *Executor*, that he ſhould pay the 400*l.* to the Reſiduary Legatee: 1 *Chanc. Rep.* 292. It has been adjudged, that an Obligee making the Wife of an Obligor *Executrix*, had ſuſpended the Action on the Bond ſo long as the *Executorſhip* continued; and that a perſonal Action being ſuſpended by the Act of the Party himſelf, is quite extinguiſhed: This was in a Caſe where the Teſtator deviſed all his Goods to the Wife of the Obligor, and made her ſole *Executrix. Moor* 855. *Hutt.* 128. If an Obligee is made *Executor* by the Obligor, the Debt is not releaſed, but the Obligee may ſtill ſue for the Debt; unleſs he adminiſters, when if he ſues he muſt ſue himſelf, which cannot be, and in this Caſe he may retain the Goods of the Obligor Teſtator in Satiſfaction of his Debt. 2 *Lev.* 73. 2 *Nelſ. Abr.* 785. And if there be no Aſſets, the Obligee *Executor* may ſue the Heir of the Obligor Teſtator in Action of Debt upon his Bond. 1 *Salk.* 304. 1 *Lill. Abr* 575. If an *Executor* releaſes all Actions, Suits and Demands, it extends only to Demands in his own Right; not ſuch as he hath as *Executor. Show.* 153. And where an *Executor* grants *Omnia bona ſua*, though ſome are of Opinion that the Goods which he hath as *Executor* will paſs; yet others hold the contrary. *Noy* 106 4 *Leon.* 70. An *Executor* ſhall be charged with Rent in the *Detinet*, if he hath Aſſets; and if he continues the Poſſeſſion, he ſhall be charged in the *Debet* and *Detinet*, in Reſpect of the Perception of the Profits, whether he hath Aſſets or not. 1 *Lev.* 127. But an *Executor* is not ſuable in the *Debet* and *Detinet* for Part, and in the *Detinet* for the other Part; becauſe they require ſeveral Judgments, *viz. De bonis propriis* for the *Debet* and *Detinet*, and *De bonis Teſtatoris* for the *Detinet.* 3 *Lev.* 74. If an *Executor* has a Term, and the Rent reſerved is more than the Value of the Premiſſes, in Action brought againſt him for it in the *Debet* and *Detinet*, he may plead the ſpecial Matter, *viz.* That he hath no Aſſets, and that the Land is of leſs Value than the Rent, and demand Judgment if he ought not to be charged in the *Detinet tantum:* And he cannot wave the Leaſe; without renouncing the whole Executorſhip. 1 *Salk.* 297. It hath been held, that if an *Executor* alters the Property of Things from the Teſtator to himſelf, by paying a Debt to the Value; or by paying the Rent of a Leaſe, and receiving the Profits, or Part of the Profits equal to the Rent, the Things and Profits received are his own. *Dyer* 185, 187. 5 *Rep.* 31. Where a Man by Will deviſes that his Lands ſhall be ſold for Payment of *Debts*, his *Executors* ſhall ſell the Land, to whom it belongs to pay the Debts. 2 *Leon. c.* 276. And if Lands are deviſed to *Executors* to be ſold for Payment of the Teſtator's Debts, thoſe *Executors* that act in the *Executorſhip*, or that will ſell, may do it without the others. 1 *Inſt.* 113. By Statute 21 *H.* 8. *c.* 4. Bargains and Sales of Lands, &c. deviſed to be ſold by *Executors*, ſhall be as good, if made by ſuch of the *Executors* only as take upon them the Execution of the Will, as if all the *Executors* had joined in the Sale: If Lands are thus deviſed to pay Debts, a ſurviving *Executor* may ſell them; but if the Deviſe be, that the *Executors* ſhall ſell the Land, and not of the Land to them to be ſold, here being only an Authority, not an Intereſt, if one dies, the other cannot ſell. 1 *Lev.* 203. When Lands are deviſed or diſpoſed for paying Debts, Goods in the Hands of an *Executor* ſhall not be liable; though in Caſe of an Adminiſtrator it is otherwiſe. *Ibid.* Each *Executor* hath the Whole of the Teſtator's Goods and Chattels, and each may ſell or aſſign the Whole; (But one of them cannot aſſign or releaſe his Intereſt to the other, if he doth it will be void.) If one *Executor* grant his Part of the Teſtator's Goods, all paſſeth, and nothing is left in the other; each having the Whole, and there are no Parts or Moieties between *Executors:* Yet one *Executor* may demiſe or grant a Moiety of the Land, for the whole Term, and ſo may the other; and this Way they may ſettle in Friends truſted for them a Moiety for each. *Offic. Exec. c* 9. One *Executor* cannot regularly ſue another at Law; but he may have Relief in Equity: In the Eye of the Law all are but as one *Executor*; and moſt Acts done by or to any one of them, are eſteemed Acts done by or to all of them. 1 *Roll. Abr.* 918. If where one *Executor* is ſued, he plead that there is another *Executor*, he ought to ſhew that he hath adminiſtred. 1 *Lev.* 161. And he only that adminiſters is to be ſued in Actions againſt *Executors*; but Actions brought by *Executors* are to be in the Name of all of them, though ſome do not take upon them the *Executorſhip.* 1 *Roll.* 924. There are two *Executors*, and one doth not adminiſter; a Writ of Debt lies againſt him alone who adminiſtered: For he that doth not meddle with the Eſtate of the Teſtator, ſhall not be charged to his Damage; tho' in ſuing Actions againſt others, he remains *Executor* to advance the Teſtator's Benefit. *Jenk. Cent.* 106, 107. An *Executor* is not diſabled by Outlawry, to ſue for the Debts of the Teſtator. Special Bail is not required of *Executors*, &c. in any Action brought for the Teſtator's Debt: And *Executors* or Adminiſtrators are not liable to Coſts. *Stat.* 24 *H.* 8. If an *Executor* brings a Writ of Error, though the Judgment is affirm'd, he ſhall not pay any Coſts; becauſe as he is *Executor*, it is *in auter Droit:* Alſo an *Executor* ſhall not put in Bail on a Writ of Error, *Cauſa ſupra. Mich.* 5 *W. & M. Executors* are excuſed from paying Coſts, as being preſumed to have no Knowledge of the Affairs of the Teſtator; and therefore they ſhall pay Coſts for not going on to Trial, or where the Cauſe of Action ariſes to the *Executor* himſelf, *&c.* 1 *Salk.* 207. 3 *Salk* 106. No Action ſhall charge an *Executor* to anſwer Damages out of his own Eſtate, upon any Promiſe to another, unleſs there be ſome Writing thereof ſigned by the Party to be charged therewith. 29 *Car.* 2 *c.* 3. On any Judgment after Verdict, had by or in the Name of an *Executor* or Adminiſtrator; an Adminiſtrator *de bonis non* may ſue forth a *Scire facias*, and take Execution upon ſuch Judgment. *Stat.* 30 *Car.* 2. Before this Statute it was not ſo; where an *Executor*, *&c.* died, for Want of Privity, the Adminiſtrator was to begin again. 2 *Nelſ. Abr.* 789 If an *Executor* makes himſelf a Stranger to the Will of the Teſtator, or pleads *Ne unques Executor*, or any falſe Plea, and it is found againſt him, Judgment ſhall be *de bonis propriis:* In other Caſes, *de bonis Teſtatoris. Cro. Jac.* 447. If on a *Sci fac.* againſt an *Executor*, the Sheriff return a *Devaſtavit*; the Plaintiff ſhall have Judgment and Execution *de bonis propriis* of the Defendant: And if *Nulla bona* be return'd, he may have either a *Capias Satisfaciend.* or an *Elegit.* 2 *Nelſ.* 791. *Dyer* 185. But one *Executor* ſhall not be charged with a *Devaſtavit* made by his Companion; for the Act of one ſhall charge the other no further than the Goods of the Teſtator in his Hands amount to. *Cro. Eliz.* 318. If an *Executor* does any Waſte, or miſemploys the Eſtate of the Deceas'd, or doth any Thing by Negligence or Fraud, *&c.* it is a *Devaſtavit*, and he ſhall be charged for ſo much out of his own Goods. 8 *Rep* 133. And a *new Executor* may have an Action againſt a former *Executor*, who waſted the Goods of the Deceaſed; or the old one may remain chargeable to Creditors, *&c. Hob.* 266.

The *Duty and Office of an Executor* is to bury the Teſtator in a decent Manner, according to his Rank and Quality, and with a due Regard to the Eſtate left after Debts are ſatisfied: For whatever an *Executor* lays out extravagantly in Funeral Charges, if there be not enough to pay Debts, he muſt bear it at his own Expence. *Wood's Inſt.* 325. But all reaſonable and neceſſary Funeral Charges muſt be allow'd before Debts and Legacies. 1 *Roll. Abr.* 926. The *Executor* is to make an Inventory of all the Goods and Chattels of the Deceas'd, with their Value, and of all Debts due to the Teſtator; and this Inventory ought to be made and apprais'd in the Preſence of the *Executor*, by Two or more of the Creditors, or two next of Kin to the Teſtator; or in their Default, by two or more of the Neighbours or Friends of the Deceas'd: And then the *Executor* muſt deliver the ſame upon Oath to the Ordinary. *Doct. & Stud. c.* 10. 21 *H.* 8. *c.* 5. Until the Inventory of the Teſtator's Goods is made and brought into the Office of the Ordinary, it ſhall be preſumed that the *Executor* hath Aſſets to pay all the Debts of the Teſtator: The Inventory ſhews the Charge of the *Executor*, and his Account muſt be his Diſcharge, for ſo much as he can prove to be laid out in the Payments for Funeral Charges, making the Inventory, Probate of the Will; Debts and Legacies: This Account will diſcharge him of all Suits in the Spiritual Court; but will not diſcharge him of Suits at the Common Law, for there each Particular muſt be again proved. *Wood* 328. An *Executor* is to paſs his Account before the Ordinary, for the Goods and Chattels of the Teſtator; but the Ordinary may not call *Executors* to account *ex Officio.* 9 *Rep.* 39. By Statute, no *Executor* or Adminiſtrator ſhall be cited into any Eccleſiaſtical Court to render an Account, otherwiſe than by Inventory, unleſs at the Inſtance of a Creditor, *&c.* 1 *Jac.* 1. *c.* 17. It has been held, an *Executor* is bound to Account; and the Ordinary muſt take the *Executor's* Account, when he is ſummoned by any Creditor, and cannot hold Plea of it, becauſe 'tis made upon Oath: But if a Legatee comes, he may unravel the Account, for this is generally the only Court for him to ſue in, and therefore he is not bound by it; though if the *Executor* will pay him his Legacy, then he cannot compel him to exhibit an Inventory or to Account, he having the End of his Suit. 2 *Inſt.* 600. *Raym.* 407. *Hill.* 6 *Ann.* The Inventory of the Teſtator's Goods being made, or before if requiſite, where there is enough to pay all Debts and Legacies, the *Executor* is to prove the Will before the Ordinary in common Form, by his own Oath, or by Witneſſes, if required by thoſe who have a Right to queſtion it; and being exhibited in the Regiſter's Office of the Eccleſiaſtical Court, a Copy in Parchment is delivered the *Executor* under the Ordinary's Seal, which is called the Probate. *Perk.* 486. 9 *Rep.* 37. 2 *Inſt.* 488. One may prove a Will before the Ordinary, which contains Goods and Lands; though formerly a Prohibition was granted as to the Lands: And a Will of Freehold Land is to be proved by Witneſſes in the Chancery. 1 *Vent.* 207. 6 *Rep.* 23. The Proving of the Will is neceſſary for Goods and Chattels, to give the *Executor* Power to bring Actions, and confirm the Acts he did as *Executor* before: When this is done, the *Executor* is to pay all the Teſtator's Debts before any Legacies, in the Order following, *viz.* After the Funeral Charges, the King's Debt is to be preferr'd; then Debts on Judgments, and Statutes or Recognizances, on Mortgages, Rent upon Leaſes, *&c.* Bonds, Bills ſealed, and other Specialties, Servants Wages, Debts on Notes, Shop-Books, *&c.* 1 *Roll Abr.* 927. *Plowd.* 543. See *Jenk. Cent.* 274. And if the *Executor* pays the Debts in any other Order, he is liable to the Payment of the Debts of a higher Degree, though out of his own Eſtate. *Doct. & Stud. c.* 10. The *Executor*, *&c.* paying Debts on Contract, ſhall not be relieved againſt a Bond-Debt, although he had no Manner of Notice of it; for this would be to alter the Courſe of the Law. *Preced. Canc.* 534. An *Executor* is allowed to retain his own Debt, out of the Teſtator's Eſtate; and ſo may the *Executor* of ſuch *Executor*; and the Reaſon is becauſe he can't pay himſelf. *Ibid.* 179. Among Debts of equal Degree, the *Executor* may pay himſelf firſt: And thoſe Debts that are firſt ſued for, are to be firſt paid: Where two Judgments are given againſt an *Executor*, the Judgment given firſt ſhall be firſt ſatisfied; but if the Judgments were given againſt the Teſtator, he who firſt ſues Execution, ſhall be paid before the other. *Noy Max.* 104. 3 *Leon. cap.* 364. If no Suit is begun againſt the *Executor*, he may pay the whole Debt to any other Creditor in equal Degree, though there be nothing left to pay another any Part of his Debt. *Wood's Inſt.* An *Executor* pays a Debt upon Bond before a Statute broken, and afterwards the Statute is broken, the Payment of the Debt upon Bond, is a good Plea againſt the Statute. *Cro. Jac.* 9. Pending a Bill in Equity againſt an *Executor*, he may pay any other Debt of a higher Nature, or of as high a Nature, where he has legal Aſſets: But where there is a final Decree againſt an *Executor*, if he pays a Bond, it is a Miſpayment; for a Decree is in Nature of a Judgment. 2 *Salk.* 507. If there are ſeveral Debts due on ſeveral Bonds from the Teſtator, his *Executor* may pay which Bond-Debt he pleaſes, except an Action of Debt is actually commenced againſt him upon one of thoſe Bonds; and in ſuch Caſe, if pending an Action, another Bond-Creditor brings another Aƈtion againſt him, before Judgment obtained by either of them, he may prefer which he will by confeſſing a Judgment to one and paying him, which Judgment he may plead in Bar to the other Aƈtion. *Vaugh.* 89 An Aƈtion was brought againſt an *Executor*, and pending that Aƈtion, he procured another to commence an Aƈtion againſt him for a juſt Debt owing by the Teſtator, and the other had Judgment firſt, which was allowed a good Plea to the firſt Aƈtion, and the *Executor*'s Conſent to pay one Creditor before another, ſhall never be intended to be by Covin, but on conſidering the Circumſtances of the Creditors, *&c.* *Sid.* 21. *Executors* ſometimes confeſs Judgment preſently to a Friend for his Debt, for they are not bound to ſtand Suit; and plead dilatory Pleas to a Stranger's Debt, that the Friend may be firſt paid upon the Execution: And *Executors* may give Precedence as they pleaſe before Execution: But if Judgment for 100 *l.* is ſuffered, and the Plaintiff compounds for 60 *l.* the Judgment for the whole Sum ſhall not be allowed to keep off other Creditors. 8 *Rep.* 133. In Aƈtion of Debt againſt an *Executor*, he may plead a Judgment obtained againſt him by another, *ultra quod* he hath not Aſſets, which Judgment is in Force; though Judgments are not to be kept on Foot by Fraud. *Sid.* 230. 1 *Ventr.* 76. If an *Executor* ſued by ſeveral Creditors, pleads *Plene Adminiſtravit* to all at the ſame Time; and that he hath no Aſſets *præter* to pay one or two, he will make himſelf liable to all the Debts: He ſhould plead ſpecially to one Creditor, ſhewing what Aſſets he hath, or pay him, and plead fully adminiſtered. 1 *Lill. Abr.* 574. On a *Scire facias* againſt an *Executor*, he cannot plead fully adminiſtered, but muſt plead ſpecially that no Goods of the Teſtator came to his Hands, whereby he might diſcharge the Debt; for he may have fully adminiſtred, and yet be liable to the Debt, where Goods of the Teſtator's afterwards come to his Hands. 1 *Lill* 568. *Cro. Eliz.* 575. In *Sci fac.* againſt *Executors*, upon a Judgment againſt their Teſtator, they pleaded *Plene Adminiſtravit*, by paying Debts upon Bonds *ante Notitiam*; It was adjudged no Plea, for at their Peril they ought to take Notice of Debts upon Record, and firſt pay them; and tho' the Recovery be in another County than that where the Teſtator lived: But where an Aƈtion is brought againſt *Executors* in another County than where they live, and they not knowing thereof, pay Debts upon Specialty, it is good *Cro. Eliz.* 793. In pleading Debt by Bond againſt *Executors*, the Plaintiff ſhould alledge not only Goods left; but that there is no Debt upon Judgment, Statute, *&c.* 3 *Lev.* 218. If a Surety pay the Debt of his Principal, who is dead, 'tis ſaid the *Executor* is not liable at Law to repay him, without a Promiſe; but he is liable in Equity. *Sid.* 89. 3 *Salk.* 96. A Bill may be exhibited in the Chancery againſt an *Executor*, to diſcover the Teſtator's Perſonal Eſtate; and thereupon he ſhall be decreed to pay Debts and Legacies. *Abr. Caſ. Eq.* 238. If a Perſon being *Executor*, and his Teſtator greatly indebted, be deſirous to pay the Aſſets as far as they will go, and that his Payments may not be afterwards queſtioned, he may bring a Bill in Equity againſt all the Teſtator's Creditors, in order that they may, if they will, conteſt each other's Debts, and diſpute who ought to be preferred in Payment. 2 *Vern.* 37. Where there are only *equitable Aſſets*, they muſt be equally paid among all the Creditors; for a Debt by Judgment, and ſimple Contraƈt is in Conſcience equal. 2 *Peer Williams* 416. And it is held, that Bonds, and other Debts, ſhall be paid equally, by *Executors*, where a Perſon has deviſed Lands to them, to be ſold, for the Payment of his Debts. 1 *Peer Will.* 430. A Debt deviſed by the Teſtator, is not to be paid by the Debtor to the Legatee, but to the *Executor*, who can give a ſufficient Diſcharge for it, and is anſwerable to the Legatee if there be ſufficient Aſſets. If an *Executor* pays out the Aſſets in Legacies, and afterwards Debts appear, of which he had no Notice, which he is obliged to pay; the *Executor* by Bill in Chancery may force the Legatees to refund. *Chanc. Rep.* 136, 149. One Legatee paid ſhall refund againſt another, and againſt a Creditor of the Teſtator, that can charge the *Executor* only in Equity: But if an *Executor* pays a Debt upon ſimple Contraƈt, there ſhall be no Refunding to a Creditor of a higher Nature. 2 *Ventr.* 360. *Executors* are not bound to pay a Legacy, without Security to refund. *Chanc. Rep.* 149, 257. And if Sentence be given for a Legacy in the Eccleſiaſtical Court, a Prohibition lies, unleſs they take Security to refund. 2 *Vent.* 358. If an *Executor* pays Legacies, and ſeven Years after Covenant is broken, for which Aƈtion is brought againſt the *Executor*; the Court inclined that it was a *Devaſtavit*, and that the *Executor* ought to have taken Security for his Indemnity upon Payment of the Legacies. *Allen* 38. Though it has been adjudged, that a Covenant is no Duty till broken; and therefore ſince it is uncertain, whether it will be broken or not, it ſhall be preſumed it will not; and the Legacies being a preſent Duty ſhall be paid by the *Executor*, notwithſtanding any Covenant not aƈtually broken. *Style* 37. 1 *Nelſ. Abr.* 786. If one binds himſelf and his *Executors* in an Obligation, *&c.* to perform a certain Thing, and in his Will gives divers Legacies and dies, leaving Goods only ſufficient to pay the Obligation when forfeited; this Obligation ſhall be no Bar to the Legacies, becauſe it is uncertain whether the ſame may ever be forfeited: Though the *Executor* may therefore make a Delivery upon Condition, *viz.* to return the Legacies if the Obligation become forfeit, and the Penalty be recovered. 1 *Rol. Abr.* 928. 2 *Ventr.* 358. The *Executor* is to pay the Legacies, after the Debts; and he may prefer a Legacy to himſelf, if nothing remains to diſcharge the other Legacies. *Plowd.* 545. *Offic. Exec.* 204. But *Executors* cannot in Equity pay their own Legacies firſt, where there is not enough to pay all of them; but ſhall have an equal Proportion with the reſt of the Legatees. *Chanc. Rep.* 354. An *Executor* has Eleƈtion, where any Chattel is given to him, to have and take in one Right or the other, *viz.* as *Executor*, or Legatee; which is to be made by a ſpecial Taking or Declaration, *&c.* 10 *Rep.* 47. *Plowd.* 519. *Dyer* 277. After the *Executor* hath his own Legacy, he may pay what Legacies he pleaſes firſt; or pay each Legatee a Part in Proportion, if there be not enough to pay every one his whole Legacy; and he is not bound to Order, as he is in the Payment of Debts due from the Teſtator. 2 *Ventr.* 358, 360. If there be a ſpecifick Legacy given of any Thing, as a Horſe, Silver Cup, *&c.* it muſt be delivered before any other Legacy, provided there be Aſſets. *Offic. Exec.* 317. And if there be enough to pay all the Legacies, after the Debts are ſatisfied, the Legacies ſhall all be paid; but if there is no ſufficient to pay Debts or more, the Legatees muſt loſe their Legacies: If there be any Remainder undiſpoſed of after the Debts and Legacies paid, by the Common Law it is ſaid to belong to the *Executor*, by Virtue of the *Executorſhip*. *Plowd.* 526. But this hath been underſtood where the *Executor* hath had no Legacy, or other Proviſion by the Will: And a Man made his Will, giving only a ſmall Legacy for Mourning; and appointed an *Executor*, without diſpoſing of the Reſidue of his perſonal Eſtate, after Debts and Legacies paid; and it was adjudged that the Remainder ſhould not go to the *Executor*, but be diſtributed among the Relations of the Teſtator by an Adminiſtration: The Teſtator was eſteemed as to that Reſidue to die Inteſtate; and thereupon Adminiſtration ſhall be granted *quoad* the Reſidue. 1 *Lill. Abr.* 579. *Wood's Inſt.*

Inſt. 322. 4 *Ann. in* B. *R.* A Teſtator made one *Executor* who was no Relation to him, and gave him 50 *l.* And the next of Kin exhibited a Bill in Chancery for the *Reſiduum* of the Eſtate; and it was determined that the *Executor* ſhould not have the Reſidue, but the next of Kin to the Teſtator: But if the *Executor* had been nearly related to the Teſtator, it might be otherwiſe; though in ſuch Caſe if there were other Relations, in equal Degree, poor and indigent, Equity would give the Reſidue among them. 3 *Salk.* 82 If there be an expreſs Legacy given to an *Executor*, and no Deviſe of the ſurplus Eſtate, that ſhall generally go to the next Kindred according to the Statute of Diſtributions. And where two Perſons were appointed *Executors*, having Legacies given them; it was decreed in Equity, that the *Executors* ſhould be only Truſtees as to the Reſidue of the Eſtate, after the Legacies paid, which ſhould remain to the Teſtator's next of Kin, *&c.* 2 *Vern. Rep.* 677, 361. In a Caſe of the like Nature, the Surplus of the Teſtator's perſonal Eſtate, has been adjudged to be in Truſt for his Children, though they had particular Legacies. 1 *Vern.* 473. *Abr. Caſ. Eq* 244. Alſo a Man by his Will gave Legacies to Relations, near to the Value of his Eſtate, and made a certain Perſon *Executor*, to whom he gave a ſmall Legacy, and deſired him to take upon him the Trouble of the *Executorſhip*; after the making of which Will, the Teſtator lived ten Years, and acquired a conſiderable additional Eſtate, and then died; on a Bill brought by his Relations, againſt the *Executor*, to have an Account of the Perſonal Eſtate, and the Surplus diſtributed amongſt them; here the new acquired Eſtate was decreed to go to the Legatees, in Proportion of each one's Legacy. *Preced. Canc.* 12. The Surpluſage of an Eſtate, given to pay Debts, *&c.* after Debts, Legacies and Portions paid, hath been ordered by the Court of Chancery to go to the Heir. *Chanc. Rep* 189. *Overſeers* of a Will have nothing to do with the Execution of it, but are only to give Counſel and Advice to the *Executors*; and if they will not do their Duty, to complain of them to the Spiritual Court, *&c.*

Executor de ſon tort, Or *Executor* of his own Wrong, is he that takes upon him the Office of an *Executor* by Intruſion, not being ſo conſtituted by the Teſtator; or for Want thereof, appointed by the Ordinary to adminiſter. *Dyer* 166. If an *Executor* of his own Wrong takes upon himſelf the Office of an *Executor* without any lawful Authority, he is chargeable to the rightful *Executor*, and to all the Creditors of the Teſtator, and likewiſe to the Legatees, ſo far as the Goods amount unto which he wrongfully poſſeſſed: And ſuch an *Executor* is made by any Act of Acquiſition, Transferring or Poſſeſſing himſelf of any of the Eſtate or Goods of the Deceaſed; but not by Acts of Neceſſity, Piety or Charity. 2 *Nelſ Abr.* 793. Where a Perſon gets the Goods of the Inteſtate into his Hands, he is chargeable for them as *Executor de ſon tort*, until he gives Satisfaction for them to the true Adminiſtrator; or ſatisfies the true Debts of the Inteſtate to the Value. *Cro. Eliz.* 88. And ſuch a one cannot retain for his own Debt, againſt another Creditor. 5 *Rep.* 31. For if an *Executor* of his own Wrong, to whom 20 *l* is owing, doth ſeiſe Goods to that Value, intending to pay himſelf, it ſhall be Aſſets in his Hands to make him chargeable to any Creditor or Legatee. 5 *Rep.* 31. And by Statute, Perſons obtaining any Goods or Debts of an Inteſtate by Fraud, or procuring Adminiſtration to be granted to a Stranger, *&c.* are chargeable as *Executors* in their own Wrong, to the Value of the Goods or Debts, *&c.* And *Executors* and Adminiſtrators of *Executors* in their own Wrong, ſhall be liable to pay the Debts of the Teſtator; in like Manner as their Teſtator or Inteſtate. 43 *Eliz. cap.* 8. 30 *Car.* 2. *cap.* 7. If a Man who is neither *Executor* nor Adminiſtrator, acts as *Executor*, as when he takes into his Hands the Goods of the Deceaſed for his own Uſe, or alters the Property by Sale, *&c.* or delivers Goods of the Deceaſed to Creditors or Legatees, receives any Debt due to the Inteſtate, *&c.* he is *Executor* in his own Wrong, and ſhall anſwer as far as he acts. 5 *Rep.* 31, 32. 8 *Rep.* 135. 9 *Rep.* 39. Tho' every Taking of the Goods of the Deceaſed, is not enough to make one chargeable; as if a Perſon take away his own Goods in the Houſe of the Deceaſed, or uſe ſome of the Deceaſed's Goods in the neceſſary Occaſions of his Family; bury the Deceaſed, and ſell ſome of the Goods for that Purpoſe; or if he take them by the Delivery of another, *&c.* *Dyer* 166, 167. *Noy's Max.* 102. When there is a rightful *Executor*, and a Stranger poſſeſſes himſelf of the Teſtator's Goods, without doing any further Act as *Executor*, he is not an *Executor de ſon tort:* But where there is neither an *Executor* or Adminſtrator, it is otherwiſe; for there the Creditors have no Perſon againſt whom they may bring any Action but him who hath poſſeſſed himſelf of the Goods. *Dyer* 105. *Roll. Abr.* 918. If there is a lawful *Executor* that hath proved the Will, or a legal Adminiſtration granted, before a Stranger intermeddles with the Goods, the Stranger cannot be an *Executor* of his own Wrong; but is a Treſpaſſer againſt the *Executor*, &c. who is to have his Remedy againſt the Stranger, and the Creditors may have their Remedy againſt the lawful *Executor.* 5 *Rep.* 82. An *Executor* of his Wrong, may be ſued as *Executor*; and he ſhall be ſued for Legacies, as well as a rightful *Executor.* *Noy* 13. Though an *Executor de ſon tort* cannot maintain any Suit or Action becauſe he cannot produce any Will to juſtify it: And he will be ſeverely puniſhed for a falſe Plea, for in ſuch Caſe the Execution ſhall be awarded for the whole Debt, tho' he meddled with a Thing of very ſmall Value. *Noy* 69. Debt was brought againſt an *Executor* of his own Wrong, who pleaded that he *never was Executor*, nor adminiſtred as ſuch; it was held, not to be material whether he had Aſſets or no, but to prove that he had adminiſtred any Thing was enough; for this would make him chargeable with the Debt: But if he had not pleaded falſly, he would have been liable for no more than the Value of the Goods of the Deceaſed. *Style* 120. If a Plaintiff alledges that the Defendant adminiſtred of his own Wrong, and the Defendant demurs, it is a Confeſſion of it to be true; and then the Action may be brought againſt the Defendant as *Executor de ſon tort.* 5 *Mod.* 136. 1 *Salk.* 298. And *Executor* of his own Wrong poſſeſſes himſelf of Goods, and afterwards Adminiſtration is granted him, he may by Virtue thereof retain Goods for his own Debt. 5 *Rep.* 30. And where a Man took Poſſeſſion of an Inteſtate's Goods wrongfully, and ſold them to another, and then took out Adminiſtration, it was adjudged that the Sale was good by Relation. *Moor* 126. But where an *Executor de ſon tort* delivered Goods to one to whom Adminiſtration was afterwards granted, it was held that if the Adminiſtration had been granted to himſelf, it would not have purged the Tort, much leſs where granted to another; for he having once made himſelf liable to an Action as *Executor de ſon tort*, he ſhall never after diſcharge himſelf by Matter *ex poſt facto.* *Hob.* 49. An *Executor de ſon tort* ſhall be allowed in Equity, all ſuch Payments which a rightful *Executor* ought to have paid. 2 *Chanc. Rep.* 33. See more of *Executors*, under *Adminiſtrators*, *Aſſets*, *Joint Executors*, *Wills*, &c.

Executory, Is where an Eſtate in Fee created by Deed or Fine, is to be afterwards executed by Entry, Livery, Writ, *&c.* And Leaſes for Years, Rents, Annuities, Conditions, *&c.* are called Inheritances *Executory.* *Wood's Inſt.* 293. *Eſtates executed* are when they paſs preſently to the Perſon to whom conveyed, without any After-Act. 2 *Inſt.* 513.

Executory Deviſe, Is ſaid to be where a future Intereſt is deviſed, that veſts not at the Death of the Teſtator, but depends on ſome Contingency which muſt happen before it can veſt. If a particular Eſtate is limited, and the Inheritance paſſes out of the Donor, this is a contingent Remainder; but where the Fee by a Deviſe is veſted in any Perſon, and to be veſted in another upon Contingency, this is an *Executory Deviſe:* And in all Caſes of *Executory Deviſes*, the Eſtates deſcend until the Contingencies happen. *Raym.* 28. 1 *Lutw.* 798. Where a contingent Eſtate limited, depends upon a Freehold, which is capable of ſupporting a Remainder, it ſhall never be conſtrued an *Executory Deviſe*, but a Remainder. And ſo it is, if the Eſtate be limited by Words *in præſenti*, as when a Perſon deviſes his Lands to the Heirs of *A. B.* who is living, *&c.* Though if the ſame were to the Heir of *A.* after his Death, it would be as good as an *Executory Deviſe.* 2 *Saund.* 380. 4 *Mod.* 255. One by Will deviſes Land to his Mother for Life, and after her Death, to his Brother in Fee; provided, that if his Wife, being then *enſient*, be delivered of a Son, then the Lands to remain to him in Fee, and dies, and the Son is born; in this Caſe it was held, that the Fee of the Brother ſhould ceaſe, and veſt in the Son, by Way of *Executory Deviſe*, on the happening of the Contingency; and here ſuch Fee Eſtate enures as a new original Deviſe to take Effect when the firſt fails. *Dyer* 127. 33. *Cro. Jac.* 592. A Remainder of a Fee may not be limited by the Rules of Law, after a Fee-ſimple; for when a Man hath parted with his whole Eſtate, there cannot remain any Thing for him to diſpoſe of: But of late Times a Diſtinction hath been made between an abſolute Fee-ſimple and a Fee-ſimple which depends upon a Contingency, or is conditionally limited; eſpecially where ſuch a Contingency may happen in the Courſe of a few Years, or of one or two Lives; and where ſuch a Remainder is limited by Will, it is called an *Executory Deviſe.* 2 *Nelſ Abr.* 797. An Eſtate deviſed to a Son and his Heirs, upon Condition that if he did not pay the Legacies given by the Will within ſuch a Time, that then the Land ſhould remain to the Legatees, *&c.* and their Heirs: This Limitation of a Fee in Remainder, after a Fee limited to the Son, being upon the Contingency of the Son's Failing in Payment of the Legacies, was adjudged good by Way of *Executory Deviſe.* *Cro. El.* 833. And where the Father deviſed his Lands to his youngeſt Son and his Heirs, and if he died without Iſſue, the eldeſt Son being alive, then to him and his Heirs; this was held a good Remainder in Fee to the eldeſt Brother, after the conditional Contingent Eſtate in Fee to the youngeſt, as depending upon the Poſſibility that he might be alive when his youngeſt Brother died without Iſſue; and his Dying without Iſſue, was a collateral Determination of his Eſtate, whilſt the other was living. *Godb.* 282. 2 *Nelſ. Abr.* 798. There can be no *Executory Deviſe* after an Eſtate-tail generally limited, becauſe that would tend to a Perpetuity; and a Contingency is too remote where a Man muſt expect a Fee upon another's Dying without Iſſue, generally: But dying without Iſſue, living another, may happen in a little Time, becauſe it depends upon one Life; and therefore a Deviſe of a Fee-ſimple to one, but to remain to another upon ſuch a Contingency, is now held good by *Executory Deviſe.* 2 *Cro.* 695. Sometimes croſs Remainders in Tail by Implication, have been pleaded againſt *Executory Deviſes.* Formerly where a Term of Years, which is but a Chattel, was deviſed to one; and that if he died, living another Perſon, it ſhould remain to the other Perſon, during the Reſidue of the Term, ſuch a Remainder was adjudged void: For a Deviſe of a Chattel to one for an Hour, was a Deviſe of it for ever. *Dyer* 74. But ſince it has been held, that a Remainder of a Term to one, after it was limited to another for Life, was good: In a Caſe where a Teſtator having a Term deviſed that his Wife ſhould have the Lands for ſo many Years of the Term as ſhe ſhould live; and that after her Death, the Reſidue thereof ſhould go to his Son and his Aſſigns; and this was the firſt Caſe wherein an *Executory* Remainder of a Term for Years was adjudged good. *Dyer* 358, 253. A Perſon poſſeſſed of a Term, deviſes it to his Wife for eighteen Years, and after to his eldeſt Son for Life, after to the Son's eldeſt Iſſue Male during Life; tho' he have no ſuch Iſſue, at the Time of the Deviſe, and Death of the Deviſor, if he has before his own Death, he ſhall have it as an *Executory Deviſe.* 1 *Roll.* 612. But if one deviſe a Term to his Wife for Life; the Remainder to his firſt Son for Life, and if he dies without Iſſue, to his ſecond Son, *&c.* the Remainder to the ſecond Son is void, and no *Executory Deviſe*; yet where he dying without Iſſue living at a Perſon's Death, may be confined to one Life, it hinders not a Remainder over. *Abr. Ca. Eq.* 194. *Executory Deviſes*, as to Terms for Years, are not extended beyond a Life, or Lives; they ought to ariſe within the Compaſs of one Life. 1 *Salk.* 229. Where there is an *Executory Deviſe*, there needs not any particular Eſtate to ſupport it; and becauſe the Perſon who is to take upon Contingency, hath not a preſent but future Intereſt, his Eſtate cannot be barred by a common Recovery; and for that it was a Remainder not in Being when the Recovery was ſuffered, it has been adjudged it could not be barred by ſuch a Recovery. 2 *Nelſ Abr.* 797, 798. It is held *Executory Deviſes*, and Limitations of the Truſt of a Term, are governed alike. 1 *Vern.* 234.

Exemplification of Letters Patent, Is a Copy or Tranſcript of *Letters Patent*, made from the Inrolment thereof, and ſealed with the Great Seal of *England*; which *Exemplifications* may be ſhewed or pleaded, as the *Letters Patent* themſelves. But neither an *Exemplification* nor *Conſtat* was pleadable at Common Law, becauſe they were only the Tenor of an Inrolment, and the Tenor of a Record is not pleadable: Though by the Statutes of 6 *R.* 2. *c.* 4. 3 *Ed* 6. and 13 *Eliz.* they are pleadable. 5. *Rep.* 53. By the laſt mentioned Statute, *Exemplifications* of the Inrolment of Grants by Letters Patent, ſhall be of as good Force in pleading for the Patentees, *&c.* as if the Patents were produced. 13 *Eliz. c.* 6. One may exemplify a Patent under the Great Seal in Chancery; and alſo any Record or Judgment, in any of the Courts at *Weſtminſter*, under the proper Seal of each Court; and ſuch an *Exemplification* may be given in Evidence to a Jury, *&c.* 1 *Lill* 583. If a Man will plead a Record in another Court than where it remaineth, he muſt have it exemplified under the Great Seal, if it be denied; otherwiſe it will not ſerve, unleſs to give in Evidence. 2 *Shep. Abr.* 134. A Rule made, or Writ filed in any Court at *Weſtminſter*, may be exemplified in the Court where made or filed. 165 *C. B.* But nothing but Matter of Record ought to be exemplified. 3 *Inſt.* 173.

Exemplificatione, Is a Writ granted for the *Exemplification* of an original Record. *Reg Orig.* 290.

Exemption, (*Exemptio*) Signifies a Privilege to be free from Service or Appearance; as Knights, Clergymen, *&c.* are exempted to appear at the County-Court by Statute; and Peers from being put upon Inqueſts. 6 *Rep.* 23. Perſons ſeventy Years of Age, Apothecaries, *&c.* are alſo exempted by Law from ſerving on Juries: And Juſtices of Peace, Attornies, *&c.* from Pariſh Offices. 2 *Inſt* 447. There is an *Exemption* from Tolls, *&c.* by the King's *Let-*

ters Patent: And a Writ of *Exemption* or of Eaſe, to be quit of ſerving on Juries, and all publick Service. *Shep. Epitom.* 1049.

Exercituale, Was anciently uſed for a Heriot; being paid only in Arms and military Accoutrements: Exercituale *Vironis ſive Baronis Regis, qui erit proximus ei, quatuor Equi.* Leg. Edw. Conf. 1.

Exeter. By Letters Patent under the Great Seal, the Site of the Caſtle of *Exon* (Part of the Dutchy of *Cornwall*) to be granted to ſome Perſon appointed by the Juſtices in Quarter-Seſſions for the County of *Devon*, for the Term of 99 Years, to the Uſe of the ſaid County and for other publick Uſes; under the ancient yearly Rent of 10*l. per Annum*, payable to the Crown. Stat. 9 *Ann. c.* 19.

Exfrediare, (From the Sax. *Frede*, *Frith*, *Peace*, and *Fritkian*) To break the Peace, or commit open Violence. *Leg. H.* 1. *c.* 31.

Ex gravi Querela, Is a Writ that lies for him to whom any Lands or Tenements in Fee are deviſed by Will, (within any City, Town or Borough, wherein Lands are deviſable by Cuſtom) and the Heir of the Deviſor enters, and detains them from him. *R. Orig.* 244. *Old Nat. Br.* 87. And if a Man deviſes ſuch Lands or Tenements unto another in Tail, with Remainder over in Fee, if the Tenant in Tail enter, and is ſeiſed by Force of the Intail, and afterwards dieth without Iſſue; he in the Remainder ſhall have the Writ *Ex gravi Querelà* to execute that Deviſe. *New Nat. Br.* 441. Alſo where Tenant in Tail dies without Iſſue of his Body, the Heir of the Donor, or he who hath the Reverſion of the Land, ſhall have this Writ in the Nature of a *Formedon in the Reverter.* Ibid. If a Deviſor's Heir be ouſted by the Deviſee, by Entry on the Lands; he may not after have this Writ, but is to have his Remedy by the ordinary Courſe of the Common Law. *Co. Lit.* 111.

Exhenium or **Exennium,** A Gift or Preſent, and more properly a New Year's Gift. —— *In Expenſis Domini Regis &* Exenniis *eidem factis apud, &c. lxxv ſol.*—— Ex Compot. Dom. de Farend. MS.

Exhibit, (*Exhibitum*) A Word mentioned in the Statute 14 *Car.* 2. *cap.* 14. And where a Deed, or other Writing is in a Suit in Chancery *exhibited* to be proved by Witneſſes, and the Examiner or Commiſſioners appointed, certify on the Back of it, that the Deed or Writing was ſhewed to the Witneſs, to prove it at the Time of his Examination, and by him ſworn to; this is called an *Exhibit* in Law Proceedings.

Exhibitio, An Allowance for Meat and Drink, ſuch as was cuſtomary among the religious Appropriators of Churches, who uſually made it to the depending Vicar; and the Benefactions ſettled for the Maintaining of Scholars in the Univerſities, not depending on the Foundation, are called *Exhibitions.* Paroch. Antiq. 304.

Exigendaries of the Common Pleas, (*Exigendarii de Banco Communi*) Are otherwiſe called *Exigenters*, by Stat. 10 *H.* 6. *c.* 4.

Exigent, (*Exigenda*) Is a Writ that lies where the Defendant in an Action perſonal cannot be found, nor any Thing of his, within the County, whereby to be attached or diſtrained; and is directed to the Sheriff, to proclaim and call him five County-Court Days, one after another, charging him to appear upon Pain of Outlawry: It is called *Exigent*, becauſe it *exacteth* the Party, *i. e.* requires his Appearance or Forth-coming to anſwer the Law; and if he come not at the laſt Day's Proclamation, he is ſaid to be *Quinquies Exactus*, and is outlawed. *Crompt. Juriſd.* 188. The Statutes requiring Proclamations on *Exigents* awarded in civil Actions, are 6 *Hen.* 8. *c.* 4. and 31 *Eliz. cap.* 3. *Exigents* are to be awarded againſt Receivers of the King's Money, who detain the ſame; and againſt the Conſpirators, Rioters, *&c.* Stat. 18 *Ed.* 3. *c.* 1. And a Writ of Proclamation ſhall be iſſued to the Sheriff to make three Proclamations in the County where the Defendant dwells, for him to yield himſelf, *&c.* by the Stat. 31 *Eliz.* The Writ of *Exrgent* alſo lies in an Indictment of Felony, where the Party indicted cannot be found: And upon ſuing out an *Exigent* for a criminal Matter before Conviction, there ſhall be a Writ of Proclamation, *&c.* 3 *Inſt.* 31. 4 *&* 5 *W. & M. c.* 22. If a Perſon indicted of Felony abſent ſo long that the Writ of *Exigent* is awarded, his Withdrawing will be deemed a Flight in Law, whereby he will be liable to forfeit his Goods; and though he renders himſelf upon the *Exigent*, after ſuch Withdrawing, and is found Not guilty, 'tis ſaid the Forfeiture ſhall ſtand. 5 *Rep.* 110. 3 *Inſt.* 232. After a *Capias* directed to the Sheriff to take and impriſon a Felon, *&c.* if he cannot be taken, an *Exigent* is awarded: And after a Judgment in a civil Action, the *Exigent* is to go forth after the firſt *Capias*; but before Judgment, there muſt be a *Capias*, *Alias* and *Pluries.* 4 *Inſt.* 177. If the Defendant be in Priſon, or beyond Sea, *&c.* he or his Executors may reverſe the Award of the *Exigent.* See *Outlawry.*

Form *of a Writ of* Exigent.

GEORGE *the Second*, &c. *To the Sheriff of* L. *Greeting: We Command you, that you cauſe* C. D. *late of*, &c. *to be* exacted *and called in your* Huſtings, *until according to the Law and Cuſtom of this Part of our Kingdom of* Great Britain *called* England, *he ſhall be outlawed, if he doth not appear; and if he appeareth, then that you take him, and cauſe him to be ſafely kept, ſo as you have his Body before us, the Day*, &c. *whereſoever*, &c. *to anſwer to* A. B. *of a Plea of*, &c. *And whereof we charged you on the Day*, &c. *laſt paſt, and you returned that the ſaid* C. *was not found in your Bailiwick: And have you there this Writ.* Witneſs, *&c.*

Exigenter, (*Exigendarius*) Is an Officer of the Court of *Common Pleas*; of which Officers there are four in Number: They make all *Exigents* and Proclamations, in Actions where Proceſs of Outlawry doth lie; and alſo Writs of *Superſedeas*, as well as the *Prothonotaries*, upon ſuch *Exigents* made out in their Offices. 18 *Hen.* 6. *c.* 9. But the iſſuing Writs of *Superſedeas* is taken from them by an Officer in the ſame Court, conſtituted by Letters Patent by King *James* the Firſt.

Exile, A Baniſhment or driving out of a Perſon. *Lit. Dict.* And this *Exile* is either by Reſtraint, when the Government forbids a Man and makes it penal to return; or 'tis voluntary, where he leaves his Country upon Diſguſt, but may come back again at Pleaſure. 2 *Lev.* 191.

Exilium, Signifies in Law Conſtruction, a Spoiling: And by the Statute of *Marlbridge* it ſeems to extend to the Injury done to Tenants, by altering their Tenure, ejecting them, *&c.* and this is the Senſe that *Fleta* determines; who diſtinguiſhes between *Vaſtum*, *Deſtructio* and *Exilium*; for he tells us that *Vaſtum & Deſtructio* are almoſt the ſame, and are properly applied to Houſes, Gardens or Woods; but *Exilium* is when Servants are enfranchiſed, and afterwards unlawfully turned out of their Tenements.—— Vaſtum & Deſtructio *fere æquipollent, & convertibiliter ſe habent in Domibus, Boſcis & Gardinis; ſed* Exilium *dici poterit, cum ſervi manumittuntur, aut à Tenementis ſuis injurioſe ejiciuntur.* Fleta, lib. 1. cap. 11.—— *Venditionem vel* Exilium *non faciant de Domibus, Boſcis, vel hominibus, &c.* Stat. Marlb. c. 25.

Exitus, Iſſue or Off-ſpring; and applied to the Iſſues or yearly Rents and Profits of Lands. —— *Et ſciat vicecomes, quod Redditus, Blada in grangia, & omnia mobilia, præter equitaturam, Indumenta & Utenſilia Domorum, continentur ſub nomine* Exituum. *Stat. Weſt.* 2. *c.* 43.

Exlegalitus, Is he who is proſecuted as an Outlaw. *Leg. Edw. Confeſſ. c.* 38.

Ex mero motu, Are Words uſed in the King's Charters and Letters Patent, to ſignify that he grants them *of his own Will and Motion,* without Petition or Suggeſtion of any other: And the Intent and Effect of theſe Words, is to bar all Exceptions that might be taken to the Charters or Letters Patent, by alledging that the King in granting them was abuſed by falſe Suggeſtions. *Kitch.* 352. When the Words *ex mero motu* are made uſe of in any Charter, they ſhall be taken moſt ſtrongly againſt the King. 1 *Co. Rep.* 451.

Ex Officio, Is ſo called from the Power a Perſon has by Virtue of an Office, to do certain Acts, without being applied to: As a Juſtice of Peace may not only grant Surety of the Peace, at the Complaint or Requeſt of any Perſon, but he may demand and take it *ex Officio* at Diſcretion, &c. *Dalt.* 270. And by Stat. 1 *Eliz. c.* 1. the Queen by her Letters Patent might authorize any Perſon exerciſing Eccleſiaſtical Juriſdiction, to adminiſter an *Oath ex Officio;* whereby a ſuppoſed Offender was compelled to confeſs, accuſe, or clear himſelf of any criminal Matter, and thereby made liable to Cenſure or Puniſhment, &c. but the Branch of this Statute relating to the ſaid Oath, is repealed by 17 *Car.* 1. *c.* 11.

Exoneratione ſectæ, Was a Writ that lay for the King's Ward, to be freed from all Suit to the County-Court, Hundred Court, Leet, &c. during Wardſhip. *F. N. B.* 158.

Exoneratione ſectæ ad Curiam Baron. A Writ of the ſame Nature, ſued by the Guardian of the King's Ward, and directed to the Sheriff or Stewards of the Court, that they do not diſtrain him, &c. for not doing Suit of Court. *New Nat. Br.* 352. And if the Sheriff diſtrain Tenants in Ancient Demeſne to come to the Sheriff's Turn or Leet, they may have a Writ commanding the Sheriff to ſurceaſe, &c. *Ibid.* 359. Likewiſe if a Man have Lands in divers Places in the County, and he is conſtrained to come to the Leet where he is not dwelling, when he reſides within the Precinct of any other Leet, &c. then he ſhall have this Writ to the Sheriff to diſcharge him from coming to any other Court-Leet than in the Hundred where he dwelleth. *Ibid.* 357. By the Common Law, Parſons ſhall not be diſtrained to come to Court Leets, for the Lands belonging to their Churches; and if they be, they may have the Writ *Exoneratione ſectæ,* &c. F. N. B. 394. So ſhall a Woman holding Land in Dower, if ſhe is diſtrained to do Suit of Court for ſuch Land; when the Heir has Lands ſufficient in the ſame County. *Ibid.*

Ex parte, Of the one Part; as a Commiſſion in Chancery *Ex parte,* is that which is taken out and executed by one Side or Part only, on the other Party's Neglecting or Refuſing to join: When both Plaintiff and Defendant proceed, it is a Joint-Commiſſion.

Ex parte talis, Is a Writ that lies for a *Bailiff* or *Receiver,* who having Auditors aſſigned to take his Account, cannot obtain of them reaſonable Allowance, but is caſt into Priſon: And the Courſe in this Caſe is to ſue this Writ out of the Chancery, directed to the Sheriff to take four Mainpernors to bring his Body before the Barons of the *Exchequer* at a certain Day, and to warn the Lord to appear at the ſame Time. *F. N. B.* 129.

Expectant, Having Relation to or depending upon; and this Word is uſed in the Law with *Fee,* as *Fee-Expectant.* If Land is given to a Man and his Wife, to hold to them and their Heirs; in this Caſe they have a *Fee-ſimple:* But if it be given to them and the Heirs of their Bodies, &c. they have Tail and a *Fee-Expectant;* and thus it is oppoſite to Fee-ſimple. *Kitch.* 153.

Expeditate, (*Expeditare*) In the Laws of the *Foreſt,* ſignifies to cut out the Ball of Dogs Fore-feet, for the Preſervation of the King's Game: But the Ball of the Foot of a Maſtiff is not to be taken out, but the three Claws of the Fore-foot on the right Side are to be cut off by the Skin. *Crompt. Juriſd.* 152. *Manwood, cap.* 16. This relates to every Man's Dog who lives near the Foreſt; and was formerly done once in every three Years: And if any Perſon keeps a great Dog not *expeditated,* he forfeits to the King 3*s.* 4*d.* 4 *Inſt.* 308.

Expeditatæ Arbores, Trees rooted up or cut down to the Roots. —— *Inquiratur de Arboribus* Expeditatis *in Foreſta.* Fleta, lib. 2. c. 41.

Expenditors, Are the Perſons appointed by Commiſſioners of *Sewers* to pay, diſburſe or *expend* the Money collected by the Tax for the Repairs of Sewers, &c. when paid into their Hands by the Collectors, on the Reparations, Amendments and Reformations ordered by the Commiſſioners, for which they are to render Accounts when thereunto required. *Laws of Sewers,* 87, 88. Theſe Officers are mentioned in the Statute 37 *H.* 8. *c.* 11. and other Statutes: The Steward who ſuperviſes the Repair of the Banks and Water-courſes in *Rumney Marſh* is called the *Expenditor.*

Expenſæ Litis, Coſts of Suit allowed a Plaintiff or Defendant recovering in his Action. See *Coſts.*

Expenſis militum non levandis, &c. Is an ancient Writ to prohibit the Sheriff from levying any Allowance for Knights of the Shire, upon thoſe that hold Lands in Ancient *Demeſn. Reg. Orig.* 261. For there is a Writ *De expenſis militum levandis,* for levying Expences for Knights of the Parliament, &c. *Reg. Orig.* 191.

Explees, The Rents or Profits of an Eſtate, &c. Vide *Eſplees.*

Explorator, A Scout; alſo a Huntſman or Chaſer. — *In memoriam* Henrici Croft *Equitis aurati,* Exploratoris *in* Hibernia *Generalis, qui obiit Anno* 1609.

Exportation, Is the Shipping or carrying out the native Commodities of *England* for other Countries; mentioned in the Statutes relating to the *Cuſtoms.* See *Importation.*

Expoſition of Deeds, It ſhall be favourable, according to the apparent Intent; and be Reaſonable and Equal, &c. *Co. Lit.* 313. See *Deed.*

Ex poſt facto, Is a Term uſed in the Law, ſignifying ſomething done after another Thing that was committed before. And an Act done, or Eſtate granted, may be made good by Matter *ex poſt facto,* that was not ſo at firſt, by Election, &c. As ſometimes a Thing well done at firſt, may afterwards become ill. 8 *Rep.* 146. 5 *Co. Rep.* 22.

Extend, (*Extendere*) Is to value the Lands or Tenements of one bound by a Statute, &c. who hath forfeited his Bond, at ſuch an indifferent Rate, as by the yearly Rent the Creditor may in Time be paid his Debt. *F. N. B.*

Extendi facias, A Writ of Extent, whereby the Value of Lands is commanded to be made and levied, &c. *Reg. Orig.*

Extent, (*Extenta*) Signifies a Writ or Commiſſion to the Sheriff for the valuing of Lands or Tenements; and ſometimes the Act of the Sheriff or other Commiſſioner upon this Writ. *Bro.* 313. *Stat.* 16 & 17 *Car.* 2. *cap.* 5. It hath been held more frequently to be the Eſtimate or Valuation of Lands, which when done to the utmoſt Value, is ſaid to be the full *Extent;* whence come our extended Rents, or Rack-Rents. And if one bound to the King by Specialty or to others by Statute, Recognizance, &c. hath forfeited it; ſo that by the yearly Rent of the Debtor's Lands, the Creditor is to be paid his Debt; upon this the Creditor may ſue a Writ to the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt, which is termed a *Liberate. F. N. B.* 131.

131. This is after the *Extent* directed to the Sheriff to ſeiſe and value the Lands, *&c.* of the Debtor, to the utmoſt *Extent.* 4 *Rep.* 67. Lands and Goods are to be appraiſed and extended by the Inqueſt of twelve Men, and then delivered to the Creditor, in Order to the Satisfaction of his Debt: Every *Extent* ought to be by Inquiſition and Verdict, by the Stat. *Weſtm.* 2. And the Sheriff without an Inquiſition cannot execute the Writ. *Cro. Jac.* 569. The Body of the Cogniſor, and all Lands and Tenements that were his at the Time of the Statute, *&c.* entered into, or afterwards, into whoſe Hands ſoever they come, are liable to the *Extent* 2 *Inſt.* 396. But Copyhold Lands are chargeable only during the Life of the Cogniſor; and may not be extended by *Elegit*, ſo as to admit a Stranghr to have Intereſt in the Lands held by Copy, without the Admittance of the Lord. Lands in Antient Demeſne, Annuities, Rents, *&c.* are extendible. 1. *Roll. Abr.* 88. Two Parts of an entire Rent, may be delivered upon an *Extent* by the Sheriff. 1 *Cro.* 742. But if the Cogniſor of a Statute have a Rent-charge, and before the *Extent* he purchaſe Parcel of the Land; the Rent is gone, and ſhall not be in Execution: 'Tis otherwiſe if he purchaſes after *Extent* of the Rent. *Dyer* 206. A Reverſion of Lands, *&c.* may not be extended; but a Plaintiff had Judgment for his Debt and Damages *de Reverſione cum acciderit*, and a ſpecial *Elegit* to extend the Moiety, *&c.* 2 *Sid.* 86. *Dyer* 373. An Advowſon in groſs is not extendible on *Elegit*, *&c.* *Stat. Weſtm.* 2. *cap.* 18. An Office of Truſt cannot be extended, becauſe 'tis not aſſignable; and nothing ſhall be extended but what may be aſſigned over. *Dyer* 7. Though an Office is extendible in Equity. *Chanc. Rep.* 39. Goods and Chattels, as Leaſes for Years, Cattle, *&c.* in the Cogniſor's own Hands, and not ſold for valuable Conſideration, are ſubject to the *Extent.* As the Lands are to be delivered to the Party at a reaſonable yearly Value, ſo the Goods ſhall be delivered in *Extent* at a Price that is reaſonable: And on a *Scire facias ad computand.* the Cogniſee is to account according to the extended Value; not the real Value of the Land. *Hardr.* 136. If the Extenders appraiſe and value the Lands too high, the Cogniſee at the Return of the Writ may pray that they may take and retain the Lands at the Rate appraiſed; and then 'tis ſaid he may have Execution againſt their Lands for the Debt; but this may not be on *Elegit. Cro. Jac.* 12. It has been adjudged, that at the Return of the Writ, the Cogniſee may refuſe the Lands, *&c.* extended, if over-valued. *Cro. Car.* 148. Where Lands are extended at under-value, and delivered in Execution; the Cogniſee hath an Intereſt in the Land, which cannot be deveſted by finding of Surpluſage. 1 *Cro.* 266. 2 *Cro.* 85. The Cogniſor cannot enter upon the Cogniſee, when Satisfaction is received for the Debt, but is put to his *Scire facias* on an *Extent:* Though on an *Elegit*, the Defendant may enter becauſe the Land is only awarded, till the Debt, which is certain is ſatisfied; whereas on *Extent*, the Land is to be held until the Debt, Damages and Coſts, *&c.* are ſatisfied: And the Cogniſee being in by Matter of Record, ſhall not be put out but by Matter of Record, *viz.* a *Scire facias* brought againſt him. 4 *Rep.* 67. *March's Rep.* 207, 208. The Cogniſee hath no abſolute Property in Lands by the *Extent*, till the Delivery upon the *Liberate*; but notwithſtanding, by the very *Extent* they are *in Cuſtodia Legis* for his Benefit. *Cro. Car.* 106, 148. No actual Seiſin can be on an *Extent*, and a Cogniſee of a Statute Staple, *&c.* cannot bring Ejectment before the *Liberate*; nor can the Sheriff upon the *Liberate* turn the Ter-tenant out of Poſſeſſion, as he may upon a *Hab. fac. Poſſeſſionem.* 1 *Vent.* 41. Where there is an *Extent* upon a Statute, and a *Liberate* thereupon, but it is not returned, yet it is good; though regularly when Inquiſitions are taken, the Writ ought to be returned. 4 *Rep.* 67. 1 *Lill. Abr.* 592. The Sheriff may be charged to make a Return of his Writ, if he put the Cogniſee in Poſſeſſion of Part only; and ſo the Cogniſee may have Poſſeſſion of the Whole. 2 *Nelſ. Abr.* 774. But if a Perſon ſuing out an *Extent*, die before the Return of a Writ, the Sheriff may not proceed in his Inquiſition, *&c.* afterwards; for there muſt be a Proſecution *de novo.* 1 *Cro.* 325. After a full and perfect Execution had by *Extent*, returned and of Record, there ſhall never be any *Re extent* upon an Eviction: But if the *Extent* be ſufficient in Law, there may be a new *Extent. Stat.* 32 *Hen.* 8. *cap.* 5. 1 *Inſt.* 290. So if Lands be extended upon a Miſtake, *&c.* and ſee *Dyer* 299. If Part of the Lands is evicted, the Cogniſee is to hold over the Reſidue of the Land till the Debt is ſatisfied. 4 *Rep.* 66. When Lands are delivered in *Extent*, it is as if the Cogniſee had taken a Leaſe thereof for Years, until the Debt is ſatisfied; and he ſhall never afterwards take out a new Execution: The Cogniſee having accepted the Land upon the *Liberate*, the Law preſumes the Debt to be ſatisfied. 1 *Lutw.* 429. An *Extent* was filed, and though it was diſcovered that Lands were omitted, the Court would not grant a *Re-extent. Sid.* 356. Lands or Goods, *&c.* are not to be ſold on an *Extent*; but delivered.

Extinguiſhment, (From *Extinguo*) Signifies a Conſolidation; For Example; If a Man hath an yearly Rent out of Lands, and afterwards purchaſes the Lands whereout it ariſeth, ſo as he hath as good an Eſtate in the Land as the Rent; now both the Property and Rent are conſolidated or united in one Poſſeſſor; and therefore the Rent is ſaid to be *extinguiſhed.* Alſo where a Perſon has a Leaſe for Years, and afterwards buys the Property; this is a Conſolidation of the Property and Fruits, and is an *Extinguiſhment* of the Leaſe: But if a Man have an Eſtate in Land but for Life or Years, and hath a higher Eſtate as a Fee-ſimple in the Rent; the Rent is not extinguiſhed, but in Suſpence for a Time; for after the Term, the Rent ſhall revive. *Terms de Ley* 327. *Extinguiſhment* of a Rent is a Deſtroying of the Rent by Purchaſe of the Land; for no one can have a Rent going out of his own Land; though a Perſon muſt have as high an Eſtate in the Land, as in the Rent, or the Rent will not be extinct. 1 *Inſt.* 147. If a Perſon hath a Rent-charge to him and his Heirs, iſſuing out of Lands, and he purchaſeth any Part of the Land to him and his Heirs; as the Rent is entire and iſſuing out of every Part of the Land, the whole Rent-charge is extinguiſhed: Though it is not ſo where one hath a Rent-ſervice, and purchaſeth Part of the Land out of which it iſſues; Rent-ſervice being apportionable according to the Value of the Land, ſo that it ſhall only extinguiſh the Rent for the Land purchaſed. *Litt.* 222. 1 *Inſt.* 148. And if the Grantee of a Rent-charge, purchaſes Parcel of the Lands, and the Grantor by his Deed granteth that he may diſtrain for the Rent in the Reſidue of the Land, this amounts to a new Grant. 1 *Inſt.* 147. If a Man be ſeiſed of a Rent-charge in Fee, and grants it to another and his Heirs, and the Tenant attorns; the Grantor is without Remedy for the Rent in arrear before his Grant; and ſuch Arrears become as it were extinct. *Vaugh.* 40. 1 *Lill. Abr.* 594. *A. B.* made a Leaſe for Years of Lands to another, and afterwards granted a Rent-charge to *C. D.* who deviſed the ſaid Rent to the ſaid *A. B.* till 100 *l.* ſhould be levied; then to *B G.* and died: Adjudged that by the Deviſe to *A. B.* the Rent was ſuſpended, and that a perſonal Thing once ſuſpended by the Act of the Party, is extinguiſhed for ever. *Dyer* 140. If Tenant for Life, makes a Leaſe for Years, rendring Rent, and after the Reverſion deſcends to the Tenant for Life; this is not an *Extinguiſhment* of the Term: But it is otherwiſe if he have the Reverſion by Purchaſe. 1 *Co. Rep.* 96. A Jointenant for Life purchaſes the Land in Reverſion, it will extinguiſh the Eſtate for Life for a Moiety, and ſever the Jointure. 2 *Rep.* 60. Lands are given to two Men, and the Heirs of their Bodies; though they have an Eſtate for Life jointly, and ſeveral Inheritances, yet the Eſtate for Life is not extinct: *Contra*, if it be by ſeveral Conveyances; as where a Leaſe is made to two for their Lives, and after the Leſſor grants the Reverſion to them and their Heirs, *&c.* here the Life-Eſtate will be extinguiſhed. 1 *Inſt.* 182. If one after his Title begun to be Tenant by the Curteſy, make a Feoffment in Fee upon Condition, and enter for the Condition broken; the Eſtate is extinct, ſo that if his Wife die, he ſhall not be Tenant by the Curteſy. 1 *Rep.* 18. Where a Man hath an Eſtate for his own Life, and for another's Life at once; the Eſtate *per auter vie* will be extinguiſhed in the Eſtate for his own Life, which is greater in Law than the other. 11 *Rep.* 87. *Dyer* 11. If a Leaſe be made to a Perſon for his Life, and alſo for 20 Years; theſe two Eſtates may ſtand well enough, and there ſhall be no *Extinguiſhment:* But if it were a Leaſe for Years, Remainder to him for Life, in this Caſe the Leaſe for Years would be extinct. *Bro.* 409. A Leaſe was granted to one for 100 Years, and the Leſſee made a Leaſe for twenty Years rendring Rent; then the Leſſor granted the Reverſion in Fee, *&c.* and the Grantee purchaſed the Reverſion of the Term; and it was held that he ſhall not have the Rent, becauſe that being incident to the Reverſion of the Term, is extinguiſhed by the Reverſion in Fee, both being in one Perſon. *Moor* 94. 2 *Nelſ. Abr.* 821. When the Freehold cometh to the Term, the Eſtate for Years is extinct. *Nelſ. Ibid.* 820. Where the Remainder of a Term is granted over to another, if the Party in Poſſeſſion purchaſe the Fee-ſimple, though by this Means his Intereſt is *extinguiſhed*; yet that ſhall not defeat the reverſionary Intereſt. 10 *Rep.* 52. 2 *Nelſ.* 820. A Fine, *&c.* of Lands, will extinguiſh a Term: And by Purchaſe of an Eſtate in Fee-ſimple, an Eſtate-tail in Land is extinct. 9 *Rep.* 139. But if a Fee-ſimple and Fee-tail meet together by *Diſcent*, the Eſtate-tail will not be extinguiſhed. 3 *Rep.* 61. Diſcent of Lands to the ſame Perſon who has a Term, will extinguiſh the Term. *Moor* 286. If a Copyholder takes a Leaſe of the Land held by Copyhold Tenure, his Copyhold is extinguiſhed. *Cro. Eliz.* 7. And a Copyhold Eſtate is extinct whenever it becomes not demiſable by Copy. *Coke's Copyhold* 62. When a Leſſor enters tortiouſly upon the Leſſee againſt his Conſent, the Rent is extinguiſhed. 2 *Lev.* 143. But it has been adjudged that Rent is not extinct by the Entry of the Leſſor, but only ſuſpended; and revives by the Leſſee's Re-entry. *Dyer* 361. An Infant has a Rent, and purchaſes the Land out of which it is iſſuing; by this the Rent will be ſuſpended, but not extinct. *Bro. Extinguiſh.* A Man Leſſee for Years takes a Wife, or Woman Leſſee a Husband, that hath the Reverſion after the Leaſe; here the Term is not extinguiſhed. 12 *Rep.* 81. If Feme Sole Debtee, take the Debtor to Husband; or there be two joint Obligors in a Bond, and the Obligee marries one of them; or in Caſe a Perſon is bound to a Feme Sole and another, and ſhe takes the Obligor to Husband; in theſe Caſes, the *Debt* will be *extinguiſhed.* 8 *Rep.* 136. And if a Debtor make the Debtee his Executor, or him and another Executors, and they take the Executorſhip upon them; Or if the Debtee makes his Debtor Executor, *&c.* it is an *Extinguiſhment* of the Debt, and it ſhall never revive. *Plowd.* 184. 1 *Salk.* 304. But where a Debtee or Debtor Executor legally refuſeth; or he and others being made Executors they all refuſe, then the Debt is revived again. *Plowd.* 185. A Perſon hath 20 *l.* due by Contract, if he take an Obligation for 10 *l.* of it, the Debt is extinct: And by Releaſe of Part of a Debt due on Bond, the whole is gone, and the Obligation *extinguiſhed. Bro Contract*, 80. 1 *And.* 235. There is an *Extinguiſhment* of *Common*, of *Liberties* and *Franchiſes*, *Services*, &c. See more of *Extinguiſhment* of *Rents*, &c. under *Unity of Poſſeſſion.*

Extinguiſhment of Common. By purchaſing Lands wherein a Perſon hath Common Appendant, the Common is extinguiſhed. *Cro. El.* 594. A Commoner releaſes his Common in one Acre, it is an *Extinguiſhment* of the whole Common. *Show. Rep.* 350. And where a Perſon hath Common of *Vicinage*, if he encloſes any Part of the Land, all the Common is extinct. 1 *Brownl.* 174. But if one have Common Appendant in a great Waſte, belonging to his Tenant, and the Lord improve Part of the Waſte leaving ſufficient; if he after make a Feoffment to the Commoner of the Land improved, this will be no *Extinguiſhment. Dyer* 339. See *Hob.* 172. A Commoner aliens Part of his Land, to which the Common doth belong; the Common is not extinct, but ſhall be divided. 2 *Shep. Abr.* 152. Vide *Common.*

Extinguiſhment of Liberties. As to Liberties and Franchiſes granted by the King, ſometimes they may be *extinguiſhed*, and ſometimes they ſhall not *Moor* 474. When the King grants any Privileges, Liberties or Franchiſes, which were in his own Hands, as Parcel of the Flowers of the Crown; ſuch as *Bona Felonum, Fugitivorum & Utlagatorum*, Waifs, Strays, Deodand, Wreck on the Sea, *&c.* if they come to the Crown again, they are drowned and extinct in the Crown, and the King is ſeiſed of them *Jure Coronæ:* But if Liberties of Fairs, Markets or other Franchiſes, and Juriſdictions, be erected and created by the King, they will not be *extinguiſhed*, nor their Appendances ſevered from the Poſſeſſions. 9 *Rep.* 25. A Man has Liberties by Preſcription, if he takes Letters Patent of them, the Preſcription will be gone and extinct; for Things of a higher determine thoſe of a lower Nature. 2 *H.* 7. 5.

Extinguiſhment of Services. The Lord purchaſes or accepts Parcel of the Tenancy, out of which an entire Service is to be paid or done; by this the whole Service will be extinct: But if the Service be *pro bono publico*, then no Part of it ſhall be extinguiſhed; and Homage and Fealty are not ſubject to *Extinguiſhment*, by the Lord's purchaſing Part of the Land. 6 *Rep.* 1, 105. *Co. Lit.* 149. If the Lord and another Perſon do purchaſe the Lands, whereout he is to have Services, they are extinct; Alſo by Severance of the Services, a Manor may be extinguiſhed. *Co. Lit.* 147. 1 *And.* 257.

Extinguiſhment of Ways. If a Man hath a Highway as Appendant, and after purchaſes the Land wherein this Way is, the Way is extinct. *Terms de Ley.* Tho' a Way of Neceſſity to Market, or Church, or to arable Land, *&c.* is not *extinguiſhed* by Purchaſe of Ground, or Unity of Poſſeſſion. 11 *H.* 7. 25. 1 *Inſt.* 155.

Extirpatione, Is a Judicial Writ, either before or after Judgment, that lies againſt a Perſon who when a Verdict is found againſt him for Land, *&c.* doth maliciouſly overthrow any Houſe, or extirpate any Trees upon it. *Reg. Jud.* 13, 56.

Extocare, To grub up Lands, and reduce them to Arable or Meadow. *Mon. Ang. tom.* 2. *p.* 71.

Extortion, (*Extorſio*, from *Extorqueo* to wreſt away) Is an unlawful Taking by any Officer, *&c.* by Colour of his Office, of any Money, or valuable Thing, from a Perſon where none at all is due, or not ſo much is due, or before it is due. 1 *Inſt.* 368. 10 *Rep.* 102. At the Common Law which was affirmed by the Statute of *Weſt.* 1. *cap.* 26. it was *Extortion* for any Miniſter of the King, whoſe Office did any way concern the Adminiſtration and Execution of Juſtice, or the common Good of the Subject, to take any Reward for doing his Office, except what he received from the King: Though reaſonable Fees for the Labour and Attendance of Officers of the Courts of Juſtice are not reſtrained by Statute, which are ſtated and ſettled by the reſpective Courts; and it has been thought expedient to allow theſe Officers to take certain immediate Fees in many Caſes. 2 *Inſt.* 209 3 *Inſt.* 149. 1 *Hawk. P. C.* 170, 171. The taking of Money by *Virtue* of an Office, implies the Act to be lawful; but to take any Money by *Colour* of an Office, implies an ill Action: And the Taking being for Expedition of Buſineſs, is judged by Colour of the Office, and unlawful. 2 *Inſt.* 206. 1 *Inſt.* 368. And where an Officer is not allowed by Law to take any Thing, and it would be *Extortion* to do it, a Promiſe to pay Money is void. 1 *Roll Abr.* 16. There muſt be a poſitive Charge in Caſes of *Extortion*, and that the Perſon charged with it took ſo much *Extorſive* or *colore Officii*; which Words are as eſſential as *Proditorie* or *Felonice* for Treaſon or Felony. 2 *Salk.* 680. *Extortion* by the Common Law is ſeverely puniſhed on Indictment by Fine and Impriſonment, and Removal of Officers from the Offices wherein committed: By the Stat. 3 *Ed.*1. *c.* 30. Officers of Juſtice, *&c.* guilty of *Extortion*, are to render treble Value: And there are divers Statutes for puniſhing *Extortions* of Sheriffs, Bailiffs, Gaolers, Clerks of the Aſſiſe, and of the Peace, Attornies and Solicitors, *&c.* 23 *Hen.* 6. 33 *Hen.* 8. 3 *Jac.* 1. 10 *&* 11 *W.* 3. The *Extortion* of Officers of the Cuſtoms, diſtraining Merchants for undue Charges, *&c.* See *Stat.* 28 *H.* 6. *c.* 5. Officers may be jointly indicted of *Extortion*, as they may be jointly guilty of the Offence. 1 *Salk.* 382. Againſt Attornies for *Extortion*, Action may be brought, and the Party grieved ſhall have treble Damages and Coſts; but Information will not lie on the Stat. 3 *Jac.* 1. *cap.* 7. *Sid.* 434. 2 *Nelſ.* 822. If an Officer by terrifying another in his Office, take more than his ordinary Fees or Duties, he is guilty of *Extortion*; which may be compared to unlawful Uſury, *&c.* And *Crompton* ſays, that Wrong done by any Man is a Treſpaſs; but exceſſive Wrong is properly *Extortion. Cromp. Juſt.* 8. And *Extortion* has been deemed more odious than Robbery, becauſe it carries an Appearance of Truth; and is often accompanied with Perjury in Officers, *&c.* by breaking their Oaths of Office. *Extortion* in a large Senſe is taken for any Oppreſſion by Power or Pretence of Right. 1 *Hawk. P. C.* 170.

Extracta Curiæ, The Iſſues or Profits of holding a Court, ariſing from the cuſtomary Fees, *&c. Paroch. Antiq.* 572.

Extracts Of Writings or Records, being Notes thereof. See *Eſtreats.*

Extrajudicial, Is when Judgment is paſs'd in a Cauſe, not depending in that Court where given; or wherein the Judge has not Juriſdiction.

Extra-parochial, Signifies to be out of any Pariſh; and where any Thing is privileged and exempt from the Duties of a Pariſh. *Stat.* 22 *&* 23 *Car.* 2. Moſt of the *Foreſts* in *England* are *Extraparochial*; ſo are ſome privileged Places, but they ought to maintain their own Poor. *Mod. Caſes in L. and Eq.* 40.

Extravagants, Are certain Conſtitutions of *Popes*, ſo called, becauſe they are *Extra Corpus Canonicum Gratiani, ſive* Extra *Decretorum libros vagantur.* Du Cange.

Extumæ, Reliques in Churches and Tombs.—— *Cartular Abbat. Glaſton. MS. f.* 15.

Exuperare, To overcome; and it ſometimes ſignifies to Apprehend or Take, as, Exuperare *vivum vel Mortuum.* Leg. Edm. c. 2.

Ey, *Inſula*, an Iſland: And where the Names of Places end in *Ey*, it denotes them an Iſland. As *Ramſey*, is the Iſland of *Rams*; *Sheppey*, the Iſland of *Sheep*; *Herſy*, the Iſland of *Harts*, &c.

Eyery Of Hawks. See *Aery.* **Eyre**, Vide *Eire*, and *Juſtices in Eyre.*

F.

F, Is a Letter wherewith *Felons*, *&c.* are branded and marked with an hot Iron, on their being admitted to the Benefit of Clergy. See the Stat. 4 *H.* 7. *c.* 13.

Fabrick Lands, Are Lands given towards the Rebuilding or Repairing of Cathedrals and other Churches: For in antient Time, almoſt every Perſon gave by his Will, more or leſs, to the *Fabrick* of the Cathedral or Pariſh-Church where he lived; and Lands thus given were called *Fabrick Lands*, being *ad* Fabricam *reparandum*: Theſe Lands are mentioned in the Stat. 12 *Car.* 2. *c.* 8.

Facta Armorum, Feats of Arms, Juſts, Tornaments, *&c.* —— *Rex Ricardus in Angliam tranſiens Statuit* Facta Armorum, *quæ vulgo Torneamenta dicuntur, in Anglia exerceri.* Hiſ. Joh. Brompton, in R. 1. p. 1261.

Facto, In Fact; as where any Thing is actually done, *&c.* See *De facto.*

Factor, Is a *Merchant*'s Agent reſiding beyond the Seas, or in any remote Parts, conſtituted by Letter or Power of Attorney: And one *Factor* may be concerned for ſeveral Merchants, and they ſhall all run a joint Riſque of his Actions. If the Principal give the *Factor* a general Commiſſion to act for the beſt, he may do for him as he thinks fit; but otherwiſe he may not. Though in Commiſſions at this Time, it is common to give the *Factor* Power in expreſs Words, to diſpoſe of the Merchandize, and deal therein as if it were his own; by which the *Factor*'s Actions will be excuſed, though they occaſion Loſs to his Principal. *Lex Mercat.* 151. A bare Commiſſion to a *Factor* to ſell and diſpoſe of Merchandize, is not a ſufficient Power for the *Factor* to entruſt any Perſon, or to give a farther Day of Payment than the Day of Sale of the Goods; for in this Caſe, on the Delivery of the one, he ought to receive the other: And by the general Power of doing as if it were his own, he may not truſt out an unreaſonable Time, *viz.* beyond one, two or three Months, *&c.* the uſual Time allowed for the Commodities diſpoſed of; if he doth, he ſhall be anſwerable to his Principal, out if his own Eſtate. 1 *Bulſt.* 103. 7 *Jac.* 1. *B.R.* If a *Factor* buys Goods on Account of his Principal where he is uſed ſo to do, the Contract of the *Factor* ſhall oblige the Principal to a Performance of the Bargain; and he is the proper Perſon to be proſecuted, on Non-performance: But if the *Factor* enters into a Charter-Party of Affreightment with a Maſter of a Ship, the Contract obliges him only; unleſs he lades aboard generally his Principal's Goods, when both the Principal and Lading become liable for the Freight, and not the *Factor. Goldsb.* 137. Goods remitted to a *Factor*, ought to be carefully preſerv'd; and he is accountable for all lawful Goods which ſhall come to his Hands; yet if the *Factor* buy Goods for his Principal, and they receive Damage after in his Poſſeſſion, thro' no Negligence of his, the Principal ſhall bear the Loſs; and if a *Factor* be robb'd, he ſhall be diſcharged in Account brought againſt him by his Principal. 4 *Rep.* 83. If the *Factor* has Orders from his Principal not to ſell any Goods but in ſuch a Manner, and he breaks thoſe Orders, he is liable to the Loſs or Damage that ſhall be received thereby: And where any Goods are bought or exchanged, without Orders, it is at the Merchant's Curteſy whether he will accept of them, or turn them on his *Factor*'s Hands. *Lex Mercat.* 154, 155. When a *Factor* has bought or ſold Goods purſuant to Orders, he is immediately to give Advice of it to his Principal; leſt the former Orders ſhould be contradicted before the Time of his giving Notice, whereby his Reputation might poſſibly ſuffer: And where a *Factor* has made a conſiderable Profit for his Principal, he muſt take due Care in the Diſpoſition of the ſame; for without Commiſſion or particular Orders, he is anſwerable. *Ibid.* A *Factor* ſhall ſuffer for not obſerving of Orders; and no *Factor* acting for another Man's Account in Merchandize, can juſtify Receding from the Orders of his Principal, though there may be a Probability of Advantage by it: If he make any Compoſition with Creditors without Orders, he ſhall anſwer it to his Principal. *Ibid.* *Factors* ought to obſerve the Contents of all Letters from their Principals, or written to them by their Order; and to be very diligent and punctual in giving ſpeedy and particular Anſwers: They ſhould make it their Buſineſs to ſtudy the Nature, Value, Riſe and Fall of Merchandizes, as well here at Home as Abroad, and alſo the proper Seaſons of Buying and Selling, *&c.* A Merchant is anſwerable in Action upon the Caſe for the Deceits of his *Factor*, in Selling Goods abroad; and as ſome Body muſt be a Loſer by ſuch Deceit, it is more Reaſon that he who employs, and puts Confidence in the Deceiver, ſhould loſe than a Stranger. 1 *Salk.* 289. If a Perſon doth employ a *Factor* to ſell Goods, who ſells them on Credit, and before the Money is paid dies indebted more than his Aſſets will pay; this Money ſhall be paid to the principal Merchant, and not to the *Factor*'s Adminiſtrator, but thereout muſt be deducted what was due for Commiſſion: For a *Factor* is in Nature only of a Truſtee for his Principal. 2 *Vern.* 638.

Factorage, Is the Wages or Allowance paid and made to a *Factor* by the Merchant. The Gain of *Factorage* is certain, however the Succeſs proves to the Merchant; but the Commiſſions and Allowances vary according to the Cuſtoms and Diſtance of the Country, in the ſeveral Places where Factors are reſident: In the *Weſt Indies*, the Commiſſion runs at about 8 *per Cent* but in *France* and *Spain*, *&c.* not above 2 *per Cent.* and in *Holland* but one and a half *per Cent* *Lex Mercat* 155.

Factum, A Man's own Act, Fact, or Feat; and particularly uſed in the Civil Law, for any Thing ſtated and made certain. See *Fait*.

Faculty, (*Facultas*) As reſtrained from the Original and active Senſe, to a particular Underſtanding in Law, is uſed for a Privilege granted to a Man by Favour and Indulgence, to do that which by Law he ought not to do. And for the Granting of theſe, there is an eſpecial Court under the *Archbiſhop of Canterbury*, called the *Court of the Faculties*; and the chief Officer thereof the *Maſter of the Faculties*; who has Power by the Stat. 25 *H.* 8. *cap.* 21. to grant Diſpenſations; as to marry Perſons without the Banes firſt asked, to eat Fleſh on Days prohibited, (and every Dioceſan may make the like Grants) to Ordain a Deacon under Age, for a Son to ſucceed the Father in his Benefice, one to have two or more Benefices incompatible, *&c.* And in this Court are regiſtred the Certificates of Biſhops and Noblemen granted to their Chaplains, to qualify them for Pluralities and Non-Reſidence. 4 *Inſt.* 337.

Faſting-Men, In *Mon. Angl. Tom.* 1. *pag.* 100. are rendered to ſignify Vaſſals: But *Cowel* thinks they rather mean Pledges or Bondſmen; which by the Cuſtoms of the *Saxons*, were *faſt* bound to anſwer for one another's peaceable Behaviour. See *Feſtingmen*.

Fag, A Knot or Excreſcency in Cloth; and in this Senſe it is uſed in the Statute 4 *Ed.* 4. *cap.* 1.

Faggot, A Badge wore in the Times of *Popery*, by Perſons who had recanted and abjured what the then Powers adjudged Hereſy: Thoſe poor Wretches that oppos'd the Doctrine of the arbitrary Prieſthood, were condemn'd not only to the Penance of carrying a *Faggot*, as an Emblem of what they had merited, to ſuch an appointed Place of Solemnity; but for a more durable Mark of Infamy, they were to have the Sign of a *Faggot* embroider'd on the Sleeve of their upper Garment: And if this Badge or *Faggot* was at any Time left off, it was often alledged as the Sign of *Apoſtacy*.

Faida, Malice or deadly Feud. *Leg. H.* 1. *c.* 88.

Failure of Record, Is when an Action is brought againſt a Man, who alledges in his Plea Matter of Record in Bar of the Action, and avers to prove it by the Record; but the Plaintiff ſaith, *Nul tiel Record*, *viz.* denies there is any ſuch Record: Upon which, the Defendant hath Day given him by the Court to bring it in; and if he fails to do it, then he is ſaid to *fail of his Record*, and the Plaintiff ſhall have Judgment to recover. *Terms de Ley* 329. In Debt upon an Eſcape, the Plaintiff declared, that he had obtained a Judgment in an inferior Court, upon which the Defendant was taken, and the Sheriff ſuffered him to eſcape; the Defendant pleaded *Nul tiel Record*, and being at Iſſue, in the Record was certified at the Day; by which it appear'd that there were ſeveral Variances in the Continuances and Proceſs; but becauſe the Plaint, Count, and Judgment certified, did agree with the Plaintiff's Declaration, it was held that thoſe Variances made no Failure of Record. *Hob.* 179. 2 *Nelſ. Abr.* 823. In *Formedon* for the Manor of *Iſfield*; the Defendant pleaded in Bar a Common Recovery of the ſaid Manor againſt the Donee in Tail, who replied *Nul tiel Record*, and the Defendant having brought in the Record, it appear'd that the Recovery was of the Manor of *Iffield*; and adjudg'd, that this being in a Common Recovery, ſhall be no Failure of Record for this ſmall Variance, but ſhall be amended being the Miſpriſion of the Clerk. 5 *Rep.* 46. And where a Fine with Proclamations was levied, and upon an Iſſue of *Nul tiel Record*, on which it was brought in at the Day, tho' the Year of the King was left out in the Proclamations made in one Term, as it was expreſſed in the Proclamations of the other two Terms, they were held to be right, and the Omiſſion no Failure of Record. *Dyer* 234. If a Judgment, *&c.* be reverſed for Error, *Nul tiel Record* may be pleaded. 8 *Rep.* 142. And where a Tenor only of a Record, *&c.* is brought in, it is a Failure of Record. *Dyer* 187. 2 *Nelſ.* 824.

Faint-Action, (Fr. *Feinte*) A *feigned* Action; ſuch that altho' the Words of the Writ are true, yet for certain Cauſes the Plaintiff hath no Title to recover thereby: But a *Falſe Action* is properly where the Words of the Writ are *falſe*. 1 *Inſt.* 361.

Faint-Pleader, Is a fraudulent, falſe or colluſory Manner of Pleading, to the Deceit of a third Perſon; againſt which, among other Things, was made the Stat. 3 *Ed.* 1. *c.* 19.

Fair-Pleader, Or not Pleading fairly, *&c.* See *Beaupleader*.

Fair, (Fr. *Feire*, Lat. *Nundinæ*) A ſolemn or greater Sort of Market, granted to any Town by Privilege, for the more ſpeedy and commodious providing of ſuch Things as the Subject needeth; and the Utterance of what Commodities we abound in above our own Uſes and Occaſions: And both our *Engliſh* and the *French* Word ſeems to come from *Feriæ*, becauſe it is incident to a *Fair* that Perſons ſhall be privileged from being moleſted or arreſted in it, for any other Debt or Contract than what was contracted in the ſame, or at leaſt was promiſed to be paid there. *Stat.* 17 *Ed.* 4. *c.* 2. And 1 *R.* 3. *c.* 6. It is generally kept once or twice in the Year; and it has been obſerv'd, that *Fairs* were at firſt occaſion'd by the Reſort of People to the Feaſt of Dedication, and therefore in moſt Places the *Fairs*, by old Cuſtom, are on the ſame Day with the Wake or Feſtival of that Saint to whom the Church was dedicated; and for the ſame Reaſon kept in the Church-yard, till by Authority, reſtrain'd. 2 *Inſt.* 221. *Blount.* The *Court of Piepowder* is incident to every *Fair*, &c. And there is a *Toll* uſually paid in *Fairs* and Markets, on the Sale of Things tollable, and for Stallage, Picage, &c. But this is not incident to a *Fair* or Market, without ſpecial Grant; for where it is not granted, ſuch a *Fair* or Market is accounted a *Free Fair* or Market. 2 *Inſt.* 220. *Cro. Eliz.* 559. By the Statute 2 *Ed.* 3. *cap.* 15. *Fairs* are not to be kept longer than they ought by the Lords thereof, on Pain of their being ſeiſed into the King's Hands, until ſuch Lords have paid a Fine for the Offence; and Proclamation is to be made how long *Fairs* are to continue: Alſo no Merchant ſhall ſell any Goods or Merchadize at a *Fair* after the Time of the *Fair* is ended, under the Penalty of forfeiting double the Value of the Goods ſold, one fourth Part whereof to the Proſecutor, and the Reſt to the King. 5 *Ed.* 3. *c.* 5. Any Citizen of *London* may carry his Goods or Merchandize to any *Fair* or Market in *England* at his Pleaſure, Whereas an Ordinance had been made by the Lord Mayor, Aldermen and Citizens, that no Citizen ſhould go to any *Fair* or Market out of the ſaid City. 3 *Hen* 7. *cap.* 9. Owners of *Fairs* and Markets are to appoint Toll-takers or Book-keepers, on Pain of 40*s.* and they ſhall enter and give Account of Horſes ſold, &c. 2 & 3 *P.* & *M. c.* 7. and 31 *Eliz. c.* 12. See *Market.*

Fait, (*Factum*) Is in Law Signification a Deed or Writing, lawfully executed to bind the Parties thereto. *Vide* Deed.

Fait enrolle, (*Fr.*) Is a Deed of Bargain and Sale, &c. and forging the Inrollment of it is a great Miſdemeanor, but not Forgery within the Stat. 5 *Eliz.* 1 *Keb.* 568.

Faitours, (*Fr.*) In the Statute 7 *R.* 2. *cap.* 5. is uſed for Evil Doers; and may be interpreted Idle Livers, from *Faitardiſe*, which ſignifieth a Kind of ſleepy Diſeaſe, proceeding of too much Sluggiſhneſs: And in the ſaid Statute it ſeems to be ſynonymous with Vagabonds. *Terms de Ley* 331.

Falang, A Jacket or Cloſe Coat. *Blount.*

Falcatura, One Day's Mowing of Graſs; a cuſtomary Service to the Lord by his inferior Tenants: *Falcata* was the Graſs freſh mowed, and laid in Swathes; and *Falcator*, the ſervile Tenant performing the Labour. *Kennet's Gloſſ.*

Falco, A Faulcon.——King *John*, in his 14th Year of his Reign, granted to *Owen Fitz-David*, and others, *Omnes accipitres* & Falcones *gentiles* & *ſpuarios*, &c.———Pat. 14 Joh.

Falda, A Sheepfold. —— *Et quod oves ſint levantes* & *cubantes in propria* Falda, &c. Rot. Chart. 6 *Hen.* 3. *m.* 6.

Faldage, (*Faldagium*) Is a Privilege which ſeveral Lords anciently reſerved to themſelves, of ſetting up *Folds* for Sheep in any Fields within their Manors, for the better Manurance of the ſame; and this was uſually done not only with their own, but their Tenant's Sheep, which they called *Secta faldæ.* This *Faldage* is term'd in ſome Places a *Fold-Courſe*; and in old Charters *Faldſoca, i. e. Libertas* Faldæ, *or* Faldagii.

Faldæcurſus, A Sheep-Walk, or Feed for Sheep. 2 *Vent Rep.* 139.

Faldfey, Fald-fee, A Fee or Rent paid by ſome cuſtomary Tenants for Liberty to fold their Sheep upon their own Land.

Faldiſtor, (*Sax.*) The higheſt Seat of a Biſhop, encloſ'd round with a Lettiſe. *Cowel.*

Faldworth, A Perſon of Age, that he may be reckoned of ſome Decennary. *Du Freſne.*

Faleræ, (Lat. *Phaleræ*) The Tackle and Furniture of a Cart or Wain. *Mon. Angl. Tom.* 2. *f.* 256.

Faleſta, A great Rock, Bank or Hill by the Sea-ſide. *Domeſd.*

Fallow-Land, Vide *Warrectum* & *Terra Warrecta.*

Fallum, Is a Sort of Land, as appears by the *Monaſticon Anglicanum.* —— *De duobus acris* & *viginti* Fallis *in*, &c. Mon. Tom. 2. 425.

Falmotum, or *Falkmote*, the ſame with *Folkmote.*

Falſe Action, If brought againſt one, whereby he is caſt into Priſon, and dies pending the Suit, the Law giveth no Remedy in this Caſe, becauſe the Truth or *Falſhood* of the Matter cannot appear before 'tis tried: And if the Plaintiff be barred or nonſuited, at Common Law, regularly all the Puniſhment is Amercement. *Jenk. Cent.* 161. See *Faint-Action.*

Falſe Claim, By the Foreſt Laws, is where a Man *claims* more than is his due, and is amerced and puniſhed for the ſame. A Perſon had a Grant by Charter of the Tenth of all the Veniſon in the Foreſt of *Lancaſter*, viz. *In Carne tantum, ſed non in Corio*; and becauſe he made a *Falſe Claim*, by alledging that he ought to have the Tenth of all Veniſon within the Foreſt, as well *in Carne*, as *in Corio*, therefore he was *in Miſericordia de Decima Venationis ſuæ in Corio non percipiendo.* Manwood, cap. 25. num. 3.

Falſe Form, In Proceedings at Law, is aided by a Verdict; tho' not where there is Want of Certainty, &c. 1 *Keb.* 734, 876.

Falſe Impriſonment, (*Falſum Impriſonamentum*) Is a Treſpaſs committed againſt a Perſon, by Arreſting and Impriſoning him without juſt Cauſe, contrary to Law; or where a Man is unlawfully detained, without legal Proceſs: And it is alſo uſed for a Writ which is brought upon this Treſpaſs. If a Perſon be any way unlawfully detain'd, it is *Falſe Impriſonment*; and conſiderable Damages are recoverable in theſe Actions. 1 *Inſt.* 124. The Law favours Liberty, and the Freedom of a Man from Impriſonment, ſo that *Falſe Impriſonment* is a great Offence; and lawful Impriſonment is ſo far pitied, that by ſeveral Statutes, as well as by the Common Law, Defaults are ſaved on that Account. *Wood's Inſt.* 16. The King cannot give any Power to impriſon, where Impriſonment may not be awarded by the Common Law. 2 *Brownl.* 18. And if a Perſon is impriſon'd on any By-Law of a Corporation, &c. it is *Falſe Impriſonment*; becauſe a By-Law to impriſon is againſt *Magna Charta, quod nullus Liber Homo Impriſonetur*, &c. 5 *Rep.* 64. It is the ſame of a Cuſtom to impriſon Perſons: But 'tis incident to a Court of Record to impriſon. 2 *Nelſ. Abr.* 827. If a Juſtice of Peace, &c. commits a Perſon without juſt Cauſe, it is *Falſe Impriſonment:* And a Conſtable cannot impriſon a Man at his Pleaſure, to compel him to do any Thing required by Law; but is to carry him before a Juſtice. *Ibid.* 1 *Leon.* 527. Where any Juſtice ſends for a Man, and commits him to Gaol without any Examination; the Party may have Action of *Falſe Impriſonment* againſt him: And if a Juſtice of Peace ſend a general Warrant to arreſt a Perſon, and ſay not for what; Action lies againſt him, but not againſt the Officer. *Mich.* 8 *Jac. B. R.* In *Falſe Impriſonment* brought againſt an Officer of an inferior Court, if he juſtify an Arreſt by Virtue of their Warrant; he muſt entitle the Court to Juriſdiction, or the Action lies againſt him. *Marſh, pl.* 195. If erroneous Proceſs iſſues out of a Court that hath Juriſdiction of the Matter, and the Bailiff or Officer executes it, whereby the Party is impriſoned, the Officer ſhall be excuſed in Action of *Falſe Impriſonment:* But if the Court out of which the Proceſs iſſues hath no Cognizance of the Cauſe, it is otherwiſe; for in ſuch Caſe the whole Proceeding is *Coram non Judice*, and the Officer will not be excuſed.

ſed. 10 *Rep.* 75. An Officer hath a Warrant upon a *Capias ad Satisfaciend.* againſt an Earl, or Counteſs, &c. who are privileged in their Perſons, and he arreſts them; 'tis ſaid Action of *Falſe Impriſonment* will not lie againſt the Officer, becauſe he is not to examine the Judicial Act of the Court, but to obey. 6 *Rep.* 56. 10 *Rep.* 75. Where a Perſon is taken and impriſon'd on a Proceſs unduly obtain'd, Action of *Falſe Impriſonment* may be brought by the Party impriſoned, againſt him at whoſe Suit he is impriſon'd; but not againſt the Officer that executes it. 1 *Lill. Abr.* 595. If an Arreſt is made by one who is no legal Officer, it is *Falſe Impriſonment*, for which Action lies. 1 *Inſt.* 69. An Action of *Falſe Impriſonment* lies againſt a Bailiff for arreſting a Perſon without Warrant, tho' he afterwards receives a Warrant: And ſo it is if he arreſt one after the Return of the Writ is paſt; for it is then without Writ. 2 *Inſt.* 53. If a Sheriff or any of his Bailiffs arreſt a Man out of his County, &c. or after the Sheriff is diſcharged of his Office; or a Perſon arreſts one on a Juſtice's Warrant after his Commiſſion is determined, &c. it will be *Falſe Impriſonment.* *Dyer* 41. And if the Sheriff, after he hath arreſted a Man lawfully, when a legal Diſcharge comes to him, as a *Superſedeas*, or the like, do not then diſcharge the Party, he may be ſued in this Action. 2 *R.* 1. 12. *Fitzh.* 253. In Caſe the Plaintiff in a Suit brings an unlawful Warrant to a Sheriff and ſhews him the Defendant, requiring him to make the Arreſt; or if he bring a good Warrant, and direct the Sheriff to a wrong Man, &c. for this the Action of *Falſe Impriſonment* will lie againſt both. *Bro. Treſp.* 99, 307. *Faux Impr.* 19. 1 *Brownl.* 211. If a Warrant be granted to arreſt or apprehend a Perſon, where there are ſeveral of the Name, and the Bailiff or other Officer arreſts a wrong Perſon, he is liable to Action of *Falſe Impriſonment*; and he is to take Notice of the right Party at his Peril. *Dyer* 244. *Moor* 457. A Man arreſted of a *Sunday* may bring his Action of *Falſe Impriſonment*; but one has been refuſed to be releaſed in ſuch a Caſe. 5 *Mod.* 95. When a Perſon is kept longer in Hold than he ought, tho' he was at firſt lawfully impriſoned, it is *Falſe Impriſonment:* If a Bailiff demand more than his juſt Fees, when offer'd him, and keep a Perſon in Cuſtody thereupon, it is *Falſe Impriſonment*, and puniſhable: And if a Sheriff, or Gaoler, keeps a Priſoner in Gaol, after his Acquittal, for any Thing except for Fees, it is unlawful Impriſonment. 2 *Inſt.* 482. *Wood* 16. If a Man falſly impriſons *A. B.* and the Gaoler detains him till he pays ſo much Money, he ſhall have Action of *Falſe Impriſonment*, and taking ſo much Money from him, againſt ſuch Perſon: And it is illegal to uſe a lawful Means for Oppreſſion. *Mod. Caſ.* 179. Unlawful or *Falſe Impriſonment* is ſometimes called *Dureſs of Impriſonment*, where one is wrongfully impriſoned till he ſeals a Bond, &c. 2 *Inſt.* 482. *Falſe Impriſonment* lies when one is impriſon'd, where by no Statute or Common Law a Man is to ſuffer Impriſonment. *Bro. Impr.* 7. So that if a Perſon bind himſelf to pay Money; and if he do not pay it, that the other ſhall impriſon him; if he pays it not, and the other doth impriſon him, it is *Falſe Impriſonment.* 23 *E.* 3. 3. And where a Man owes me Money, or hath done any Treſpaſs, &c. and I impriſon him for it, without Order of Law, he may bring *Falſe Impriſonment* againſt me. *F. N. B.* 88. An Impriſonment will be unlawful, and give this Action, altho' the Cauſe be good, when he that makes it doth the ſame without any Colour of Authority; or if he has a Colour, yet no good Authority, from the Court, &c. or where a Court or Officer hath Power, but do not well make it out; or when the Authority is well made forth, and not rightly purſued and executed. 4 *Rep.* 64. 8 *Rep.* 67. *Dyer* 242. And all Perſons Male or Female, that have a Hand in a wrong Impriſonment, ſhall be ſued in Action of *Falſe Impriſonment*; and the Party grieved may ſue any one of them for it. 1 *Inſt.* 57. *Bro Treſp.* 113, 256. But if the Impriſonment be by the Agreement and Conſent of him that is arreſted, it may be juſtifiable. *Bro. Faux Impr.* 18. If a Man arreſted or apprehended be committed to a private Priſon, where he ſhould be ſent to the Common Gaol; Action will lie for it, as a *Falſe Impriſonment.* 2 *Brownl.* 41. A Man under Arreſt, or in Stocks, &c. is ſaid to be in Priſon: And in a common Arreſt, where lawful, the Officer may make any Place his Priſon, becauſe the Writ commands that *Habeas Corpus ejus coram, &c. apud Weſtm.* which is a general Authority. 1 *Salk.* 401. In criminal Caſes, where a Man is falſly impriſon'd, he may bring a *Habeas Corpus*, and upon Return of the Writ, ſetting forth the Cauſe of the Commitment, if it appears to be againſt Law, he ſhall be diſcharg'd; or he may be bailed, if it be doubtful, &c. 4 *Inſt.* 182.

Falſe Judgment, (*Falſum Judicium*) Is a Writ that lieth where *Falſe Judgment* is given in the County-Court, Court-Baron, or other Courts not of Record. *F. N. B.* 17, 18. This Writ may be brought on a Judgment in a Plea, Real or Perſonal: And for Errors in the Proceedings of inferior Courts; or where they proceed without having Juriſdiction, Writ of *Falſe Judgment* lieth: Though the Plaintiff aſſign Errors in a Writ of *Falſe Judgment*, he ſhall not ſay, *In hoc Erratum eſt, &c.* but *unde queritur diverſimodo ſibi* Falſum Judicium *factum fuiſſe, Judicium in hoc, &c.* Moor 73. 2 Nelſ. Abr. 829. If Writ of *Falſe Judgment* abate for any Fault in the Writ, the Plaintiff ſhall not have a *Scire facias ad audiend. Errores* upon the Record certified; becauſe it comes without an Original; but if the Plaintiff dies, and falſe *Judgment* is given in the inferior Court, his Heir ſhall have a *Sci. fac. ad audiend. Error.* againſt him who recovered upon that Record, which is removed into *C. B.* And where the Plaintiff in a Writ of *Falſe Judgment* is Nonſuit, it was formerly a Queſtion, whether the other Party ſhall ſue Execution upon this Record ſo removed againſt the Plaintiff, without ſuing out a *Scire facias*; but it has been adjudged, that he may do it. *Hill.* 23 *Hen.* 6. *New Nat. Br.* 39. When a Record is removed into *B. R.* by Writ of *Falſe Judgment*, if the Party alledges Variance between the Record removed, and that on which Judgment was given, the Trial ſhall be by thoſe who were preſent in Court when the Record was made up. 2 *Lutw.* 957. *Stat.* 1 *Ed.* 3. *cap.* 4. A Man ſhall not have a Writ of *Falſe Judgment* but in a Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them. *New Nat. Br.* 40. A Tenant at Will, according to the Cuſtom of the Manor, which is Tenant by Copy of Court-Roll, ſhall not have a Writ of *Falſe Judgment* upon a Judgment given againſt him: But where *Falſe Judgment* is given on a Writ of *Juſticies*, directed to the Sheriff, the Party grieved ſhall have a *Faux Judgment*, altho' the Judgment be for Debt, or Treſpaſs above the Sum of 40 *s.* *Ibid.* Where a Record of a Judgment in the County-Court was vicious, and the Judgment reverſed in *C. B.* the Suitors were ordered to be amerced a Mark, and the County Clerk fined 5 *l.* And if a Plaintiff in an Inferior Court declare for more than 40 *s.* Judgment ſhall be reverſed by Writ of *Falſe Judgment:* But where Damages are laid under that Sum, Coſts may make it amount to more. 1 *Mod.* 249. 2 *Mod.* 102, 206. Upon *Falſe Judgment* before Bailiffs, or others who hold Plea by Preſcription, in every Sum in Debt by Bill before them, a Party ſhall not have a Writ of *Falſe Judgment*; but a Writ of Error thereupon. *M.* 4 *E.* 4. For Defaults of Tenants for Life, in Writs of Right, &c. *Faux*

Judgment lies by him in Reverſion: And this Writ may be brought againſt a Stranger to the Judgment, if he be Tenant of the Land. A Judgment ſhall be intended good till reverſed by Writ of *Falſe Judgment*, *&c.* See *Accedas ad Curiam*, and *Attaint.*

Form *of a Writ of* Falſe Judgment.

GEORGE *the Second*, &c. *To the Sheriff of S. Greeting: If* A. B. *ſhall make you ſecure in proſecuting his Suit, then in your full County Court do you cauſe to be recorded the Plea, which is in the ſaid Court, without our Writ, between* C. D. *and the ſaid* A. B. *in a certain Treſpaſs upon the Caſe, to the ſaid* C. *by the ſaid* A. *done*, &c. *whereof the ſaid* A. *complains that* Falſe Judgment *is done him in the ſame Court: And that Record have before our Juſtices at* Weſtminſter, *the* Day, &c. *under your Seal, and the Seals of four legal Men of the ſaid Court, that were preſent at the making of the ſaid Record; and ſummon by good Summoners the ſaid* C. *that he be then there to hear that Record, and have you there the Summoners*, &c. *and this Writ.* Witneſs, *&c.*

Falſe Latin, Before the late Statute for turning Law Proceedings into *Engliſh*, if a *Latin* Word was ſignificant, though not good *Latin*, yet an Indictment, Declaration, or Fine, ſhould not be made void by it: But if the Word was not *Latin*, nor allowed by the Law, and it were in a material Point, it made the whole vicious. 5 *Rep.* 121. 2 *Nelſ.* 830. Vide *Latin.*

Falſe Tokens, As where Perſons get Money or Goods into their Hands, by forged Letters, or other counterfeit Means, is puniſhable by Impriſonment, *&c.* by Stat. 33 *H.* 8. *c.* 1. See *Counterfeits.*

Falſify, Seems to ſignify as much as to prove a Thing to be *falſe*. *Perk.* 383.

Falſifying a Record, A Perſon that purchaſes Land of another, who is afterwards outlawed of Felony, *&c.* may *falſify the Record*, not only as to the Time wherein the Felony is ſuppoſed to have been committed, but alſo as to the Point of the Offence: But where a Man is found guilty by Verdict, a Purchaſer cannot *falſify* as to the Offence; though he may for the Time, where the Party is found guilty generally in the Indictment, *&c.* becauſe the Time is not material upon Evidence. 2 *Hawk. P. C.* 456. And any *Judgment* given by Perſons who had no good Commiſſion to proceed againſt the Perſon condemned, may be *falſified* by ſhewing the Special Matter, without Writ of Error. *Ibid.* Alſo where a Man is *attainted* of Treaſon or Felony, if he be afterwards pardoned by Parliament, the Attainder may be *falſified*, by him or his Heir, without Plea. *Ibid.*

Falſifying a Recovery. Iſſue in Tail may *falſify a Recovery* ſuffered by Tenant for Life, *&c.* And it has been held, that a Perſon may *falſify a Recovery* had by the Iſſue in Tail, where an Eſtate-tail is bound before by a Fine. 2 *Nelſ. Abr.* 831. But where there was Tenant for Life, Remainder in Tail, and Reverſion in Fee, Tenant for Life ſuffered a common Recovery, in which he in Remainder was vouched, and the Uſes were declared to him, who had the Remainder in Tail; it was adjudged, that by the Recovery all Remainders and Reverſions were barred, and that they could not *falſify* this *Recovery.* 10 *Rep.* 43. He in Reverſion ſuffered a common Recovery, and declared the Uſes; his Heir ſhall not *falſify* it by pleading that his Father had nothing at the Time of the *Recovery*, becauſe he is eſtopped to ſay he is not Tenant to the *Præcipe. Godb.* 189. An Infant brought an Aſſiſe in *B. R. Pending* which Action the Tenant brought an Aſſiſe againſt the Infant in *C. B.* for the ſame Land, and had Judgment by Default, which he pleaded in Bar to the Aſſiſe brought by the Infant; who ſet forth all this Matter in his Replication, and that the Demandant at the Time of the ſecond Writ brought was Tenant of the Land, and prayed that he might *falſify* this *Recovery*; and it was held that he might, becauſe he could not have Writ of Error, or Attaint. *Godb.* 271. 2 *Cro.* 264. It has been determined, that a *Recovery* is not ſo firm, but it may be *falſified* in Point of *Recovery* of the Thing itſelf, between the ſame Parties. *Ibid.*

Falſifying a Verdict. Where in any Real Action, there is a Verdict againſt Tenant in Tail, the Iſſue can never *falſify* ſuch *Verdict* in the Point directly tried; but only in a ſpecial Manner, as by ſaying that ſome Evidence was omitted, *&c.* 2 *Ld. Raym.* 1050.

Falſonarius, A Forger.——*Et quod* Falſonarios *Chartam*, *&c. detegent.* Hoveden 424.

Falſo returno Brevium, Is a Writ that lieth againſt the Sheriff who hath Execution of Proceſs, for *falſe Returning* of Writs. *Reg. Jud.* 43.

Familia, Signifies all the Servants belonging to a particular Maſter; but in another Senſe, it is taken for a Portion of Land, ſufficient to maintain one *Family:* It is ſometimes mentioned by our Writers to be a *Hide* of Land, which is alſo called a *Manſe*; and ſometimes *Carucata* or a Plough-land. *Blount.*

Fanaticks, Are Perſons pretending to be inſpired, and being a general Name for *Quakers*, *Anabaptiſts*, and all other Sectaries, and factious *Diſſenters* from the Church of *England. Stat.* 13 *Car.* 2. *cap.* 6.

Fanatio, (*Menſis Fanationis*) Is the *Fawning* Seaſon, or *Fence-Month* in *Foreſts.* Kennet's Gloſſ.

Farandman, (*Sax.*) A Traveller or Merchant Stranger, to whom by the Laws of *Scotland* Juſtice ought to be done with all Expedition, that his Buſineſs or Journey be not hindered. *Skene*, *c.* 140.

Fardel of Land, (*Fardella Terræ*) Is generally accounted the Fourth Part of a *Yard Land*; but according to *Noy*, (in his *Compleat Lawyer*, *p.* 57.) it is an eighth Part only, for there he ſays that two *Fardels* of Land make a *Nook*, and four *Nooks* a *Yard-Land.*

Farding-deal, (*Quadrantata Terræ*) Is the fourth Part of an Acre: And beſides *Quadrantata Terræ*, we read of *Obolata*, *Denariata*, *Solidata*, and *Librata Terræ*, which probably ariſe in Proportion of Quantity from the *Farding-deal*, as an Half-penny, Penny, Shilling, or Pound in Money, riſe in Value; and then muſt *Obolata* be half an Acre, *Denariata* an Acre, *Solidata* twelve Acres, and *Librata Terræ* twelve Score Acres of Land: But ſome hold *Obolata* to be but half a Perch, and *Denariata* a Perch; and I find *Viginti Libratas Terræ vel redditus*, Reg. Orig. 94, 248. whereby it ſeems that *Librata Terræ* is ſo much as yields 20 *s. per Annum.* F. N. B. 87. Spelm. Gloſſ.

Fare, (*Sax.*) A Voyage or Paſſage by Water; but more commonly the Money paid for ſuch Paſſage, in which Senſe we now uſe it. 3 *P. & M. cap.* 16.

Farinagium, Toll of Meal or Flower.——*Et quod de cætero Molendinarius non capiat* Farinagium, *&c.* Ordin. Inſul. de Jerſey 17 Edw. 2.

Farleu, Is Money paid by Tenants in the Weſt of *England* in *Lieu* of a *Heriot:* And in ſome Manors in *Devonſhire*, *Farleu* is diſtinguiſhed to be the beſt Goods; as *Heriot* is the beſt Beaſt, payable at the Death of a Tenant. *Cowel.*

Farlingarii, Are Whoremongers and Adulterers. *Sax.*

Farm, or **Ferm**, (Lat. *Firma*, from the Sax. *Feorm*, i. e. Food, and *Feormian* to feed or yield Victuals) Signifies a large Meſſuage and Land, taken by Leaſe under a certain yearly Rent, payable by the Tenant; and in former Days, about the Time of

William the Firſt, called the Conqueror, theſe Rents were reſerved to the Lords in Victuals and other Neceſſaries ariſing from the Land; but afterwards in the Reign of King *Hen.* 1. were altered and converted into Money. *Terms de Ley.* A *Farm* is moſt properly the chief Meſſuage in a Village; and it is a collective Word, conſiſting of divers Things gathered into one, as a Meſſuage, Land, Meadow, Paſture, Wood, Common, *&c.* *Locare ad Firmam* is ſometimes taken for as much as to let or ſet to *Farm*; and the Reaſon of it may be in Reſpect of the firm or ſure Hold the Tenants thereof have above Tenants at Will. A *Farm* in *Lancaſhire* is called *Ferm-holt*; in the North a *Tack*, and in *Eſſex* a *Wike:* And *Ferm* is taken in various Ways. *Plowd.* 195.

Farmer, Is he that tenants a *Farm*, or is Leſſee thereof. *Terms de Ley.* And 'tis ſaid generally every Leſſee for Life or Years, although it be but of a ſmall Houſe and Land, is called *Farmer*, as he is that occupieth the *Farm:* As this Word implies no Myſtery, except it be that of Husbandry, Husbandman is the proper Addition of a *Farmer.* 2 *Hawk.* 188. By Statute, no Parſon or Spiritual Perſon may take *Farms* or Leaſes of Land, on Pain of forfeiting 10 *l. per* Month, *&c.* 21 *Hen.* 8. *c.* 13. And no Perſon whatſoever ſhall take above two *Farms* together, and they to be in the ſame Pariſh, under the Penalty of 3 *s.* 4 *d.* a Week. 25 *Hen.* 8.

Farthing, Was the fourth Part of a *Saxon* Penny, as it is now of the *Engliſh* Penny.

Farthing of Gold, (*Quaſi* fourth Thing) A Coin uſed in ancient Times, containing in Value the *fourth Part* of a *Noble.* It is mentioned in the Stat. 9 *H.* 5. *c.* 7. where it is ordained, that there ſhall be good and juſt Weight of the *Noble, Half-Noble,* and *Farthing of Gold*, *&c.*

Farthing of Land, Seems to differ from *Farding-deal*; for it is a large Quantity of Land: In a Survey Book of the Manor of *Weſt Slapton* in Com. *Devon.* is entered thus: *A. B.* holds ſix *Farthings* of Land at 126 *l. per Annum.*

Farundel of Land, the ſame with *Farding-deal.*

Faſſus, (Fr. *Faiſſeau*) A Faggot of Wood. *Mon. Ang. Tom.* 2. *p.* 238.

Faſt-Days, Are *Days* of *Faſting* and Humiliation, appointed to be obſerved by publick Authority. There are fixed *Days* of *Faſting* enjoined by our Church, at certain Times in the Year, mentioned in ancient Statutes, particularly the 2 *&* 3 *Ed.* 6. *c.* 19. and 5 *Eliz.* *c.* 5. And by 12 *Car.* 2. *c.* 14. the 30th of *January* is ordained to be a *Day* of *Faſting* and Repentance, for the Murder of King *Charles* I. Other *Days* of *Faſting* which are not fixed, are occaſionally appointed by the King's *Proclamation.* Tho' Abſtinence from Eating of Fleſh is required on thoſe Days, by our Laws; it is made penal to affirm that any Forbearing of Fleſh, is neceſſary to Salvation. 1 *Hawk. P. C.* 8. See *Embring Days.*

Faſtermans, Among the *Saxons* were Pledges. *Leg. Ed Confeſſ. cap.* 38. Vide *Faſtingmen.*

Fat, or **Vate,** Is a large wooden Veſſel uſed by Maltſters and Brewers, for meaſuring of Malt with Expedition, containing eight Buſhels or a Quarter. *Stat.* 1 *H.* 5. *c.* 10. and 11 *H.* 6. *c.* 8. It is alſo a leaden Veſſel, or Pan, made uſe of by Brewers to run their Wort into, and by others for the making of Salt at *Droitwich*, in the County of *Worceſter.*

Fatua mulier, A Whore. *Cum quadam* Fatua muliere *Nudus in Lecto cum nuda extitit deprehenſus.* Du Freſne.

Fauſetum, A Faucet, Muſical Pipe, or Flute. —— *Organum & decentum* Fauſetum *in divino Officio omnibus noſtris, &c. interdicimus.*

Fautors, Are Favourers or Supporters of others; Abettors of Crimes, *&c.*

Feal. The Tenants by Knight-Service did ſwear to their Lords to be *Feal* and *Leal*, i. e. to be *Faithful* and *Loyal.* *Spel. de Parliament* 59.

Fealty, (*Fidelitas, Fr.* Feaulte, *i. e. Fides*) Signifies an Oath taken at the Admittance of every Tenant, to be true to the Lord of whom he holds his Land: And he that holds Lands by the Oath of *Fealty*, has it in the freeſt Manner; becauſe all Perſons that have *Fee*, hold *per Fidem* and *fiduciam*, that is, by *Fealty* at the leaſt. *Smith de Repub. Angl. lib.* 3. *cap.* 8. This *Fealty*, which is uſed in other Nations, as well as *England*, at the firſt Creation of it bound the Tenant to *Fidelity*; the Breach whereof was the Loſs of his Fee. It is uſually mentioned with *Homage*, but differs from it; being an Obligation permanent, which binds for ever: And theſe differ in the Manner of the Solemnity; for the Oath of *Homage* is taken by the Tenant kneeling; but that of *Fealty* is taken ſtanding, and includes the ſix following Things, *viz.* 1. *Incolume*, that he do no bodily Injury to the Lord. 2. *Tutum*, that he do no ſecret Damage to him in his Houſe, or any Thing which is for his Defence. 3. *Honeſtum*, that he do him no Injury in his Reputation. 4. *Utile*, that he do no Damage to him in his Poſſeſſions. 5. *Facile*; and, 6. *Poſſibile*, that he render it eaſy for the Lord to do any Good, and not make that impoſſible to be done, which was before in his Power to do: All which is compriſed in *Leg. Hen.* 1, *c.* 5. *Fealty* has likewiſe been divided into *General* and *Special*; *General*, to be performed by every Subject to his Prince; and *Special*, required only of ſuch as in reſpect of their Fee, are tied by Oath to their Lords. *Grand Cuſtum. Normand.* *Fealty Special* is with us performed either by Freemen, or by Villeins. The Particulars of the Oath of *Fealty*, as it is uſed by the *Feudiſts*, is well expreſſed by *Zaſius*, in his *Tractat. de Feudis, Part* 7. *Numb.* 15, 16. which is worthy comparing with the uſual Oath taken here in *England.* By Stat. 17 *Ed.* 2. the Form of this Oath is appointed, and as now obſerved, it runs as follows, *viz.* *I* A. B. *will be to you my Lord* C. *True and Faithful, and bear to you* Fealty *and* Faith *for the Lands and Tenements which I hold of you: And I will truly do and perform the Cuſtoms and Services that I ought to do to you. So help me God.* The Oath is adminiſtred by the Lord or his Steward; the Tenant holding his right Hand upon the Book, and repeating after the Lord, *&c.* the Words of the Oath; and then kiſſing the Book. *Terms de Ley.* This Oath is in ſome Manors neglected; but in Copyhold Manors, where Courts are kept, and Copyhold Eſtates granted, it is generally uſed: Leſſees for Life, or Years, ought to do *Fealty* to their Lords, for the Lands they hold; and there can be no Tenure without ſome Service. *Wood's Inſt.* 183. But a bare Tenant at Will, ſhall not do *Fealty*, becauſe he hath no certain Eſtate; and the Matter of an Oath ought to be certain. *Lit.* 131, 132. 1 *Inſt.* 93. *Fealty* is incident to all manner of Tenures, except *Frankalmoign* and Tenancy at Will. *Ibid.* Fidelitas *eſt Fidei, obſequii & ſervitii ligamen quo particulariter Vaſſalus Domino aſtringitur.* Spelm.

Feaſts, Anniverſary Times of *Feaſting* and Thankſgiving, as *Chriſtmas, Eaſter, Whitſontide*, &c. The *four Feaſts* which our Laws eſpecially take Notice of, are the *Feaſts* of the *Annunciation of the Bleſſed Virgin Mary*, of the *Nativity of St. John the Baptiſt*, of *St. Michael the Archangel*, and of *St. Thomas the Apoſtle*; on which Quarterly Days, Rent on Leaſes is uſually reſerved to be paid. See the Stat. 5 *&* 6 *Ed.* 6. 3 *Jac.* 1. *c.* 1. 12 *Car.* 2. *c.* 30.

Fees of *Attornies* and *Officers*, Are Conſiderations paid and allowed them as a Reward and Recompence for their Pains and Labour; and in reſpect to Officers, they are granted over and above their Salaries, to excite them to Diligence in executing their Offices. They differ from *Wages* which are paid to Servants for certain Work and Labour done in a certain Space; whereas *Fees* are diſburſed, to Officers, *&c.* for the tranſacting of Buſineſs which occaſionally occurs. If a Client, when his Buſineſs in Court is diſpatched, refuſeth to pay the Officer his Court Fees; the Court on Motion will grant an Attachment againſt him, on which he ſhall be committed until the *Fees* are paid. 1 *Lill. Abr.* 598. Eccleſiaſtical Courts have not Power to eſtabliſh *Fees*: But if a Perſon bring a *Quantum Meruit in B. R. &c.* for *Fees*, and the Jury find for him, then they become eſtabliſhed *Fees*. 1 *Salk.* 333. Action of the Caſe, lies for an Attorney for his *Fees*, againſt him that retained him in his Cauſe: And Attornies are not to be diſmiſſed by their Clients, till their *Fees* are paid. 1 *Lill.* 142. But Attornies are not to demand more than their juſt *Fees*; nor to be allowed *Fees* to Counſel without Tickets, *&c.* Stat. 3 Jac. 1. c. 7. An Attorney may have Action of Debt for his *Fees*, and alſo of Counſel, and Coſts of Suit: But a Solicitor may not bring an Action for Money laid out in Suits, without expreſs Retainer to lay it out, and Promiſe to pay it. And as a Counſellor is not bound to give Counſel till he has his Fee; 'tis ſaid he can have no Action for it: Though it has been held otherwiſe. *F. N.* B. 121. 1 *Brownl.* 73. 31 *H.* 6. 9. There were no *Fees* due to Sheriffs for executing their Offices, till the Stat. 29 *Eliz. &c.* which allows them *Fees* for executing Writs of Execution, *&c.* By the Stat. of *Weſtm.* 2. 13 *Ed.* 1. *c.* 42 *&* 44. the ancient *Fees* of Officers of Courts of Juſtice were ordained: And by Statutes, not only the *Fees* of Sheriffs, but of Gaolers, Bailiffs, *&c.* are limited. See *Extortion.* In an Action of falſe Impriſonment, it has been adjudg'd that a Bailiff cannot detain a Perſon arreſted for his *Fees*. 1 *Ld. Raym.* 4.

Fee-Eſtate, (*Feodum*, or *Feudum*) *Fee*, comes of the French *Fief*, i. e. *Prædium beneficiarium, vel res clientelaris*, or from the Sax. *Feh*, viz. *Merces, Stipendium, quaſi dicitur ſtatus* Beneficiarius; it is ſaid to be that Eſtate which we hold by the Benefit of another, and for which we do Service or pay Rent to the chief Lord; and is applied to all thoſe Lands and Tenements which are held by perpetual Right, by an Acknowledgment of any Superiority to a higher Lord. The Writers on this Subject, divide all Lands wherein a Man hath a perpetual Eſtate to him and his Heirs, into *Allodium* and *Feudum*: *Allodium* they define to be every Man's Land, *&c.* which he poſſeſſeth merely in his own Right, without Acknowledgment of Service or Payment of any Rent to another; and this is a Property in the higheſt Degree: But *Feudum* is ſuch Land as is held of another, for which Service is done or Rent is paid, as an Acknowledgment thereof. All the Land in *England*, except the Crown-Lands in the King's own Hands in Right of his Crown, are in the Nature of *Feudum*, or *Fee*; for though many have Lands by Diſcent from their Anceſtors, and others have bought Land, it cannot come to any either by Diſcent or Purchaſe, but with the Burden that was laid upon him who had *Novel Fee*, or firſt of all received it from his Lord; ſo that there is no Perſon hath *Directum Dominium*, i. e. the very Property or *Demain* in any Land but the King, in Right of his Crown: And notwithſtanding he that hath *Fee*, hath *jus perpetuum & utile Dominium*, yet he owes a Duty for it, and therefore it is not ſimply his own; and he that can ſay moſt of his Eſtate, ſaith thus: *I am ſeiſed of this or that Land or Tenement, in my Demain, as of* Fee; *ſeiſitus inde in Dominico meo ut de Feodo*, which is as much as if he ſaid, it is my Demain or proper Land to me and my Heirs for ever; but yet I hold it in Nature of a Benefit of and from another. *Camb. Britan.* 93. All that write *de Feudis*, hold that *Feudatarius* hath not an entire Property in his *Fee*: And as *Fee* cannot be without *Fealty*, ſworn to a Superior, the Lands of the Crown are not properly *Fee*; for no Man may grant that our King or Crown oweth Fealty to any Superior on Earth. The Word *Fee* is ſometimes uſed for the Compaſs or Circuit of a Lordſhip or Manor, as we ſay the *Lord of the Fee*, *&c.* as well as the particular Eſtate of the Tenant: And alſo for a perpetual *Right Incorporeal*; as to have the Keeping of Priſons, *&c.* in *Fee*. *Bract. Lib.* 2. *cap.* 5. *Old Nat.* Br 41. And when a Rent or Annuity is granted to one and his Heirs, it is a *Fee Perſonal.* 1 *Inſt.* 1, 2. *Fee* is commonly divided into *Fee Abſolute*, otherwiſe called *Fee Simple*; and *Fee Conditional*, termed otherwiſe *Fee-Tail. Fee-Simple* (*Feodum ſimplex*) is where a Man hath Lands or Tenements, to hold to him and his Heirs for ever: *Fee-Tail* is an Eſtate whereof one is ſeiſed with Limitation, to him and the Heirs of his Body, *&c.* *Litt.* 14, 16. All Eſtates at the Common Law were *Fee-Simple*; and all other Eſtates and Intereſts are derived out of it, wherefore there muſt be a *Fee-Simple* at laſt in ſome Body. *Lit.* 647. To have *Fee Simple* implies that it is without Limitation to what Heirs, but to Heirs generally: Though it may be limited by Act of Parliament. 4 *Inſt.* 206. It is the Word *Heirs* makes the Inheritance; and a Man cannot have a greater Eſtate. *Litt.* 1. And a *Fee-Simple* may not come after a *Fee-Simple*; nor can a Remainder, it being an abſolute Eſtate, ſo that nothing can come after it. *Dyer* 33. If one give or grant Lands to *J. S.* and his Heirs; and if he die without Heirs, that *J. D.* ſhall have it to him and his Heirs: By this *J. S.* hath a *Fee-Simple*, and *J. D.* will have no Eſtate. *Dyer* 4, 33. Where Land is given or granted by Fine, Deed, or Will, in Poſſeſſion, Reverſion, or Remainder, to another and his Heirs; it will be a *Fee ſimple. Plowd.* 134. And if Land be granted to a Man and his Heirs, *Habendum* to him for Life only, and Livery of Seiſin is made; it is a *Fee-Simple* Eſtate becauſe a Fee is expreſſed in the Grant. 2 *Rep* 23. A Leaſe granted to one for a Term of Years, and after that the Leſſee ſhall have the Land to him and his Heirs, by the Rent of 10 *l.* a Year; if the Grantor makes Livery upon it, 'tis a *Fee Simple*: Otherwiſe but for Years. 1 *Inſt.* 217. Where Lands are granted to *A.* for Life, Remainder to B. for Life, the Remainder to the right Heirs of *A.* here *A.* hath a *Fee-Simple.* 20 *Hen.* 6. 35. *Bro. Eſt.* 34, 35. A Gift or Grant is to a Man's Wife during Life, after to him in Tail, and after to his right Heirs; he will have a *Fee-Simple* Eſtate. 2 *Rep.* 91. If Lands are granted to a Man and his Succeſſors, this creates no *Fee-Simple*: But if ſuch a Grant be made to a Corporation, it is a *Fee-Simple*; and in Caſe of a ſole Corporation, as a Biſhop, Parſon, *&c.* a *Fee-Simple* is to them and their Succeſſors. *Wood* 119. An Eſtate is granted to a Perſon, to hold to him for ever, or to him and his Aſſigns for ever, is only an Eſtate for Life; the Word *Heirs* being wanting to make it *Fee-Simple*: But in Wills, which are more favoured than Grants, the *Fee-Simple* and Inheritance may paſs without the Word *Heirs*. 1 *Inſt.* 19. 9. And by Deed of Feoffment a *Fee-Simple* may be created, which would be an Eſtate-Tail by Will; as where Lands are given to another, and his Heirs Male, *&c.* without the Word *Body. Hob.* 32. A Gift to a Man and his Children, and their Heirs, is a *Fee-Simple* to all that are living; tho' if Land is given to a Man and his Heir, in the ſingular Number, it is but an Eſtate for Life; and the Heir cannot take by Diſcent, he being but one, and therefore it is ſaid ſhall take nothing. 1 *Inſt.* 8 *Litt. Rep.* 6. A *Fee-Simple* determinable upon a Contingency, is a *Fee* to all Intents; though not ſo durable as abſolute *Fee*. *Vaugh.* 273. In pleading Eſtates in *Fee-Simple*, they may be generally alledged; but the Commencement of Eſtates-Tail, and other particular Eſtates, muſt regularly be ſhewed. 1 *Inſt.* 303. The *Fee-Simple* Eſtate, being the chief and moſt excellent; therefore he who hath it in Lands or Tenements, may give, grant, or charge the ſame by Deed or Will at his Pleaſure; or he may make

Waſte or Spoil upon it: And if he bind himſelf and his Heirs to Warranty; or for Money by Obligation, or otherwiſe; and leaving ſuch Land to the Heir, it ſhall be charged with the Warranty and Debts: Alſo the Wife of a Man that is ſeiſed of ſuch an Eſtate, ſhall be endowed; and the Husband of a Woman having this Eſtate, be Tenant by the Curteſy. *Co. Lit.* 273. *Dyer* 330. *Perk. Sect* 236. Tho' *Fee-Simple* is the moſt ample Eſtate of Inheritance, it is ſubject to many Incumbrances; as Judgments, Statutes, Mortgages, Fines, Jointures, Dower, &c. And there is a *Fee Simple Conditional*, where the Eſtate is defeaſible by not performing the Condition; and a *Qualified Fee-Simple*, which may be defeated by a Limitation, &c. This is called a *Baſe Fee*, upon which no Reverſion or Remainder can be expectant. 1 *Inſt.* 18. 10 *Rep.* 97. See *Diſcent, Executory Deviſe, Wills.*

Fee Expectant, (*Feudum Expectativum.*) See *Expectant.*

Fee-Farm, (*Feudi Firma*) Is when the Lord upon Creation of the Tenancy, reſerves to himſelf and his Heirs, either the Rent for which it was before let to Farm, or was reaſonably worth, or at leaſt a fourth Part of the Value; without Homage, Fealty or other Services, beyond what are eſpecially compriſed in the Feoffment. 2 *Inſt* 44. By *Fitzherbert*, a third Part of the yearly Value of the Land may be appointed for the Rent, where Lands are granted in *Fee-Farm*, &c. *F. N. B.* 210. And my Lord *Coke* ſays, *Fee-Farm* Rents may be one Half, a Third, or fourth Part of the Value. *Co. Lit.* 143. Though theſe *Fee-Farm* Rents ſeem to be more or leſs according to the Conditions or Conſideration of the Purchaſe of the Lands out of which they are iſſuing. It is the Nature of *Fee Farm*, that if the Rent be behind and unpaid for the Space of two Years, then the Feoffor or his Heirs may bring an Action to recover the Lands, &c. *Brit. cap.* 66. *num.* 4.

Fee-Farm Rents of the Crown. The *Fee-Farm* Rents remaining to the Kings of *England* from their *Ancient Demeſnes*, were many of them alienated from the Crown in the Reign of King *Charles* 2. And by Stat. 22 *Car.* 2. *c.* 6. the King was enabled by Letters Patent to grant *Fee Farm* Rents due in Right of his Crown, or in Right of his Dutchies of *Lancaſter* and *Cornwal*, except Quit-Rents, &c. to Truſtees to make Sale thereof, and the Truſtees were to convey the ſame by Bargain and Sale to Purchaſers, &c. who may recover the ſame as the King might. But it has been obſerved, that Men were ſo very doubtful of the Title to Alienations of this Nature, that whilſt theſe Rents were expoſed to Sale for ready Money, ſcarce any would deal for them, and they remained unſold; 'till what made Men earneſt to buy them, was the Stop upon ſome of his Majeſty's other Payments, which occaſioned Perſons to reſort to this as the moſt eligible in that Conjuncture: No Tenant in Tail of any of the ſaid Rents, is enabled to bar the Remainder. 22 & 23 *Car.* 2. *cap.* 24. On the Taxing of *Fee-Farm* Rents, Receivers, &c. were to allow to the Perſons paying them ſo much in the Pound as the Land-Tax amounts to. Stat. 9 & 10 *W.* 3. *c.* 18.

Felagus, (*Quaſi fide cum eo ligatus*) A Companion but particularly a Friend, who was bound in the *Decennary* for the good Behaviour of another. In the Laws of King *Ina*, it is ſaid, if a Murderer could not be found, &c. the Parents of the Perſon ſlain ſhould have ſix Marks, and the King forty; if he had no Parents, then the Lord ſhould have it. *Et ſi Dominus non haberet,* Felagus *ejus.* LL. Inæ, cap. 15.

Feld, Is a *Saxon* Word, ſignifying *Feld*; and in its Compound it ſignifies Wild, as *Feld*-Honey, is Wild Honey, &c. *Blount.*

Fele Homagers, Were faithful Subjects from the Sax. *Fai*, i. e. *Fides.*

Felo de ſe, One that commits Felony or lays violent Hands upon himſelf, and is the Occaſion of his own untimely Death. When a Perſon with Deliberation and direct Purpoſe kills himſelf, by Hanging, Drowning Shooting, Stabbing, &c. this is *Felo de ſe*; but the Perſon that commits this Felony, muſt be of the Age of Diſcretion, and *Compos Mentis:* And therefore if an Infant under fourteen Years of Age, or a Lunatick during his Lunacy, or one diſtracted by a Diſeaſe, or an Ideot, kills himſelf, it is no Felony. 3 *Inſt.* 54. *Dalt. ch* 145 Alſo if a Perſon during the Time that he is *Non Compos Mentis* giveth himſelf a mortal Wound, tho' he dieth thereof when he recovers his Memory; he is not *Felo de ſe*, becauſe at the Time of the Stroke he was not *Compos Mentis*. *Dalt.* 342, 344. And he who deſires and perſuades another Man to kill him, is not a *Felo de ſe*; his Aſſent being void in Law, and the Perſon killing him a Murderer. *Kelw.* 136. It is *Felo de ſe* where a Man maliciouſly attempts to kill another, and falls upon his Sword, &c. whereby he kills himſelf; but he muſt be the only Agent. 1 *H. P. C.* 68. A *Felo de ſe* ſhall forfeit all his Goods and Chattels Real and Perſonal; but not until it is lawfully found by the Oath of twelve Men, before the Coroner *ſuper viſum Corporis*, that he is *Felo de ſe* 3 *Inſt.* 55. By the Return of the Inquiſition, the Goods, &c. are veſted in the King: Tho' it hath been ſaid, that Goods of a *Felo de ſe* are forfeited before Inquiſition, *viz.* immediately upon committing the Fact. 1 *Lev.* 8. But ſee 5 *Rep.* 110. where it is adjudged that they are not forfeited 'till it is found of Record. The Lands of Inheritance of a *Felo de ſe* are not forfeited, by Reaſon he was not attainted in his Life-time; nor is ſuch a Perſon's Wife barred of Dower, or his Blood corrupted. 1 *Hawk.* 68. If a Judgment is obtained by a Plaintiff in any Action, and the Plaintiff hangs himſelf, ſo as to become *Felo de ſe*, the Debt is forfeited to the King. 1 *Saund.* 36. 2 *Nelſ. Abr.* 840. Goods are forfeited to the King by a *Felo de ſe*, for the Loſs of a Subject, and Breach of the Peace. 1 *Plowd.* 261. But theſe Forfeitures are oftentimes ſaved, by the Coroner's Jury finding their Verdict Lunacy; to which they are inclinable on a favourable Interpretation, that it is impoſſible for a Man in his Senſes to do a Thing ſo contrary to Nature; but if this Argument be good, Self-Murder can be no Crime, becauſe a Madman cannot be guilty of any Crime. 1 *Hawk.* 67. If a Perſon *Felo de ſe* is ſecretly made away with, that the Coroner cannot view the Body; Preſentment is to be made of it by Juſtices of Peace, &c. to entitle the King to the Forfeiture of Goods. 5 *Rep.* 110. Where a Perſon is found *Felo de ſe*, who on Account of Lunacy, &c. ought not to be ſo; or where one is returned *Non Compos*, when in Truth the Party is *Felo de ſe*, &c. if there be no Fault in the Coroner, or Incertainty in the Inquiſition, a *Melius Inquirendum* will not be granted; but the Inquiſition is traverſable in *B. R.* 3 *Mod.* 238. 2 *Nelſ. Abr.* 840. Although there can be no *Melius Inquirend.* 'tis ſaid the Court may order an Indictment to be againſt the *Felo de ſe*; and if that be found, his Goods ſhall be forfeited. 1 *Lill Abr.* 601. A Pardon of Murder, doth not pardon *Felo de ſe*; but a Pardon of all Felonies and Forfeitures doth. By Cuſtom and Practice, the Bodies of *Felo's de ſe's* are buried in the Highway, &c.

Felons Goods. The Statute *de Prærogativa Regis*, 17 *Ed.* 2. *c.* 1. grants to the King, among other Things the Goods of Felons and Fugitives. If the King grant to a Man and his Heirs *Felons Goods*, the Grantee cannot deviſe them, &c. on the Statute 32 *H.* 8. becauſe they are not of an yearly Value; but where a Perſon is ſeiſed of a Manor, to which they are appendant, it is otherwiſe, for they will paſs as appurtenant. 3 *Rep.* 32. A Perſon committed to

Priſon on Suſpicion of Felony, having the Money taken from him which he had about him before Conviction, brought an Action of Treſpaſs for ſeiſing his Money, *&c.* on the Stat. 1 *R.* 3. *c.* 3. by which it is enacted, that no Perſon ſhall take the Goods of another, *&c.* *Raym.* 414. 2 *Nelſ.* 839. See *Flight*.

Felony, (*Felonia*, Fr. *Felonnie*) As Sir *Edward Coke* tells us, is derived from the *Latin* Word *Fel*, or from the old Sax. *Fell*, one ſignifying Gall, and the other Fiery; and his Reaſon is, becauſe either of theſe Words are ſuitable to the Crime, which is always intended to be done with a bitter or fierce Mind: But the learned *Spelman* gives a different Account of the Derivation of this Word, that it comes from the *Saxon* Word *Feah*, which ſignified a Reward or Eſtate, and the *German Lon*, which in *Engliſh* is Price; and this was formerly a Crime puniſhed with the Price, *viz.* the Loſs of Eſtate. And before the Reign of K. *H.* 1. *Felonies* were puniſhed by Pecuniary Fines, for he was the firſt who ordered Felons to be hanged, about the Year 1108. The Judgment againſt a Man for *Felony* hath been the ſame ſince the Reign of this King, *i.e.* That he be hanged by the Neck till Dead; which is entered *ſuſpendatur per Collum, &c.* 4 Inſt. 124. *Felony* was anciently every Capital Crime perpetrated with an evil Intention: All Capital Offences by the Common Law came generally under the Title of *Felony*; and could be expreſſed by no Word but *Felonice*; which muſt of Neceſſity be laid in an Indictment of *Felony*. 1 *Inſt.* 391. It is always accompanied with an evil Intention; and therefore ſhall not be imputed to any Miſanimadverſion: But the bare Intention to commit a *Felony* is ſo very Criminal, that at the Common Law it was puniſhable as *Felony*, where it miſſed of its Effect through ſome Accident; and as our Law now is, the Party may be ſeverely fined for ſuch an Intention. 1 *Hawk. P. C.* 65. *Felony* is included in High Treaſon. *H. P. C.* 11. We account any Offence *Felony*, that is in Degree next Petit Treaſon; and at this Day *Felony* includes Petit Treaſon, Murder, Homicide, Sodomy, Rape, Burning of Houſes, Burglary, Robbery, Breach of Priſon, Reſcous and Eſcape, after one is impriſoned or arreſted for *Felony*, &c. It is either by the *Common Law*, or by *Statute: Felony* by the *Common Law* is againſt the Life of a Man, as Murder, Manſlaughter, *Felo de ſe*, *Se Defendendo*, &c. Againſt a Man's Goods, ſuch as Larceny, and Robbery: Againſt his Habitation, as Burglary, Arſon or Houſe-burning; and againſt Publick Juſtice, as Breach of Priſon. 3 *Inſt.* 31. Piracy, Robbery, or Murder upon the Sea, are *Felonies* puniſhable by the *Civil Law*; and likewiſe by Statute: And *Felonies* by *Statute* are very numerous. *Mod. Juſt.* 180. *Felony* is diſtinguiſhed from lighter Offences, in that the Puniſhment of it is Death; but not always, for Petit Larceny is *Felony*, and the Indictment againſt ſuch an Offender muſt run, *Felonice cepit*, yet it is not puniſhed by Death, though it be Loſs of Goods: And of *Felonies* in general, there are two Sorts; one which for the firſt Offence is allowed *Clergy*, and another that is not; but *Clergy* is granted where it is not expreſly taken away by Statute. *Staundf. lib.* 1. *Felony* is puniſhed with Loſs of Life, and of Lands, not entailed, Goods and Chattels; but the Statutes make a Difference in ſome Caſes concerning Lands as the 37 *H.* 8. *c.* 6. And *Felony* ordinarily works Corruption of Blood; unleſs a Statute making an Offence *Felony*, ordains it ſhall be otherwiſe, as ſome Statutes do. The Puniſhment of a Perſon for *Felony*, by our ancient Books, is, 1ſt, To loſe his Life. 2dly, To loſe his Blood, as to his Anceſtry, and ſo as to have neither Heir nor Poſterity. 3dly, To loſe his Goods. 4thly, To loſe his Lands; and the King ſhall have *Annum, Diem & Vaſtum*, to the Intent that his Wife and Children be caſt out of the Houſe, his Houſe pulled down, and all that he had for his Comfort or Delight deſtroyed. 4 *Rep.* 124. A *Felony* by Statute incidently implies, that the Offender ſhall be ſubject to the like Attainder and Forfeiture, *&c.* as is incident to a *Felon* at Common Law. 3 *Inſt.* 47, 59, 90. And when Perſons are to undergo Judgment of Life and Member for any Crime by Statute, it is *Felony* thereby, whether the Word *Felony* be mentioned or not. 1 *Hawk.* 107. All *Felonies* are ſeveral, and cannot be joint; ſo that a Pardon of one Felon, cannot diſcharge another: But the *Felony* of one Man may be dependant upon that of another, and the Pardon of the one by a neceſſary Conſequence enure to the Benefit of the other, as in Caſes of Principal and Acceſſary, *&c.* 2 *Hawk. P. C.* 387, 380. Private Perſons may arreſt Felons by their own Authority, or by Warrant from a Juſtice of Peace: And every private Perſon is bound to aſſiſt an Officer to take Felons, *&c.* 2 *Hawk.* 75. And if a Perſon be brought before a Juſtice upon Suſpicion of *Felony*, where a *Felony* is committed, though it appears on Examination that he is not guilty, yet it is ſaid he is not to be diſcharged without Trial. *Lamb.* 229. But one ought not to be arreſted upon Suſpicion of *Felony*, except there be *probabilis Cauſa* ſhewed for the Ground of the Suſpicion. 1 *Lill. Abr.* 603. If a *Felony* is not done by a Man, but ſome Perſon elſe, if another hath probable Cauſe to ſuſpect he is the Felon, and accordingly doth arreſt him, this is lawful, and may be juſtified: But to make good ſuch Juſtification, there muſt be in Fact a *Felony* committed by ſome Perſon, without which there can be no Ground of Suſpicion. 2 *Hale's Hiſt. P. C.* 78. A private Man arreſting one for *Felony*, cannot juſtify Breaking Doors, to take the Party ſuſpected; but he doth it at his Peril, *viz.* if in Truth he be a Felon, it is juſtifiable; but if innocent, then it is not: To prevent a Murder or Manſlaughter, private Perſons may break Doors open. 2 *Hale Ibid.* 82. Officers may break open a Houſe to take a Felon, or any Perſon juſtly ſuſpected of *Felony*; and if an Officer hath a Warrant to take a Felon, who is killed in reſiſting, it is not *Felony* in the Officer; but if the Officer is killed, it is otherwiſe. *Dalt.* 289. Perſons indicted of *Felony*, *&c.* where there are ſtrong Preſumptions and Circumſtances of Guilt, are not repleviſable; but for Larceny, *&c.* when Perſons are committed who are of good Reputation, they may be bailed. 2 *Hawk.* 101. If one be committed to Priſon for one *Felony*, the Juſtices of Gaol-Delivery may try him for another *Felony*, for which he was not committed, by Virtue of their Commiſſion. 1 *Lill.* 602. A Felon refuſing to plead, and put himſelf upon his Trial, ſhall be put to the Penance of *Paine fort & Dure*, *&c.* If a Felon ſtands Mute by the Act of God, the *Felony* is to be enquired of by Jury, and whether the Priſoner be the ſame Perſon, and all other Matters in the ſame Manner as if the Criminal had pleaded. 2 *Hawk.* 327. And it may be enquired of by Inqueſt of Office, whether he do ſo of Malice, or by the Act of God. *Ibid.* Where a married Woman commits *Felony*, in Company with her Husband, it ſhall be preſumed to be done by his Command, and ſhe ſhall be excuſed. 3 *Inſt.* 310. If a Man's Horſe be going into the Ground of another, and he takes it *Felleo Animo*, not as Damage-Feaſant, it is no Finding, but *Felony*: But if *A.*'s Sheep ſtray into the Flock of *B.* and he drives the ſame along with his Flock, or by Miſtake ſhears him, this is not a *Felony*; though if he knew it to be another Perſon's, and marks it with his Mark, it is an Evidence of *Felony*. 1 *Hale's Hiſt. P. C.* 506. Where one ſteals another's Goods, and a third Perſon feloniouſly takes them from him; he is a *Felon* as to both the others. And when there is a Pretence of Title to Things unlawfully taken, it may be only a Trick to colour *Felony*; and the ordinary

Diſcovery of a felonious Intent is, if the Party doth it ſecretly, or being charged with the Goods denies it. *Ibid* 507, 509. If a Perſon to whom Goods are delivered on a pretended Buying them, runs away with them, it is *Felony:* And a Gueſt ſtealing Plate ſet before him at an Inn, &c. is *Felony*; alſo Perſons who have the Charge of Things, as a Servant of a Chamber, &c. may be guilty of *Felony:* And the leaſt Removing of a Thing in Attempts of *Felony*, is *Felony*, though it be not carried off. 3 *Inſt.* 308. *Raym.* 275. But Goods muſt not be of a baſe Nature; ſuch as Dogs, &c. nor *Feræ Naturæ*, as Deer, Hares, &c. except they be made tame, when it will be *Felony* to ſteal them. If any Turkeys, Geeſe, Poultry, Fiſh in a Trunk, &c. are taken away, it is *Felony* 3 *Inſt.* 309, 310. Stealing of tame Peacocks, is *Felony*, ſo of Herons, and young Hawks in their Neſts: 'Tis otherwiſe of Pheaſants, Partridge, Conies, &c. although they be ſo kept that they cannot eſcape; if they be not reclaimed, and known. *Jenk. Cent.* 204. As to Cats, Dogs, Monkeys, and the like; though it be no *Felony* to take them, Treſpaſs lies for them. *Jenk. Ibid.*

Felonies by Statute, Are the following, *viz.* To embezil the King's *Armour*, Munition, Naval Stores, &c. to the Value of 20*s.* is declared to be *Felony*; but not to cauſe Corruption of Blood, &c. And the Proſecution muſt be in a Year. 31 *Eliz. c.* 4. Acknowledging *Bail* in the Name of another Perſon, who is not privy or conſenting, is *Felony* without Benefit of Clergy. 21 *Jac.* 1. *c.* 26. Officers of the *Bank* of *England*, imbezilling *Bank Notes*, &c. wherewith they are truſted, it is made *Felony.* 15 *Geo.* 2. *c.* 13. *Bankrupts* not ſurrendering to be examined, and not diſcovering their Eſtates, or removing or embezilling any Money or Effects to the Value of 20*l.* were guilty of *Felony:* And their Goods and Eſtates to be forfeited and divided to and among the Creditors. 4 & 5 *Ann. cap.* 17. and 5 *Geo.* 1. *c.* 24. And if *Bankrupts* do not ſurrender themſelves to the Commiſſioners, in forty-two Days after Notice given in the *Gazette*, it is *Felony*, by 5 *Geo.* 2. *c.* 30. Stealing *Bills* of Exchange, Bonds, or Notes for Money, &c. is made *Felony.* 2 *Geo.* 2. *c.* 25. *Buggery* with Man or Beaſt, is *Felony* without Benefit of Clergy; and the Act extends to Women as well as Men. 25 *H.* 8. To commit any Offence of *Burglary*, in ſtealing Goods from a Houſe, Shop, Warehouſe, Coach-houſe, &c. to the Value of 5*s.* though no Body be therein, is *Felony* excluded Clergy. 10 & 11 *W.* 3. *Burning* of Barns, Buildings, Stacks of Corn, &c. is made *Felony*; though it works no Corruption of Blood. 22 & 23 *Car.* 2. Deſtroying of *Cattle*, the Offenders ſhall ſuffer as in Caſes of *Felony.* 22 *Car.* 2. Perſons breaking into Shops to deſtroy woollen *Cloth* in the Loom, or cutting it on the Rack, &c. to be guilty of *Felony.* 12 *Geo.* 1. 34. Mixing blanched Copper with Silver, to make it heavier and reſemble Gold *Coin*; or receiving or paying counterfeit Money, or Coin unlawfully diminiſhed, is *Felony*; but incurs no Corruption of Blood, or Loſs of Dower. 8 & 9 *W.* 3. See 15 *Geo.* 2. *c.* 28. Stealing of *Cloth*, on the Rack or Tenters, or any Wool, &c. left out to Dry, is adjudg'd *Felony*, for a third Offence. 15 *Geo.* 2. *cap.* 27. Uſing Violence to hinder Perſons, or Carriages from carrying *Corn* to be exported, being the ſecond Offence, or deſtroying it in any Granary, Boat, &c. was made *Felony* and Tranſportation, by 11 *Geo.* 2. *c.* 22. Perſons, three or more in Number, aſſembled and armed with Fire-Arms, &c. to be aſſiſting in running, landing, or carrying away uncuſtomed Goods; or found paſſing within five Miles from the Sea-Coaſts, with any Horſes, &c. whereon ſhall be more than ſix Pounds of Tea, or five Gallons of Brandy, &c. landed without Entry, and that obſtruct or aſſault any Officer of the *Cuſtoms*; or who ſhall wound or beat ſuch Officer on board any Ship, or Boat, &c. to be guilty of *Felony*, and tranſported. 9 *Geo.* 2. *c.* 35. To inroll a *Deed* in the Name of another, without his Privity or Conſent, is *Felony.* 21 *Jac.* 1. *c.* 26. Where Perſons to the Number of five, aſſemble in a riotous Manner to beat Informers againſt *Diſtillers* ſelling Spirituous Liquors unlawfully, or to reſcue Offenders, &c. it is *Felony* 11 *Geo* 2. *c.* 26. Perſons any Way aſſiſting Felons in Gaol, or in the Cuſtody of a Conſtable, &c. or conveying to them Arms or Inſtruments, to make their *Eſcape*, is made *Felony* and Tranſportation. 16 *Geo* 2. *c.* 31. Putting out of *Eyes*, &c. of any one, is *Felony* without Benefit of Clergy. 22 & 23 *Car.* 2. *c.* 1. To acknowledge a *Fine* of Lands in the Name of another Perſon, not privy or conſenting, is *Felony* 21 *Jac.* 1. *Forging* a Deed or Writing to the Intent the Inheritance of Land may be defeated or charged, or the Title troubled, &c. for the ſecond Offence, after a former Conviction, is made *Felony.* 5 *Eliz. cap.* 14. And forging any Deed, Will, Bond, Note, &c. is *Felony* in all Caſes, by 2 *Geo.* 2. *c.* 25. Forging the Seal of the Bank of *England*, or any Bank-Bills; and forging the Common Seal of the *South Sea* Company, or any Bond of the ſaid Company, are *Felony.* 7 & 8 *W.* 3. 9 *Ann.* So is alſo the Forgery of Exchequer-Bills, or any Indorſements thereon; and of Lottery-Tickets and Orders, or altering the Number or principal Sum of any Order; forging any Warrant of the *South Sea* Company, &c. or Letter of Attorney to tranſfer Stock, or to receive any Annuity; Perſonating or Forging the Name of any Proprietor, &c. 8 & 9 *Ann.* 3 & 6 & 8 *Geo.* 1. Forging of Stamps on Vellum, Paper, &c. is likewiſe *Felony* 10 *Ann.* Forging or Counterfeiting Bills of Exchange, or the Acceptance of any Bill, &c. is *Felony.* 2 *Geo.* 2. 7 *Geo.* 2. *c* 22. Perſons maliciouſly cutting *Hop-binds* growing on Poles, are guilty of *Felony.* 6 *Geo* 2 *c.* 37. To deſtroy *Horſes* in the Night-time, is *Felony*; but wounding them incurs a Forfeiture of treble Damages only. 22 & 23 *Car.* 2. Horſe ſtealing is *Felony* without Benefit of Clergy. 2 & 3 *Ed.* 6. Maliciouſly Burning of *Houſes*, &c. was made *Felony* by 22 & 23 *Car.* 2. And Demoliſhing of Meeting-Houſes, Dwelling-Houſes, &c. is *Felony* by the Act againſt Rioters. 1 *Geo.* 1. Stealing of Lead from Houſes, or Iron Bars or Rails fixed thereto, or to any Fences, is *Felony*, by Stat. 4 *Geo.* 2. *c.* 32. Perſons *Hunting* in the Day-time in Foreſts, Chaſes, &c. diſguiſed with painted Faces, and concealing the Fact on Examination, is *Felony* 1 *Hen.* 7. If any Perſons having their Faces blacked, armed with Fire-Arms, &c. ſhall unlawfully hunt, kill or ſteal any Deer in any Foreſt, ſteal any Fiſh out of a Pond, &c. or ſhoot at any Perſon; or ſend any threatning Letter, demanding Money or other valuable Thing of another; or kill or wound any Cattle; cut down any Trees in any Avenue, Garden, &c. they are guilty of *Felony* without Benefit of Clergy; and if the Offenders are not taken, the Hundred ſhall make Satisfaction not exceeding 200*l.* 9 *Geo.* 1 *c* 22. The acknowledging or procuring to be acknowledged of a *Judgment* in the Name of another Perſon, is *Felony.* 21 *Jac.* 1. Conſpiracy or Imagination, though by Words only, to kill the *King*, or any of the King's Council, or any Lord of the Realm, &c. within the King's Houſhold is *Felony*, the Offenders being thereof convicted by twelve of the ſaid Houſhold before the Lord Steward, &c. 3 *Hen.* 7. *c.* 14. Perſons ſtealing *Linen*, Fuſtian or Cotton Goods, from Whitening or Bleaching Grounds, Drying-Houſes, &c. of 10*s.* Value; and thoſe who buy or receive them, knowing the ſame to be ſtolen, are guilty of *Felony.* 4 *Geo.* 2. *c.* 16. Cutting off any *Limb* or Member, or maliciouſly diſabling any Member, with Intent to maim or diſfigure a Perſon, is *Felony* without Benefit of Clergy. 22 & 23 *Car.* 2. Perſons *marrying* a ſecond Huſband or Wife, the firſt being living, is *Felony:* But if either of them be abſent abroad above ſeven Years, without Notice of his or her's being alive, the other may marry again. 1 *Jac.* 1. Stealing or taking away a Woman againſt her Will, that has Lands or Goods, or is Heir apparent, and marrying her, is *Felony* 3 *H.* 7. Perſons convicted of maliciouſly ſetting any *Mine* on Fire, or Pit of Coal, to be guilty of *Felony.* 10 *Geo.* 2. *c.* 32. The breaking down Locks, Sluices, or other Works on *Navigable* Rivers, *&c.* is made *Felony.* 8 *Geo.* 2. *c.* 20. Slitting or cutting off the *Noſe,* &c. of any Perſon, is *Felony* excluded Clergy. 22 *&* 23 *Car.* 2. If *Pick-pockets* take above 12*d.* from the Perſon of another *clam & ſecrete,* without his Knowledge, it is *Felony.* 8 *Eliz. c.* 4. Not only ſetting out *Pirates,* but aſſiſting or adviſing any Piracy, or receiving or concealing any Pirate, *&c.* is *Felony.* 11 *&* 12 *W.* 3. *c.* 7. And trading with Pirates, furniſhing them with Stores, or boarding any Veſſel, and throwing overboard Goods, *&c.* is Piracy and *Felony,* by 8 *Geo.* 1. Wilful *Poiſoning* is Murder and *Felony*; and the Aiders, Abettors, *&c.* ſhall ſuffer Death. 1 *Ed.* 6. It is *Felony* for any Perſon to break *Priſon,* being in for *Felony,* by 1 *Ed.* 2. Aſſaulting and ſtriking, or attempting to kill a *Privy Counſellor,* when in the Execution of his Office, is *Felony* without Benefit of Clergy. 9 *Ann.* Thoſe who receive, relieve or maintain *Prieſts* and Jeſuits, knowingly, are guilty of *Felony.* 27 *Eliz. c.* 2. To commit a *Rape* on any Maid within Age, or any married Woman, Maid at full Age, or any other Woman, by Force and againſt her Will, was formerly puniſhable only by Fine and Impriſonment; but the Stat. *Weſtm.* 2. made it *Felony:* And by 18 *Eliz. c.* 7. it is *Felony* to know a Woman carnally under the Age of ten Years, though ſhe conſent. Acknowledging a Recognizance or Statute, in the Name of another Perſon, not privy and conſenting, is *Felony.* 21 *Jac.* 1. *c.* 26. Imbezilling of *Records* is made *Felony,* by 8 *H.* 6. *Rioters* aſſembled, being twelve in Number, not diſperſing within an Hour after Proclamation made for that Purpoſe, *&c.* ſhall be guilty of *Felony.* 1 *Geo* 1. Suffering a *Recovery* of Lands in the Name of another, is *Felony.* 21 *Jac.* 1. *Robbery* of Churches, *&c.* is *Felony,* by 23 *Hen.* 8. *c.* 1. Robbery on the Highway is *Felony* by the Common Law; and the 13 *Ed.* 1. orders a Hue and Cry to be made from Town to Town, and County to County, *&c.* after the Robbers; alſo 40*l.* Reward is given for apprehending a Robber on the Highway, (as it is in ſeveral other Caſes by other Statutes) by 4 *&* 5 *W. & M.* Perſons aſſaulting others in a forcible Manner, with an Intent to *rob* them, is *Felony,* and Offenders to be tranſported. 7 *Geo.* 2. *Servants* purloining or imbezilling their Maſter's Goods, *&c.* to the Value of 40*s.* Felony. 12 *Ann.* Deſtroying and Killing of *Sheep,* is made *Felony*; and ſo is the Stealing, or Driving away Sheep, or other Cattle, with an Intent to Steal their Carcaſſes, *&c.* 22 *&* 23 *Car.* 2. 14 *Geo.* 2. *c.* 6. Wilful caſting away a *Ship,* or cauſing the ſame to be done; or making of Holes, in the Bottom or Sides tending to the Loſs of the Ship, *&c.* is *Felony.* 1 *Ann.* 12 *Ann.* *Soldiers* departing from their Captains without Licence; raiſing a Mutiny, or reſiſting a ſuperior Officer, *&c.* are guilty of *Felony.* 18 *H.* 6. 10 *Ann.* &c. So all Perſons Subjects of *Great Britain,* in this Kingdom or *Ireland,* inliſting themſelves Soldiers, to go beyond the Seas, and ſerve any foreign Prince, without Leave. 9 *Geo.* 2. *c.* 30. *Stabbing* a Perſon not having a Weapon drawn, if he dies in ſix Months, is Murder, and *Felony* excluded Clergy. 1 *Jac.* 1. *Stealing* of Goods and Chattels, which Perſons by Contract are to uſe, is *Felony.* 6 *&* 7 *W.* 3. And receiving ſtolen Goods knowingly and comforting the Felon, is *Felony.* If any *Thief taker* or other Perſon takes a Reward for helping of another to ſtolen Goods, and do not proſecute the Felon, he is guilty of *Felony.* 4 *Geo.* 1. *cap.* 11. Cutting out the *Tongue* of any Perſon maliciouſly, and lying in wait for that Purpoſe, is *Felony.* 22 *&* 23 *Car.* 2. If Perſons maliciouſly pull down, pluck up, or otherwiſe deſtroy any *Turnpike*-Gate, Poſts, or Rails, *&c.* it is *Felony*; not to work Corruption of Blood. 8 *Geo.* 2. *c.* 20. If any *Waterman* ſhall take into his Boat, a greater Number of Paſſengers than allowed, and a Perſon is drowned, it is *Felony* and Tranſportation. 10 *Geo.* 2. *c.* 31. Doing any *Witchcraft,* *&c.* whereby any Perſon ſhall be killed, conſumed, or lamed, *&c.* was *Felony,* without Benefit of Clergy. 1 *Jac.* 1. *cap.* 12. But ſee 9 *Geo.* 2. *c.* 5. Taking and ſtealing away *Woollen Cloth* from the Tenters in the Night-time, is declared to be *Felony.* 22 *Car.* 2. *c.* 5. Perſons maliciouſly ſetting on Fire, burning or cauſing to be burnt any *Wood,* Underwood, *&c.* are guilty of *Felony.* 1 *Geo.* 1. And by late Statutes, Perſons convicted of *Felony* or Larceny within the Benefit of Clergy, may be ordered by the Court by whom convicted to be *tranſported* to the Plantations for ſeven Years; and for *Felony* excluded *Clergy,* the Offenders may be pardoned and tranſported for fourteen Years: But if any Felon thus under Tranſportation ſhall return before the End of the Time limited, he ſhall ſuffer Death; though the King may pardon the Tranſportation, and allow of the Return of the Offender, Satisfaction being made to the Proprietor. 4 *Geo.* 1. 6 *Geo.* 1. *cap.* 23. 'Tis further enacted if any Felon order'd for *Tranſportation,* ſhall be afterwards at large in any Part of *Great Britain,* before the Expiration of the Term for which he was to be tranſported, he ſhall ſuffer as for *Felony* without Benefit of Clergy; and whoever ſhall diſcover, apprehend and proſecute any ſuch Offenders, ſhall have 20*l.* Reward, to be paid as that for apprehending Highwaymen. Stat. 16 *Geo.* 2. *cap.* 15. See *Clergy, Larceny,* &c.

An Indictment *for a* Felony, *and againſt* Acceſſaries.

South'ton, ſſ. THE *Jurors,* &c. *that* A. B. *late of* H. *in the County of* S. *Labourer, on the Day,* &c. *in the Year of the Reign,* &c. *at* H. *aforeſaid in the ſaid County, with Force and Arms,* &c. *did break and enter the Cloſe of one* C. D. *and feloniouſly ſteal, take, and drive away a certain black Horſe or Gelding, of the Price of ſix Pounds,* &c. *of the Goods and Chattels of the ſaid* C. D. *then and there found, that is to ſay, at* H. *aforeſaid, in the ſaid County, againſt the Peace of our ſaid Sovereign Lord the now King, his Crown and Dignity.*

And that one E. F. *of,* &c. *in the ſaid County, Yeoman, before the Felony aforeſaid done and committed by him the ſaid* A. B. *in the Manner aforeſaid, that is to ſay, on the Day and Year,* &c. *at* H. *aforeſaid in the ſaid County, feloniouſly abetted, procured and excited the ſaid* A. B. *to commit the ſaid Felony, in the Manner aforeſaid, againſt the Peace,* &c.

And that G. H. *of,* &c. *in the ſaid County, knowing that the ſaid* A. B. *had committed the ſaid Felony, in Manner aforeſaid, on the ſaid Day in the ſaid Year,* &c. *aforeſaid, at* H. *aforeſaid in the ſaid County, feloniouſly and wilfully received, comforted and entertained the ſaid* A. B. *after the ſaid Felony by him done and committed, againſt the Peace,* &c.

Feme Covert, Is a married Woman; who is likewiſe ſaid to be *Covert Baron.* Stat. 27 *Eliz. c.* 3.

Feme ſole, (*Fr*) A Woman alone, that is unmarried: And if ſhe marries, her Debts become thoſe of the Huſband, *&c.* 1 *Roll. Abr.* 351. *Feme Sole Merchant.* See *London.*

Fence, Is a Hedge, Ditch, or other Incloſure of Land for the better Manurance and Improvement of the ſame. And where a Hedge, and Ditch join together, in whoſe Ground or Side the Hedge is, to the Owner of that Land belongs the keeping of the ſame Hedge or *Fence*, and the Ditch adjoining to it on the other Side, in Repair and ſcoured. *Par. Offic.* 188. An Action of the Caſe or Treſpaſs lies, for not repairing of *Fences*, whereby Cattle come into the Ground of another and do Damage. 1 *Salk.* 335. Alſo it is preſentable in the Court-Baron, &c. Vide *Approvement. Stat* 13 *Ed.* 1.

Fence-Month, (*Menſis Prohibitionis*, or *Menſis Vetitus*) Is a Month wherein Female *Deer* in Foreſts, &c. do *fawn*, and therefore it is unlawful to hunt in *Foreſts* during that Time; which begins fifteen Days before *Midſummer*, and ends fifteen Days after it, being in all thirty Days. *Manw. Part.* 2. *cap.* 13. *Stat.* 20 *Car.* 2. *cap.* 3. Some antient Foreſters call this Month the *Defence Month*, becauſe then the Deer are to be defended from being diſturbed, and the Interruptions of Fear and Danger; as there are certain *Defence-Months* for Fiſh, particularly Salmons, as appears by the Stat. *Weſtm.* 2. *cap.* 47, &c. Serjeant *Fleetwood* ſaith, that the *Fence-Month* hath been always kept with Watch and Ward, in every Bailiwick thro' the whole Foreſt, ſince the Time of *Canutus*. Fleetwood's Foreſt Laws, p. 5.

Fengeld, (*Sax.*) A Tax or Impoſition exacted for the repelling of Enemies.——*Pecunia vel Tributum ad arcendos Hoſtes erogatum.* MS. Antiq.

Fens, (*Paludes*) Are low marſhy Grounds, or Lakes for Water; for the Draining whereof in this Kingdom, ſeveral Statutes have been enacted. The Statutes 4 *Jac.* 1. *cap.* 8 & 13. make Proviſion for draining and ſecuring from Inundation the drown'd Grounds and Marſhes of *Leſneſs* and *Fants* in *Kent*; and the *Fens* and low Grounds in the *Iſle of Ely*. The 15 *Car.* 2. *c.* 17. appoints *William, Earl of Bedford*, and other Adventurers, a Corporation, for the draining of *Bedford Level* in *Bedfordſhire*, conſiſting of a Governor, Bailiffs and Conſervators, &c. who have Power to lay and levy Taxes within the great Level of the *Fens*; and alſo to erect Works within the ſame, for carrying the Water to the Sea, making Satisfaction to the Owners of Lands for Injury received; and throwing down any of the ſaid Works, incurs treble Damages, &c. By 16 & 17 *Car.* 2. *cap.* 11. *Deeping Fens*, &c. in *Lincolnſhire*, *are* to be drained from Water; and *Edward, Earl of Mancheſter*, and ſeveral others are declared Undertakers thereof, on certain Truſts, with Power to erect Banks, Bridges, Drains, Locks, Sluices, &c. for Recovery of the ſaid *Fens*; and Aſſeſſees of Lands held by the Adventurers under the Truſtees, may hold Aſſemblies for making of By-Laws, for the Management of the Works of Draining; they may charge the Owners of the Land by an Acre Tax, &c. and on Default of Payment, ſell the Defaulters Lands, &c. The 11 *Geo.* 2. *cap.* 34. ordains that Commiſſioners ſhall be appointed to put this Act in Execution, for effectual Draining and Preſerving of the *Fens* in the Iſle of *Ely*, in *Cambridgeſhire*; who are authoriſed to make Drains, Dams, &c. and proper Works thereon: And the ſaid Commiſſioners may charge Proprietors with a proportionable Acre-Tax, *viz.* for *Waterden Fen*, at the Rate of 5 *s.* and *Redmoor*, *Cawdle Fen*, and the *Holts*, at 2 *s.* an Acre by the Year, for four Years; and afterwards at an yearly Rate, not exceeding 1 *s.* 6 *d. per* Acre; they may likewiſe borrow Money for maintaing and effecting the Works, by aſſigning over the Duties: Perſons obſtructing the Draining, to forfeit 100 *l.* and if any Perſon ſhall burn any of the Engines erected, he ſhall be impriſoned three Years; and being convicted again of the like Offence, to be guilty of Felony. And for raiſing Money, for Draining and future Preſervation of *Deeping Fens*, a Rate of 20 *s.* an Acre is to be paid, by all the Taxable Land-Owners, according to Agreement of the Proprietors; levied by Diſtreſs of Goods, or Sale of Defaulters Lands; which may be alſo mortgaged to raiſe the Money, &c. by 11 *Geo.* 2. *cap.* 39.

Feod or **Feud**, Is defined to be a Right which a Vaſſal hath in Lands, or ſome immoveable Thing of his Lord's, to uſe the ſame, and take the Profits thereof hereditarily; rendring unto the Lord ſuch *Feodal* Duties and Services as belong to Military Tenure, &c. and the Property of the Soil always remaining to the Lord. *Spelm. of Tenures, cap.* 1.

Feodal, (*Feodalis, vel Feudalis*) Of or belonging to the *Fee*. Stat. 12 Car. 2. c. 24.

Feodality, Fealty paid to the Lord by his *Feodal* Tenant.——*Fecit* Feodalitatem *ſuam, prout decet, dicto Domino.* Cartular. Rading. MS.

Feodary or **Feudary**, (*Feudatarius*) An Officer of the *Court of Wards*, appointed by the Maſter of that Court, by Virtue of the Statutes 32 *Hen.* 8. *cap.* 26. whoſe Buſineſs it was to be preſent with the *Eſcheator* in every County at the finding of Offices of Lands, and to give in Evidence for the King as well concerning the Value as the Tenure; and his Office was alſo to ſurvey the Lands of the Ward, after the Office found, and to rate it. He did likewiſe aſſign the King's Widows their Dowers; and receive all the Rents of Wards Lands within his Circuit, which he anſwered to the Receiver of the Court. This Office ſeems to be wholly taken away by Stat. 12 *Car.* 2. *cap.* 24.

Feodatary, Was the Tenant who held his Eſtate by *Feodal* Service: And Grantees, to whom Lands in *Feud* or *Fee* were granted by a ſuperior Lord, were ſometimes called *Homagers*; and in ſome Writings are term'd *Vaſſals*, *Feuds* and *Feodataries*. See *Feuds*.

Feodum Militis, a Knight's *Fee*: *Feodum Laicum*, a Lay *Fee*, or Land held in Fee of a Lay Lord. *Kennet's Gloſſ.*

Feoffment, (*Feoffamentum*, from the *Gothick* Word *Feudum*, and ſignifies *Donationem Feudi*) Is a Gift or Grant of any Manors, Meſſuages, Lands or Tenements, to another in *Fee*, to him and his Heirs for ever, by the Delivery of Seiſin and Poſſeſſion of the Thing given or granted: And in every *Feoffment*, the Giver or Grantor is called the *Feoffor*, and he that receives by Virtue thereof, is the *Feoffee*. *Littleton* ſays, the proper Difference between a *Feoffor* and a *Donor*, is, that the one gives in *Fee-ſimple*, the other in *Fee-Tail*. *Littl lib.* 1. *c.* 6. *Accomp. Conv.* 1 *Vol.* 71. The Deed of *Feoffment* is our moſt ancient Conveyance of Lands: And in Records we often find *Fees* given to Knights under the Phraſes of *De veteri Feoffamento*, and *De novo Feoffamento*; the firſt whereof were ſuch Lands as were given or granted by King *Henry* I. And the others, ſuch as were granted after the Death of the ſaid King, ſince the Beginning of the Reign of *Henry* II. At Common Law the uſual Conveyance was by *Feoffment*, to which Livery and Seiſin was neceſſary, the Poſſeſſion being thereby given to the *Feoffee*; but if Livery and Seiſin could not be made, by Reaſon there was a Tenant in Poſſeſſion, the Reverſion was granted, and the particular Tenant attorn'd. 1 *Inſt.* 9, 49. And a *Feoffment* is ſaid in ſome Reſpects to excel the Conveyance by Fine and Recovery; it clearing all Diſſeiſins, Abatements, Intruſions, and other wrongful Eſtates, which no other Conveyance doth: And for that it is ſo ſolemnly and publickly made, it has been of all other Conveyances the moſt obſerved. *Weſt. Symb.* 235. *Plowd.* 554. It bars the *Feoffor* of all collateral Benefit, as Conditions, Powers of Revocation, Writs of Error, &c. and deſtroys contingent Uſes. 1 *Inſt.* 5. But a *Feoffment* may not be of ſuch Things whereof Livery and Seiſin may not be made; for no Deed of *Feoffment* is good to paſs an Eſtate without Livery of Seiſin; and if either of the Parties die before Livery, the *Feoffment* is void. *Plowd.* 214, 219.

Though where a Feme *Feoffor* made a *Feoffment* of Lands with Livery in View, and then married the *Feoffee* before the Livery was executed by actual Entry; it was adjudged the Livery might be executed after Marriage, the *Feoffee* having not only an Authority to enter, but an Intereſt paſſed by the Livery in View, and the Woman did all on her Part to be done. 1 *Vent.* 186. There muſt be Livery of Seiſin in all *Feoffments*, and Gifts, *&c.* where a corporal Inheritance or Freehold doth paſs: And without Livery, the Deed is no *Feoffment*, Gift or Demiſe. *Lit.* 59. 8 *Rep.* 82. But a Freehold may paſs without Livery by the Stat. 27 *H.* 8. *c.* 10. By Force of which Statute, a *Feoffment* to the *Uſe* of the *Feoffor*, *Feoffee*, *&c.* ſupplies the Place of Livery and Seiſin. *Wood's Inſt.* 239. A *Feoffment* being a Common Law Conveyance, and executed by Livery, makes a Tranſmutation of Eſtate; but a Conveyance on the Statute of Uſes, as a Covenant to ſtand ſeiſed, *&c.* makes only a Tranſmutation of Poſſeſſion, and not of Eſtate. 2 *Lev.* 77. 1 *Ventr.* 378. A *Feoffment* to the Uſe of *A.* for Life, the Remainder to *B.* If *A.* refuſes to take the Eſtate, *B.* ſhall take preſently, becauſe the whole Eſtate is out of the *Feoffor* by Livery; But if it had been by Covenant to ſtand ſeiſed, he ſhould not have taken 'till after the Death of *A.* but it would reſt in the Covenantor, who ſhall have the Uſe in the mean Time. 2 *Lev.* 77. 1 *Leon. Ca.* 279. Before the Stat. *Weſtm.* 3. If a Man had made *Feoffment* in Fee, without declaring any Uſe, it ſhould have been to the Uſe of the *Feoffee*; though now by that Statute, where no Conſideration or Declaration of Uſe is expreſſed, it ſhall go to the *Feoffor* himſelf. 2 *Leon.* 15, 16. If I convey Lands by *Feoffment*, which I have on the Part of the Mother, to *J. S.* and his Heirs, without Conſideration; the Uſe will be void, and the Land ſhall return again to me and my Heirs on the Part of the Mother: Yet if I declare the Uſe to me and my Heirs, or upon ſuch *Feoffment* reſerve a Rent in like Manner, it ſhall go to my Heirs at the Common Law, it being a new Thing divided from the Land. *Hob.* 31. *Co. Lit.* 13, 231. 1 *Rep.* 100. *Dyer* 134. Where a Man makes a *Feoffment*, without any Conſideration; by that the Eſtate and Poſſeſſion paſſes, but not the Uſe, which ſhall deſcend to his Heir. 1 *Leon.* 182. A *Feoffment* in Fee is made to the Uſe of ſuch Perſons, and for ſuch Eſtates, as the *Feoffor* ſhall appoint by his Will, or to the Uſe of the Laſt Will; by Operation of Law the Uſe veſts in the *Feoffor*, and he is ſeiſed of a qualified Fee, *viz.* until he makes his Will, and declares the Uſes; and after the Will is made, it is only directory, for nothing paſſes by it but all by the *Feoffment.* 6 *Rep.* 18. *Moor* 567. A *Feoffment* in Fee, upon Condition, *&c.* was inrolled, but no Livery made; and it was adjudged no good *Feoffment*, but the Inrollment ſhall conclude the Perſon to ſay that it was not his Deed. *Popb.* 6. 2 *Nelſ. Abr.* 844. If a Bargain and Sale of Lands be not inrolled, and the Bargainor deliver Livery and Seiſin of the Lands *ſecundum formam Chartæ*, *&c.* it has been held a good *Feoffment.* 2 *And.* 68. A *Feoffment* in Fee made upon Condition not to alien, the Condition is void; becauſe 'tis repugnant to the Eſtate; but if Livery is had, the *Feoffment* will be good againſt the *Feoffor*: And a Bond with Condition that the Feoffee ſhall not alien, is ſaid to be good. 1 *Co. Inſt.* 206. 2 *Cro.* 596. If a Man makes a *Feoffment* of Lands on Condition, that the *Feoffee* ſhall give the Land to the *Feoffor* and his Wife in Special Tail, Remainder to the Heirs of the *Feoffor*; and he dies before ſuch Gift is made, the *Feoffee* ought to make it as near the Intent of the Condition as may be, *viz.* to the Wife without Impeachment of Waſte, Remainder to the Heirs of the Body of her Husband, on her Body begotten, and Remainder to the Husband's right Heirs. In Caſe the *Feoffor* and his Wife both die, the *Feoffee* then ſhould make the Eſtate to the Iſſue, and Heirs of the Body of his Father and Mother begotten, Remainder to the Right Heirs of the Husband or Father. 1 *Inſt.* 219, 220. Tenant in Tail makes a *Feoffment* in Fee; the Inheritance of the Tail is not given to the *Feoffee* by the *Feoffment*, nor is he thereby Tenant in Tail; for none ſhall be Tenant in Tail but he only who is comprehended in the Gift made by the Donor. But it gives away all the immediate Eſtate the *Feoffor* had. *Plowd* 562. *Hob.* 335. If Leſſee for Life, and the Reverſioner in Fee, make a *Feoffment* in Fee by Deed, each gives his Eſtate; the Leſſee his by Livery, and the Fee from him in Remainder. 6 *Rep.* 15. *Lill. Abr.* 609. A *Feoffment* was made *Habendum* to the *Feoffee* and his Heirs, after the Death of the *Feoffor*, and Livery was made; yet it was held to be a void *Feoffment*, for an Eſtate of Freehold in Lands cannot begin at a Day to come: But where a Leſſor made a Leaſe for Lives, and granted the Reverſion to another for Life, whoſe Eſtate for Life was to begin after the Death of the Survivor of the other Leſſees for Life, this was adjudg'd a good Eſtate in Reverſion for Life. *Hob.* 171. 1 *Nelſ. Abr.* 846. If a Man be diſſeiſed, and makes a Deed of *Feoffment*, and a Letter of Attorney to enter and take Poſſeſſion of the Land, and afterwards to make Livery, according to the Form of the Charter, it will be a good *Feoffment*, tho' he was out of Poſſeſſion at the Time of the Deed made; for the *Feoffment* takes Effect by the Livery, and not by the Deed. *Co. Lit.* 48, 52. And if the Husband alone make a *Feoffment* of his Wife's Land, or of both their Lands, his Wife being on the Land, and diſagreeing to it; this will be good againſt all Perſons but the Wife: Alſo ſo it is, if one Jointenant make a Deed of *Feoffment* of the whole Land, his Companion being then upon it: Or if a Man diſſeiſe me of my Lands, and then enfeoff another thereof whilſt I am upon the Land, *&c. Perk. Sect.* 219, 220. A *Feoffment* may be made of a Meſſuage, Land, Meadow, Paſture, or other corporal Thing; and of a Moiety, Third, or Fourth Part of it, that lies in Livery: And in Deeds of *Feoffment*, there muſt be a good *Feoffor*, that is, one able to grant the Thing conveyed by the Deed; a *Feoffee* capable to take it; and a Thing grantable, and granted in the Manner the Law requireth. 1 *Inſt.* 42, 49, 190. Every Gift of *Feoffment* of Lands made by Fraud or Maintenance, ſhall be void; and the Diſſeiſee notwithſtanding ſuch Alienation, ſhall recover againſt the firſt Diſſeiſor his Land and double Damages; provided he commence his Suit in a Year after the Diſſeiſin, and that the *Feoffor* be Pernor of the Profits. *Stat.* 1 *R.* 2. *cap.* 9. See 11 *Hen.* 6. *cap.* 3. A Deed of *Feoffment* is always applied to a corporal and immovable Thing: And is made by the Words, have *Granted*, *Bargained*, *Enfeoffed*, &c. The Way of pleading a *Feoffment* is thus, *viz.* That *A. B.* was ſeiſed in Fee of the Place where, *&c.* and being ſo ſeiſed, *Feoffavit quendam* C. D. *inter alia per nomina omnium*, *&c. habend. & tenend. dict' Tenementa*, *&c. præfat'* C. D. *& hæredibus ſuis in perpetuum ad ſolum opus & uſum*, *&c.* 3 Salk. 165.

Form *of a* Deed of Feoffment *of Lands.*

THIS Indenture *made*, &c. *Between* A. B. *of*, &c. *of the one Part*, *and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *That the ſaid* A. B. *for and in Conſideration of the Sum of Five hundred Pounds of lawful Money of* Great Britain, *to him in hand paid by the ſaid* C. D. *the Receipt whereof the ſaid* A. B. *doth hereby confeſs and acknowledge, and for other good Cauſes and Conſiderations him thereunto moving, he the ſaid* A. B. hath *granted*, *bargained and ſold*, *aliened*, *enfeoffed*, *ed, releaſed, and confirmed, and by theſe Preſents doth grant, bargain, and ſell, alien,* enfeoff, *&c. unto the ſaid* C. D. *his Heirs and Aſſigns for ever,* All *that Meſſuage or Tenement ſituate,* &c. *now in the Poſſeſſion of,* &c. *and alſo the Reverſion and Reverſions, Remainder and Remainders, Rents and Services thereof; and all the Eſtate, Right, Title, Intereſt, Claim and Demand whatſoever of him the ſaid* A. B. *of, in and to the ſame Premiſſes, and of, in and to every Part and Parcel thereof;* To have and to hold *the ſaid Meſſuage, and all and ſingular the Premiſſes above mentioned, with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of him the ſaid* C. D. *his Heirs and Aſſigns for ever;* under *the yearly Rent of Four pence;* Or, *to be holden of the Chief Lord or Lords of the Fee of the Premiſſes by the Rents and Services therefore due and of Right accuſtomed.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Heirs and Aſſigns, that the ſaid* A. B. *now is lawfully and rightfully ſeiſed in his own Right of a good, ſure, perfect, abſolute and indefeaſible Eſtate of Inheritance in Fee-ſimple, of and in all and ſingular the ſaid Meſſuage and Premiſſes above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, without any Manner of Condition, Mortgage, Limitation of Uſe or Uſes, or other Matter, Cauſe or Thing, to alter, change, charge or determine the ſame:* And alſo *that he the ſaid* A. B. *now hath good Right, full Power, and lawful Authority in his own Right to grant, bargain, ſell and convey the ſaid Meſſuage and Premiſſes above-mentioned, with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever, according to the true Intent and Meaning of theſe Preſents.* And alſo *that he the ſaid* C. D. *his Heirs and Aſſigns, ſhall and may from Time to Time, and at all Times hereafter, peaceably and quietly have, hold, occupy, poſſeſs and enjoy all and ſingular the ſaid Premiſſes above-mentioned, to be hereby granted, with the Appurtenances, without the Let, Trouble, Hindrance, Moleſtation, Interruption and Denial of him the ſaid* A. B. *his Heirs or Aſſigns, and of all and every other Perſon and Perſons whatſoever, claiming or to claim by, from or under him, them, or any of them.* And further, *that he the ſaid* A. B. *and his Heirs, and all and every other Perſon and Perſons, and his and their Heirs, any Thing having or claiming in the ſaid Meſſuage and Premiſſes above-mentioned, or any Part thereof, by, from or under him, ſhall and will at all Times hereafter, at the Requeſt and Coſts of the ſaid* C. D. *his Heirs or Aſſigns, make, do and execute, or cauſe or procure to be made, done and executed, all and every further and other lawful and reaſonable Grants, Act and Aſſurances in the Law whatſoever, for the further, better, and more perfect Granting Conveying, and Aſſuring of the ſaid Premiſſes hereby granted, with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever, according to the true Intent and Meaning of theſe Preſents, and to and for none other Uſe, Intent or Purpoſe whatſoever.* And laſtly, *the ſaid* A. B. hath *made, ordained, conſtituted and appointed, and by theſe Preſents doth make, ordain, conſtitute and appoint* E. F. *of,* &c. *and* G. H. *of,* &c. *his true and lawful Attornies jointly, and either of them ſeverally, for him and in his Name, into the ſaid Meſſuage and Premiſſes, with the Appurtenances hereby granted and conveyed, or mentioned to be granted and conveyed, or into ſome Part thereof, in the Name of the whole, to enter, and full and peaceable Poſſeſſion and Seiſin thereof for him, and in his Name, to take and have; and after ſuch Poſſeſſion and Seiſin ſo thereof taken and had, the like full and peaceable Poſſeſſion and Seiſin thereof, or of ſome Part thereof, in the Name of the Whole, unto the ſaid* C. D. *or to his certain Attorney or Attornies in that Behalf, to give and deliver;* To hold *to him the ſaid* C. D. *his Heirs and Aſſigns for ever, according to the Purport, true Intent and Meaning of theſe Preſents, ratifying, confirming and allowing all and whatſoever his ſaid Attornies, or either of them, ſhall do in the Premiſſes.* In Witneſs, *&c.*

Feræ Naturæ, In our Law ſignifies Beaſts and Birds that are wild, in Oppoſition to the Tame; ſuch as Hares, Foxes, Wild Geeſe, and the like, wherein no Man may claim a Property. 2 *Cro.* 293.

Ferdfare, (from the Sax *Fyrd* and *Fare*, Iter) *Significat quietantiam eundi in exercitum.* Fleta, lib. 1. cap. 47.

Ferdwit, (Sax. *Ferd*, exercitus, & *Witè* pœna) Was uſed for being quit of Manſlaughter, committed in the Army. *Fleta, lib.* 1. It is rather a Fine impoſed on Perſons for not going forth in a military Expedition; to which Duty all Perſons who held Land, were in Neceſſity obliged: And a Neglect or Omiſſion of this common Service to the Publick, was puniſhed with a pecuniary Mulct called the *Ferdwite.* Cowel.

Ferial Days, (*Dies Feriales, Feriæ*) According to the *Latin* Dictionary are Holy-Days; but in the Statute 27 *H.* 6. *c.* 5. *Ferial* Days are taken for Working Days; all the Days of the Week, except *Sunday:* The Week-Days as diſtinguiſhed from *Sunday*, the Profane from the Sacred, were called *Dies Feriales*, by a Charter dat. 28 *Mart.* 1448.—— Ex Cartular. Eccl. Elyenſis, MS.

Ferlingata terræ, A Quarter or fourth Part of a Yard-land.——*Decem acræ faciunt* Ferlingatam, 4 Ferlingatæ *faciunt* Virgatam, *&* 4 *Virgatæ faciunt* Hidam, *&c.* In antient Records there is Mention of *Ferlingus* and *Ferdlingus terræ.* Mon. Angl. Tom. 2. f. 8. See *Fardel of Land.*

Ferm, (*Firma*) A Houſe and Land let by Leaſe, *&c.* Vide *Farm.*

Fermary, (from the Sax. *Feorme*, Victus) Is an Hoſpital; and we read of Friers of the *Firmary.*

Fermiſona, The Winter Seaſon of killing Deer; as *Tempus pinguedinis* is the Summer Seaſon. *Quod idem Hugo & hæredes ſui de cætero quolibet anno poſſint capere in prædicto Parco de, &c. unam Damam in* Fermiſona *inter Feſtum Sancti* Martini *& Purif. Beatæ* Mariæ, *Et unam Damnam in* Pinguedine *inter Feſtum, &c. Fin. Concor. in Cur. Dom. Regis apud* Litchfield *coram* Roger. de Turkilby, *&c. inter* Hugonem de Acover *Quer. &* Will. de Aldethley *Deforc.* Penes Will. Dugdale, Mil'.

Fernigo, A Piece of waſte Ground where *Fern* grows. *Cartular. Abbat Glaſton. MS.*

Ferramentum, *Ferramenta*, The Iron Tools or Inſtruments of a Mill.——*Et reparare* Ferramenta *ad tres carucas, i. e.* The Iron Work of three Ploughs. *Lib. Niger. Heref.*

Ferrandus, An Iron Colour, particularly applied to Horſes, which we at this Time call an *Iron Gray.*

Ferry, A Liberty by Preſcription of the King's Grant, to have a Boat for Paſſage upon a River, for Carriage of Horſes and Men for reaſonable Toll: It is uſually to croſs a large River. *Terms de Ley.* A *Ferry* is no more than a common Highway; and no Action will lie for one's being diſturb'd in his Paſſage, unleſs he alledge ſome particular Damage, *&c.* 3 *Mod. Rep.* 294. The not keeping up a *Ferry*, has been held to be indictable. See *Bridge.*

Ferſpeken, To ſpeak ſuddenly —— *Nemo poteſt placitare, &c. nec cogi debet Rectum ejus* Ferſpeken *de omnibus cauſis, &c.* Leg. H. 1. c. 61.

Feſta in Cappis, Were ſome grand Holy-Days, in which the whole *Choirs* and *Cathedrals* wore *Caps.* Vitæ Abbat. S. Alban. pag. 80, 83.

Feſtingmen. The Saxon *Feſtinman* ſignifies a Surety or Pledge; and to be free of *Feſtingmen*, was probably to be free of *Frank-pledge*, and not bound for any Man's Forth-coming, who ſhould tranſgreſs the Law. *Mon. Angl. Tom.* 1. *p.* 123.

Feſting-Penny, Earneſt given to Servants when hired or retained in Service, ſo called in ſome *Northern*

thern Parts of *England*, from the Sax. *Feſtnian*, to *faſten* or confirm.

Feſtum, A Feaſt; *Feſtum S. Michaelis*, the Feaſt of *St. Michael*, *&c.*

Feſtum Stultorum, The Feaſt of Fools. See *Caput Anni*.

Feud, (*Feida*) Signifies in the *German* Tongue *Guerram*, Lat. *Bellum*; and according to *Lambard*, *Capitales Inimicitias*: And *Feud* uſed in *Scotland* is a Combination of Kindred for revenging the Death of any of their Blood againſt the Killer, and all his Race; or any other great Enemy. *Skene*.

Feudbote, A Recompence for Engaging in a *Feud*, and the Damages conſequent; it having been the Cuſtom in antient Times, for all the Kindred to engage in their Kinſman's Quarrel. *Sax. Dict.*

Feuds, (*Feoda*) Eſtates in Lands were originally at Will, and then they were called *Munera*; afterwards they were for Life, and then they were term'd *Beneficia*, and for that Reaſon the Livings of Clergymen are ſo called at this Day; and afterwards they were made Hereditary, when they were called *Feoda*, and in our Law *Fee-ſimple*. *Rel. Spel.* 9. When *Hugh Caput* uſurped the Kingdom of *France*, about the Year 947. to ſupport himſelf in ſuch Uſurpation, he granted to the Nobility and Gentry, that whereas 'till then they enjoy'd their Honours for Life, or at Will only, they ſhould from thenceforth hold them to them and their Heirs; which was imitated by *William* called *The Conqueror*, upon his Acceſſion to the Crown of *England*, for 'till his Reign *Feuds* or *Fees* were not hereditary, but only for Life, or for ſome determinate Time. 3 *Salk.* 165.

Feudal and **Feudary**. See *Feodal* and *Feodary*.

Fiat, In our Law is a ſhort Order or Warrant of ſome Judge for making out and allowing certain Proceſſes, *&c.* If a *Certiorari* be taken out in Vacation, and teſted of the precedent Term, the *Fiat* for it muſt be ſigned by a Judge of the Court, ſome Time before the Eſſoin-Day of the ſubſequent Term, otherwiſe it will be irregular: But it is ſaid there is no need for any Judge to ſign the Writ of *Certiorari* itſelf; but only where it is required by Statute. 1 *Salk.* 150. 2 *Hawk.* 289.

Fiat Juſtitia, On a Petition to the King, for his Warrant to bring a Writ of *Error in Parliament*, he writes on the Top of the Petition *Fiat Juſtitia*, and then the Writ of Error is made out, *&c.* And when the King is Petitioned to redreſs a Wrong, he indorſes upon the Petition *Let Right be done the Party*. Dyer 385. Stamf. Prærog. Reg. 22.

Fiction of Law, (*Fictio Juris*) Is allowed of in ſeveral Caſes: But it muſt be framed, according to the Rules of Law; not what is imaginable in the Conceptions of Man; and there ought to be Equity and Poſſibility in every legal *Fiction*. There are many of theſe *Fictions* in the *Civil* Law; and by ſome Civilians, it is ſaid to be an Aſſumption of Law upon an Untruth, for a Truth, in ſomething poſſible to be done, but not done. *Godolphin & Bartol.* The Seiſin of the Conuſee in a Fine is but a *Fiction in our Law*; it being an invented Form of Conveyance only. 1 *Lill. Abr.* 610. And a Common Recovery is *Fictio Juris*, a formal Act or Device by Conſent, where a Man is deſirous to cut off an Eſtate-tail, Remainders, *&c.* 10 *Rep.* 42. By *Fiction of Law*, a Bond made beyond Sea, may be pleaded to be made in the Place where abroad, in *Iſlington* in the County of *Middleſex*, *&c.* to try the ſame here; without which it cannot be done. 1 *Inſt.* 261. And ſo it is in ſome other Caſes; but the Law ought not to be ſatisfied with *Fictions*, where it may be otherwiſe really ſatisfied; and *Fictions in Law* ſhall not be carried farther, than the Reaſons which introduce them neceſſarily require. 1 *Lill. Abr.* 610. 2 *Hawk.* 320.

Fidem mentiri, Is when a Tenant doth not keep that *Fealty* which he hath ſworn to the Lord. *Leg. H.* 1. *c.* 53.

Fief, Which we call *Fee*, is in other Countries the contrary to Chattels: In *Germany*, certain Diſtricts or Territores are called *Fiefs*; where there are *Fiefs of the Empire*.

Fieri facias, Is a judicial Writ, given by the Statute of *Weſtm.* 2. 13 *Ed.* 1. that lies where Judgment is had for Debt or Damages recovered in the King's Courts againſt any Man; by which Writ the Sheriff is commanded to levy the Debt and Damages of the Goods and Chattels of the Defendant, *&c.* *Old Nat. Br.* 152. This Writ is to be ſued out within a Year and a Day after the Judgment; or the Judgment muſt be revived by *Scire facias*: But if a *Fieri facias* be not executed, a ſecond *Fieri facias* or *Elegit* may be ſued out; and 'tis ſaid ſome Years after, without a *Scire facias*, provided Continuances are entered from the firſt *Fi. fa.* which 'tis alſo held may be entered after the ſecond *Fi. fa.* taken out, unleſs a Rule is made that Proceedings ſhall ſtay, *&c.* *Sid.* 59. 2 *Nelſ. Abr.* 776. If a Man recover Debt againſt *A. B.* and levy Part of it by *Fieri facias*, and this Writ is returned; yet he may take his Body in Execution by *Capias* for the reſt of the Debt. *Roll. Abr.* 904. The Sheriff on a *Fieri facias* is to do his beſt Endeavours to levy the Money upon the Goods and Chattels of the Defendant; and for that Purpoſe to enquire after his Goods, *&c.* And the Plaintiff may enquire and ſearch if he can find any, and give Notice thereof to the Sheriff: who *ex officio* is to take and ſell them if he can, or if not, by a Writ of *Venditioni Exponas*. 2 *Shep. Abr.* 111. There may be a *Teſtatum fieri facias* into another County, if the Defendant hath not Goods enough in the County where the Action is laid to ſatisfy the Execution; and the *Fieri facias* for the Ground of the *Teſtatum*, may be returned of Courſe by the Attornies, as Originals are. 2 *Salk.* 589. If all the Money is not levied on a *Fieri facias*, the Writ muſt be returned before a ſecond Execution can be iſſued; becauſe it is to be grounded on the firſt Writ, by reciting that all the Money was not levied. 1 *Salk.* 318. Where the Sheriff levies Goods by *Fieri facias*, and doth not return the Writ, and afterwards another *Fieri facias* is brought to levy the Money, the Defendant may plead this Matter. *Godb.* 171. And where the Sheriff ſells Goods which he levied by *Fieri facias*, and doth not pay the Money, Action of Debt will lie againſt him; for the Defendant is diſcharged as to the Plaintiff, and the Sheriff is now become his Debtor in Law; and if the Sheriff die after he hath levied the Debt, the like Action will lie againſt his Executors, as it is a Duty when levied. *March Rep.* 13. *Cro. Car.* 387. If a Sheriff that hath ſeiſed Goods by *Fieri facias* is going out of his Office, he muſt deliver them to the new Sheriff, and return his Writ executed *pro tanto*; and he ought not to deliver them to the Owner, by Reaſon the Writ of Execution is warranted by a Record, and therefore the Diſcharge thereof muſt appear by Record. *Yelv.* 44. Upon a *Fieri facias* the Sheriff returned, that he had levied Goods *ad valentiam* of the Debt; the Return being filed, a Motion was made that he might bring in the Money, which not being done an Attachment was granted, and then the Sheriff appeared and prayed to amend the Return, for that the Goods were damaged by Lying, and he could not get Buyers; but it was adjudged that the Return ſhall not be altered, for he might have returned this at firſt by Way of Excuſe; and having returned that he had levied Goods *ad valentiam*, he ſhall pay the Money. *Sid.* 407. The Sheriff may ſell the Goods on a *Fieri facias*, and take the Money; though he cannot take the Money upon a *Capias ſatisfaciend.* that Writ not warranting him to do it. *Lut.* 588. But the Sheriff cannot deliver the Goods by him taken in Execution

Execution to the Plaintiff, in Satisfaction of his Debt; becauſe his Authority is to ſell the Goods. *Ibid.* 589. 1 *Lill. Abr.* 611. And if a Sheriff ſells the Goods taken by *Fieri facias* at under Price, the Sale is good, and the Defendant can have no Remedy; though where there appears to be Covin between the Sheriff and the Buyer, the Owner ſhall have his Action upon the Caſe. *Kelw.* 64. A Sheriff took Goods in Execution upon a *Fieri facias*, whereupon a Stranger promiſed the Officer to pay him the Debt, in Conſideration he would reſtore them; on *Indebitatus Aſſumpſit* brought for the Money, it was objected upon a Demurrer, that it was ill, for that it was like a Conſideration to ſuffer a Priſoner to eſcape; but it was held, that as upon a *Fieri facias* Goods are to be ſold by the Sheriff, and the Writ is to raiſe the Money, this is no more in Effect than a Sale for that Purpoſe. 1 *Salk.* 28. On a *Fieri facias*, the Sheriff has Power to take any Thing, but wearing Clothes; and if the Defendant hath two Gowns, *&c.* 'tis ſaid he may ſell one. If the Sheriff executes a Writ of *Fieri facias*, he may afterwards return *Nulla Bona*, upon there appearing a prerogative Writ ſubſequent; or on better Information, that Goods taken were not the Defendant's. *Comb.* 356, 452. By the Seizure of the Goods, the Sheriff hath a Property in them; but Goods of a Stranger, *&c.* in the Poſſeſſion of the Defendant ſhall not be ſeiſed in Execution; for the Sheriff at his Peril muſt take Notice whoſe Goods they are: Tho' if the Sheriff enquires by a Jury, where the Property is lodged, and it is found that they are the Defendant's Goods, when they are not, this will indemnify the Sheriff. *Dalt. Sher.* 60. *Wood's Inſt.* 608. The Sheriff cannot break open the Door of an Houſe to execute a *Fieri facias* upon the Goods of the Owner or Occupier; but a Man's Houſe ſhall be a Protection for his own Goods only, and not for the Goods of another. 5 *Rep.* 91. 2 *Nelſ. Abr* 775. If the Defendant is a beneficed Clergyman, and the Sheriff returns *Quod eſt Clericus beneficiatus, &c.* a Writ ſhall go to the Biſhop of the Dioceſe to levy the Debt *De bonis Eccleſiaſticis*, who thereupon ſends forth a Sequeſtration of the Profits of the Clerk's Benefice, directed to the Churchwardens, *&c.* But this Writ of Sequeſtration muſt be renewed every Term. 2 *Inſt.* 4, 472, 627. By Virtue of a *Fieri facias* a Term for Years may be ſold, as well as any other Goods, and without an Inqueſt or Jury: Alſo Corn growing may be ſold. 8 *Rep.* 96. 1 *Rol. Abr.* 892. And if the Sheriff on a *Fieri facias, &c.* ſelleth a Term for Years, and after that the Judgmeut is reverſed; the Term ſhall not be reſtored, but the Money for which it was ſold. 8 *Rep.* 141. A Term is ſold on an Execution by *Fieri facias*; the Sale of the Term is good, tho' the Judgment be reverſed, and Reſtitution ſhall be only of the Money: But where a Term is delivered to the Plaintiff upon an *Elegit*, and then the *Elegit* is reverſed, Reſtitution ſhall be of the Term. *Cro. Jac.* 246. When upon a *Fieri facias* the Sheriff ſells a Term, reciting it falſly, as to its Commencement and Ending, *&c.* the Sale is void, becauſe there is no ſuch Term: Yet if he recites it generally, and being of divers Years yet to come, ſells all the Intereſt which the Defendant had in the Land, the Sale will be good. 4 *Rep.* 74. If an Execution is ſued on a *Fi. fa.* and the Defendant dies before it is executed, it may be ſerved on the Defendant's Goods in the Hands of his Executor or Adminiſtrator. *Cro. Eliz.* 181. Two *Fieri facias's* are delivered the ſame Day to the Sheriff againſt the ſame Perſon; he is bound to execute that firſt which was firſt delivered; and if he executes the laſt firſt, he muſt anſwer it to the Party that brought the Firſt, who may bring an Action againſt him; but the Execution ſhall ſtand good. 1 *Salk.* 330. A Man had a Judgment for Debt againſt another, and on a *Fi. fac.* the Sheriff took his Goods in Execution, but the Plaintiff ſuffered the Goods to remain in the Hands of the Debtor, and would not let the Sheriff proceed any further: *A. B.* having alſo a Judgment againſt this Debtor, on a *Fieri facias*, ſeiſed upon the ſame Goods, and it was held good, for the former was a fraudulent Execution. *Fareſl. Rep.* 37, 38. On a Writ of *Fieri facias* againſt one Partner, the Sheriff may take the Goods of both; yet the Vendee ſhall have only a Moiety thereof in Common with the other. *Comberb* 207 By the Common Law Goods were bound from the Day of the *Teſte* of the Writ; but by Statute 29 *Car.* 2 they are bound only from the Time of Delivery thereof, *&c. Ibid.* The Sheriff having taken Goods, and levied the Money by Virtue of a *Fieri facias*, ought to bring it into Court. *Godb.* 147. See *Execution.*

Form of a Writ of *Fieri facias.*

GEORGE *the Second.* &c. *We Command you, that you cauſe to be made of the Goods and Chattels of* C. D. (if on a Bond, ſay, otherwiſe called, *&c.*) *in your Bailiwick, one hundred Pounds, which* A. B. *lately in our Court before us at* Weſtminſter, *recovered againſt him for a Debt; and alſo the Sum,* &c. *which were awarded to the ſaid* A. B *in our ſame Court before us, for his Damages which he hath ſuſtained, occaſioned as well by the Detaining of the ſaid Debt, as for his Expences and Coſts by him laid out in and about his Suit in that Behalf, whereof the ſaid* C. D. *is convicted, as appears to us of Record; and have you the Money before us at* Weſtminſter *on the Day,* &c. *next after,* &c. (*ſuch a Return*) *to render to the ſaid* A. B. *his Debt and Damages aforeſaid: And have you then there this Writ.* Witneſs, *&c.*

Fifteenths, Were a Tribute or Impoſition of Money, laid generally upon Cities, Boroughs, *&c.* through the whole Realm; ſo called, becauſe it amounts to a *Fifteenth Part* of that which each City or Town hath been anciently valued at, or a *Fifteenth* of every Man's perſonal Eſtate according to a reaſonable Valuation. And every Town knew what was a *Fifteenth Part*, which was always the ſame; whereas a *Subſidy* raiſed on every particular Man's Lands or Goods, was adjudged incertain: And in that Regard the *Fifteenth* ſeems to have been a Rate formerly laid upon every Town; according to the Land or Circuit belonging to it. *Camd. Brit.* 171. There are certain Rates mentioned in *Domeſday*, for levying this Tribute yearly; but ſince, though the Rate be certain, it is not to be levied but by Parliament. By 31 *Ed.* 3. *cap.* 13. a *Fifteenth* was granted, for Pardons, *&c.* The 7 *Ed.* 6. *c.* 4. granted a Subſidy and two *Fifteenths* by the Temporalty, &*c.* And in the 1, 5, *&c. Eliz.* and 1, 3 & 18 *Jac.* 1. *Fifteenths* and Tenths were granted for Maintaining the Wars, *&c.*

Fighting and Quarrelling, Is prohibited by Statute, in a Church or Church-yard, *&c.* on Pain of Excommunication, and other corporal Puniſhment. *Stat.* 5 & 6 *Ed.* 6. *c.* 4. See *Church.*

Fightwite, (*Sax.*) Signifies a Mulct for Fighting or Making a Quarrel to the Diſturbance of the Peace. ——— *Mulcta ob Commiſſam pugnam in Perturbationem Pacis: In exercitu Regis* 120 *ſol. luebatur* Fightwita, *i. e. Foriſfactura pugnæ.* MS. Codex.

Filacer or Filizer, (*Filizarius*, from the Lat. *Filum*) Is an Officer of the Court of *Common Pleas*, called by this Name, as he *files* thoſe Writs whereon he makes out Proceſs. There are fourteen of theſe *Filizers* in their ſeveral Diviſions and Counties; and they make forth all Writs and Proceſſes upon original Writs, iſſuing out of the Chancery, as well real, as perſonal and mix'd, returnable in that Court: And in Actions meerly Perſonal, where the Defendants are returned ſummoned, they make out *Pones* or Attachments; which being returned and executed, if the Defendant appears not, they make forth a *Diſtringas*, and ſo *ad Infinitum*, or until he doth appear: If he be returned *Nihil*, then Proceſs of *Capias* infinite, *&c.* They enter all Appearances and Special Bails, upon any Proceſs made by them: And make the firſt *Scire facias* on ſpecial Bails, Writs of *Habeas Corpus*, *Diſtringas nuper Vicecomitem vel Ballivum*, and all *Superſedeas's* upon Special Bail: In real Actions, Writs of View, of Grand and Petit *Cape*, of *Withernam*, *&c.* Alſo Writs of *Adjournment* of a Term, in Caſe of publick Diſturbance, *&c.* And until an *Order* of Court, 14 *Jac.* 1. they entered Declarations, Imparlances and Pleas, and made out Writs of Execution, and divers other judicial Writs, after Appearance: But that Order limited their Proceedings to all Matters before Appearance, and the *Prothonotaries* to all after. The *Filizers* of the *Common Pleas* have been Officers of that Court before the Statute 10 *H.* 6. *c.* 4. wherein they are mentioned: And in the *King's Bench*, of later Times, there have been *Filizers*, who make out Proceſs upon original Writs returnable in that Court, on Actions *contra Pacem*, *&c.*

File, (*Filacium*) A Thread, String or Wire, upon which Writs, and other Exhibits in Courts and Offices are faſtened or *filed*, for the more ſafe Keeping and ready Turning to the ſame. A *File* is a Record of the Court; and the *Filing* of Proceſs of a Court, makes it a Record of it. 1 *Lill.* 112. An original Writ may be *filed* after Judgment given in the Cauſe, if ſued forth before; Declarations, *&c.* are to be *filed:* And Affidavits muſt be be *filed*, ſome before read in Court; and ſome preſently when read in Court. *Ibid.* 113. Before *Filing*, a Record removed by *Certiorari*, the Juſtices of *B. R.* may refuſe to receive it, if it appears to be for Delay, *&c.* and remand it back for the Expedition of Juſtice: But if the *Certiorari* be once *filed*, the Proceedings below cannot be revived. 2 *Hawk.* 7, 207. An Indictment, *&c.* cannot be amended after *filed.*

Field-Ale or **Filkdale**; A Kind of Drinking in the *Field*, by Bailiffs of Hundreds; for which they gathered Money of the Inhabitants of the Hundred to which they belong'd: But it has been long ſince prohibited. *Bract.* 4 *Inſt.* 307.

Filicetum, Signifies a Ferny Ground. —— *Ubi* Filices *creſcunt.* 1 Inſt. 4.

Filiolus, Is properly a little Son, alſo a Godſon. —— Filiolus *quem de ſacro Fonte ſuſcepit.* Dugd. Warwickſh. 697.

Filum Aquæ, Is the Thread or Middle of the Stream, where a River parts two Lordſhips: *Et habebunt iſtas Buttas uſque ad* Filum Aquæ *prædictæ.* Ex Reg. Priorat. de Wormley, fol. 3. Mon. Angl. Tom. 1. fol. 390. *File du Mer*, the high Tide of the Sea. *Rot. Parl.* 11 *H.* 4.

Finders, Are mentioned in ſeveral ancient Statutes, and ſeem to be the ſame with thoſe which we now call *Searchers*; who are employed for the Diſcovery of Goods imported or exported, without paying Cuſtom. *Stat.* 18 *Ed.* 3. 14 *R.* 2. *c.* 10. 1 *H.* 4. *c.* 13, *&c.*

Fine, (*Finis*) Is a *final* Agreement or Conveyance upon Record, for the Settling and Aſſuring of Lands and Tenements, acknowledged in the King's Court by the Cogniſor to be the Right of the Cogniſee. *Accomp. Convey.* 1 *Vol.* 89. This Word hath divers Uſes or Significations; but it is moſt commonly, *Amicabilis Compoſitio &* Finalis *Concordia, ex conſenſu & Licentia Domini Regis vel ejus Juſticiariorum*, or a Covenant made before Juſtices and entered of Record for Conveyance of Lands, Tenements or any Thing inheritable, to cut off all Controverſies: *Et* Finis *dicitur* Finalis *Concordia quia* finem *litibus imponit. Glanv. lib.* 8. *c.* 1. *Bract. lib.* 5. A *Fine* was anciently a Determination of a real Controverſy; but now it is generally a feign'd Action upon a Writ of Covenant, *&c.* and ſuppoſes a Controverſy where in Reality there is none, to ſecure the Title that a Man hath in his Eſtate againſt all Men; or to cut off *Intails*, and with more Certainty convey the Title of Lands, *&c.* either in Fee-ſimple, Fee-tail, for Life or Years; whereupon alſo a Rent may be reſerved. *Weſt's Symb. par.* 2. Originally the *final Concord* was inſtituted and allowed, in Regard that by the Law and antient Courſe of Proceedings, no Plaintiff could agree without Licence of the Court: And *Fines* have been formerly had in perſonal Actions; but Time hath wrought other Uſes of them, *viz.* to cut off Intails, and paſs the Inheritance of Lands, though the ſame be not controverted, to whom we think good; and a *Fine* may be levied on a Writ of Right, *&c.* in any real Action, tho' not on an Original in a perſonal Action; and the Common Writ of Covenant on which a *Fine* is levied, is not a perſonal but a real Action. As a *Fine* is a Concord acknowledged before a competent Judge, touching Hereditaments or Things immoveable, and for its better Credit imputed to be made in the Preſence of the King, becauſe levied in his Court; therefore it binds Women covert, being Parties, and others whom ordinarily the Law diſables to act; for this Reaſon, that all Preſumption of Deceit is excluded, where the King and his Court of Juſtice are ſuppoſed to be privy to what is tranſacted. And *Fines* are now levied in the Court of *Common Pleas* at *Weſtminſter*, on Account of the Solemnity thereof, ordained by the Stat. 18 *Ed.* 1. before which Time they were ſometimes levied in the *Exchequer*, in the *County-Courts*, *Courts-Baron*, *&c.* They may be acknowledged before the Lord Chief Juſtice of the *Common Pleas*, as well in as out of Court; and two of the Juſtices of the ſame Court, have Power to take them in open Court: Alſo Juſtices of Aſſiſe may do it by the general Words of their Patent or Commiſſion; but they do not uſually certify them without a ſpecial Writ of *Dedimus Poteſtatem.* 2 *Inſt* 512. *Dyer* 224. The King by Patent or Commiſſion, with a *Non obſtante*, may give Power to *A.* and *B.* Juſtices of Aſſiſe in a Circuit, when *A.* is not a Judge of either of the Benches, only a Serjeant at Law, *&c.* to take the Cognizance of all *Fines conjunctim & ſeparatim*; and upon ſuch a Commiſſion, the Cognizance of a *Fine* taken by *A.* will be good, without any *Dedimus Poteſtatem* ſued out before or after it. *Jenk. Cent.* 227. And *Fines* are alſo taken by Commiſſioners in the Country, empowered by *Dedimus Poteſtatem*; one whereof named muſt be a Knight; and the Writ of *Dedimus* doth ſurmiſe, that the Parties who are to acknowledge the *Fine* are not able to travel to *Weſtminſter* for the Doing thereof: Theſe Commiſſions general and Special, iſſue out of the Chancery. By the *Common Law* all *Fines* were levied in Court: But the Statute 15 *Ed.* 2. allows the *Dedimus Poteſtatem* to Commiſſioners, who may be puniſhed for Abuſes, and the *Fines* taken before them ſet aſide: And it is ſaid an Information may be brought by him in Reverſion againſt Commiſſioners, who take the Caption of a *Fine*, where a married Woman, *&c.* is an Infant. 3 *Lev.* 36. In the Levying of *Fines* in Court, a Pleader ſhall ſay *Sir Juſtice conge d'Accorder*, *&c.* i. e. he deſires *leave to Accord or Agree:* And when the Sum for the King's *Fine* is agreed, after Proclamation and Crying the Peace, the Pleader ſhall repeat the Subſtance of the *Fine*, *&c.* *Stat. de Finibus*, 18 *Ed.* 1. Touching the *Form of Fines*, it is to be conſidered upon what Writ or Action the *Concord* is to be made; and there muſt firſt paſs a Pair of Indentures between the Cogniſor and Cogniſee, whereby the Cogniſor covenants to paſs a *Fine* to the Cogniſee of ſuch Things, by a Time limited; and theſe Indentures preceding the *Fine*, are ſaid to *lead the Uſes* of the *Fine:* But by the Statute 4 & 5 *Ann.* the Uſes of a *Fine*, *&c.* may be declared after the *Fine* levied, and be good in Law. Upon this the

Writ of Covenant is brought by the Cogniſee againſt the Cogniſor, who then yields to paſs the *Fine* before the Judge; and ſo the Acknowledgment being recorded, the Cogniſor and his Heirs are preſently concluded, and all Strangers (not excepted) after five Years paſt; and if the Writ whereon the *Fine* is grounded, be not a *Writ of Covenant*, which is uſual, but of *Warrantia Chartæ*, or a Writ of Right, or of Cuſtoms and Services, &c. then the Writ is to be ſerved upon the Party that is to acknowledge the *Fine*; and he appearing doth it accordingly. *Weſt. Sect.* 23. *Dyer* 179. By Statute, a *final Concord* cannot be levied in the King's Court, without original Writ. &c. And when a *Fine* is paſſed, it is to be in the Preſence of the Parties, who are to be of full Age, good Memory, &c. And if a Feme Covert be one, ſhe is to be privately examined if ſhe conſent freely; for if ſhe doth not, the *Fine* cannot be levied. *Stat.* 18 *Ed.* 1. A *Fine* after the Ingroſſing is to be openly read and proclaimed in the Court of *C. B.* and a Tranſcript to be ſent to the Juſtices of Aſſiſe, and another to the Juſtices of the Peace of the County where the Land lieth, to be openly *proclaimed* there; which being certified, concludes all Perſons; Feme Coverts, Perſons under Age, in Priſon, &c. excepted; if they lay not Claim by Way of Action or Entry in five Years: Perſons out of the Land, or *Non ſanæ Memoriæ*, &c. have that Time after their Imperfections are removed. 1 *R.* 3. *c.* 7. And by ſubſequent Acts, *Fines* after Ingroſſing are to be proclaimed in Court the ſame Term, and the three next Terms, formerly four ſeveral Days in each Term; but of late only once in the Term wherein ingroſſed, and once in each of the ſucceeding Terms. 4 *H.* 7. 31 *Eliz. c.* 2. The Day and Year of acknowledging a *Fine*, and Warrant of Attorney for the Suffering a Recovery, are to be certified with the Concord: And an Office hath been erected for the *Inrolment* of Writs for *Fines*, &c. the Fees whereof are limited and appointed; likewiſe the *Chirographer* the firſt Day of every Term is to fix in the Court of *C. B.* a Table containing the *Fines* paſſed in the Term before in every County, &c. by 23 *Eliz. c.* 3. There are in every *Fine* five Parts, *viz.* 1*ſt*, An original Writ, uſually a Writ of Covenant. 2. The *Licentia Concordandi*, or King's Licence, for which the King hath a *Fine* called the *King's Silver*. 3. The Concord itſelf, containing the Agreement between the Parties how the Land, &c. ſhall paſs, being the Foundation and Subſtance of the *Fine*; it begins, *Et eſt concordia talis*, &c 4. The Note of the *Fine*, or Abſtract of the original Contract. 5. The Foot of the *Fine*, which includes all, ſetting forth the Day, Year, and Place and before what Juſtices the Concord was made, &c. Of this there are Indentures made forth in the Office, which is called the Ingroſſing of the *Fine*; and it beginneth thus, *Hæc eſt* finalis *Concordia facta in Curia Domini Regis apud* Weſtm. *a die Paſchæ in quindecim dies anno*, &c. 2 Inſt. 511, 517. 'Tis ſaid, the Concord being the compleat *Fine*, it ſhall be adjudged a *Fine* of that Term in which the Concord was made, and the Writ of Covenant returnable. 1 *Salk.* 341. A Concord cannot be of any Thing but what is contained in the Writ of Covenant: And the Note of the *Fine* remaining with the *Chirographer*, it hath been held, *eſt Principale Recordum.* 3 *Leon.* 234. As to *Fines*, there are various Kinds: They are either with Proclamations, or without; that with Proclamations, is term'd a *Fine according to the Statutes* 1 *R.* 3. *c.* 7. and 4 *H.* 7. *c.* 24. And ſuch a *Fine* is every *Fine*, that is pleaded, intended to be, if it be not ſhewed what *Fine* it is: And theſe *Fines* are the beſt Sort, and moſt uſed; alſo if there be Error in the Proclamations, it ſhall be taken as a good *Fine* at Common Law. 3 *Rep.* 86. A *Fine* may ſtand, though the Proclamations according to the Statute are made irregularly; for *Fines* are Matter of Record, and remain in Subſtance and Form as they were before. *Plowd.* 265. If Tenant in Tail levies a *Fine*, and dies before all the Proclamations are made, though the Right of the Eſtate-tail deſcends upon the Iſſue, immediately on the Death of the Anceſtor; yet if Proclamations are made afterwards, ſuch Right ſhall be barred by the *Fine*, by the Statute 4 *H.* 7. and 32 *H.* 8. 3 *Rep* 84. The *Fine* without Proclamations is called a *Fine at the Common Law*, being levied in ſuch Manner as was uſed before the Statute 4 *H.* 7. *c.* 24. and is ſtill of the like Force by the Common Law, to diſcontinue the Eſtate of the Cogniſor, if the *Fine* be executed. A *Fine* alſo with or without Proclamations is either executed or executory: A *Fine executed* is ſuch a *Fine* as of its own Force gives preſent Poſſeſſion to the Cogniſee, without any Writ of Seiſin to enter on the Lands, &c. as a *Fine ſur Cogniſance de Droit come eo*; and in ſome Reſpects a *Fine ſur Releaſe*, &c. is ſaid to be executed. A *Fine executory* doth not execute the Poſſeſſion in the Cogniſee, without Entry or Action, but requires a Writ of Seiſin; as the *Fine ſur Cognizance de Droit tantum*, &c. unleſs the Party be in Poſſeſſion of the Lands; for if he be in Poſſeſſion at the Time of levying the *Fine*, there need not be any ſuch Writ, or any Execution of the *Fine*; and then the *Fine* will enure by Way of Extinguiſhment of Right, not altering the Eſtate or Poſſeſſion of the Cogniſee, however it may better it. *Weſt. Sect.* 20. *Fines* are likewiſe ſingle or double; *Single*, where an Eſtate is granted by the Cogniſor to the Cogniſee, and nothing is thereby rendered back again from the Cogniſee to the Cogniſor. The *double Fine* is that which doth contain a Grant or Render back again from the Cogniſee, of the Land itſelf; or of ſome Rent, Common, or other Thing out of it, and by which Remainders are limited, &c. *Weſt. Sect* 21, 30. And a *Fine* is ſometimes called a double *Fine*, when the Lands lie in ſeveral Counties. *Fines* are further divided into four Sorts, *viz.* A *Fine ſur Cognizance de Droit come eo*, &c. A *Fine ſur Done Grant & Render*; a *Fine ſur Cognizance de Droit tantum*; and a *Fine ſur Conceſſit*: The *Fine ſur Cognizance de Droit come ceo* is a ſingle *Fine* levied with Proclamations, according to the Statute 4 *H.* 7. And it is the principal and ſureſt Kind of *Fine*, it being ſaid to be executed, becauſe it gives preſent Poſſeſſion (at leaſt in Law) to the Cogniſee, ſo that he needs no Writ of *Hab. facias Seiſinam*, or other Means for Execution thereof; for it admits the Poſſeſſion of the Lands of which the *Fine* is levied to paſs by the *Fine*, ſo that the Cogniſee may enter, and the Eſtate is thereby in him, to ſuch Uſes as are declared in the Deed to lead the Uſes thereof: But if it be not declared by Deed to what Uſe the *Fine* was levied, ſuch *Fine* ſhall be to the Uſe of the Cogniſor that levied the ſame. 2 *Inſt.* 513. If the Cogniſee of a *Fine* levied of Lands, do pay Money unto the Cogniſor at the Time of the *Fine* levied, and there is no Uſe declared of the *Fine*, the Law will conſtrue the *Fine* to the Uſe of the Cogniſee: And if there be no Money paid by the Cogniſee, nor any Uſe declared, the *Fine* ſhall enure to the Cogniſor that levied it. *Paſch.* 23 *Car. B. R.* Where a *Fine* is levied to the Uſe of two Perſons in Tail, &c. in Conſideration of Marriage, though the Deed to lead its Uſes do not mention any Marriage had between them, yet it hath been adjudged that the Eſtate-tail is executed before Marriage; for the *Fine* doth carry the Uſes, and they are perfected by the *Fine*, notwithſtanding the Conſideration is perfected afterwards; but without a *Fine*, the Marriage muſt be had, before any Uſe could ariſe. 1 *Leon.* 138. If a Feme Covert alone declares the Uſes of a *Fine* intended to be levied by Huſband and Wife of her Land, and the Huſband alone declares other Uſes; it hath been held that both Declarations of Uſes are void, and the Uſe ſhall follow the Ownerſhip of the Lands: But in another Caſe, it was determined that the Uſes declared by the Wife were void; and the Uſes declared by the Husband, good only againſt himſelf, during the Coverture. 2 *Rep.* 56. If Huſband and Wife levy a *Fine* of the Lands of the Wife, and he alone declares the Uſes, this ſhall bind the Wife, if her Diſſent doth not appear; becauſe otherwiſe it ſhall be intended that ſhe did conſent. *Ibid.* 59. Though there be a Variance between a Deed declaring Uſes, and the *Fine* levied; yet if nothing appears to the contrary, ſuch *Fine* by Conſtruction of Law ſhall be to the Uſes declared in the Deed, and which is Evidence thereof: And where a *Fine* varies from a former Deſcription, it has been held that a new Deed made after, will declare the Uſes of the *Fine.* 1 *Ld. Raym.* 289, 290. 'Tis ſaid not to be abſolutely neceſſary, to inſert the Word *Uſe*, in the Declaration of Uſes of *Fines*; for any Words which ſhew the Intent of the Parties will be ſufficient. *Ibid.* A *Fine ſur Cognizance de Droit come ceo, &c.* may not be levied to any Perſon but one that is Party to the Writ of Covenant, though a Vouchee, after he hath entered into the Warranty to the Demandant, it is ſaid may confeſs the Action, or levy a *Fine* to the Demandant, for he is then ſuppoſed to be Tenant of the Land, though he is not a Party to the Writ; and yet a *Fine* levied by the Vouchee to a Stranger, is void. No ſingle *Fine* can be with a Remainder over to another Perſon not contained in it: But if *A.* levy a *Fine* to B. *Sur Cogniſance de Droit come ceo*, and B. by the ſame Concord grants back the Land again to *A.* for Life, Remainder to *E.* the Wife of *A.* for her Life, Remainder to *A.* and his Heirs; this will be a good *Fine. Plowd.* 248, 249. A *Fine ſur Done Grant & Render*, is a double *Fine*, being in a Manner two *Fines*, *i. e.* A *Fine ſur Cogniſance de Droit come ceo, &c.* and a *Fine ſur Conceſſit*, both formed into one; whereby the Cogniſee, after a Releaſe and Warranty made to him by the Cogniſor of the Lands contained therein, doth grant and render back to the Cogniſor the Lands, *&c.* thereby oftentimes limiting Remainders to Perſons that are Strangers, and not named in the Writ of Covenant. This *Fine* is partly executed and partly executory; and as to the firſt Part of it, is altogether of the ſame Nature with a *Fine ſur Cogniſance de Droit come ceo*; but as to the ſecond Part, containing a Grant and Render back, it is taken in Law to be rather a private Conveyance or Charter between Party and Party, and not as a Writ or Judgment upon Record: And this Render is ſometimes of the whole Eſtate, and ſometimes of a particular Eſtate, with Remainder or Remainders over; or of the Reverſion, and ſometimes with Reſervations of Rent and Clauſe of Diſtreſs, and Grant thereof over by the ſame *Fine.* 5 *Rep.* 38. *A. B* and *C. D.* levied a *Fine* of Lands, and the Cogniſee by the ſame *Fine* rendered back the Land to *A. B.* in Tail reſerving a Rent to himſelf, *&c.* the Rent and Reverſion ſhall paſs, though in one *Fine*; and it ſhall enure as ſeveral *Fines. Cro. Eliz.* 727. It is ſaid, a Grant and Render of Land, cannot be immediately *in primo Gradu* to a Perſon who is no Party to the Writ; but mediately or *in ſecundo Gradu* it may. 3 *Rep.* 514. *Bro.* 108. The *Fine* with Grant and Render, differs from the *Fine ſur Cogniſance de Droit come ceo, &c.* as that muſt be levied of the Land in the Original; but the Grant and Render may be of another Thing than is expreſſed in the Original. Tho' to make a good Grant and Render, the Land rendered muſt paſs to the Cogniſee by the *Fine*; for he cannot render what he hath not. 3 *Rep.* 98, 510. *Hugh's Abr.* 936. A Man may not by this *Fine* reſerve to himſelf a leſs Eſtate by Way of Remainder than the Fee: And the Render of a Rent, (if any be) muſt be to one of the Parties to the *Fine*, and not to a Stranger. *Dyer* 33, 69. 2 *Rep.* 39. To make a Leaſe for Years, *&c.* by *Fine* with a Render; the Leſſee muſt acknowledge the Land to be the Right of the Leſſor that is ſeiſed thereof, and then ſuch Leſſor grants and renders the ſame back again to the Leſſee, for a certain Number of Years, reſerving Rent, *&c.* and this is a good *Fine:* But if the Leſſor be Tenant in Tail, then to bind him, he and the Leſſee, are to acknowledge the Tenements the Right of *A B.* who is to render the ſame *Fine* to Leſſee for Years, the Remainder to the Leſſor and his Heirs, *&c.* 44 *E.* 3. 45. See 2 *Leon.* 206. A *Fine* and Render is a Conveyance at Common Law, and makes the Cogniſor on the Render back a new Purchaſer; by which Lands ariſing on the Part of the Mother, may go to the Heirs on the Part of the Father, *&c.* 1 *Salk.* 337. 2 *Nelſ. Ab.* 864 The *Fine Sur Conceſſit* is where the Cogniſor is ſeiſed of the Lands contained therein, and the Cogniſee hath no Freehold in it, but it paſſeth by the *Fine:* This *Fine* is uſed to grant away Eſtates for Life, or Years; and it is executory, ſo that the Cogniſees muſt enter or have a Writ of *Hab. fac. Seiſinam* to obtain Poſſeſſion; if the Parties to whom the Eſtate is limited, at the Time of levying ſuch *Fine*, be not in Poſſeſſion of the Thing granted. A *Fine Sur Cogniſance de Droit tantum* is alſo a *Fine* executory, and much of the Nature of a *Fine ſur Conceſſit*; it is commonly made uſe of to paſs a Reverſion, and then it is expreſſed by ſuch *Fine* that the particular Eſtate is in another, and that the Cogniſor willeth that the Cogniſee ſhall have the Reverſion, or that the Land ſhall remain to him after the particular Eſtate is ſpent: And ſometimes it is uſed by Tenant for Life, to make a Releaſe (in Nature of a Surrender) to him in Reverſion, but not by the Word *Surrender*; for it is ſaid a particular Tenant, as for Life, *&c.* cannot ſurrender his Term to him in Reverſion by *Fine*; but he may grant and releaſe to him by *Fine. Plowd.* 268. *Dyer* 216. A *Fine* upon a Releaſe, *&c.* ſhall not be intended to be to any other Uſe, but to him to whom it is levied. 3 *Leon.* 61. A *Fine* is called a *Feoffment of Record*, and is of great Antiquity, for we read of *Fines* before the Conqueſt. 2 *Inſt.* 511. But it hath been held, that a *Fine* is improperly called a Feoffment of Record; though it hath the Effects of a Feoffment, where he that levies it is ſeiſed of the Freehold at the Time of the *Fine* levied. 1 *Salk.* 340. Lands bought of divers Perſons, by ſeveral Purchaſers, may paſs in one *Fine*, to ſave Charges; but the Writ of Covenant muſt be brought by the Vendees againſt all the Vendors, and every Vendor warrant againſt him and his Heirs. If a Feme ſole marries after the *Dedimus Poteſtatem* to take her *Fine, &c.* the *Fine* ſhall nevertheleſs be paſſed as her *Fine. Dyer* 246. And if either of the Parties Cogniſors die after the King's Silver is entered, the *Fine* ſhall be finiſhed, and be good. 1 *Cro.* 469. A Record of a *Fine* may be amended, (if the King's Silver is paid) where it is the Miſpriſion of the Clerk. 5 *Rep.* 43. A *Fine* is perfect, when the King's Silver is paid thereon. 1 *And.* 229. And tho' one Concord will ſerve for Lands that lie in divers Counties; yet there muſt be ſeveral Writs of Covenant. 3 *Inſt.* 21. *Dyer* 227. A Concord of a *Fine* may have an Exception of Part of the Things mentioned therein: And if more Acres are named, than a Man hath in the Place, or are intended to be paſſed; no more ſhall paſs by the *Fine* than is agreed upon. 1 *Leon.* 81. 3 *Bulſt.* 317, 318. A *Fine* as well as a Deed may be covinous, and avoidable for this; where it is ſuffered by Fraud to deceive a Purchaſer, or Creditor, *&c.* 3 *Rep.* 80. 16 *H.* 7. 5.

Form of a *Præcipe and Concord* of a *Fine ſur Cogniſance de Droit come ceo, &c.*

Southʼton, ſſ. Command *A.* B. that he juſtly and without Delay, perform to B. *D.* the Covenant made between them, of one Meſſuage, forty Acres of Land, ſixty Acres of Meadow, and ſeventy Acres of Paſture, *&c.* with the Appurtenances in *R.* And unleſs, *&c.*

A*ND the Agreement is ſuch, that is to ſay, That the ſaid* A. *hath acknowledged the Tenements aforeſaid, with the Appurtenances, to be the Right of the ſaid* B. *as that which the ſaid* B. *hath of the Gift of the ſaid* A. *and thoſe he hath remiſed and quit-claimed, from him and his Heirs, to the aforeſaid* B. *and his Heirs for ever. And moreover, the ſaid* A. *hath granted for himſelf and his Heirs, that they will warrant to the ſaid* B. *and his Heirs, the ſaid Tenements, with the Appurtenances, againſt the ſaid* A. *and his Heirs for ever. And for this,* &c.

Form of a *Fine ſur Done Grant and Render,* called a *Double Fine.*

Dorſet, ſſ. Command *W.* B That he juſtly and without Delay, perform to *T. D.* the Covenant made between them, of the Manor of, *&c.* with the Appurtenances in *D.* And unleſs, *&c.*

AND *the Agreement is ſuch, to wit, That the ſaid* W. *hath acknowledged the ſaid Manor, with the Appurtenances, to be the Right of him the ſaid* T. *as that which the ſaid* T. *hath of the Gift of the ſaid* W. *and that he hath remiſed and quit-claimed, from him the ſaid* W. *and his Heirs, to the ſaid* T. *and his Heirs: And further, the ſaid* W. *hath granted for himſelf and his Heirs, that they will warrant to the ſaid* T. *and his Heirs, the aforeſaid Manor with the Appurtenances, againſt the ſaid* W. *and his Heirs for ever: And for this Acknowledgment, Remiſe, Quit-claim, Warranty, Fine and Agreement, the ſaid* T. *hath granted to the ſaid* W. *and his Heirs, the annual Rent of Twenty Pounds, iſſuing out of the ſaid Manor, with the Appurtenances; and that he hath rendered to him,* &c *for him the ſaid* W. *and his Heirs, to have and receive the ſaid Rent, at the Feaſts of the Annunciation of the Bleſſed Virgin* Mary, *and St.* Michael *the Archangel, by even and equal Portions to be paid yearly for ever. And if it ſhall happen that the ſaid Rent of Twenty Pounds be in arrear, in Part or in all, after any of the ſaid Feaſts whereon it ought to be paid, then it ſhall be lawful for the ſaid* W. *and his Heirs to enter into the ſaid Manor, with the Appurtenances, and diſtrain, and to drive and carry away, and retain in his own Poſſeſſion the Diſtreſs there taken and had, until the ſaid Rent with the Arrears thereof, if any be, ſhall be fully paid and ſatisfied.*

If the *Render* on the *Fine* be of the whole Manor, and not a Rent, *&c.* out of it, then it is in the following *Form:*

A*ND for this Acknowledgment, Remiſe, Quit claim, Warranty, Fine and Agreement, the ſaid* T. *hath granted to the ſaid* W. *the Manor,* &c. *aforeſaid, with the Appurtenances; and that he hath* rendered *to him,* &c. *To have and to hold to the ſaid* W. *and the Heirs which he ſhall beget on the Body of* E. *his Wife: And if it ſhall happen that the ſaid* W. *ſhall die, without Heirs by him begotten on the Body of the ſaid* E. *then after the Death or Deceaſe of the ſaid* W. *the ſaid Manor, with the Appurtenances, ſhall wholly remain to the ſaid* E. *during the Life of her the ſaid* E. *And after the Deceaſe of the ſaid* E. *the ſaid Manor with the Appurtenances, ſhall remain to the right Heirs of the ſaid* T. &c. *And for this,* &c.

Form of a *Fine ſur Cogniſance de Droit tantum,* by Husband and Wife.

Middleſex, ſſ. Command *A.* B. and *E.* his Wife, that they juſtly perform to *L. D.* the Covenant made between them, of the third Part of three Meſſuages, three Tofts, three Gardens, two hundred Acres of Land, ſixty Acres of Meadow, and one hundred Acres of Paſture, with the Appurtenances, in *K. H.* and B. And unleſs, *&c.*

AND *the Agreement is ſuch,* (*to wit*) *That the ſaid* A. *and* E. *have acknowledged the ſaid third Part of the Meſſuages, with the Appurtenances, to be the Right of the ſaid* L. *and have granted that the ſaid third Part with the Appurtenances,* (*which* J. R. *Widow, at the Day when this Agreement was made, holds for her Life*) *of the Inheritance of the ſaid* E. *and which after the Death of* J. R. *ought to revert to the ſaid* A. *and* E. *ſhall immediately after the Death of the ſaid* J. R. *remain to the ſaid* L. *and his Heirs for ever: To hold,* &c. *And moreover the ſaid* A. *and* E. *have granted for themſelves, and the Heirs of the ſaid* E. *that they will warrant to the ſaid* L. *and his Heirs, the ſaid third Part with the Appurtenances,* (*as aforeſaid*) *againſt them the ſaid* A. *and* E. *and the Heirs of the ſaid* E. *for ever. And for this,* &c.

A *Fine ſur Conceſſit* upon a Grant for ninety-nine Years.

Berks, ſſ. Command *A. B.* that he juſtly, *&c.* perform to *C. D.* the Covenant made between them, of the Manor of, *&c.* with the Appurtenances; and of two hundred Acres of Land, three hundred Acres of Meadow, and one hundred and eighty Acres of Paſture, with the Appurtenances, in *R.* And unleſs, *&c.*

AND *the Agreement is ſuch, that is to ſay, That the ſaid* A. *hath granted to the ſaid* C. *the ſaid Manor and Tenements, with the Appurtenances:* To have and to hold *to the ſaid* C. *from the Feaſt of St.* Michael *the Archangel laſt paſt, until the End of the Term of,* &c. *Years, from thence next enſuing, and fully to be compleat and ended, without Impeachment of Waſte;* Yielding and paying *therefore yearly, to the ſaid* A. *and his Heirs a Pepper-Corn, at the Feaſt of the Nativity of St.* John *the Baptiſt, if demanded. And the ſaid* A. *and his Heirs, warrant to the ſaid* C. *the ſaid Manor and Tenements with the Appurtenances, as aforeſaid, againſt the ſaid* A. *and his Heirs, during the whole Term aforeſaid. And for this,* &c.

Taken and acknowledged the
Day and Year, *&c.* before, *&c.*

Form of an Indenture to lead the Uſes of a Fine, *on a Purchaſe.*

THIS Indenture *made,* &c. Between W. B. *of,* &c. *Eſq;* *and* A. *his Wife, of the one Part, and* T. D. *of,* &c. *of the other Part,* Witneſſeth, *That for and in Conſideration of the Sum of* 1000l. *of lawful* Britiſh *Money to the ſaid* W. B. *and* A. *his Wife in Hand paid by the ſaid* T. D. *The Receipt whereof they do hereby acknowledge, and for divers other good Cauſes and Conſiderations, he the ſaid* W. B. *hath covenanted and* *granted, and by theſe Preſents doth covenant and grant, to and with the ſaid* T. D. *his Heirs and Aſſigns, That he the ſaid* W. B. *and* A. *his Wife, ſhall and will on this Side, and before the End of* Eaſter *Term next coming, before the King's Majeſty's Juſtices of his Court of* Common Pleas *at* Weſtminſter, *in due Form of Law, levy and acknowledge unto the ſaid* T. D. *and his Heirs, one* Fine ſur Cogniſance de Droit come ceo, &c. *with Proclamations to be thereupon had, according to the Form of the Statute in that Caſe made and provided, of* all *that Meſſuage or Tenement, with the Appurtenances, ſituate,* &c. *And alſo of all thoſe Pieces or Parcels of Land lying and being,* &c. *and containing,* &c. *with all and ſingular their Appurtenances; all which ſaid Premiſſes were formerly purchaſed of,* &c. *and are now in the Tenure of,* &c. *And alſo of the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Premiſſes abovementioned, and of every Part and Parcel thereof, with the Appurtenances, by ſuch Name and Names, Quantity and Number of Acres and Things, and in ſuch Manner as by the ſaid* T. D. *or his Counſel learned in the Law ſhall be reaſonably deviſed or adviſed and required.* Which *ſaid* Fine *ſo to be had and levied; and all and every other* Fine *and* Fines *already had, or at any Time hereafter to be had, levied, ſued or proſecuted of the ſaid Premiſſes, or any Part thereof, by it ſelf or jointly, with any other Lands or Tenements, by or between the ſaid Parties to theſe Preſents, or by or between them, or any or either of them, and any other Perſon or Perſons, as for and concerning all and ſingular the ſaid Premiſſes abovementioned with the Appurtenances,* ſhall be *and enure, and ſhall be adjudged, eſteemed, and taken to be and enure, to and for the only proper Uſe and Behoof of the ſaid* T. D. *his Heirs and Aſſigns for ever, and to and for none other Uſe, Intent or Purpoſe whatſoever.* In Witneſs, *&c.*

An Indenture *declaring the* Uſes of a Fine, *by Way of Settlement.*

THIS Indenture *made,* &c. Between A. B. *of,* &c. *Eſq;* and M. *his Wife, of the one Part, and* C. D. *of,* &c. *of the other Part,* Witneſſeth, *That the ſaid* A. B. *and* M. *his Wife, for the Settling and Aſſuring of the Manors, Lands, Tenements, Hereditaments and Premiſſes herein after mentioned, to the ſeveral Uſes herein after declared and limited, and for divers other good Cauſes and Conſiderations,* he, *the ſaid* A. B. *hath covenanted and granted, and by theſe Preſents doth for himſelf, his Heirs and Aſſigns, covenant and grant, to and with the ſaid* C. D. *his Heirs and Aſſigns; and the ſaid* M. *Wife of the ſaid* A. B. *doth hereby conſent and agree, that the ſaid* A. B. *and* M. *his Wife ſhall and will, before the End of* Michaelmas *Term next enſuing, acknowledge and levy in due Form of Law, before his Majeſty's Juſtices of the Court of* Common Pleas *at* Weſtminſter, *unto the ſaid* C. D. *his Heirs and Aſſigns, one* Fine ſur Conuſance de Droit come ceo, &c. *with Proclamations to be thereupon had according to the Form of the Statute in that Caſe made, of* all *that the Manor of,* &c. *And of all that Meſſuage or Farm called,* &c. *and alſo the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Manor and Premiſſes abovementioned, and of every Part and Parcel thereof with the Appurtenances, by the Names of twenty five Meſſuages, fifteen Cottages, two Mills, four hundred Acres of Land, three hundred Acres of Meadow, five hundred Acres of Paſture, thirty Acres of Wood, and thirty Pounds Rent, and Common of Paſture for all Manner of Cattle,* &c. *with the Appurtenances in,* &c. *aforeſaid. And it is hereby agreed by and between the ſaid Parties to theſe Preſents, and the true Meaning hereof is, and it is hereby ſo declared, That the* Fine *ſo as aforeſaid, or in any other Manner to be had and levied of the ſaid Manor and Premiſſes, or any Part thereof; and alſo all and every other* Fine *and* Fines *already had, levied, or to be had and levied of the ſame Premiſſes, or any Part thereof, ſhall be and enure, and ſhall be adjudged, eſteemed, and taken to be and enure; and the ſaid* C. D. *and his Heirs, and all and every other Perſon and Perſons, and his and their Heirs now ſtanding and being ſeiſed, or which at the Perfecting of the ſaid* Fine *ſhall ſtand or be ſeiſed of the ſaid Manor and Premiſſes, or any Part thereof, ſhall at all Times hereafter ſtand and be ſeiſed thereof, and of every Part thereof, with the Appurtenances, to and for the ſeveral Uſes, Intents and Purpoſes herein after limited, expreſſed and declared, (that is to ſay)* As for and concerning *the ſaid Manor, with its Rights, Members, and Appurtenances, and all and ſingular the Meſſuages, Cottages, Lands, Tenements, Commons, Waſtes, Waſte* Grounds, *Mines, Royalties, Rents and Hereditaments whatſoever, to the ſame Manor belonging or appertaining, or accepted, reputed, or taken as Part, Parcel, or Member thereof, to the Uſe and Behoof of the ſaid* A. B. *and* M. B. *for and during the Term of their natural Lives, and the Life of the longeſt Liver of them, without Impeachment of or for any Manner of Waſte; and with full Power and Authority for the ſaid* A. B. *alone, during his Life, and after his Death, for the ſame* M. *alone, during her Life, to make and grant any Leaſe or Leaſes, or Grant or Grants by Copy of Court-Roll, for one, two, or three Life or Lives, in Poſſeſſion or Reverſion, of any Lands or Tenements, Parcel of the ſaid Manor, which have been uſually ſo granted; provided that there ſhall be no more than three Lives at any one Time in Being on the ſaid Premiſſes, or any Part thereof, and ſo as the uſual Rents, Heriots and Services, or more ſhall be reſerved on ſuch Leaſes and Copies reſpectively; and from and after the Deceaſe of the ſaid* A. B. *and* M. *his Wife, and the Survivor of them, then to the Uſe and Behoof of the right Heirs of the ſaid* A. B. *for ever.* And as for and concerning *all and ſingular the ſaid Meſſuage or Farm called,* &c. *with the Appurtenances, whereof the ſaid* Fine *ſhall be ſo levied, and whereof no Uſe is herein before declared, to the only proper Uſe and Behoof of the ſaid* A. B. &c. *his Heirs and Aſſigns for ever; and to and for none other Uſe, Intent or Purpoſe whatſoever.* In Witneſs, *&c.*

A *Fine* may be levied of any Things whereof a *Præcipe quod reddat* lies; as of Manors, Meſſuages, Lands, Rents, *&c.* or of any Thing whereof a *Præcipe quod faciat* lies, as Cuſtoms, Services, *&c.* or whereof a *Præcipe quod permittat,* or *Præcipe quod teneat* may be brought. 2 *Inſt.* 513. And almoſt any Kind of Contract may be made and expreſſed by a *Fine,* as by a Deed; and therefore it may be ſo made that one of the Parties ſhall have the Land, and the other a Rent out of it; and that one ſhall have it for a Time, and another for another Time; alſo a Leaſe for Years, or a Jointure for a Wife, may be made; and a Gift in Tail, and a Remainder over, may be limited and created thereby. 1 *Rep.* 76. The King, and all Perſons who may lawfully grant by Deed, may levy a *Fine*; but not Infants, Ideots, Lunaticks, *&c.* 7 *Rep.* 32. Civil Corporations, as Mayor and Commonalty, *&c.* may levy a *Fine* of Land belonging to their Body: But Biſhops, Deans and Chapters, Parſons, *&c.* are reſtrained from levying of *Fines* to bind their Succeſſors. All Perſons that may be Grantees, or that may take by Contract, may take by *Fine*: Though in Caſes of Infants, Feme Coverts, Perſons attainted, Aliens, *&c.* who, it is ſaid, may take by *Fine,* before the Ingroſſing of the *Fine,* there goes a Writ to the Juſtices of *C. B. quod permittat finem Levari. Litt.* 669. Tenant in Fee-ſimple, Fee-tail general, or ſpecial, Tenant in Remainder or Reverſion, may levy a *Fine* of their Eſtates; ſo may Tenant for Life, to hold to the Cogniſee for Life of Tenant for Life: But a Perſon who is Tenant, or hath an Intereſt only for Years, cannot levy a *Fine* of his Term to another. 3 *Rep.* 77. 5 *Rep.* 124. As *Fines* may be levied of Things in Poſſeſſion; ſo they may be levied of a Remainder or Reverſion, or of a

Right *in futuro.* 3 *Rep.* 90. But if a Leſſee for Years, or a Diſſeiſee, or one that hath Right only to a Reverſion or Remainder, levy a *Fine* to a Stranger that hath nothing in the Land, this *Fine* will be void or voidable as to the Stranger; and he that hath Cauſe to except againſt it, may ſhew that the Freehold and Seiſin was in another at the Time of the *Fine* levied, and that *Partes* Finis *nihil habuerunt tempore Levationis* Finis, and by this avoid the *Fine:* And yet a Diſſeiſor, who hath a Fee-ſimple by Wrong in him, may levy a *Fine* to a Stranger that hath nothing in the Land, like unto one that is rightfully ſeiſed of Land in Fee, *&c.* and it will be a good *Fine. Plowd.* 353. 3 *Rep.* 87. If the Cogniſor of a *Fine* hath nothing in the Land paſſed, at the Time of the *Fine* levied, the Fine may be avoided: But where the Cogniſor or Cogniſee is ſeiſed of an Eſtate of Freehold, whether by Right or by Wrong, the *Fine* will be a good *Fine* in Point of Eſtate. 41 E. 3. 14. 22 *Hen.* 6. 43. 27 *Hen.* 8. *Fines* may be had of all Things *in Eſſe tempore Finis,* which are inheritable; but not of Things uncertain; or of Lands held in Tail by the King's Letters Patent; of Land reſtrained from Sale by Act of Parliament, or of Lands in Right of a Man's Wife, without the Wife, *&c.* 5 *Rep.* 225. *Weſt. Sect.* 25. Lands aſſured for Dower, or Term of Life, or in Tail, to any Woman by Means of her Husband, or his Anceſtors, cannot be conveyed away from her by *Fine, &c.* without her Act: But if a Woman and her Husband levy a *Fine* of her Jointure, ſhe is barred of the ſame; though if the Jointure be made after Coverture, when the Wife hath an Election to have her Jointure or Dower on the Huſband's Death, it is ſaid this will be no Bar of her Dower in the Reſidue of the Land of the Husband. *Dyer* 358. *Leon.* 285. No *Fine* of the Husband alone, of the Lands of the Wife, ſhall hurt her, but that ſhe or her Heirs, or ſuch as have Right may avoid it; but if ſhe joins with him, it ſhall bind her and her Heirs. 37 *H.* 8. Women Coverts ought to be cautious in levying *Fines* with their Husbands of their own Lands; and if a married Woman under Age levies a *Fine* of her Lands, ſhe cannot reverſe it during her Husband's Life, nor after his Death, if ſhe be of full Age when he dies; but if the Husband dies during her Minority, ſhe may. *Dyer* 359. *Wood's Inſt.* 243. A married Female ought not to be admitted alone without her Husband to levy a *Fine*; and if ſhe be received, the Husband may avoid the *Fine* by Entry; but if he do not, it is good to bar her and her Heirs, except ſhe be an Infant at the Time of the *Fine* levied: The Huſband and Wife together may diſpoſe of her Land, *&c.* 12 *Rep.* 122. If Baron and Feme levy a *Fine,* the Feme within Age, ſhe may be brought into Court by *Habeas Corpus*; and if it be found by Inſpection, that ſhe is under Age, it hath been adjudged, where the Baron and Feme brought a Writ of Error, that as to both, *quod* Finis *Revocetur.* 1 *Leon.* 116, 117. 3 *Salk.* 168. Husband and Wife, Tenants in Special Tail, the Husband only levies a *Fine,* this bars the Iſſue in Tail; but it remains in Right to the Wife as to herſelf, and to all the Eſtates and Remainders depending upon it, and all the Conſequences of Benefit to herſelf and others, ſo long as ſhe lives, as if the *Fine* had not been levied. *Hob.* 257, 259. If a Husband make a Feoffment of the Wife's Land, upon Condition, which is broken, and the Feoffee levies a *Fine,* and the Huſband and Wife die having Iſſue, and five Years paſs; the Heir is barred to enter as Heir to the Father upon the Condition, but he ſhall have five Years after the Death of his Father, as Heir to his Mother. *Plowd.* 367. If a Woman with her ſecond Husband acknowledge a *Fine,* it ſhall not bind her; though if ſhe levies a *Fine* with her right Husband by a wrong Chriſtian Name, ſhe is bound by *Eſtoppel* during her Life, and the Tenant may plead, that ſhe by ſuch a Name levied the *Fine.* 1 *Aſſ. pl.* 11. *Brook* 117. When the Husband and Wife join in a *Fine* of the Wife's Lands, all the Eſtate paſſeth from her, and he is joined only for Conformity; ſo that if the *Fine* levied by Husband and Wife in ſuch a Caſe be reverſed, ſhe ſhall have Reſtitution. 2 *Rep.* 77. A Husband and his Wife covenanted to levy a *Fine* of the Lands of the Wife, to the Uſe of the Heirs of the Body of the Husband on the Wife, Remainder to the Husband in Fee; both dying without Iſſue; it was held that the Heir of the Wife had the Title, becauſe the Limitation to the Heirs of the Body of the Husband was merely void, there being no precedent Eſtate of Freehold for Life, *&c.* to ſupport it as a Remainder. 2 *Salk.* 675. 4 *Mod.* 153. If a Widow having an Eſtate in Dower accept of a *Fine,* and by the ſame *Fine* render back the Land for 100 Years, *&c.* this is a Forfeiture of her Eſtate within the Stat. 11 *H.* 7. 20. by which Statute ſhe may not make a greater Eſtate than for her own Life; if ſhe do, it is a preſent Forfeiture. 2 *Cro.* 689. If Tenant for Life grants a greater Eſtate by *Fine* than for his own Life, it is a Forfeiture: And if there be Tenant for Life, and Remainder for Life, and the Tenant for Life levy a *Fine* to him in Remainder and his Heirs, both their Eſtates are forfeited, the Tenant for Life by Levying the *Fine,* and the Remainder-Man for Life by accepting it. 2 *Lev.* 209. Where a *Fine* is levied by Tenant for Life, for a greater Eſtate, the *Fine* may be good; but it is a Forfeiture of the Eſtate of Tenant for Life, whereof he in Remainder, *&c.* may take preſent Advantage and enter: And when a Perſon enters for a Forfeiture, all Eſtates are avoided. *Dyer* 111. Tho' if ſuch a Tenant for Life levy a *Fine ſur Grant & Releaſe* to the Cogniſee for the Life of Tenant for Life; or by *Fine* grant a Rent out of the Land for a longer Time, the *Fine* is good, and there will be no Forfeiture of the Eſtate of Tenant for Life: So likewiſe if a *Fine* be levied of Lands by Tenant for Life to a Stranger, who thereby acknowledges all his Right to be in the Tenant for Life, and releaſes to him and his Heirs. 27 *Ed.* 1. 1. 44 *Ed.* 3. 36. If there be Tenant in Tail upon Condition not to alien, or diſcontinue the Lands, *&c.* if he doth, the Donor to re-enter, and his Iſſue levy a *Fine* of the Land, this is a Forfeiture of the Eſtate. 1 *Leon.* 292. An Eſtate being ſettled on Husband and Wife for Life, Remainder to firſt and other Sons in Tail, with Remainders over; after the Birth of their eldeſt Son, they by Releaſe and *Fine,* mortgaged the Lands: On a Bill exhibited againſt the Son to Redeem, *&c.* he pleaded the Marriage Settlement of his Father and Mother, whereby they were but Tenants for Life, and that this *Fine* was a Forfeiture of their Eſtate; and ſo it was adjudged. *Preced. Canc.* 591. But it is ſaid where a Wife by Settlement has only a Truſt for Life, if ſhe joins with her Husband in a Mortgage in Fee and *Fine* of the Lands; this Truſt is not forfeited, as it would be in Caſe of a legal Eſtate. 1 *Peere Williams* 147. A *Fine* is levied by Leſſee for Life, *&c.* who continues the Poſſeſſion, and pays the Rent; it ſhall not bind the Leſſor, who ſhall have five Years Claim after the Determination of the Leſſee's Eſtate, *&c.* 3 *Rep.* 77, 78. If one doth levy a *Fine* of my Land, while I am in Poſſeſſion, this will not hurt me; nor where a Stranger levies a *Fine* of my Lands let to a Tenant, if the Tenant pays me his Rent duly: And if there is Tenant in Tail, or for Life, Remainder in Tail, *&c.* And the firſt Tenant in Tail or for Life, bargains and ſells the Land by Deed inrolled, and levies a *Fine* to the Bargainee, the Remainders are not bound; for the Law adjudges them always in Poſſeſſion. 9 *Rep.* 106. Leſſees who pretend Title to the Inheritance of the Lands, cannot by *Fine* bar the Inheritance. 3 *Rep.* 77. But if a Leaſe is made for Years, and the Leſſor before Entry of the Leſſee levies a *Fine* with Proclamations, and the Leſſee doth not make his Claim within five Years, the Leſſee is barred, and no Relief can be had for him; for though the Leſſee for Years cannot levy a *Fine*, yet he ſhall be barred by a *Fine* levied by the Tenant of the Land, &c. 5 *Rep.* 124. If a Perſon hath a Remainder depending on an Eſtate for Years, and the Termor is diſſeiſed, and a *Fine* is levied and five Years paſs, &c. the Termor and Reverſioner are barred: Becauſe the Termor might preſently have entered, and he in Remainder had an Aſſiſe. *Weſt. Sect.* 183. In Caſe a Perſon enters upon and puts out a Copyholder, and the Diſſeiſor doth levy a *Fine* of the Lands, if the Copyholder ſuffer five Years to paſs after the Diſſeiſin and *Fine*, without making any Claim, the Intereſt of the Copyholder and his Lord are hereby barred for ever: And if a Copyholder makes a Feoffment in Fee upon good Conſideration, and the Feoffee levies a *Fine* with Proclamations, and five Years paſs, the Lord is barred; but if a Copyholder himſelf levies a *Fine* and five Years do paſs, the Lord is not barred, for the Copyholder not having a Freehold, the *Fine* will be void. *Wood's Inſt.* 247, 248. A *Fine* of *Ceſtui que Truſt* ſhall bar and transfer a Truſt, as it ſhould an Eſtate at Law, if it were on a good Conſideration. *Chanc. Rep.* 49. And *Fines* of *Ceſtui que Uſe* are as good as if levied of immediate Poſſeſſions, &c. 1 *R.* 3. 2 *Nelſ. Abr.* 860. Intereſts in Eſtates which may be barred by *Fine*, are either Intereſts by Common Law, or by Cuſtom; as Copyholds, &c. And if I have a Fee-ſimple, and am diſſeiſed, and the Diſſeiſor levies a *Fine* with Proclamations, and I do not claim within five Years after, I and my Heirs (Allowance being made for Impediments) are barred for ever. *Plowd.* 353. 3 *Rep.* 79. If a Man purchaſe Lands of another in Fee, and after finding his Title to be bad, and that a Stranger hath Right to the Land, levies a *Fine* thereof with Intent to bar him; and he ſuffers five Years to paſs without Claim, &c. he is barred of his Right for ever: And in theſe Caſes, none ſhall be relieved in Equity. 3 *Rep. Doct. & Stud.* 83, 155. A *Fine* with Proclamations levied by Perſons of Lands entailed to them or their Anceſtors, &c. is a good Bar againſt their Heirs, claiming only by ſuch Intail. 32 *H.* 8. *c.* 36. Where the Anceſtor is barred by the *Fine*, there for the moſt part the Heir is barred alſo. 9 *Rep.* 105. Although the Iſſue in Tail be within Age, out of the Realm, &c. when a *Fine* is had and the Proclamations paſſed; the Eſtate-tail ſhall be barred. 3 *Rep.* 84. If the Eſtate paſſed by the *Fine*, be afterwards (before all the Proclamations had) avoided, it is ſaid the Iſſue in Tail are barred by it. 3 *Rep.* 91. The Tenant in Tail to him and the Heirs Male of his Body hath three Sons, the Second levies a *Fine* in the Life of the Father, and the Father dies; here the Eldeſt is not barred. But if the Elder die without Iſſue, living the Second, it is a Bar to the Third. *Hob.* 333. See *Jenk. Cent.* 96. Tenant in Tail diſcontinues; the Diſcontinuee levies a *Fine* with Proclamations, and five Years paſs without Claim in the Life of Tenant in Tail: In this Caſe the Iſſue may have a *Formedon*, and ſhall not be barred; for his Father could not Claim. 'Tis otherwiſe where he is diſſeiſed, and the Diſſeiſor levies ſuch *Fine*; there the Tenant in Tail may Claim, &c. *Jenk. Cent.* 192. A Tenant for Life, and he that is next in Remainder in Tail join in a *Fine*, it is a good Bar to the Iſſue in Tail for ever, ſo long as that Eſtate-tail ſhall continue. 10 *Rep.* 96. But though a *Fine* bars the Eſtate-tail and the Iſſue in Tail, yet it doth not Remainders or Reverſions; tho' Recoveries bar them all. And if one makes his Title as Heir by another, and not by him that levied the *Fine*, he is not barred. 1 *Cro.* 377. Alſo he that is privy in Blood only, and not in Eſtate, is not within the Statutes to be barred by a *Fine*: As if Lands are given to a Man and the Heirs Females of his Body, and he hath a Son and a Daughter, and the Son levies a *Fine*, and dies without Iſſue, this is no Bar to the Daughter; for notwithſtanding ſhe be Heir to his Blood, yet ſhe is not Heir to the Eſtate, nor need make her Conveyance to it by him; but if her Father had levied the *Fine*, it would have been otherwiſe. *Trin.* 21 *Jac.* A *Fine*, &c. cannot deſtroy an executory Eſtate, which depends upon Contingencies, as it is uncertain whether there will ever be an Eſtate in Being for the *Fine* to work upon; but a *Fine* and Recovery will bar an Eſtate in Remainder, as that is an Eſtate veſted. 1 *Lill. Abr.* 617. Eſtates by Statute Merchant, Statute-Staple, and *Elegit*, may be barred, if a *Fine* is levied, and thoſe that have Right ſuffer five Years to paſs without Claim, &c. 5 *Rep.* 124. If a *Fine* be levied of Lands in Ancient Demeſne, it doth not bar by the Statute of Non-claim. *Lut.* 781. As Deans, Biſhops, Parſons, &c. are prohibited by Statute to levy *Fines*, and may not have a Writ of Right; they are not barred by five Years Non-claim, and their Non-claim will not prejudice their Succeſſors. *Plowd.* 238, 375. If a Corporation which hath an abſolute Eſtate, ſo as to maintain a Writ of Right, is diſſeiſed of Land, and a *Fine* is levied by the Diſſeiſor; if they claim not in five Years, they are barred: But in ſuch Caſe it is ſaid, that every Succeſſor being Head of the Corporation, may have a new five Years to make their Claim. *Plowd.* 537. By the ancient Common Law, he that had Right was to make his Claim, &c. within a Year and a Day of the *Fine* levied and the Execution thereof, or he was barred for ever: But this Bar is now gone; and if a *Fine* without Proclamations according to the Common Law be now levied, he that hath Right may make his Claim or Entry, &c. at any Time to prevent the Bar. 1 *Inſt.* 254, 262. By Statute, a Claim or Entry to avoid the Bar of a *Fine* is to be made in five Years: And no Claim or Entry ſhall avoid any *Fine* with Proclamations, unleſs an Action be commenced within one Year after ſuch Entry, and proſecuted with Effect. 1 *R.* 3. *c.* 7. 4 & 5 *Ann. c.* 16. The Statutes of 4 *Hen.* 7. *c.* 24. and 32 *Hen.* 8. *c.* 36. declare the Force of *Fines* how far they bar and take away the Entry or Action of Parties, Privies and Strangers, having Right: Privies in Blood, as Heirs of the Cogniſor are barred preſently by a *Fine*; but Strangers to the *Fine*, ſuch as are not Parties nor Privies, have five Years to enter and claim their Rights, &c. *Plowd.* 367, 375. Feme Coverts have five Years after the Death of their Husbands, to avoid the *Fine* of the Husband of the Wife's Lands; and alſo to claim their Dower; and if they do not make their Claim in that Time by Action or Entry, they are barred by Statute. *Dyer* 72. 2 *Rep.* 93. An Infant ſhall have five Years after he comes of Age, although he was in his Mother's Womb at the Time of the *Fine* levied. *Plowd.* 359. And an Infant is allowed Time, during his Minority, to reverſe his own *Fine* and prevent the Bar; and if not reverſed during that Time, their *Fines* will be good. *Aſſ. pl.* 53. Strangers out of the Realm at the Time of the *Fine* levied, ſhall have five Years after their Return to prevent the Bar; and ſo if they were in *England* when the *Fine* was levied, and within five Years are ſent in the King's Service by his Commandment. *Plowd.* 366. A Perſon in *Scotland* or *Ireland* ſhall be ſaid to be out of the Realm. 4 *H.* 7. Madmen, &c. have five Years after the Cure of their Maladies, and though the Infirmity happen after the *Fine* levied, if before the laſt Proclamation. *Plowd.* 367. *Dyer* 3. And they who have divers Defects, have five Years after the laſt Infirmity removed; but if the Impediments are once wholly gone, and afterwards the Party relapſes into the like again, the five Years ſhall begin immediately after the firſt Removal; and if the Party dies, his Heir ſhall not have a new five Years. *Plowd.* 375. *Dyer* 233. If a Feme Covert dies during the Coverture, being no Party to the *Fine*, *&c.* or if an Infant being Party to the *Fine*, and having preſent Right, dies in his Infancy: If a Perſon beyond Sea when the *Fine* was levied, never return, *&c.* a Perſon in Priſon dies whilſt therein; or if one *Non Compos*, *&c.* dies ſuch, in all theſe Caſes, their Heirs, are not limited to any Time. 2 *Inſt.* 519, 520. Five Years are given after a Remainder falls; and five Years after the Forfeiture of Tenant for Life. *Plowd.* 374. And he that hath two Titles, ſhall have two five Years to make his Claim. *Jenk. Ca.* 45. A future Intereſt of another Perſon, cannot be barred by *Fine* and Non-claim, until five Years after it happens; as in Caſe of a Remainder or Reverſion. 2 *Rep.* 93. *Raym.* 151. And where there is no preſent nor future Right in Land, *&c.* only a Poſſibility at the Time of Levying the *Fine*, a Perſon may enter and claim when he pleaſes. 10 *Rep.* 49. Alſo when there is only a Right to a Rent, *&c* iſſuing out of Lands, and not the Land in the *Fine*, the Perſons that have it are not barred at all. 5 *Rep.* 124. No *Fine* bars any Eſtate in Poſſeſſion or Reverſion, which is not deveſted and put to a Right. 9 *Rep.* 106. He that at the Time of a *Fine* levied had not any Title to enter, ſhall not be immediately barred by the *Fine*: But this is in Caſe of an Intereſt not turned to a Right, where a Man is not bound to claim; and not in the Caſe of Tenant in Tail, barring his Iſſue. 32 *Hen.* 8. When an Eſtate is put to a Right, and there comes a *Fine* and Non-claim, it is a perpetual Bar. *Carter* 82, 163. A *Fine*, Grant and Render was levied, and a *Scire facias* brought and Judgment given, and alſo Writ of Seiſin awarded, but not executed; and afterwards a ſecond *Fine* was levied and executed, and five Years paſſed; it was the Opinion of the Court that the ſecond *Fine* barred the firſt. *March's Rep.* 194. 2 *Nelſ. Abr.* 864. If a Man that is attainted of Treaſon or Felony, levy a *Fine* of his Land; this, as to the King and Lord of whom the Land is held, is void, and no Bar to their Diſadvantage and Title of Forfeiture: But as to all others it is a good Bar. 2 *Shep. Abr.* 241. One levied a *Fine*, and then was outlawed for Treaſon and died; the Heir reverſed the Outlawry; and it was held the Wife ſhould have her Dower, if ſhe bring her Action within five Years. *Moor cap.* 879. Where a *Fine* may be a Bar as to ſome Lands, and not as to other Lands. See *F. N. B.* 98. *Plowd.* A *Fine* was levied, and five Years paſſed without bringing a Writ of Error; and it was held a good Bar within the Stat. 4 *Hen.* 7. *cap.* 14. *Cro. Jac.* 333. But it has been adjudged that where five Years paſs, that ſhall not hinder, where the *Fine* is erroneous. 2 *Nelſ. Abr.* 838. And *Fines* may be reverſed for Error, ſo as the Writ of Error be brought in twenty Years, *&c.* and not afterwards, by Stat. 10 & 11 *W.* 3. *cap.* 14. *Fines* are not reverſible for Raſure, Interlineation, Miſentry, *&c.* or any Want of Form; but 'tis otherwiſe if of Subſtance. 23 *Eliz.* A *Fine* ſhall not be reverſed for ſmall Variance, which will not hurt it; nor is there Occaſion for a preciſe Form in a Render upon a *Fine*, becauſe it is only an *amicable Aſſurance* upon Record. 5 *Rep.* 38. If a *Fine* be levied of Lands in a wrong Pariſh, though the Pariſh in which they lie be not named, it will be a good *Fine*, and not be erroneous, being an amicable Aſſurance: And a *Fine* of a Cloſe may be levied by a *Lieu Conus* in a Town, without mentioning the Town, Vill, *&c.* *Godb* 440. 2 *Cro* 574. 2 *Mod.* 47. If there be Want of an Original, or not Writs of Covenant for Lands in every County; or if there is any notorious Error, in the Suing out a *Fine*, or any Fraud or Deceit, *&c.* Writ of Error may be had to make void the *Fine*. 1 *Inſt.* 9. 1 *Cro.* 469. So if either of the Parties dies before finiſhed, *&c.* And if the Cogniſor of a *Fine* die before the Return of the Writ of Covenant, (though after the Caption of the *Fine*) it is ſaid it may be reverſed. 3 *Salk.* 168. A Writ of Error may be brought in *B. R.* to reverſe a Fine levied in *C. B.* and the Tranſcript only not the very Record of the *Fine* is removed in theſe Caſes: But if the Court of *B. R.* adjudge it erroneous; then a *Certiorari* goes to the Chirographer to certify the *Fine* itſelf, and when it comes up it is cancelled. 1 *Salk.* 341. And where on a Writ of Error in *B. R.* to reverſe a *Fine* in *C. B.* the *Fine* was affirmed; a *Writ of Error coram vobis Reſiden.* hath been allowed to lie. *Ibid.* 357. The Court of *B. R.* will not reverſe a *Fine*, without a *Sci. fac.* returned againſt the Tertenant, becauſe the Cogniſees are but nominal Perſons. *Ibid.* 339. A *Fine* may be ſet aſide, by pleading that neither of the Parties had any Thing in the Eſtate, at the Time of Levying the *Fine*, &c. But thoſe that are privy to the Perſon that levied the *Fine*, are eſtopped to plead this Plea. 3 *Rep.* 88. In the Pleading a *Fine* or Recovery to Uſes, the Deeds need not be ſet forth; but the Pleader is to ſay, that the *Fine*, *&c.* was levied to ſuch Uſes, and produce the Deeds in Evidence to prove the Uſes. 8 *W.* 3. *B. R.* A fraudulent obtaining of a *Fine*, or Irregularity therein, cannot be relieved againſt in *Chancery*; but muſt be in the Court where levied, though the Officers may be examined and puniſhed, if they did it *Criminaliter.* Preced. Canc. 150. And where one was perſonated on levying a *Fine*, it was not ſet aſide in Equity, but a Reconveyance ordered of the Land. *Ibid.* 151. *Fines* levied before the Juſtices in *Wales*; or in the Counties Palatine of *Cheſter*, *Durham*, &c. have the ſame Effect as *Fines* levied before the Juſtices of *C. B.* 34 & 35 *H.* 8. 2 & 3 *Ed.* 6. 5 *Eliz.* &c. Sometimes a Sum of Money paid for the Income of Lands, *&c.* let by Leaſe, is called *Fine*. And *Fine* alſo ſignifies an Amends, or Puniſhment for an Offence committed; in which Caſe a Man is ſaid *facere finem de Tranſgreſſione cum Rege*, *&c.* And in all Caſes it is a *final* Concluſion or End of Differences.

Fine adnullando levato Tenemento quod fuit de antiquo Dominico, Is a Writ directed to the Juſtices of *C. B.* for diſannulling a *Fine* levied of Lands in *Antient Demeſne*, to the Prejudice of the Lord. *Reg. Orig.* 15.

Fines for Alienation, Were *Fines* paid to the King by his Tenants in *Chief*, for Licence to *alien* their Lands according to the Statute 1 *Ed.* 3. *c.* 12. But theſe are taken away by the Stat. 12 *Car.* 2. *cap.* 24.

Fines for Offences. Among the Antients, all *Puniſhments* were by *Fine*; but in Proceſs of Time this Sort of Puniſhment became too mild, and then for ſome Crimes Death was inflicted. And a *Fine* is a Sum of Money which one is to pay to the King, for any Contempt or Offence againſt the Government. 3 *Inſt.* 218. 3 *Salk.* 32. All *Fines* belong to the King, and the Reaſon is, becauſe the Courts of Juſtice are ſupported at his Charge; and whereever the Law puts the King to any Charge for the Support and Protection of his People, it provides Money for that Purpoſe. *Bract.* 129. Where a Statute impoſes a *Fine* at the Will and Pleaſure of the King, that is intended of his Judges, who are to impoſe the *Fine*. 4 *Inſt.* 71. Courts of Record only can *fine* and *impriſon* a Perſon: And ſuch a Court may *fine* a Man for an Offence committed in Court in their View, or by Confeſſion of the Party recorded in Court. 1 *Lill. Abr.* 621. A Man ſhall be *fined* and impriſoned for all Contempts done to any Court of Record againſt the Commandment of the King's Writs, *&c.* 8 *Rep.* 60. If a Perſon is arreſted coming to the Courts of Juſtice to anſwer a Writ, the Offender doing it ſhall be *fined* for the Contempt: But there has been a Difference made where it is done by the Plaintiff in the Writ, and a Stranger, who it is ſaid ſhall not be *fined*. 9 *H.* 6. 55. 1 *Danv.* 469. If an Officer of the Court neglects his Duty, and gives not due Attendance; a Clerk of the Peace doth not draw an Indictment well in Matter of Form, or Return thereof, upon a *Certiorari* to remove the Indictment into *B. R.* If a Sheriff, *&c.* make an inſufficient Return of a *Habeas Corpus* iſſuing out of *B. R. &c.* Or if Juſtices of Peace proceed on an Indictment after a *Certiorari* iſſued to remove the Indictment, the Court may ſet a *Fine* upon them. 1 *Lill.* 620. When a Juror at the Bar will not be ſworn, he may be *fined*. 7 *H.* 6. 12. And if one of the Jury depart without giving his Verdict; or any of the Jury give their Verdict to the Court before they are all agreed, they may be *fined*. 8 *Rep.* 38. 40 *Aſſ.* 10. In Actions *quare Vi & Armis*, as Treſpaſs, and the like; if Judgment paſs againſt the Defendant in a Court of Record, he ſhall be *fined*. 8 *Rep.* 59. But in Actions which have not ſomething of Force, or Fraud, or Deceit to the Court; if the Defendant come the firſt Day he is called, and tender the Thing demanded to the Plaintiff, he is not to be *fined*. 5 *Rep.* 49. Where a Plaintiff gets Judgment in a real Action by Deceit, the Defendant not having Summons, *&c.* he may be *fined*. 8 *Rep.* 99. If a Writ abates through the Default of the Plaintiff, he ſhall be *fined:* And ſo if the Plaintiff be nonſuited. 34 *Aſſ.* 9. And if in Appeal of Maihem, *&c.* againſt ſeveral, ſome are found Guilty, and the Plaintiff prays Judgment againſt them only, and relinquiſhes his Suit againſt the others, he ſhall be *fined* for not proceeding againſt the Reſt. 22 *Aſſ.* 82. If in an Action a Man denies his own Deed, and this is found againſt him by Verdict, he ſhall be *fined* for his Falſity, and the Trouble to the Jury. 8 *Rep.* 60. 1 *Danv.* 471. But where a Perſon denies a Recovery or other Record, to which he himſelf is Party, he ſhall not be *fined*; for it is not his Act but the Act of the Court, and he does not deny it abſolutely, but *non habetur tale Recordum. Ibid.* All *Capiatur Fines* are taken away by Stat. 4 & 5 *W. & M. cap.* 12. Except where a Defendant pleads *Non eſt factum*, and it is found againſt him. 1 *Lill. Abr.* 621. In Treſpaſs, Aſſault and Battery, *&c.* there can be no *Capiatur pro Fine* entered ſince the Statute 5 & 6 *W.* 3. but inſtead thereof the Plaintiff is to have ſo much in Coſts allowed him, to pay to the King for the *Fine:* And in *B. R.* Judgment is entered up without any Notice of the *Fine*, the Law being altered by this Statute: In *C. B.* they enter their Judgments *nihil de Fine quia remittitur per Stat.* 1 *Salk.* 54. 2 *Nelſ. Abr.* 847. To every *Fine* Impriſonment is incident; and when the Judgment is *quod Defendens Capiatur*, that is *Capiatur quouſque Finem fecerit.* 8 *Rep.* 59. Where an Offender is to be *fined*, the uſual Judgment is *Quod Capiatur, i. e.* to be impriſoned 'till the *Fine* is paid: But if the *Fine* is tendered, there ought to be no Impriſonment. 1 *Vent.* 116. When a Perſon is *fined* to the King, notwithſtanding the Body remains in Priſon, 'tis ſaid the King ſhall be ſatiſfied the *Fine* out of the Offender's Eſtate. 4 *Leon. c.* 393. A *Fine* may be mitigated in the ſame Term wherein it was ſet, it being under the Power of the Court during that Time; but it may not be done afterwards. *Raym.* 376. And *Fines* aſſeſſed in Court by Judgment upon an Information, cannot be afterwards mitigated. *Cro. Car.* 251. If a *Fine* certain is impoſed by Statute on any Conviction, the Court cannot mitigate it; but if the Party comes in before the Conviction, and ſubmits himſelf to the Court, they may aſſeſs a leſs *Fine*; for he is not convicted, and perhaps never might. 3 *Salk.* 33. The Court of *Exchequer* may mitigate a *Fine* certain, becauſe it is a Court of Equity, and they have a Privy Seal for it. *Ibid.* A Defendant being indicted for an Aſſault, confeſſed it, and ſubmitted to a ſmall *Fine*; and it was adjudged that in ſuch a Caſe he may produce Affidavits to prove on the Proſecutor that it was *ſon Aſſault*, and that in Mitigation of the *Fine*; though this cannot be done after he is found Guilty. 1 *Salk.* 55. If a Perſon is found Guilty of a Miſdemeanor upon Indictment, and fined, he cannot move to mitigate the *Fine*, unleſs he appear in Perſon; but one abſent may ſubmit to a *Fine*, if the Clerk in Court will undertake to pay it. 1 *Vent.* 209, 270. 1 *Salk.* 55. 2 *Hawk.* 446. It is a common Practice in the Court of *B. R.* to give a Defendant Leave to ſpeak with the Proſecutor, *i. e.* to make Satisfaction for the Coſts of the Proſecution, and alſo for Damages ſuſtained, that there may be an End of Suits; the Court at the ſame Time ſhewing on that Account an Inclination to ſet a moderate *Fine* on Behalf of the King. *Wood's Inſt.* 653. And in Caſes where Coſts are not given by Law, after a Proſecutor has accepted Coſts from the Defendant, he cannot aggravate the *Fine*; becauſe having no Right to demand Coſts, if he takes them, it ſhall be intended by Way of Satisfaction of the Wrong. 2 *Hawk. P.C.* 292. A Joint Award of one *Fine* againſt divers Perſons, is erroneous; it ought to be ſeveral againſt each Defendant, for otherwiſe one who hath paid his Part might be continued in Priſon 'till all the others have paid theirs likewiſe, which would be in Effect to puniſh him for the Offence of another. 2 *Hawk.* 446. A Man was *fined* a great Sum who drank a Health to the pious Memory of a Traitor, that was executed, *&c. Raym.* 376. 3 *Mod.* 52. *Fines* to the King are *eſtreated* into the *Exchequer.*

Fines le Roy, Are all *Fines* to the King; and under this Head are included *Fines* for *Original Writs.* Originals on *Treſpaſs* in the Caſe, where the Damages are laid above 40 *l.* pay a *Fine*, *viz.* from 40 *l.* Damages to 100 Marks, 6 *s.* 8 *d.* from 100 Marks to 100 *l.* the *Fine* is 10 *s.* From 100 *l.* to 100 Marks, 13 *s.* 4 *d.* From 200 to 400 Marks, 16 *s.* 8 *d.* From 400 Marks to 200 *l.* it is 1 *l.* *Fine*; and ſo for every 100 Marks more, you pay 6 *s.* 8 *d.* and every 100 *l.* further 10 *s.* *Practiſ. Attorn.* 1 *Edit. pag.* 132. And *Fines* are paid for Original Writs in *Debt*; for every Writ of 40 *l.* Debt, 6 *s.* 8 *d.* and if it be of 100 Marks, but 6 *s.* 8 *d.* and for every 100 Marks 6 *s.* 8 *d. &c.* Alſo for every Writ of *Plea of Land*, if it be not a Writ of Right Patent, which is for the yearly Value of 5 Marks, 6 *s.* 8 *d.* and ſo according to that Rate. 19 *H.* 6. 44. 7 *Hen.* 6. 33. *New Nat. Br.* 212.

Fine non capiendo pro pulchre Placitando, Is a Writ to inhibit *Officers* of Courts to take *Fines* for fair *Pleading. Reg. Orig.* 179.

Fine capiendo pro Terris, &c. A Writ lying where a Perſon upon Conviction of any Offence by Jury, hath his *Lands and Goods* taken into the *King's* Hand, and his Body is committed to Priſon, to be remitted his Impriſonment, and have his Lands and Goods redeliver'd him, on obtaining Favour for a Sum of Money, *&c. Reg. Orig. fol.* 142.

Fine pro Rediſſeiſina capienda, Is a Writ that lies for the Releaſe of one impriſoned for a *Rediſſeiſin*, on Payment of a reaſonable *Fine. Reg. Orig.* 222.

Fine Force, Is where a Perſon is *forced* to do that which he can no ways help; ſo that it ſeems to ſignify an abſolute Neceſſity or Conſtraint not avoidable. *Old Nat. Br.* 68. *Stat.* 35 *H.* 8. *c.* 12.

Finire, To fine, or pay a *Fine* upon Compoſition and making Satisfaction, *&c.* It is the ſame with *Finem facere*, mentioned in *Leg. H.* 1. *cap.* 53. And in *Brompton, p.* 1105.——— *Quando Rex* Scotiæ *cum Domino Rege* Finivit, *&c.* And in *Hovedon, p.* 783.

Finitio, Death, ſo called; becauſe *Vita* Finitur *morte.* Blount.

Finors of Gold and Silver, Are thoſe Perſons that purify and ſeparate Gold and Silver from other coarſer Metals, by Fire and Water. 4 *H.* 7. *c.* 2. They are not to allay it; or ſell the ſame, ſave only to the Maſter of the Mint, Goldſmiths, &c. *Ibid.*

Firdfare and **Firdwite**; See *Ferdſare* and *Ferdwit.* Leg. Canuti, par. 2. c. 22.

Firderinga, A Preparation to go into the Army. *Leg. H.* 1.

Fire and **Fire-cocks.** Church-wardens in *London* and within the Bills of Mortality, are to fix *Fire-Cocks*, &c. at proper Diſtances in Streets, and keep a large Engine and Hand-Engine for extinguiſhing *Fire*, under the Penalty of 10 *l.* &c. *Stat.* 6 *Ann. c.* 31. To prevent *Fires*, Workmen in the City of *London*, &c. muſt erect Party-Walls between Buildings of Brick or Stone, of a certain Thickneſs, &c. under Penalties. Stat. 7 *Ann. c.* 17. And on the Breaking out of any *Fire*, all the Conſtables and Beadles ſhall repair to the Place with their Staves, and be aſſiſting in putting out the ſame, and cauſing People to work, &c. No Action ſhall be had againſt any Perſon in whoſe Houſe or Chamber a *Fire* ſhall begin. 6 *Ann.* 10 *An. c.* 14. See *Arſon.*

Firebare, (Sax.) Signifies a *Beacon* or high Tower by the Sea-ſide, wherein were continual Lights, either to direct Sailors in the Night, or to give Warning of the Approach of an Enemy.—— *Quod ſine dilatione levari & reparari fac. ſigna &* Firebares *ſuper montes altiores in quolibet Hundredo, ita quod tota patria, per illa ſigna, quotieſcunque neceſſe fuerit, præmunire poteſt,* &c. Ordinatio *obſervanda à* Lynne *uſque* Yarmouth. *Temp. Ed.* 2.

Firebote, Fuel for *Firing* for neceſſary Uſe, allowed by Law to Tenants out of the Lands, &c. granted them. See *Eſtovers.*

Firma, Is taken for Victuals or Proviſions; alſo Rent, &c.

Firma Alba, Rent of Lands let to Farm paid in Silver, not in Proviſion for the Lord's Houſe.

Firmam Noctis, Was a Cuſtom or Tribute paid towards the Entertainment of the King for one Night, according to *Domeſday.*——— *Comes Mertion* T. R. E. *Reddebat* Firmam *unius* Noctis, &c. *i. e.* Proviſion or Entertainment for one Night, or the Value of it. *Temp. Reg. Edw. Confeſſ.*

Firmam Regis, Antiently *pro* Villa Regia, *ſeu* Regis Manerio. *Spelm.*

Firmatio, *Firmationis Tempus.* Doe-Seaſon, as oppoſed to Buck-Seaſon. 31 *Hen.* 3. *Firmatio* ſignifies alſo a Supplying with Food. *Leg. Inæ, cap.* 34.

Firmura. *Will. de Creſſi* gave to the Monks of *Blyth*, a Mill, *cum libera* Firmura of the Dam of it. *Reg. de Blyth.* This has been interpreted Liberty to ſcour and repair the Mill-Dam, and carry away the Soil, &c. And Dr. *Thornton* Engliſhes it *Free-Firmage.*

Firſt-fruits, (*Primitiæ*) Are the Profits after Avoidance, of every Spiritual Living for the firſt Year, according to the Valuation thereof in the King's Books. Theſe were given in ancient Time to the *Pope* throughout all Chriſtendom; and were firſt claimed by him in *England* of ſuch Foreigners as he beſtowed Benefices on here by Way of Proviſion; afterwards they were demanded of the Clerks of all Spiritual Patrons, and at Length of all other Clerks on their Admiſſion to Benefices: But upon the throwing off the Popes Supremacy in the Reign of King *Hen.* 8. they were tranſlated to and veſted in the King, as appears by the Stat. 26 *H.* 8. *c.* 3. And for the Ordering thereof, there was a Court erected 32 *Hen.* 8. but diſſolved *Anno* 1 *Mar.* Though by 1 *Eliz.* theſe Profits are reduced again to the Crown, yet the Court was never reſtored; for all Matters formerly handled therein, were transferred to the *Exchequer*, within the Survey of which Court they now remain. By the Statute 26 *Hen.* 8. the Lord Chancellor, &c. is empowered to examine into the Valne of *Firſt Fruits*; and Clergymen entering on their Livings before the ſame are paid or compounded, are to forfeit double Value. But the 1 *Eliz. c.* 4. ordains, that if an Incumbent on a Benefice do not live half a Year, or is ouſted before the Year expired, his Executors are to pay only a fourth Part of the *Firſt-fruits*; and if he lives the Year, and then dies, or be ouſted in ſix Months after, but half of the *Firſt-fruits* ſhall be paid. And by this Statute Livings not above 10 *l. per Ann.* &c. are diſcharged from Payment of theſe Duties: As are alſo Benefices under and not exceeding 50 *l.* a Year, by Stat. 5 *Ann. c.* 24. The 2 *Ann. cap.* 11. ſettles upon a *Corporation* the *Firſt-fruits* and Tenths of all Benefices for the *Maintenance of the poor Clergy*; which is called the Coporation of the *Bounty* of Q. *Anne.* See the Act, relating to large Waſtes in *Yorkſhire* incloſed, a ſixth Part for Benefit of *poor Clergymen*, whoſe Livings do not exceed 40 *l. per Ann.* Stat. 12 *Ann. c.* 4. *Vide* 3 *Geo.* 1. *c.* 10.

Fiſh and Fiſhing. No Fiſherman ſhall uſe any Net or Engine, to deſtroy the Fry of *Fiſh*: And Perſons uſing Nets for that Purpoſe, or taking Salmon or Trout out of Seaſon, or any *Fiſh* under certain Lengths, are liable to forfeit 20 *s.* And Juſtices of Peace, and Lords of Leets have Power to put the Acts in Force. 13 *R.* 2. 17 *R.* 2. 1 *El. c.* 17. No Perſon may faſten Nets, &c. acroſs Rivers to deſtroy *Fiſh*, and diſturb Paſſage of Veſſels, on Pain of 5 *l.* Stat. 2 *H.* 6. *c.* 15. None ſhall *fiſh* in any Pond or Moat, &c. without the Owner's Licence, on Pain of three Months Impriſonment. 31 *H.* 8. *cap.* 2. And no Perſon ſhall take any *Fiſh* in any River, without the Conſent of the Owner, under the Penalty of 10 *s.* for the Uſe of the Poor, and treble Damage to the Party grieved, leviable by Diſtreſs of Goods; and for want of Diſtreſs, the Offender is to be committed to the Houſe of Correction for a Month: Alſo Nets, Angles, &c. of Pochers may be ſeiſed, by the Owners of Rivers, or by any Perſons, by Warrant from a Juſtice of Peace, &c. 22 & 23 *Car.* 2. *cap.* 25. 4 & 5 *W. & M. c.* 23. The Stat. 4 & 5 *Ann. cap.* 21. was made for the Increaſe and Preſervation of Salmon in Rivers in the Counties of *Southampton* and *Wilts*; requiring that no Salmon be taken between the 1ſt of *Auguſt* and 12th of *November*, or under Size, &c. And by 1 *Geo.* 1. *c.* 18. Salmon taken in the River *Severn*, *Dee*, *Wye*, *Weere*, *Ouſe*, &c. are to be 18 Inches long at leaſt; or the Perſons catching them ſhall forfeit 5 *l.* And Sea *Fiſh* ſold muſt be of the Lengths following, *viz.* Bret and Turbot 16 Inches, Bril and Pearl 14, Codlin, Baſs and Mullet 12, Sole and Plaice 8, Flounders 7, Whiting 6 Inches long, &c. on Pain of forfeiting 20 *s.* to the Poor, and the *Fiſh.* *Vide* the *Statute.* Perſons that import any *Fiſh*, contrary to the 1 *Geo.* 1. for better preventing *freſh Fiſh* taken by *Foreigners* being imported into this Kingdom, &c. ſhall forfeit 100 *l.* to be recovered in the Courts at *Weſtminſter*, one Moiety to Informers, and the other to the Poor; and Maſters of Smacks, Hoys, Boats, &c. in which the *Fiſh* ſhall be imported, or brought on Shore, forfeit 50 *l.* Alſo ſelling the ſame in *England*, is liable to 20 *l.* Penalty. *Stat.* 9 *Geo. c.* 33.

Fiſhing Right of, and *Property* of *Fiſh.* It has been held, that where the Lord of a Manor hath the Soil on both Sides the River, 'tis a good Evidence that he hath the *Right of Fiſhing*, and it puts the Proof upon him who claims *Liberam Piſcariam*; but where a River ebbs and flows, and is an Arm of the Sea, there 'tis common to all, and he who claims a Privilege to himſelf muſt prove it; for if Treſpaſs is brought for *fiſhing* there, the Defendant may juſtify that the Place where is *Brachium Maris, in quo unuſquiſque ſubditus Domini Regis habet & habere debet* Liberam Piſcariam: In the *Severn*, the Soil belongs to the Owners of the Land on each Side;

and the Soil of the River *Thames*, is in the King, &c. but the *Fiſhing* is common to all. 1 *Mod.* 105. He who is Owner of the Soil of a private River, hath *Separalis Piſcaria*; and he that hath *Libera Piſcaria*, hath a Property in the *Fiſh*, and may bring a poſſeſſory Action for them; but *Communis Piſcaria* is like the Caſe of all other Commons. 2 *Salk.* 637. One that has a cloſe Pond in which there are *Fiſh*, may call them *Piſces ſuos* in an Indictment, &c. But he cannot call them as *Bona & Catalla*, if they be not in Trunks. *Mod. Ca.* 183. There needs no Privilege to make a *Fiſh Pond*; as there doth in Caſe of a Warren. *Ibid.*

Fiſhermen, There ſhall be a Maſter, Wardens and Aſſiſtants of the *Fiſhermen's Company* in *London*, choſen yearly at the next Court of the Lord Mayor and Aldermen after the tenth of *June*, who are conſtituted a Court of Aſſiſtants; and they ſhall meet once a Month at their common Hall, to regulate Abuſes in Fiſhery, regiſter the Names of *Fiſhermen*, and mark their Boats, &c. *Fiſhermen* are not to kill, or ſell any Fry or Brood of Fiſh; and no Fiſh ſhall be ſold more than once, at *Billingſgate*, or within 150 Yards of the Dock; or before ſuch Hours in the Morning, &c. And Fines not above 10 *l.* or under 5 *s.* may be impoſed and levied by the Lord Mayor and Aldermen, and Juſtices of Peace. *Stat.* 9 *Ann. c.* 26. See *Herrings*, &c.

Fiſhery, A *Royal Fiſhery* of *England* was eſtabliſhed in the Reign of King *Car.* 2. and the Members of it incorporated into a Company. See 29 *Car.* 2. The Crown hath Power to direct 20 *s.* out of every 100 *l.* *South-Sea* Stock, to be applied for improving the *Fiſhery* of the Kingdom, carried on to *Greenland*, and in other Northern Seas. *Stat.* 9 *Ann. cap.* 21. And for Recovery of the Britiſh *Fiſhery*, Allowances are made on Fiſh exported to other Countries, &c. *Stat.* 5 *Geo.* 1. *cap.* 28. *Fiſhery* in *Scotland* to be improved according to the Articles of the Union. 13 *Geo.* 1. *c.* 30.

Fiſhgarth, A Dam or Wear in a River, made for the Taking of *Fiſh*, eſpecially in the Rivers of *Owſe* and *Humber*. 23 H. 8. c. 18.

Flaco, A Place covered with ſtanding Water. *Mon. Angl. Tom.* 1. *p.* 209.

Flecta, A feather'd or fledged Arrow, a *Fleet Arrow*. Radulphus *de F. tenet*, &c. *per ſervitium reddendi per Annum viginti* Flectas. *Dom. Reg.* 9 Edw. 1.

Fledwite or **Flightwite**, (from the Sax. *Flyht*, *fuga*, & Wite, *Mulcta*) In our antient Law ſignifies a Diſcharge from Amerciaments, where a Perſon having been a *Fugitive*, comes to the Peace of our Lord the King of his own Accord, or with Licenſe. *Raſtal.*

Fleet, (Sax. *Fleot*, i. e. *Flota*, a Place of Running-water, where the Tide or *Float* comes up) Is a famous *Priſon* in *London*, ſo called from the River or Ditch on the Side whereof it ſtands. To this Priſon Men are uſually committed for Contempt to the King and his Laws, particularly againſt the Courts of Juſtice; or for Debt, when Perſons are unable or unwilling to ſatiſfy their Creditors: There are large Rules, and a *Warden* belonging to the *Fleet Priſon*, &c. *Stat.* 8 & 9 *W.* 3. *cap.* 7. By a late Statute, the Warden of the *Fleet* was diſabled to hold any Office, for his notorious Oppreſſions of the Priſoners; and the King was empowered to grant the ſaid Office to ſuch Perſon as he ſhould think fit, &c. 2 *Geo.* 2. *c.* 32.

Fleet-Ditch, The Lord Mayor of *London*, &c. may fill up *Fleet-Ditch*, and make the Soil level with the Streets; and the Fee is veſted in the Mayor and Commonalty, but they ſhall not erect Houſes or Buildings thereon above fifteen Foot high, &c. *Stat.* 6 *Geo.* 2. *cap.* 22.

Fleet of Ships. See *Flota Navium*, and *Navy Royal* of *England*.

Flem, *Flema*, (from the Sax. *Flean*, to kill or ſlay) An Outlaw; and by Virtue of the Word *Flemaſare* were claimed *Bona felonum*, as may be collected from a *Quo Warranto* Temp. Ed. 3.

Flemenefrit, **Flemenesfrinthe**, **Flymenafrynthe**, Signifies the Receiving or Relieving of a Fugitive or Outlaw. *Leg. Inæ, cap.* 29, 47. *LL. H.* 1. *cap.* 10, 12.

Flemeswite, (Sax.) *Fleta*, who writes of this Word, interprets it *Habere Catalla Fugitivorum*. Lib. 1. cap. 47.

Flighers, Maſts for Ships.——*Conceſſit etiam eis* Flighers *ad ſuam propriam Navem, colligendas in territorio*, &c. Mon. Ang. Tom. 1. p. 799.

Flight For any Crime committed, which implies Guilt. See *Fugitives.*

Flood mark, The Mark which the Sea makes on the Shoar, at flowing Water and the higheſt Tide: It is alſo called *High-water Mark*.

Florence, An ancient Piece of *Engliſh* Gold Coin: Every Pound-Weight of old Standard Gold was to be coined into fifty *Florences*, to be current at ſix Shillings each; all which made in Tale fifteen Pounds, or into a proportionate Number of *Half Florences* or *Quarter* Pieces, by Indenture of the *Mint*. 18 Ed. 3.

Florin, A Foreign Coin, in *Spain* 4 *s.* 4 *d.* *Germany* 3 *s.* 4 *d.* and *Holland* 2 *s.* And in ſome Parts of *Germany*, Accounts are kept in *Florins*.

Flota navium, A Fleet of Ships.——*Rex*, &c. *Sciatis quod conſtituimus* Johannem *de* R. *Admirallum noſtrum* Flotæ Navium *ab ore aquæ Thamiſiæ verſus partes occidentales*, &c. Rot. Francia, 6 R. 2. m. 21.

Fletages, Are ſuch Things as by Accident ſwim on the Top of great Rivers; the Word is ſometimes uſed in the Commiſſions of *Water Bailiffs*.

Flotſam, Is when a Ship is ſunk or caſt away, and the Goods are *floating* upon the Sea. 5 *Rep.* 106. *Flotſam*, *Jetſam* and *Lagan* are mentioned together; *Jetſam* being where any Thing is caſt out of the Ship when in Danger, and the Ship notwithſtanding periſheth; and *Lagan* is when heavy Goods are thrown over-board before the Wreck of the Ship, which ſink to the Bottom of the Sea. *Lex. Mercat.* 149. The King ſhall have *Flotſam*, *Jetſam* and *Lagan*, when the Ship is loſt, and the Owners of the Goods are not known; but not otherwiſe. *F. N. B.* 122. Where the Proprietors of the Goods may be known, they have a Year and a Day to claim *Flotſam*. 1 *Keb.* 657. *Flotſam*, *Jetſam*, &c. any Perſon may have by the King's Grant, as well as the Lord Admiral, &c. *Lex Mercat.* 149.

Focage, (*Focagium*) The ſame with *Houſe-bote* or *Fire-bote*.

Focal, A Right of taking Wood for Firing: *In eadem Haiâ* 10 *Carratas* Focalis *recipiendas annuatim per viſum ſervientis mei.* Mon. Ang. Tom. 1. p. 779.

Foder, (Sax. *Foda*, i. e. *Alimentum*) Any Kind of Meat for Horſes, or other Cattle, And among the *Feudiſts* it is uſed for a Prerogative of the Prince, to be provided with Corn and other Meat for his Horſes, by his Subjects, in his Wars or other Expeditions. *Hotam. de verb. Feudal.*

Fodertorium, Proviſion or Fodder, to be paid, by Cuſtom to the King's Purveyor. *Cartular. St. Edmund. MS. fol.* 102.

Foeſa, (Fr. *Foiſſon*) Graſs, Herbage. *Mon. Angl. Tom.* 2. *pag.* 506.

Fogage, (*Fogagium*) Fog or Rank After-Graſs, not eaten in Summer. *LL. Foreſtar. Scot. c.* 16.

Foiterers, By *Blount* are interpreted to be Vagabonds. See *Faitours*.

Folc-lands, (*Sax.*) Copyhold Lands ſo called in the Time of the *Saxons*, as Charter Lands were called *Boc-lands*. *Kitch.* 174. *Folcland* was *Terra Vulgi* or *Popularis*, the Land of the vulgar People, who had no certain Eſtate therein, but held the ſame under

under the Rents and Services accuſtomed or agreed, at the Will only of their Lord the *Thane*; and it was therefore not put in Writing, but accounted *Prædium Ruſticum & Ignobile.* Spelm. of Feuds, cap. 5.

Folcmote or **Folkmote**, (Sax. *Folcgemot*, i. e. *Conventus Populi*) Is compunded of *Folk*, *populus*, and *Mote* or *Gemote*, *convenire*; and ſignified originally, as *Somner* in his *Saxon Dictionary* tells us, a general Aſſembly of the People, to conſider of and order Matters of the Commonwealth: *Omnes proceres Regni & Milites & Liberi homines univerſi totius Regni Britanniæ facere debent in pleno* Folcmote *Fidelitatem Domino Regi, &c. Leg. Edw. Confeſſ. cap.* 35. And Sir *Henry Spelman* ſays, the *Folcmote* was a Sort of annual Parliament, or Convention of the Biſhops, Thanes, Aldermen and Freemen, upon every *May-day* yearly; where the Laymen were ſworn to defend one another, and to the King, and to preſerve the Laws of the Kingdom, and then conſulted of the Common Safety. But Dr. *Brady* infers from the Laws of our *Saxon* Kings, that it was an inferior Court, held before the *King's Reve* or Steward, every Month to do *Folk* Right, or compoſe ſmaller Differences, from whence there lay Appeal to the Superior Courts. *Brady's Gloſſ. pag.* 48. *Manwood* mentions *Folkmote* as a Court holden in *London*, wherein all the *Folk* and People of the City did complain of the Mayor and Aldermen, for Miſgovernment within the ſaid City: And this Word is ſtill in Uſe among the *Londoners*; and denotes *Celebrem ex tota Civitate conventum. Stow's Survey.* According to *Kennet*, the *Folkmote* was a Common Council of all the Inhabitants of a City, Town or Borough, convened often by Sound of Bell to the *Mote-hall* or *Houſe*; or it was applied to a larger Congreſs of all the Freemen within a County, called the *Shire-mote*, where formerly all Knights and military Tenants did Fealty to the King, and elected the annual Sheriff on the firſt of *October*, till this popular Election to avoid Tumults and Riots devolved to the King's Nomination. *Anno* 1315. 3 *Ed.* 1. After which the *City Folkmote* was ſwallowed up in a ſelect Committee or *Common Council*; and the *County Folkmote*, in the *Sheriff's Tourn* and *Aſſiſes.* 3. The Word *Folkmote* was uſed for any Kind of Popular or Publick Meeting; as of all the Tenants at the *Court-Leet* or *Court-Baron*, in which Signification it was of a leſs Extent. —— *Paroch. Antiq.* 120.

Foldage and **Fold-courſe**, A Liberty to fold Sheep, &c. See *Faldage* and *Faldfee.*

Folgarii, Menial Servants; *Eos qui aliis deſerviunt. Bract. lib.* 3. *tract.* 2. *cap.* 10. Houſe-keepers by the *Saxons* were called *Husfaſtene*; and their Servants or Followers, *Folgheres* or *Folgeres.* LL. Hen. 1. cap. 9.

Fool, A Natural, one ſo from the Time of his Birth. See *Ideot.*

Footgeld, (From the *Sax.* Fot, *Pes*, & Geldan, *ſolvere*) Is as much as *Pedis Redemptio*, and ſignifies an Amercement for not cutting out and *expeditating* the Balls of great Dogs Feet in the *Foreſt*: To be quit of *Footgeld* is a Privilege to keep Dogs within the Foreſt unlawed, without Puniſhment. *Manwood par.* 1. *p.* 86.

Forage, (Fr. *Fourage*) Hay and Straw for Horſes, particularly for the Uſe of Horſe in an Army.—— *Et le dit* J. *Trovera herbe & feyn &* Forage *pour un Hackney, &c.* MS. Penes Wal. Blount. Bar.

Foragium, Straw when the Corn is thraſhed out. *Cowel.*

Forbalk, (*Forbalka*) Lying forward or next the Highway. *Petr. Bleſenſis Contin. Hiſt. Croyland p.* 116.

Forbarre, Is to bar or deprive one of a Thing for ever. 9 *R.* 9 *c.* 2. and 6 *H.* 6. *c.* 4.

Forbatudus, Is when the Aggreſſor in Combat is ſlain. —— *Et ſic eſt veritas ſine ullo concludio & in ſua culpa ſecundum Legem* Forbatudum *fecit, &c.*

Forbiſher of Armour, (*Forbator*) *Si quis Forbator arma alicujus ſuſceperit, ad purgandum, &c.* LL. Aluredi, MS. cap. 22.

Force, (*Vis*) Is moſt commonly applied *in pejorem partem*, the evil Part, and ſignifies any unlawful Violence. It is defined by *Weſt* to be an Offence, by which Violence is uſed to Things or Perſons; and he divides it into *Simple* and *Compound*; *Simple Force*, is that which is ſo committed that it hath no other Crime accompanying it; as if one by *Force* do only enter into another Man's Poſſeſſion, without doing any other unlawful Act: Mix'd or *Compound Force*, is when ſome other Violence is committed with ſuch a Fact, which of itſelf alone is criminal; as where any one by *Force* enters into another Man's Houſe, and kills a Man, or raviſhes a Woman, &c. And he makes ſeveral other Diviſions of this Head. *Weſt. Symbol. par.* 2. *ſect.* 65. The Lord *Coke* ſays, there is alſo a *Force implied* in Law; as every Treſpaſs, Reſcous, or Diſſeiſin, implieth it; and an *actual Force*, with Weapons, Number of Perſons, &c. where threatning is uſed to the Terror of another. 1 *Inſt.* 257. By the Law any Perſon may enter a Tavern; and a Landlord may enter his Tenant's Houſe to view Repairs, &c. But if he that enters a Tavern, commits any *Force* or Violence; or he that enters to view Repairs, breaketh the Houſe, &c. it ſhall be intended that they entered for that Purpoſe. 8 *Rep.* 146. All *Force* is againſt the Law; and it is lawful to repel *Force* by *Force*: There is a *Maxim* in our Law, *Quod alias bonum & Juſtum eſt, ſi per vim vel fraudem petatur, malum & injuſtum eſt.* 3 Rep. 78.

Forcible Entry, (*Ingreſſus manu forti factus*) Is a violent actual Entry into Houſes or Lands: And *forcible Detainer* is a With-holding by Violence, and with ſtrong Hand, of the Poſſeſſion of Land, &c. whereby he who hath Right of Entry is barred or hindred. *Writ of forcible Entry* lies where one is ſeiſed of a Freehold, and is put out thereof with Force; or if he is diſſeiſed peaceably, and afterwards the Diſſeiſor doth hold and *detain* the ſame by Force. *F. N. B.* 54. When one or more Perſons armed with unuſual Weapons, violently enter into the Houſe or Land of another; or where they do not enter violently, if they *forcibly* put another out of his Poſſeſſion; or if one enter another's Houſe, without his Conſent, although the Door be open, &c. Theſe are *Forcible Entries* puniſhable by Law. 1 *Inſt.* 257. So when a Tenant keeps Poſſeſſion of the Land at the End of his Term againſt the Landlord, it is a *Forcible* Detainer. *Cro. Jac.* 199. And if a Leſſee takes a new Leaſe of another Perſon, whom he conceives to have better Title, and at the End of the Term keeps Poſſeſſion againſt his own Landlord, this is a *Forcible* Detainer. *Ibid.* Alſo Perſons continuing in Poſſeſſion of a defeazible Eſtate, after the Title is defeated, are puniſhable for *Forcible Entry*; for continuing in Poſſeſſion afterwards, amounts in Law to a new Entry. 1 *Inſt.* 256, 257. And an Infant, or Feme Covert may be guilty of *Forcible Entry* within the Statutes, in Reſpect of Violence committed by them in Perſon; but not for what is done by others at their Command, their Commands being void. 1 *Inſt.* 357. If a Man have two Houſes next adjoining, the one by a defeaſible Title, and the other by good Title; and he uſes Force in that he hath by the good Title to keep Perſons out of the other Houſe, this is a *forcible Detainer.* 2 *Shep. Abr.* 203. A Man enters into the Houſe of another by the Windows, and then threatneth the Party, and he for fear doth leave his Houſe, it is *forcible Entry*: So if one enter a Houſe when no Perſon is therein, with armed Men, &c. *Moor Caſ.* 185. If a Perſon after Peaceable Entry, ſhall make Uſe of Arms to defend his Poſſeſſion, &c. it will be *forcible Detainer*: A Man puts another out of his Houſe by Force, if he then put in one of his Servants in a peaceable Manner, who keeps out the Party, &c. it will be a *forcible Entry*; but not Detainer; but if himſelf remaineth there with Force, this makes a *forcible Detainer*. 2 *Shep.* 203. If I hear that certain Perſons will come to my Houſe to beat me, &c. and I take in Force to defend myſelf, 'tis no *forcible* Detainer: Though where they are coming to take Poſſeſſion only, it is otherwiſe. *Ibid.* This Offence may be commited of a Rent, as well as of a Houſe or Land; as where one comes to diſtrain, and the Tenant threatens to kill him, or doth *forcibly* make Reſiſtance, &c. *Ibid.* 201. Indictment of *forcibly Entry* lies not only for Lands, but for Tithes; and alſo for Rents: But not againſt a Lord entering a Common with Force, for which the Commoner may not indict him, becauſe it is his own Land. *Cro. Car.* 201, 486. And no Man can be guilty of *forcible Entry*, for entring with Violence into Lands or Houſes in his own ſole Poſſeſſion, at the Time of Entry; as by breaking open Doors, &c. of his Houſe, detained from him by one who has the bare Cuſtody of it: But Jointenants, or Tenants in Common, may be guilty of *forcible Entry*, and holding out their Companions. 1 *Hawk. P. C.* 147. A Perſon is not guilty of a *forcible* Detainer, by barely refuſing to go out of a Houſe, and continuing therein in Deſpight of another. *Ibid.* 146. And no Words alone can make a *forcible Entry*, although violent and threatning, without Force uſed by the Party. 1 *Lill. Abr.* 514. 1 *Hawk.* 145. At Common Law, any one who had a Right of Entry into Lands, &c. might regain Poſſeſſion thereof by Force; but this Liberty being much abuſed, to the Breach of the publick Peace, it was found neceſſary that it ſhould be reſtrained by Statute: At this Day, he who is wrongfully diſpoſſeſſed of Goods, may juſtify the Retaking them by Force. *Lamb.* 135. *Cromp.* 70. *Kelw.* 92. But ſee 3 *Salk.* 187. By Statutes, none ſhall enter into any Lands or Tenements, but where Entry is given by Law, and in a peaceable Manner, though they have Title of Entry, on Pain of Impriſonment, &c. And when a *forcible Entry* is committed, Juſtices of Peace are impower'd to view the Place, and enquire of the Force by a Jury ſummoned by the Sheriff of the County; and cauſe the Tenements to be ſeiſed and reſtored, and impriſon the Offenders till they pay a Fine. 5 *R.* 2. *c.* 7. 15 *R.* 2. *c.* 2. 8 *Hen.* 6. *cap.* 9. If a Juſtice of Peace come to view a Force in a Houſe, and they refuſe to let him in; this of itſelf will make a *forcible Detainer* in all Caſes; but it muſt be upon Complaint made. The Juſtices of Peace are not to enquire into the Title of either Party: And there ſhall be no Reſtitution upon an Indictment of *forcible Entry* or Detainer, where the Defendant hath been in quiet Poſſeſſion for three Years together without Interruption, next before the Day of the Indictment found, and his Eſtate in the Land not ended; which may be alledged in Stay of Reſtitution, and Reſtitution is to be ſtaid till that be tried, if the other will traverſe the ſame, &c. *Dalt.* 312. *Stat.* 31 *Eliz. cap.* 11. If a Diſſeiſee within three Years makes a lawful Claim, this is an Interruption of the Poſſeſſion of the Diſſeiſor. *H. P. C.* 139. Though it has been adjudged, that it is not the Title of the Poſſeſſor, but the Poſſeſſion for three Years, which is material. *Sid.* 149. Since the Statute 5 *R.* 2. if *W. R.* is ſeiſed of Lands, and *L. R.* having good Right to enter, doth accordingly enter *Manu forti*, he may be indicted notwithſtanding his Right, &c. 3 *Salk.* 170. For a *forcible* Detainer only 'tis ſaid there is no Reſtitution; the Plaintiff never having been in Poſſeſſion; but there may be Reſtitution where *forcible Entry* and Detainer are found. 1 *Ventr.* 23. *Sid.* 97, 99. The Juſtices on *forcible* Detainer may puniſh the Force upon View, and fine and impriſon the Offenders; but cannot meddle with the Poſſeſſion. *Sid.* 156. And it hath been held, that in *forcible Entry* and Detainer, the Jury are to find all or none; and not the Detainer, without the *forcible Entry*. 1 *Ventr.* 25. A Reverſioner cannot bring Action of *forcible Entry*, becauſe he cannot be expelled, tho' he may be diſſeiſed. *Dyer* 141. And the Words in the Writ to maintain the Action are, that the Defendant *Expulit & Diſſeiſivit*, &c. yet it is ſaid that every Diſſeiſin implies an Expulſion in *forcible Entry*. 2 *Cro.* 31. The Poſſeſſion of the Termor is the Poſſeſſion of him in Reverſion: And when a Leſſee for Years is put out of Poſſeſſion by Force, Reſtitution muſt be to him in Reverſion, and not the Leſſee; and then his Leſſee may re-enter. 1 *Leon.* 327. A Termor may ſay that he was expelled, and his Landlord in Reverſion diſſeiſed; or rather that the Tenant of the Freehold is diſſeiſed, and he the Leſſee for Years expelled. 4 *Mod.* 248. 2 *Nelſ. Abr.* 869. A Copyholder cannot be diſſeiſed, becauſe he hath no Freehold in his Eſtate; but he may be expelled: And a Copyhold Tenant may be reſtored, where he is expelled wrongfully; but if the Indictment be only of Diſſeiſin, as he may not be diſſeiſed, there can be no Reſtitution but at the Prayer of him that hath the Freehold. *Yelv.* 81. 2 *Cro.* 41. Indictment for *forcible Entry* muſt be laid of *Liberum Tenementum*, &c. to have Reſtitution by the Statute 15 *R.* 2, &c. 2 *Cro.* 157. Though by 21 *Jac.* 1. *cap.* 15. Juſtices of Peace may give like Reſtitution of Poſſeſſion to Tenants for Years, Tenant by *Elegit*, Statute ſtaple, &c. and Copyholders, as to Freeholders. Juſtices of Peace only have Power to enquire of *forcible Entry*: But an Indictment of *forcible Entry* may be removed from before Juſtices of Peace into the Court of *B. R.* *coram Rege*, which Court may award Reſtitution. 11 *Rep.* 65. And the Juſtices before whom ſuch Indictment was found, may, after Traverſe tendered, certify or deliver the Indictment into the *King's Bench*, and refer the Proceeding thereupon to the Juſtices of that Court. A Record of Juſtices of Peace of *forcibly Entry*, is not traverſable; but the Entry and Force, &c. may be traverſed in Writing, and the Juſtices may ſummon a Jury for Trial of the Traverſe. 1 *Salk.* 353. The Finding of the Force being in Nature of a Preſentment by the Jury, is traverſable; and if the Juſtices of Peace refuſe the Traverſe, and grant Reſtitution, on removing the Indictment into *B. R.* there the Traverſe may be tried; and on a Verdict found for the Party, &c. a Re-reſtitution ſhall be granted. *Sid.* 287. 2 *Salk.* 588. If no Force is found at a Trial thereof before Juſtices, Reſtitution is not to be granted; nor ſhall it be had till the Force is tried; or ought the Juſtices to make it in the Abſence of the Defendant, without calling him to anſwer. 1 *Hawk. P. C.* 154. No other Juſtices of Peace but thoſe before whom the Indictment was found, may either at Seſſions or out of it award Reſtitution; the ſame Juſtices may do it in Perſon, or make a Precept to the Sheriff to do it, who may raiſe the Power of the County to aſſiſt him in executing the ſame. 1 *Hawk.* 152. And the ſame Juſtices of Peace may alſo ſuperſede the Reſtitution, before it is executed; on Inſufficiency found in the Indictment, &c. But no other Juſtices, except of the Court of *B. R.* A *Certiorari* from *B. R.* is a *Superſedeas* to the Reſtitution; and the Juſtices of *B. R.* may ſet aſide the Reſtitution after executed, if it be againſt Law, or irregularly obtained, &c. 1 *Salk.* 154 If Juſtices of Peace exceed their Authority, an Information may be brought againſt them. A Conviction for *Forcible Entry*, before a Fine is ſet, may be quaſhed on Motion; but after a Fine is ſet, it may not; the Defendant muſt bring Writ of Error. 2 *Salk.* 450. Indictments for *Forcible Entry* muſt ſet forth that the Entry was *Manu forti*, to diſtinguiſh this Offence from other Treſpaſſes *Vi & Armis*; and there are many Niceties to be obſerved in drawing the Indictment, otherwiſe it will be quaſhed. 1 *Cro.* 461. *Dalt.* 298. There muſt be Certainty in this Indictment; and no Repugnancy, which is an incurable Fault. An Indictment of *Forcible Entry* was quaſhed, for that it did not ſet forth the Eſtate of the Party: So where the Defendant had not been in Poſſeſſion peaceably three Years before the Indictment, without ſaying before the Indictment found, &c. And Force ſhall not be intended when the Judgment is generally laid, for it muſt be always expreſſed. 2 *Nelſ. Abr.* 867, 869. If a Plaintiff proceeds not criminally by Indictment for *Forcible Entry*, but commences a Civil Action on the Caſe, which he may do on the Statute of *Hen.* 6. the Defendant is to plead *Not guilty*, or may plead any ſpecial Matter, and traverſe the Force; and the Plaintiff in his Replication muſt anſwer the ſpecial Matter, and not the Traverſe; and if it be found againſt the Defendant, he is convicted of the Force of Courſe; whereupon the Plaintiff ſhall recover treble Damages and Coſts. 3 *Salk.* 169. And if in Treſpaſs or Aſſiſe upon the Statute of *Forcible Entry*, 8 *H.* 6. *c.* 9. the Defendant is condemned by *non ſum Informatus*; he ſhall pay treble Damages and treble Coſts: Adjudged and affirmed in Error. For the Words of the Statute give them where the Recovery is by Verdict, or otherwiſe in due Manner. *Jenk. Cent.* 197. Though *Forcible Entry* is puniſhable either by Indictment or Action; the Action is ſeldom brought, but the Indictment often.

Form *of an* Indictment *for a* Forcible Entry.

Wilts, ſſ. THE *Jurors*, &c. *That* A. B. *of*, &c. *and* C. D. *of*, &c. *having aſſembled themſelves with other Offenders, and Diſturbers of the Peace of our ſaid Lord the King, whoſe Names to the Jurors aforeſaid are unknown, and being armed in a warlike Manner, on the Day of*, &c. *in the Year of the Reign*, &c. *at* M. *in the ſaid County, with Force and Prms, that is to ſay, with Staves, Swords, Guns*, &c. *and other offenſive and defenſive Arms, did enter, and each of them did enter into one Meſſuage with the Appurtenances in* M. *aforeſaid, in the peaceable Poſſeſſion of one* E. F. *of which ſaid Meſſuage the ſaid* E. F. *was then poſſeſſed for the Term of*, &c. *Years yet to come; and that the ſaid* A. B. *and* C. D. *and the other Malefactors aforeſaid, with Force and Arms, did eject, drive out and remove the ſaid* E. F. *from his Poſſeſſion aforeſaid, and the ſaid* E. F. *being ſo ejected, they unlawfully and with a ſtrong Hand, then did detain from him, and yet do detain from him the Poſſeſſion of the ſaid Meſſuage, with the Appurtenances, againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided.*

A Writ *of* Forcible Entry, *according to the* Statute.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: If* A. B. *ſhall make you ſecure*, &c. *then put* C. D. &c. *to anſwer as well to us, as the ſaid* A. B. *why, Whereas in the Statute made in the Parliament at* Weſtminſter *in the eighth Year of the Reign of King* Henry *of* England *the Sixth held, then ſet forth, amongſt other Things is contained, That if any Perſon out of any Lands or Tenements with ſtrong Hand is expelled and diſſeiſed, or peaceably expelled, and after with a ſtrong Hand held out, or any Feoffment or Diſcontinuance in any wiſe be made thereof after ſuch Entry, to defraud the Poſſeſſor of his Right and take it away, the Party grieved in this Particular, ſhall have againſt ſuch Diſſeiſor the Aſſiſe of Novel Diſſeiſin, or a Writ of Treſpaſs; and if the Party grieved by Aſſiſe or Action of Treſpaſs ſhall recover, and by Verdict or other Manner in due Form of Law it ſhall be found, that the Party, Defendant, entred into the Lands and Tenements with Force, or thoſe after his Entry with Force held, the Plaintiff ſhall recover his Damages to the Treble againſt the Defendant, and further Fine and Ranſom to us he ſhall make; the ſaid* C. D. *the ſaid* A. B. *out of his free Tenement (or Freehold) in* M. *with ſtrong Hand hath expelled and diſſeiſed, and him ſo expelled and diſſeiſed, holdeth out of the ſame, to the Contempt of us, and no ſmall Damage and Grievance of him the ſaid* A. B. *and againſt the Form of the Statute aforeſaid, and againſt our Peace: And have you there the Names of the Pledges, and this Writ.* Witneſs, &c.

Forcible Marriage, Of a Woman of Eſtate is Felony; for by the Stat. 3 *Hen.* 7. *c.* 2. it is enacted, That if any Perſons ſhall take away any Woman having Lands or Goods, or that is Heir apparent to her Anceſtor, by Force and againſt her Will, and marry or defile her, the Takers, Procurers, Abettors, and Receivers of the Woman taken away againſt her Will, and knowing the ſame, ſhall be deemed principal Felons: But as to Procurers and Acceſſaries, they are to be before the Offence committed, to be excluded the Benefit of Clergy, by 39 *Eliz. c.* 9. The Indictment on the Stat. 3 *H.* 7. is expreſly to ſet forth, that the Woman taken away had Lands or Goods, or was Heir apparent, and alſo that ſhe was married or defiled, becauſe no other Caſe is within the Statute; and it ought to alledge that the Taking was for Lucre: It is no Excuſe, that the Woman at firſt was taken away with her Conſent; for if ſhe afterwards refuſe to continue with the Offender, and be forced againſt her Will, ſhe may from that Time properly be ſaid to be taken againſt her Will; and it is not material whether a Woman ſo taken away, be at laſt married or defiled with her own Conſent or not, if ſhe were under the Force at the Time, the Offender being in both Caſes equally within the Words of the Act. 3 *Inſt.* 61.. *H. P. C.* 119. 1 *H. P. C.* 109, 110. Thoſe Perſons who after the Fact receive the Offender, are but Acceſſaries after the Offence, according to the Rules of the Common Law; and thoſe that are only privy to the Damage, but not Parties to the *Forcible* Taking away, are not within the Act. *H. P. C.* 119. A Man may be indicted for taking away a Woman by Force in another County; for the Continuing of the Force in any County amounts to a *Forcible* Taking there. *Ibid.* Taking away any Woman Child, under the Age of ſixteen Years and unmarried, out of the Cuſtody and without the Conſent of the Father or Guardian, &c. the Offender ſhall ſuffer Fine and Impriſonment; and if the Woman agrees to any Contract of Matrimony with ſuch Perſon, ſhe ſhall forfeit her Eſtate during her Life, to the next of Kin to whom the Inheritance ſhould deſcend, &c. *Stat.* 4 & 5 *P.* & *M. c.* 8. See 3 *Mod. Rep.* 84, 169. This is a *Force againſt the Parents:* And an Information will lie for ſeducing a young Man or Woman from their Parents, againſt their Conſents, in order to marry them, &c. 3 *Cro.* 557. *Raym.* 473.

Ford, (*Forda*) A ſhallow Place in a River made ſo by damming or penning up the Water. *Mon. Ang. Tom.* 1. *pag.* 657.

Fordol, (From the Sax. *Fore*, before, and *dæle* a Part or Portion) Signifies a But or Head-land, ſhooting upon other Bounds.

Forecheapum, *Praemption*, from the Sax. *Fore*, *ante*, and *Ceapean*, i.e. *Nundinari*, *Emere*.——— *Et non licebat iis aliquod* Forecheapum *facere Burghmannis*, & *dare Theolonium ſuum.* Chron. Brompton. Col. 897, 898. *and* LL. Æthelredi, c. 23.

Forecloſed, Shut out, or excluded, as the Barring the Equity of Redemption on Mortgages, &c. 2 Inſt. 298.

Foregoers. The King's Purveyors were ſo called from their *going before* to provide for his Houſhold. 36 *Ed.* 3. 5.

Foreign, (Fr. *Forain*, Lat. *Forinſecus*, *Extraneus*) Strange or outlandiſh, of another Country, and in our Law, is uſed adjectively, being joined with divers Subſtantives in ſeveral Senſes. *Kitch.* 126.

Foreign Attachment, Is an Attachment of *Foreigners Goods*, found within a *Liberty* or *City*, for the Satisfaction of ſome Citizen to whom the Foreigner is indebted; or of Money in the Hands of another Perſon, due to him againſt whom an Action of Debt is brought, *&c.* See *Attachment.*

Foreign Court, At *Lemſter*, (Anciently called *Leominſter*) There is the Borough and the *Foreign Court*; which laſt is within the Juriſdiction of the Manor, but not within the Liberty of the Bailiff of the Borough: So there is a *Foreign Court* of the Honour of *Gloceſter*. *Clauſ.* 8 *Ed.* 2. *Foreign bought and ſold* is a Cuſtom within the City of *London*, which being found prejudicial to the Sellers of Cattle in *Smithfield*, it was enacted 22 *&* 23 *Car.* 2. that as well Strangers, as Freemen, may buy and ſell any Cattle there.

Foreign Kingdom, Is a Kingdom under the Dominion of a *Foreign* Prince; ſo that *Ireland*, or any other Place, ſubject to the Crown of *England*, cannot with us be called *Foreign*; though to ſome Purpoſes they are diſtinct from the Realm of *England.* If two of the King's Subjects fight in a *Foreign Kingdom*, and one of them is killed, it cannot be tried here by the Common Law; but it may be tried and determined by the *Conſtable and Marſhal*, according to the *Civil Law*; or the Fact may be examined by the Privy Council, and tried by Commiſſioners appointed by the King in any County of *England*, by Statute. 3 *Inſt.* 48. 33 *H.* 8. One *Hutchinſon* killed Mr. *Colſon* abroad in *Portugal*, for which he was tried there and acquitted, the Exemplification of which Acquittal he produced under the Great Seal of that Kingdom; and the King being willing he ſhould be tried here, referred it to the Judges, who all agreed, that the Party being already acquitted by the Laws of *Portugal*, could not be tried again for the ſame Fact here. 3 *Keb.* 785. If a Stranger of *Holland*, or any *Foreign Kingdom*, buys Goods at *London*, and gives a Note under his Hand for Payment, and then goes away privately into *Holland*; the Seller may have a Certificate from the Lord Mayor, on Proof of Sale and Delivery of the Goods; upon which the People of *Holland* will execute a legal Proceſs on the Party. 4 *Inſt.* 38. Alſo at the Inſtance of an Ambaſſador or Conſul, ſuch a Perſon of *England*, or any Criminal againſt the Laws here, may be ſent from a *Foreign Kingdom* hither. Where a Bond is given, or Contract made in a *Foreign Kingdom*, it may be tried in the *King's Bench*, and laid to be done in any Place in *England.* *Hob.* 11. 2 *Bulſt.* 322. And an Agreement made in *France*, on two *French* Perſons marrying, touching the Wife's Fortune, has been decreed here to be executed, according to the Laws of *England*; and that the Husband ſurviving ſhould have the Whole: But Relief was firſt given for a certain Sum, and the reſt to be governed by the Cuſtom of *Paris.* *Preced Canc.* 207, 208.

Foreign Oppoſer, or *Appoſer.* See *Exchequer.*

Foreign Plea, Is a Plea in Objection to a Judge, where he is refuſed as incompetent to try the Matter in Queſtion, becauſe it ariſes out of his Juriſdiction. *Kitch.* 75. *Stat.* 4 *Hen.* 8. *cap.* 2. And if a Plea of iſſuable Matter is alledged in a different County from that wherein the Party is indicted or appealed, by the Common Law, ſuch Pleas can only be tried by Juries returned from the Counties wherein they are alledged. 2 *Hawk. P. C.* 404. But by the Stat. 33 *H.* 8. *c.* 14. all *Foreign Pleas* triable by the Country, upon an Indictment for Petit Treaſon, Murder or Felony, ſhall be forthwith tried without Delay, before the ſame Juſtices before whom the Party ſhall be arraigned, and by the Jurors of the ſame County where he is arraigned, notwithſtanding the Matter of the Pleas are alledged to be in any other County or Counties: Though as this Statute extends not to Treaſon, nor Appeals, it is ſaid a *Foreign* Iſſue therein muſt ſtill be tried by the Jury of the County wherein alledged. 3 *Inſt.* 17. *H. P. C.* 255. In a *Foreign Plea* in a Civil Action the Defendant ought to plead to that Place where the Plaintiff alledges the Matter to be done in his Declaration; and the Defendant may plead a *Foreign Plea* where a Matter is tranſitory, or not tranſitory; but in the laſt Caſe he muſt ſwear to it. *Sid.* 234. 2 *Nelſ.* 871. When a *Foreign Plea* is pleaded, the Court generally makes the Defendant put it in upon Oath, that it is true; or will enter up Judgment for Want of a Plea: But if a Plea in *B. R.* *&c.* be only to the Juriſdicton of the Court, or a Plea of Privilege, *&c.* if it is not put in on Oath, Judgment ſhall not be ſign'd for Want thereof. 5 *Mod.* 335. *Foreign Anſwer* is ſuch an Anſwer as is not triable in the County where made: And *Foreign Matter* is that Matter which is done in another County, *&c.*

Foreign Service, Is that whereby a mean Lord holds of another, without the Compaſs of his own Fee: Or that which the Tenant performs either to his own Lord, or to the Lord Paramount, out of the Fee. *Kitch.* 299. Of theſe Services, *Bracton* ſays thus: *Item ſunt quædam ſervitia, quæ dicuntur* Forinſeca, *quamvis ſunt in Charta de Feoffamento expreſſa & nominata*; *& quæ ideo dici poſſunt* Forinſeca, *quia pertinent ad Dominum Regem, & non ad Dominum Capitalem, &c. Quandoque enim nominantur* Forinſeca, *large ſumpto vocabulo, quoad ſervitium Domini Regis, quandoque ſcutagium, quandoque ſervitium Domini Regis, & ideo* Forinſecum *dici poteſt, quia fit & capitur* Foris, *ſive extra ſervitium quod fit Domino Capitali.* Bract. lib. 2. c. 16. And *Foreign Service* ſeems to be *Knight-Service*, or *Eſcuage* uncertain. *Perkin* 650. ——— *Salvo* Forinſeco Servitio. *Mon. Ang. Tom.* 2. *pag.* 637.

Foreigners, Though made Denizens or naturalized here, are diſabled to bear Offces in the Government, to be of the Privy Council, Members of Parliament, *&c.* by the Acts of Settlement of the Crown. 12 *W.* 3. *cap.* 2. 1 *Geo.* 1. *c.* 4.

Forejudger, (*Forjudicatio*) A Judgment whereby a Perſon is deprived or put by the Thing in Queſtion. *Bract. lib.* 4. To be *forejudged* the Court, is when an *Officer* or *Attorney* of any Court is expelled the ſame for ſome Offence; or for not appearing to an Action, on a Bill filed againſt him, *&c.* And in the latter Caſe, he is not to be admitted to practice in the Court, till he appears. 2 *Hen.* 4. *cap.* 8. If an Attorney *privileged* in C. B. is ſued, after a Bill filed againſt him, the Plaintiff's Attorney delivers it to one of the Criers of the Court, who calls the Attorney Defendant by his Name, and ſolemnly proclaims aloud, that if he does not appear to ſuch Bill, he will be *forejudged:* And when the Crier hath ſo called ſuch an Attorney, the Bill is delivered to the Secondary, who gives a Rule for him to appear, or he will ſtand *forejudged:* After which this Bill is to be carried to the Prothonotary's Office, and there filed and entered; and if the Attorney appears not in four Days, then the Bill is entered upon a Roll of that Term, and carried to the Clerk of the Warrants and Inrolments; and he thereupon ſtrikes ſuch Attorney out of the Roll of Attornies, when he ſtands unprivileged, and may be arreſted as any other Perſon, *&c.* *Practiſ Solic.* 322. *Attorn. Compan.* 182, 183. But an Attorney *forejudged*, may be reſtored, on clearing himſelf from his Contumacy in not appearing when he was called, and on making Satisfaction to the Plaintiff; and then a Judge will make an Order to the Clerk of the Warrants, to replace him in the proper Roll of Attornies: And there are Inſtances of reſtoring Attornies *forejudged*, upon Payment of a ſmall Fine. *Ibid Raſtal* 96.

Form *of a* Forejudger *of an Attorney.*

BE it remember'd, *that on the Day of*, &c. *this ſame Term*, A. B. *came here into this Court by*, &c. *his Attorney, and exhibited to the Juſtices of our Sovereign Lord the King, his Bill againſt* J. M. *Gent. one of the Attornies of the* Common Bench *of our ſaid Sovereign Lord the King, perſonally preſent here in Court*; *the Tenor of which Bill follows in theſe Words, that is to ſay, To the Juſtices of our Sovereign Lord the King, ſſ.* A. B. *by*, &c. *his Attorney, complains of* J. M. *one of the Attornies*, &c. *for that whereas*, &c. (ſetting forth the whole Bill.) *The Pledges for the Proſecution are* John Doe *and* Richard Roe: *Whereupon the ſaid* J. M. *being ſolemnly called, came not*; *therefore he is* forejudged *from exerciſing his Office of Attorney of this Court, for his Contumacy*, &c.

Foreſchoke, (*Derelictum*) Is of the ſame Meaning with *Forſaken* in modern Language; in one of our Statutes, it is ſpecially uſed for Lands or Tenements ſeiſed by a Lord, for Want of Services performed by the Tenant, and quietly held by ſuch Lord beyond a Year and a Day; now the Tenant, who ſeeing his Land taken into the Hands of the Lord, and poſſeſſed ſo long, and not purſuing the Courſe appointed by Law to recover it, doth in Preſumption of Law diſavow or forſake all the Right he hath to the ſame; and then ſuch Lands ſhall be called *Foreſchoke*. Stat. 10 Ed. 2. c. 1.

Foreſt, (*Foreſta, Saltus*) Signifies a great or vaſt Wood; *Locus Sylveſtris & Saltuoſus*. Our Law-Writers define it thus, Foreſta *eſt Locus ubi feræ inhabitant vel includuntur*; others ſay it is called *Foreſta, quaſi ferarum ſtatio, vel tuta manſio ferarum. Manwood* in his *Foreſt Laws* gives this particular Definition of it: A *Foreſt* is a certain Territory or Circuit of Woody Grounds and Paſtures, known in its Bounds, and privileged, for the peaceable Being and Abiding of wild Beaſts, and Fowls of *Foreſt*, Chaſe and Warren, to be under the King's Protection for his Princely Delight; repleniſhed with Beaſts of Venary or Chaſe, and great Coverts of *Vert* for Succour of the ſaid Beaſts; for Preſervation whereof there are particular Laws, Privileges and Officers belonging thereunto. *Manw. part* 2. *cap.* 1. *Foreſts* are of that Antiquity in *England*, that (except the *New Foreſt* in *Hampſhire*, erected by *William* called *The Conqueror*, and *Hampton Court* erected by King *Hen.* 8.) it is ſaid there is no Record or Hiſtory doth make any certain Mention of their Erections and Beginnings; tho' they are mentioned by ſeveral Writers; and in divers of our Laws and Statutes. 4 *Inſt.* 319. Our ancient Hiſtorians tell us, that *New Foreſt* was raiſed by the Deſtruction of twenty-two Pariſh Churches, and many Villages, Chapels and Manors, for the Space of thirty Miles together; which was attended with divers Judgments on the Poſterity of King *Will.* 1. who erected it; for *William Rufus* was there ſhot with an Arrow, and before him *Richard* the Brother of *Hen.* 1. was there killed; and *Henry* Nephew to *Robert*, the eldeſt Son of the Conqueror, did hang by the Hair of the Head in the Boughs of the *Foreſt* like unto *Abſalom. Blount.* Beſides the *New Foreſt*, there are ſixty-eight other *Foreſts* in *England*; thirteen Chaſes, and more than ſeven hundred Parks: The four principal *Foreſts* are *New Foreſt* on the Sea, *Shirewood Foreſt* on the *Trent*, *Dean Foreſt* on the *Severn*, and *Windſor Foreſt* on the *Thames*. The Way of making a *Foreſt* is thus: Certain Commiſſioners are appointed under the Great Seal of *England*, who view the Ground intended for a *Foreſt*, and fence it round with Meres and Bounds; which being returned into the Chancery, the King cauſed it to be proclaimed throughout the County where the Land lieth, that it is a *Foreſt* and to be governed by the Laws of the *Foreſt*, and prohibits all Perſons from hunting there without his Leave; and then he appointeth Officers fit for the Preſervation of the Vert and Veniſon, and ſo it becomes a *Foreſt* on Record. *Manw. cap.* 2. Tho' the King may erect a *Foreſt* on his own Ground and Waſtes; he may not do it in the Ground of other Perſons, without their Conſents; and Agreements with them for that Purpoſe, ought to be confirmed by Parliament. 4 *Inſt.* 300. Proof of a *Foreſt* appears by Matter of Record; as by the *Eyres* of the Juſtices of the *Foreſt*, and other Courts, and Officers of *Foreſts*, &c. and not by the Name in Grants. 12 *Rep.* 22. As Parks are incloſed with Wall, Pale, &c. ſo *Foreſts* and Chaſes are incloſed by Metes and Bounds; ſuch as Rivers, Highways, Hills, &c. which are an Incloſure in Law; and without which there cannot be a *Foreſt*. 4 *Inſt.* 317. And in the Eye of the Law, the Boundaries of a *Foreſt* go round about as it were a Brick Wall, directly in a right Line the one from the other; and they are known either by Matter of Record, or Preſcription. *Ibid.* Bounds of *Foreſt*, may be aſcertained by Commiſſion from the Lord Chancellor; and Commiſſioners, Sheriffs, Officers of *Foreſts*, &c. are empowered to make Inqueſts thereof. *Stat.* 16 & 17 *Car.* 1. *c.* 16. Alſo the Boundaries of *Foreſts* are reckoned a Part of the *Foreſt*; for if any Perſon kill or hunt any of the King's Deer in any Highway, River, or other incluſive Boundary of a *Foreſt*, he is as great an Offender as if he had killed or hunted Deer within the *Foreſt* itſelf. 4 *Inſt.* 318. By the Grant of a *Foreſt*, the Game of the *Foreſt* do paſs; and Beaſts of *Foreſt* are the Hart, Hind, Buck, Doe, Boar, Wolf, Fox, Hare, &c. The Seaſons for hunting whereof are as follow, *viz.* That of the Hart and Buck, begins at the Feaſt of St. *John Baptiſt*, and ends at *Holy-rood Day*; of the Hind and Doe, begins at *Holy rood*, and continues till *Candlemas*; of the Boar, from *Chriſtmas* to *Candlemas*; of the Fox, begins at *Chriſtmas*, and continues till *Lady-Day*; of the Hare, at *Michaelmas*, and laſts till *Candlemas*. *Dyer* 169. 4 *Inſt.* 316. Not only Game, &c. are incident to a *Foreſt*, but alſo a *Foreſt* hath divers ſpecial Properties. 1. A *Foreſt* truly and ſtrictly taken cannot be in the Hands of any but the King; for none but the King hath Power to grant Commiſſion to any one to be a *Juſtice in Eyre* of the *Foreſt*: But if the King grants a *Foreſt* to a Subject, and granteth farther that upon Requeſt made in Chancery, he and his Heirs ſhall have Juſtices of the *Foreſt*, then the Subject hath a *Foreſt* in Law. 4 *Inſt.* 314. *Cro. Jac.* 155. The ſecond Property of a *Foreſt* is the Courts; as the *Juſtice-Seat*, the *Swainmote*, and Court of *Attachment*. The third Property is the Officers belonging to it; as firſt the *Juſtices* of the *Foreſt*, the *Warden* or Warder, the *Verderors*, *Foreſters*, *Agiſters*, *Regarders*, *Keepers*, *Bailiffs*, *Beadles*, &c. Though as to the Courts, the moſt eſpecial Court of a *Foreſt* is the *Swainmote*, which is no leſs incident to it than a Court of *Pie-powders* to a Fair: And if this fail, there is nothing remaining of a *Foreſt*, but it is turned into the Nature of a Chaſe. *Manw. cap.* 21. *Crompt. Jur.* 146. There is but one *Chief Juſtice* of the *Foreſts* on this Side *Trent*, and he is named *Juſticiarius Itinerans Foreſtarum*, &c. *citra* Trentam; and there is another *Capitalis Juſticiarius*, and he is *Juſticiarius Itinerans omnium Foreſtarum ultra* Trentam, &c. who is a Perſon of greater Dignity, than Knowledge in the Laws of the *Foreſt*; and therefore when *Juſtice Seats* are held, there are aſſociated to him ſuch as the King ſhall appoint, who together with him determine *Omnia placita foreſtæ*, &c. 4 *Inſt.* 315. A *Juſtice in Eyre* cannot grant Licence to fell any Timber, unleſs it be *ſedente Curia*, or after a Writ of *Ad quod Damnum*: And it hath been reſolved by all the Judges, that though *Juſtices in Eyre*, and the King's Officers within his *Foreſts* have Charge of Veniſon, and of Vert or Green Hue, for the Maintenance of the King's Game, and all Manner of

Trees for Covert, Browſe and Pawnage; yet when Timber of the *Foreſt* is ſold, it muſt be cut and taken by Power under the *Great Seal* or the *Exchequer Seal* by View of the *Foreſters*, that it may not be had in Places inconvenient for the Game: And the Juſtice in Eyre, or any of the King's Officers in the *Foreſt*, cannot ſell or diſpoſe of any Wood within the *Foreſt* without Commiſſion; ſo that the Exchequer and the Officers of the *Foreſt* have *Diviſum Imperium*, the one for the Profit of the King, the other for his Pleaſure. 3*d Vol. Read. on Stat. pag.* 304, 305. Alſo no Officer of the *Foreſt* can claim Windfalls, or Dotard Trees, for their Perquiſites, becauſe they were once Parcel of the King's Inheritance; but they ought to be ſold by Commiſſion, for the King's beſt Benefit. *Ibid.* If any Officers cut down Wood, not neceſſary for Browſe, &c. they forfeit their Offices. 9 *Rep.* 50. The Lord of a *Foreſt* may by his Officers enter into any Man's Wood within the Regard of the *Foreſt*, and cut down Browſe-Wood for the Deer in Winter. 2 *Par. Game Law*, *p.* 46. A Preſcription for a Perſon to take and cut down Timber-Trees in a *Foreſt*, without View of the *Foreſter*, it is ſaid may be good: But of this *Quære*, without Allowance of a former *Eyre*, &c. If a Man hath a Wood in a *Foreſt*, and hath no ſuch Preſcription, the Law will allow him to fell it, ſo as he doth not prejudice the Game, but leave ſufficient Vert; but it ought to be by Writ of *Ad quod Damnum*, &c. 4 *Inſt. Cro. Jac.* 155. And every Perſon in his own Wood in a *Foreſt* may take *Houſe bote* and *Hay bote*, by View of the *Foreſter*; and ſo may Freeholders by Preſcription, Copyholders by Cuſtom, &c. 1 *Ed.* 3. *cap.* 2. The Wood taken by View of the *Foreſter*, ought to be preſented at the next *Court of Attachment*, that it was by View, and may appear of Record. Fences, &c. in *Foreſts* and Chaſes, muſt be with low Hedges, and they may be deſtroyed, though of forty Years Continuance, if they were not before. *Cro. Jac.* 156. He whoſe Wood is in Danger of being ſpoiled, for Want of repairing Fences by another, ought to requeſt the Party to make good the Hedges; and if he refuſe, then he muſt do it himſelf, and have Action on the Caſe againſt the other that ſhould have done it. 1 *Jones* 277. A Perſon may have Action at Common Law, for a Treſpaſs in a *Foreſt*, as to Wood, &c. to recover his Right. *Sid.* 296. The *Court of the Juſtice in Eyre* may proceed upon the Preſentments or Verdicts in the *Swainmote*, &c. And Preſentments and Convictions of the Court of *Attachment* and *Swainmote*, muſt be delivered to the Lord Chief Juſtice in Eyre, at the next Court of Juſtice-Seat, &c. where Judgment is to be given: And the Plea of the *Foreſt* runs thus; *Præſentatio per Foreſtarios, & Convictio per Viridarios, &c.* The *Court of Attachment* or Woodmote in *Foreſts*, is kept every forty Days; at which the *Foreſters* bring in the Attachments *de viridi & venatione*, and the Preſentments thereof, and the Verderors do receive the ſame, and inrol them; but this Court can only enquire, and not convict. 4 *Inſt.* 289. The *Court of Swainmote* is holden before the Verderors, as Judges, by the Steward of the Swainmote, thrice in the Year: The Freeholders within the *Foreſt*, are to appear at this Court, to make Inqueſts and Juries; and this Court may enquire *de ſuperonatione Foreſtariorum & aliorum Miniſtroum* Foreſtæ *& de eorum Oppreſſionibus populo noſtro illatis:* It may enquire of Offences, and convict alſo, but not give Judgment, which muſt be at the Juſtice-Seat. *Ibid.* The Court of the *Chief Juſtice in Eyre*, or *Juſtice-Seat*, is a Court of Record, and hath Authority to hear and determine all Treſpaſſes, Pleas, and Cauſes of the *Foreſt*, &c. within the *Foreſt*, as well concerning Vert and Veniſon, as other Cauſes whatſoever; and this Court cannot be kept oftener than every third Year. As before other Juſtices in Eyre, it muſt be ſummoned forty Days at leaſt before the Sitting thereof; and one Writ of Summons is to be directed to the Sheriff of the County, and another Writ *Cuſtodi* Foreſtæ *Domini Regis vel ejus locum tenenti, &c.* Which Writ of Summons conſiſts of two Parts: Firſt, To ſummon all the Officers of the *Foreſt*, and that they bring with them all Records, &c. Secondly, All Perſons which claim any Liberties or Franchiſes within the *Foreſt*, and to ſhew how they claim the ſame: If there be erroneous Judgment at the Juſtice-Seat, the Record may be removed by Writ of Error into *B. R.* 4 *Inſt.* 291. The *Court of Regard*, or Survey of Dogs, is holden likewiſe every third Year, for Expeditation or Lawing of Dogs; by cutting off to the Skin three Claws of the Fore-feet, to prevent their running at and killing of Deer. By Statute, three *Courts of Swainmote* are to be held for *Foreſts* in the Year; one fifteen Days before *Michaelmas*, another about *Martinmas*, and the third fifteen Days before *Midſummer:* And Preſentments of Treſpaſſes of Green Hue, and hunting in *Foreſts*, muſt be made at the next *Swainmote* by *Foreſters*, &c. Alſo no Officer of the *Foreſt* ſhall ſurcharge the *Foreſt*, on Pain of Impriſonment by the Juſtices of the *Foreſt*. *Charta de* Foreſta, 9 *Hen.* 3. *cap.* 1. *Ordinatio de* Foreſta, 34 *Ed.* 1. *Juſtices of Foreſts*, &c. may make Deputies. 32 *Hen.* 8. *cap.* 35. The *Chief Warden* of the *Foreſt* is a great Officer, next to the Juſtice of the *Foreſt*, to bail and diſcharge Offenders; but he is no judicial Officer: And the Conſtable of the Caſtle where a *Foreſt* is, by the *Foreſt* Law is Chief Warden of the *Foreſt*, as of *Windſor Caſtle*, &c. A *Verderor* is a judicial Officer of the *Foreſt*, and choſen in full County, by the King's Writ: His Office is to obſerve and keep the Aſſiſes or Laws of the *Foreſt*, and view, receive and inrol the Attachments and Preſentments of all Treſpaſſes of the *Foreſt*, of Vert and Veniſon, and to do equal Right and Juſtice to the People: The Verderors are the Chief Judges of the *Swainmote* Court; although the Chief Warden, or his Deputy, uſually ſits there. 4 *Inſt.* 292. The *Regarder* is to make Regard of the *Foreſt*, and to view and enquire of Offences, Concealments, Defaults of *Foreſters*, &c. Before any Juſtice-Seat is holden, the Regarders of the *Foreſt* muſt make their Regard, and go through and view the whole *Foreſt*, &c. They are miniſterial Officers, conſtituted by Letters Patent of the King, or choſen by Writ to the Sheriff. 4 *Inſt.* 291. A *Foreſter* is in legal Underſtanding a ſworn Officer miniſterial of the *Foreſt*, and is to watch over the Vert and Veniſon, and to make Attachments and true Preſentments of all manner of Treſpaſſes done within the *Foreſt:* A *Foreſter* is alſo taken for a *Woodward:* This Officer is made by Letters Patent, and 'tis ſaid the Office may be granted in Fee or for Life. 4 *Inſt.* 293. Every *Foreſter* when he is called at a Court of Juſtice-Seat, ought upon his Knees to deliver his Horn to the Chief Juſtice in Eyre; ſo every Woodward ought to preſent his Hatchet to my Lord. A *Riding Foreſter* is to lead the King in his Hunting. 1 *Jones* 277. The Office of *Foreſter*, &c. though it be a Fee-ſimple, cannot be granted or aſſigned over, without the King's Licence. 4 *Inſt.* 316. If a *Foreſter* by Patent for Life, is made Juſtice of the ſame *Foreſt pro hac vice*, the *Foreſterſhip* is become void; for theſe Offices are incompatible, as the *Foreſter* is under the Correction of the Juſtice, and he cannot judge himſelf. 4 *Inſt.* 313. An *Agiſter*'s Office is to attend upon the King's Woods and Lands in a *Foreſt*, receive and take in Cattle, &c. by Agiſtment, that is to depaſture within the *Foreſt*, or to feed upon the Pawnage, &c. And this Officer is conſtituted by Letters Patent. 4 *Inſt.* 293. Perſons inhabiting in the *Foreſt*, may have Common of Herbage for Beaſts commonable within the *Foreſt*; but by the *Foreſt* Law, Sheep are not commonable there, becauſe they bite ſo cloſe that they deſtroy the Vert; and yet it has been held, that Sheep may be commonable in *Foreſts* by Preſcription. 3 *Bulſt.* 213.

There may be a Preſcription for Common in a *Foreſt* at all Times in the Year; tho' it was formerly the Opinion of our Judges, that the *Fence-month* ſhould be excepted. 3 *Lev.* 127. A *Foreſt* may be *diſafforeſted* and laid open; but Right of Common ſhall remain. *Poph.* 93. He that hath a Grant of the Herbage or Pawnage of a Park, *Foreſt*, *&c.* cannot take any Herbage or Pawnage, but of the Surpluſage over and above a competent and ſufficient Paſture and Feeding for the Game; and if there be no Surpluſage, he that hath the Herbage and Pawnage, cannot put in any Beaſts; if he doth, they may be driven out. 3 *Vol. Read. on Stat.* 305. None may gather Nuts in the *Foreſt*, without Warrant. A *Ranger* of a *Foreſt* is one whoſe Buſineſs it is to rechaſe the wild Beaſts from the *Purlieus* into the *Foreſt*, and to preſent Offences within the Purlieu, and the *Foreſt*, *&c.* And though he is not properly an Officer in the *Foreſt*, yet he is a conſiderable Officer of and belonging to it. The *Beadle* is a *Foreſt* Officer, that warns all the Courts of the *Foreſt*, and executes Proceſs, makes all Proclamations, *&c.* 4 *Inſt.* 313. There are alſo *Keepers* or *Bailiffs* of Walks in *Foreſts* and Chaſes, who are ſubordinate to the Verderors, *&c.* And theſe Officers cannot be ſworn on any Inqueſts or Juries out of the *Foreſt*. If any Man hunt Beaſts within a *Foreſt*, although they are not Beaſts of the *Foreſt*, they are puniſhable by the *Foreſt* Laws; becauſe all Hunting there, without Warrant, is unlawful. 4 *Inſt.* 314. If a Deer be hunted in a *Foreſt*, and afterwards by Hunting it is driven out of the *Foreſt*, and the *Foreſter* follows the Chaſe, and the Owner of the Ground where driven kills the Deer there; yet the *Foreſter* may enter into the Lands and retake the Deer: For Property in the Deer is in this Caſe by Purſuit. 2 *Leon.* 201. He that hath any Manner of Licence to hunt in a *Foreſt*, Chaſe, Park, *&c.* muſt take heed that he do not abuſe his Licence, or exceed his Authority; for if he do, he ſhall be accounted a Treſpaſſer *ab initio*, and be puniſhed for that Fact as if he had no Licence at all. *Manw.* 280, 288. Every Lord of Parliament ſent for by the King, may in coming and returning kill a Deer or two in the King's *Foreſt* or Chaſe through which he paſſes; but it muſt not be done privily, without the View of the *Foreſter* if preſent; or if abſent by cauſing one to blow a Horn, becauſe otherwiſe he may be a Treſpaſſer, and ſeem to ſteal the Deer. *Chart. Foreſt. c.* 11. 4 *Inſt.* 308. *Lex Foreſtæ* is a private Law, and muſt be pleaded. 2 *Leon.* 209. But it hath been obſerved, that the Laws of the *Foreſt* are eſtabliſhed by Act of Parliament, and for the moſt part contained *in Charta de Foreſta*, 9 *H.* 3. and 34 *Ed.* 1. By the Law of the *Foreſt*, Receivers of Treſpaſſers in hunting or killing of Deer, knowing them to be ſuch, or any of the King's Veniſon, are principal Treſpaſſers; though the Treſpaſs was not done to their Uſe or Benefit, as the Common Law requires; by which the Agreement ſubſequent amounts to a Commandment: But if the Receipt be out of the Bounds of the *Foreſt*, they cannot be puniſhed by the Laws of the *Foreſt*, being not within the *Foreſt* Juriſdiction, which is local. 4 *Inſt.* 317. If a Treſpaſs be done in a *Foreſt*, and the Treſpaſſer dies, it ſhall be puniſhed after his Death in the Life-time of the Heir, contrary to the Common Law. *Hue* and *Cry* may be made by the *Foreſt* Law for Treſpaſs, as to Veniſon; though it cannot be purſued but only within the Bounds of the *Foreſt*. 4 *Inſt.* 294. And not purſuing Hue and Cry in the *Foreſt*, a Townſhip, *&c.* may be fined and amerced. In every Treſpaſs and Offence of the *Foreſt* in Vert or Veniſon, the Puniſhment is, to be impriſoned, ranſomed, and bound to the good Behaviour of the *Foreſt*, which muſt be executed by a judicial Sentence by the Lord Chief Juſtice in *Eyre* of the *Foreſt*. If any *Foreſter* find any Perſon hunting without Warrant, he is to arreſt his Body, and carry him to Priſon; from whence he ſhall not be delivered without ſpecial Warrant from the King, or his Juſtices of the *Foreſt*, *&c.* But by 1 *Ed.* 3. *c.* 8. Perſons are bailable if not taken *in the Manner*, as with a Bow ready to ſhoot, carrying away Deer killed, or ſmeared with Blood, *&c.* Tho' if one be not thus taken, he may be attached by his Goods. 4 *Inſt.* 289. The Warden of the *Foreſt* ſhall let ſuch to Mainpriſe until the *Eyre* of the *Foreſt*; or a Writ may be had out of the Chancery to oblige him to do it; and if he refuſe to deliver the Party, a Writ ſhall go to the Sheriff to attach the Warden, *&c.* who ſhall pay treble Damages to the Party grieved, and be committed to Priſon, *&c.* *Stat.* 1 *Ed.* 3. No Officer of the *Foreſt* may take or impriſon any Perſon without due Indictment, or *per main ouvre*, with his Hand at the Work; nor ſhall conſtrain any to make Obligation againſt the Aſſiſe of the *Foreſt*, on Pain to pay double Damages, and to be ranſomed at the King's Will. 7 *R.* 2. *c.* 4. A *Foreſter* ſhall not be queſtioned for killing a Treſpaſſer, who (after the Peace cried unto him) will not yield himſelf; ſo as it be not done out of ſome former Malice. 21 *Ed.* 1. but if Treſpaſſers in a *Foreſt*, *&c.* kill a Man who oppoſes them, although they bore no Malice to the Perſon killed, it is Murder; becauſe they were upon an unlawful Act, and therefore Malice is implied. *Rol. Abr.* 548. And if Murder be committed by ſuch Treſpaſſers, all are Principals. *Kel. Rep.* 87. If a Man come into a *Foreſt* in the Night-time, the *Foreſter* cannot juſtify Beating him before he make Reſiſtance; but if he reſiſts, he may juſtify the Battery. Perſons may be fined for concealing the Killing of Deer by others; and ſo for carrying a Gun, with an Intent to kill the Deer: And he that ſteals Veniſon in the *Foreſt*, and carries it off on Horſeback, the Horſe ſhall be forfeited, unleſs it be a Stranger's ignorant of the Fact. 2 *Par. Game Law* 34, 35. Where Heath is burned in a *Foreſt*, the Offenders may be fined: And if any Man cuts down Buſhes and Thorns, and carries them away in a Cart, he is finable; and the Cart and Horſes ſhall be ſeiſed by the *Foreſt* Laws. *Ibid.* 36, 46. But a Man may preſcribe to cut Wood, *&c.* And every Freeman within the *Foreſt*, may on his own Ground make a Mill Dyke, or Arable Land, without encloſing ſuch Arable; but if it be a Nuſance to others, it is puniſhable. *Chart. Foreſt. c.* 11. 12 *Rep.* 22. And if any having Woods in his own Ground, within any *Foreſt*, or Chaſe, ſhall cut the ſame by the King's Licence, *&c.* he may keep them ſeveral and incloſed, for ſeven Years after Felling. 22 *E.* 4. 7. By *Charta de Foreſta*, no Man ſhall loſe Life or Member for killing the King's Deer in any *Foreſt*, *&c.* but ſhall be fined; and if he have nothing to pay the Fine, he ſhall be impriſoned a Year and a Day; and then be delivered, if he can give good Security not to offend for the future; and if not, he ſhall abjure the Realm: Before this Statute, it was Felony to hunt the King's Deer. 2 *Roll.* 120. To hunt in a *Foreſt*, Park, *&c.* in the Night diſguiſed, if denied or concealed, upon Examination before a Juſtice of Peace, it is *Felony*: But if confeſſed, it is only Fineable. 1 *H.* 7. *c.* 7. By the 9 *Geo.* 1. *cap.* 22. If any Perſons *armed* and *diſguiſed*, ſhall appear in any *Foreſt*, Chaſe, *&c.* where Deer are kept, and hunt, wound, kill or ſteal any Deer; or if any Perſons ſhall procure any one to join with them in any ſuch unlawful Act; or ſhall reſcue ſuch an Offender, *&c.* they ſhall be guilty of Felony. And the *Norman* Kings puniſhed thoſe who hunted and killed Deer in *Foreſts* with great Severity, inflicting their Puniſhments in various Ways; as by Hanging, Forfeiture of Goods, and Loſs of Limbs, Gelding, and putting out Eyes, *&c.* *W.* 1. *H.* 1. *R.* 1. *&c.* Felony committed within a *Foreſt*, is enquired of before the Judges of the Common Law; and not by the Juſtice of the *Foreſt*. See *Drift of the Foreſt*, *Chaſe and Purlieu*

Foreſtagium Seems to ſignify ſome Duty payable to the King's *Foreſters*, as *Chiminage* or ſuch like: *Et ſint quieti de Thelonio & Paſſagio, & de* Foreſtagio, &c. *Chart.* 18 *E.* 1.

Foreſtal, (*Foreſtallamentum*, from the Sax. *Fore*, i. e. via & *Stal*) Is to intercept on the Highway. *Spelman* ſays, it is *Viæ obſtructio, vel itineris interceptio*; with whom agrees *Coke on Litt.* fol. 161. And according to *Fleta*, Foreſtalling *ſignificat obſtructionem Viæ vel Impedimentum tranſitus & fugæ averiorum*, &c. lib. 1. cap. 24. In our Law, *Foreſtalling* is the Buying or Bargaining for any Corn, Cattle, or other Merchandize, by the Way as they come to Fairs or Markets to be ſold, before they are brought thither; to the Intent to ſell the ſame again, at a higher and dearer Price. By the 5 & 6 *Ed.* 6. *cap.* 14. any buying or contracting for Merchandize, Victuals, or other Thing whatſoever in the Way, coming by Land or Water to any Fair or Market, or to any Port, &c. to be ſold, or cauſing the ſame to be bought, or diſſuading People by Word, Letter, Meſſage, or otherwiſe, from bringing ſuch Things to Market, or perſuading them to enhance the Price after they are brought thither, is *Foreſtalling*: And the Party guilty of any Offence of *Foreſtalling*, &c. upon Conviction at the Quarter-Seſſions by two Witneſſes, on Bill, Information, Preſentment, &c. ſhall for the firſt Offence, loſe the Goods ſo bought, or the Value of them, and ſuffer two Months Impriſonment; for the ſecond Offence, he ſhall forfeit double the Value, and be impriſoned ſix Months; and for the third Offence, he ſhall loſe all his Goods, be ſet upon the Pillory, and be impriſoned at the King's Pleaſure. *Stat. Ibid.* The Forfeitures are to the King's Uſe only, if there are no Informers; otherwiſe a Moiety goes to the King, and a Moiety to the Informer. All Endeavours to enhance the common Price of any Victuals or Merchandiſe, and Practices which have an apparent Tendency thereto, whether by ſpreading falſe Rumours, or buying Things in a Market before the accuſtom'd Hour, or by buying and ſelling again the ſame Thing in the ſame Market, &c. are highly Criminal by the Common Law; and all ſuch Offences anciently came under the general Appellation of *Foreſtalling.* 3 *Inſt.* 195, 196. And ſo jealous is the Common Law of Practices of this Nature, which are a general Inconvenience and Prejudice to the People, and very oppreſſive to the poorer Sort, that it will not ſuffer Corn to be ſold in the Sheaf before thraſhed; for by ſuch Sale the Market is in Effect *Foreſtalled.* 3 *Inſt.* 197. *H. P. C.* 152. By the Common Law Perſons guilty of *Foreſtalling* upon an Indictment found, are liable to a Fine and Impriſonment, anſwerable to the Heinouſneſs of their Offence. 1 *Hawk.* 235. See *Ingroſſer.*

Foreſtaller, Is a Perſon guilty in any of the Inſtances and Particulars deſcribed of *Foreſtalling.* 5 & 6 *E.* 6. *c.* 14.

Forfang or **Forefeng**, (from the Sax. *Fore, ante &* fangen, *prendere*) Is the Taking of Proviſion from any one in Fairs or Markets, before the King's *Purveyors* are ſerved with Neceſſaries for his Majeſty. —— *Eſt captio obſoniorum, quæ in Foris aut Nundinis ab aliquo fit, priuſquam Miniſter Regis ea ceperit quæ Regi fuerint neceſſaria.* Anteceptio *vel* præventio—— *Et ſint quieti de* Wardwite & Forfeng & Withfang, &c. *Chart. Hen.* 1. *Hoſp. Sancti Barth. Lond. Anno* 1133.

Forfeiture, (*Forisfactura*, from the Fr. *Forfait*) Signifies the Effect or Penalty of traſgreſſing ſome Law. It is of Lands or Goods, and differs from *Confiſcation*, in that *Forfeiture* is more general; whereas *Confiſcation* is particulary applied to ſuch as are *forfeit* to the King's *Exchequer*, and *Confiſcate* Goods are ſaid to be ſuch as no Body doth Claim. *Staundf. P. C.* 186. There is a *full Forfeiture, plena Forisfactura*, otherwiſe called *Plena Wita*, which is a *Forfeiture* of Life and Member, and all that a Man hath. *Leg. H.* 1. *c.* 88. And there is Mention in ſome Statutes, of *Forfeiture* at the King's Will, of Body, Lands, and Goods, &c. 4 *Inſt.* 66. *Forfeitures* are in Criminal Matters, where a Perſon is attainted of Treaſon, Felony, &c. And as all Eſtates are ſaid to be derived from the Crown; ſo all *Forfeitures* and Eſcheats of Lands belong to the King, unleſs granted away. *Finch* 132, 164. Alſo where Land comes to the Crown, as *forfeited* by Attainder of Treaſon, all meſne Tenures of common Perſons are extinct; but if the King grant it out, the former Tenure ſhall be revived, for which a Petition of Right lies. 2 *Hale's Hiſt. P. C.* 254. In *Treaſon*, all Lands of Inheritance, whereof the Offender was ſeiſed in his own Right, were *forfeited* by the Common Law; and Rights of Entry, &c. 2 *Hawk. P. C.* 448. And the Inheritance of Things not lying in Tenure, as of Rent-Charges, Commons, &c. ſhall be *forfeited* in High Treaſon: But no Right of Action whatſoever to Lands of Inheritance is *forfeited*, either by the Common or Statute Law. *Ibid.* 449 All Lands, Tenements, &c. are *forfeited* in Treaſon by Stat. 26 *H.* 8. *c.* 13. And the King ſhall be adjudged in Poſſeſſion of Lands and Goods *forfeited* for Treaſon on the Attainder of the Offender, without any Office found, ſaving the Right of others. 33 *H.* 8. *c.* 20. Lands and Hereditaments in Fee-ſimple and Fee-tail, are *forfeited* in High Treaſon: But Lands in Tail could not be *forfeited* only for the Life of Tenant in Tail, till the Statute 26 *H.* 8. by which Statute they may be *forfeited.* 2 *Hawk.* Where Tenant for Life, &c. is attainted, the King ſhall have the Profits of the Lands during the Life of ſuch Tenant only. 2 *Inſt.* 37. There ſhall be no *Forfeiture* of Lands for Treaſon of dead Perſons, not atainted in their Lives. *Stat.* 34 *Ed.* 3. *cap.* 12. 3 *Inſt.* 12. Tho' the Chief Juſtice of *B. R.* as Sovereign Coroner may view the Body of a Perſon killed in a Rebellion, and make a Record thereof, whereby he ſhall *forfeit* Lands and Goods. *Wood's Inſt.* 654. And a Man may be attainted by Act of Parliament. 3 *Inſt.* After the Deceaſe of the *Pretender*, no Attainder for Treaſon in *Scotland* ſhall make any *Forfeiture*, to diſinherit the Heir, &c. *Stat.* 7 *Ann. cap.* 21. Upon *Outlawry* in Treaſon or Felony, the Offender ſhall *forfeit* as much as if he had appeared, and Judgment had been given againſt him, ſo long as the Outlawry is in Force. 3 *Inſt.* 52, 212. For *Petit Treaſon*, *Murder*, *Burglary*, *Robbery*, and all *Felonies* for which the Offenders ſhall ſuffer Death, they ſhall *forfeit* all their Lands in Fee-ſimple, Goods and Chattels. 1 *Inſt.* 391. 1 *Lill. Abr.* 628. But *Gavelkind* Land in *Kent* is not *forfeited* by committing of Felony; and by a Felony only, entailed Lands are not *forfeit. S. P. C.* 3. 26. Land that one hath in Truſt; or Goods and Chattels in Right of another, or to another's Uſe, &c. will not be liable to *Forfeiture.* Though Leaſes for Years, in a Man's own, or his Wife's Right; Eſtates in Jointenancy, &c. and all Statutes, Bonds, and Debts due thereby, and upon Contracts, &c. ſhall be *forfeited.* 1 *Inſt.* 42, 151. *Staundf.* 188. A married Man guilty of Felony, *Forfeits* his Wife's Term; and if a Wife kill her Husband, the Husband's Goods are *forfeited. Jenk. Cent.* 65. In *Manſlaughter*, the Offender *forfeits* Goods and Chattels: And in *Chance-medley* and *ſe Defendendo*, Goods and Chattels; but the Offenders have their Pardon of Courſe. 1 *Inſt.* 391. Thoſe that are hanged by *Martial Law* in Time of War, *forfeit* no Lands. 1 *Inſt.* 13. And for Robbery or Piracy, &c. on the Sea, if tried in the Court of Admiralty by the *Civil Law*, and not by Jury, there is no *Forfeiture*: But if a Perſon be attainted before Commiſſioners by Virtue of the Statute 28 *Hen.* 8. there works a *Forfeiture.* 1 *Lill. Abr.* The King ſhall have Goods of *Felons*, and Year, Day and Waſte in their Lands, &c. which afterwards go to the Lord of the Manor of whom held. *Magna Charta, cap.* 22. and 17 *Ed.* 2. *cap.* 14. And the Profits of Lands whereof a Perſon attainted of Felony is ſeiſed of an Eſtate of Inheritance in Right of his Wife; or of an Eſtate for Life only in his own Right, are *forfeited* to the King, and nothing is *forfeited* to the Lord. 3 *Inſt.* 19. *Fitz. Aſſ.* 166. By the Conviction of a Felon, his Goods and Chattels are *forfeited*; but by Attainder, his Lands and Tenements. 1 *Inſt.* 291. The *Forfeiture* in Caſe of Felony ſhall relate to the Time mentioned in the Indictment when the Felony was committed, as to the avoiding of Eſtates and Charges after; but for the mean Profits of the Land, it ſhall relate only to the Judgment. 1 *Inſt.* 390. Goods or Lands of one arreſted for Felony, ſhall not be ſeiſed before he is convict or attaint of the Felony; on Pain of *forfeiting* double Value. 1 *R.* 3. *c.* 3. Goods of a Felon, &c. cannot be ſeiſed before *forfeited*; though they may be inventoried, and a Charge made thereof before Indictment. *Wood's Inſt.* 659. In Treaſon or Felony, the Delinquent may ſell his Goods, be they Chattels real or perſonal, *bona fide*, before Conviction, for his Maintenance in Priſon; for the King hath no Intereſt in the *Forfeiture* 'till Conviction. 8 *Rep.* And where Goods of a Felon are pawn'd before he is attainted, the King ſhall not have the *Forfeiture* of the Goods 'till the Money is paid to him to whom they were pawn'd. 3 *Inſt.* 17. 2 *Nelſ. Abr.* 874, 875. Goods of Perſons that *fly* for a Felony, are *forfeited* to the Lord of the Franchiſe, when the Flight is found of Record. 2 *Inſt.* 281. *A Felo de ſe forfeits* all his Goods and Chattels. 3 *Inſt.* 55. For *Miſpriſion* of Treaſon, the *Forfeiture* is Goods and Chattels, and Profits of Lands during Life. 1 *Inſt.* 392. In a *Præmunire*, Lands in Fee ſimple are *forfeited*, with Goods and Chattels. 1 *Inſt.* 129. For *Petit Larceny* the Offender *forfeits* his Goods. 1 *Inſt.* 391. And for *ſtanding Mute* where Perſons are adjudged to Penance, in Caſes of Felony, there is a *Forfeiture* of Goods and Chattels; and ſo for challenging above 35 Jurors, &c. 3 *Inſt.* 227. Drawing a Weapon upon a Judge, or *ſtriking* another in the *King's Courts*, incurs *Forfeiture* of the Profits of Lands for Life, and of Goods: And it is the ſame *Forfeiture* for reſcuing a Priſoner in or before any of thoſe Courts, committed by the Juſtices. 2 *Cro.* 367. 3 *Inſt.* 141. If a Woman after a *Rape*, conſent to the Raviſher, ſhe ſhall loſe her Dower after the Death of her Husband, &c. Stat. 6 *R.* 2. *c* 6. And if any Maiden or Woman Child above 12, and under 16 Years of Age, ſhall agree to be taken away and deflowred, or Contract with any Man for Marriage againſt the Will and without the Conſent of her Father; or if he be dead, her Mother or Guardian appointed by her Father's Will, ſhe ſhall *forfeit* her Land of Inheritance for her Life. 4 & 5 *P.* & *M. c.* 8. *Artificers* going out of the Kingdom, and teaching their Trades to Foreigners, are liable to *forfeit* their Lands, &c. by Stat. 5 *Geo.* 1. *c* 27.

Forfeiture in civil Caſes. A Man that hath an Eſtate for Life or Years, may *forfeit* it by many Ways, as well as by *Treaſon* or *Felony*, and ſuch Means as are before mentioned: As by *Alienation*; by *claiming a greater* Eſtate than he hath; or *affirming* the *Reverſion* to be in a Stranger, &c. If Tenant for Life, in Dower, by the Curteſy, or after Poſſibility of Iſſue extinct, or any Leſſee for Years, Tenant by Statute-Merchant, Staple, or *Elegit*, of Lands or Tenements that lie in *Livery*, ſhall make any abſolute or conditional Feoffment in Fee, Gift in Tail, Leaſe for any other Life than his own, &c. or levy a Fine *ſur Conuſance de Droit come ceo*, &c. or ſuffer a common Recovery thereof; or being impleaded in a Writ of Right brought againſt him, join the *Miſe* upon the meer Right, or admit the Reverſion to be in another; or in a *quid Juris clamat*, claim the Fee-ſimple; or if Leſſee for Years being ouſted, bring an Aſſiſe *ut de libero Tenemento*, &c. By either of theſe Things, there will be a *Forfeiture* of Eſtate. *Plowd.* 15. 1 *Rep.* 15. 8 *Rep.* 144. 1 *Inſt.* 251. *Dyer* 324, 152. 1 *Bulſt.* 219. But where the Land granted by Tenant for Life, or Years, is not well conveyed; or the Thing doth not lie in *Livery*, as a Rent, Common, or the like; he will not *forfeit* his Eſtate: And therefore, if a Feoffment, Gift in Tail, or Leaſe for another's Life, made by the Tenant for Life, is not good, for Want of Words in the Making it, or due Execution in the Livery and Seiſin, this ſhall not produce a *Forfeiture*. 2 *Rep.* 55. When Tenant in Tail makes Leaſes, not warranted by the Statute; a Copyholder commits Waſte, refuſes to pay his Rent, or do Suit of Court; and where an Eſtate is granted upon Condition, or Non-performance thereof, &c. they will make a *Forfeiture*. 1 *Rep.* 15. Alſo *Offices* may be *forfeited* by Neglect of Duty, &c. See *Fine*.

Forfeited Eſtates. There are ſeveral Statutes appointing *Commiſſioners of forfeited Eſtates*, on Rebellions in this Kingdom and *Ireland*: By 11 & 12 *W.* 3. *c.* 3. all Lands and Tenements, &c. of Perſons attainted or convicted of Treaſon or Rebellion in *Ireland*, were veſted in ſeveral Commiſſioners and Truſtees for Sale thereof; and any Perſon or Society might purchaſe any of the ſaid Lands, and the Conveyances being inrolled, they ſhould be actually ſeiſed thereof: And the Commiſſioners had Power to proceed ſummarily, and determine by Examinations on Oath, &c. The 1 *Geo.* 1. *c.* 50. appointed Commiſſioners to enquire of *forfeited Eſtates* in *England* and *Scotland*, on the Rebellion at *Preſton*, &c. And the Eſtates of Perſons attainted of Treaſon were veſted in his Majeſty for publick Uſes; but afterwards in Truſtees, to be ſold for the Uſe of the Publick; and Purchaſers to be *Proteſtants*. The Commiſſioners had Power to ſummon Claimants, and determine Claims, &c. for which they were a Court of Record; and five Judges were aſſigned to be a Court of Delegates to hear and determine Appeals. The Commiſſioners to give up their Accounts to the King, and both Houſes of Parliament: And were alſo impowered to enquire of Eſtates of *Popiſh Recuſants*, and Lands given to *ſuperſtitious Uſes*; two Thirds of the former being liable to *Forfeiture*, and the latter veſted in the Crown, &c. See 1 *Geo.* 1. *c.* 50. and 4 *Geo.* 1. *c.* 8, 5, 7 & 8 *Geo.* 1. and 5 *Geo.* 2. *c.* 23.

Forgabel, (*Forgabulum*) A ſmall reſerved Rent in Money, or Quit-Rent:—— *Ita quod ego Henricus M. vel Hæredes mei nihil juris de Tenemento*, &c. *exceptis vi. denar. de* Forgabulo *annuatim percipiendis ad Paſcha pro omnibus ſervitiis*. Ex Cartul. Abbat. de Rading. MS. f. 88.

Forge, (*Forgia*) A Smith's *Forge*, to melt and work Iron.——*Henricus Rex conceſſiſſe*, &c. & *unam* Forgiam Ferrariam *ita liberam*. Chart. Hen. 2.

Forgery, (from the Fr. *Forger*, i. e. *accudere, fabricare*, to beat on an Anvil, forge or form) Is where a Perſon fraudulently makes and publiſhes falſe Writings, to the Prejudice of another Man's Right; or it ſignifies the Writ that lies againſt him who commits ſuch an Offence, the Penalty whereof is declared in the Stat. 5 *Eliz. cap.* 14. And *Forgery* either at Common Law, or by Statute, puniſhable by Indictment, Information, &c. But there can be no *Forgery*, where none can be prejudiced by it but the Perſon doing it. 1 *Salk.* 375. *Forgery* by the *Common Law* extends to a falſe and fraudulent making or altering of a Deed or Writing, whether it be Matter of Record, or any other Writing, Deed, or Will. 3 *Inſt.* 169. 1 *Roll. Abr.* 65. Not only where one makes a falſe Deed; but where a fraudulent Alteration is made of a true Deed, in a material Part of it, as by making a Leaſe of the Manor of *Dale*, appear to be a Leaſe of the Manor of *Sale*, by changing the Letter *D.* into an *S.* or by altering a Bond, &c. for 500 *l.* expreſſed in Figures, to 5000 *l.* by adding a new Cypher, theſe are *Forgery*: So it is if a Man finding another's Name at the Bottom of a Letter, at a conſiderable Diſtance from the other Writing, cauſes a Letter to be cut off, and a general Releaſe to be written above the Name, &c. Alſo a Writing may be ſaid to be *forged*, where one being directed to draw up a Will for a ſick Perſon, doth inſert ſome Legacies therein falſly of his own Head; tho' there be no *Forgery* of the Hand or Seal; for the Crime of *Forgery* conſiſts as well in endeavouring to give an Appearance of Truth to a meer Falſity, as in counterfeiting a Man's Hand, &c. 1 *Hawk. P. C.* 182, 183. 3 *Inſt.* 170. But a Perſon cannot regularly be guilty of *Forgery*, by an Act of Omiſſion; as by omitting a Legacy out of a Will, which he is directed to draw for another: Though it has been held, that if the Omiſſion of a Bequeſt to one cauſe a material Alteration in the Limitation of an Eſtate to another; as if the Deviſor directs a Gift for Life to one Man, and the Remainder to another in Fee, and the Writer omit the Eſtate for Life, ſo that he in the Remainder hath a preſent Eſtate upon the Death of the Deviſor, not intended to paſs, this is *Forgery*. *Noy* 118. *Moor* 760. If one write a Will without any Direction, and bring it to the Teſtator, who is not of perfect Memory, and he ſigns it, this doth not amount to *Forgery*. *Ibid.* If a Feoffment be made of Land, and Livery and Seiſin is not indorſed when the Deed is delivered, and afterwards on ſelling the Land for a valuable Conſideration to another, Livery is indorſed upon the firſt Deed; this hath been adjudged *Forgery* both in the Feoffor and Feoffee; becauſe it was done to deceive an honeſt Purchaſor. *Moor* 665. And when a Perſon knowingly falſifies the Date of a ſecond Conveyance, which he had no Power to make, in order to deceive a Purchaſer, &c. he is ſaid to be guilty of *Forgery*. 3 *Inſt.* 169. 1 *Hawk.* 182. It ſeems to be no Way material, whether a *forged* Inſtrument be made in ſuch Manner, that if it were in Truth ſuch as it is counterfeited for, it would be of Validity or not. 1 *Sid.* 142. The Counterfeiting Writings of an inferior Nature, as Letters and ſuch like, is not properly *Forgery*; but the Deceit is puniſhable. 1 *Hawk.* 184. By Statute 1 *H.* 5. *c.* 3. a *Forger* or Publiſher of falſe Deeds, was to pay Damages, Fine and Ranſom. And by 5 *Eliz. cap.* 14. If any Perſon alone or with others, ſhall falſly *forge* or make, or cauſe to be *forged* and made, or aſſent to the *Forging* of any Deed or Writing ſealed, Court-Roll or Will in Writing, to the Intent that the Freehold or Inheritance of Lands may be defeated or charged; or ſhall pronounce, publiſh, or ſhew forth in Evidence any ſuch *forged* Writing as true, knowing of the *Forgery*; and ſhall be convicted thereof, upon an Action founded on this Statute, or otherwiſe by Bill, &c. in the *King's Bench* or *Exchequer*, he ſhall pay double Coſts and Damages to the Party grieved and be ſet on the Pillory, and have both his Ears cut off, and his Noſtrils ſlit, and ſhall *forfeit* to the King the Iſſues and Profits of his Lands and Tenements during Life, ſuffer perpetual Impriſonment, &c. And if any one ſhall *forge* or falſly make any Deed or Writing, containing a Leaſe for Years of Lands (not Copyhold) or an Annuity in Fee, for Life or Years, or any Obligation, Acquittance, Releaſe, or other Diſcharge of any Debt or perſonal Demand, or publiſh or give in Evidence the ſame knowingly; he ſhall pay to the Party injured double Coſts and Damages, and ſhall be likewiſe ſet on the Pillory, and loſe one of his Ears, and be impriſoned for a Year. And if any Perſon ſhall be guilty of a ſecond Offence, it ſhall be adjudged *Felony*, without Benefit of Clergy. *Stat. Ibid.* The *Forgery* of a Deed of Gift of meer perſonal Chattels, is not within the Words of the Statute which are Obligation, Acquittance, Releaſe, &c. 3 *Leon.* 170. And *forging* an Aſſignment of a Leaſe is not within the Act, becauſe it doth not charge the Lands, but only transfers an Intereſt which was in Being before. *Noy* 42. *Forgery* of a Leaſe of Lands in *Ireland* is not within this Statute. 3 *Leon.* 170. Where there is a Penalty in an Obligation, &c. the Party grieved by a *forged* Releaſe thereof, ſhall recover double the Penalty as Damages, and not of the Debt appearing in the Condition. 3 *Inſt.* 172. As to publiſhing a Deed, knowing the ſame to be *forged*, it has been reſolved, that if a Perſon is informed by another that a Deed is *forged*, if he afterwards publiſhes it as true, he is within the Danger of this Statute. *Ibid* 171. The King may pardon the corporal Puniſhment of *Forgery* which tends to common Example; but the Plaintiff cannot releaſe it: If the Plaintiff releaſe or diſcharge the Judgment or Execution, &c. it ſhall only diſcharge the Coſts and Damages; and the Judges ſhall proceed to Judgment upon the Reſidue of the Pains, and award Execution upon the ſame. 5 *Rep.* 50. 5 *Eliz. c.* 12. But in an extraordinary Caſe a *Forgery* hath been compounded; and the Defendant diſcharged on paying a ſmall Fine. 3 *Salk.* 172. In an Information for *Forgery*, it was adjudged that no Perſon who is or may be a Loſer by the Deed *forged*, or who may receive any Benefit or Advantage by the Verdict being found againſt the Defendant, ſhall be a Witneſs for the King. *Hard.* 331. A Perſon convicted of *Forgery*, and adjudged to the Pillory, &c. whereby he becomes infamous, is not allowed to be a Witneſs; but it is a good Exception to his Evidence. *Hawk. P. C.* 432. And one convicted of this Crime, may be challenged on a Jury, ſo as to be incapable to ſerve as a Juror; and it hath been holden, that Exceptions to Perſons found guilty of Perjury or *Forgery*, as well as Felony, &c. are not ſalved by a Pardon. 2 *Hawk.* 417. The Court of *B. R.* will not ordinarily at the Prayer of the Defendant, grant a *Certiorari* for Removal of an Indictment of *Forgery*, &c. 1 *Sid.* 54. By a late Act, *Forging* or Counterfeiting any Deed, Will, Bond, Bill or Exchange, Note or Acquittance for Money, or any Indorſement or Aſſignment of a Bill, &c. with Intent to defraud any Perſon, or publiſhing ſuch falſe Deed, &c. to be true, knowingly, the Offenders ſhall be guilty of Felony, and ſuffer Death as Felons; but not to work Corruption of Blood, &c. *Stat.* 2 *Geo.* 2. *cap.* 25. Vide 7 *Geo.* 2. *cap.* 22. *Forging* of *Exchequer* and *Bank Bills*, *Lottery Tickets*, *Letters of Attorney* to transfer Stock, &c. See *Felony*.

An *Indictment* for *forging* a Deed.

Wilts, ſſ. THE *Jurors*, &c. *That* A. B. *late of*, &c. *on the Day*, &c. *in the Year of the Reign*, &c. *at* M. *in the ſaid County, upon his own Head and Imagination, did wittingly, ſubtilly and falſly forge and make a certain falſe Deed, that is to ſay, a certain Indenture, whereby one* C. D. *did bargain and ſell all his Lands called*, &c. *with the Appurtenances in*, &c. *in the ſaid County to one* E. F. *and then and there publiſhed, and cauſed the ſaid Indenture to be read and ſhewed forth in Evidence, to the Intent to moleſt and trouble the Eſtate, Poſſeſſion, Title and Intereſt of the ſaid* C. D. *in the Lands and Tenements aforeſaid, and whereby the ſaid* C. D. *is greatly troubled and moleſted in his Poſſeſſion, Title and Intereſt in the ſaid Lands and Tenements, with the Appurtenances, in Contempt of our ſaid Sovereign Lord the now King, to the Grievance and Damage of him the ſaid* C. D. *and againſt the Form of the Statute in ſuch Caſe made and provided, and alſo againſt the Peace*, &c.

Forinſecus, Outward, or on the Outſide. *Kennet's Gloſſ.*

Forinſecum Manerium, The Manor as to that Part of it, which lies without the Town, and not included within the Liberties of it.——*Summa reddituum Aſſiſorum de* Manerio Forinſeco *Banbury*, &c. *Paroch. Antiq.* 351.

Forinſecum Servitium, The Payment of extraordinary Aid, oppoſed to *Intrinſecum Servitium*, which was the common and ordinary Duties, within the Lord's Court. *Kenn. Gloſſ.* See *Foreign Service.*

Forisbannitus, Signifies baniſhed: *Expulſus à Scotia*, Forisbannitus *ab Anglia*, *&c.* Mat. Pariſ. Ann. 1245.

Forisfamiliari. When a Son accepts of his Father's Part of Lands, in the Life time of the Father, and is contented with it; he is ſaid to be *Forisfamiliari*, and cannot claim any more. *Blount.*

Forland, (*Forlandum*) Lands extending further or lying before the reſt; alſo a *Promontory*. Mon. Angl. Tom. 2. fol. 332.

Forlet-land, Was Land in the Biſhoprick of *Hereford* granted or leaſed *dum Epiſcopus in Epiſcopatu ſteterit*, ſo as the Succeſſor might have the ſame for his preſent Revenue: This Cuſtom has been long ſince diſuſed, and the Land thus formerly granted is now let by Leaſe as other Lands, though it ſtill retains the Name by which it was antiently known. *Butterfield's Surv.* 56.

Form, Is required in Law Proceedings; otherwiſe the Law would be no Art; but it ought not to be uſed to ſnare or entrap. *Stat.* 27 *Eliz. Hob.* 232. Matters of *Form* in Pleas that go to the Action, may be taken Advantage of and helped on a general Demurrer; as when a Plea is only in Abatement. 2 *Ld. Raym.* 1015.

Forma Pauperis, Is where any Perſon has juſt Cauſe of Suit, and is ſo *poor*, that he cannot bear the uſual Charges of ſuing at Law, or in Equity: In this Caſe, upon his making Oath that he is not worth 5 *l.* his Debts being paid, and bringing a Certificate from ſome Lawyer that he hath Cauſe of Suit, the Judge admits him to ſue *in forma Pauperis*, i. e. without paying any Fees to Counſellor, Attorney or Clerk: This had Beginning from the Stat. 11 *Hen.* 7. *cap.* 12. by which it is enacted, that poor Perſons having Cauſe of Action or Suits, ſhall have Original Writs, Counſel and Attornies, aſſigned them *gratis*. On proceeding in *Chancery*, *Affidavit* is firſt made that the Plaintiff is not worth 5 *l.* in Lands, Tenements, Goods or Chattels, his wearing Apparel, and the Matters of the Suit excepted; and then a *Petition* is drawn up and preſented to the Lord Chancellor or Maſter of the Rolls, praying to be admitted *in forma Pauperis*, and to have Counſel, *&c.* aſſigned him, who are neither to take Fees, nor make any Contract or Agreement for Recompence, on Pain of Puniſhment; and no Counſellor or Attorney aſſigned ſhall refuſe to proceed, without ſhewing good Cauſe to the Lord Chancellor, *&c. Pract. Sol.* 24. If it be made appear, that any *Pauper* has ſold or contracted for the Benefit of his Suit, while depending in Court, ſuch Cauſe ſhall be thenceforth wholly diſmiſſed. And a Man ſuing *in forma Pauperis* is not to have a new Trial granted him, but is to acquieſce in the Juſtice of the Court; nor ſhall *Paupers* be admitted to remove Cauſes out of inferior Courts. 1 *Mod.* 268. If a Cauſe goes againſt a *Pauper*, or a Plaintiff *in forma Pauperis* be Nonſuit; he ſhall not pay Coſts to the Defendant, but ſhall ſuffer ſuch Puniſhment in his Perſon as the Court ſhall award. 23 *Hen.* 8. *cap.* 15. 1 *Lill. Abr.* 634. 2 *Sid.* 261. *Paupers* uſing Delays, to vex their Adverſaries; or being proved to be vexatious Perſons, and having many frivolous Suits depending, will be *diſpaupered* by the Court; for the Law doth not aſſiſt them to do Injury to others. 1 *Lill.* 633.

Formedon, (*Breve de* Forma donationis) Is a Writ that lieth for him who hath Right to Lands or Tenements by Virtue of any *Intail*, growing from the Statute of *Weſtm.* 2. *c.* 2. It is a *Writ of Right* for Recovery of Land; and is of three Kinds, *viz.* in *Deſcender*, *Remainder* and *Reverter*: *Formedon in Deſcender* lieth where Tenant in Tail enfeoffs a Stranger, or is diſſeiſed, and dieth, the Heir ſhall have this Writ to recover the Land. *Formedon in Remainder* lies where one gives Land in Tail, and for Default of Iſſue the Remainder to another in Tail, *&c.* If the Tenant in Tail die without Iſſue, and a Stranger abates and enters into the Land, he in Remainder ſhall have this Writ. *Formedon in the Reverter* lieth where Land is entailed to certain Perſons and their Iſſue, with Remainder over for Want of Iſſue, and on the Remainder failing to revert to the Donor and his Heirs; now if Tenant in Tail dies without leaving any Iſſue, and likewiſe he in Remainder, then the Donor or his Heirs to whom the Reverſion comes, ſhall have this Writ for Recovery of the Eſtate, in Caſe it be aliened, *&c. Reg. Orig.* 238, 242. *F. N. B.* 111. *Formedon in Deſcender* is the higheſt Writ a Tenant in Tail can have: And where Tenant in Tail aliens, or is diſſeiſed of his Eſtate, or if a Recovery is had againſt him by Default and he die, his Heir ſhall have a *Formedon*, it being the only Remedy the Heir may have for the Poſſeſſion of his Anceſtor; but if he be outed of his own Poſſeſſion, as if he be ſeiſed, and put out, he ſhall have his Writ of *Aſſiſe.* There is a Writ of *Formedon in Deſcender*, where *Partition* of Lands held in Tail, being made among Parceners, *&c.* and one alieneth her Part, her Heir ſhall have this Writ: And by the Death of one Siſter without Iſſue, the Partition is made void, and the other ſhall have the whole Land as Heir in Tail. *New Nat. Br.* 476, 477. Alſo there is a Writ of *Formedon inſimul tenuit*, that lies for a Coparcener againſt a Stranger upon the Poſſeſſion of the Anceſtor; which may be brought without naming the other Coparcener who hath her Part in Poſſeſſion. *Ibid.* 481. This Writ may be likewiſe had by one Heir in *Gavelkind*, *&c.* of Lands entailed; and where the Lands are held without Partition. A Demandant in a Writ of *Formedon*, ought to make his Deſcent by all which did hold the Eſtate; otherwiſe the Writ will abate; and the Demandant ſhould always be made Couſin and Heir, or Son and Heir to him who was laſt ſeiſed of the Tail; but the ſureſt Way is to make every Man named in the Writ Son and Heir in the Writ, and it is not material whether they were ſeiſed or not, although they are named Heir. 8 & 11 *Hen.* 6. In a *Formedon in Deſcender*, the Demandant is to ſet forth his Pedigree in the Declaration: In *Formedon in Remainder*, that the Tenant in Tail is dead without Iſſue; but in a *Formedon in Reverter* the Donor, *&c.* need not ſhew the Pedigree of the Iſſue, nor who was laſt ſeiſed, becauſe he is ſuppos'd to be a Stranger to them. 2 *Nelſ. Abr.* 880. Where a Fee-ſimple is demanded in a *Formedon in Reverter*, the Taking of the Profits ought to be alledged in the Donor, and Donee: If an Eſtate-tail is demanded, it muſt be alledged in the Donee only. 1 *Lutw.* 96. The Writ of *Formedon* is now rarely brought, except in ſome ſpecial Caſes, where it cannot be avoided; and the trying Titles by *Ejectione firmæ* ſupplies it's Place, at an eaſier Rate: But when it is neceſſary, the *Forms* following are of uſe.

Form of a Writ of *Formedon in Deſcender*, &c.

GEORGE *the Second*, &c. *To the Sheriff of* W. *Greeting: Command* A. B. *that he render to* C. D. *one Meſſuage*, &c. *with the Appurtenances in*, &c. *That* R. B. *gave* T. D. *of*, &c. *and the Heirs of his Body iſſuing, and which after the Death of the ſaid* T. D. *to the aforeſaid* C. D. *Son and Heir of him the ſaid* T. D. *ought*

ought to deſcend, *by Form of the Gift aforeſaid, as he ſaith, and unleſs,* &c. If in Remainder; *That* R. B. *gave to* L. D. *and the Heirs of his Body iſſuing; ſo that if the ſaid* L. D. *ſhould die without Heir of his Body iſſuing, the ſaid Meſſuage and Lands, with the Appurtenances, ſhould remain to the aforeſaid* C. D. *and his Heirs; and that after the Death of the ſaid* L. D. *to the ſaid* C. D. *they ought to remain, by Form of the Gift aforeſaid, becauſe the ſaid* L. D. *died without Heir of his Body iſſuing, as he ſaith,* &c. If in Reverter; *That* T. D. *Father of the ſaid* C. D. *whoſe Heir he is, gave to,* &c. *and the Heirs of their Bodies iſſuing, and which after the Death of,* &c. *to the ſaid* C. D. *ought to* revert, *by Form of the Gift aforeſaid, becauſe the ſaid,* &c. *are dead, without Heirs of their Bodies iſſuing, as he ſaith, and unleſs,* &c.

Form of a *Declaration* in a *Formedon.*

Wilts, ſſ. C. D. *by,* &c. *his Attorney demands againſt* A. B. *one Meſſuage, one Garden, and two Acres of Land, with the Appurtenances in* W. *which* L. D. *gave to* T. D. *his Son, and the Heirs of his Body begotten, and which after the Death of the ſaid* T. D. *the Son of* L. D. *to the ſaid* C. *Son and Heir of the ſaid* T. *Son of the ſaid* L. *ought to* deſcend, *by Form of the Gift,* &c. *And whereupon he ſaith, that the ſaid* L. *by his Deed of Gift or Feoffment made the Day and Year,* &c. *Gave the Tenements aforeſaid, with the Appurtenances, to the ſaid* T. *his Son, and the Heirs of his Body to be begotten, in Form as aforeſaid; by which Gift the ſaid* T. *the Son of the ſaid* L. *was ſeiſed of the ſaid Tenements, with the Appurtenances, in his Demeſne as of Fee and Right, by Form of,* &c. *in the Time of Peace, in the Reign of* George *the Firſt, late King of* Great Britain, *taking thereof the Profits to the Value,* &c. *And from the ſaid* T. *deſcendeth the Right, by the Form,* &c. *to the ſaid* C. *now the Demandant, as Son and Heir of the Body of the ſaid* T. *And which after the Death,* &c. *And therefore he brings his Suit,* &c.

Formella, A certain Weight of about ſeventy Pounds, mentioned in the *Statute of Weights and Meaſures.* 51 H. 3.

Fornagium, *Furnagium*, (Fr. *Fournage*) Signifies the Fee taken by a Lord of his Tenants, bound to bake in the Lord's common Oven, or for a Permiſſion to uſe their own; this was as uſual in the Northern Parts of *England.* Plac. Parl. 18 Ed. 1.

Fornication, (*Fornicatio*, from the *Fornices* in *Rome*, where lewd Women proſtituted themſelves for Money) Is Whoredom, or the Act of Incontinency in ſingle Perſons; for if either Party is married, it is *Adultery*. The Stat. 1 *H.* 7. *cap.* 4. mentions this Crime; which by an Act made *Anno* 1650. during the late Times of *Uſurpation*, was puniſhed with three Months Impriſonment for the firſt Offence; and the ſecond Offence 'tis ſaid was made Felony. *Scobel's Collect.* The *Spiritual Court* hath Cognizance of this Offence: And formerly *Courts Leet* had Power to enquire of and puniſh *Fornication* and *Adultery*; in which Courts the King had a Fine aſſeſſed on the Offenders, as appears by the Book of *Domeſday.* 2 Inſt. 488.

Forpriſe, (*Forpriſum*) An Exception or Reſervation, in which Senſe it is uſed in the Stat. 14 *Ed.* 1. This Word is frequently inſerted in Leaſes and Conveyances, wherein *Excepted* and *Forepriſed* is an uſual Expreſſion. In another Signification it is taken for any Exaction; according to *Thorn. Anno* 1285.

Forſes, (*Catadupæ*) Water-falls ſo called in *Weſtmoreland.* Camb. Britan.

Forſpeaker, An Attorney or Advocate in a Cauſe. *Blount.*

Fortia, Power, Dominion or Juriſdiction: And we read of *Infortiare Placitum*, by Judges aſſembled. *Leg. H.* 1. *cap* 29.

Fortiori, *à fortiori* or *Multo fortiori*, Is an Argument often uſed by *Littleton*, to this Purpoſe: If it be ſo in a Feoffment paſſing a new Right, *much more* is it for the Reſtitution of an antient Right, *&c. Co. Lit.* 253, 260.

Fortilice and **Fortility**, (*Fortelleſcum*) Signifies a fortified Place, Bulwark or Caſtle; as it is ſaid within the Towns and *Fortilities* of *Berwick* and *Carliſle*, Anno 11 H. 7. c. 18.

Fortlet, (*Fr.*) A Place or Fort of ſome Strength; or rather a little Fort. *Old Nat. Br.* 45.

Fortuna, Is that which is called in our Law Treaſure-trove, *i. e. Theſaurum ducente* Fortuna *invenire* ——— *Inquirendum eſt per* 12 *Jurator. pro Rege, &c. quod fideliter præſentabunt omnes* Fortunas, *Abjurationes, &c.*

Fortunium, A Tournament or Fighting with Spears; or an Appeal to *Fortune* therein. *Mat. Pariſ. Anno* 1241.

Foſſa, A Ditch full of Water; wherein Women committing Felony were drowned: It has been likewiſe uſed for a Grave, in antient Writings. See *Furca.*

Foſſatum, (*Lat.*) Is a Ditch or Place fenced round with a Ditch or Trench; alſo it is taken for the Obligation of Citizens, to repair the City Ditches. *Foſſatura* ſignifies the ſame with *Foſſatum*; And the Work or Service done by Tenants, *&c.* for Repairing and Maintenance of Ditches is called *Foſſatorum operatio*; and the Contribution for it *Foſſagium.* Kennet's Gloſſ.

Foſſeway, (From *Foſſus*, digged) Was antiently one of the four principal Highways of *England*, leading through the Kingdom; which had its Name from its being ſuppoſed to be digged and made paſſable by the *Romans*, and having a *Ditch* upon one Side. *Cowel.*

Foſterlean, (*Sax.*) Nuptial Gifts, which we call a Jointure or Stipend for the Maintenance of the Wife.——*Poſtea ſciendum eſt cui* Foſterlean *pertineat, vadiet hoc Brigdunia & plegient amici ſui.*

Fother or **Fodder**, (From the Teuton. *Fuder*) Is a Weight of Lead containing eight *Pigs*, and every *Pig* one and twenty Stone and a Half; ſo that it is about a Tun or common Cart load: Among the *Plumbers* in *London* it is Nineteen hundred and an Half; and at the Mines it is Two and twenty hundred Weight and a Half. *Skene.*

Fovea, A Place for Burial of the Dead. *Statut. Eccl. Paulin. London. MS.* 29.

Foundation, The Founding and Building of a College or Hoſpital is called *Foundatio, quaſi fundatio*, or *fundamenti locatio. Co. lib.* 10. The King only can found a *College*; but there may be a College in Reputation, founded by others. *Dyer* 267. If it cannot appear by Inquiſition, who it was that founded a *Church* or *College*, it ſhall be intended it was the King; who has Power to *found* a new Church, *&c. Moor* 282. The King may *found* and erect an *Hoſpital*, and give a Name to the Houſe, upon the Inheritance of another, or licence another Perſon to do it upon his own Lands; and the Words, *Fundo, Creo, &c.* are not neceſſary in every *Foundation*, either of a College or Hoſpital made by the King; but it is ſufficient if there be Words equivalent: The Incorporation of a College or Hoſpital is the very *Foundation*; but he who endows it with Lands is the *Founder*; and to the Erection of an Hoſpital nothing more is requiſite but the Incorporation and *Foundation.* 10 *Rep. Caſe of Sutton's Hoſp.* Perſons ſeiſed of Eſtates in Fee-ſimple, may erect and *found Hoſpitals* for the Poor, by Deed inrolled in Chancery, *&c.* which ſhall be incorporated, and ſubject to ſuch Viſitors as the *Founder* ſhall appoint, *&c. Stat.* 39 *Eliz.* Where a Corporation is named, it is ſaid the Name of the *Founder* is Parcel of the Corporation. 2 *Nelſ.* 886. Though the *Foundation* of a Thing may alter the Law, as to that particular Thing; yet it ſhall not work a general Prejudice. 1 *Lill. Abr.* 634.

Founder of Metal, (From the Fr. *Foundre*, to melt or pour) Is he that melts Metal, and makes any Thing of it by Pouring or Caſting it into a Mould. 17 *R.* 2. *cap.* 1. Whence is *Bell founder*, a *Fount* of Letters, &c.

Fourcher, (Fr. *Fourchir*) Signifies a putting off, or delaying of an Action; and has been compared to ſtammering, by which the Speech is drawn out to a more than ordinary Length of Time, as by *Fourching* a Suit is prolonged, which might be brought to a Determination in a ſhorter Space: The Device is commonly uſed when an Action or Suit brought againſt two Perſons, who being jointly concerned, are not to anſwer till both Parties appear; and is where the Appearance or *Eſſoin* of one, will excuſe the other's Default, and they agree between themſelves that one ſhall appear or be eſſoined one Day, and for Want of the other's appearing, have Day over to make his Appearance with the other Party; and at that Day allowed the other Party doth appear, but he that appeared before doth not, in Hopes to have another Day by Adjournment of the Party who then made his Appearance. *Terms de Ley* 356. This is called *Fourcher*; and in the Statute of *Weſt.* 1. *cap.* 42. it is termed *Fourcher by Eſſoin*; where are Words to this Effect, *viz.* Coparceners, Jointenants, &c. may not *fourch* by *Eſſoin*, to eſſoin ſeverally; but ſhall have only one Eſſoin, as one ſole Tenant. And *Anno* 6 *Ed.* 1. *c.* 10. it is uſed in like Manner: The Defendants ſhall be put to anſwer without *Fourching*, &c. 23 *Hen.* 6. *cap.* 2. 2 *Inſt.* 250. *Fourcher* in the Latin is writ *Furcare*; becauſe it is two-fold.

Fraction. The Law makes no *Fraction* of a Day; if any Offence be committed, in Caſe of Murder, &c. the Year and Day ſhall be computed from the Beginning of the Day on which the Wound was given, &c. and not from the preciſe Minute or Hour. 2 *Hawk.* 163. See *Co. Litt.* 255.

Fractitium, Is made Uſe of for arable Land.—— *Pratum de Mura & tres Acr. terræ de* Fractitio. *Mon. Angl. Tom.* 2. 873.

Fractura navium, Wreck of Shipping at Sea.

Frampole Fences, Are ſuch *Fences* as the Tenants in the Manor of *Writtel* in *Eſſex*, ſet up againſt the Lord's Demeans; and they are entitled to the Wood growing on thoſe *Fences*, and as many Poles as they can reach from the Top of the Ditch with the Helve of an Axe, towards the Reparation of their *Fences* It is thought the Word *Frampole* comes from the Sax. *Frempul*, profitable; or that it is a Corruption of *Franc pole*, becauſe the Poles are free for the Tenants to take: But Chief Juſtice *Brampton*, whilſt he was Steward of the Court of the Manor of *Writtel*, acknowledged that he could not find out the Reaſon why thoſe *Fences* were called *Frampole*; ſo that we are at a Loſs to know the Truth of this Name etymologically.

Franchilanus, (Fr. *Franchi*, i. e. free) A Freeman.———*Sciatis me dediſſe, cum Villanis, &* Franchilano, *& cum Tenuris eorum*, &c. *Chart. Hen.* 4. And we find *Francus homo* uſed for a Freeman in *Domeſday.*

Franchiſe, (*Fr.*) Is taken for a Privilege or Exemption from ordinary Juriſdiction; as for a Corporation to hold Pleas to ſuch a Value, &c. And ſometimes it is an Immunity from Tribute, when it is either perſonal or real, that is belonging to a Perſon immediately; or by Means of this or that Place whereof he is Chief or a Member. *Crompt. Juriſd.* 141. There is alſo a *Franchiſe Royal*; which ſeems to be that where the King's Writ runs not. 31 *Hen.* 6. *c.* 4. But *Franchiſe* Royal is ſaid by ſome Authors, to be where the King grants to one and his Heirs, that they ſhall be quit of Toll, &c. *Bract. lib.* 2. *cap.* 5. A *Franchiſe* in general is a Royal Privilege in the Hands of a Subject; and may be veſted in Bodies Politick or Corporations, either aggregate or ſole, or in many Perſons that are not Corporations, (as in Borough Towns, &c.) or in a ſingle Perſon: And *Franchiſes* are of different Kinds: ſuch as the *Principality of Wales*, *Counties Palatine*, *Counties*, *Hundreds*, *Ports* of the Sea, &c. Then there is a *Franchiſe* or Liberty of having a *Leet*, *Manor* or *Lordſhip*, as well as a Liberty to make a *Corporation*, and to have Cogniſance of Pleas; and *Bailiwicks* of Liberties, the Liberty of a *Foreſt*, Chaſe, &c. *Fairs* and *Markets*, *Felons Goods*, *Goods of Fugitives*, *Outlaws*, *Deodands*, *Treaſure Trove*, *Waifs*, *Eſtrays*; *Wrecks*, &c. All theſe come under *Franchiſes* and Liberties. *F. N B.* 230. 2 *Inſt.* 221. All *Franchiſes* and Liberties are derived from the Crown, and ſome are held by Charter; but ſome lie in Preſcription and Uſage, without the Help of any Charter. *Finch* 164. And Uſage may uphold *Franchiſes*, which may be claimed by Preſcription, without Record either of Creation, Allowance or Confirmation; and Wreck of the Sea, Waifs, Strays, Fairs and Markets, and the like, are gained by Uſage, and may become due without any Matter of Record. 2 *Inſt.* 281. 9 *Rep.* 27. But Goods of Felons and Outlaws, and ſuch like, grow due by Charter, and cannot be claimed by Uſage, &c. *Ibid.* It hath been adjudged, that Grants of *Franchiſes*, made before the Time of Memory, ought to have Allowance within Time of Memory in the *King's Bench*, or before the Barons of the *Exchequer*, or by ſome Confirmation on Record; and it is ſaid they are not Records pleadable, if they have not the Aid of ſome Matter of Record within Time of Memory; and ſuch ancient Grants, after ſuch Allowance, ſhall be conſtrued as the Law was when they were made, and not as it hath been ſince altered: But *Franchiſes* granted within Time of Memory are pleadable without any Allowance or Confirmation; and if they have been allowed or confirmed as aforeſaid, the *Franchiſes* may be claimed by Force thereof, without ſhewing the Charter. 9 *Rep.* 27, 28. 2 *Inſt.* 281, 494. There have been formerly ſeveral antient Prerogatives divided from the Crown, beſides the *Franchiſes* aforementioned; as Power to pardon Felony, make Juſtices of Aſſiſe, and of the Peace, &c. Though by the Statute 27 *H.* 8. *c.* 24. they were reſumed and re-united to the Crown; and the King cannot grant Power to another to make Strangers born, Denizens here, becauſe ſuch Power is by Law inſeparably annexed to his Perſon. 7 *Rep.* 25. By ſeveral antient Statutes, the *Church* ſhall have all her Liberties and *Franchiſes* inviolable: And the *Lords Spiritual* and *Temporal* ſhall enjoy their Liberties, &c. and the King may not deprive them of any of them. 9 *H.* 3. *c.* 1. 14 *Ed.* 3. 2 *H.* 4. *cap.* 1. By the Statute of *Magna Charta*, 9 *H.* 3. *cap.* 37. The *Franchiſes* and Liberties of the City of *London*, and all other Cities, Towns, &c. are confirmed. The 30 *Ed.* 1. ordains, that a Writ ſhall iſſue out to the Sheriffs of Counties, to permit all Men to enjoy their antient Liberties and *Franchiſes*; and on Proclamation made, they ſhall ſhew their Tenures to the Juſtices of Aſſiſe, or forfeit their *Franchiſes*. The *Franchiſes* of Religious Houſes were granted to the King, by Stat. 32 *H.* 8. *c.* 20. All Writs, Proceſſes, &c. in *Franchiſes*, are to be made in the King's Name; and Stewards, Bailiffs, and other Miniſters of Liberties, ſhall attend the Juſtices of Aſſiſe, and make due Execution of Proceſs, &c. 27 *Hen.* 8. Some *Franchiſes*, as *York*, *Briſtol*, &c. have Return of Writs, to whom Mandates are directed from the Courts above, to execute Writs and Proceſs: And a Mayor or Bailiff of a Town, may have Liberty to keep Courts, and hold Pleas in a certain Place, according to the Courſe of the Common Law; and Power to draw Cauſes out of the King's Courts, by an excluſive Juriſdiction: But the Cauſes here may be removed to the ſuperior Courts. 1 *Inſt.* 114. 4 *Inſt.* 87, 224 Sheriffs of Counties, within which is any *Franchiſe*, the Lord whereof is intitled to Return of Writs, ſhall on his Requeſt, appoint one or more Deputies, to reſide at ſome Place near, there to receive all Writs in the Sheriff's Name, and under his Seal to iſſue Warrants for their due Execution; and the Lord Chancellor is to ſettle the Charges to be paid any ſuch Deputy, *&c.* by 13 *Geo* 2. *c.* 18. A *Franchiſe* hath no Relation to the County wherein it lies, as has been generally held; for it is not neceſſary to ſet forth the County when any Thing is ſhewed to be done within a Liberty or *Franchiſe* *Trin.* 23 *Car. B. R.* If a *Franchiſe* fails to adminiſter Juſtice within the ſame, the *Franchiſe* ſhall not be allowed; but on any ſuch Failure, the Court of *B.R.* may compel the Owners of the *Franchiſe*, *&c.* to do Juſtice; for this Court ought to ſee Juſtice equally diſtributed to all Perſons. 1 *Lill. Abr.* 635. *Franchiſes* may be forfeited and ſeiſed where they are abuſed, for Miſ-uſer or Non-uſer; and when there are many Points, a Miſ-uſer of any One will make a Forfeiture of the Whole on a *Quo Warranto* brought. *Kitch.* 65. And where *Franchiſes* come to the Crown again from whence derived, by Forfeiture, *&c.* they are *extinguiſhed*; but in ſome Caſes it is ſaid they are not. For Contempt of the King's Writ, in a County Palatine, *&c.* the Liberties may be ſeiſed, and the Offenders fined; and the Temporalties of a Biſhop, have been adjudg'd to be ſeiſed until he ſatisfied the King for ſuch a Contempt, on Information exhibited, *&c. Cro. Car.* 253. The Biſhop of *Durham* pretending he had ſuch a *Franchiſe*, that the King's Writ was not to come there, and becauſe one brought it thither he impriſoned him; this being proved upon an Information brought againſt him, it was adjudged he ſhould pay a Fine to the King, and loſe his Liberties. 2 *Shep. Abr.* 250. Wherever the King is Party to a Suit, as in all Informations and Indictments, the Proceſs ought to be executed by the Sheriff, and not the Bailiff of any *Franchiſe*, whether it have the Clauſe *Non omittas*, *&c.* or not; for the King's Prerogative ſhall be preferred to any *Franchiſe.* 2 *Hawk.* 284. And Sheriffs upon a *Non omittas*, or on a *Capias Utlagatum*, or *Quo minus*, may enter and make Arreſts in any *Franchiſe.* 1 *Lill.* 635. If a Perſon claims *Franchiſes* which he ought not to have, it is a Uſurpation upon the King; and not ſhewing his Title, the King ſhall take from him his *Franchiſe.* Poph. 180. 1 Bulſt. 54. See *Quo Warranto.*

Francigenæ, Was the general Appellation of all Foreigners. Vide *Englecery.*

Franclaine, Is uſed to denote a Freeman or Gentleman, in our ancient Authors. *Forteſcue.*

Frank, A *French* Gold Coin, worth about a *French* Shilling; but in Computation was twenty *Sols*, which is a *Livre*, and twenty Pence in our Money.

Frankalmoign, (*Libera Eleemoſyna*) Is a Tenure by Spiritual Service, where an Eccleſiaſtical Corporation, ſole or aggregate, holdeth Land to them and their Succeſſors, of ſome Lord and his Heirs in *free* and perpetual Alms: And *perpetual* ſuppoſes it to be a Fee-ſimple; though it may paſs without the Word *Succeſſors. Litt.* 133. 1 *Inſt.* 94. A Lay Perſon cannot hold in *free* Alms: And when a Grant is in *Frankalmoign*, no Mention is to be made of all Manner of Service; for it is free from any Temporal Service, and is of the higheſt Nature, becauſe it is a Tenure by Spiritual Service. *Litt.* 137. None can hold in *Frankalmoign* but by Preſcription, or by Force of ſome Grant made before the Statutes of *Mortmain*, 7 *Ed.* 1. *c.* 36, and 18 *Ed.* 1. *c.* 1. ſo that the Tenure cannot at this Day be created, to hold of a Founder and his Heirs in free Alms: But the King is not reſtrained by the Statutes; nor a Subject licenſed or diſpenſed with by the King, to make ſuch a Grant, *&c.* 1 *Inſt.* 98, 99. And if an Eccleſiaſtical Perſon holds Lands by Fealty and certain Rent, the Lord may at this Time confirm his Eſtate, to hold to him and his Succeſſors in *Frankalmoign*; for the former Services are extinct, and nothing is reſerved but that he ſhould hold of him, which he did before; whereby this Change and Alteration is not within the Statute 18 *Ed.* 1. of *Quia emptores Terrarum. Litt.* 540. 1 *Inſt.* 99, 306. Tenure in *Frankalmoign* is incident to the Inheritable Blood of the Donor or Founder; except in Caſe of the King, who may grant this Tenure to hold of him and his Succeſſors. *Litt.* 135. And the Reaſon why a Grant in *Frankalmoign*, ſince the Stat. 18 *Ed.* 1. is void, except in the Caſe of the King, *&c.* is, becauſe none can hold Land by this Tenure, but of the Donor; whereas the Statute enjoins, that it be held of the Chief Lord, by the ſame Service by which the Feoffor held it; though the King may grant away any Eſtate, and reſerve the Tenure to himſelf. 1 *Inſt.* 99, 223. If any Perſons that hold Lands or Tenements in *Frankalmoign*, make any Failure in doing ſuch Divine Service as they ought, the Lord may make Complaint of it to the Ordinary or Viſitor; which is the King, if he be Founder, or a Subject where he was appointed Viſitor upon the Foundation; and the Ordinary, *&c.* may puniſh the Negligence, according to the Eccleſiaſtical Laws. *Litt.* 136. 1 *Inſt.* 96. Alſo for Neglect in performing Divine Service in certain, the Lord may diſtrain: But *Frankalmoign* is ſaid to be held by Service uncertain; and where the Tenure is tied to certain Services, as to read Prayers every Friday, *&c.* this is not *Frankalmoign*, but *Tenure by Divine Service*; it is Lands given in Alms, but not in free Alms. *Briton, cap.* 66. The Tenure by *Frankalmoign* is an antient Tenure, chiefly to be met with in Grants to religious Houſes, Biſhops, Deans, Colleges, *&c.* and is become out of Uſe.

Frank-Chaſe, Is a Liberty of *Free Chaſe*; by which all Perſons that have Lands within the Compaſs thereof, are prohibited to cut down any Wood, *&c.* without the View of the Foreſter, though it be in their own Demeſnes. *Cromp. Juriſd.* 187.

Frank-fee, Is where Freehold Lands are held exempted from all Services, but not from Homage. In the *Regiſter* of Writs, we find that is *Frank-fee*, which a Man holds at the Common Law, to him and his Heirs; and not by ſuch Service, as is required in Antient Demeſne, according to the Cuſtom of the Manor: And that the Lands in the Hand of King *Edward the Confeſſor*, at the Making of the Book of *Domeſday*, were Antient Demeſne, and all the reſt *Frank fee*; wherewith *Fitzherbert* agrees. *Reg. Orig.* 12. *F. N. B.* 161. And the Author of the *Terms of the Law* defines a *Frank fee* to be a Tenure pleadable at the Common Law; and not in Antient Demeſne. *Terms de Ley* 358.——Feudum Francum *eſt, pro quo nullum Servitium præſtatur Domino.* Frachineus, lib. 7. cap. 39.

Frank-ferm, Was when Lands or Tenements were changed in the Nature of the Fee, by Feoffment, *&c.* out of Knight-Service, for certain yearly Services. *Britton, cap.* 66. See *Fee farm.*

Frank-Law, (*Libera Lex*) Is applied to the Benefit of the Free and Common Law of the Land. You may find what it is by the contrary, from *Crompton* in his Juſtice of Peace; where he ſays, he that for any Offence loſeth his *Frank Law*, falls into theſe Miſchiefs, *viz.* He may never be impanelled upon any Jury or Aſſiſe; or be permitted to give any Teſtimony: If he hath any Thing to do in the King's Courts, he muſt not attend them in Perſon, but appoint his Attorney therein for him: And his Lands ſhall be eſtreated, and his Body committed to Priſon, *&c. Crompt. Juriſd.* 156. *Lib. Aſſiſ.* 59. See *Conſpiracy.*

Frank-Marriage, (*Liberum Maritagium*) Is where a Man ſeiſed of Land in Fee ſimple, gives it to another with his Daughter, Siſter, *&c.* in Marriage;

to hold to them and their Heirs: And it is a Tenure in ſpecial Tail, growing from theſe Words in the Gift, *i. e. Sciant*, *&c. me* A. B. *dediſſe & conceſſiſſe*, *&c.* T. B. *filio meo &* Annæ *Uxor. ejus, filiæ*, *&c. in* Liberum Maritagium *unum Meſſuagium*, *&c. Lit.* 17. *Weſt. Symb. par.* 1. *lib.* 2. *ſect.* 303. The Effect of which Word is, That they ſhall have the Land to them and the Heirs of their Bodies; and ſhall do no Services to the Donor, except Fealty, until the fourth Degree. *Glanvil*, *lib.* 7. *cap.* 18. And *Fleta* gives this Reaſon why the Heirs do no Service until the fourth Degree: *Ne Donatores vel eorum hæredes per Homagium receptionem, a reverſione repellantur.* And why in the fourth Deſcent and downward, they ſhall do Services to the Donor; *Quia in quarto gradu vehementer præſumitur, quod Terra eſt pro defectu hæredum Donatoriorum reverſura. Fleta*, *lib.* 3. *cap.* 11. All this appears in *Bracton*, *lib.* 2. *cap.* 7. where it is ſaid, that Lands in *Frank-Marriage* are *quieta & libera ab omni ſeculari ſervitio*, *&c. uſque ad tertium hæredem, & uſque ad quartum gradum.* Alſo *Bracton* divides Marriage into *Liberum Maritagium* and *Maritagium ſervitio obligatum*; which laſt was where Lands were given in Marriage, with a Reſervation of the Services to the Donor, which the Donee and his Heirs were bound to perform for ever; but neither he, or the next two Heirs, were obliged to do Homage, which was to be done when it came to the fourth Degree, and then, and not before, were required to be performed both Services and Homage. *Bract. lib.* 2. Lands given by one Man to another with a Wife in *Frank Marriage*, amounts by Implication to a Gift in Tail; which in this Caſe may bo created without the Words *Heirs* or *Body. Litt.* 17. *Wood's Inſt.* 120. A Gift in *Frank Marriage* might be made as well after as before Marriage: And ſuch a Gift was a Fee-ſimple before the Statute of *Weſtm.* 2. but ſince, it is uſually a Fee-tail: Theſe Gifts were common in former Times, whereon Queſtions in Law did ariſe; but are now diſuſed. 2 *Nelſ. Abr.* 888.

Frank-pledge, (*Franci plegium*, from the French *Franc*, i. e. Liber, and *Pledge*, Fidejuſſor) Signifies a *Pledge* or Surety for the Behaviour of *Freemen*; it being the antient Cuſtom of this Kingdom, borrowed from the *Lombards*, that for the Preſervation of the publick Peace, every Free-born Man at the Age of Fourteen, (Religious Perſons, Clerks, *&c.* excepted) ſhould give Security for his Truth towards the King and his Subjects, or be committed to Priſon; whereupon a certain Number of Neighbours, uſually became bound one for another, to ſee each Man of their *Pledge* forth-coming at all Times, or to anſwer the Tranſgreſſion done by any gone away; And whenever any one offended, it was forthwith inquired in what *Pledge* he was, and then thoſe of that *Pledge* either produced the Offender within One and thirty Days, or ſatisfied for his Offence. This was called *Frank-pledge*; and this Cuſtom was ſo kept, that the Sheriffs at every *County Court*, did from Time to Time take the Oaths of young Perſons as they grew to fourteen Years of Age, and ſee that they were ſettled in one *Decennary* or other; whereby this Branch of the Sheriff's Authority was called *Viſus franci plegii*, or *View of Frank-pledge.* At this Day no Man ordinarily giveth other Security for the Keeping of the Peace, than his own Oath; ſo that none anſwereth for the Tranſgreſſion of another, but every Perſon for himſelf. 4 *Inſt.* 78. Living under *Frank-pledge* has been termed living under *Law*, *&c.* See the Statute of *View of Frank-pledge*, 18 *Ed.* 3. And *Court-Leet*, *Deciner*, *&c.*

Frank-Tenement, A Poſſeſſion of *Freehold* Lands and Tenements. See *Freehold.*

Fraſſetum, A Corruption of *Fraxinetum*, is taken for a Wood or woody Ground, where *Aſhes* grow. 1 *Inſt.* 4.

Frateria, A Fraternity, Brotherhood or Society of Religious Perſons, who were bound to pray for the good Health and Life, *&c.* of their living Brethren, and the Souls of thoſe that were dead: In the Statutes of the Cathedral Church of St. *Paul's* in *London*, collected by *Ralph Baldock*, Dean, 1295. There is one Chapter *de Frateria Beneficiorum Eccleſiæ S. Pauli*, *&c.*

Fraternities, Of Places in reſpect to a Trade or Myſtery. *Vide* Corporation.

Frater nutricius, Uſed in antient Deeds for a Baſtard Brother. *Malmsb.*

Fratres conjurati, Are ſworn Brothers or Companions; ſometimes thoſe were ſo called who were ſworn to defend the King againſt his Enemies. *Hoveden*, *pag.* 445. *Leg. W.* 1.——*Præcipimus ut omnes Liberi homines ſint* Fratres conjurati *ad Monarchiam noſtrum & Regnum noſtrum contra Inimicos pro poſſe ſuo defendendum.* Leg. Ed. 1. cap. 35.

Fratres pyes, Were certain Friers, wearing black and white Garments; of whom Mention is made by *Walſingham*, *p.* 124.

Fratriagium, Is a younger Brother's Inheritance; and whatever the Sons or Brothers poſſeſs of the Eſtate of the Father, they enjoy it *ratione Fratriagii*, and are to do Homage to the elder Brother for it, who is bound to do Homage for the Whole to the ſuperior Lord. *Bract. lib.* 2. *c.* 35.

Fraud, (*Fraus*) Is Deceit in Grants and Conveyances of Lands, and Bargains and Sales of Goods, *&c.* to the Damage of another Perſon. *F. N. B.* 98. Fraudulent Aſſurances of Lands or Goods to deceive Creditors, ſhall be void; and the Creditors ſhall have Execution thereof. 50 *Ed.* 3. *c.* 6. By the Statute 13 *Eliz. c.* 5. all fraudulent Conveyances made of Lands, Goods or Chattels, to ſet aſide or avoid Debts, as to Creditors ſhall be void; and by 27 *Eliz. c.* 4. Conveyances and Aſſurances of Land made to *defraud* Purchaſers, as to ſuch Purchaſers they are declared void: And Perſons juſtifying or putting ſuch Grants, *&c.* in Uſe as good, and *bona fide* made, ſhall forfeit a Year's Value of the Lands, and the whole Value of Goods and Chattels, and be alſo impriſoned: Where Lands are conveyed with Clauſe of Revocation, *&c.* and afterwards ſold for valuable Conſideration, the firſt Conveyance ſhall be void againſt the Purchaſer, but this is not to extend to Mortgages made *bona fide.* If a Man ſeiſed of Land in Fee, make a Feoffment of it to divers Uſes, with Remainders over, *&c.* and with Power of *Revocation* by Writing under Hand and Seal; here if he for good Conſideration doth enter into a Recognizance, the Land ſhall be charged with the ſame: So if *A.* reſerves to himſelf Power to revoke by the Aſſent of B. and then bargains to another. *Bridg.* 22. *Lane* 22. And where one hath made an Eſtate with a Power of Revocation; and after with Intent to deceive a Purchaſer he makes a Feoffment, *&c.* to a Stranger to extinct the Power, and then ſells the Land for a valuable Conſideration; in this Caſe both the Conveyances ſhall be *fraudulent* as to the Purchaſer. 2 *Rep.* 83. The Statute of *Frauds* 29 *Car.* 2. requires that Contracts and Agreements, Leaſes and Deviſes of Lands, *&c.* ſhall be put in Writing. And Deviſes of Lands, Rents, *&c.* are deemed fraudulent and void, againſt Creditors upon Bonds, or other Specialties. 3 & 4 *W. & M. cap.* 14. Alſo Judgments againſt Purchaſers of Lands for a valuable Conſideration, ſhall be deemed Judgments only from the Signing, *&c.* 29 *Car.* 2. *cap.* 3. The Statute 13 *Eliz.* makes a fraudulent Deed or grant of Goods, *&c.* void againſt Creditors, but not againſt the Party himſelf, his Executors or Adminiſtrators, for againſt them it remains good: And a Conveyance, if made of Lands by *Fraud*, is not void by the Statute againſt all Perſons; but only againſt thoſe who afterwards come to the

Land upon valuable Conſideration. *Cro. El.* 445. *Cro. Jac.* 271. Grants and Conveyances are to be on good Conſideration, and *bona fide*, or they will be fraudulent; and a Grant *bona fide* is made without any Truſt, &c. A Grant upon good Conſideration, except it be alſo *bona fide*, is not within the Proviſo of the Act 13 *Eliz.* 3 *Rep.* 81. Conſideration valuable is Money, Marriage, &c. and not natural Affection, &c. A Man made a Leaſe for twenty one Years, in Truſt for his Daughter till Marriage; and if ſhe married with his Conſent, then to her during the Term; this till Marriage, has been held *fraudulent* as to a Purchaſer: But after Marriage it is good, becauſe Marriage is an Advancement to the Daughter, and taking Effect made it upon valuable Conſideration, which a Marriage is always taken to be, and the Husband was drawn in by this Conveyance to marry her. 1 *Sid.* 133. It has been adjudged, That if a Father makes a Feoffment to another, for the Advancement of Daughters, or his younger Sons, or for Payment of his Debts; and afterwards enfeoffs his eldeſt Son or Heir, this is not *Fraud* or Colluſion within the Statute, for he is bound in Law to make Proviſion for his Children: But where there is a Grandfather, Father, and two Sons, and the Grandfather (living the Father) conveys his Land to either of the Sons, this is out of the Statute 32 *H.* 8. becauſe it is not a common Thing ſo to do, and the Father ought to have the immediate Care of his Children; though if he is dead, then it belongeth to the Grandfather. 6 *Rep.* 76. If a Man levy a Fine to the Uſe of himſelf for Life, Remainder to his Son in Tail, and after ſells the Fee-ſimple to another, he as a Purchaſer ſhall avoid this Conveyance upon the Statute 27 *Eliz.* becauſe it was *voluntary*, and therefore *fraudulent*; ſo it had been if he had ſettled the Remainder on his Wife, unleſs there had been a Conſideration on precedent Marriage. *Sid.* 133. 3 *Salk.* 174. But it was ruled by *Hale* Chief Juſtice, that a Deed may be voluntary, and not *fraudulent*, as where a Father having an extravagant Son, ſettles his Land ſo that he may not ſpend all; this is good, if there is no Conſideration of Money. 1 *Mod.* 119. Although every voluntary Conveyance is *prima facie* deemed *fraudulent* againſt Purchaſers, yet ſome Circumſtances may alter the Caſe: An Infant promiſed, on his Marriage, to ſettle his Eſtate when he came of Age, upon himſelf and his Iſſue; and this was held a ſufficient Conſideration, though an Infant by Law is not compellable to fulfil ſuch Promiſe. 2 *Lev.* 147. A Perſon, in Conſideration that his Son is to marry the Daughter of *A. B.* covenants to ſtand ſeiſed of Lands to the Uſe of his Son for Life; and after to other Sons in Reverſion or Remainder: The Uſes thus limited in Remainder, ſhall be *fraudulent* as to any Purchaſer of the Land, though the firſt be upon good Conſideration. And although the Conſideration of Marriage is good; if there be a Power to revoke annexed to the Deed, it will be void as to Purchaſers. *Lane* 22. If a Man after Marriage, make a voluntary Conveyance of Land for a Jointure, or Maintenance of his Wife, and afterwards ſell the Land for Money, to one that hath no Notice of it; in this Caſe, the Conveyance made to the Uſe of the Wife, ſhall be ſaid to be *fraudulent:* And yet if a Perſon upon a Marriage, before the Marriage and in Conſideration thereof, or after Marriage, in Conſideration of a Portion given or Money paid, convey his Land to the Uſe of his Wife, &c. it will not be a *fraudulent* Deed. 2 *Cro.* 158. A Feme Covert joins with her Husband in the Alienation of her Jointure, and hath a new Deed of Settlement of other Lands dated the ſame Day in lieu thereof, without Articles or Agrement precedent to this ſecond Settlement; this is not *fraudulent* againſt a Purchaſer, though the Lands in the new Settlement are more in Value than thoſe in the firſt; for the old Settlement being deſtroyed, and a new one made on the ſame Day, it ſhall be preſumed that there was an Agreement for it. 2 *Lev.* 70, 71. The Husband who married a Wife an Inheritrix, promiſed, that if ſhe would join with him in a Sale of her Land, and let him have the Money to pay his Debts, that he would leave her 400*l.* at his Death; about ſix Months after the Lands were ſold, he gave Bond to a Stranger to leave his Wife the 400*l.* And it was adjudged that this was not *fraudulent quoad* Creditors, but good againſt them. 2 *Lev.* 148. A Perſon makes a voluntary Conveyance, and then mortgages the ſame Land, and the firſt Deed is upon a Trial found *fraudulent*; then he to whom the Deed was made exhibited his Bill in *Equity* to redeem the Mortgage; and it was held, that tho' the firſt Deed was *fraudulent quoad* the Mortgage-Money, yet it was good to paſs the Equity of Redemption. *Chanc. Rep.* 59. Where a Leaſe is made with a *Proviſo*, that if the Leſſor pays 10*s.* the Leaſe ſhall be void; becauſe 10*s.* is not the Value of the Leaſe and Land, but only limited as a Power of Revocation, it is frudulent as to a Purchaſer. *Cro. Jac.* 455. And if a Man make an Aſſignment of his Leaſe, and yet keeps Poſſeſſion of the Lands, the Deed of Aſſignment will be judged *fraudulent.* In *Chancery* it has been decreed, That if a Man conveys his Land to Friends in Truſt, to the Uſe of his Children, &c. to *defraud* a Purchaſer, the Truſt ſhall go in *Equity* to the Purchaſer; alſo it ſhall be liable for Debts, to ſatisfy the ſame. *Tothil* 43, 44. A Husband aſſigned a Term of his Wife's, in Truſt for his Wife; and it was held *fraudulent* againſt Purchaſers. *Chanc. Rep.* 225. By the *Common Law*, an Eſtate made by *Fraud*, ſhall be avoided only by him who hath a former Right, Title, Intereſt, Debt or Demand. 3 *Rep.* 83. If one indebted do really ſell Lands, though to avoid Payment of Debts; if the Vendee be not privy to the Intent, the Sale to him is good: For as to the Vendee there is no *Fraud* in the Caſe. *Mich* 24 *Car. B. R.* A Man gives his Goods to his Son, they are nevertheleſs liable as to his Creditors; but if he gives them to one of his Creditors, without any Truſt or Covin, it ſhall not be *fraudulent* to make him liable to other Creditors. 3 *Salk.* 174. If a Man is indicted, and give away his Goods to prevent a Forfeiture, the King ſhall have them upon an Attainder or Conviction; tho' 'tis otherwiſe if he ſell them for a good Conſideration to one who had no *Notice* of the Indictment. *Ibid.* If Tenant for Life commit a Forfeiture, and he in the Reverſion enters, this ſhall be as a *fraudulent* Conveyance with Reſpect to Creditors. *Ventr.* 257. *Fraudulent* Gifts, or Grants of Goods to *defraud* the Lord of his Heriot, ſhall be void; and the Value of the Goods forfeited. 13 *Eliz.* 5. Gifts made in Secret are liable to Suſpicion of *Fraud:* A general Gift of all a Man's Goods may be reaſonably ſuſpected to be *fraudulent*, even though there be a true Debt owing to the Party to whom made. 3 *Rep.* 80, 81. And the ſeveral Marks or Badges of *Fraud*, in a Gift or Grant of Goods are, if it be general, without Exception of ſome Things of Neceſſity; if the Donor ſtill poſſeſſes and uſes the Goods; if the Deed be ſecretly made; if there be a Truſt between the Parties; or if it be made pending the Action. 3 *Rep.* 80, &c. And where a Perſon is Party to a *Fraud*, all that follows by Reaſon of that *Fraud* ſhall be ſaid to be done by him. *Cro. Jac.* 469. But when *Fraud* is not expreſly averred, it ſhall not be preſumed; nor ſhall the Court adjudge it to be ſo, till the Matter is found by Jury. 10 *Rep.* 56. A poor Man was drawn in to ſell an Eſtate, at a great Under-Value; but no *Fraud* appearing, tho' the Purchaſe was not a fair Bargain, the Seller could not be relieved in Equity, to ſet it aſide. *Preced. Canc.* 206. The Chancery may decree a Conveyance to be *fraudulent*, meerly for being voluntary, and without any Trial at Law; yet it has been inſiſted, that *Fraud* or not was triable only by a Jury. *Ibid.* 14, 15. A Will, as well as Deed, ſhall be ſet aſide in Chancery for *Fraud* and Circumvention. *Ib.* 123. *Fraudulent* Conveyances to multiply Votes at *Election of Knights of the Shire*, ſhall be taken againſt the Perſons making them as free and abſolute; and all Securities for Redeeming and Reſtoring, *&c.* to be void. *Stat.* 10 *Ann. c.* 23. A *Preſentation* to a Benefice; or *Adminiſtration* of Goods, obtained by *Fraud*, are void; and ſo is Sale of Goods by *Fraud*, altho' in open Market, *&c.* Where a *fraudulent* Deed or Conveyance, is aſſigned upon a valuable Conſideration, the *Fraud* is purged thereby. 1 *Ld. Raym.* 88.

Fraus Legis, If a Perſon having no Manner of Title to a Houſe, procure an Affidavit of the Service of a Declaration in Ejectment, and thereupon gets Judgment; and by Virtue of a Writ of *Hab. fac. Poſſeſſionem* turns the Owner out of Poſſeſſion of the Houſe, and ſeiſes and converts the Goods therein to his own Uſe, he may be puniſhed as a Felon; becauſe he uſed the Proceſs of the Law with a felonious Purpoſe, *in fraudem Legis.* Raym. 276 Sid. 254.

Fraxinetum, A Wood of Aſhed Trees. *Domeſday.*

Fredum, Was a Compoſition made by a Criminal, to be freed from Proſecution, of which the third Part was paid into the *Exchequer.* See *Delatura.*

Fredwit, A Liberty to hold Courts, and take up Amerciaments, *&c. Cowel.*

Free-Bench, (*Francus Bancus*, i. e. *Sedes Libera*) Is that Eſtate in Copyhold Lands which the Wife hath on the Death of her Husband for her Dower, according to the Cuſtom of the Manor: But it is ſaid the Wife ought to be eſpous'd a Virgin; and is to hold the Land only ſo long as ſhe lives ſole and continent. *Kitch.* 102. Of this *Free Bench*, ſeveral Manors have ſeveral Cuſtoms; and *Fitzherbert* calls it a *Cuſtom* whereby in certain Cities the Wife ſhall have the whole Lands of the Husband for her Dower, *&c. F. N. B.* 150. In the Manors of *Eaſt* and *Weſt Enbourne* in the County of *Berks*, and the Manor of *Torre* in *Devonſhire*, and other Parts of the *Weſt* of *England*, there is a Cuſtom; that when a Copyhold Tenant dies, his Widow ſhall have her *Free-Bench* in all his Cuſtomary Lands, *Dum ſola & caſta fuerit*; but if ſhe commits Incontinency, ſhe forfeits her Eſtate: Yet neverthelcſs, on her coming into the Court of the Manor, riding backwards on a *Black Ram*, with his Tail in her Hand, and ſaying the Words following, the Steward is bound by the Cuſtom to re-admit her to her *Free-Bench*; the Words are theſe,

> *Here I am,*
> *Riding upon a* Black Ram,
> *Like a Whore as I am:*
> *And for my* Crincum Crancum,
> *I have loſt my* Binkum Bankum;
> *And for my Tail's Game,*
> *Have done this wordly Shame*;
> *Therefore pray Mr.* Steward *let me have my Land*
> *again.*

This is a Kind of *Penance*, among jocular Tenures and Cuſtoms, to purge the Offence.

Free-booter, Signifies a Perſon who fights without Pay, in Hopes of getting ſome *Booty.*

Freebord, (*Francbordus*) Is Ground claimed in ſome Places more or leſs, beyond, or without the Fence: It is ſaid to contain two Foot and a Half, in *Mon. Angl. Tom.* 2. *pag.* 241.

Free-borough-men, Were ſuch great Men as did not engage like the *Frank-pledge* Men for their *Decennier.* See *Friburgh.*

Free-Chapel, (*Libera Capella*) A Chapel ſo called, becauſe it is exempt from the Juriſdiction of the Dioceſan. Thoſe *Chapels* are properly *Free-Chapels* which are of the King's Foundation, and by him exempted from the Ordinary's Viſitation: Alſo *Chapels* founded within a Pariſh for the Service of God, by the Devotion and Liberality of pious Men, over and above the Mother-Church, and endowed with Maintenance by the Founders, which were *free* for the Inhabitants of the Pariſh to come to, were therefore called *Free Chapels. Reg. Orig.* 40, 41. The *Free Chapel* of St. *Martin le Grand* is mentioned in the Stat. 3 *Ed.* 4. *c.* 4. as are others likewiſe, by ancient Statutes: But theſe Chapels were given to the King, with the *Chantries*, *&c.* 1 Ed. 6. c. 14.

Freehold, (*Liberum Tenementum*) Is that Land or Tenement which a Man *holds* in Fee-ſimple, Fee-tail, or for Term of Life. *Bract. lib.* 2. *cap.* 9. And is deſcribed to be of two Sorts: *Freehold in Deed*, and *Freehold in Law*; the Firſt being the real Poſſeſſion of Lands, *&c.* in Fee, or for Life, and the other the Right a Perſon hath to ſuch Lands or Tenements, before his Entry or Seiſure. *Freehold* is alſo extended to *Offices*, which a Man holds either in Fee, or during Life: And in the *Regiſter* of Writs it is ſaid, that he who holds Land upon an Execution of a *Statute-Merchant* until he is ſatisfied the Debt, *Tenet ut Liberum Tenementum ſibi & aſſignatis ſuis*, and the ſame of a Tenant by *Elegit*; but ſuch Tenants are not *Freeholders*, only as *Freeholders* for their Time, till they have received the Profits of the Land to the Value of their Debt. *Reg. Judic.* 68, 73. A Leaſe for ninety nine Years, *&c.* determinable upon a Life or Lives, is not a Leaſe for Life to make a *Freehold*, but a Leaſe for Years or Chattel determinable upon Life or Lives: And an Eſtate for One thouſand Years is not a *Freehold*, or of ſo high a Nature as an Eſtate for Life. *Co. Litt.* 6. He that hath an Eſtate for the Term of his own Life, or the Life of another, hath a *Freehold*, and no other of a leſs Eſtate; though they of a greater Eſtate have a *Freehold*, as Tenant in Fee, *&c. Litt.* 57. When a Man pleads *Liberum Tenementum* generally, it ſhall be intended that he hath an Eſtate in Fee; and not a bare Eſtate for Life. *Cro. Eliz.* 87. An Eſtate of *Freehold* cannot by the *Common Law* commence *in futuro*; but it muſt take preſently in Poſſeſſion, Reverſion, or Remainder. 5 *Rep.* 94. A Man made a Deed of Gift to his Son and his Heirs, of Lands after his Death, and no Livery was made; now if there had been *Livery*, it had been void, becauſe a *Freehold* cannot commence *in futuro*: And it has been held, that it ſhall not enure as a Covenant to ſtand ſeiſed, by Reaſon of the Word *Give*; by which was intended a Tranſmutation of the Eſtate, and not to paſs it by Way of Uſe. *March Rep.* 50, 51. Whatſoever is Part of, or fix'd to the *Freehold* goes to the Heir; and Glaſs-Windows, Wainſcot, *&c.* affix'd to the Houſe are Parcel of the Houſe, and cannot be removed by Tenants. 4 *Rep.* 63, 64. But it hath been adjudged, that if Things for Trade, *&c.* are fix'd to the *Freehold* by the Leſſee, he may take them down and remove them, ſo as he do it before the End of the Term, and he do not thereby injure the *Freehold.* 1 *Salk.* 368. Any Thing fix'd to the *Freehold* may not be taken in Diſtreſs for Rent or in Execution, *&c.* But it is not Felony at Common Law, only Treſpaſs, to ſteal or take any Thing annexed to the *Freehold*; ſuch as lead on a Church or Houſe, Corn or Graſs growing on the Ground, Apples on a Tree, *&c.* Though if they are ſevered from the *Freehold*, whether by the Owner or the Thief; if he ſever them at one Time, and take them away at another, it is Larceny to take them. 12 *Aſſ.* 32. 1 *Hawk.* 93. And to ſteal Lead on Houſes, *&c.* is made Felony, by a late Statute. 4 *Geo.* 2. The Statute of *Magna Charta*, *cap.* 29. ordains,

dains, that no Perſon ſhall be diſſeiſed of his *Freehold*, &c. but by Judgment of his Peers, or according to the Law of the Land; which doth not only relate to common Diſſeiſins, but the King may not otherwiſe ſeiſe into his Hands the *Freehold* of the Subject. *Wood's Inſt.* 614. None ſhall diſtrain any Freeholders to anſwer for their *Freeholds*, or any Thing touching the ſame, without the King's Writ, Stat. 52 *H.* 3. *cap.* 22. Nor ſhall any Perſon be compelled to anſwer for his *Freehold* before any Lord of a Manor, &c. 15 *R.* 2. *c.* 12. *Freehold* Eſtates, of certain Values, are required by Statutes to qualify Jurors; Electors of Knights of the Shire in Parliament, &c.

Freeholders, Are ſuch as hold any *Freehold* Eſtate. By the ancient Laws of *Scotland*, *Freeholders* were called *Milites*; and *Freehold*, in this Kingdom, hath been ſometimes taken in Oppoſition to *Villenage*, it being Lands in the Hands of the Gentry and better Sort of Tenants, by certain Tenure, who were always *Freeholders*, contrary to what was in the Poſſeſſion of the inferior People, held *at the Will of the Lord.* Lambard.

Freeman, (*Liber homo*) Is one diſtinguiſh'd from a Slave, that is born or made *Free*; and theſe have divers Privileges beyond others. See *London.*

Freight, (Fr. *Fret*) Signifies the Money paid for Carriage of Goods by Sea; or in a larger Senſe, it is taken for the Cargo, or Burthen of the Ship. Ships are freighted either by the Ton, or by the Great; and in Reſpect of Time, the *Freight* is agreed for at ſo much *per* Month, or at a certain Sum for the whole Voyage. If a Ship *freighted* by the Great, happens to be caſt away, the *Freight* is loſt; but if a Merchant agrees by the Ton, or at ſo much for every Piece of Commodities, and by any Accident the Ship is caſt away, if Part of the Goods is ſaved, it is ſaid ſhe ought to be anſwered her *Freight pro rata:* And when a Ship is *inſured*, and ſuch a Misfortune happens, the Inſured commonly transfer thoſe Goods over to the Aſſurers, towards a Satisfaction of what they make good. *Lex Mercat. or Merchants Compan.* 79. If *Freight* is agreed for the Lading and Unlading of Cattle at ſuch a Port, and ſome of them die before the Ship arrives there, the whole *Freight* ſhall be paid for the Living and the Dead; but if the Agreement be for *tranſporting* them, *Freight* ſhall be only paid for the Living: And it is the ſame of Slaves. *Ibid.* 85. The Lading of a Ship, in Conſtruction of Law, is bound for the *Freight*; the *Freight* being in Point of Payment preferr'd before any other Debts to which the Goods ſo laden are liable, though ſuch Debts as to Time were precedent to the *Freight:* And Actions touching the ſame, are conſtrued favourably for the Ship and Owners; for if four Part-Owners of Five, belonging to a Ship, ſettle their Accounts with the *Freighters*, and receive their Dues, yet the fifth Man may ſue ſingly by himſelf without joining with the Reſt, by the Common Law, and the Law Marine. *Hill.* 27 *Car.* 2. *B. R.* If Part of the Lading be on Ship-board, and through ſome Misfortune happening to the Merchant, he has not his full Lading aboard at the Time agreed, the Maſter ſhall have *Freight* by Way of Damage, for the Time thoſe Goods were on Board; and is at his Liberty to contract with another, leſt he loſe his Seaſon and Voyage: And where a Ship is not ready to take in, or the Merchant not ready to lade his Goods aboard, the Parties are not only ſo at Liberty, but the Perſon damnified may bring an Action againſt the other and recover his Damages ſuſtained. *Leg. Rhod.* If the *Freighter* of a Ship ſhall lade on Board prohibited Goods, or unlawful Merchandize, whereby the Ship is detained, or the Voyage impeded; he ſhall anſwer the *Freight* agreed for. *Style* 220. And when Goods are laden aboard, and the Ship hath broke Ground, the Merchant may not afterwards unlade them; for if he then changes his Mind, and reſolves not to venture, but will unlade again, by the Marine Law the *Freight* becomes due. If a Maſter *freights* out his Ship, and afterwards ſecretly takes in Goods unknown to the firſt Laders, by the Law Marine he forfeits his *Freight:* And if a Maſter of a Ship ſhall put into any other Port than what the Ship was *freighted* to, he ſhall anſwer Damages to the Merchant; unleſs he is forced in by Storm, Enemies, or Pirates; and in that Caſe he is obliged to ſail to the Port agreed at his own Expence *Leg. Oleron.* A Ship is *freighted* out and in, there ſhall be no *Freight* due till the Voyage is perform'd; ſo that if the Ship be caſt away, coming home, the *Freight* outwards as well as inwards are both gone. 1 *Brownl.* 21. A Maſter of a Ship is not bound to anſwer *Freight* to the Owners for Paſſengers, where it appears they are not able to pay. See *Charter party.*

French. King *William* I. called *The Conqueror*, being a Native of *Normandy* in *France*, cauſed the Laws of this Realm, in his Time, to be written and pleaded in the *French Language.* 3 *Rep.* 17. But by the Stat. 37 *E.* 3. 15. all Pleas that are pleaded in any of the King's Courts, ſhall be pleaded in the *Engliſh* Tongue; though Appeals were ſtill to be arraigned, and the Plea of the Defendant read in *French*, in the ſame Manner as anciently. 2 *Hawk. P. C.* 308. Vide Stat. 4 *Geo.* 2. *c.* 26.

Frenchman, Heretofore a Term for every Stranger or outlandiſhman. *Bract. lib.* 3. *tract.* 2. *cap.* 15. See *Francigenæ.*

Frendwite, Comes from the Sax. *Freond.* i. e. Amicus, & *Wite* mulcta, and is a Mulct exacted of him who harbour'd his outlawed Friend. *Blount.* But ſee *Fleta, lib.* 1. *cap.* 47.

Freſca, Freſh Water or Rain, and Land Floods. *Chart. Antiq. in Somner of Gavelkind, p.* 132.

Freſh Diſſeiſin, (Friſca *Diſſeiſina*, from the Fr. *Fraiz*, i. e. Recens, & *Diſſeiſor*, viz. *Poſſeſſione ejicere*) ſignifies that *Diſſeiſin*, which a Man might formerly ſeek to defeat of himſelf, and by his own Power, without reſorting to the King, or the Law; as where it was not above fifteen Days old, or of ſome other ſhort Continuance. *Briton, cap.* 5. Of this *Bracton* writes at large, concluding it to be arbitrary. *Lib.* 4. *cap.* 5.

Freſh Fine, Is that which was levied within a Year paſt: It is mentioned in the Statute of *Weſtm.* 2. 13 Ed. 1. cap. 45.

Freſh Force, (*Friſca Fortia*) Is a *Force* newly done in any City, Borough, &c. And if a Perſon be diſſeiſed of any Lands or Tenements within ſuch a City, or Borough, he who hath a Right to the Land, by the Uſage and Cuſtom of the ſaid City, &c. may bring his *Aſſiſe*, or *Bill of Freſh Force*, within forty Days after the *Force* committed; and recover the Lands. *F. N. B.* 7. *Old Nat. Br.* 4. This Remedy may be alſo had where any Man is deforced of any Lands, after the Death of his Anceſtor, to whom he is Heir; or after the Death of Tenant for Life, or in Tail, in Dower, &c. within forty Days after the Title accrued; and in a Bill of *Freſh Force*, the Plaintiff or Demandant ſhall make Proteſtation to ſue in the Nature of what Writ he will, as *Aſſiſe* of *Mortdanceſtor*, of *Novel Diſſeiſin*, *Intruſion*, &c. *New Nat. Br.* 15. The Aſſiſe or Bill of *Freſh Force* is ſued out without any Writ from the Chancery; but after the Forty Days, there is to be a Writ out of the *Chancery*, directed to the Mayor, &c. *Ibid.*

Freſh Suit, or *Purſuit*, (*Recens inſecutio*) Is ſuch a preſent and earneſt following of an Offender, where a Robbery is committed, as never ceaſes from the Time of the Offence done or diſcovered, until he be apprehended: And the Benefit of a Purſuit of a Felon is, that the Party purſuing ſhall have his Goods reſtored to him; which otherwiſe are forfeited to the King. *Staundf. Pl. Cor. lib.* 3. *cap.* 10. and 12. When an Offender is thus apprehended, and Indictment brought againſt him, upon which he is convicted of the Felony, the Party robb'd ſhall have Reſtitution of his Goods; and though the Party robb'd do not apprehend the Thief preſently, but that it be ſome Time after the Robbery, if the Party did what in him lay to take the Offender; and notwithſtanding in ſuch Caſe he happen to be apprehended by ſome other Perſon, it ſhall be adjudged *Freſh Purſuit. Terms de Ley* 362, 363. It has been anciently holden, that to make a *Freſh Suit*, the Party ought to make *Hue and Cry* with all convenient Speed, and to have taken the Offender himſelf, &c. But at this Day, if the Party hath been guilty of no groſs Negligence, but hath uſed all reaſonable Care in inquiring after, purſuing, and apprehending the Felon, he ſhall be allowed to have made ſufficient *Freſh Suit.* 2 *Hawk. P. C.* 169. Alſo it is ſaid, that the Judging of *Freſh Suit* is in the Diſcretion of the Court, tho' it ought to be found by the Jury; and the Juſtices may, if they think fit, award a Reſtitution without making any Inquiſition concerning the ſame. *Ibid.* 169, 171. Where a Gaoler immediately purſues a Felon, or other Priſoner, eſcaping from Priſon, it is *Freſh Suit*, to excuſe the Gaoler: And if a Lord follow his *Diſtreſs* into another's Ground, on its being driven off the Premiſſes, this is called *Freſh Suit*; ſo where a Tenant purſues his Cattle, that eſcape or ſtray into another Man's Lands, &c. *Freſh Suit* may be either within the *View*, or without; as to which the Law makes ſome Difference: And it has been ſaid that *Freſh Suit* may continue for ſeven Years. 3 *Rep. S. P. C.*

Fretum Britannicum, Is uſed in our ancient Writings for the *Streights* between *Dover* and *Calis*.

Frettum and **Frectum**, The Freight of a Ship, or Freight-Money.——*Acquietari facietis* Frettum *Navium*, &c. Clauſ. 17 Joh. m. 16.

Friburgh, alias **Frithburgh**, (*Frideburgum*, from the Sax. *Frid*, i. e. Pax, & *Borge*, Fidejuſſor) Is the ſame with *Frank-pledge*; the one being in the Time of the *Saxons*, and the other ſince the *Conqueſt*: Of theſe *Friburghs*, *Bracton* treats *Lib.* 3. *Tract.* 2. *cap.* 10. And they are particularly deſcribed in the Laws of King *Edward* ſet out by *Lambard*, *fol.* 143. *Fleta* likewiſe writes on this Subject, *lib.* 1. *cap.* 47. And *Spelman* makes a Difference between *Friborg* and *Frithborgh*; ſaying the Firſt ſignifies *Libera Securitas*, and the other *Pacis Securitas*. Although *Friburghs* or *Friburghers* were antiently required as principal *Pledges* or Sureties for their Neighbours, for the Keeping of the Peace; yet as to great Perſons, they were a ſufficient Aſſurance for themſelves, and their menial Servants. *Skene*.

Fridſtoll and **Frithſtow**, (Sax. *Frid*, Pax, & *Stol*, ſedes) A Seat, Chair, or Place of Peace. In the Charter of Immunities granted to the Church of St. *Peter* in *York*, by *Henry* I. and confirmed *Anno* 5 *H.* 7. *Fridſtoll* is expounded *Cathedra pacis & quietudinis*, &c. And there were many ſuch in *England*; but the moſt famous was at *Beverley*, which had this Inſcription; *Hæc ſedes Lapidea* Freedſtoll *dicitur, i. e. Pacis Cathedra, ad quam reus fugiendo perveniens, omnimodam habet ſecuritatem.* Camd.

Friendleſs Man, Was the old *Saxon* Word for him whom we call an *Outlaw*; and it is for this Reaſon, becauſe he was, upon his Expulſion from the King's Protection, denied all Help of *Friends*, after certain Days: *Nam forisfecit amicos.* Bract. lib. 3. Tract. 2. cap. 12. See *Frendwite*.

Frier, (Lat. *Frater*, Fr. *Frere*) The Name of an Order of Religious Perſons, of which there are four principal Branches, *viz.* 1. *Minors, Grey Friers*, or *Franciſcans.* 2. *Auguſtins.* 3. *Dominicans*, or *Black Friers.* 4. *White Friers*, or *Carmelites*; of which the Reſt deſcend. 4 *H.* 4. *c.* 17. *Lyndewood de Relig. Domibus, c.* 1.

Frier-obſervant, (*Frater obſervans*) Is a Branch of the *Franciſcan Friers*, which are *Minors* as well the *Obſervants* as the *Conventuals*, and *Capuchines.* And they are called *Obſervants*, becauſe they are not combined together in any Cloiſter, Convent, or Corporation, as the Conventuals are; but tie themſelves to *obſerve* the Rules of their Order more ſtrictly than the *Conventuals* do, and upon a Singularity of Zeal ſeparate themſelves from them, living in certain Places of their own Chuſing. *Zach. de Rep. Eccleſ. de Regular. cap.* 12. They are mentioned in the Stat. 25 *H.* 8. *cap.* 12.

Friling, Freoling, (From the Sax. *Freoh*, Liber & *Ling*, progenies) Signifies a Man that is free.

Friperer, (Fr. *Fripier*, i. e. Interpolator) One that ſcours and furbiſhes up old Clothes to ſell again; a Kind of Broker. 1 *Jac.* 1. *c.* 21.

Friſcus, Is taken for uncultivated Ground.——*Et de Communia Paſturæ in* Friſcis *& Dominicis ſuis.* Mon. Angl. Tom. 2. pag. 56.

Friſt, A Term among Merchants for ſelling Goods upon *Credit.*

Frith, (*Sax.*) A Wood, from *Frid*, i. e. *Pax*, for the Engliſh *Saxons* held Woods to be ſacred, and therefore made them Sanctuaries. Sir *Edward Coke* expounds it a Plain between two Woods, or a Lawnd. *Co. Lit.* 5. *Camden* in his *Britan.* uſeth it for an Arm of the Sea, or a Streight, between two Lands, from the Word *Fretum.*

Frithbrech, (*Pacis Violatio*) The Breaking of the Peace. *LL. Æthelred. c.* 6. See *Grithbreche.*

Frithgear, (From the Sax. *Frith* or *Frid*, Pax, & *Gear*, Annus) The Year of Jubilee, or of Meeting for Peace and Friendſhip. *Somn.*

Frithgild, Is the ſame which we now call a *Guild-Hall*; or a Company or Fraternity.

Frithman, One belonging to ſuch Fraternity or Company. *Blount.*

Frithmote, Is mentioned in the Records of the County Palatine of *Cheſter: Per* Frithmote J. Stanley, *Ar. clamat capere annuatim de Villa de* Olton, *quæ eſt infra feodum & Manerium de*, &c. 10 *ſol. quos Comites Ceſtriæ ante confectionem Chartæ præd. ſolebant capere.* Pl. in Itin. apud Ceſtriam, 14 Hen. 7.

Frithſoke, Frithſoken, Signifies Surety of Defence; or, according to *Fleta*, *Libertas habendi Franci plegii; ſeu Immunitatis locus.*

Frodmortel, rectius **Fredmortel**, (from the Sax. *Freo*, free, and *Morthdel*, Homicidium) An Immunity for committing Manſlaughter.—— *Et concedo eis Curiam ſuam de omnibus Querelis, Et Judicium ſuum pro* Frodmortel, &c. Mon. Angl. Tom 1. p. 173.

Frumgyld, (*Sax.*) Is the firſt Payment made to the Kindred of a Perſon ſlain, towards the Recompence of his Murder.——*Prima Capitis æſtimationis Penſio vel ſolutio.* LL. Edmund.

Frumſtol, The chief Seat or Manſion-houſe; which is called by ſome the *Homeſtal.* Leg. Inæ, cap. 38.

Fruſca terræ, Waſte and Deſart Lands. *Mon. Tom.* 2. *pag.* 327.

Fruſſura, (from the Fr. *Froiſſure*) A Breaking down; alſo a Ploughing or Breaking up: Fruſſura *Domorum* is Houſe-breaking; and Fruſſura *Terræ*, new broke Land. *Mon. Angl. Tom.* 2. *pag.* 394.

Fruſtrum terræ, Is a ſmall Peace or Parcel of Land, *Reſiduum quiddam præter acras numeratas vel Campum menſuratum.*——Fruſtrum terræ *accipiatur pro ampla Portione ſeorſum a Campo, Villa, Manerio jacenti.* Domeſday.

Frutectum, A Place where Shrubs, or tall Herbs do grow. *Mon. Ang Tom.* 3. *pag.* 22.

Fuage. In the Reign of King *Edward* III. the *Black Prince* having *Aquitain* granted him, laid an Impoſition of *Fuage* upon the Subjects of that Dukedom,

dom, *i. e.* 12 *d.* for every *Fire. Rot. Parl.* 25 *Ed.* 3 And 'tis probable, that the *Hearth-Money* impoſed *Anno* 16 *Car.* 2. took its Original from hence. See *Fumage.*

Fuel. By an ancient Statute, if any Perſon ſhall ſell Billet-wood or Faggots for *Fuel* under the Aſſiſe, *&c.* on Preſentment thereof upon Oath by ſix Perſons ſworn by a Juſtice of Peace, the Party may be ſet on the Pillory in the next Market-Town, with a Faggot, *&c.* bound to ſome Part of his Body. For the *Aſſiſe of Fuel*, it is ordained, that every *Billet* ſhall be in Length three Foot and four Inches, and if ſingle contain ſeven Inches and a half about; a *Faggot* bound muſt be three Foot long, and have the Bond twenty-four Inches round, beſides the Knot; and every *Talſhide* marked one, being round bodied, ſhall meaſure in Length four Foot, and be ſixteen Inches and a half about, *&c.* Stat. 7 *Ed.* 6. *cap.* 7. *&* 43 *Eliz. cap.* 14. And none are to buy any *Fuel* but ſuch as will burn it, or retail it to thoſe as do; on Pain to forfeit the treble Value: Alſo no Perſon may alter any Mark or *Aſſiſe of Fuel*, on the like Forfeiture. Stat. *Ibid.*

Fuer, (Fr. *Fuir*, Lat. *Fugere*) Is uſed ſubſtantively, though it be a Verb; and is two-fold, *Fuer in fait*, or *in facto*, when a Man doth apparently and corporally *fly*; and *Fuer in Ley, in Lege*, when being called in the County Court he appeareth not, which is *Flight* in the Interpretation of Law. *Staundf. Pl. Cor. Lib.* 3. *cap.* 22.

Fuga Catallorum, A Drove of Cattle: *Fugatores Carrucarum*, Waggoners who drive Oxen, without beating or goading. *Fleta, lib.* 2. *c.* 78

Fugacia, Signifies a Chaſe, being all one with *Chaſea*; and *Fugatio*, Hunting, or the Privilege to hunt. *Blount.*

Fugam fecit, Is where it is found by Inquiſition, that a Perſon *fled* for Felony, *&c.* And if *Flight* and Felony be found on an Indictment for Felony, or before the Coroner, where a Murder is committed, the Offender ſhall forfeit all his Goods, and the Iſſues of his Lands, 'till he is acquitted or pardoned: And it is held, that when one indicted of any capital Crime, before Juſtices of *Oyer, &c.* is acquitted at his Trial, but found to have fled, he ſhall notwithſtanding his Acquittal, forfeit his Goods; but not the Iſſues of his Lands, becauſe by the Acquittal the Land is diſcharged, and conſequently the Iſſues. 3 *Inſt.* 218. *Hawk. P. C.* 27. 2 *Hawk. P. C.* 450. The Party may in all Caſes, except that of the Coroner's Inqueſt, traverſe the Finding of a *Fugam fecit*; and the Particulars of the Goods found to be forfeited, may be always traverſed: Alſo whenever the Indictment againſt a Man is inſufficient, the Finding of a *Fugam fecit* will not hurt him. 2 *Hawk.* 451. Making Default in Appearance on Indictment, *&c.* whereby *Outlawry* is awarded, a *Flight in Law.* See *Exigent.*

Fugitives Goods, (*Bona Fugitivorum*) Are the proper Goods of him that *flies* upon Felony; which after the Flight lawfully found on Record, do belong to the King or Lord of the Manor. 5 *Rep.* 109.

Fugitives over Sea. To depart this Realm over the Sea, without the *King's Licence*, except it be Great Men and Merchants, and the King's Soldiers, incurs forfeiture of Goods: And Maſter's of Ships, *&c.* carrying ſuch Perſons beyond Sea, ſhall forfeit their Veſſels; alſo if any Searcher of any Port, negligently ſuffer any Perſons to paſs, he ſhall be impriſoned, *&c.* Stat. 9 *Ed.* 3. 10. 5 *R.* 2. *c.* 2.

Fugitio, *Pro* Fuga—*Condonavit omnes Felonias &* Fugitiones. *Knighton, anno* 1537.

Fullum Aquæ, A Fleam or Stream of Water, ſuch as comes from a Mill.

Fumage, (*Fumagium*) Dung for Soil, or a Manuring of Land with Dung.—*Et ſint Quieti de* Fumagio *& Maremio cariando, &c. Chart. R.* 2. *Pat.* 5 *Ed.* 4. And this Word has been ſometimes uſed for *Smoke-Money*, a cuſtomary Payment for every Houſe that had a Chimney. *Domeſday.*

Fumadoes, Are Pilchards garbag'd and ſalted, then hung in the *Smoke*, and preſs'd; ſo called in *Spain* and *Italy*, whither they are exported in great Abundance. 14 *Car.* 2. *c.* 31.

Funditores, Is uſed for Pioneers, *in Pat.* 10 *Ed.* 2. *m.* 1.

Furca and **Foſſa,** (*i. e.* the Gallows and the Pit) In ancient Privileges granted by our Kings, it ſignified a Juriſdiction of puniſhing Felons; that is, Men by *Hanging*, and Women with *Drowning.* And Sir *Edw. Coke* ſays *Foſſa* is taken away, but that *Furca* remains. 3 *Inſt.* 58. *Skene* treating of theſe Words, ſaith thus—*Erectio* Furcarum *eſt meri Imperii & altæ Juſtitiæ, & ſignificat Dominium aeris, quia ſuſpenſi pendent in aere: Et merum Imperium conſiſtit in quatuor, ſicut ſunt quatuor Elementa; In Aere, ut hii qui ſuſpenduntur; In Igne, quando quis comburitur propter Maleficium; In Aqua, quando quis ponitur in culeo & in Mare projicitur ut parricida, vel in amnem immergitur ut Fœminæ furti Damnatæ; In Terra, cum quis decapitatur & in Terram proſternitur.* Skene.

Furcare ad Taſſum, To pitch Corn with a *Fork* in Loading a Waggon, or in making a Rick or Mow. *Tenentes debent falcare, ſpargere, vertere, cumulare, cariare in Manerium Domini, & ad* Taſſum furcare *unam acram Prati*—Cowel.

Furcam & Flagellum. The meaneſt of all ſervile Tenures, when the Bondman was at the Diſpoſal of his Lord for Life and Limb—*Ipſe tenet in* Villenagio *ad* Furcam & Flagellum *de Domino ſuo, &c.* Placit. Term. Mich. 2 Joh. Rot. 7.

Furigeldum, A Mulct paid for Theft: And by the Laws of King *Ethelred*, it is allow'd, that they ſhall be Witneſſes *qui nunquam* Furigeldum *reddiderunt, i. e.* who never was accuſed of Theft.

Furlong, Is a Quantity of Ground containing generally forty Poles or Perches in Length, every Pole being ſixteen Foot and a half; eight of which *Furlongs* make a Mile: It is otherwiſe the eighth Part of an Acre of Land in Quantity. *Stat.* 35 *Ed.* 1. *cap.* 6. In the former Acceptation, the *Romans* call it *Stadium*; and in the latter *Jugerum.* Alſo the Word *Furlong* hath been ſometimes uſed for a Piece of Land of more or leſs Acres.

Furnage, (*Furnagium*) *Eſt tributum quod Domino* Furni *a ſectatoribus penditur ob uſum* Furni; *Et multis enim in locis tenentur Vaſſali ad coquendum panes ſuos in* Furno *Domini. Eſt etiam Lucrum ſeu Emolumentum quod Piſtori conceditur in piſtionis ſumptus & Mercedem, & tunc poteſt Piſtor de quolibet quarterio frumenti lucrare* 4. *Denar. & furfur, & duos panes ad* Furnagium. *Aſſiſa Panis & Cerviſiæ,* 51 *H.* 3. See *Fornagium.*

Furnarius, Is uſed for a Baker, who keeps an *Oven*; and *Furniare* ſignifies to bake or put any Thing in the Oven. *Matt. Pariſ. Anno* 1258.

Furr, (*Furrura*) from the Fr. *Fourer*, i. e. *Pelliculare*) Is the Coat or Covering of a Beaſt. The Statute 24 *H.* 8. *c.* 13. mentions divers Kinds of it, *viz. Sables*; which are a rich *Furr*, of Colour between black and brown, the Skin of a Beaſt called a *Sable*, of Bigneſs between a Pole-cat and an ordinary Cat, bred in *Ruſſia* and *Tartary. Lucerns*, the Skin of a Beaſt of that Name, near the Size of a Wolf, in Colour neither red nor brown, but between both, and mingled with black Spots; which are bred in *Muſcovy*; and is a very rich *Furr. Genets*, a Beaſt's Skin ſo called, in Bigneſs between a Cat and Weezle, mailed like a Cat, and of that Nature, and of two Kinds black and grey, the black moſt precious which hath black Spots upon it hardly to be ſeen; this Beaſt is the Product of *Spain. Foins* are of Faſhion like the *Sable*, the Top of the *Furr* is black, and the Ground whitiſh; bred for the moſt part in *France. Marten* is a Beaſt very like the *Sable*, the Skin ſomething coarſer, produc'd in *England* and *Ireland*,

Ireland, and all Countries not too cold; but the beſt are in *Ireland*. Beſides theſe, there are the *Fitch* or *Pole-cat*; the *Calabar*, a little Beaſt, in Bigneſs near a *Squirrel*; *Miniver* being the Bellies of *Squirrels*; and *Shanks*, or what is called *Budge*, &c. all of them *Furrs* of Foreign Countries, ſome whereof make a large Branch of their Inland Traffick.

Furſt & Fondong, (*Sax.*) Time to adviſe, or to take Counſel.——*De quibuſcunque Implacitetur aliquis* Furſt & Fondong *habeat*. Leg. H. 1. cap. 46.

Furtum, Theft, or Robbery of any Kind. *Litt. Dict.*

Fuſtians. No Perſons ſhall dreſs *Fuſtians* with any other Inſtrument than the Broad Sheers, under the Penalty of 20 *s.* And the Maſter and Wardens of the Company of *Clothworkers* in *London*, &c. have Power to Search the Workmanſhip of Sheermen, as well for *Fuſtian* as Cloth. 11 *H.* 7. 39 *Eliz. c.* 13.

Fuſtick, Wood brought from *Barbadoes*, *Jamaica*, &c. uſed by Dyers, mentioned in the 12 *Car.* 2. *cap.* 18.

Fyrderinga, (from the Sax. *Firderung*, i. e. *Expeditionis apparatus*) A going out to War, or a military Expedition at the King's Command; not going upon which, when ſummon'd, was puniſhed by Fine at the King's Pleaſure. *Leg. H.* 1. *c.* 10. *Blount* calls it an Expedition; or a Fault or Treſpaſs for not going upon the ſame.

Fyrthing or **Fyrdung**, A military Expedition.

G.

GAbble, (*Blatero, Garrio*) To babble and talk idly to no Purpoſe, whence comes *Gabbler* or *Babler*. Plaut.

Gabel, (*Gabella*, *Gablum*, *Gablagium*) in French *Gabelle*, i. e. *Vectigal*, hath the ſame Signification among our antient Writers, as *Gabelle* hath in *France*: It is a Tax; but hath been variouſly uſed, as for a Rent, Cuſtom, Service, &c. And where it was a Payment of Rent, thoſe who paid it were termed *Gablatores*. *Domeſday*. *Co. Lit.* 213. It is by ſome Authors diſtinguiſhed from *Tribute*; Gabella *eſt Vectigal quod ſolvitur pro Bonis mobilibus*; & Tributum *eſt proprie quod Fiſco vel principi ſolvitur pro rebus immobilibus*. When the Word *Gabel* was formerly mentioned, without any Addition to it, it ſignified the *Tax on Salt*, tho' afterwards it was applied to all other Taxes.

Gable-End, (*Gabulum*) The Head or extream Part of a Houſe or Building.——*Quæ Domus ſita eſt inter* Gabulum *Tenementi mei* & Gabulum *Tenementi* Laurentii K. *Paroc. Antiq.* 286.

Gabulus Denariorum, Rent paid in Money. *Selden on Tithes*, *p.* 321.

Gafold-gild, (*Sax.*) Is the Payment of Tribute or Cuſtom; alſo it ſometimes denotes Uſury.

Gafold-land, or **Gaful-land**, (*Terra cenſualis*) Land liable to Taxes; and rented or letten for Rent. *Sax. Dict.*

Gage, (Fr. Lat. *Vadium*) Signifies as much as to pawn or pledge. *Glanvil*, *lib.* 10. *cap.* 6. And *Gage Deliverance* is where he that hath taken a Diſtreſs, being ſued, hath not delivered the Cattle, &c. that were diſtrained; then he ſhall not only avow the Diſtreſs; but *Gager Deliverance*, i. e. put in Surety or Pledges, that he will deliver them. *F. N. B.* 67, 74. This *Gage Deliverance* is had on ſuing out *Replevins*, upon the Plaintiff's Praying the ſame: And it is ſaid the Parties are to be at Iſſue, or there is to be a Demurrer in Law, before *Gage Deliverance* is allowed; and if a Man claim any Property in the Goods, or the Beaſts are dead in the Pound, the Plaintiff ſhall not *gage*, &c. Kitch. 145.

Gager del Ley, In old Writings. See *Wage* and *Wager of Law*.

Gainage, (*Gainagium*, i. e. *Plauſtri apparatus*, Fr. *Gaignage*, viz. *Lucrum*) The *Gain* or Profit of tilled or planted Land, raiſed by Cultivating it; and the Draught, Plough, and Furniture for carrying on the Work of Tillage, by the baſer Kind of *Soke-men* or *Villains*. *Gainage* was only applied to arable Land, when they that had it in Occupation had nothing thereof but the Profit raiſed by it from their own Labour, towards their Suſtenance, nor any other Title but at the Lord's Will: And *Gainor* is uſed for a *Soke-man*, that hath ſuch Land in Occupation. *Bract. lib.* 1. *cap.* 9. *Old Nat. Br.* 117. The Ward *Gain* is mentioned by *Weſt. Symb. par.* 2. *ſect.* 3. Where he ſays Land in Demeſne, but not in *Gain*, &c. And in the Stat. 51 *H.* 3. there are theſe Words; no Man ſhall be diſtrained by his Beaſts, that *gain* the Land. By the Statute of *Magna Charta*, *c.* 14. *Gainage* is meant no more than the Plough-Tackle, or Implements of Husbandry, without any Reſpect to *Gain* or Profit; where it is ſaid of the Knight and Freeholder, he ſhall be amerced *Salvo contenemento ſuo*; the Merchant or Trader, *Salva Merchandiſa ſua*; and the Villeins or Countrymen, *Salvo Gainagio ſuo*, &c. In which Caſes it was that the Merchant and Husbandman ſhould not be hindered, to the Detriment of the Publick, or be undone by arbitrary Fines; and the Villein had his *Wainage*, to the End the Plough might not ſtand ſtill; for which Reaſon the Husbandmen at this Day are allowed a like Privilege by Law, that their Beaſts of the Plough are not in many Caſes liable to Diſtreſs. See *Wainage*.

Gainery, (Fr. *Gaignerie*) Tillage, or the Profit ariſing from it, or of the Beaſts employed therein. *Stat. Weſtm.* 1. *c.* 6. & 17.

Galea, A Galley, or ſwift-ſailing Ship. *Hoved. pag.* 682, 692.

Galleti, According to *Somner* were *Viri Galeati*; but *Knighton* ſays they were *Welchmen*.——*In quorum prima acie fuit Dominus* Galfridus, *cum multis* Galletis, &c. Knight.

Galligaſkins, Wide Hoſe or Breeches, having their Name from their Uſe by the *Gaſcoigns*.

Gallihalpence, A Kind of Coin, which with *Suſkins* and *Doitkins*, were forbidden by the Stat. 3 *H.* 5. 1. It is ſaid they were brought into this Kingdom by the *Genoeſe* Merchants, who trading hither in *Galleys*, lived commonly in a Lane ner *Tower-ſtreet*, and were called *Galley-men*, landing their Goods at *Galley-Key*, and trading with their own ſmall Silver Coin term'd *Galley Half-pence*. Stow's Survey of Lond. 137.

Gallimawfry, Signifies a Meal of coarſe Victuals, given to *Galley Slaves*.

Gallivolatium, (from *Gallus* a Cock) A Cock-ſhoot or Cock-glade.

Galoches, (*Fr.*) Signify a Kind of Shoe, worn by the *Gauls* in dirty Weather; mentioned in the Statute 14 & 15 *H.* 8. *c.* 9.

Gamba, **Gamberia**, **Gambria**, (Fr. *Jambiere*) Military Boots or Defence for the Legs.

Gambeyſon, (*Gambezonum*) A Horſeman's Coat uſed in War, which covered the Legs: Or rather a quilted Coat, *Cento*, *Veſtimentum ex coactili Lana confectum*, to put under the Armour, to make it ſit eaſy. *Fleta*, *lib.* 1. *cap.* 24.

Game, (*Aucupia* from *Auceps*, *Aucupis*, i. e. *Avium captio*) Birds or Prey got by Fowling and Hunting: And Deſtroying the *Game* is an Offence by Statute. No Perſon ſhall take Pheaſants or Partridges with Engines in another Man's Ground, without Licence, on Pain of 10 *l.* *Stat.* 11 *H.* 7. *c.* 17. If any Perſons ſhall take or kill any Pheaſants or Patridges, with any Net in the Night-time, they ſhall forfeit 20 *s.* for every Pheaſant, and 10 *s.* for every Partridge taken; and Hunting with Spaniels in Standing-Corn, incurs a Forfeiture of 40 *s.* 23 *Eliz. c.* 10. Thoſe who kill any Pheaſant, Partridge, Duck, Heron, Hare, or other Game, are liable to a Forfeiture of 20*s.* for every Fowl and Hare; and Selling, or Buying to ſell again, any Hare, Pheaſant, *&c.* the Forfeiture is 10 *s.* for each Hare, *&c.* 1 *Jac.* 1. *cap.* 17. Alſo Pheaſants or Partridges are not to be taken between the firſt of *July* and the laſt of *Auguſt*, on Pain of Impriſonment for a Month, unleſs the Offenders pay 20 *s.* for every Pheaſant, *&c.* killed: And Conſtables, having a Juſtice of Peace's Warrant, may ſearch for *Game* and Nets, in the Poſſeſſion of Perſons not qualified by Law to kill *Game*, or to keep ſuch Nets. 7 *Jac.* 1. *c.* 11. Conſtables by Warrant of a Juſtice of Peace, are to ſearch Houſes of ſuſpected Perſons for *Game*; and if any *Game* be found upon them, and they do not give a good Account how they came by the ſame, they ſhall forfeit for every Hare, Pheaſant, or Patridge, not under 5 *s.* nor exceeding 20 *s.* And inferior Tradeſmen, hunting, *&c.* are ſubject to the Penalties of the Act, and may be likewiſe ſued for Treſpaſs: If Officers of the Army or Soldiers kill *Game*, without Leave, they forfeit 5 *l.* an Officer, and 10 *s.* a Soldier. 4 *&* 5 *W. & M. cap.* 23 Higlers, Chapmen, Carriers, Innkeepers, Victualers, *&c.* having in their Cuſtody, Hare, Pheaſant, Partridge, Heath-Game, *&c.* (except ſent by ſome Perſon qualified to kill *Game*) ſhall forfeit for every Hare and Fowl 5 *l.* to be levied by Diſtreſs and Sale of their Goods, being proved by one Witneſs, before a Juſtice; and for Want of Diſtreſs, ſhall be committed to the Houſe of Correction for three Months: One Moiety of the Forfeiture to the Informer, and the other to the Poor. And ſelling *Game*, or offering the ſame to Sale, incurs the like Penalty; wherein Hare, and other *Game* found in a Shop, *&c.* is adjudg'd an Expoſing to Sale: Killing Hares in the Night is liable to the ſame Penalties: And if any Perſons ſhall drive wild Fowl with Nets, between the firſt Day of *July* and the firſt of *September*, they ſhall forfeit 5 *s.* for every Fowl. 5 *Ann. c.* 14 9 *Arn c.* 25. And Penalties for killing and deſtroying *Game*, are recoverable not only before Juſtices of Peace by the ſeveral Statutes; but alſo by Action of Debt, Bill, Plaint or Information, in any of his Majeſty's Courts at *Weſtminſter*; and the Plaintiff if he recovers ſhall likewiſe have double Coſts. 8 G. 1. *c.* 19. Perſons qualified to keep Guns, Dogs, *&c.* to kill *Game*, are ſuch as have a free Warren, or are Lords of Manots, or have 100 *l. per Annum* Inheritance or for Life, or Leaſe for ninety-nine Years of 150 *l. per Ann.* (and by the Exception of the Act, the eldeſt Sons and Heirs of Eſquires, or other Perſons of higher Degree). And if any Perſon ſhall keep a Gun not ſo qualified, he ſhall forfeit 10 *l.* And Perſons being qualified may take Guns from thoſe that are not, and break them. 22 *&* 23 *Car.* 2. *c.* 25. 33 *Hen.* 8. *c.* 6. One Juſtice of Peace, upon Examination and Proof of the Offence, may commit the Offender till he hath paid the Forfeiture of 10 *l.* And Perſons not qualified by Law, keeping Dogs, Nets, or other Engines to kill *Game*, being convicted thereof before a Juſtice of Peace, ſhall forfeit 5 *l.* or be ſent to the Houſe of Correction for three Months; and the Dogs, *Game*, *&c.* ſhall be taken from them, by the Stat. 5 *Ann.* No *Certiorari* ſhall be allowed to remove any Conviction or other Proceeding on the Stat. 5 *Ann. &c.* into any Court at *Weſtminſter*, unleſs the Party convicted become bound to the Party proſecuting with ſufficient Sureties, in the Sum of 50 *l.* to pay the Proſecutor his Coſts and Charges, *&c.* after the Conviction confirmed, or a *Procedendo* granted. *Ibid.* In Convictions for keeping of Guns, the Peace is not concerned, but only the Qualification of the Perſons that uſe them; ſo that it hath been adjudged the Juſtices of Peace have no general Power to puniſh the Offenders, for Want of Juriſdiction. 4 *Mod.* 49. But where a Perſon was brought before a Juſtice of Peace for ſhooting with Hail-ſhot in a Hand-gun, the Juſtice committed him to Priſon until he ſhould pay 10 *l.* *&c.* and having made a Record of his Conviction, it was certified upon the Return of an *Habeas Corpus*; and it was held, that if the Juſtice of Peace had purſued the Statute, no Court could diſcharge the Defendant. *W. Jones* 170. On a *Certiorari* to remove a Conviction before a Juſtice, *&c.* for carrying a Gun, not being qualified; it appeared upon the Return to be taken before a certain Juſtice of Peace, without adding *Necnon ad diverſas felonias & Treſgreſſiones, audiend. aſſign'*, *&c.* and it was ruled that this was a good Exception upon a *Certiorari* to remove an Indictment taken at the Seſſions; but not upon a Conviction of this Nature, becauſe the Court can take Notice that the Statutes give the Juſtices Authority in theſe Caſes. 1 *Vent.* 33. *Sid.* 419. A Perſon was convicted before a Juſtice of Peace upon the Statute, for keeping a Gun, not having 100 *l. per Annum*; and the Conviction being removed into *B. R.* was quaſhed, for not ſaying *when* the Defendant had not 100 *l.* a Year; for it might be he had ſuch Eſtate at the Time when he kept the Gun, though not at the Conviction, and the Offence and Time ought to be certainly alledged. 3 *Mod.* 280. The Defendant not having 100 *l. per Annum*, did ſhoot in a Gun in *February*, and was brought before a Juſtice of Peace in *March* following, and then by him convicted; and it was held, that as by the Statute no Time was limited when the Offender ſhould be carried before a Juſtice to be examined, it therefore ought to be *Inſtanter*; which not being done, the Conviction was quaſhed. 4 *Mod.* 147. A Man was indicted for ſhooting of *Game*; but it was omitted ſhewing that he was not worth 100 *l.* a Year; and it was ordered by the Court, that the Party ſhould ſhew he was worth ſo much to diſcharge him.' 2 *Keb.* 582. If a Perſon hunt upon the Ground of another, ſuch other Perſon cannot juſtify Killing of his Dogs, as appears by 2 *Roll Abr.* 567. But it was otherwiſe adjudged *Mich.* 33 *Car.* 2. in C. B. 2 *Cro.* 44. and ſee 3 *Lev.* 28. Any Man may hawk and hunt at his Pleaſure in his own Lands: And the Common Law allows the Hunting of Foxes, and other ravenous Beaſts of Prey, in the Ground of another Perſon; tho' a Man may not dig and break the Ground to unearth them, without Licence, which is unlawful; and the Owner of the Ground may maintain an Action of Treſpaſs for it. 2 *Roll.* 538. *Cro. Jac.* 321. An Action was brought againſt a Perſon for entering another Man's Warren; the Defendant pleaded that there was a Pheaſant on his Land, and his Hawk purſued it into the Plaintiff's Ground; it was reſolved that this doth not amount to a ſufficient Juſtification, for in this Caſe he can only follow his Hawk and not take the *Game. Poph.* 162. though it is ſaid to be otherwiſe where the Soil of the Plaintiff is not a Warren. 2 *Roll. Abr.* 567. If a Man in Hunting ſtarts a Hare upon his own Ground, and follows and kills it on the Ground of another, yet ſtill the Hare is his own, becauſe of the freſh Suit; but if a Man ſtarts a Hare upon another Perſon's Ground, and hunts and kills it there, he is ſubject to an Action, tho' it is ſeldom brought, being frivolous. *Cro. Car.* 553. In Action of Debt, *Qui tam*, *&c.* by a common Informer on the Stat. 5 *Ann.* for 15 *l.* wherein the Plaintiff declared on two ſeveral Counts, one for 10 *l.* for killing two Partridges, the other for 5 *l.* for keeping an Engine to deſtroy the *Game*, not being qualified, *&c.* The Plaintiff had a Verdict for 5 *l.* only: This Action was brought by Virtue of the Stat. 8 *Geo.* 1. *Mod. Caſ. in Law and Eq.* 238.

Form of a *Juſtice of Peace's Warrant*, and *Conviction*, *&c.* for killing of *Game*.

To the Conſtable and Churchwardens of, &c.

Wilts, ſſ. WHereas *it hath been duly proved before me, by the Oath of,* &c. *That* A. B. *of your Pariſh, hath for ſome Time paſt kept and made Uſe of two Greyhounds,* &c. *for killing and deſtroying of* Game, *and on the Day,* &c. *laſt paſt, with the ſaid Dogs, killed one Hare in the Ground called,* &c. *in the Pariſh of,* &c. *aforeſaid, without having any viſible Eſtate, or being otherwiſe legally qualified to do the ſame, contrary to an Act of Parliament in that Caſe made:* Theſe *are therefore in his Majeſty's Name, to command you forthwith to levy the Sum of* 5l. (*which he hath forfeited by the Offence aforeſaid*) *on the Goods of the ſaid* A. B. *by Diſtreſs and Sale thereof; and that you do pay one Moiety of the ſaid Forfeiture to* C. D. *of,* &c. *who informed of the ſaid Offence, and that you do diſtribute the other Moiety thereof amongſt the Poor of your Pariſh, or keep the ſame for their Uſe, according to the Direction of the Act of Parliament: And for Want of ſuch Diſtreſs, that you do convey the ſaid* A. B. *to the Houſe of Correction, there to remain for the Space of three Months.* Given, &c.

Form of a *Declaration* at *Law* againſt a Perſon killing *Game*, upon the Stat. 8 *Geo.* 1.

South'ton, ſſ. A. B. *who ſues as well in this Behalf for the Poor of the Pariſh of,* &c. *in the County aforeſaid, as for himſelf, Complains of* C. D. *in Cuſtody of the Marſhal of the* Marſhalſea *of our Sovereign Lord the King, before the King himſelf being; Of a Plea that he render to the ſaid Poor, and to the ſame* A. *who ſues as well for the ſaid Poor, as for himſelf, Five Pounds of lawful Money of* Great Britain, *which to the ſaid Poor, and to the ſaid* A. *he owes, and unjuſtly detains: For that, to wit, That whereas the aforeſaid* C. *not having Lands, Tenements, or any other Eſtate of Inheritance, in his own Right, or in the Right of his Wife, of the clear yearly Value of One hundred Pounds; or for the Term of his own Life; nor having a Leaſe or Leaſes of Ninety and nine Years, or for any longer Term, of the yearly Value of one hundred and fifty Pounds; nor being the Son and Heir apparent of any Eſquire, or other Perſon of higher Degree; nor being the Owner of any Foreſt, Park or Warren, ſtocked with Deer or Conies for his neceſſary Uſe; hath on the Day of,* &c. *in the Sixth Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *at the Pariſh of,* &c. *aforeſaid in the County aforeſaid, unlawfully and unjuſtly had and kept Greyhounds, and other Dogs called Lurchers, and unlawful Engines for the Taking, Courſing and Deſtroying of Hares and Conies; and on the ſame Day and Year, at the ſaid Pariſh of,* &c. *in the County aforeſaid, with the ſaid Dogs, unlawfully and unjuſtly took, run down, killed and deſtroyed* (*contrary to the Form of the Statute in ſuch Caſe lately made and provided*) *ſeveral* Hares, *that is to ſay, Five Hares; whereby an Action hath accrued to the above named Poor, and to the ſaid* A. *who ſues as well for the ſaid Poor, as for himſelf, to have and demand of the aforeſaid* C. *the aforeſaid Five Pounds: Nevertheleſs the ſaid* C. *altho' often thereto required, hath not paid the ſaid Five Pounds to the aforeſaid Poor, and to the ſaid* A. *who ſues as well for the ſaid Poor, as for himſelf; but hath hitherto entirely denied, and ſtill doth deny to pay that to them, to the Damage,* &c. *And thereupon, as well for the Poor aforeſaid, as for himſelf, he brings this Suit.*

Game-Keepers, Are thoſe who have the Care of keeping and preſerving of the Game, being appointed thereto by Lords of Manors, &c. Lords of Manors, or other Royalties, not under the Degree of an Eſquire, may by Writing under Hand and Seal, authorize one or more *Game-keepers*; who may ſeize Guns, Dogs, Nets, and other Engines, made Uſe of to kill the Game by ſuch Perſons as are prohibited, for the Uſe of the Lord of the Manor, or otherwiſe deſtroy them. 22 & 23 *Car.* 2 *c.* 25. Any Lord or Lady of a Manor or Lordſhip, may impower his or her *Game-keeper* within their reſpective Royalties, to kill Hare, Pheaſant, Partridges, &c. But if the ſaid *Game-keeper* under Colour of the ſaid Power, ſhall kill and afterwards ſell or diſpoſe thereof to any Perſon whatſoever, without the Conſent of the Lord or Lady of ſuch Manor, upon Conviction thereof, he ſhall be committed to the Houſe of Correction for three Months, there to be kept to hard Labour. 5 *Ann. cap.* 14. By the Stat. 9 *Ann.* no Lord or Lady of a Manor ſhall make, conſtitute or appoint, above one Perſon to be *Game-keeper* within any one Manor, with Power to kill Game; the Name of which *Game keeper* ſo appointed, is to be entered with the Clerk of the Peace of the County wherein the Manor lies: And if any other *Game-keeper* ſhall preſume to kill any Hare, Pheaſant, Partridge, &c. Or if any *Game-keeper* ſhall ſell any Hare, Pheaſant, &c. he ſhall for every Offence incur ſuch Forfeitures, as are inflicted by the Act 5 *Ann.* And by 3 *Geo.* 1. *c.* 11. no Lord of a Manor is to make or appoint any Perſon to be a *Game-keeper*, with Power to take and kill Hare, Pheaſant, Partridge, or other Game, unleſs ſuch Perſon be qualified by Law ſo to do, or be truly and properly a Servant to the ſaid Lord, or immediately employed to take and kill the Game for the ſole Uſe or Benefit of the ſaid Lord: And any Perſon not qualified, or not employed as aforeſaid, who under Pretence of any Qualification from any Lord of a Manor, ſhall take or kill any Hare, &c. or keep or uſe any Dogs to kill and deſtroy the Game, ſhall for every ſuch Offence incur ſuch Forfeitures, Pains, and Penalties, as are inflicted by the Acts 5 & 9 *Ann.* By this laſt Statute, no *Game-keeper* can qualify any Perſon to kill Game, or to keep Guns, Dogs, &c. Where *Game-keepers* ought to have a Juſtice of Peace's Warrant, to take away Guns from unqualified Perſons, ſee *Comberb.* 305.

Appointment of a *Game-keeper* by a Lord of a Manor.

TO all People *to whom theſe Preſents ſhall come,* I T. *Lord* A. *Lord of the Manor of* B. *in the County of,* &c. *have (by Virtue of ſeveral Acts of Parliament lately made for the Preſervation of the Game) nominated, authoriſed and appointed, and by theſe Preſents do nominate, authorize and appoint* E. D. *of,* &c. *to be my* Game-keeper *of and within my Manor,* &c. *in the County of,* &c. *aforeſaid, with full Power and Authority, according to the Direction of the Statutes in that Caſe made, to kill Game for my Uſe; and to take and ſeiſe all ſuch Guns, Greyhounds, Setting dogs, and other Dogs, Ferrets, Trammels, Hays, or other Nets, Snares or Engines, for the Taking, Killing or Deſtroying of Hares, Pheaſants, Partridges, or other Game, as within the ſaid Manor of,* &c. *and the Precincts thereof, ſhall be kept or uſed by any Perſon or Perſons not legally qualified to do the ſame: And further to act and do all and every Thing and Things which belong to the Office of a* Game-keeper, *purſuant to the Direction of the ſaid Acts of Parliament, during my Will and Pleaſure; for which this ſhall be his ſufficient Warrant.* Given *under my Hand and Seal,* &c.

Gaming, or Games unlawful, (*Ludos vanos*) The Playing at Tables, Dice, Cards, &c. King *Ed.* 3. in the 39th Year of his Reign, enjoined the Exerciſe of Shooting and of Artillery, and forbad the Caſting of the Bar, the Hand and Foot Balls, Cock-fighting, &c. *alios Ludos vanos*; but no Effect did follow from it, till they were ſome of them forbidden by Act of Parliament. 11 *Rep.* 87. *Anno* 28 *H.* 8 Proclamation was made againſt all unlawful Games, and Commiſſions awarded into all the Counties of *England*, for the Execution thereof; ſo that in all Places, Tables, Dice, Cards and Bowls, were taken and burnt. *Stow's Annals* 527. And by the Statute 33 *H.* 8. *c.* 9. Juſtices of Peace, and head Officers in Corporations, are impowered to enter Houſes ſuſpected of unlawful Games; and to arreſt and impriſon the *Gameſters*, till they give Security not to play for the future: Alſo the Perſons keeping unlawful *Gaming* Houſes, may be committed by a Juſtice, until they find Sureties not to keep ſuch Houſes; who ſhall forfeit 40 *s.* and the *Gameſters* 6 *s.* 8 *d.* a Time: And if the King licence the Keeping of *Gaming-houſes*, it is againſt Law, and void. No Artificer, Apprentice, Labourer or Servant, ſhall play at Tables, Tennis, Dice, Cards, Bowls, &c. out of *Chriſtmas* Time, on Pain of 20 *s.* for every Offence; and at *Chriſtmas*, they are to play in their Maſter's Houſe, or Preſence: But any Nobleman, or Gentleman, having 100 *l.* *per Annum* Eſtate, may licence his Servants or Family to play within the Precincts of his Houſe, or Garden, at Cards, Dice, Tables, or other Games, as well among themſelves, as others repairing thither. *Stat. Ibid.* This Act is to be proclaimed once a Quarter, in every Market-Town, by the reſpective Mayors, &c. and at every Aſſiſes and Seſſions. A Perſon was convicted of keeping a Cockpit; and the Court reſolved it to be an unlawful Game, within the Stat. 33 *H.* 8. and fined him 40 *s.* a Day. *Keb.* 510. But to play at Dice, &c. is not unlawful in itſelf, though prohibited by Statutes to certain Perſons, and to be uſed in certain Places. 2 *Ventr.* 175. If any Perſon of what Degree ſoever, ſhall by Fraud, Deceit, or unlawful Device, in playing at Cards, Dice, Tables, Bowls, Cock-fighting, Horſe-races, Foot-races, or other Games or Paſtimes, or bearing a Share in the Stakes, Betting, &c. win any Money, or valuable Thing, he ſhall forfeit treble the Value, one Moiety to the Crown, and the other to the Party grieved, Proſecution being in ſix Months; in Default whereof, the laſt mentioned Moiety is to go to ſuch other Perſon as will proſecute within one Year, &c. 16 *Car.* 2. *cap.* 7. And by this Statute, if any Perſon ſhall play at any of the ſaid Games, upon Tick, and not for ready Money, and loſe above 100 *l.* upon Tick or Credit, at any one Meeting, if the Money be not paid down, his Security taken for it ſhall be void; and the Winner ſhall forfeit treble the Value of the Money won; one Moiety to the Crown, and the other Moiety for him that will ſue for the ſame, by Action of Debt, Bill, Plaint or Information, &c. A Watch may be loſt at *Gaming*, which is convertible to, or may be taken for ready Money; and it is not within the Statute: A Perſon loſt his Watch which was delivered, and after that the ſame Party loſt 100 *l.* upon Tick, for which a Bond was given; and this was held good; for the Statute doth not reſtrain playing for ready Money, as the Watch is intended to be, but ſuch playing *only* as puts People in Debt: But it was here inſiſted, that if above 100 *l.* were loſt at Play, and Part paid preſently, and Bond given for the Reſidue, ſuch Bond would be void by the Statute. 1 *Lev.* 244. 1 *Lill. Abr.* 645. It has been adjudged, that if *A. B.* loſe 100 *l.* to one, and afterwards 100 *l.* to another, upon Tick or Credit, it is not within the Meaning of the Statute, becauſe it is a ſeveral Contract; but it would be otherwiſe on a joint Contract: And if a Perſon loſt 200 *l.* in ready Money; and 100 *l.* more, for which he gave his Note, the Note would be good, but all beyond it be void. 1 *Salk.* 345. A Perſon brought an Action for 40 *l.* the Defendant pleaded it was for Money won at Play, and that at the ſame Time he alſo loſt 66 *l.* to another; but on Demurrer the Plaintiff had Judgment; for it was held that loſing 106 *l.* to ſeveral Perſons at one Time, is not within the Statute 16 *Car.* 2. unleſs they are Partners in the Stakes; for then as to the Chance of the Game, they are as one Perſon. *Mich.* 13 *W.* 3. 1 *Salk.* 345. Where Security is given for Money won at *Gaming* to a third Perſon, not being privy to it, or not knowing it was won at Play, it is not within the Statute; as where the Winner being indebted to another brought the Loſer to his Creditor, who entered into Bond to him, &c. 2 *Mod.* 297. If a Perſon loſe Money at Play, and the Loſer give the Winner a Bill for it drawn upon a third Perſon, who accepts the Bill; tho' the Acceptance of the Bill is in Nature of a new Contract, yet all is founded on the illegal Winning, and it is for the Security of the Payment of the Money loſt; and therefore 'tis within the Statute: But if the Bill be aſſigned for a valuable Conſideration to a Stranger, ſuch Aſſignee not being privy to the firſt Wrong, as was the Winner, it ſhall not be within the Statute. 1 *Salk.* 344. By the Statute of 9 *Ann. cap.* 14. all Notes, Bills, Bonds, Judgments, Mortgages, or other Securities, given for Money won by playing at Cards, Dice, Tables, Tennis, Bowls, or other Games; or by Betting on the Sides of ſuch as play at any of thoſe Games, or for Repayment of any Money knowingly lent for ſuch *Gaming* or Betting, ſhall be void: And where Lands are granted by ſuch Mortgages or Securities, they ſhall go to the next Perſon, who ought to have the ſame as if the Grantor were actually dead, and the Grants had been made to the Perſon ſo entitled after the Death of the Perſon ſo incumbering the ſame. If any Perſon playing at Cards, Dice, or other Game, or Betting, ſhall loſe the Value of 10 *l.* at one Time, to one or more Perſons, and ſhall pay the Money, he may recover the Money loſt by Action of Debt, within three Months afterwards; and if the Loſer do not ſue, any other Perſon may do it and recover the ſame, and treble the Value with Coſts, one Moiety to the Proſecutor, and the other to the Poor: And the Perſon proſecuted ſhall anſwer upon Oath, on preferring a Bill to diſcover what Sums he hath won. Perſons by Fraud or ill Practice, in playing at Cards, Dice, or by bearing a Share in the Stakes, &c. or by Betting, winning any Sum above 10 *l.* ſhall forfeit five Times the Value of the Thing won, and ſuffer ſuch Infamy and corporal Puniſhment, as in Caſes of wilful Perjury, being convicted thereof on Indictment or Information; and the Penalty ſhall be recovered by Action, by ſuch Perſon as will ſue for the ſame. And if any one ſhall aſſault and beat, or challenge to fight any other Perſon, on Account of Money won by *Gaming*, upon Conviction thereof, he ſhall forfeit all his Goods, and ſuffer Impriſonment for two Years. *Stat.* 9 *Ann.* Alſo by this Statute, any two or more Juſtices of Peace, may cauſe ſuch Perſons to be brought before them as they ſuſpect to have no viſible Eſtates, &c. to maintain them; and if they do not make it appear that the principal Part of their Expences is got by other Means than *Gaming*, the Juſtices ſhall require Securities for their good Behaviour for a Twelvemonth; and in Default of ſuch Security, commit them to Priſon until they find it: And Playing or Betting during the Time, to the Value of 20 *s.* ſhall be deemed a Breach of Behaviour, and a Forfeiture of their Recognizances. *Ibid.* By a late Act, where it ſhall be proved before any Juſtice of Peace, that any Perſon hath uſed unlawful *Games* contrary to the Stat. 33 *H.* 8. the Juſtice may commit ſuch Offender to Priſon, till he enter into a Recognizance that he ſhall not from thenceforth at any Time to come play at any unlawful Game. Stat. 2 *Geo. cap.* 2. 28. For better preventing exceſſive and deceitful *Gaming*; the Ace of Hearts, Pharaoh, Baſſet, and Hazard, are declared to be Lotteries by Cards or Dice; and Perſons ſetting up theſe *Games* are liable to the Penalty of 200 *l.* And every Perſon who ſhall be an Adventurer, or Play or Stake therein forfeits 50 *l.* Likewiſe the Sale of any Houſe, Plate, *&c.* in the Way of Lottery by Cards, *&c.* is adjudged void, and the Things to be forfeited to any Perſons that will ſue for the ſame. 12 *Geo.* 2. *c.* 28. The *Game* of Paſſage, and all other *Games* with one or more Dice, or any Thing in that Nature, having Figures or Numbers thereon, (Bagammon and *Games* now Play'd with thoſe Tables only excepted) ſhall be deemed *Games* or Lotteries by Dice, within the 12 *Geo.* 2. And ſuch as keep any Office or Table for the ſaid *Game*, *&c.* or Play thereat, are ſubject to the Penalties in that Act. 13 *Geo.* 2. *cap.* 19. It was formerly held that *Indebitatus Aſſumpſit* would lie for Money won at *Gaming*; tho' ſome Judges were of Opinion it would not, but ſpecial Action upon the Caſe. 2 *Lev.* 118. 2 *Vent.* 175. But it hath been ſince adjudged, that it will not lie, for there muſt be Work done, or ſome meritorious Act for which Debt lies, to maintain it: And although a Caſt of the Dice, alters the Property of the Money, if it is ſtaked down, it being then a Gift on a Condition precedent, and an *Indebitatus Aſſumpſit* lies againſt him who holds the Wager, becauſe it is a Promiſe in Law to deliver it if won; yet in other Caſes, there is no Conſideration. 5 *Mod.* 15. *Mod. Caſ.* 128. Common *Gaming-houſes* are a common Nuſance in the Eye of the Law; not only becauſe they are great Temptations to Idleneſs, but as they draw together great Numbers of diſorderly Perſons to the Diſturbance of the Neighbourhood. 1 *Hawk. P. C.* 198. *Noy* had a Writ on the Statute 33 *H.* 8. to remove Bowling-Alleys, *&c.* which were pulled down, as common Nuſances. 3 *Keb.* 465.

An *Indictment* for keeping a *Gaming-houſe.*

South'ton, ſſ. THE *Jurors*, &c. *preſent, That* A. B. *late of* W. *in the ſaid County Innholder, on the Day*, &c. *in the Year of the Reign*, &c. *and on divers other Days and Times, before the Day of this Inquiſition, at* W. *aforeſaid in the ſaid County, did maintain and keep a common Room*, &c. *for* Gaming, *and did then and there ſuffer divers ſuſpected Perſons unlawfully to play with Cards and Dice, as well in the Day, as in the Night-time, after lawful Hours, to the Grievance of the Inhabitants there, and to the bad Example of other Subjects of our ſaid Lord the King, and contrary to the Statute*, &c. *and alſo againſt the Peace*, &c.

Gang-days, (*Dies Luſtrationis*) And *Gang-weeks* are mentioned in the Laws of King *Athelſtan.* See *Rogation Week.*

Gaol, (*Gaola*, Fr. *Geole*, i. e. *Gaveola*, a Cage for Birds) Is uſed metaphorically for a Priſon. It is a ſtrong Place or Houſe for keeping of Debtors, *&c.* and wherein a Man is reſtrained of his Liberty to anſwer an Offence done againſt the Laws: And every County hath two *Gaols*, one for Debtors, which may be any Houſe where the Sheriff pleaſes; the other for the Peace and Matters of the Crown, which is the *County Gaol. Mod. Juſt.* 230. Juſtices of Peace may not commit Felons, and other Criminals to the *Counters* in *London*, or other Priſons but the common *Gaols*; for they can legally impriſon no where but in the common *Gaol. Co. Lit.* 9, 119. But the Houſe of Correction, and the *Counters* of the *Sheriffs of London*, are the common Priſons for Offenders for the Breach of the Peace, *&c.* Sheriffs of Counties are to have the Keeping of the common *Gaols*; except ſuch as are held by Inheritance. 19 *Hen.* 7. 10. And for the Relief of Priſoners in *Gaols*, Juſtices of Peace in Seſſions have Power to tax every Pariſh in the County, not exceeding 8 *d.* per Week, leviable by Conſtables, and diſtributed by Collectors, *&c.* 14 *Eliz. cap.* 5. Offenders committed to Priſon, are to bear the Charges of their Conveying to *Gaol*; or on Refuſal, their Goods ſhall be ſold for that Purpoſe, by Virtue of a Juſtice of Peace's Warrant; and if they have no Goods, a Tax is to be made by *Conſtables, &c.* on the Inhabitants of the Pariſh where the Offenders were apprehended. 3 *Jac.* 1. *c.* 10. If a *Gaol* be out of Repair, inſufficient, *&c.* the Juſtices of Peace in the Quarter-Seſſions may agree with Workmen for Rebuilding or Repairing it; and by Warrant under their Hands and Seals, order the Sum agreed upon to be levied upon the ſeveral Hundreds and Diviſions in the County, by a proportionate Rate. 11 *&* 12 *W.* 3. *cap.* 19.

Gaoler, Is the Maſter of a Priſon; one that hath the Cuſtody of the Place where Priſoners are kept. Sheriffs muſt make ſuch *Gaolers* for which they will anſwer: But if there is a Default in the *Gaoler*, Action lies againſt him for an Eſcape, *&c.* 2 *Inſt.* 592. In common Caſes, the Sheriff or *Gaoler* are chargeable at the Diſcretion of the Party; though the Sheriff is moſt uſually charged. *Wood's Inſt.* 76. He who hath the Cuſtody of the Gaol wrongfully or of Right, ſhall be charged with the Eſcape of Priſoners; and if he that hath the actual Poſſeſſion be not ſufficient, *Reſpondeat Superior. Ibid.* A *Gaoler* kills an unruly Priſoner, it is no Felony; but if it be by hard Uſage, it is Felony and Murder. 3 *Inſt.* 52. And if a *Gaoler* barbarouſly miſuſe Priſoners, he may be fined and diſcharged. *Raym.* 216. If any Perſon aſſault a *Gaoler*, for keeping a Priſoner in ſafe Cuſtody, he may be fined and impriſoned. 1 *Hawk.* 58, 59. Where a Gaol is broken by Thieves, the *Gaoler* is anſwerable; not if it be broken by Enemies. 3 *Inſt.* 52. No Fees ſhall be taken by *Gaolers* of Priſoners, but ſuch as are allow'd by Law, and the Judges, *&c.* are to ſettle the ſame; alſo the Judges may determine Petitions againſt Extortions of *Gaolers*, Bailiffs. Stat. 2 *Geo.* 2. *c.* 22. See *Priſoners*, and *Eſcape*

Gaol-delivery. The Adminiſtration of Juſtice being originally in the Crown, in former Times our Kings in Perſon rode thro' the Realm once in ſeven Years, to judge of and determine Crimes and Offences: Afterwards *Juſtices in Eyre* were appointed; and ſince *Juſtices of Aſſiſe* and *Gaol-delivery*, &c. A Commiſſion of a *Gaol delivery* is a Patent in Nature of a Letter from the King to certain Perſons, appointing them his Juſtices, or two or three of them, and authorizing them to deliver his *Gaol*, at ſuch a Place, of the Priſoners in it; for which Purpoſe, it commands them to meet at ſuch Place, at the Time they themſelves ſhall appoint; and informs them, that for the ſame Purpoſe the King hath commanded his Sheriff of the ſame County to bring all the Priſoners of the *Gaol*, and their Attachments before them, at the Day appointed, *Cromp. Juriſd.* 125. 4 *Inſt.* 168. Juſtices of *Gaol-delivery* are empowered by the Common Law to proceed upon Indictments of Felony, Treſpaſs, *&c.* and to order Execution or Reprieve: And they have Power to diſcharge ſuch Priſoners, as upon their Trials ſhall be acquitted; alſo all ſuch againſt whom, upon Proclamation made, no Evidence appears to indict them; which Juſtices of *Oyer and Terminer*, &c. may not do. 2 *Hawk.* 24, 25. But theſe Juſtices have nothing to do with any Perſon not in Cuſtody of the Priſon, except in ſome ſpecial Caſes; as if ſome of the Accomplices to a Felony be in ſuch Priſon, and ſome of them out of it, the Juſtices may receive an Appeal againſt thoſe who are out of the Priſon, as well as thoſe who are in it; which Appeal after the Trial of ſuch Priſoners, ſhall be removed into *B. R.* and Proceſs iſſue from thence againſt the Reſt; but if thoſe out of Priſon be omitted in the Appeal, they can never be put into any other, becauſe there can be but one Appeal for one Felony. *Fitz. Coron.* 77. *S. P. C.* 64. Such Juſtices have no more to do with one let to Mainpriſe, than if he were at large; for ſuch Perſon cannot be ſaid to be a Priſoner, ſince it is not in the Power of his Sureties to detain him in their Cuſtody: And where any Perſon is bailed, that he is in the Cuſtody of his Sureties, they may detain him where they pleaſe. 2 *H. P. C.* 25. Tho' *per Hale* C. J. If a Perſon be let to Bail, yet he is in Law in Priſon, and his Bail are his Keepers; and therefore the Juſtices of *Gaol-delivery* may take an Indictment againſt him, as well as if he was actually in Gaol. And they may take Indictments not only of Felony, but alſo of High Treaſon, if the Offenders are in Priſon, and try and give Judgment upon them, like unto Commiſſioners of *Oyer and Terminer*; tho' it has been formerly held otherwiſe. 2 *Hale's Hiſt. P. C.* 35. Juſtices of *Gaol-delivery* may puniſh thoſe who unduly bail Priſoners; as being guilty of a negligent Eſcape. *S. P. C.* 77. 25 *Ed.* 3. 39. They are alſo to puniſh Sheriffs and Gaolers, refuſing to take Felons into their Cuſtody from Conſtables, *&c.* 4 *Ed.* 3. 10. and have Authority to puniſh many particular Offences by Statute.

Garb, (*Garba*, from the Fr. *Garbe*, alias *Gerbe*, i. e. *faſcis*) Signifies a Bundle or Sheaf of Corn. *Chart. Foreſt, cap.* 7. And in ſome Places it is taken for an Handful, *viz.* Garba *aceris fit ex triginta peciis*. Fleta, lib. 2. c. 12. *Garba Sagittarum* is a Sheaf of Arrows containing twenty-four. *Skene.*

Garble, Is to ſever the Droſs and Duſt from Spice, Drugs, *&c.* *Garbling* is the Purifying and Cleanſing the Good from the Bad; and may come from the Italian *Garbo*, i. e. Finery or Neatneſs; and thence probably we ſay, when we ſee a Man in a neat Habit, that he is in a handſome *Garb.* Cowel.

Garbler of Spices, An Officer of Antiquity in the City of *London*, who may enter into any Shop, Warehouſe, *&c.* to view and ſearch Drugs and Spices, and *garble*, and make clean the ſame, or ſee that it be done. 21 *Jac.* 1. *c.* 19. And all Drugs, *&c.* are to be cleanſed and garbled before ſold, on Pain of Forfeiture, or the Value. *Stat. Ibid.* But ſee Statute 6 *Ann. c.* 16.

Garcio, (Fr. *Garçon*) A Groom or Servant. *Pla. Cor.* 21. *Ed.* 1. *Garcio ſtolæ*, Groom of the Stole to the King: And in the *Iriſh* Language, (according to *Toland*) *Garſon* is an Appellative for any menial Servant. *Kennet's Gloſſ.*

Garciones, Are thoſe Servants which follow the Camp. ——— *Habeat* Garcionem *ſuo ſervitio ſemper attendentem. Ingulph.* 886. And the Word *Garciones* hath been applied to the Baggage of an Army; ſo called *à* Garcionibus *ſive militum famulis.* Walſing. 242.

Gard, Gardian, &c. See *Guard*, and *Guardian.*

Gardebrache, (Fr. *Gardebrace*) An Armour or Vambrace for the Arm. *Chart. K. Hen.* 5.

Garderobe, (*Garderoba*) A Cloſet or ſmall Apartment, for hanging up Clothes, being the ſame with *Wardrebe.* See 2 *Inſt.* 255.

Gardia, Is a Word uſed by the *Feudiſts* for *Cuſtodia.* Lib. Feud. 1.

Gare, A Coarſe Wool, full of ſtaring Hairs, ſuch as grow about the Shanks of Sheep. 31 *Ed.* 3. *c.* 8.

Garlanda, A Chaplet, Coronet, or Garland. *Matt. Pariſ.*

Garneſtura, Victuals, Arms, and other Implements of War, neceſſary for the Defence of a Town or Caſtle. *Mat. Pariſ. Anno* 1250.

Garniſh. To *garniſh* the Heir, ſignifies in Law to warn the Heir. *Stat.* 27 *Eliz. c.* 3.

Garniſhment, (Fr. *Garnement*, from *Garnir*, i. e. *inſtruere*) In a legal Senſe intends a Warning given to one for his Appearance, for the better furniſhing of the Cauſe and Court. For Example; one is ſued for the *Detinue* of certain Writings delivered; and the Defendant alledging that they were delivered to him by the Plaintiff, and another Perſon upon Condition, prays that the other Perſon may be warned to plead with the Plaintiff, whether the Conditions be perform'd or not; in this Petition he is ſaid to pray *Garniſhment*; which may be interpreted either a Warning of that other, or a Furniſhing the Court with all Parties to the Action, whereby it may thoroughly determine the Cauſe; and until he appears and joins, the Defendant is as it were out of the Court. *Cromp. Juriſd.* 211. *F. N. B.* 106. A Writ of *Scire facias* is to go forth againſt the other Perſon to appear and plead with the Plaintiff; and when he comes and thus pleads, it is called *Enterpleader:* If the *Garniſhee* be returned *Scire feci*, and make Default, Judgment will be had to recover the Writings, and for their Delivery againſt the Defendant; and if the *Garniſhee* appears and pleads, if the Plaintiff recovers, he ſhall have Damages. *Raſt.* 213. 1 *Brown.* 147. *Garniſhment* is generally uſed for a Warning; as *Garniſher le Court* is to warn the Court; and *Reaſonable Garniſhment* is where a Perſon hath reaſonable Warning. *Kitch.* 6. In the Stat. 27 *Eliz. c.* 3. we read, upon a *Garniſhment*, or two *Nihils* returned, *&c.* And further, ſome Contracts are naked, *ſans Garnement*, and ſome furniſhed, *&c.*

Garniſhee, Is a third Perſon or Party in whoſe Hands Money is *attached* within the Liberties of the City of *London*, by Proceſs out of the Sheriff's Court; ſo called, becauſe he hath had *Garniſhment* or Warning, not to pay the Money to the Defendant, but to appear and anſwer to the Plaintiff Creditor's Suit. Vide *Attachment.*

Garniſture, A Furniſhing or Providing. *Pat.* 17 *Ed.* 3. Vide *Garneſtura.*

Garſummune, *Gerſuma*, or *Gerſoma*, A Fine or Amerciament. *Domeſday, Spelm. Gloſſ.*

Garter, (*Garterium*, Fr. *Jartier*, i. e. *Periſcelis, Faſcia poplitaria*) Signifies in divers Statutes and elſewhere, a ſpecial *Garter*, being the Enſign of a Noble Order of Knights, inſtituted by King *Ed.* 3. called *Knights of the Garter:* It is alſo taken for the Principal *King at Arms*, among our *Engliſh Heralds*, attending upon the Knights thereof; created by King *Hen.* 5. and mentioned in the Statute 14 *Car.* 2. *cap.* 33.

Garth, A little Backſide or Cloſe in the *North* of *England*; being an ancient *Britiſh* Word, as *Gardd* in that Language is *Garden*, and pronounced and writ *Garth*; alſo a *Dam* or Wear, *&c.*

Garthman. As there are *Fiſhgarths* or Wears for catching of Fiſh, ſo there are *Garthmen*; for by Statute it is ordained, that no Fiſher nor *Garthman* ſhall uſe any Nets or Engines to deſtroy the Fry of Fiſh, *&c.* 17 *R.* 2. *cap.* 9. And this Word is ſuppoſed to be derived from the Scottiſh *Gart*, which ſignifieth enforced or compelled; and Fiſh are forced by the Wear to paſs in a Loop where they are taken.

Gaſtaldus, A Governor of a Country, whoſe Office was only temporary, and who had Juriſdiction over the common People. *Blount.*

Gate, At the End of the Names of Places, ſignifies a Way or Path, from the Sax. *Geat*, i. e. *Porta.* The Cuſtody of the *Gates* of the City of *London*, is granted to the Lord Mayor, *&c.* by *Chart.* King *Hen.* 4.

Gavel, (Sax. *Gafel*) Tribute, Toll, Cuſtom or yearly Revenue; of which we had in old Times ſeveral Kinds. See *Gabel.*

Gavelet, (*Gaveletum*) Is an ancient and ſpecial Kind of *Ceſſavit* uſed in *Kent*, where the Cuſtom of *Gavelkind* continues, whereby a Tenant, if he withholds his Rents and Services due to the Lord, ſhall forfeit his Land: It was intended where no Diſtreſs could be found on the Premiſſes, ſo that the Lord might ſeiſe the Land itſelf in the Nature of a Diſtreſs, and keep it a Year and a Day; within which Time, if the Tenant came and paid his Rent, he was admitted to his Tenement to hold it as before; but if not, the Lord might enter and enjoy the ſame. 10 *H.* 3. 10 *Ed.* 2. The Lord was to ſeek by the Award of his Court, from three Weeks to three Weeks, to find ſome Diſtreſs upon the Land or Tenement, until the fourth Court; and if in that Time he could find none, at the fourth Court it was awarded that the Tenement ſhould be ſeiſed as a Diſtreſs, and kept in the Lord's Hands a Year and a Day without manuring; and if the Tenant did not in that Time redeem it, by paying the Rent and making Amends to the Lord, the Lord having pronounced his Proceſs by Witneſſes at the next *County Court*, was awarded by his Court to enter and manure the Tenement as his own: And if the Tenant would afterwards have it again, he was to make Agreement with the Lord. *Fitz. Ceſſ.* 60. *Terms de Ley* 373. *Gaveletum* is as much as to ſay to ceaſe, or to *let* to pay the Rent; and *Conſuetudo de Gavelet* was not a Rent or Service, but a Rent or Service with-held, denied or detained, cauſing the Forfeiture of the Tenement. *Co. Lit.*

Gavelet in London, (*Breve de Gaveleto in* London, *pro redditu ibidem quia Tenementa fuerunt indiſtringibilia*) Is a Writ uſed in the *Huſtings* of *London*; and the *Statute of Gavelet*, 10 *Ed.* 2. gives this Writ to Lords of Rents in the City of *London*, as well as in *Kent*: Here the Parties, Tenant and Demandant, appear by *Scire facias*, to ſhew Cauſe why the one ſhould not have his Tenement again on Payment of his Rent, or the other recover the Lands, on Default thereof. *Practiſ. Solic.* 419.

Gavelgeld, Is applied to the Payment of Tribute or Toll. *Mon. Ang. Tom.* 3.

Gavelkind, Is ſaid by *Lambard* to be compounded of three *Saxon* Words, *Gyfe*, *Eal*, *Kyn*, *omnibus cognatione proximis data*. *Verſtegan* calls it *Gavelkind*, *quaſi Give all kind*, that is to each Child his Part: And *Taylor* in his Hiſtory of *Gavelkind*, derives it from the Britiſh *Gavel*, i. e. a Hold or Tenure, and *Cenned*, *Generatio aut familia*; and ſo *Gavel cenedh* might ſignify *Tenura Generationis*. But whatever is the Etymology, it ſignifies a Tenure or Cuſtom, annexed and belonging to Lands in *Kent*, whereby the Lands of the Father are equally divided at his Death among all his Sons; or the Land of the Brother among all the Brethren, if he have no Iſſue of his own. *Lit.* 210. In the Time of our *Saxon* Anceſtors, the Inheritance of Lands did not deſcend to the eldeſt Son as now, but to all alike; from whence came the Cuſtom of *Gavelkind*: And the Reaſon why this Cuſtom was retained in *Kent*, is becauſe the *Kentiſhmen* were not conquered by the *Normans* in the Time of *Will.* 1. For *Stigand*, then *Archbiſhop of Canterbury*, who commanded the Forces in that Country, ordered every Man to march with Boughs in their Hands, and meeting *William* they acquainted him with their Reſolution of ſtanding or falling in Defence of the Laws of their Country, and he imagining himſelf to be encompaſſed in a Wood, granted that they and their Poſterity ſhould enjoy their Rights, Liberties and Laws; ſome of which, particularly this of *Gavelkind* continues to this Day. *Blount.* All the Lands in *England* were of the Nature of *Gavelkind* before the Conqueſt, and deſcended to all the Iſſue equally; but after the Conqueſt (as it is called) when *Knight-Service* was introduced, the Deſcent was reſtrained to the eldeſt Son, for the Preſervation of the Tenure. *Lamb.* 167. 3 *Salk.* 129. In the Reign of *H.* 6. there were not above thirty or forty Perſons in all *Kent* that held by any other Tenure than this of *Gavelkind*; which was afterwards altered upon the Petition of divers *Kentiſh* Gentlemen, in much of the Land of that County, ſo as to be deſcendible to the eldeſt Son, according to the Courſe of the Common Law, by the Stat. 31 *H.* 8. *cap.* 3. Tho' the Cuſtom to deviſe *Gavelkind* Land, and the other Qualities and Cuſtoms remain. 1 *Inſt.* 140. By the Statute 34 & 35 *H.* 8. *cap.* 26. all *Gavelkind* Lands in *Wales* were made deſcendible to the Heir, according to the Common Law; whereby it appears, that the Tenure of *Gavelkind* was likewiſe in that Principality. By the Cuſtomary Tenure called *Gavelkind*, which is an ancient *Socage* Tenure, the Lands are dividable between the Heirs Male who ſhall inherit as Siſters do at the Common Law; and when one Brother dies without Iſſue, all the other Brothers are to inherit. 1 *Inſt.* 140. But a Father having *Gavelkind* Lands, had three Sons, one of whom died in the Life-time of his Father, leaving Iſſue a Daughter; and it was held that the Daughter ſhall inherit the Part of her Father *Jure Repræſentationis*, and yet ſhe is not within the Words of the Cuſtom of dividing the Land between the Heirs Male, for ſhe is the Daughter of a Male, and Heir by Repreſentation. 1 *Salk.* 243. The Heir at the Age of fifteen Years, it is ſaid, may give and ſell his Lands in *Gavelkind*, and ſhall inherit. *Co. Lit.* 111. The Cuſtom of *Gavelkind* is not altered, though a Fine be levied of the Lands at Common Law; becauſe 'tis a Cuſtom that runs with the Land. 6 *Ed.* 6. Land in *Gavelkind* was deviſed to the Husband and Wife for Life, Remainder to the next Heir Male of their Bodies, &c. They had three Sons, and it was adjudged that the eldeſt Son ſhould not have the Whole. *Dyer* 133. A Donee in Tail, of *Gavelkind* Lands, had Iſſue four Sons; and it was held, that all ſhould inherit: But if a Leaſe for Life is made of *Gavelkind*, Remainder to the right Heirs of *A. B.* who hath Iſſue four Sons, in this Caſe the eldeſt Son ſhall inherit the Remainder, becauſe in Caſe of Purchaſe, there can be but one right Heir. 1 *Rep.* 103. If *Gavelkind* Lands come to the Crown, and are regranted to hold *in Capite*, &c. the Land ſhall deſcend to all the Heirs Males as *Gavelkind*. 4 & 5 *Mar.* 2. *Nelſ. Abr.* 895. A Wife ſhall be endowed of *Gavelkind* Land, of a Moiety of the Land whereof her Husband died ſeiſed, during her Widowhood. 1 *Inſt.* 111. And it has been adjudged, that the Widow cannot have Election to demand her Thirds or Dower at Common Law, ſo as to avoid the Cuſtom, and marry a ſecond Husband, by which ſhe ſhall loſe her Dower. *Moor* 260. But ſee 1 *Leon.* 62. The Husband ſhall be Tenant by the Curteſy of Half the *Gavelkind* Lands of the Wife, during the Time he continues unmarried, without having any Iſſue by his Wife; but if he marry, he ſhall forfeit his Tenancy by the Curteſy. 1 *Inſt.* 111. If the Husband had Iſſue by his Wife, and ſhe die, he ſhall be Tenant by the Curteſy of the whole Land; and though he do marry, he ſhall not forfeit his Tenancy. *Mich.* 21 *Car. B. R.* 1 *Lill. Abr.* 649. Altho' a Father be attainted of Treaſon or Felony, and hanged, the Heir of *Gavelkind* Land ſhall inherit; for the Cuſtom is, the Father to the Bough, and the Son to the Plough. *Doct. & Student*, *c.* 10. A Rent in Fee granted out of *Gavelkind* Lands, ſhall deſcend in *Gavelkind* to all the Heirs Male, as the Lands would have done; it being of the ſame Nature with the Land itſelf. 2 *Lev.* 138. 1 *Mod.* 97. All Lands in *Kent* ſhall be taken to be *Gavelkind*, except thoſe which are *diſgavelled* by particular Statutes. 1 *Mod.* 98. If Lands are alledged to be in *Kent*, it ſhall be intended that they are *Gavelkind*; if the Contrary doth not appear. 2 *Sid.* 153. By *Hale* Chief Juſtice, *Gavelkind Law* is the Law of *Kent*, and is never pleaded, but preſumed: And it has been held, that the ſuperior Courts may take Notice of *Gavelkind* generally without pleading; tho' not of the ſpecial Cuſtom of *deviſing* it, &c. which ought to be pleaded ſpecially. But it appears by ſome of our Books, that the Court cannot judicially take Notice of the Cuſtom of *Gavelkind*, without pleading the ſame; and that it ought to be ſet forth in the Declaration, *&c.* 1 *Mod.* 98. *Cro. Car.* 465. *Lutw.* 236, 754.

Gavelman, Is a Tenant liable to Tribute. —— *Villani de, &c. qui vocantur* Gavelmanni. *Somner of Gavelkind, pag.* 33. And hence *Gavelkind* has been thought to be Land in its Nature Taxable. *Blount.*

Gavelmed, The Duty or Work of mowing Graſs, or cutting of Meadow Land, required by the Lord from his cuſtomary Tenants, *Conſuetudo falcandi quæ vocatur* Gavelmed. *Somn.*

Gavelſeſter, (Sax.) *Sextarius Vectigalis*, Is a certain Meaſure of Rent-Ale: And among the Articles to be charged on the Stewards and Bailiffs of the Manors belonging to the *Church* of *Canterbury* in *Kent*, according to which they were to be accountable, this of old was one; *De* Gavelſeſter *cujuſlibet Bracini braciati infra Libertatem Maneriorum, viz. unam Lagenam & dimidiam Cerviſiæ.* This Duty elſewhere occurs under the Name of *Tolſeſter*; in lieu whereof the *Abbot of Abington* was wont of Cuſtom to receive the Penny mentioned by *Selden* in his Diſſertation annexed to *Fleta, cap.* 8. Nor doth it differ from what is called *Oakgavel* in the Gloſſary at the End of *Hen.* 1. Laws. *Sax. Dict.*

Gavel-werk, (*Sax.*) Was either *Manu opera*, by the Hands and Perſon of the Tenant, or *Carropera*, by his Carts or Carriages. *Phillips of Purvey.*

Gaugetum, A *Gauge* or *Gauging*, done by the Gauger; and the true *Engliſh Gauge* is mentioned *Rot Parl.* 35 *Ed.* 1.

Gauger, (*Gaugeator* Fr. *Gauchir*, i. e. *in gyrum torquere*) Signifies an Officer appointed by the King, to examine all Tuns, Pipes, Hogſheads, Barrels and Tercians of Wine, Oil, Honey, *&c.* and to give them a Mark of Allowance, as containing lawful Meaſure, before they are ſold in any Place: And becauſe his Mark is a Circle made with an Iron Inſtrument for that Purpoſe, it ſeems to have its Name from thence. Of this Officer and his Office, we have many Statutes; as by 27 *Ed.* 3. *cap.* 8. all Wines, *&c.* imported, are to be gauged by the King's *Gaugers*, or their Deputies: By 31 *Ed.* 3. *c.* 5. Selling Wine before gauged, incurs Forfeiture of the Value. And by 23 *H.* 6. *cap.* 16. the *Gauge-Penny* is to be paid *Gaugers*, on gauging Wines. The 31 *Eliz.* ordains, that Beer, *&c.* imported, ſhall be gauged by the Maſter and Wardens of the Coopers Company. See 12 *Car.* 2. *c.* 4. Vide *Exciſe.*

Geaſpecia, In a Charter of the Privileges of *Newcaſtle upon Tyne*, renewed *Anno* 30 *Eliz.* we find *Sturgiones, Porpecias*, (i. e. *Porpoiſes*) *Delphinos*, Geaſpecias, (*viz. Grampois*) *&c.*

Geburſcip, (*Geburſcipa*) Neighbourhood, or adjoining Diſtrict. *Leg. Edw. Confeſſ. c.* 1.

Geburus, A Country Inhabitant of the ſame *Gebureſhip* or Village; from the Sax. *Gebure*, a Carl, Ploughman, or Farmer. *Cowel.*

Geld, (*Geldum*) *Mulcta, Compenſatio Delicti & Pretium rei.* Hence in our ancient Laws, *Wergeld* was uſed for the Value or Price of a Man ſlain; and *Orfgeld* of a Beaſt: Likewiſe Money or Tribute; for it is ſaid, *Et ſint quieti de* Geldis, *Danegeldis, Horngeldis, Blodwita, &c. Chart. Rich.* 2. *Priorat. de H. in Devon. Pat.* 5 *Ed.* 4. *Angeld* is the ſingle Value of a Thing; *Twigeld*, double Value, *&c.*

Geldable, (*Geldabilis*) That is liable to pay Tax or Tribute. *Camden* dividing *Suffolk* into three Parts, calls the firſt *Geldable*, becauſe ſubject to Taxes; from which the other two Parts were exempt, as being *Eccleſiæ Donatæ.* This Word is mentioned in the Stat. 27 *H.* 8. *cap.* 26. But in an old *MS.* it is expounded to be that Land or Lordſhip, which is *ſub diſtrictione Curiæ vi ecom.* 2 *Inſt.* 701.—— *Jur. dicunt quod Prior de* Sempringham *tenet tres Carucatas terræ in S. & non ſunt* Geldabiles. *Ex Rot. Hundr. in Turr. Lond. Ann.* 3 *Ed.* 1.

Gemote, (Sax. i. e. *Conventus*) *Omnis homo pacem habeat eundo ad* Gemotum *& rediens de* Gemoto, *Niſi probatus fur fuerit.* Leg. Edw. Conf. c. 35. See *Mote.*

Geneath, *Villanus*, as *Regis Geneath* is the King's Villain. *LL. Inæ, MS. cap.* 19.

General Iſſue, Is a Plea to the Fact of *Not guilty*, in Criminal Caſes, in order to Trial, by the Country, or by Peers, *&c.* *H. P. C.* 254.

Generatio, When an old Abbey or Religious Houſe had ſpread itſelf into many Colonies, or depending Cells, that Iſſue or Offspring of the Mother Monaſtery was called *Generatio, quaſi proles & ſoboles Matricis Domus.* Annual. Waverl. 1232.

Generale. The ſingle Commons, or ordinary Proviſion of the Religious, were termed *Generale*, as their general Allowance, diſtinguiſhed from their *Pietantiæ* or Pittances; which upon extraordinary Occaſions were thrown in as Over commons. In the Obſervances of the *Cluniac Monks*, they are deſcribed thus: Generale *appellamus quod ſingulis in ſingulis datur ſcutellis: Pietantia quod in una ſcutella duobus.* They are alſo deſcribed amongſt other Cuſtoms. *Cartular. Glaſton, MS. fol.* 10.

Generals of Orders, Chiefs of the ſeveral Orders of *Monks, Friers*, and other Religious Societies.

Geneva, A famous Strong-Water, or Spirit, put down by Stat. 2 *Geo.* 2. Vide *Diſtillers.*

Gentleman, (*Generoſus*) Is compounded of two Languages, from the Fr. *Gentil*, i. e. *Honeſtus, vel honeſto loco natus*, and the Sax. *Mon*, a Man; as if you would ſay a Man well born. The *Italians* call thoſe *Gentil homini* whom we ſtyle *Gentlemen*; the *French* likewiſe diſtinguiſh ſuch by the Name of *Gentilhomme:* And the *Spaniards* keep up to the Meaning of the Word, calling him *Hidalgo* or *Hijo d'alga*, who is the Son of a Man of Account; ſo that *Gentlemen* are ſuch whom their Blood or Race doth make known. Under the Denomination of *Gentleman*, are compriſed all above Yeomen; whereby Noblemen are truly called *Gentlemen. Smith de Rep. Ang. lib.* 1. *cap.* 20, 21. A *Gentleman* is generally defined to be one, who without any Title, bears a *Coat of Arms*, or whoſe Anceſtors have been Freemen; and by the Coat that a *Gentleman* giveth, he is known to be, or not to be deſcended from thoſe of his Name, that lived many hundred Years ſince. *Cicero* in his *Topicks*, ſpeaks thus of this Subject; *Gentiles ſunt, qui inter ſe eodem ſunt nomine ab ingenuis oriundi, quorum majorum nemo ſervitutem ſervivit, qui capite non ſunt diminuti.* There is ſaid to be a *Gentleman* by Office, and in Reputation, as well as thoſe that are born ſuch. 2 *Inſt.* 668. And we read that *J. Kingſton* was made a *Gentleman* by King *R.* 2. *Pat.* 13 *R.* 2. *par.* 1. *Gentilis Homo* for a *Gentleman*, was adjudged a good *Addition. Hill.* 27 *Ed.* 3. But the Addition of Eſquire, or *Gentleman*, was rare before 1 *H.* 5. though that of Knight is very ancient. 2 *Inſt.* 595, 667.

Gentlewoman, (*Generoſa*) Is a good Addition for the Eſtate and Degree of a Woman, as *Generoſus* is for that of a Man; and if a *Gentlewoman* be named *Spinſter* in any original Writ, Appeal, *&c.* it hath been held that ſhe may abate, and quaſh the ſame. 2 *Inſt.* 668.

Gentility, (*Gentilitas*) Is loſt by Attainder of Treaſon, or Felony, by which Perſons become baſe and ignoble, *&c.*

Genu, Is a Generation. —— *Suceſſit* Ethelbaldo *Offa quinto* Genu. *Malmsb. lib.* 1. *c.* 4.

Genus, (*Lat.*) The general Stock, Extraction, *&c.* as the Word Office in Law is the *Genus*, or general; but the Sheriff, *&c.* is the *Species* of it, or Particular. 2 *Lill. Abr.* 528. See *Statute.*

George Noble, A Piece of Gold, current at ſix Shillings and eight Pence, in the Reign of King H. 8. *Lownds's Eſſ. upon Coins, p.* 41.

Georgia. The Sum of Twenty-ſix Thouſand Pounds, is granted by the Land Tax Act, towards ſettling the new Colony of *Georgia* in *America.* Stat. 8 *Geo.* 2. *c.* 23. And Thirty Thouſand Pounds further, by 9 *Geo.* 2. *c.* 34 and 10 *Geo.* 2. *c.* 17.

Gerſuma, Mentioned in *Mon. Ang. Tom.* 2. *p.* 973. See *Garſummune.*

Geſtu & Fama, An antient Writ where a Perſon's good Behaviour was impeached, now out of Uſe. *Lamb. Eiren. lib.* 4. *cap.* 14. See *Good Abearing.*

Gewineda, (*Sax.*) Was uſed for the publick Convention of the People, to decide a Cauſe: *Et pax quam Aldermannus Regis in quinque Burgorum* Gewinedâ *dabit emendatur* 12 *libris.* LL. Ethelred. cap. 1.

Gewitneſſa, The giving of Evidence. *Leg Ethel. cap.* 1. *apud Brompton.*

Gift, (*Donum*) Is a Conveyance, which paſſeth either Lands or Goods. And a *Gift* is of a larger Extent than a *Grant,* being applied to Things moveable and immoveable; yet as to Things immoveable, when taken ſtrictly, it is applicable only to Lands and Tenements given in Tail; but *Gifts* and *Grants* are ſaid to be alike in Nature and often confounded. *Wood's Inſt.* 260. A *Gift* may be by *Deed,* in *Word,* or in *Law:* All Goods and Chattels perſonal may be given without Deed, except in ſome ſpecial Caſes; and a *Free Gift* is good without a Conſideration. *Perk.* 57. But a general *Gift* of all one's Goods, without any Exception, though this be by Deed, it is liable to Suſpicion as fraudulent, to deceive Creditors; for by giving all a Man's Goods, there ſeems to be a ſecret Truſt and Confidence implied, that the Donee ſhall deal favourably with the Donor, in Reſpect to his Circumſtances. 3 *Rep.* 80. And therefore whenever any *Gift* ſhall be made, in Satisfaction of a Debt, it is good to make it in a publick Manner before Neighbours; that the Goods and Chattels be appraiſed to the full Value, and the *Gift* expreſly made in Satisfaction of the Debt; and that on the *Gift,* the Donee take Poſſeſſion of them, &c. *Hob.* 230. If a Man intending to give a Jewel to another, ſay to him, *Here I give you my Ring, with the Ruby in it,* &c. and with his own Hand delivers it to the Party; this will be a good *Gift;* notwithſtanding the Ring ſhall bear any other Jewel, being delivered by the Party himſelf to the Perſon to whom given. *Bac. Max.* 87. And if a Perſon give a Horſe to another, being preſent, and bid him take the Horſe, though he call the Man by a wrong Name, it will be a good *Gift:* But it would be otherwiſe if the Horſe were delivered for the Uſe of another Perſon, being abſent; there a Miſtake of the Name would alter the Caſe. *Ibid.* A *Gift* muſt be certain; and therefore to give or grant another his Horſes or Cows, that may be ſpared, will be void: Though if one give to *A. B.* his Horſe, or his Cow, he may take which he will of them. *Bro. Done* 19. If I give all my Money in my Purſe to another, without ſaying how much it is; this is a void *Gift,* and no Action will lie for the ſame. *Plowd.* 273. As to *Gifts in Law,* when a Man is married to a Woman, all her Goods and Chattels by *Gift* in Law become the Husband's; but then he is liable for her Debts: So if a Man is made Executor of a Will, the Law gives him all the Goods and Chattels of the Teſtator, ſubject to the Teſtator's Debts: And if a Perſon make a Suit of Clothes for another, and put it upon him to uſe and wear, this will be a *Gift* or Grant in Law of the Apparel made. 1 *Inſt.* 351. A Man by Deed did *Give* and *Grant, Bargain* and *Sell, Alien, Enfeoff* and *Confirm* to his Daughter certain Lands: But no Conſideration of Money was mentioned, nor was the Deed inrolled; there was likewiſe no Conſideration of Natural Affection expreſſed, (other than what was implied in naming the Grantee his Daughter) and there was no Livery endorſed, or any found to have been made; nor was the Daughter in Poſſeſſion at the Time of the Deed made: And in *B. R.* it was adjudged by the Court that the Deed was good, and carried the Eſtate to the Daughter by way of Covenant to ſtand ſeiſed, &c. 1 *Mod. Rep.* 175. The Words *Give* and *Grant,* in Deeds of Gift, &c. of Things which lie in Grant, will amount unto a Grant, a Feoffment, a Gift, Releaſe, Confirmation or Surrender, at the Election of the Party, and may be pleaded as a *Gift,* or Grant, Releaſe &c. at his Election. 1 *Inſt.* 301. And Words ſhall be marſhalled ſo in *Gifts* and Grants, that where they cannot take Effect according to the Letter, the Law will make ſuch Conſtruction as the *Gift* by Poſſibility may take Effect: *Benignæ ſunt Interpretationes Chartarum propter ſimplicitatem Laicorum, ut res,* &c. Co. Litt. 183. If a Perſon gives or grants Land, and does not ſay in what Pariſh or County it lies; yet if there be any other Thing to deſcribe it, as lately belonging to ſuch a Perſon, &c. or other Circumſtantial Matter, it may be averred where the Land lieth, and ſo the *Gift* be good. *Bro. Grant,* 53. 9 *Rep.* 47. All corporeal and immoveable Things that lie in Livery, ſuch as Manors, Meſſuages, Cottages, Lands, Woods, and the like, may be given and granted in Fee, for Life, or Years at firſt; and be aſſignable over after, from Man to Man *in infinitum.* 1 *Roll. Abr.* 44. And where a Man gives and grants Wood to another on his Lands, or 20*s.* for it to be received out of the ſame Lands, &c. here the Wood paſſes by the *Gift* preſently, with Power to chuſe to have the Money. *Roll. Abr.* 47. A Deed of *Gift* of Lands or Goods may be made upon Condition; and on a *Gift* or Sale of Goods, the Delivery of 6*d.* or a Spoon, &c. is a good *Seiſin* of the Whole. *Wood's Inſt.* 234.

Form of a Deed of *Gift of Lands and Tenements.*

THIS Indenture, *made the Day and Year,* &c. Between A. B. *of,* &c. *of the one Part, and* T. B. *of,* &c. *Son of the ſaid* A. B. *of the other Part,* Witneſſeth, *That the ſaid* A. B. *as well for and in Conſideration of the Natural Love and Affection which he hath and beareth unto the ſaid* T. B. *his Son, as alſo for the better Maintenance and Preferment of the ſaid* T. B. Hath *given, granted, aliened, enfeoffed and confirmed, and by theſe Preſents doth give, grant, alien, enfeoff and confirm, unto the ſaid* T. B. All *that Meſſuage or Tenement, ſituate,* &c. *with all and ſingular its Appurtenances, and all Houſes, Outhouſes, Lands,* &c. *And the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Premiſſes; and all the Eſtate, Right, Title, Intereſt, Property, Claim and Demand whatſoever of him the ſaid* A. B. *of, in, and to the ſaid Meſſuage or Tenement, Lands and Premiſſes, and of, in, and to every Part and Parcel thereof, with the Appurtenances; and all Deeds, Evidences and Writings concerning the ſaid Premiſſes only, now in the Hands or Cuſtody of the ſaid* A. B. *or which he may get or come by without Suit in Law;* To have and to hold *the ſaid Meſſuage or Tenement, Lands and Premiſſes hereby given and granted, or mentioned or intended to be given and granted unto the ſaid* T. B. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of him the ſaid* T. B. *his Heirs and Aſſigns for ever.* And *the ſaid* A. B. *for himſelf, his Heirs, Executors and Adminiſtrators, doth Covenant and Grant to and with the ſaid* T. B. *his Heirs and Aſſigns by theſe Preſents, that he the ſaid* T. B. *his Heirs and Aſſigns, ſhall and lawfully may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, poſſeſs, and enjoy the ſaid Meſſuage, Tenement, Lands, Hereditaments and Premiſſes hereby given and granted, or mentioned or intended ſo to be, with their Appurtenances, free, clear and diſcharged of and from all former and other Gifts, Grants, Bargains and Sales, Feoffments, Jointures, Dowers, Eſtates, Entails, Rents, Rent-Charges, Arrearages of Rents, Statutes, Judgments, Recognizances, Statutes*

Merchant and of the Staple, Extents, and of and from all other Titles, Troubles, Charges and Incumbrances whatſoever, had, made, committed, done or ſuffered, or to be had, made, committed, done or ſuffered, by him the ſaid A. B. *his Heirs, Executors or Adminiſtrators, or any other Perſon or Perſons lawfully claiming or to claim by, from or under him, them, or any or either of them.* In Witneſs, *&c.*

A Gift of *Goods* and *Chattels.*

TO all People, *&c.* *I* A. B. *of,* &c. *ſend Greeting.* Know ye, *That I the ſaid* A. B. *for and in Conſideration of the natural Love and Affection which I have and bear unto my beloved Brother* L. B. *of,* &c. *and for divers other good Cauſes and Conſiderations me hereunto moving,* have *given and granted, and by theſe Preſents do give and grant unto the ſaid* L. B. *all and ſingular my Goods, Chattels, Plate, Jewels, Leaſes and perſonal Eſtate whatſoever, in whoſe Hands, Cuſtody or Poſſeſſion ſoever they be, within the Kingdom of* Great Britain, *&c.* To have, hold and enjoy *all and ſingular the ſaid Goods, Chattels, and Perſonal Eſtate aforeſaid, unto the ſaid* L. B. *his Executors, Adminiſtrators and Aſſigns, to the only proper Uſe and Behoof of him the ſaid* L. B. *his Executors, Adminiſtrators and Aſſigns for ever.* And *I the ſaid* A. B. *all and ſingular the aforeſaid Goods, Chattels and Premiſſes, to the ſaid* L. B. *his Executors, Adminiſtrators and Aſſigns, againſt all Perſons whatſoever, ſhall and will warrant, and for ever defend by theſe Preſents.* In Witneſs, *&c.*

Gifta Aquæ, The Stream of Water to a Mill. ——*Molendinum & vivarium cum* Gifta Aquæ. *Mon. Angl. Tom.* 3.

Gigmills, A Kind of Fulling Mills for Fulling and Burling of Woollen Cloth, prohibited *Anno* 5 & 6 *Ed.* 6. *c.* 22.

Gild, A Fraternity or Company, *&c.* See *Guild.*

Gilding Metals. The *Gilding* any Metal but Silver, and Church Ornaments; or Silvering any thing except the Apparel of Peers, *&c.* and Metal for Knight's Spurs, is liable to Forfeiture of ten Times the Value, and a Year's Impriſonment, by Stat. 8 *H.* 5. *cap.* 3. None ſhall *gild* Rings or other Things made of Copper or Latten, in Pain to forfeit 5 *l.* to the King, and Damages to the Party deceived. 5 *Hen.* 4. *cap.* 13. For *gilding* Silver Wares, no Perſon may take above 4 *s.* 8 *d.* for a Pound of Troy Weight, under Penalties. Stat. 2 *H.* 5. *c.* 4.

Giſarms, or **Guiſarmes**, An Halbert or Hand-Ax, from the Lat. *Bis Arma*, becauſe it wounds on both Sides. *Skene.*——*Eſt Armorum genus longo manubrio & porrecta cuſpide.* Spelm. It is mentioned in the Stat. 13 *Ed.* 1. *c.* 6.

Giſt of Action, From the Fr. *Giſt*, is the Cauſe for which the *Action* lieth; the Ground and Foundation thereof, without which it is not maintainable. 5 *Mod. Rep.* 305.

Gladiolum, A little Sword or Dagger; alſo a Kind of Sedge. *Matt. Pariſ.* 1206.

Gladius. *Jus Gladii*, Is mentioned in our *Latin* Authors, and the *Norman* Laws; and it ſignifies a ſupream Juriſdiction. *Camd.* And 'tis ſaid that from hence, at the Creation of an Earl, he is *Gladio ſuccinctus*; to ſignify that he had a Juriſdiction over the County of which he was made Earl. See *Pleas of the Sword.*

Glaire, (*Fr.*) A Sword, Lance, or Horſeman's Staff. *Gleyre* was one of the Weapons allowed the contending Parties in a Trial by *Combat.* Orig. Juriſd. 79. *Glavea*, a Hand-Dart. *Blount.*

Glaſs. There were certain Duties granted on all *Glaſs-ware, &c.* by Statute 6 & 7 *W.* 3. And theſe Duties were continued for ever by a ſubſequent Act: But they are ſince taken off. See Stat. 10 & 11 *W.* 3. *c.* 18.

Glaſs-men, Are reckoned amongſt wandering Rogues and *Vagrants*, by the old Statutes. 39 *Eliz.* and 1 *Jac.* 1. *c.* 7.

Glebe, (*Gleba*) Is Church-land; *Dos vel Terra ad Eccleſiam pertinens. Lyndewood* ſays, Gleba *eſt terra in qua conſiſtit Dos Eccleſiæ; generaliter tamen ſumitur pro ſolo vel pro terra culta:* We moſt commonly take it for the Land belonging to a Pariſh Church, beſides the Tithes. If any Parſon, Vicar, *&c.* hath cauſed any of his Glebe Lands to be manured and ſown at his own Coſts, with any Corn or Grain, the Incumbents may deviſe all the Profits and Corn growing upon the ſaid Glebe by Will. Stat. 28 *H.* 8. *cap.* 11. And if a Parſon ſows his Glebe and dies, the Executors ſhall have the Corn ſown by the Teſtator. But if the Glebe be in the Hands of a Tenant, and the Parſon dies after Severance of the Corn, and before his Rent due; it is ſaid, neither the Parſon's Executors, or the Succeſſor, can claim the Rent, but the Tenant may retain it, and alſo the Crop, unleſs there be a ſpecial Covenant for the Payment to the Parſon's Executors proportionably, *&c. Wood's Inſt.* 163. There is a Writ grounded upon the Stat. *Articuli Cleri, cap.* 6. Where a Parſon is diſtrained in his Glebe Lands by Sheriffs, or other Officers; againſt whom Attachment ſhall iſſue. *New Nat. Br.* 386, 387.

Glebariæ, Turfs digged out of the Ground.—— *In Sylvis, Campis, Semitis, Moris,* Glebariis, *&c.*

Gliſcywa, An old *Saxon* Word for a Fraternity. *Leg. Adelſtan. cap.* 12.

Glomerells, Commiſſaries appointed to determine Differences between Scholars of a *School* or *Univerſity*, and the Townſmen of the Place: In the Edict of the Biſhop of *Ely*, *Anno* 1276, there is Mention of the *Maſter of the Glomerells.*

Glove-Silver, Money cuſtomarily given to Servants to buy them *Gloves*, as an Encouragement of their Labours.——*Inter antiquas conſuetudines Abbatiæ de Sancto Edmundo, capiunt etiam quidam ex prædict. Servientibus* Glove-Silver *in Feſto Sti. Petri quorum hæc ſunt Nomina, Clericus Cellerarii* 2 *Denar. Armiger Cellerarii* 11 *Den. Grangiarius* 11 *Den. Vaccarius* 1 *Den.* ————Ex Cartular. S. Edmund. MS. 323. *Glove-Money* has been alſo applied to extraordinary Rewards given to Officers of Courts, *&c.*

Glyn, A Valley, according to the Book of *Domeſday.*

Go. This Word is ſometimes uſed in a ſpecial Signification, as to *go* without Day, is to be diſmiſſed the Court; ſo in old Phraſe to *go* to God. *Broke, Kitch.* 190.

God-bote, (*Sax.*) An Eccleſiaſtical or Church Fine, paid for Crimes and Offences committed againſt God.

God-gild, That which is offered to God, or his Service. *Sax.*

Golda, A Mine, according to *Blount. Conceſſionem quam idem* Thomas *fecit de Terris ſuis & Terris tenentium ſuorum, à* Goldis *mundandi per ſe & ſuos ſecundum conſuetudinem, &c.* Mon. Ang. Tom. 2 pag. 610.

Gold and Silver Lace and *Thread*, Perſons that ſell Orrice Lace, mixed with other Metal or Materials than *Gold*, *Silver*, Silk and Vellum, ſhall forfeit 2 *s.* 6 *d.* for every Ounce: And there ſhall be allow'd at leaſt ſix Ounces of *Gold* and *Silver* prepared and reduced into Plate, to cover four Ounces of Silk, except large Twiſt, Freeze, *&c.* And laying the ſame on greater Proportions of the Silk, or in any other Manner than directed, incurs the like Forfeiture of 2 *s.* 6 *d.* the Ounce. Copper and Lace inferior to *Silver*, is to be ſpun upon Thread, Yarn or Incle, and not on Silk; but this does not extend to *Tinſel* Apparel, uſed in Theatres. No Gold or Silver Lace, Thread, Fringe or Wire, *&c.* may be imported, on Pain of being forfeited and burnt, and

100*l.* Penalty. Stat. 15 *Geo.* 2. *c.* 20. See *Wire-Drawers.*

Goldſmiths, *Gold* and *Silver* Manufactures are to be aſſayed by the Warden of the *Goldſmiths* Company in *London,* and mark'd; and Gold is to be of a certain Touch. 28 *Ed.* 1. *cap.* 20 *Goldſmiths* muſt have their own Marks on Plate, after the Surveyors have made their Aſſay; and falſe Metal ſhall be ſeiſed and forfeited to the King. 37 *E.* 3. 7. Work of Silver made by *Goldſmiths,* &c. is to be as fine as *Sterling,* except the Solder neceſſary; and marking other Work, incurs a Forfeiture of double Value. 2 *H.* 6. *c.* 14. *Goldſmiths* ſhall not take above 1*s.* the Ounce of Gold, beſides the Faſhion, more than the Buyer may be allowed for it at the King's Exchange: And if the Work of any *Goldſmith* be marked and allowed by the Maſters and Wardens of the Myſtery, and afterwards found faulty; the Wardens and Corporation ſhall forfeit the Value of the Thing ſo ſold or exchanged. 18 *Eliz.* *c.* 15 Molten Silver is not to be tranſported by *Goldſmiths* before it is marked at *Goldſmiths-Hall,* and a Certificate made thereof on Oath; and Officers of the Cuſtoms may ſeize Silver ſhipped otherwiſe. 6 & 7 *W.* 3. *cap.* 17. The Cities of *York, Exeter, Briſtol, Cheſter, Norwich,* and Town of *Newcaſtle,* are appointed Places for aſſaying and marking wrought Plate of *Goldſmiths,* &c. 12 *W.* 3. 4. 1 *Ann.* *c.* 9. A Duty is granted on Silver Plate of 6*d.* *per* Ounce; and *Goldſmiths* are to make Entries thereof with the Weight, on Pain of 100*l.* &c. And *Goldſmiths* muſt work their Plate according to the old *Standard*; which is to be touched, aſſayed and marked before expoſed to Sale. Stat. 6 *Geo.* 1. *c.* 11. By a late Act, Gold Plate made by *Goldſmiths* ſhall contain 22 Carracts of Fine Gold; and Silver Plate 11 Ounces and two Penny Weight of Silver, in every Pound Troy, or they forfeit 10*l.* And no *Goldſmith* ſhall ſell any ſuch Plate, until marked with the firſt Letters of the Maker's Chriſtian and Surname, the Marks of the City of *London,* being the Leopard's Head, Lion Paſſant, &c. and thoſe made uſe of by the Aſſayers at *York, Exeter,* &c. All Perſons making Plate, are to enter their Marks, Names and Places of Abode in the Aſſay-Office; they are likewiſe to ſend with the Plate required to be marked, a particular Account thereof, in order to be entred, &c. or forfeit 5*l.* The *Aſſayers* determine what Solder is neceſſary about Plate, and judge of the Workmanſhip, and for good Cauſe may refuſe to Aſſay it; and if any Parcel be diſcovered of a coarſer Allay than the Standards, it may be broke and defaced; alſo the Fees for aſſaying and marking are particularly limited, &c. 12 *Geo.* 2. *c.* 26.

Goldwit, or **Goldwich,** Perhaps a golden Mulct; in the Records of the *Tower,* there is Mention of *Conſuetudo vocata* Goldwith *vel* Goldwich.

Goliardus, Is a Jeſter or Buffoon, mentioned in *Mat. Pariſ.* 1229.

Good Abearing, (*Bonus Geſtus*) Signifies an exact *Carriage* or *Behaviour* of a Subject towards the King and the People; whereunto ſome Perſons upon their Miſbehaviour are bound: And he that is bound to this, is ſaid to be more ſtrictly bound than to the *Peace*; becauſe where the Peace is not broken, the Surety *de Bono Geſtu* may be forfeited by the Number of a Man's Company, or by their Weapons. *Lamb. Eiren. lib.* 2. *cap.* 2. 34 *Ed.* 3. *cap.* 1.

Good Behaviour, Surety for the *Good Behaviour* is Surety for the *Peace,* and differs very little from *Good Abearing.* A Juſtice of Peace may demand it *ex Officio,* according to his Diſcretion, when he ſees Cauſe; or at the Requeſt of any other under the King's Protection: His Warrant alſo is to be iſſued when he is commanded to do it by Writ of *Supplicavit* out of the *Chancery* or *B. R.* It may be granted againſt any Perſons whatſoever, under the Degree of Nobility, againſt whom Complaint is to be made in the Court of Chancery, or in *B. R.* and they may be bound there to keep the Peace. *Dalt.* 267, 268. The Warrant of the Juſtice to keep the Peace, is to be granted againſt Infants, and Feme Coverts, who ought to find Security by their Friends, and not be bound themſelves; it may be had againſt the Huſband, at the Requeſt of the Wife, and againſt the Wife, at the Requeſt of the Huſband; againſt a Lunatick, that hath ſometimes lucid Intervals; (but not a *Non Compos,* or againſt or for one attainted of Felony, &c.) againſt any Perſon affronting a Judge, Juſtice of Peace, &c. and in a Word againſt all Perſons that are ſuſpected to break the Peace, or that do break it by Affrays, Aſſaults, Battery, Wounding, Fighting, Quarrelling, Threatning to beat another, or to burn his Houſe, Rioters, &c. and in all Caſes, where there is a future Danger. *Dalt.* 263, 264. 4 *Inſt.* 180. Alſo one may be bound to his *Good Behaviour* for a ſcandalous Way of Living, for keeping Bawdy-Houſes, or haunting them, Gaming-Houſes, &c. and ſo may common Drunkards, Whoremongers, and common Whores, Night-walkers, and thoſe that live idly, Cheats, Libellers, &c. *Dalt.* 292, 293. A Woman who is a common Scold may be bound to the *Good Behaviour:* But the Stat. 34 *Ed.* 3. *c.* 1. relates only to Miſbehaviours againſt the Publick Peace; ſo that it ought not to be demanded for private Defamation of another, but for Words only, which tend to the Breach of the Peace, or terrifying others, or unto Sedition, &c. 4 *Inſt.* 181. 1 *Lill. Abr.* 650, 651. A Juſtice of Peace may not bind any Perſon to the *Good Behaviour,* upon a general Accuſation made againſt the Party. *Paſch.* 23 *Car. B. R.* He that demands Security for the Peace, muſt make *Oath* before the Juſtice of Blows given, or that he ſtands in Fear of his Life or ſome bodily Hurt; or that he fears the Party will burn his Houſe, &c. and that he doth not demand the Peace of him for any Malice or Revenge, but for his own Safety; whereupon the Juſtice grants his Warrant to bring the Party before him, and then Security is to be given by Recognizance for the *Good Behaviour*; or on Default thereof, the Party ſhall be committed to Gaol. 1 *Inſt.* 293. 4 *Inſt.* 180. And when Security for the Peace is given to the King by Recognizance in a Penal Sum, if the Peace is afterwards broken by any Act of the Party, or by his Procuring another to break it, &c. it is a Forfeiture of the Recognizance, which being brought to the next Seſſions of the Peace by the Juſtice, the Juſtices in Seſſions are to certify the Recognizance, with the Cauſe of Forfeiture, into *B. R.* or the *Exchequer,* &c. from whence Proceſs ſhall go out againſt the Offender. *Dalt.* 277, 296. Juſtices of Peace, under Colour of their Authority, uſe to require the *Good Behaviour* of every one at their Pleaſure; and if they refuſed, then to commit them to Priſon: But if they have not good Cauſe to require Sureties for *Good Behaviour,* and the Party refuſing to give it is committed to Priſon, falſe Impriſonment well lies; for the Statute which gives the Juſtices that Authority, is principally againſt Vagabonds. 1 *Lill.* 651. The Surety for the Peace or *Good Behaviour* may be releaſed by the Juſtice that took it, and the Party upon whoſe Complaint it was granted. *Dalt.* 296. But it is ſaid ſuch a Recognizance may not be diſcharged by Releaſe of the Party himſelf; becauſe the Cogniſor is bound to the King, and to keep the Peace in general; though by the Death of the King, or of the Principal Cogniſor, (not of the Sureties) it is diſcharged of Courſe. *Roll. Rep.* 199.

Goods and Chattels, (*Bona & Catalla*) Perſonal, &c. See *Chattels.*

Goole, (Fr. *Goulet*) A Breach in a Sea Bank or Wall; or a Paſſage worn by the Flux and Reflux of the Sea. 16 & 17 *Car.* 2. *c.* 11.

Gorce, (From the Fr. *Gort*) A Wear: By Stat. 25 *Ed.* 3. *cap.* 4. it is ordained, that all *Gorces*, Mills, Wears, &c. levied and ſet up, whereby the King's Ships and Boats are diſturbed and cannot paſs in any River, ſhall be utterly pulled down, without being renewed. Sir *Edward Coke* derives this Word from *Gurges*, a deep Pit of Water, and calls it a *Gors* or *Gulf*; but this ſeems to be a Miſtake, for in *Domeſday* it is called *Gourt* and *Gort*, the *French* Word for a Wear. *Co. Litt.* 5.

Gore, A narrow Slip of Ground. *Paroch Antiq.* 393.

Gote, (Sax. *Geotan*, i. e. *Fundere*) A Ditch, Sluice or Gutter, mentioned in the 23 *H.* 8. *c.* 5.

Government. In the firſt Year of K. *Will.* and Q. *M.* an Act was made for empowering his Majeſty to apprehend and detain ſuch Perſons as he ſhould find juſt Cauſe to ſuſpect were conſpiring againſt the *Government*: By Virtue of which, thoſe who were ſuſpected of Treaſonable Practices, were taken up and impriſoned, without Bail or Mainprize, for ſix Months, &c. Stat. 1 *W.* & *M. cap.* 2. A like Act of Parliament, to continue a ſhort Time, paſſed in the Reign of Q. *Anne*, 6 *Ann. cap.* 15. And his Majeſty K. *George* the Firſt, was empowered by Statute, to ſecure and detain ſuſpected Perſons, in the Time of the late *Rebellion*; and all Actions, Suits and Proſecutions, by Reaſon of any Thing done to ſuppreſs the ſame, and for the Service of the Government, were made void. *Stat.* 1 *Geo.* 1. *cap.* 8, 39. and others. Suſpending the *Habeas Corpus* Act. See *Habeas Corpus.* Preaching againſt the Government. Vide *Indictment.*

Governors of the Cheſt at Chatham, Are Officers appointed to take Care of and relieve the *poor* and maimed *Seamen* belonging to the *Navy* Royal. 22 & 23 *Car.* 2.

Grace. Acts of Parliament for a general and free *Pardon*, are called *Acts of Grace.* 7 Geo. 1. cap. 29, &c.

Graduates, (*Graduati*) Are Scholars as have taken *Degrees* in an Univerſity. 1 *H.* 6. *cap.* 3.

Graffer, (Fr. *Greffier*, i. e. *Scriba*) A Notary or Scrivener, uſed in the Stat. 5 *H.* 8. *cap.* 1.

Graffio, Gravio, A Landgrave, or Earl——*Nec Princeps, nec* Graffio, *hanc lenitatem mutare audeat.* Mon. Ang. Tom. 1. p. 100.

Graffium, A Writing-Book, Regiſter, or Cartulary of Deeds and Evidences. *Annal. Ecclef. Menevenſis apud Angl. Sacr. par.* 1. *pag.* 653.

Grail, (*Gradale*, or *Graduale*) A *Gradual* or Book, containing ſome of the Offices of the *Roman* Church. ——Gradale, *ſic dictum, à gradalibus in tali libro contentis.* Lyndewood. *Provincial. Ang. lib.* 3. It is ſometimes taken for a *Maſs-book*, or Part of it, inſtituted by *Pope Celeſtine, Anno* 430. See Stat. 37 *H.* 6. *c.* 32.

Grain, Is the twenty-fourth Part of a Penny Weight. *Merch. Dict.* Alſo *Grain* ſignifies any Corn ſown on Ground; and there is what is ſo called in the Top of the Ear, leſs than Corn. *Litt. Aleyn's Rep.* 80.

Grand Aſſiſe, A Writ in a real Action, to determine the Right of Property in Lands. See *Magna Aſſiſa.*

Grand Cape, Is a Writ on Plea of Land, where the Tenant makes Default in Appearance at the Day given, for the King to take the Land into his Hands, &c. *Reg. Jud.* 1. Vide *Cape Magnum.*

Grand Days, Are thoſe Days in the *Terms* which are ſolemnly kept in the *Inns of Court* and Chancery, *i. e. Candlemas Day* in *Hillary* Term, *Aſcenſion Day* in *Eaſter Term, St. John the Baptiſt Day* in *Trinity* Term, and *All Saints Day* in *Michaelmas* Term; which Days are *Dies non Juridici*, or no Days in Court.

Grand Diſtreſs, Is a Writ ſo called not for the Quantity of it, for it is very ſhort, but for its Quality, for the Extent thereof is very great, being to all the Goods and Chattels of the Party diſtrained within the County: It lies in two Caſes, either when the Tenant or Defendant is attached, and appears not, but makes Default; or where the Tenant hath once appeared, and after makes Default, then this Writ is had by the *Common Law* in lieu of a *Petit Cape.* Stat. Weſtm. 1. c. 44. 52 H. 3. cap. 9.

Grand Jury, Is the Jury that find Bills of Indictment before Juſtices of Peace, and Gaol-Delivery, or of *Oyer* and *Terminer*, &c. They ought only to hear Witneſſes for the King; and to find a Bill on probable Evidence; becauſe it is but an Accuſation, and the Party is to be put upon his Trial afterwards. But if the Bill be againſt *A.* for Murder, and the *Grand Jury* on the Evidence before them, be ſatisfied it was *Se Defendendo*, &c. and ſo return it ſpecially; the Court may remand them to conſider better thereof, or hear the Evidence at the Bar, and accordingly direct the *Grand Jury.* 2 *Hale's Hiſt. P. C.* 157, 158. But ſee 2 *Hawk.* 210. Where a *Grand Jury* refuſes to preſent Things that are within their Charge, &c. a new *Grand Inqueſt* may be impanelled, to enquire of the Concealment of the former; on whoſe Defaults preſented, they ſhall be amerced. *Ibid.* 155. Vide *Indictment*, and *Jury.*

Grand Serjeanty, An antient Tenure, by Military Service. See *Chivalry.*

Grange, (*Grangia*) A Houſe or Farm where Corn is laid up in barns, *Granaries*, &c. and provided with Stables for Horſes, Stalls for Oxen, and other Things neceſſary for Husbandry.

Grangiarius, Is a Perſon who has the Care of ſuch a Place, for Corn and Husbandry: And there was antiently a *Granger*, or *Grange*-Keeper belonging to Religious Houſes, who was to look after their *Granges*, or Farms in their own Hands. *Fleta, lib.* 2. *c.* 8. *Cartular. St. Edmund. MS.* 323.

Grant, (*Conceſſio*) Signifies in the Common Law a Conveyance in Writing of Incorporeal Things not lying in Livery, and which cannot paſs by Word only; as of Reverſions, Advowſons in Groſs, Tithes, Rents, Services, Common in Groſs, &c. It has been alſo taken generally, for every Gift and *Grant* of any Thing whatſoever. 1 *Inſt.* 172. 3 *Rep.* 63. And *Grants* are made by ſuch Perſons as cannot give but by Deed: And he that *granteth* is termed the *Grantor*; and he to whom the *Grant* is made is the *Grantee. Weſt. Symb. Sect.* 234. Any natural Perſon, or corporate Body, (not prohibited by Law, as Infants, Feme Coverts, Monks, &c.) may make a *Grant* of Lands, and be a *Grantor*; and an Infant, or Woman Covert may be a *Grantee. Perk.* 3, 4, 43, &c. Though the Infant at his full Age may diſagree to the *Grant*, and the Husband diſagree to the *Grant* to his Wife. *Ibid. Grants* made by Perſons *non ſanæ memoriæ*, are good againſt themſelves; but they are voidable by their Heirs, &c. A Man that is born Dumb, or Dumb and Deaf, if he have Underſtanding by making of Signs, he may *grant* his Land to another; not one who is born Deaf, Dumb and Blind alſo. 1 *Co. Inſt.* 2. A Perſon attainted of Treaſon or Felony, may make a Deed of Gift or *Grant*, and be good againſt all Perſons, except the King, and the Lord of whom the Lands are held; and for Relief in Priſon, they may be good againſt them likewiſe. 1 *Inſt.* 2. *Perk. Sect.* 26, 31. Regularly to every good *Grant* the following Things are requiſite: 1. That there be a Perſon able to *grant.* 2. A Perſon capable of the Thing *granted.* 3. That there be a Thing *grantable.* 4. That it be *granted* in ſuch Manner as the Law requires. 5. That there be an Agreement to and Acceptance of the Thing granted, by him to whom made. And 6. There ought to be an Attornment where needful. 1 *Inſt.* 73.

73. But *Grants* and Conveyances are good, without Attornment of Tenants, Notice being given them of the *Grants*, by Stat. 4 & 5 *Ann.* *Grants* are taken moſt ſtrongly againſt the *Grantor* in Favour of the *Grantee:* The *Grantee* himſelf is to take by the *Grant* immediately, and not a Stranger, or any *in futuro*; and if a *Grant* be made to a Man and his Heirs, he may aſſign at his Pleaſure, though the Word Aſſigns be not expreſſed. *Lit.* 1. *Saund.* 322. The Uſe of any Thing being *granted*, all is *granted* neceſſary to enjoy ſuch Uſe: And in the *Grant* of a Thing, what is requiſite for the obtaining thereof is included. 1 *Inſt.* 56. So that if Timber Trees are *granted*, the *Grantee* may come upon the *Grantor*'s Ground to cut and carry them away. 2 *Inſt.* 309. *Plowd.* 15. Where the principal Thing is *granted*, the Incident ſhall paſs; but the Principal will not paſs by the *Grant* of the Incident. 1 *Inſt.* 152. A Lord of a Manor cannot *grant* the ſame, and reſerve the Court Baron, it being inſeparably incident. *Ibid.* 313. A *Grant* of a Manor, without the Words *cum pertinentiis*, will paſs all Things belonging to the Manor: The *Grant* of a Farm will alſo paſs all Lands belonging to it; but a *Grant* of a Meſſuage paſſes only the Houſe, Outhouſes and Gardens. *Owen*'s *Rep.* 51. *Tot il. Maner. de A.* may be taken in the ſingular or plural Number; and Daſhes and Abbreviations in *Grants* ſhall be ſo taken that the *Grant* be not void. 9 *Rep.* 48. When Lands are *granted* by Deed, the Houſes which ſtand thereon will paſs; Houſes and Mills paſs by the *Grant* of all Lands, becauſe that is the moſt durable Thing on which they are built. 4 *Rep.* 86. 2 *And.* 123. By *Grant* of all the Lands, the Woods will paſs: And if a Man *grant* all his Trees in a certain Place, this paſſeth the Soil; though an Exception of Wood extends to the Trees only, and not the Soil. 1 *Roll. Rep.* 33. *Dyer* 19. 5 *Rep* 11. Trees in Boxes will not paſs by the *Grant* of the Land, &c. as they are ſeparate from the Freehold. *Mod. Caſes* 170. A Man *grants* all his Wood that ſhall grow in Time to come; it is a void *Grant*, not being *in Eſſe.* 3 *Leon.* 57. A *Grant de veſtura Terræ* paſſeth not the Freehold; and therefore the *Grantee* hath no Authority to dig in it by Virtue of ſuch a *Grant. Ow.* 37. By the *Grant* of Lands in the Poſſeſſion of another, it is good if ſuch other be in Poſſeſſion, let the Poſſeſſion be by Right or Wrong. 1 *Roll. Rep.* 23. If a *Grant* is general, and the Lands *granted* reſtrained to a certain Vill, the *Grantee* ſhall have no Lands out of the Vill. 2 *Rep.* 33. If I *grant* all my Lands in *D.* which I had by the *Grant* of *A. B.* this is a good *Grant* of all my Lands in *D.* whether I had them of *A. B.* or any other. *Mich.* 2 *Jac.* 2. It has been held, that where a *Grant* is made of Lands and Tenements in *D.* Copyhold Lands will not paſs; for they cannot paſs otherwiſe than by Surrender. *Owen* 37. Where Lands are certainly deſcribed in a *Grant*, with a Recital as *granted* to *A. B.* &c. tho' they were not thus *granted*, it has been adjudged that the *Grant* was good. 10 *Rep.* 110. A firſt Deſcription of Lands in a *Grant* is falſe, notwithſtanding the ſecond be true, nothing will paſs by it; though if the firſt be true, and the ſecond falſe, the *Grant* may be good. 3 *Rep.* 10. The Word *Grant*, where it is placed among other Words of Demiſe, &c. ſhall not enure to paſs a Property in the Thing demiſed; but the *Grantee* ſhall have it by Way of Demiſe. *Dyer* 56. A Man cannot *grant* that which he hath not, or more than he hath: Though he may covenant to purchaſe an Eſtate, and levy a Fine to Uſes, which will he good. *Bac. Max.* 58. A Perſon may *grant* a Reverſion, as well as a Poſſeſſion; but the Law will not allow of *Grants* of Titles only, or imperfect Intereſts, or of ſuch Intereſts as are merely future. *Ibid.* A bare Poſſibility of an Intereſt, which is uncertain; a Right of Entry or Thing in Action, Cauſe of Suit, &c. may not be granted over to a Stranger. *Perk. Sect* 65. 1 *Inſt.* 214. 4 *Rep.* 66. It was formerly held, that by a *Grant* of all a Man's Goods and Chattels, Bonds would paſs; now 'tis held the contrary, that the Words *Goods and Chattels* do not extend to Bonds, Deeds or Specialties, being Things in Action, unleſs in ſome ſpecial Caſes. 8 *Rep.* 33. 1 *Inſt.* 152. See 2 *Geo.* 2. *c.* 25. In *Grants* there muſt be a Foundation of Intereſt, or they will not be binding: If a Perſon *grants* a Rent-charge out of Lands, when he hath nothing in the ſame Land, the *Grant* will be void. *Perk.* 15. Though it is ſaid, if a Man *grant* an annual Rent out of Land, wherein he hath no Kind of Intereſt, yet it may be good to charge the Perſon of the *Grantor Owen Rep.* 3. A Man may *grant* an Annuity for him and his Heirs, to commence after his Death, and it ſhall charge the Heir. *Bac. Max.* 58. And after the *Grant* of an Annuity, &c. is determined, Debt lies for the Arrears; and the Perſon of the Tertenant will be charged. 7 *Rep.* 39. If a common Perſon *grants* a Rent, or other Thing that lies in *Grant*, without Limitation of any Eſtate, by the Delivery of the Deed, a Freehold paſſes: But if the *King* makes ſuch a *Grant* of a Rent, &c. it is void for Uncertainty. *Danv Rep.* 45 A *Grant* to a Man, with a Blank for his Chriſtian Name, is void, except to an Officer known by his Office, when it muſt be averred: And it is the ſame where the *Grantee*'s Chriſtian Name is miſtaken. *Cro. Eliz.* 328. And *Grants* may be void by Incertainty, Impoſſibility; being againſt Law, on a wrong Title, to defraud Creditors, &c. 1 *Inſt.* 183. Such Things as lie in *Grant*, may not be granted, or held without Deed: And if any Thing not grantable, is granted with other Things, the *Grant* will be void for all. 2 *Shep. Abr.* 269, 271, 273. Truſts and Confidences are perſonal Things, and may not be granted over to others in moſt Caſes; as Offices of Truſt, and the like: But regularly all kind of Chattels Real and Perſonal, are grantable. *Perk. Sect.* 99. *Plowd.* 379, 141. If one *grant* any Thing that lies in Livery or *Grant*, and that is *in eſſe* at the Time of the *Grant*, in Fee, or for Life, and the Eſtate is to begin at a Day to come; this for the moſt part will be void: But a Leaſe or *Grant* for Years, may be good *in futuro*; and may be to one for Term of Years, or Years determinable on Lives, and after to another, to begin at the End of that Eſtate. 5 *Rep.* 1. *Dyer* 58. Where a Man hath a Reverſion after an Eſtate for Life of Land, and he *grants* a Rent out of it; the *Grant* is good, and will faſten upon the Land after the Eſtate of the Tenant for Life is ended: And if a Perſon *grant* Rents, &c. and a Stranger take them at that Time; in this Caſe the *Grant* will be good, for one may not be out of Poſſeſſion of theſe Things but at his Pleaſure. *Perk.* 92, 98. Of *Grants* ſome charge the *Grantor* with ſomething he was not charged with before; and others diſcharge the *Grantee* of ſomething wherewith he was before charged or chargeable. If a Man *grant* to me a Rent-Charge; and after I *grant* to him, that he ſhall not be ſued for this Rent; this is good to bar me of bringing an Action, tho' I may diſtrain for the Rent ſtill: And if one *grants* to his Leſſee for Life or Years, that he ſhall not be impeached for Waſte; it will be a good Diſcharge, and may be pleaded 7 *H.* 6. 43. *Bro. Grant* 175. *Kelw.* 88. If an Eſtate be made of Land upon Condition, that if *A. B.* the *Grantor* pay to *C. D.* the *Grantee* 20 *l.* on ſuch a Day, he ſhall have his Land again; they may both join and make an Eſtate of the Land, or charge it with any Rent, &c. before the Day of Redemption: And *C. D.* may alſo before the Day *grant* away his Eſtate to another, but it will he ſubject to the Condition; and if he *grant* a Rent to a Stranger, and *A. B.* doth perform the Condition, and then reenter, he may avoid the Charge. 1 *Rep.* 147. 10 *Rep.* 48. If a Man *grants* that to one, that he hath

granted before to another, for the like Term, *&c.* the ſecond *Grant* will be void. *Dyer* 23. *Perk. Sect.* 102. *Grants* are uſually made by theſe Words, *viz. Have Given, Granted* and *Confirmed*, &c. And Words in *Grants* ſhall be conſtrued according to a reaſonable Senſe, and not be ſtrained to what is unlikely. *Hob.* 304. Alſo it hath been adjudged, that *Grants* ſhall be expounded according to the Subſtance of the Deed, not the ſtrict Grammatical Senſe; and agreeable to the Intention of the Parties. 1 *Inſt.* 146, 313.

Form of a *Grant of an Annuity* out of Lands.

THIS Indenture *made*, &c. Between A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *That the ſaid* A. B. *for and in Conſideration of the Sum of*, &c. *to him in Hand paid by the ſaid* C. D. *the Receipt whereof is hereby acknowledged*, he *the ſaid* A. B. hath *Given, Granted and Confirmed, and by theſe Preſents doth Give, Grant and Confirm unto the ſaid* C. D. *and his Aſſigns, one Annuity of*, &c. *to be received, taken, had, and to be iſſuing out of* All *that Meſſuage or Tenement ſituate*, &c. *with all and ſingular the Hereditaments and Appurtenances thereunto belonging, and every Part and Parcel thereof*; To have and to hold *the ſaid Annuity or yearly Rent-Charge of*, &c. *abovementioned, and every Part and Parcel thereof, unto the ſaid* C. D. *and his Aſſigns, for and during the natural Life of him the ſaid* C. D. Payable *and to be paid in and upon*, &c. *yearly and every Year, by even and equal Portions.* And *if it ſhall happen the ſaid Annuity or yearly Rent-Charge of*, &c. *or any Part thereof, ſhall be behind and unpaid, in Part or in all, by the Space of twenty-one Days next after either of the ſaid Days or Times of Payment thereof, whereon the ſame ſhould or of Right ought to be paid, as aforeſaid, That then and ſo often, and at any Time thence after, it ſhall and may be lawful to and for the ſaid* C. D. *and his Aſſigns, into the ſaid Premiſſes abovementioned, or into any Part thereof, to enter and diſtrain, and the Diſtreſs and Diſtreſſes then and there found, to take, lead, drive, carry away and impound, and the ſame in Pound to detain and keep until the ſaid Annuity, and the Arrears thereof (if any be) together with all Coſts and Charges thereabout, ſhall be fully paid and ſatisfied.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, that he the ſaid* A. B. *his Heirs and Aſſigns, ſhall and will well and truly pay, or cauſe to be paid, unto the ſaid* C. D. *or his Aſſigns, the ſaid Annuity or yearly Rent-Charge of*, &c. *abovementioned, at the Days and Times and in Manner and Form above expreſſed, according to the true Intent and Meaning of theſe Preſents.* And alſo, *That the ſaid Meſſuage*, &c. *and Hereditaments abovementioned to be charged or chargeable with the ſaid Annuity hereby granted, ſhall from Time to Time be and continue over and ſufficient for the Payment of the ſaid Annuity or Rent-Charge of*, &c. *yearly, during the Life of the ſaid* C. D. In Witneſs, *&c.*

Grants of the King. The King's *Grant* is good for himſelf and Succeſſors, tho' his Succeſſors are not named. *Yelv.* 13. Before the Statute *de prærogativa Regis*, Dowers, Advowſons, and other Things, have paſſed by the general *Grant of the King*; but by that Statute they are to be *granted* in expreſs Words. 1 *Rep.* 50. The King may not *grant* away an Eſtate-tail in the Crown, *&c.* And the Law takes Care to preſerve the Inheritance of the King for the Benefit of the Succeſſor. 2 *And.* 154 *Style* 263. But where the King is Tenant in Tail of Lands, of the Gift of his Anceſtor; he may bar this Intail by Fine levied, and grant and render, *&c. Jenk. Cent.* 307. A *Grant* may not be made by the King which tends to a Monopoly againſt the Intereſt and Liberty of the Subject: Nor can the King make a *Grant Non obſtante* any Statute made or to be made; if he doth, any ſubſequent Statute prohibiting what is *granted*, will be a Revocation of the *Grant.* 11 *Rep.* 87. *Dyer* 52. Where the King is reſtrained by the Common Law to make a *Grant*, if he makes a *Grant Non obſtante* the Common Law, it will not make the *Grant* good; but when he may lawfully make a *Grant*, and the Law requires he ſhould be fully appriſed of what he *grants*, and not be deceived, a *Non obſtante* ſupplies it, and makes the *Grant* good: If the Words are not ſufficient to paſs the Thing granted, a *Non obſtante* will not help. 4 *Rep.* 35. *Nelſ. Abr.* 904. If a *Grant* is made by the King, and a former *Grant* is in Being of the ſame Thing, if it be not recited, the *Grant* will be void: And reciting a void *Grant*, when there is another good, may make the King's *Grant* void. *Dyer* 77. *Cro. Car.* 143. But there may be a *Non obſtante* to a former *Grant.* If the King is deceived in his *Grant*, as where it contains more than was intended to be *granted*; or if there be any Deceit in the Conſideration, *&c.* ſuch *Grant of the King* is void. 5 *Rep.* 94. *Moor* 293. And the King's *Grants* may be void by Reaſon of Incertainty; as if Debts and Duties are granted, without ſaying in particular what Duties, *&c.* 12 *Rep.* 46. But where there is a particular Certainty preceding, they ſhall not be deſtroyed by any Incertainty or Miſtake which follows: And there is a Diſtinction where a Miſtake of Title is prejudicial to the King, and when it is in ſome Deſcription of the Thing which is ſupplemental only, and not material or iſſuable. 1 *Mod.* 195. The King *grants* the Manor of *D.* which he has by the Attainder of a certain Perſon, *&c.* and in Fact the King hath it not ſo; this *Grant* is void. 10 *Rep.* 109. If the King *grants* a Meſſuage of the Value of 5 *l.* a Year to *A. B.* and it be of the yearly Value of 10 *l.* the Value being in the ſame Sentence with the *Grant*, will make it void: Tho' if it be mentioned in another Sentence, it may be good. *Jenk. Cent.* 261. The *Grant* of the King to a Corporation, that they ſhall not be impleaded for Lands, nor for any Cauſe ariſing there, elſewhere than before themſelves, *&c.* This doth not bind the King where he is Party: And the King by his *Grant* cannot exclude himſelf from proſecuting Pleas of the Crown; for it concerns the publick Government. *Kelw.* 88. *Dyer* 376. *Jenk. Cent.* 190.

Grantz, Is uſed for *Grandees*, in the Parl. Roll. 6 *Ed.* 3. *n.* 5, 6. —— *Et les ditz Countz, Barons, &* *autre* Grantz, *&c.*

Graſs-hearth, The *Graſing* or Turning up the Earth with a Plough; whence the cuſtomary Service for the inferior Tenants of the Manor of *Amerſden* in *Oxfordſhire*, to bring their Ploughs and do one Day's Work for their Lord, was called *Graſs-hearth* or *Graſs-hurt*: And we ſtill ſay the Skin is *graſed* or ſlightly hurt, and a Bullet *graſes* on any Place, when it gently turns up the Surface of what it ſtrikes upon. *Paroch. Antiq.* 496, 497.

Grava, A little Wood or Grove: —— *Unam Carucatam terræ cum* Gravis *& Paſturis eidem pertinen.* Mon. Ang. Tom. 2. p. 198. Co. Lit. 4.

Gravare & Gravatio, An Accuſation or Impeachment. *Leg. Etheld. c.* 19.

Grave, The Names of Places ending with *Grave*, come from the Sax. *Graf*, a Wood, Thicket, Den, or Cave.

Gravers, Of Seals and Stones ſhall give to every one their Weight of Silver and Gold, on Pain of Impriſonment. *Stat.* 7 *Ed.* 3. *c.* 7.

Grazier, (*Pecuarius*) A Breeder or Keeper of Cattle, mentioned in the Stat. 25 *H.* 8. See *Cattle.*

Great Men, Are ſometimes underſtood of the Temporal Lords in the higher Houſe of Parliament, as by Stat. 43 *Ed.* 3. *cap.* 2. and ſometimes of the Members of the Houſe of Commons, as by 2 *R.* 2.

Great Seal of England. See *Keeper of the Great Seal*, and *Treaſon*.

Gree, (Fr. *Gre*, i. e. good Liking or Allowance) In our Law ſignifies Satisfaction; as to make *Gree* to the Parties, is to *agree* with and ſatisfy them for an Offence done. And where it is ſaid in our Statutes, that Judgment ſhall be put in Suſpence till *Gree* is made to the King of his Debt; it is taken for Satisfaction. 1 *R*. 2. *c*. 15. 25 *Ed*. 3. *c*. 19.

Green Cloth, Of the *King's Houſhold*, ſo term'd from the *Green Cloth* on the Table, is a Court of Juſtice compos'd of the *Lord Steward*, Treaſurer of the Houſhold, Comptroller, and other Officers, to which is committed the Government and Overſight of the King's Court, and the Keeping of the Peace within the Verge, &c. See *Counting Houſe*.

Greenhew or **Green-hue**, Is all one with *Vert* in Foreſts, &c. *Manwood*, *Par*. 2. *c*. 6. *num*. 5.

Greenland Company. A Joint-Stock of 40,000 *l*. was by Statute to be raiſed by Subſcribers, who were incorporated: And the Company to uſe the Trade of catching Whales, &c. into and from *Greenland*, and the *Greenland* Seas; they may make By-Laws for Government, and of Perſons employed in their Ships, &c. *Stat*. 4 & 5 *W*. 3. *c*. 17. But any Perſons who will adventure to *Greenland* for Whale-Fiſhing, ſhall have all Privileges granted to the *Greenland* Company, by 1 *Ann*. *c*. 16. Any Subjects may import Whale-Fins, Oil, &c. of Fiſh caught in the *Greenland* Seas, without paying any Cuſtoms, &c. *Stat*. 10 *Geo*. 1. *c*. 16. And Ships employed in the *Greenland* Fiſhery are to be of ſuch Burden, provided with Boats, ſo many Men, Fiſhing-Lines, Harping-Irons, &c. and be licenſed to proceed; and on their Return ſhall be paid 20 *s*. *per* Tun Bounty, for Whale-Fins, &c. imported. 6 *Geo*. 2. *c*. 33. A further Bounty or Allowance of 10 *s*. a Tun, is granted to this Company, to be paid by the Commiſſioners of the Cuſtoms, during the War; and the Seamen ſhall not be impreſs'd from that Service, by 13 *Geo*. 2. *cap*. 28.

Green-Silver. There is an antient Cuſtom within the Manor of *Writtel* in the County of *Eſſex*, that every Tenant whoſe Fore-door opens to *Greenbury*, ſhall pay a Half-penny yearly to the Lord, by the Name of *Green-Silver*.

Green Wax, Is where Eſtreats are delivered to the Sheriffs out of the *Exchequer*, under the Seal of that Court, made in *Green Wax*, to be levied in the ſeveral Counties: This Word is mentioned in the Stat. 43 *Ed*. 3. *c*. 9. and 7 *H*. 4. *c*. 3.

Greenwich Hoſpital. A Duty is laid on all Foreign-built Ships for Relief of decay'd Seamen in *Greenwich Hoſpital*, &c. by Stat. 1 *Jac*. 2. *cap*. 18. And every Seamen ſhall allow out of his Wages 6 *d*. a Month, for the better Support of the ſaid Hoſpital: For which Duty, Receivers are appointed, who may depute Officers of the Cuſtoms, &c. to collect the ſame, and examine on Oath Maſters of Ships, &c. 10 *Ann*. 2 *Geo*. 2. *cap*. 7. See *Navy* and *Mariner*.

Greve, (Sax. *Gereſa*) A Word of Power and Authority, ſignifying as much as *Comes* or *Vicecomes*; and hence comes our *Shreive*, *Portreve*, &c. which by the *Saxons* were written *Sciregereſa*, *Portgereſa*. *Lambert* in his Expoſition of *Saxon* Words, *Verbo* Præfectus, makes it the ſame with *Reve*. See *Hovedon Part*. *poſter*. *Annal*. *fol*. 346.

Grils, A kind of ſmall Fiſh. *Stat*. 22 *Ed*. 4.

Grith, Is a *Saxon* Word, ſignifying Peace. *Terms de Ley* 179.

Grithbreche, (Sax. *Grythbryce*, i. e. *Pacis fractio*) Breach of the Peace.——— *In cauſis Regiis* Grithbreche 100 *Sol*. *emendabit*. Leg. Hen. 1. c. 36.

Grithſtole, (Sax. *Sedes Pacis*) A Place of Sanctuary. See *Fridſtol*.

Grocers, Were formerly thoſe that engroſſed Merchandize. *Stat*. 37 *Ed*. 3. *c*. 5. It is now a particular and well known *Trade*; and the Cuſtom Duties for *Grocery* Wares and Drugs, are particularly aſcertained, by the Statute 2 *W*. & *M*. *Seſſ*. 2. *c*. 4. Vide *Aromatarius*.

Gronna, A deep Pit, or bituminous Place, where Turfs are dug to burn. *Hoved*. 438. *Mon*. *Angl*. *Tom*. 1. *pag*. 243.

Groom, Is the Name of a Servant in ſome inferior Place: 33 *H*. 8. *c*. 10. and is generally applied to Servants in Stables: But it hath a Special Signification, extending to *Groom of the Chamber*; *Groom of the Stole*, &c. which laſt is a great Officer of the King's Houſhold, whoſe Precinct is properly the King's Bed-Chamber, where the Lord Chamberlain hath nothing to do; and *Stole* ſignifies a Robe of Honour, and not a Cloſe-ſtool, as vulgarly apprehended. *Lex Conſtitut*. *p*. 182. Vide *Garcio*.

Groom-Porter, An Officer or Superintendant over the Royal *Gaming Tables*; and in *Latin* is writ *Aulæ Regiæ janitor Primarius*.

Groſs, (*Groſſus*) *In Groſs*, abſolute, entire, not depending on another; as antiently a *Villein in Groſs* was ſuch a ſervile Perſon as was not appendant or annexed to the Lord or Manor, and to go along with the Tenure as appurtenant to it; but was like the other perſonal Goods and Chattels of his Lord, at his Lord's Pleaſure and Diſpoſal: So alſo *Advowſon in Groſs* differs from *Advowſon Appendant*, being diſtinct from the Manor. *Co*. *Litt*. 120.

Groſſe bois, (Fr. *Gros bois*, i. e. great Wood) Signifies ſuch Wood as by the Common Law or Cuſtom is reputed Timber. 2 *Inſt*. 642.

Groſs-weight, The whole Weight of Goods or Merchandize, Duſt and Droſs mix'd with them, and of the Cheſt, Bag, &c. out of which *Tare* and *Tret* are allowed. *Merchant's Dict*.

Grot, (Fr.) A Den, Cave, or hollow Place in the Ground; alſo a ſhady woody Place, with Springs of Water. *L*. *Fr*. *Dict*.

Groundage, A Cuſtom or Tribute paid for the ſtanding of a Ship in a Port.

Grouſe, Are the Red and Black *Heath-Game*, for preſerving of which, no Heath, Furze or Fern ſhall be burnt on any Heaths, Moors or other Waſtes, between the 2d of *February* and 24th of *June*, by Stat. 4 & 5 *W*. & *M*. *c*. 23.

Growme, An Engine to ſtretch Woollen Cloth after it is woven; mentioned 43 *Ed*. 3. *c*. 10.

Growth-halfpenny, Is a Rate ſo called, and paid in ſome Places for the *Tithe* of every fat Beaſt, Ox, or other unfruitful Cattle. *Clayton*'s *Rep*. 92.

Gruarii, (From the Fr. *Gruyer*) Signifies the principal Officers of the Foreſt in general.

Guard, (Fr. *Garde*, Lat. *Cuſtodia*) A Cuſtody or Care of Defence. And ſometimes it is uſed for thoſe that attend upon the Safety of the Prince, called the *Life Guard*, &c. ſometimes ſuch as have the Education and *Guardianſhip* of *Infants*; and ſometimes for a *Writ* touching *Wardſhip*, as *Droit de Gard*, *Ejectione de Gard*, and *Raviſhment de Gard*. F. N. B. 139.

Guardian, (Fr. *Gardein*, Lat. *Cuſtos*, *Guardianus*) Signifies him that hath the Charge or Cuſtody of any Perſon or Thing; but moſt commonly he who hath the Cuſtody and Education of ſuch Perſons as are not of ſufficient Diſcretion to guide themſelves and their own Affairs, as Children and Ideots, (uſually the former) being as largely extended in the Common Law as *Tutor* and *Curator* among the Civilians. *Blount*. And a *Guardian* is either *Legitimus*, *Teſtamentarius*, *Datus*, or *Cuſtumarius*: He that is a legitimate or lawful *Guardian* is ſo *Jure Communi*, or *Jure Naturali*; the firſt as *Guardian* in *Chivalry*, in Fact or in Right; the other *de Jure Naturali*, as Father or Mother: A *Teſtamentary Guardian* was by the Common Law; for the Body of the Minor was to remain with him who was appointed, till the Age of Fourteen; and as for his Goods it might be longer, or as long as the Teſtator appointed; but as to this Matter there are ſeveral Statutes: *Guardianus Datus* was by the Father in his Life-time, or by the Lord Chancellor after the Death of the Father; and where there is a *Guardianſhip* by the Common Law, the Lord Chancellor can order and intermeddle; but were by Statute, he cannot remove either the Child or the *Guardian: Guardianſhip* by *Cuſtom* is of Orphans by the Cuſtom of *London*, and other Cities and Boroughs; and in Copyhold Manors, by the Cuſtom it may belong to the Lord of the Manor to be *Guardian* himſelf, or to appoint one. 3 *Salk. Rep.* 176, 177. The *Guardianſhips* by the *Common Law*, are *Guardians* in *Chivalry*; (taken away by Statute) *Guardians by Nature*, ſuch as the Father or Mother: *Guardians* in *Socage*, who are the next of Blood, to whom the Inheritance cannot deſcend, if the Father does not order it otherwiſe; and *Guardian* becauſe of *Nurture*, when the Father by Will appoints one to be *Guardian* of his Child. 1 *Inſt.* 88. 2 *Inſt.* 305 3 *Rep.* 37. The Duty and Office of the *Guardian* in Socage, is to educate the Heir, and preſerve his Eſtate, and Writings of his Land; and not to make any Deſtruction on the Eſtate, but to manage it for his utmoſt Advantage. And where Land deſcends of the Part of the Father, there the next of Kin on the Part of the Mother ſhall have the *Guardianſhip:* And ſo on the other Side, and not ſuch a Kinſman as may have any Benefit by his Death. 1 *Cro.* 825. *Moor cap.* 872. The eldeſt Son of the Half Blood ſhall be *Guardian* in Socage to a Son by the ſecond Venter: And the *Guardianſhip* in Socage continues till the Minor accompliſhes the Age of fourteen Years, and then he may chuſe his *Guardian* before a Judge at his Chamber, or in Court, or in the Chancery: Alſo after the Minor is come to the Age of fourteen, he may ſue his *Guardian* in Socage to Account as Bailiff, *&c. Cro. Jac.* 219 Though a Father is *Guardian* by Nature, yet a Man may be *Guardian* to an Infant againſt his Father, for Prevention of Waſte; which is a Forfeiture of *Guardianſhip.* Hard. 96. *Guardian* in Socage ſhall make no Waſte nor Sale of the Inheritance, but keep it ſafely for the Heir: And where there hath been ſome Doubt of the Sufficiency of a *Guardian* in Socage, the Chancery hath obliged him to give Security. 2 *Mod.* 177. Alſo a *Guardian* may be ordered to enter into Security by Recognizance not to ſuffer a Female Infant to marry whilſt in his Cuſtody; and to permit other Relations to viſit her, *&c.* 2 *Lev.* 128. And the Court of Chancery will make ſuch *Guardian* give Security not to marry the Infant without the Court is firſt acquainted with it. 2 *Chan. Rep.* 237. Before the Act of 12 *Car.* 2. Tenant in Socage might have diſpoſed of his Land in Truſt for the Benefit of the Heir; but it is ſaid he could not deviſe or diſpoſe of the *Guardianſhip* or Cuſtody of the Heir from the next of Kin to whom the Land could not deſcend, becauſe the Law gave the *Guardianſhip* to ſuch next of Kin. *Keilw.* 186. But now Tenant in Socage may nominate whom he pleaſes to have the Cuſtody of the Heir, and the Land ſhall follow the *Guardianſhip*, as an Incident given by Law to attend the Cuſtody; and ſuch ſpecial *Guardian* cannot aſſign the Cuſtody by any Act, the Truſt being Perſonal; nor ſhall it go to the Executor or Adminiſtrator of the *Guardian*, but determines by his Death. *Vaugh.* 180. *Dyer* 189. *Guardianſhip by Statute* is by the 12 *Car.* 2. *c.* 24. by which it is enacted, That a Father by Deed in his Life-time, or by Will, may diſpoſe of the Cuſtody of his Child under twenty-one Years of Age, and not married at the Time of his Death, and whether then born, or *in Ventre ſa Mere*, during the Minority, to any Perſons not Popiſh Recuſants, who may maintain Action of Treſpaſs, *&c.* againſt unlawful Takers away of ſuch Children, and take into Cuſtody their Lands, *&c.* And by this Statute the Father may appoint a *Guardian* to his Heir for any Time till he is twenty one Years old; and ſuch *Guardian* ſhall have the like Remedy for his Ward as the *Guardian* in Socage had at Common Law. 2 *Nelſ. Abr.* 911. But if the Father appoint no *Guardian* to his Child, the Ordinary or Spiritual Court may appoint one for the perſonal Eſtate until the Age of Fourteen: And as to his Lands, there ſhall be a *Guardian* in Socage, *&c.* as heretofore. 2 *Lev.* 262. If a Biſhop appoints a *Guardian* of Goods and Lands, it will be void; for it may be only of Goods and Chattels: And *Guardianſhip* is a Thing cogniſable by the Temporal Courts, where a Deviſe is made of it, which Courts are to judge whether the Deviſe be purſuant to the Statute. 1 *Ventr.* 207. A Copyhold Tenant is not within the Statute 12 *Car.* 2. to diſpoſe of the Cuſtody of his Children; for it belongs to the Lord or others, according to the Cuſtom of the Manor: But the Lord of a Manor hath no Power by the Common Law, without ſome *particular Cuſtom*, to grant the *Guardianſhip* of an Infant Copyholder. 3 *Lev.* 395. *Lutw.* 1190. *Guardianſhips* are not only by the *Common Law*, by *Statute Law*, and by *particular Cuſtom*; but are alſo diſtinguiſhed into *Guardian* in *Socage*, *Guardian* appointed by the *Father*, and *Guardian* aſſigned by the *Court.* 1 *Lill. Abr.* 655. And a Father or Mother, without Aſſignment, are *Guardians* of Women, Children, *&c.* Stat. 4 *&* 5 *P. & M. c.* 8. A Female Infant may be brought into Court, and ask'd whether ſhe be willing to ſtay with her *Guardian.* 2 *Lev.* The Husband of a Woman under Age cannot diſavow a *Guardian* made by the Court for his Wife. 1 *Vent.* 185. An Infant 'tis ſaid cannot revoke the Authority of the *Guardian*: But the Court may diſcharge one *Guardian*, at their Diſcretion, and aſſign another; and the Juſtices of *Niſi prius*, *&c.* may aſſign a new *Guardian. Palm.* 252. *Stile* 456. *Noy* 49. 1 *Danv. Abr.* 604. The Court will aſſign a *Guardian* to an Infant to ſue or defend Actions, if the Infant comes into Court and deſires it; or a Judge at his Chamber, at the Deſire of the Infant, may aſſign a Perſon named by him to be his *Guardian*; but this laſt is no Record until entered and filed with the Clerk of the Rules: The Heir muſt be in Perſon in Court, for the Appointment of a *Guardian* for his Appearance. 1 *Lill.* 656. 2 *Leon* 238. *Guardians* to Infants, appointed by the Court to ſue, may acknowledge Satisfaction upon Record, for a Debt recovered at Law for the Infant. *Trin.* 23 *Car. B. R.* A *Guardian* in Socage may keep Courts in the Infant's Manors in his own Name, grant Copies, *&c.* He is *Dominus pro Tempore*, and hath an Intereſt in the Lands. *Cro. Jac.* 91. Such a *Guardian* may let the Land for Years, and avow in his own Name and Right; and his Leſſee for Years may maintain Ejectment: But he cannot preſent to an Advowſon, for which he may not lawfully Account; and the Infant muſt preſent of whatſoever Age. *Cro. Jac.* 98, 99. Though it is ſaid if the Infant be within the Age of Diſcretion, his *Guardian* may preſent. 8 *E.* 2. 10. A *Guardian* for Nurture of the Minor appointed by Will, hath Power to make Leaſes at Will only. *Cro. El.* 678, 734. *Guardians* are to take the Profits of the Minor's Lands, *&c.* to the Uſe of the Minor, and account for the ſame: They ought to ſell all Moveables in a reaſonable Time, and turn them into Land or Money, except the Minor is near of Age, and may Want ſuch Goods himſelf: And they ſhall pay Intereſt for Money in their Hands, which might have been put out at Intereſt; in which Caſe it ſhall be preſumed the *Guardians* made uſe of it themſelves. 3 *Salk.* 177. A *Guardian* ſhall anſwer for what is loſt by his Fraud, Negligence or Omiſſion; but not for any caſual Events, as where the Thing had been well but for ſuch an Accident. *Litt.* 123. On accounting of *Guardians*, they ſhall have Allowance of Coſts and Expences; and if they are robb'd, *&c.* without any Default or Negligence, they ſhall be diſcharged thereof. 1 *Inſt.* 89. In *Guardianſhips* of great Eſtates, the *Guardians* generally paſs their Accounts yearly in the Chancery, for their better Juſtification when the Minor calls them to a general Account at his full Age. By Statute, *Guardians* are to retain the Lands till the Heir comes of Age, and then reſtore the ſame as fully ſtock'd, *&c.* as received. 9 *H.* 3. *c.* 3. They ſhall ſuſtain the Land, without Deſtruction of any Thing. 3 *Ed.* 1. *c.* 21. And Perſons, who as *Guardians* hold over, without the Conſent of the Perſon next entitled, ſhall be adjudged Treſpaſſers, and be accountable for Profits, *&c.* Stat. 6 *Ann. c.* 18. Action of Account may be brought againſt the Executors or Adminiſtrators of a *Guardian*, *&c.* Stat. 4 & 5 *Ann.* A *Guardianſhip* of a Minor is an Intereſt in the Body and Lands, *&c.* of one within Age.

An *Election of a Guardian* by a Minor.

KNOW all Men *by theſe Preſents, That I* A. B. *Son and Heir of,* &c. *deceaſed, being now about the Age of eighteen Years,* have *elected and choſen, and by theſe Preſents do elect and chuſe* C. D. *of,* &c. *to be Guardian of my Perſon and Eſtate, until I ſhall attain the Age of twenty-one Years, and I do hereby Promiſe to be Ruled and Governed by him in all Things touching my Welfare; and I do authorize and impower the ſaid* C. D. *to enter upon and take Poſſeſſion of all and every my Meſſuages, Lands, Tenements, Hereditaments and Premiſſes whatſoever, ſituate lying and being in,* &c. *in the County of,* &c. *or elſewhere, whereunto I have or may have any Right or Title, and to let and ſet the ſame, and receive and take the Rents, Iſſues and Profits thereof, for my Uſe and Benefit, during the Term aforeſaid; giving and hereby granting unto the ſaid* C. D. *my full Power in the ſaid Premiſſes; and whatſoever he ſhall lawfully do or cauſe to be done in the Premiſſes, by Virtue hereof, I do hereby promiſe to ratify and confirm.* In Witneſs, *&c.*

Guardian de l'eſtemary, Is the *Guardian* or Warden of the *Stannaries*, or Mines in the County of *Cornwal*, &c. 17 *Car.* 1. *c.* 15.

Guardians de l'Eglis, Churchwardens who are Officers choſen in every Pariſh to have the Care and Cuſtody of the Church Goods; and they may have an Action for ſuch Goods, and have divers Powers for the Benefit of the Church. Stat. 43 *Eliz. cap.* 2.

Guardians of the Peace, Are thoſe that have the Keeping of the Peace; *Wardens* or *Conſervators* thereof. *Lamb. Eiren. lib.* 1. *cap.* 3.

Guardian of the Cinque Ports, Is a Magiſtrate that hath the Juriſdiction of the Ports or Havens, which are commonly called the *Cinque Ports*, who has there all the Authority and Juriſdiction the Admiral of *England* has in Places not exempt: And *Camden* believes this *Warden of the Cinque Ports* was firſt erected among us in Imitation of the *Roman* Policy, to ſtrengthen the Sea-Coſts againſt Enemies, *&c.* *Camd. Brit.* 258.

Guardian of the Spiritualities. The Perſon to whom the *Spiritual Juriſdiction* of any *Dioceſe* is committed, during the *Vacancy* of the See, is called by this Name. 25 *H.* 8. *c.* 21. The *Archbiſhop* is *Guardian of the Spiritualities* on the Vacancy of any *See* within his Province; but when the *Archiepiſcopal See* is vacant, the Dean and Chapter of the Archbiſhop's Dioceſe are *Guardians of the Spiritualities, viz.* the Spiritual Juriſdiction of his Province and Dioceſe is committed to them. 2 *Rol. Abr.* 223. 25 *H.* 8. The *Guardian of the Spiritualities* it is ſaid may be either *Guardian in Law, Jure Magiſtratus*, as the Archbiſhop is of any Dioceſe in his Province; or *Guardian by Delegation*, being he whom the *Archbiſhop* or *Vicar General* doth for the Time appoint. 13 *Eliz. c.* 12. And the *Guardian of the Spiritualities* hath all Manner of Eccleſiaſtical Juriſdiction of the Courts, Power of granting Licences and Diſpenſations, Probate of Wills, *&c.* during the Vacancy, and of admitting and inſtituting Clerks preſented; but ſuch *Guardians* cannot as ſuch conſecrate or ordain, or preſent to any Benefices. *Wood's Inſt.* 25, 27.

Gueſt, (Sax. *Geſt*, Fr. *Giſt*, a Stage of Reſt in a Journey) A Lodger or Stranger in an Inn, *&c.* A *Gueſt* who hath a Piece of Plate ſet before him in an Inn, may be guilty of Felony in fraudulently taking away the ſame. 1 *Hawk. P. C.* 90. And a *Gueſt* having taken off the Sheets from his Bed, with Intent to ſteal them, carried them into another Room, and was apprehended before he could get away; this was adjudged Larceny. *Ibid.* 92. Action lies againſt an Inn-keeper, refuſing a *Gueſt* Lodging, *&c.* See *Inn.*

Guidage, (*Guidagium*) Is an old legal Word, ſignifying that which is given for ſafe Conduct thro' a ſtrange Land, or unknown Country. *Eſt* Guidagium *quod datur alicui, ut tuto conducatur per terram alterius.* Conſuetud Burgund. p. 119. 2 Inſt. 526.

Guild, (From the Sax. *Guildan*, to pay) Signifies a Fraternity or Company, becauſe every one was *Gildare*, i. e. to pay ſomething towards the Charge and Support of the Company. The Original of theſe *Guilds* and Fraternies, is ſaid to be from the old *Saxon* Law; by which Neighbours entered into an Aſſociation, and became bound for each other, to bring forth him who committed any Crime, or make Satisfaction to the Party injured, for which Purpoſe they raiſed a Sum of Money among themſelves, and put it into a common Stock, whereout a *pecuniary* Compenſation was made according to the Quality of the Offence committed. From hence came our Fraternities and *Guilds*; and they were in Uſe in this Kingdom long before any formal Licences were granted for them: Though at this Day they are a Company combined together, with Orders and Laws made by themſelves, by the Prince's Licence. *Camd. Guildam Mercatoriam*, or the *Merchant's Guild*, is a Liberty or Privilege granted to Merchants, whereby they are enabled to hold certain Pleas of Land, *&c.* within their own Precinct 37 *Ed* 3. 15 *R.* 2. And *Guildhalls* are the Halls of thoſe Societies, where they meet and make Laws, *&c.* for their better Government. King *Ed.* 3. in the 14th Year of his Reign, granted Licence to the Men of *Coventry* to erect a *Merchants Guild*, and alſo a Fraternity of Brethren and Siſters, with a Maſter or Warden, and that they might make Chantries, beſtow Alms, do other Works of Piety, and conſtitute Ordinances touching the ſame, *&c.* And King *H.* 4. in the 4th Year of his Reign, gave Licence to found a *Guild* of the *Holy Croſs* at *Stratford* upon *Avon.* Antiq. Warwickſh. 119, 522. *Guild* or *Gild*, is alſo uſed for a Tribute or Tax, an Amercement, *&c.* 27 *Ed.* 3. 11 *H.* 6. 15 *Car.* 2. See *Geld.*

Guild-hall, Or the Chief Hall of the City of *London*, for the Meeting of the Lord Mayor and Commonalty of the City, making Laws and Ordinances, holding of Courts, *&c.*—Gildarum *nomine continentur non ſolum minores Fraternitates, ſed ipſæ etiam Civitatum Communitates.* Spelm.

Guildhalda Teutonicorum. The Fraternity of *Eaſterling* Merchants in *London*, called the *Still-yard.* 22 *Hen.* 8. *c.* 8.

Guild-Rents, Are Rents payable to the Crown, by any *Guild* or Fraternity; or ſuch Rents as formerly belong'd to *Religious Guilds*, and came to the Crown at the general Diſſolution of Monaſteries, being ordered to be ſold by the Stat. 22 *Car.* 2. *c.* 6.

Guilder, Foreign Coin: The *German Guilder* is 3 *s.* 8 *d.* and the golden one in ſome Parts of *Germany*

many 4 *s.* 9 *d.* In *Portugal* it paſſes for 5 *s.* but the *Poland* and *Holland Gelder* is but 2 *s.* In *Holland* Merchants keep their Accounts in *Guilders*, *&c.*

Gule of Auguſt, (*Gula Auguſti*, alias *Goule de Auguſt*) Is the Day of *St. Peter ad Vincula*, which is celebrated on the *1ſt of Auguſt*, and called the *Gule of Auguſt*, from the Lat. *Gula*, a Throat, from this Reaſon, that one *Quirinus* a Tribune, having a Daughter that had a Diſeaſe in her *Throat*, went to Pope *Alexander*, the Sixth from St. *Peter*, and deſired of him to ſee the Chains that St. *Peter* was chained with under *Nero*, which Requeſt being granted, ſhe the ſaid Daughter kiſſing the Chains, was cured of her Diſeaſe: Whereupon the *Pope* inſtituted this Feaſt in Honour of St. *Peter*; and, as before, this Day was termed only the *Calends of Auguſt*, it was on this Occaſion called indifferently either St. *Peter's Day ad Vincula*, from what wrought the Miracle, or the *Gule of Auguſt*, from that Part of the Virgin whereon it was wrought. *Durand's Rationale Divinorum, lib.* 7. *cap.* 19. It is mentioned *F. N. B.* 62. *Plowd.* 316. *Stat. Weſtm.* 2. *cap.* 30. 27 *Ed.* 3.

Guns. None may ſhoot in, or keep in his Houſe any *Gun*, Hand-gun, *&c.* who hath not Lands to the Value of 100 *l.* a Year, in Pain of 10 *l.* Nor ſhall any Perſon ſhoot in ſuch *Guns*, under the Length of one Yard, or three Quarters of a Yard, under the like Penalty: If any do ſo, one that hath 100 *l. per Ann.* Land, may ſeize the *Guns* unlawfully kept and uſed; but then he muſt break them within 20 Days, or ſhall forfeit 40 *s.* In Foreſts, Parks and Chaſes, thoſe who have Power from the King to take away *Guns*, may retain the ſame. *Stat.* 33 *H.* 8. *c.* 6.

Gunpowder. It is lawful for all Perſons, as well Strangers as natural-born Subjects, to import any Quantities of *Gunpowder*, or Salt-Petre, Brimſtone, and other Materials for the making thereof, and to make and ſell *Gunpowder*, &c. *Stat.* 16 *Car.* 1. *c.* 21. But no Perſon ſhall keep more than 600 *lb.* Weight of *Gunpowder*, in any Places in the Cities of *London* and *Weſtminſter*, or the Suburbs, *&c.* And Perſons keeping more, not removing it, on Order of Juſtices of Peace, ſhall forfeit 20 *s.* for every hundred Weight: *Gunpowder* is to be carried in covered Carriages, the Barrels cloſe jointed, or in Caſes, Bags of Leather, *&c.* 5 *Geo.* 1. *cap.* 26. By a ſubſequent Act, it is unlawful for any Perſon to keep in *London*, &c. above 200 *lb.* Weight of *Gunpowder* at one Time, beyond the Space of twenty-four Hours, which incurs a Forfeiture of the Powder, or the Value: And two Juſtices may cauſe Searches to be made, and the ſame to be ſeized and amoved, *&c.* Perſons obſtructing the Search, incur the Penalty of 5 *l.* Alſo none ſhall uſe Iron or Steel Hammers, where *Gunpowder* is, on Pain of 20 *s.* 11 *Geo.* 1. *c.* 23. Perſons who are no Dealers therein are not to keep above 50 *lb.* of *Gunpowder*, in *London* and *Weſtminſter*, or if they deal in it, not more than 200 Weight longer than twenty-four Hours, tho' under different Roofs; or on the *Thames*, except in Ships paſſing or detained, on Pain of forfeiting all ſuch *Gunpowder*, *&c.* A Juſtice of Peace may iſſue his Warrant to ſearch for dangerous Quantities of Powder, and break open any Place, if there be Occaſion to ſeize the ſame; which may be removed out of the Limits aforeſaid, and kept 'till determined in one of the Courts, whether it be forfeited, *&c.* And if any Perſons permit others to have *Gunpowder* in Places not belonging to the Owners, they ſhall forfeit 1 *s.* for every Pound. *Stat.* 15 *Geo.* 2. *cap.* 32. No *Gunpowder* ſhall be put on board Ships, above *Blackwall* in the River *Thames*, under 5 *l.* Penalty for every 50 *lb.* Weight, *&c.* by 5 *Geo.* 2. *c.* 20.

Gurgites, Is uſed as a *Latin* Word for *Weares: Tres* Gurgites *in Aqua de Monew attachiantur per Homines de Groſſomonte.* Black Book Hereford, f. 20. See *Gorce.*

Guti and **Gotti,** Engl. *Goths*, called ſometimes *Jutæ*, and by the Romans *Getæ*, is derived from the old Word *Jet*, which ſignifies a *Giant:* They were one of thoſe three Nations or People who left *Germany*, and came to inhabit this Iſland. *Leg. Edw Confeſſ. c.* 35.

Guttera, A Gutter or Spout to convey the Water from the Leads and Roofs of Houſes: And there are *Gutter Tiles*, eſpecially to be laid in ſuch *Gutters*, *&c.* mentioned in the Statute 17 *Ed.* 4.

Gwabr-merched, Is a *Britiſh* Word which ſignifies a Payment or Fine, made to the Lords of ſome Manors, upon the Marriage of their Tenants Daughters; or otherwiſe on their committing Incontinency. See *Marchett.*

Gwalſtow, (*Sax.*) A Place of Execution: *Omnia* Gwalſtowa, *i. e. Occidendorum loca, totaliter Regis ſunt in ſoca ſua.* Leg. Hen. 1. c. 11.

Gylpur, The Name of a Court held every three Weeks in the Liberty or Hundred of *Pathbew*, in the County of *Warwick.* Inquiſic. ad quod Damn. 13 Ed. 3.

Gyltwite, A Compenſation or Amends for Treſpaſs, *&c.* *Mulcta pro Tranſgreſſione.* LL. Edgar. Regis, Anno 964.

Gyrovagi, Wandering *Monks*, who pretending great Piety left their own Cloiſters, and viſited others. *Matt. Pariſ. p.* 490.

H.

HAbeas Corpora, Is a Writ for the Bringing up a Jury, or ſo many of them as refuſe to appear upon the *Venire facias*, for the Trial of any Cauſe brought to Iſſue. *Old Nat. Br.* 157. And the *Habeas Corpora Juratorum* in the Court of *C. B.* ſerves for the ſame Purpoſe as the *Diſtringas Jurator.* in *B. R.* It commands the Sheriff to have the Jurors before the Judges at ſuch a Day, to paſs on the Trial of certain Parties, in ſuch a Cauſe, *&c.* *Practiſ. Solic.* 308, 309.

Habeas Corpus, The great Writ of *Engliſh Liberty*, lies where one is indicted for any Crime or Treſpaſs before Juſtices of Peace, or in a Court of any Franchiſe, and being impriſoned for the ſame, hath offer'd ſufficient Bail, but it is refuſed where bailable; he may then have this Writ out of the *King's Bench* to remove himſelf thither, and anſwer the Cauſe there. *F. N. B.* 250. And the Courſe in this Caſe is firſt to procure a *Certiorari* out of the *Chancery*, directed to tho Juſtices for removing the Indictment into *B. R.* And upon that to procure this Writ to the Sheriff, for the Cauſing his Body to be brought at a Day. *Reg. Jud.* 81. This Writ is alſo uſed to bring the Body of a Perſon into Court, who is committed to any Gaol, either in Criminal or Civil Cauſes; and a *Habeas Corpus* will remove a Perſon and Cauſe from one Court and Priſon to another. The Writ of *Habeas Corpus* was originally ordained by the *Common Law* of the Land, as a Remedy for ſuch as were unjuſtly impriſoned, to procure their Liberty; and it is a miſtaken Notion that this Writ is of a modern Date, and introduced with the Reign of King *Charles* 2. But before the Statute 31 *Car.* 2. 'tis true it was difficult to be obtained, becauſe the Judges who had Authority to iſſue it, pretended to have Power either to grant or deny it; and the Sheriffs and Gaolers to whom the Writ was directed frequently put poor Priſoners to the Charges of a ſecond, and third *Habeas Corpus*, before they would yield Obedience to the firſt; which being grievous to the People, the Stat. 31 *Car.* 2. was enacted to prevent Abuſes of this Nature, and further our Laws for the Benefit of the Liberty of the Subject. *Laws of Liberty*, *pag.* 44, 45. By the Statute 31 *Car.* 2. *cap.* 2. a Perſon in Priſon may have an *Habeas Corpus* from any Judge, on Complaint made and View of the Copy of the Warrant of Commitment, (unleſs he be committed for Treaſon or Felony eſpecially expreſſed in the Warrant, or other Offences or Matters not bailable) which *Habeas Corpus* ſhall be returnable immediately; and upon Certificate of the Cauſe of Commitment, the Priſoner ſhall be diſcharged on Bail to appear in the Court of *B. R.* the next Term, or at the next Aſſizes, &c. where the Offence is cogniſable: And Perſons committed for Treaſon or Felony, (eſpecially expreſſed in the Warrant) on Prayer in open Court, the firſt Week of the Term, or Day of Seſſions, &c. are to be brought to Trial; and if not indicted the next Term, or Seſſions after Commitment, upon Motion the laſt Day of the Term, &c. they ſhall be let out upon Bail; except it appears upon Oath, that the King's Witneſſes are not ready; and if on Prayer they are not indicted or tried the ſecond Term after Commitment, they ſhall be diſcharged. No Perſons who ſhall be delivered upon an *Habeas Corpus*, ſhall be committed again for the ſame Offence, other than by legal Order and Proceſs of ſuch Court where they ſhall be bound to appear, or other Court having Juriſdiction of the Cauſe; on Pain of 500 *l.* And if any Perſon be in Priſon, or any Officer's Cuſtody, for any Criminal Matter, he ſhall not be removed by him into the Cuſtody of any other Officer but by *Habeas Corpus*, upon Pain of incurring the Penalty of 100 *l.* for the firſt Offence, and 200 *l.* for the ſecond Offence, and being diſabled to execute his Office. No Perſon ſhall be ſent Priſoner to *Ireland*, *Scotland*, or any Place beyond the Seas in the King's Dominions; which will be falſe Impriſonment, on which the Priſoner may recover treble Coſts, and not leſs than 500 *l.* Damages, &c. and the Party committing or detaining him alſo ſhall incur the Penalty of a *Præmunire*. Judges denying a *Habeas Corpus* ſhall forfeit 500 *l.* And the Officer refuſing to obey it, or to deliver a true Copy of the Commitment Warrant, is liable to a Forfeiture of 100 *l.* for the firſt Offence, &c. *Stat. Ibid.* This is the Subſtance of the *Habeas Corpus Act*; which hath been ſuſpended ſeveral Times in late Reigns, on Rebellions, &c. No Writ of *Habeas Corpus*, or other Writ to remove a Cauſe out of an Inferior Court, ſhall be allowed, except delivered to the Judge of the Court, before the Jury to try the Cauſe have appeared, and before any of them are ſworn. 43 *Eliz. cap.* 5. And Writs to remove Suits commenced in an Inferior Court of Record ſhall not be obeyed, unleſs delivered to the Steward of the Court before Iſſue or Demurrer joined, &c. And a Suit ſhall never be removed again, after a *Procedendo* is allowed. 21 *Jac.* 1. 23. Nor ſhall any Suit be removed where the Thing in Demand doth not exceed 5 *l.* or where the Freehold, Inheritance, Title of Land, &c. are concerned. And Judges are to proceed in Suits in Inferior Courts laid not to exceed the Sum of 5 *l.* although there may be Actions againſt the Defendant, wherein the Plaintiff's Demands may exceed that Sum, by Stat. 12 *Geo.* 1. *cap.* 29. If the Steward of an Inferior Court proceeds after an *Habeas Corpus* delivered and allowed, the Proceedings are void; and the Court of *B. R.* will award a *Superſedeas*; and grant an Attachment againſt the Steward for the Contempt. *Cro. Car.* 79, 296. A *Habeas Corpus* ſuſpends the Power of the Court below, ſo that if they proceed, it is void, and *coram non judice*. And on a *Habeas Corpus*, if the Record be filed, no *Procedendo* can go to the Court below; but where a Record below is not filed, or not returned, it may be granted. 1 *Salk.* 352. A *Habeas Corpus cum Cauſa* removes the Body of the Party for whom granted, and all the Cauſes depending againſt him; and if upon the Return thereof the Officer doth not return all the Cauſes, &c. it is an Eſcape in him. 2 *Lill. Abr.* 2. A Judge will not grant a *Habeas Corpus* in the Vacation, for a Priſoner to follow his Suits; but the Court may grant a ſpecial *Habeas Corpus* for a Priſoner to be at his Trial in the Vacation-time. *Ibid.* 3. And the Court may grant a *Habeas Corpus* to bring a Priſoner, not in Priſon on Execution, out of Priſon, to be a Witneſs at a Trial; though it is at the Peril of the Party ſuing out the Writ, that the Priſoner do not eſcape. *Style* 119. *Trin.* 1640. But no Perſon ought to take out a *Habeas Corpus* for any one in Priſon, without his Conſent; except it be to turn him over to *B. R.* or charge him with an Action in Court. 2 *Lill.* A Man brought into *B. R.* by *Habeas Corpus*, ſhall not be removed thence till he has anſwered there; he ſhall be detained until then, and after he may be removed. 1 *Salk.* 350. A Perſon is in Cuſtody upon a Criminal, and alſo on a Civil Matter, if he would move himſelf by *Habeas Corpus*, there ought to be but one *Habeas Corpus* of the Crown Side or Plea Side, and both Cauſes are to be returned. *Mod. Caſ.* 133. If there be Judgment againſt a Defendant in the Court of *B. R.* and another in *C. B.* on which he is in Execution in the *Fleet*, he may have an *Habeas Corpus* to remove himſelf into *B. R.* where he ſhall be in Cuſtody of the Marſhal for both Debts. *Dyer* 132. Where the Chief Juſtice of the Court of King's Bench commits a Perſon to the Marſhal of the Court by his Warrant, he ought not to be brought to the Bar by Rule, but by *Habeas Corpus*. 1 *Salk.* 349. In extrajudicial Commitments, the Warrant of Commitment ought to be returned *in hæc verba* on a *Habeas Corpus*; but when a Man is committed by a Court of Record, it is in the Nature of an Execution for a Contempt, and in ſuch Caſe the Warrant is never returned. 5 *Mod.* 156. The Cauſe of the Impriſonment muſt be particularly ſet forth in the Return of the *Habeas Corpus*, or it will not be good; for by this the Court may judge of it, and with a *Paratum habeo*, that they may either diſcharge, bail, or remand the Priſoner. 2 *Nelſ. Abr.* 915. 2 *Cro.* 543. If a Commitment is without Cauſe, or no Cauſe is ſhewn, a Priſoner may be delivered by *Habeas Corpus*. 1 *Salk.* 348. But on a *Habeas Corpus* granted by the Court of *B. R.* a Difference was made as to a Return; that where a Priſoner is committed by one of the Privy Council, there the Cauſe of his Commitment is to be returned particularly; but when he is committed by the whole Council, no Cauſe need be alledged. 1 *Leon.* 70, 71. And it has been adjudged, that on a Commitment by the Houſe of Commons, of Perſons for Contempt and Breach of Privilege, no Court can deliver on a *Habeas Corpus*: But *Holt* Ch. Juſt. was of a contrary Opinion. 2 *Salk.* 503, 404. A Writ of Error may be allowed by the King in ſuch a Caſe, &c. and it is not to be denied *ex debito Juſtitiæ*; though it has been a Doubt, whether any Writ of Error lay upon a Judgment given on a *Habeas Corpus*. *Ibid.* A Man may not be delivered from the Commitment of a Court of *Oyer* and *Terminer* by *Habeas Corpus*, without Writ of Error: And where there appears to be good Cauſe, and a Defect only in the Form of the Commitment, he ought not to be diſcharged. 1 *Salk.* 348. If a Perſon be committed by the Admiralty in Execution, he is not removeable by *Habeas Corpus* into *B. R.* to anſwer an Action brought againſt him there; but it might be otherwiſe if an Action had been before depending. *Ibid.* 351. Where there is a precedent Action in B. R. to the King's Suit, on which the Party is out on Bail, *Habeas Corpus* may be brought by the Bail, &c. and the Priſoner turned over; though this was greatly oppoſed in Favour of the King's Execution. *Ibid.* 353. A *Habeas Corpus* is a prerogative Writ, which concerns the Liberty of the Subject, and muſt be obeyed in *Counties Palatine*, &c. If it is not, an *Alias Habeas Corpus* will iſſue with a great Penalty. And on the Inſufficiency of the Return

turn of an *Habeas Corpus*, an *Alias Habeas Corpus* ſhall be granted. 2 *Cro.* 543. 12 *W.* 3. *B. R.* Where an Action is founded on the Cuſtom of *London*, for a Thing actionable there, and not elſewhere; if it be removed by *Habeas Corpus*, a *Procedendo* ſhall be granted: But the Declaration itſelf ought to be returned upon the *Habeas Corpus*, and then the Court will ſee what was the Cauſe, *&c.* For the Special Matter and all the Proceedings are to be in the Return in this Caſe; as well as in an Action on a By-Law, to take Notice thereof. *Carth.* 75, 76. Before a *Habeas Corpus* is returned and filed, it may be amended; but not afterwards. 2 *Lill. Abr.* 2. A *Habeas Corpus* is grantable, without Motion, to remove a Perſon upon an Arreſt; but not where committed for a Crime. 1 *Lev.* 1. In the ſuing out theſe Writs in *B. R.* to remove a Cauſe, *&c.* they are firſt to be carried to the other Court to be allowed; and ſome few Days after the Delivery, the Return muſt be called for, and ſpecial Bail put in at a Judge's Chamber; which being done, within four Days in Term, and ſix Days in the Vacation, the Cauſe is removed to the ſuperior Court. *Practiſ. Solic.* 262. And if the Defendant be actually a Priſoner, he ſhall not be delivered from Priſon till the Bail on the *Habeas Corpus* be accepted, or juſtified in Court. *Ibid.* If a Defendant arreſted cannot find Bail, and would be removed to the *King's Bench* or *Fleet* Priſon, a *Habeas Corpus* is to be delivered there; and they will make out a Return, and ſend an Officer with the Defendant to a Judge's Chamber, and there a *Committitur* is made, whereupon the Judge's Tipſtaff takes the Priſoner into Cuſtody, and charges him in Priſon; and he may agree with the Marſhal or Warden, for the Liberty of the Rules, *&c.* *Practiſ. Attorn. Edit.* 1. *pag.* 124. When the Defendant is in the Cuſtody of a Bailiff, or in any other Priſon, and would be turned over to the *King's Bench*, the Practice is the ſame; the *Habeas Corpus* directed to the Sheriff of *London* and *Middleſex* is to be delivered, and he, after Search in his Office for what Writs he hath againſt the Defendant, will make Return of them, and then the Bailiff or Keeper of the other Priſon, who hath the Defendant in Cuſtody, is to carry him to a Judge's Chamber, where he will be turned over, *ut ſupra.* Ibid.

Form of a *Habeas Corpus* returnable *immediate.*

GEORGE *the Second*, &c. *To the Mayor, Aldermen*, &c. *Greeting: We command you, that the Body of* A. B. *in our Priſon under your Cuſtody detained, as 'tis ſaid, together with the Day and Cauſe of his Taking and Detaining, by whatſoever Name the ſaid* A. B. *ſhall be charged in the ſame, you have under ſafe and ſecure Conduct, before our beloved and faithful* Philip *Lord* Hardwick, *our Chief Juſtice aſſigned to hold Pleas before us, at his Chamber ſituate in* Serjeants Inn *in* Chancery Lane, *immediately after the Receipt of this Writ, to do and receive all thoſe Things which the ſame our Chief Juſtice ſhall then and there conſider of in this Particular*, &c.

The *Habeas Corpus cum Cauſa*, to remove the Body and Cauſe is made out as follows:

A Writ of *Habeas Corpus* to remove a *Cauſe.*

GEORGE *the Second*, &c. *To the Mayor, Aldermen, and Sheriffs of the City of* London, *Greeting: We command you, that you have before us at* Weſtminſter *on* Tueſday *next after the* Octave *of St.* Hillary, *under ſafe and ſecure Conduct, the Body of* C. D. *who is ſaid to be detained in our Priſon under your, or one of your Cuſtodies, together with the Day and Cauſe of his being taken and detained, (by whatſoever Name the ſaid* C. D. *be therein charged) to anſwer to* A. B. *of a Plea, or in an Action of Debt*, &c. *And further to to and receive all and ſingular thoſe Things, which our Court before us ſhall then and there conſider of in this Behalf; And have you then there this Writ.* Witneſs, *&c.*

Habeas Corpus ad proſequendum, Is to remove a Man in order to Proſecution and Trial in the proper County, *&c.*

Habeas Corpus ad faciendum & Recipiendum, A Writ iſſuing out of the *Common Pleas* for Defendants that are ſued in Courts below, to remove their Cauſes into this Court: And if an Inferior Court will proceed againſt the Law, in a Thing of which the Juſtices of *C. B.* have Cogniſance, and commit a Man thereon, they may diſcharge him by *Habeas Corpus.* 1 *Mod.* 235.

Habeas Corpus ad Reſpondendum, Lies where a Perſon is impriſoned upon Proceſs at the Suit of another, in any Priſon, except the *King's Bench* Priſon; and a third Perſon would ſue the Priſoner in *B. R.* this Writ removes the Priſoner from the Priſon where he was into the *King's Bench*, to *anſwer* the Action in that Court; and for that Reaſon it is called *Habeas Corpus ad Reſpondend.* 2 *Lill. Abr.* 4. And where a Perſon is in Cuſtody in an Inferior Juriſdiction, the Plaintiff may bring his Writ returnable in *B. R.* and then the Defendant cannot nonſuit the Plaintiff, nor be bailed but by the Court of *B. R.* *&c.* *Ibid.* There is Mention in ſome of our Books of a *Habeas Corpus ad Subjiciendum*, for a Criminal to *ſubmit* to the Order of the Court.

Habeas Corpus ad Satiſfaciendum, Is had againſt a Man in the *Fleet* Priſon, *&c.* to charge him in Execution; which being delivered to the Warden will be ſufficient. *Practiſ. Attorn. Edit.* 1. *pag.* 173.

Habendum. In every *Deed* or Conveyance there are two principal Parts, the *Premiſſes*, and the *Habendum*; the Office of the Firſt is to expreſs the Name of the Grantor and Grantee, and the Thing granted: And the *Habendum* is to limit the Eſtate, by which the general Implication in the Premiſſes may be qualified: As in a Leaſe or Grant to two Perſons, if the *Habendum* be to one for Life, and the Remainder to the other for Life, this alters the general Implication of the Jointenancy, which would paſs by the Premiſſes, if the *Habendum* were not. 2 *Rep.* 55. And where Things which lie in Grant are conveyed to take Effect barely on Delivery of the Deed of Grant, without other Ceremony; in ſuch Caſe, if the *Habendum* be for a leſs Eſtate than in the Premiſſes, or be repugnant to it, the *Habendum* is void: But when a Ceremony is requiſite to the Perfection of an Eſtate granted, and not a bare Delivery only of the Deed; and to the Eſtate limited by the *Habendum*, nothing is required to perfect it; there though the *Habendum* is of a leſs Eſtate than the Premiſſes, the *Habendum* ſhall ſtand good, and qualify the Eſtate granted in the Premiſſes. 2 *Rep.* 23. 2 *Nelſ.* 920. An *Habendum* may not only qualify what is granted in the Premiſſes; but it may alſo enlarge what is thus granted, or explain the Premiſſes: Though the *Habendum* ſhall never introduce one who is a Stranger to the Premiſſes. 1 *Jones* 4. 3 *Leon.* 60. If a Bargain and Sale be made, without expreſſing to whom; although it were *Habendum* to *A. B.* who is a Party to the Deed, it is not good; becauſe the *Habendum* is only to limit an Eſtate, and not to give any Thing. *Cro. Eliz.* 585, 903. 2 *Lill.* 8. If one Thing be granted in the Premiſſes of a Deed, *Habendum* with another Thing, which is not appendant, *&c.* this other Thing ſhall not paſs. *Hob.* 161, 172. None can take by any Deed, who is not named in the Premiſſes: But though an Eſtate limited by the *Habendum* to a Man that is no Party, is void by Way of Eſtate; it may be good in Remainder. *Hob.* 313. *Godb.* 51. See *Deed.*

Habentia, Signifies Riches: In ſome antient Charters, *Habentes Homines* is taken for rich Men; and we read, *Nec Rex ſuum paſtum requirat, vel* Habentes Homines *quos nos dicimus* Feaſting Men. *Mon. Angl. Tom.* 1. *pag.* 100.

Haberdaſhers. If any Perſons work *Hats* with Foreign Wool, and not having ſerved an Apprenticeſhip to the Trade, *&c.* they ſhall forfeit the Goods and 5 *l.* And no Perſon may dye any *Caps* with Bark, *&c.* but only with Copperas and Gall, or Woad and Madder. Stat. 8 *Eliz. cap.* 7. None ſhall make *Hats* or *Felts*, that hath not ſerved ſeven Years in *Felt-making*; nor retain any but Journeymen who have lawfully ſerved; or have above two Apprentices at once, and thoſe not for leſs than ſeven Years Time, *&c.* in Pain of 5 *l.* a Month: But *Hatmakers* may employ their own Children in the Trade. 1 *Jac.* 1. *cap.* 17. And the Maſters and Wardens of *Haberdaſhers* in *London*, calling to them one of the Company of the *Cappers*, and another of the *Hatmakers*, and Mayors, *&c.* of Towns and Corporations, may ſearch all *Hatters*, and puniſh them that offend, by Fines. Stat. *Ibid.* A Statute was lately made to prevent the Exportation of *Hats* out of the Plantations abroad, which may be ſeiſed, and Offenders are liable to 500 *l.* Penalty; and for regulating the Trade of *Hat-making* there, *&c.* See Stat. 5 *Geo.* 2. *c.* 22.

Habere facias Poſſeſſionem, Is a judicial Writ that lies where one hath recovered a Term for Years in Action of *Ejectione firmæ*, to put him into *Poſſeſſion*. *F. N. B.* 167. And one may have a new Writ, if a former be not well executed; but where Execution is made, and the Writ returned, the Court will never grant a new *Habere facias, &c.* *Mich.* 21 *Car.* 1. *B. R.* A Sheriff delivered Poſſeſſion in the Morning, by Virtue of an *Habere facias Poſſeſſionem*, and ſome Time in the ſame Day after he was gone, the Defendant turned the Plaintiff out of Poſſeſſion; and it was held, that if he had been turned out immediately, or whilſt the Sheriff or his Officers were there, an Attachment might be granted againſt the Defendant; for this had been a Diſturbance in Contempt of the Execution; but it being ſeveral Hours after the Plaintiff was in Poſſeſſion, the Court doubted, but agreed to grant a new *Habere facias, &c.* 1 *Salk.* 321. 2 *Nelſ. Abr.* 779. If the Sheriff delivers Poſſeſſion of more than is contained in the Writ of *Habere facias Poſſeſſionem*, an Action of the Caſe will lie againſt him; or an Aſſiſe for the Lands. *Style* 238. The Sheriff cannot return upon this Writ, that another is Tenant of the Land by Right, but muſt execute the Writ, for that will not come in Iſſue between the Demandant and him. 6 *Rep.* 52.

Habere facias Seiſinam, Is a Writ directed to the Sheriff to give *Seiſin* of a Freehold Eſtate recovered in the King's Courts by *Ejectione firmæ*, or other Action. *Old Nat. Br.* 154. The Sheriff may raiſe the *Poſſe Comitatus* in his Aſſiſtance, to execute theſe Writs: And where a Houſe is recovered in a real Action, or by Ejectment, the Sheriff may break open the Doors to deliver Poſſeſſion and Seiſin thereof; but he ought to ſignify the Cauſe of his Coming, and requeſt that the Doors may be opened. 5 *Rep.* 91. This Writ alſo iſſues ſometimes out of the Records of a Fine, to give the Cogniſee Seiſin of the Land whereof the Fine is levied. *Weſt. Symb. par.* 2. And there is a Writ called *Habere facias Seiſinam, ubi Rex habuit Annum, Diem & Vaſtum*; for the Delivery of Lands to the Lord of the Fee, after the King hath had the Year, Day and Waſte in the Lands of a Perſon convict of Felony. *Reg. Orig.* 156.

Habere facias Viſum, A Writ that lies in divers Caſes in real Actions, as in *Formedon, &c.* where a *View* is required to be taken of the Lands in Controverſy. *Reg. Jud.* 26, 28, *&c.* *F. N. B.*

Habergeon, (From the Germ. *Hals, Collum, & Bergen, tegere*) An Helmet which covered the Head and Shoulders. *Blount.*

Haberjects, (*Haubergetæ*) A Sort of Cloths of a mixed Colour, mentioned in the Statute of *Magna Charta, cap.* 26.

Habiliments of War, Armour, Utenſils, or Proviſions for the Maintaining of War. 3 *Eliz. cap.* 4.

Hable, (*Fr.*) Signifies a Sea-port Town; this Word is uſed in 27 *H.* 6. *cap* 3.

Hachia, A Hack, Pick, or Inſtrument for Digging. *Placit.* 2 *Ed.* 3.

Hadbote, (*Sax.*) A Recompence or Amends for Violence offered to Perſons in Holy Orders. *Sax. Dict.*

Hade of Land, (*Hada Terræ*) Is a ſmall Quantity of Land, thus expreſſed:——*Surſum reddidit in Manus Domini duas acras terræ, continentes decem ſeliones & duas* Hadas, *Anglic.* Ten *Ridges*, and Two *Hades, jacent. inter Terr. &c.* Rot. Cur. Maner. de Orleton, *Anno* 16 *Jac.*

Haderunga, Reſpect or Diſtinction of Perſons; from the Sax. *Had, Perſona*, and *Arung*, honoured and admired. *Leg. Ethelred.*

Hadgonel, (*Sax.*) Seems to be a Tax or Mulct. ——*Item quando aliquis delegabit terram Burgagii, &c. quieta* Hadgonel *& maxime Celerario.* Mon. Angl. par. 1. fol. 302.

Hærede abducto, Is a Writ that anciently lay for the Lord, who having by Right the Wardſhip of his Tenant under Age, could not come by his Body, being carried away by another Perſon. *Old Nat. Br.* 93.

Hærede deliberando alii, qui habet Cuſtodiam terræ, A Writ directed to the Sheriff to require one that had the Body of him who was Ward to another, to deliver him to the Perſon whoſe Ward he was, by Reaſon of his Land. *Reg. Orig.* 161.

Hærede Rapto, Alſo a Writ; ſee *Raviſhment of Guard.* Reg. Orig. 163.

Hæredipeta, The next Heir to Lands.————*Et nullus* Hæredipeta *ſuo propinquo vel extraneo periculoſa ſane Cuſtodia committatur.* Leg. H. 1. cap. 70.

Hæretico comburendo, Is a Writ that lay againſt an *Heretick*, who having been convicted of *Hereſy* by the Biſhop, and abjured it, afterwards fell into the ſame again, or ſome other, and was thereupon delivered over to the Secular Power. *F. N. B.* 69. By this Writ, grantable out of Chancery, upon a Certificate of ſuch Conviction, *Hereticks* were burnt; and ſo were likewiſe Witches, Sorcerers, *&c.* But the Writ *De Hæretico comburendo* lies not at this Day. 12 *Rep.* 93. *Stat.* 29 *Car.* 2.

Hafne, Is a *Daniſh* Word for Haven or Port; and *Hafne Courts* are granted *inter alia* by Letters Patent of *Rich.* Duke of *Glouc.* Admiral of *England* 14 Aug. Anno 5 Edw. 4.

Haga, (Sax. *Manſio*) A Houſe in a City or Borough. *Domeſday.* An ancient *Anonymous* Author expounds *Haga* to be a Houſe and Shop, *Domus cum Shopa*: And in a Book which belonged to the *Abbey of St. Auſtin in Canterbury*, Mention is made of *Hagam Monachis, &c.* See *Co. Lit.* 56.

Hagia, A Hedge, (Sax. *Hæg*, melted into *Hay*, whence *Haia*.) Mon. Angl. Tom. 2. p. 273.

Haia; Alſo an Hedge: Sometimes taken for a Park, *&c.* encloſed. *Bract. lib.* 2. *c.* 40. And *Haiement* is uſed for a Hedge-Fence. *Rot. Inq.* 36 *Ed.* 3.

Hail-Shot. The Stat. 3 *Ed.* 6. againſt ſhooting of *Hail Shot* or more Pellets than one, by any Perſon under the Degree of a Lord, *&c.* is repealed. *Stat.* 6 & 7 *W.* 3. *c.* 13.

Hair-Powder, Not to be mixed with Lime, Alabaſter, *&c.* under Penalties, by Stat. 4 *Geo.* 2. Vide *Starch-Powder.*

Hake, A Sort of Fiſh dried and ſalted; hence the Proverb obtains in *Kent, As dry as a Hake.* Paroch. Antiq. 575. Spelm.

Haketon, A military Coat of Defence. *Walſ. in Ed.* 3.

Half-blood, Is no Impediment to *Deſcents* of Fee-ſimple Lands of the Crown, or to Dignities, or in Deſcent of Eſtates-tail: But in other Caſes it is an Impediment. Adminiſtration is grantable to the *Half-blood* of the Deceaſed, as well as the Whole-blood; and *Half-blood* ſhall come in for a Share of an Inteſtate's Eſtate, equally with the Whole-blood, they being next of Kin in equal Degree. *Style* 74. 1 *Vent.* 307. 22 *Car.* 2. 10. See *Demy Sangue.*

Halfendeal, Signifies the Moiety, or one Half of a Thing; as *Fardingdeal* is a Quarter, or fourth Part of an Acre of Land, *&c.*

Half-mark, (*Dimidia Markæ*) Is a Noble, or ſix Shillings and eight Pence in Money. If a *Writ of Right* is brought, and the Seiſin of the Plaintiff, or his Anceſtor, be alledged, the Seiſin is not traverſable by the Defendant, but he muſt render the *Half-mark* for the Inquiry of the Seiſin; which is as much as to ſay, that though the Defendant ſhall not be admitted to deny, that the Plaintiff or his Anceſtors were ſeiſed of the Land in Queſtion, and to prove his Denial; yet he may be allowed to tender *Half a Mark* in Money, to have an Inquiry made whether the Plaintiff, *&c.* were ſo ſeiſed, or not. *F. N. B.* 5. *Old Nat. Br.* 26. But in a Writ of Advowſon brought by the King, the Defendant may be permitted to traverſe the Seiſin, by Licence obtained from the King's Serjeant; ſo that the Defendant ſhall not be obliged to proffer the *Half-mark, &c.* F. N. B. 31.

Half-Seal, Is what is uſed in the *Chancery* for Sealing of Commiſſions to *Delegates*, upon any Appeal to the Court of Delegates, either in Eccleſiaſtical or Marine Cauſes. *Stat.* 8 *Eliz. c.* 5.

Half-Tongue. See *Medietas Linguæ*, as to Pleas and Trials of *Foreigners.*

Halke, (from the Sax. *Heale*, i. e. *Angulus*) An Hole; ſeeking in every *Halke, &c.*

Hall, (Lat. *Halla*, Sax. *Heall*) Was anciently taken for a Manſion-houſe or Habitation, being mentioned as ſuch in *Domeſday*, and other Records; and this Word is retained in many Counties of *England*, eſpecially in the County Palatine of *Cheſter*, where almoſt every Gentleman of Quality's Seat is called a *Hall.*

Hall, or Common Hall. There is a *Common Hall* for electing the Mayor, Sheriffs, and other Officers of the City of *London*, aſſembled at *Guild-hall* by the Lord Mayor. *Ord.* 7 *W.* 3.

Hallage, Is Toll paid for Goods or Merchandize vended in a *Hall*; and particularly applied to a Fee or Toll due for Cloth, brought for Sale to *Blackwell-Hall* in *London*: Lords of Fairs or Markets are entitled to this Fee. 6 *Rep.* 62.

Hallamas, The Day of *All-Hallows*, or *All Saints*, *viz. November* 1. and one of the croſs Quarters of the Year, was computed in ancient Writings from *Hallamaſs* to *Candlemas.* Cowel.

Hallamſhire, Is a Part of the County of *York*, in which the Town of *Sheffield* ſtands. 21 *Jac.* 1. *cap.* 23.

Hallmote or Halimote, (Sax. *Heall*, i. e. Aula, & *Gemote*, Conventus) Was that Court among the *Saxons*, which we now call a Court-Baron; and the Etymology is from the Meeting of the Tenants of one *Hall* or Manor. The Name is ſtill kept up in ſeveral Places in *Herefordſhire*; and in the Records of *Hereford* this Court is entered as follows, *viz.* Hereford Palatium, *ad* Halimot *ibidem tent.* 11 *Die Octob. Anno Regni Regis Hen.* 6, *&c.* It hath been ſometimes taken for a Convention of Citizens in their publick *Hall* where they held their Courts, which was alſo called *Folkmote* and *Halmote*: But the Word *Halimote* is rather the Lord's Court held within the Manor, in which the Differences between the Tenants were determined.——— *Omnis Cauſa terminetur vel Hundredo, vel Comitatu, vel* Halmote *ſocam habentium, vel Dominorum Curia.* Leg. Hen. 1. cap. 10.

Halymote, Is properly a *Holy* or Eccleſiaſtical Court; but there is a Court in *London*, formerly held on the *Sunday* next before St. *Thomas*'s Day, called the *Halymote* or *Holy Court*, (*Curia Sanctimotus*) for regulating the *Bakers* of the City, *&c.*

Halywercfolk, *Holyworkfolk*, or People who enjoyed Lands by the Service of Repairing or Defending a Church or Sepulchre; for which pious Labours they were exempt from all Feodal and Military Services. It did ſignify ſuch of the Province of *Durham* in particular, as held their Lands to defend the Corpſe of St. *Cuthbert*; and who claimed the Privilege not to be forced to go out of the Biſhoprick, either by the King or Biſhop. *Hiſt. Dunelm. apud Wartoni Ang. Sac. par.* 1. *p.* 749.

Ham, Is a *Saxon* Word, uſed for a Place of Dwelling; a Village or Town: And hence is the Termination of ſome of our Towns, as *Nottingham*, *Buckingham, &c.* Alſo a Home-cloſe, or little narrow Meadow is called *Ham.*

Hambling, or Hameling of Dogs, Is the ancient Term uſed by Foreſters for *expeditating.* Manwood.

Hamlet, and Hamel or Hampſel, (from the Sax. *Ham*, i. e. *Domus*, and Germ. *Let*, Membrum) Signify a little Village, or Part of a Village or Pariſh; of which three Words, *Hamlet* is now only uſed; though *Kitchen* mentions the other Two, *Hamel* and *Hamſel.* By *Spelman* there is a Difference between *Villam integram, Villam dimidiam*, and *Hamletam*; and *Stow* expounds it to be the Seat of a Freeholder. Several Country Towns have *Hamlets*, as there may be ſeveral *Hamlets* in a Pariſh; and ſome particular Places may be out of a Town or *Hamlet*, though not out of the County. *Wood* 3.

Hamfare, Breach of the Peace in a Houſe. *Brompton in Legibus* H. 1. *c.* 80.

Hamſoken, (Sax. *Hamſocen*) Is the Liberty or Privilege of a Man's own Houſe; alſo a Franchiſe granted to Lords of Manors, whereby they hold Pleas, and take Cogniſance of the Breach and Violation of that Immunity. And likewiſe *ſignificat quietantiam Miſericordiæ intrationis in alienam Domum Vi & Injuſte.* Fleta, lib. cap. 47. In *Scotland* Violations of this Kind are equally puniſhable with Raviſhing a Woman. *Skene.* And our old Records expreſs *Burglary* under the Word *Hamſocne.*

Handborow, A Surety or manual Pledge, *i. e.* an inferior Undertaker; for *Headborow* is the Superior or Chief. *Spelm.*

Hand-habend, A Thief caught in the very Fact, having the Goods ſtolen in his Hand. *Leg. Hen.* 1. *cap.* 59. *Fleta, lib.* 1. *cap.* 38.

Hand in and out, Is the Name of an unlawful *Game*, now diſuſed and prohibited by the Statute 17 *Ed.* 4. *c.* 2.

Handful, In Meaſuring is four Inches by the Standard. *Anno* 33 *H.* 8. *c.* 5.

Handgrith, (from the Sax. *Hond*, manus, and *Grith, Pax*) Peace or Protection given by the King, with his own Hand. ——— *Hæc mittunt hominem in Miſericordia Regis, infractio ſeu violatio pacis quam per* Manum *ſuam dabit alicui.* Leg. Hen. 1.

Hand-gun, An Engine to deſtroy Game. *Stat.* 33 *Hen.* 8. See *Guns.*

Handy-warp, A Kind of Cloth. *Stat.* 4 & 5 *Ph. & M. c.* 5.

Hanig, A Term for cuſtomary Labour to be done and performed. *Mon. Ang. Tom.* 2. *p.* 264.

Hankwit alias Hangwite, (from the Sax. *Hangan*, i. e. ſuſpendere, & *Wite*, Mulcta) Is a Liberty granted to a Perſon, whereby he is quit of a Felon or Thief hanged without Judgment; or eſcaped out of Cuſtody. *Raſtal.* We read it interpreted to be quit *de Laron pendu ſans Serjeants le Roy, i. e.* without legal Trial: And elſewhere, *Mulcta pro Latrone præter juris exigentiam ſuſpenſo vel elapſo.* And it may ſignify a Liberty, whereby a Lord challenges the Forfeiture for him who hangs himſelf within the Lord's Fee. *Domeſday.*

Hanper or **Hanaper,** (*Haniperium*) The *Hanaper* of the *Chancery*; it ſeems to be the ſame as *Fiſcus* originally in the *Latin.* 10 R. 2. c. 1.

Hanſe, (an old *Gothiſh* Word) Signifies a Society of *Merchants,* for the good Uſage and ſafe Paſſage of Merchandize from one Kingdom to another. The *Hanſe* or *Mercatorum Societas,* was and in Part yet is endowed with many large Privileges by Princes within their Territories; and had four principal Seats or *Staples,* where the *Almain,* or *German* and *Dutch* Merchants, being the Founders of this Society, had an eſpecial Houſe; one of which was here in *London,* called the *Steel-Yard.* Ortelius's Index ad Theatr. verbo *Aſiatici.*

Hans Towns, In *Germany, &c.* ſo named, either becauſe they lay near the Sea, or from the Gothick *Anſi,* which is taken for thoſe who were the Richeſt of the People; and from thence it is inferred, that theſe Towns were the chiefeſt for Trade or Riches: Or it may come from the German *Hanſa, i. e. Societas*; a Company of Merchants excelling others in Trade. There were at firſt ſeven Towns diſtinguiſhed by this Name; but afterwards they were Seventy in Number.

Hantelode, An Arreſt, from the Germ. *Hant,* an Hand, and *Load, i. e.* laid; *Manus immiſſio:* As Arreſts are made by laying hold on the Debtor, *&c.*

Hap, (Fr. *Happer, i. e. Rapere,* to catch) Is of the ſame Signification with us as in the *French*; as to *hap* the Rent, is where Partition being made between two Parceners, and more Land allowed to one than the other, ſhe that has moſt of the Land charges it to the other, and ſhe *haps* the Rent, whereon Aſſiſe is brought, *&c.* This Word is uſed by *Littleton,* where a Perſon *happeth* the Poſſeſſion of a Deed Poll. *Litt. ſ.* 8.

Haque, A little Hand-gun, prohibited to be uſed by Statute 33 *H.* 8. *c.* 6. and 2 *&* 3 *Ed.* 6. *cap.* 14. There is the *Half-Haque,* or *Demy-Haque,* within the ſaid Acts.

Haquebut, A bigger Sort of Hand-gun than the *Haque,* from the Teuton. *Haeck-Buyſe*; it is otherwiſe called an *Harquebuſs,* and vulgarly a *Hagbut.* 2 & 3 Ed. 6. c. 14. *and* 4 *&* 5 Ph. and Mar. c. 2.

Haratium, (from the Fr. *Haras*) A Race of Horſes and Mares kept for Breed; in ſome Parts of *England* termed a *Stud of Mares, &c.* Spelm. Gloſſ.

Harbinger, An Officer of the King's Houſe, *&c.* See *Herbinger.*

Harbours and Havens: There are many Acts of Parliament for Repairing and Improving the *Harbours* and *Havens* of this Kingdom; ſuch as the 23 *Hen.* 8. *cap.* 7. and 28 *H.* 8. relating to the *Havens* and Ports of *Plymouth, Dartmouth, Falmouth, &c.* in *Devonſhire* and *Cornwall*; and none ſhall labour in Tin Works, near Rivers of thoſe *Havens*; but ſhall prevent the Fall of Stones and Gravel therein. Caſting and unlading Ballaſt, Rubbiſh, *&c.* in any *Harbour, Haven,* or Road, incurs the Penalty of 5 *l.* by Stat. 34 *Hen.* 8. *cap.* 9. The 27 *Eliz. cap.* 1. was made for repairing *Orford Haven* in *Suffolk*; and 13 *&* 14 *Car.* 2. and 4 *Geo.* 1. *c.* 13, *&c.* for the Reparation of *Dover Harbour, &c.* And Duties are granted by theſe Statutes, towards effecting thereof. *Vide* the Statutes.

Hardwic, Mentioned in *Domeſday,* and by *Spelman.* See *Herdewick.*

Hares, The Penalty of Taking and Killing them, by Statute 1 *Jac.* 1, *&c.* Vide *Game.*

Harlots. If any Vintner, Alehouſe keeper, *&c.* in *London,* ſhall permit any *Harlots,* or common Women of their Bodies, to come into their Houſes to eat, or drink, or otherwiſe to be converſant or abide there; they ſhall be liable to Impriſonment, and alſo the Women and *Harlots.* Artic. Wardmote 23.

Harneſs, (Fr. *Harniſch*) Signifies all Warlike Inſtruments. *Hoved p.* 725. *Matt. Pariſ.* The Tackle or Furniture of a Ship, was alſo called *Harneſs* or *Harneſium.* Pl. Parl. 22 Edw. 1.

Haro, Harron, An *Outcry* after Felons and Malefactors; and the Original of this *Clameur de Haro* comes from the *Normans.* Cuſtum. de Normand. Vol. 1. p. 104

Harping-Irons, Are Iron Inſtruments for the Striking and Taking of *Whales:* And thoſe that ſtrike the Fiſh with them are called *Harpiniers.* Merch. Dict.

Harriers, (*Harrecti canes*) Small Hounds, for hunting the *Hare:* Anciently ſeveral Perſons held Lands of the King, by the Tenure and Service of keeping Packs of *Beagles* and *Harriers.* Cart. 12 Ed. 1.

Hart, Is a Stag or male Deer of the Foreſt five Years old compleat; and if the King or Queen do hunt any ſuch, and he eſcape alive, then he is called an *Hart Royal:* And where by the Hunting he is chaſed out of the Foreſt, Proclamation is uſually made in the adjacent Places, that in Regard of the Diverſion the Beaſt has afforded the King or Queen, none ſhall hurt or hinder him from returning to the Foreſt; and then he is called a *Hart Royal proclaimed.* Manwood's Foreſt Laws, par. 2. cap. 4.

Harveſt Workmen, May be licenſed by Juſtices, of Peace to go into other Counties to work, *&c.* *Stat.* 13 *&* 14 *Car.* 2. *c.* 12.

Haſta Porci, A Shield of Brawn.——Johannes de Muſgrave *tenet Terras in* B. *de Domino Rege per ſervitium deferendi Domino Regi unam* Haſtam Porci, *&c.* Paroch. Antiq. 450.

Hatches, Are certain Dams made of Clay and Earth, to prevent the Water iſſuing from the Works and *Tin* Waſhes in *Cornwall,* from running into the freſh Rivers: And the Tenants of ſeveral Manors there are bound to do certain Days Work *ad le Hatches,* or *Hacches. Stat.* 27 *Hen.* 8. *c.* 23. And from a *Hatch,* Gate, or Door, ſome Houſes ſituate on the Highway, near a common Gate, are called *Hatches.*

Hats and Caps, A Title in the Statute Law, ſee Stat. 8 *Eliz. c.* 7. *Haberdaſhers.*

Haur, (from the Fr. *Hair*) Is uſed for Hatred. *Leg. W.* 1. *c.* 16.

Hauthoner, (*Homo Loricatus*) A Man armed with a Coat of Mail.————*Et faciendo ſervitium de* Hauthoner, *quantum pertinet ad Villam, &c.* Charta Galfridi de Dutton, temp. H. 3.

Haw, A ſmall Parcel of Land, ſo called in *Kent*; as a *Hemphaw* or *Beanhaw,* lying near the Houſe, and encloſed for thoſe Uſes. *Sax. Dict.* But Sir *Edward Coke,* in an ancient Plea concerning *Feverſham* in *Kent,* ſays *Hawes* are Houſes. *Co. Litt.* 5. See *Haga.*

Hawgh or **Howgh,** Signifies a green Plot in a Valley, as they uſe it in the *North* of *England.* Camb.

Hawberk alias **Hawbert,** (Fr. i. e. *Lorica*) He that holds Land in *France* by Finding a Coat or Shirt of Mail, and to be ready with it when he ſhall be called, is ſaid to have Hauberticum *feudum, Fief de* Haubert: And *Hawberk,* with our Anceſtors, had the ſame Signification, and ſo it ſeems to be uſed in the Stat. 13 *Ed.* 1. *cap.* 6.

Hawks. The Stealing of an *Hawk,* or Concealing it, after Proclamation made by the Sheriff, is Felony with Clergy: But this extends only to long-winged *Hawks,* of the Kind of *Falcons*; and not to *Goſs-Hawks,* or *Sparrow Hawks.* 34 *Ed.* 3. 37 *Ed.* 3. *cap.* 19. 3 *Inſt.* 97. None ſhall kill or ſcare away any *Hawks* from the Coverts where they uſe to breed, on Pain of 10*l.* to be recovered before Juſtices of Peace, and divided between the King and Proſecutor. *Stat.* 11 *Hen.* 7. *cap.* 17. A *Hawk* taken up muſt be delivered to the Sheriff, if taken by a mean Perſon, to be proclaimed in the Towns of the County, *&c.* And Action of Trover and Converſion lies for an *Hawk reclaimed*, and which may be known by her Vervels, Bells, *&c.* *Hawking* for Game, ſee *Game.*

Hawkers. Thoſe deceitful Fellows who went from Place to Place, buying and ſelling Braſs, Pewter, and other Goods and Merchandize, which ought to be utter'd in open Market, were of old ſo called; and the Appellation ſeems to grow from their uncertain Wandering, like Perſons that with *Hawks* ſeek their Game where they can find it. They are mentioned Stat. 25 *Hen.* 8. *cap.* 6. and 33 *Hen.* 8. *cap.* 4. *Hawkers* and *Pedlars*, *&c.* going from Town to Town, or Houſe to Houſe, are now to pay a Fine and Duty to the King. If they travel with an Horſe, Aſs, *&c.* the ſame is 8*l.* and if on Foot, 4*l.* and to be licenſed by Commiſſioners appointed for that Purpoſe, or be liable to certain Penalties; and any Perſon may ſeiſe a *Hawker*, *&c.* till he produce a Licence: Travelling without Licence, ſhall forfeit 12*l.* and refuſing to ſhew their Licenſes 5*l.* There is alſo a Forfeiture for lending a Licence to hire; and it ſhall be void. 8 & 9 *W.* 3. *cap.* 25. But Traders in the Linen and Woollen Manufactures, ſending their Goods to Markets and Fairs, and ſelling them by Wholeſale; Makers of Goods, ſelling thoſe of their own Making; and Makers and Sellers of *Engliſh* Bone-lace, going from Houſe to Houſe, *&c.* are excepted out of the Acts, and not to be taken as *Hawkers.* 3 & 4 *Ann.* 4. 4 *Geo.* 1. If *Hawkers* and Pedlars, offer any Tea, *&c.* to Sale, tho' they have Permits, the ſame may be ſeiſed as forfeited, *&c.* by the late Act againſt running uncuſtomed Goods. 9 *Geo.* 2. *c.* 35. We now call thoſe Perſons *Hawkers*, who go up and down the Streets of *London*, crying *News-Books* and Papers, and ſelling them by Retail, and the Women and others who ſell them by Wholeſale from the Preſs, are called *Mercuries.*

Hay, *Haya*, Fr. *Haye*, A Hedge or Incloſure; alſo a Net to take Game. See *Haia.*

Hay-bote, Is a Liberty to take Thorns and other Wood, to make and repair Hedges, Gates, Fences, *&c.* either by Tenant for Life, or Years: It is alſo ſaid to be Wood, for the making of Rakes and Forks, with which Men in *Summer* make *Hay.* See *Co. Litt.* 41.

Hay-market. Carts of *Hay*, which ſtand to be ſold in the *Hay-market*, are to pay 3*d.* *per* Load towards the Paving and Amending the Street; and ſhall not ſtand loaden with *Hay* after Three o'Clock in the Afternoon, *&c.* on Pain of forfeiting 5*s.* *Hay* ſold in *London*, *&c.* between the firſt of *June* and laſt of *Auguſt*, being new *Hay*, is to weigh 60 Pounds a Truſs; and old *Hay* the reſt of the Year 56 Pounds, under the Penalty of 2*s.* 6*d.* for every Truſs offer'd to Sale, *&c.* *Stat.* 2 *W.* & *M.* *c.* 8. 8 & 9 *W.* 3.

Hayward, (from the Fr. *Haye*, i. e. ſepes, & *Garde*, Cuſtodia) Is one that keeps the common Herd of Cattle of a Town; and the Reaſon of his being called *Hayward* may be, becauſe one Part of his Office is to ſee that they neither break nor crop the Hedges of incloſ'd Grounds, or for that he keeps the Graſs from Hurt and Deſtruction. He is an Officer appointed in the *Lord's Court*: And is to look to the Fields, and impound Cattle that do treſpaſs therein; to inſpect that no Pound-breaches be made, and if any be, to preſent them at the Leet, *&c.* *Kitch.* 46. There may be a Cuſtom in a Manor, to have a Surveyor of the Fields or *Hayward*, and for him to diſtrain Cattle Damage-feaſant; but he muſt avow in the Name of him who hath the Freehold. 2 *Cro.* 430. See *Agillarius.*

Hazard, Is an unlawful Game at Dice; and thoſe that play at it are called *Hazardors*: And we read, Hazardor *communis ludens ad falſos talos adjudicatur, quod per ſex Dies in diverſis locis ponatur ſuper Colliſtrigium.* Int. Plac. Trin. 2 Hen. 4. Suſſex 10.

Headborow, (from the Sax. *Head*, caput, & *Borge*, fidejuſſor) Signifies him that is *Head* of the *Frank-pledge* in *Boroughs*; and had the principal Government within his own Pledge; and as he was called *Headborow*, ſo he was alſo ſtiled *Borowhead*, *Burſholder*, *Thirdborow*, *Tithingman*, *&c.* according to the Uſage and Diverſity of Speech in ſeveral Places. *Lamb.* Theſe *Headborows* were the chief of the ten Pledges: the other Nine being denominated *Handborows*, or inferior Pledges: *Headborows* are now a Kind of *Conſtables.*

Headland, Is the upper Part of Ground left for the Turning of the Plough; whence the *Headway.* Paroch. Antiq. 587.

Head-pence, Was an Exaction of a certain Sum heretofore collected by the Sheriff of *Northumberland* of the Inhabitants of that County, without any Account therefore to be made to the King; which was aboliſhed by the Stat. 23 *H.* 6. *c.* 7.

Head-Silver, Paid to Lords of Leets. See *Common Fine.*

Healfang or **Halsfang**, Is compounded of two *Saxon* Words *Hals*, i. e. *Collum*, and *Fang*, capere, and ſignifies that Puniſhment, *qua alicui collum ſtringatur*, (*Colliſtrigium*). Sometimes it is taken for a pecuniary Mulct, to commute for ſtanding in the *Pillory*; payable to the King or Chief Lord. *Leg. H.* 1. *cap.* 11.

Hearth-Money, A Tax. Vide *Chimney-Money.*

Hebber-men, Fiſhermen, or Pochers below *London-Bridge*, who fiſh for Whitings, Smelts, *&c.* commonly at *Ebbing* Water; mentioned in one of the Articles of the *Thames* Jury, at the Court of the Conſervator of the River of *Thames*, printed *Anno* 1632. And theſe Perſons are puniſhable by Statute 4 *H.* 7. 15.

Hebbing-wears, Are Wears or Engines made or laid at *Ebbing-Water.* 23 H. 8. 5.

Hebdomas, (Lat.) A Week. See *Week.*

Hebdomadius, The Week's Man, Canon or Prebendary in a Cathedral Church, who hath the Care of the Choir, and the Officers belonging to it for his own Week. *Reg. Ep'ſc. Hereford. MS.* See *Ebdomary.*

Heck, Is the Name of an Engine to take Fiſh in the River *Owſe.* 23 H. 8. c. 18.

Heccagium, Is ſuppoſed to be Rent paid to the Lord of the Fee, for Liberty to uſe the Engines called *Hecks.*

Heda, A ſmall Haven, Wharf, or landing Place. *Domeſd.* See *Hith.*

Hedagium, Toll or Cuſtomary Duties paid at the *Hith* or Wharf, for the Landing of Goods, *&c.* from which Exemption was granted by the King to ſome particular Perſons and Societies. *Cartular. Abbat. de Radinges, MS. f.* 7.

Hedge-bote, Is neceſſary Stuff to make *Hedges*, which the Leſſee for Years, *&c.* may of common Right take in his Ground leaſed. See *Hay-bote.*

Hedge-breakers. By the Statute 43 *Eliz. cap.* 7. *Hedge breakers*, *&c.* ſhall pay ſuch Damages as a Juſtice of Peace ſhall think fit; and if not able to pay the Damages, ſhall be committed to the Conſtable to be whipp'd. And Conſtables, and others, may apprehend Perſons ſuſpected of *Hedge-ſtealing*, and carry them before a Juſtice; where not giving a good Account how they came by Wood, *&c.* they are not only to make ſuch Recompence as the Juſtice of Peace ſhall adjudge, but pay a Sum not exceeding 10*s.* for the Uſe of the Poor, or be ſent to the Houſe of Correction for a Month, by 15 *Car.* 2. 2. Perſons convicted of Buying ſtolen

Wood, ſhall forfeit treble Value to him from whom taken. *Ibid.*

Heir, (*Hæres, ab hæreditate*) Is he that ſucceeds by Deſcent to Lands, Tenements and Hereditaments, being an Eſtate of Inheritance. The Eſtate muſt *be Fee*, becauſe nothing paſſeth *Jure Hæreditatis* but *Fee*; and by the *Common Law* a Man cannot be *Heir* to Goods and Chattels: But the *Civilians* call him *Hæredem, qui ex Teſtamento ſuccedit in Univerſum jus Teſtatoris.* Some Writers have made a Diſtinction of Hæres *ſanguinis, & Hæreditatis*; a Man may be *Hæres ſanguinis* to a Father or Anceſtor, and yet upon Diſpleaſure be defeated of his Inheritance; And there is an *Ultimus Hæres*, being he to whom Lands come by *Eſcheat*, for Want of lawful *Heirs*, *viz.* The Lord of whom the Lands are held, or the King. *Bract. lib.* 7. *cap.* 17. *Hæres*, according to Sir *Edw. Coke*, is he *qui ex juſtis Nuptiis procreatus eſt*, to whom Lands and Tenements by the Act of God, and Right of Blood, do deſcend. *Co. Litt.* 7. The eldeſt Son, after the Death of his Father, is his *Heir*, &c. And if there be Grandfather, Father and Son, and the Father die before the Grandfather, and after the Grandfather dies ſeiſed; the Land ſhall go to the Son or Daughter of the Father, and not to any other Children of the Grandfather. *Bro.* 303. And this *Heir* is called *Hæres jure Repræſentationis*, becauſe he doth repreſent his Father's Perſon: But if in this Caſe, the Father die without any Child; his next eldeſt Brother ſhall have the Land as *Heir*, or for Want of a Brother, it deſcends to the Siſters of the Father. *Ibid.* A Man having Iſſue only a Daughter, dies, leaving his Wife with Child of a Son, which is afterwards born; here the Son after his Birth is *Heir* to the Land, but till then the Daughter is to have it. 9 *H.* 6. 23. *Perk.* 521. There are ſome Perſons who may not be Heirs; as a Baſtard born out of lawful Wedlock; an Alien, born out of the King's Allegiance, tho' in Wedlock; a Man attainted of Treaſon or Felony, whoſe Blood is corrupted; theſe laſt may not be *Heirs, propter Delictum*; and an Alien cannot be *Heir, propter Defectum ſubjectionis*; nor may one made Denizen by Letters Patent; though 'tis otherwiſe of a Perſon naturalized by Act of Parliament. *Co. Litt.* 8. 2 *Danv. Abr.* 552. A Baſtard, by Continuance, may be *Heir* againſt a Stranger: And an Hermaphrodite may be *Heir*, and take according to that Sex which is moſt prevalent; but a Monſter, that hath not human Shape cannot be *Heir*, altho' a Perſon deform'd may. *Co. Litt.* 7. 2 *Danv.* 553. Ideots and Lunaticks, Perſons excommunicate, attainted in *Præmunire*, Out-laws in Debt, &c. may be *Heirs. Ibid.* There is a *Lineal Heir*, as the Son of a Perſon; and a *Collateral Heir*, as Brother, &c. Yet a Man can have no right *Heir*, to take Lands during his Life. *Dyer* 99. The Word *Heir* is not a good Deſcription of a Perſon in the Life-time of the Anceſtor; and an eldeſt Son ſhall not take by the Name of *Heir* in the Life-time of his Father. 2 *Leon.* 70. A Man cannot raiſe a Fee-ſimple Eſtate to his right *Heirs*, by the Name of *Heirs*, as a Purchaſe, by Conveyance or otherwiſe; but in ſuch Caſe the *Heir* ſhall be in by Deſcent: *Fortior & Potentior eſt Diſpoſitio Legis, quam Hominis. Hob.* 30. 2 *Lill. Abr.* 11. By the Law of *England*, no Perſon can take to himſelf an Inheritance in Fee-ſimple by Deed, without the Word *Heirs*; but he may by Deviſe: Tho' in Caſes where the Word *Heir* is wanting, it has been adjudged that if there are other Words equivalent, and the Intereſt in the Thing granted paſſeth by the Conſideration only, without any further Ceremony in the Law, an Eſtate in Fee may paſs. 2 *Nelſ. Abr.* 928. In a Deviſe by Will, or Exchange, &c. the Word *Heirs* is not neceſſary: But Eſtates of Inheritance which are otherwiſe conveyed require it. *Jenk. Cent.* 196. The Word *Heir* is *nomen collectivum*, and extends unto all Heirs: And under *Heirs*, the *Heirs* of *Heirs* are comprehended *in Infinitum*; if Lands are given to a Man and his *Heirs*, all his *Heirs* are ſo totally in him, that he may give his Lands to whom he will. *Trin.* 23 *Jac.* 1. *Noy* 56. The *Heir* is favoured by the *Common Law*, and the Anceſtor could not give away his Lands by Will from his *Heir* at Law, without the Conſent of the *Heir*, till the Statute 32 *H.* 8. 2 *Lill.* 11. *Hill.* 23 *Car. B. R.* Dubious Words in a Will ſhall be conſtrued for the Benefit of the Heir; and not to diſinherit him: And the *Heir* at Law is preferred in Chancery in a doubtful Caſe. *Noy* 185. *Chanc. Rep.* 7. Where Lands were deviſed to the *Heirs* of *J. S.* then living; it was held, that his eldeſt Son ſhould have them, though in Strictneſs he was not *Heir* during his Father's Life, but *Heir* apparent: But this was by Reaſon of the Words *then living*, which made it a Deſcription of the Perſon. *Preced. Canc.* 57. Not only Land, but Rent not due at the Death of the Anceſtor Leſſor, ſhall go to the *Heir*; ſo Corn ſown by Tenant for Years, where his Term expires before the Corn is ripe; every Thing faſtned to the Freehold, Timber-Trees, Deeds belonging to the Inheritance; Deer, Conies, Pigeons, Fiſh, &c. 2 *Nelſ. Abr.* 927. An *Heir* ſhall enforce the Adminiſtrator to pay Debts with perſonal Eſtate, to preſerve the Inheritance. *Chanc. Rep.* 280, 293. If an Executor hath Aſſets, he is compellable in Equity to redeem a Mortgage, for the Benefit of the *Heir*; and it is the ſame where the *Heir* is charged in Debt. *Hard.* 511. And when the *Heir* is ſued for the Debt of his Anceſtor, and pays it, he ſhall be re-imburſed by the Executor of the Obligor, who hath perſonal Aſſets. 1 *Chanc. Rep.* 74. But in Action of Debt brought upon a Bond againſt an *Heir*, 'tis no good Plea for the *Heir* to ſay, that the Executors have Aſſets in their Hands. *Dyer* 204. For a Creditor may ſue either *Heir* or Executor; and *Heirs* and Executors are both chargeable upon Specialties. If an *Heir* hath Aſſets, and the Executor alſo, it is at the Election of the Obligee to have Action of Debt againſt the one, or the other; but he ſhall not charge them doubly. 2 *Plowd.* 433. If an *Heir* has made over Lands fallen to him by Deſcent, Execution ſhall be had againſt him to the Value of the Land, &c. if it be not ſold *bona fide* before the Action brought, in which Caſe there is a Saving by the Statute 3 & 4 *W. & M. cap.* 14. And whether the *Heir* hath Lands by Deſcent, ſhall be tried and enquired of, with the Value, by a Jury, to make the *Heir* anſwerable. 5 *Mod.* 122. It has been held, that the *Heir* is never chargeable without an expreſs *Lien* and Aſſets; and even then no longer than he hath Aſſets, for he is not obliged to keep them till he is charged: But if he hath Aſſets, he ought to plead truly, and to confeſs them; otherwiſe Judgment ſhall be given againſt him *de Terris propriis*, for 'tis then his Debt. *Jones* 88. 3 *Salk.* 179 When a Man recovers againſt an *Heir*, by Default or Verdict, on pleading *Riens per Deſcent*, a ſpecial Judgment *de Terris Deſcenſis*, may be entered againſt the *Heir*, and the Plaintiff ſhall have all the Lands by Deſcent in Execution: Though if the Judgment be general againſt the *Heir*, without praying ſuch ſpecial Judgment, he can have only a Moiety of the Lands by *Elegit. Plowd.* 439. 2 *Leon* 16. Here the Plaintiff may ſurmiſe, that the *Heir* hath ſuch Land by Deſcent, and pray to have Execution of all his Land. *Dyer* 149. *Roll.* 72. The Judgment and Execution ſhall be general, unleſs the *Heir* acknowledges the Action, and ſhews that he hath ſo much by Deſcent; but if he will not ſhew what he hath by Deſcent, he loſes the Benefit of the Law. *Mich.* 1 *W. & M. B. R. Cro. Eliz.* 692. Where an *Heir* is ſued for the Debt of his Anceſtor, his Body ought not to be taken in Execution, or any other Lands which he had not by Deſcent; yet if the Heir do not ſhew what Lands he had by Deſcent, it ſhall be intended that he had Aſſets to pay the Debt. *Moor* 522. If the *Heir*, in Caſe where the Anceſtor hath bound himſelf and his *Heirs*, have never ſo much Land come to him by Gift in Tail, or Conveyance of the Father, and not by Deſcent, he is not chargeable at all: And ſo it is for any Eſtate but what is in Fee-ſimple; as where Lands are granted to *J. S.* and his *Heirs* during the Life of another, *&c.* the *Heir* ſhall not be charged for this, no more than for Land entailed. 10 *Rep.* 98. No Lands can be charged but Fee-ſimple; and therefore in a Suit againſt the *Heir*, the Judgment is only for the Land deſcended, and not for other Lands, *&c.* but where it is by his own Fault, as by a falſe Plea, or the like. 1 *Inſt.* 102, 376. A Man binds himſelf and his Heirs in an Obligation, and hath Lands and *Heirs* on the Part of the Father, and the Part of the Mother; the *Heirs* and Lands of both, and not of one alone, muſt be charged in Debt: And the Plaintiff ſhall have ſeveral Actions; and Execution ſhall ſtay, till it may be had againſt both of them. 2 *Rep.* 25. *Hob.* 25. Alſo if one bind himſelf and his *Heirs*, and leave Land at *Common Law*, and Lands in *Gavelkind*; the Obligee muſt ſue all the *Heirs*. *Hob.* 25. An *Heir* ſued on a Specialty, ſhall have his Age; and if one of the *Heirs* be within Age, the Parol ſhall be ſtay'd for all. *Moor, ca.* 203. A collateral *Heir* is chargeable for the Debt of his Anceſtor; but the Declaration muſt be ſpecial, and he is to be charged as collateral *Heir*, not as immediate *Heir*; and if a Son happens between, who dies, he muſt be ſaid Uncle and *Heir* of the Son, who was *Heir* of the Debtor, *&c. Cro. Car.* 151. And a Child born, though he lives but an Hour, has the Fee of Lands veſted in him as *Heir. Hetl.* 134. In a Writ a Man need not ſhew how he is *Heir*; but he muſt in a Declaration, *&c.* tho' it is only for Form to ſet forth how a Perſon is *Heir*, becauſe it is not traverſable; and *Heir*, or no *Heir*, is iſſuable. *Moor* 885. If an *Heir* ought to confeſs the Debt on Action brought againſt him, and the Debt be not denied, it muſt be admitted. 1 *Lutw.* 442. Debt againſt the *Heir*, upon the Bond of his Anceſtor, is to be brought in the *Debet* and *Detinet*, becauſe the *Heir* himſelf is bound; and not in the *Detinet* only, tho' that is cured by a Verdict. *Sid.* 342. 1 *Lev.* 224. An *Heir* is not bound by the Bond of the Anceſtor, unleſs he is expreſly bound: And if in a Bond a Man binds his *Heirs*, but not himſelf, the Bond is void. 2 *Saund.* 136. *Cro. Jac.* 570. Alſo a Man ſhall never bind his *Heir* to Warranty, where himſelf was not bound: If he makes a Feoffment in Fee, and binds his *Heirs* only to Warranty, the Feoffment is void, for the *Heir* ſhall be bound to Warranty in ſuch Caſes only, where the Anceſtor was bound, without which it cannot deſcend upon him. 1 *Inſt.* 386. And Warranties and Eſtoppels ſhall deſcend upon the *Heir* general, and not upon any ſpecial *Heir*, *&c.* So that if a Man convey Land with Warranty againſt him and his *Heirs*, his *Heir* on the Mother's Part ſhall not be vouched by this, ſo long as there is an *Heir* on the Father's Part, *&c. Hob.* 24. A Grant of an Annuity muſt be for a Man and his *Heirs*, to bind the *Heir*, although there be Aſſets; and when he is named, the *Heir* ſhall not be bound except there be Aſſets. 1 *Inſt.* 144. Where a Perſon covenants with another to perform any Act, if his *Heir* be not named, he is not bound by it: But in Covenants of others, that concern the Inheritance, the *Heir* ſhall have the Benefit of them, though not named. 5 *Rep.* 8. 1 *Roll. Abr.* 520. An *Heir* may enter for a Condition broken, when the Condition is annexed to Lands, and take Advantage of it; becauſe if there had been no Condition, the Land would have deſcended to him: And an *Heir* may perform a Condition, to ſave the Land. 2 *Nelſ. Abr.* 929. The *Heir* ſhall not have Money due on Mortgages in Fee, if he be not particularly named, but the Executor; and if the Day be paſt, altho' the *Heir* be named, the Executor ſhall have it. 1 *Inſt.* 210. 2 *Ventr.* 348. If a Perſon makes a Leaſe for Years of Lands of Inheritance, rendring Rent to his Executors and Aſſigns, the *Heir* ſhall have the Rent; for by the Reſervation it is to continue after the Leſſor's Death, and is incident to the Reverſion; though it was formerly held otherwiſe, the *Heir* not being named: And where it is reſerved to the Leſſor and his Aſſigns, it is otherwiſe. 2 *Lev.* 13, 14. 12 *Rep.* 36. *Heirs* includes Aſſigns in Grants, *&c.* If a Woman keeps Land from the *Heir*, on Pretence of being with Child by the *Heir*'s Anceſtor, her deceaſed Husband, the Writ *Ventre Inſpiciendo* is to be granted to ſearch her, *&c.* that the *Heir* be not defrauded. *F. N. B.* 227. The next *Heir* Male is to bring Appeal for the Death of his Anceſtor, *&c.* And *Heirs* may have divers Writs, as Writ of *Mortdanceſtor, Entre ad communem Legem, In caſu Proviſo*, and *Conſimili caſu, Quod permittat, &c.* See *Diſcent, &c.*

Heir apparent, Is one during the Life-time of his Anceſtor; till the Anceſtor's Death he is only *Heir apparent*, or at *Law*. 1 Inſt. 8. Bonds and Bargains with ſuch an *Heir*, to have double or treble the Money lent, after his Father's Death, *&c.* are ſet aſide in Equity; but it is by paying what was lent *bona fide*, with Intereſt, if the Obligor applies for Relief: Tho' in caſe the Obligee ſues, he ſhall not recover what was really lent; for that would be to aſſiſt Fraud. 2 *Ventr* 359. 1 *Vern.* 141. Where *young Heirs* enter into any Bond, *Chancery* relieves againſt it, without Evidence of actual Impoſition; becauſe there is a ſuppoſed Diſtreſs, and Preſumption of a Liableneſs to be impoſed on. *Barnardiſt.* 481.

Heireſs, Is a *Female Heir* to a Man, having an Eſtate of Inheritance in Lands; and where there are ſeveral joint *Heirs*, they are called *Co-heirs* or *Co-heireſſes*. Stealing an *Heireſs*, and marrying her againſt her Will, where Felony. See *Forcible Marriage*

Heir-loome, (From the Sax. *Heier*, i. e. *Hæres*, & *Leome*, Membrum) Comprehends divers Implements of Houſhold, ſuch as the firſt beſt Bed and other Things, which by the Cuſtom of ſome Countries have belonged to a Houſe certain Deſcents, and are never inventoried after the Deceaſe of the Owner as Chattels, nor do they go to the Executor, but accrue to the *Heir* with the Houſe itſelf by Cuſtom, and not by the Common Law: And theſe are not deviſable by Teſtament; for the Law prefers the Cuſtom before a Deviſe, which takes not Effect till after the Death of the Teſtator, and then they are veſted in the *Heir* by the Cuſtom. *Co. Litt.* 18, 185. But Sale in a Man's Life-time might make it otherwiſe. The antient Jewels of the *Crown* are *Heir-looms*, and ſhall deſcend to the next Succeſſor; and are not deviſable by Will. *Ibid.* 185. And *Heir-looms* in general are ſaid to extend to all large Houſhold Implements; of which *Spelman* ſays thus: *Omne Utenſile robuſtius quod ab ædibus non facile revellitur, ideoque ex more quorundam locorum ad hæredem tranſit, tanquam membrum hæreditatis.* And Sir *Edw. Coke* ſays, *Conſuetudo Hundredi de* Stretford *in Com.* Oxon. *eſt, quod* Hæredes *Tenementorum poſt Mortem anteceſſorum ſuorum habebunt, &c. Principalium*, Anglice, *an* Heir-loom, *viz. de quodam genere Catallorum, Utenſilium, &c. Optimum Plauſtrum, optimam Carucam, optimum Ciphum, &c.* Co. Litt. 18.

Hegira, The Mahometan *Æra*, or Computation of Time, beginning from the Flight of *Mahomet* from *Rome*, 16 July, Anno 622.

Helſing, A Braſs Coin among the *Saxons*, equivalent to our Half-penny.

Hellen-Wall, Is an End Wall, that defends the Reſt of the Building, from the Sax. *Helan*, to cover; hence a Thatcher, Slater or Tiler, who covers

vers the Roof of a Houſe, is in the Weſtern Parts of *England* called a *Hellier*. Paroch. Antiq. 573

Hemp and Flax. None may water *Hemp* or *Flax* in any River, running Water, Stream, Brook, or common Pond, where Beaſts are uſed to be watered; but only in their ſeveral Ponds, *&c.* for that Purpoſe, in Pain of 20 *s.* *Stat.* 33 *H.* 8. *c.* 17. Perſons coming from abroad, uſing the Trade of *Hemp* or *Flax* Dreſſing, and of making Thread, Weaving Cloth made of *Hemp* or *Flax*, or making Tapeſtry Hangings, Twine or Nexts for Fiſhery, Cordage. *&c.* after three Years, ſhall have the Privileges of Natural born Subjects. *Stat.* 15 *Car.* 2.

Henchman, Henxman, A *German* Word, ſignifying *Domeſticum*; it is uſed for a Man that runs on Foot, attending upon a Perſon of Honour. 3 *E.* 4. 5. 24 *H* 8. 13

Henedpenny, A cuſtomary Payment of Money, inſtead of *Hens* at *Chriſtmas*; mentioned in a Charter of King *Edward.* 3. Mon Angl. Tom. 2. p. 327. *Du Freſne* is of Opinion, it may be *Hen-peny*. *Gallinagium*, or a Compoſition for Eggs: But *Cowel* thinks it is miſprinted *Hened-peny*, for *Heved-peny* or *Head-peny*

Henghen, (*Sax.*) A Gaol, Priſon or Houſe of Correction. *Leg H.* 1. *c.* 65.

Heordfeſte, (Sax. *Heorthfaſt*, i. e. Fix'd to the Houſe or Hearth) Is the ſame with *Husfeſtane*, the Maſter of a Family. *LL. Canuti, cap.* 40.

Heordpeny, (From the Sax. *Heorth*, focus & Penning, Denarius) *Olim* Romeſcot, *&* *poſtea* Peterpence. *Leg. Edgar. apud Brompt. c.* 5.

Herald, Heralt, or **Harold,** (Ital. *Heraldo*, Fr. *Herault*, quaſi *Herus* altus) Signifies an Officer at Arms, *Veſtegan*, thinks it may be derived from two *Dutch* Words, *viz.* Here, *exercitus &* Healt, *pugil Magnanimus*; as if he ſhould be called the *Champion of the Army*: And the *Romans* called *Heralds*, *Feciales*. *Polydore, lib.* 19. deſcribes them thus: *Habent inſuper Apparitores Miniſtros, quos* Heraldos *dicunt, quorum præfectus* Armorum Rex *vocitatur; hii Belli & pacis* Nuncii, *Ducibus, Comitibuſque a Rege factis inſignia aptant, ac eorum funera curant.* The Function of theſe Officers, as now exerciſed with us, is to denounce War, proclaim Peace, and to be employed by the King in Martial Meſſages: They are Examiners and Judges of Gentlemens *Coats of Arms*, and Conſervers of *Genealogies*; and they marſhal the Solemnities at the Coronations, and Funerals of Princes, and other great Men The three Chief of theſe *Heralds*, are called *King's at Arms*; of which *Garter* is the Principal, inſtituted by King *Henry* 5. whoſe Office is to attend the *Knights of the Garter* at their Solemnities, and to marſhal the Funerals of the Nobility; And King *Edw.* 4. granted the Office of *King of Heralds* to one *Garter*, *cum Feudis & Proficuis ab antiquo, &c.* The next is *Clarencieux* or *Clarentius*, ordained by *Edward* 4. who attaining the Dukedom of *Clarence* by the Death of *George* his Brother, whom he beheaded for aſpiring to the Crown, made the *Herald* which belong'd to that Dukedom a King at Arms, and called him *Clarencieux*; his proper Office is to marſhal and diſpoſe the Funerals of all the leſſer Nobility, Knights and Eſquires, through the Realm, on the *South* Side of *Trent*. The Third is *Norroy*, quaſi *North Roy*, whoſe Office and Buſineſs is the ſame on the *North* Side of *Trent*, as *Clarentius* on the South, which is intimated by his Name, ſignifying the *Northern King*, or *King at Arms* of the *North* Parts. Theſe three Officers are diſtinguiſhed as follows, *viz.* Garter *Rex Armorum Anglicorum indefinite*; Clarencieux, *Rex Armorum partium Auſtralium*: Norroy, *Rex Armorum partium Borealium*. Beſides the *Kings at Arms*, there are Six *inferior Heralds*, according to their Original, as they were created to attend Dukes and Great Lords, in Martial Expeditions, i. e. *York*, *Lancaſter*, *Cheſter*, *Windſor*, *Richmond* and *Somerſet*; the Four former inſtituted by King *Edward* 3. and the Two latter by *Edward* 4. and *Henry* 8. To theſe, upon the Coming of King *George* to the Crown, on Account of his *Hanoverian* Dominions, a new *Herald* was made, called *Hanover Herald*; and another ſtiled *Glouceſter*, King at Arms. *Anno* 11 *Geo.* 1. And laſtly, to the ſuperior and inferior *Heralds*, are added Four others called *Marſhals* or *Purſuivants at Arms*, who commonly ſucceed in the Places of ſuch *Heralds* as die, or are preferred; and they are *Blue Mantle*, *Rouge-Croſs*, *Rouge Dragon*, and *Portcullis*; all equipp'd with proper Enſigns, Badges and Diſtinctions. The antient *Heralds* have been made a Corporation or College under the *Earl Marſhal* of *England*, with certain Privileges by the Kings of this Realm: *Conceſſerunt, &c.* Heraldi Armorum, *& omnes alii* Heraldi, *Proſecutores ſive* Purſuivandi *Armorum, qui pro tempore fuerint, imperpetuum, ſint unum Corpus Corporatum, in re, facto, & nomine; habeantque ſucceſſionem perpetuam, nec non quoddam ſigillum commune, &c. Dat. &c.* Spelm. Gloſſ. Herald's *Court of Honour*. See *Honor-Courts*.

Herbage, (*Herbagium*) Is the green Paſture and Fruit of the Earth, provided by Nature for the Bite or Food of Cattle: And it is uſed for a Liberty that a Perſon hath to feed his Cattle in the Ground of another Perſon; or in the Foreſt, *&c.* *Cromp. Juriſd.* 197.

Herbagium anterius, The firſt Crop of Graſs or Hay, in Oppoſition to the ſecond Cutting, or *After-Math*. Paroch. Antiq. 459.

Herbinger or **Harbinger,** (From the Fr. *Herberger*, i. e. *Hoſpitio accipere*) Signifies an Officer of the King's Houſhold, who goes before and allots the Noblemen, and thoſe of the King's Retinue, their Lodgings. It has been alſo taken for an Inn-keeper, who has the Care of Lodging and *Harbouring* his Gueſts. *Kitch.* 176.

Herberg, (*Sax.*) A Houſe of Entertainment; whence *Herbigere*, to harbour and entertain.

Herbury, Is a *Saxon* Word uſed for Inn. *Blount.*

Herce, (Lat. *Hercia*) A Harrow. ——*Carucas &* Hercias *reparare.* Fleta, lib. 2. cap. 77.

Hercia, The ſame as *Herce*; and ſignifies likewiſe a Candleſtick ſet up in Churches, made in the Form of an *Harrow*, in which many Candles were plac'd; theſe Candleſticks were uſed on the Sepulture of Perſons, and ſet *ad Caput Cenotaphii.*

Herciebant, (From the Fr. *Hercer*, to harrow, and *Arabant*) *Arabant &* Herciebant *ad Curiam Domini, i. e.* They did plough and harrow at the Lord's Manor. 4 *Inſt.* 270.

Herdewic, (*Herdewycha*) A Grange, or Place for Cattle and Huſbandry. *Mon. Angl. Tom.* 3.

Herdwerc, Herdſman's Labour, or cuſtomary Work done by Shepherds, Herdſmen, and inferior Tenants. *Regiſt. Eccleſ. Chriſti Cant. MS.*

Herebannum, (Sax.) *Here, exercitus, &* Ban *Edictum, Mulcta*) A Mulct for not going armed into the Field, when called forth. *Spelm.*

Herebote, From the Sax. *Here*, and *Bode* a Meſſenger) The King's Edict commanding his Subjects into the Field.

Hereditaments, (*Hæreditamenta*) Signify all ſuch immoveable Things, whether Corporeal or Incorporeal, which a Man may have to him and his *Heirs* by way of Inheritance; and which, if they are not otherwiſe deviſed, deſcend to him that is next Heir, and fall not to the Executor as Chattels do. 32 *Hen.* 8. *cap.* 2. It is a Word of very great Extent, comprehending whatever may be inherited or come to the *Heir*; be it Real, Perſonal or Mix'd, and tho' it is not holden, or lieth not in Tenure. *Co. Lit.* 6. 16. And by the Grant of *Hereditaments* in Conveyances, Manors, Houſes, and Lands of all Sorts, Rent, Services, Advowſons, *&c.* will paſs. *Ibid.* *Hæreditamentum eſt omne quod jure hæreditario ad Hæredem tranſeat.* Coke.

Herefare, (*Sax.*) Is a going in a military Expedition, or to a Warfare.

Heregeld, A Tribute or Tax levied for the Maintenance of an Army. See *Tax.*

Heremitorium, A ſolitary Place of Retirement for *Hermits.*—— *Radulphus* Heremita *locum* Heremitorium *de M. ædificavit.* Mon. Angl. Tom. 3. p. 18.

Herenach, An ancient Word ſignifying Archdeacon.

Hereſlita, A Soldier hired for the Wars, departing without Licence; from the Sax. *Here*, and *Sliten* to depart, or *Slitan*, *ſcindere*, *diſſolvere.* 4 *Inſt.* 128. This Word is alſo writ *Hereſla*; and *Hereſliz.*

Hereſy, (*Hæreſis*) Is an Opinion contrary to ſound Principles of Religion; among Proteſtants it is taken for a falſe Opinion repugnant to any eſſential Point of Doctrine of the Chriſtian Faith revealed in Scripture, and obſtinately maintained and perſiſted in, by ſuch as profeſs the Name of *Chriſt.* Some Authors ſay 'tis properly the Obſtinacy that makes the Crime of *Hereſy*, and not the Error; for when a Man is humble, and ingenuous, and deſires to receive further Light and Information, giving every Thing urged againſt him its due Weight; he is not guilty of *Hereſy.* There is no expreſs Law or Statute that determines what ſhall be called *Hereſy*, it being impoſſible to ſet down all the particular Errors which may be ſaid to be *Heretical*, concerning which there have been ſo many Diſputes: Yet as the Stat. 1 *Eliz. c.* 1. directed the *High Commiſſion Court*, (ſince aboliſhed) to reſtrain the ſame to what had been adjudged ſo by the Authority of the Scriptures; or by the firſt four General Councils, or any other general Council wherein it was declared *Hereſy* by expreſs Words of Scripture; or as ſhould be determined to be ſuch by Parliament, the Convocation aſſenting: Theſe Rules may be a good Direction to the Judges of the Eccleſiaſtical Courts in Relation to *Hereſy.* 3 *Inſt.* 40. *H. P. C.* 3, 4. Opinions condemned by Scripture, or the four firſt General Councils, *viz.* of *Nice*, *Epheſus*, *Conſtantinople* and *Chalcedon*, ſhall be accounted *Hereſy. Jenk Cent.* 210. See 12 *Rep.* 57. The Archbiſhop, or Biſhop of every Dioceſe, have Power to convict any for *Hereſy*; this is by the *Common Law.* And by the 23 *Hen.* 8. *c.* 9. the Archbiſhop of either Province may cite any Perſon before him for *Hereſy*, if the immediate Ordinary or Biſhop conſent thereto; or do not his Duty in puniſhing the ſame. The Convocation may declare what Tenets are Heretical; and ſome ſay that an Heretick may be convicted before an Archbiſhop and Biſhops, &c. at a general Convocation; but it is ſaid to be a Queſtion of late, whether they have Power to convene and convict the Heretick. 2 *Roll. Abr.* 226. 1 *Hawk. P. C.* 4. The Temporal Courts cannot take Cogniſance of any Perſon for *Hereſy*, by Indictment, or otherwiſe; but they may incidently adjudge whether any Tenet be *Hereſy* or not, as in a *Quare Impedit*, where the Biſhop pleads, that he refuſed the Clerk for *Hereſy*, &c. 5 *Rep.* 58. And if a Perſon in Maintenance of his Errors ſets up *Conventicles*, and raiſes Factions, to the Diſturbance of the publick Peace; he may be fined and impriſoned, upon an Indictment at the *Common Law.* 2 *Hawk.* 4. *Hereſy* was anciently *Treaſon*, according to Lord *Finch*; and the Puniſhment for *Hereſy* was Burning, by Force of the Writ *de Hæretico Comburendo*; but the Heretick forfeited neither Lands nor Goods, becauſe the Proceedings againſt him were only *pro ſalute Animæ. H. P. C.* 5. 3 *Inſt* 43. *Raym.* 407. By the Stat. 29 *Car.* 2. *c.* 9. the Proceedings on the Writ *de Hæretico Comburendo*, and all Puniſhments by Death in Purſuance of any Eccleſiaſtical Cenſures, are taken away: And all the old Statutes which gave Power to arreſt or impriſon Perſons for *Hereſy*, &c. are repealed: But by the Common Law, an obſtinate Heretick being excommunicate, is ſtill liable to be impriſoned by Virtue of the Writ *de Excommunicato capiendo*, till he make Satiſfaction to the Church. And denying the Truth of the Chriſtian Religion, or the Divine Authority of the Holy Scriptures, &c. is liable, for the ſecond Offence, to three Years Impriſonment, and divers Diſabilities, by Stat. 9 & 10 *W.* 3. *c.* 32.

Heretick, (*Hæreticus*) Is one that adheres to and is convicted of Hereſy, or that maintains any Opinions or Principles contrary to the Chriſtian Religion: And a Perſon is not an *Heretick* by doing a Thing condemned or forbidden by the Goſpel; but by an Obſtinate Adherence to an Opinion, oppoſite to ſome Article of the *Chriſtian Faith.* See *Hæretico Comburendo.*

Heretoche, (From the Sax. *Here*, *exercitus*, and *togen*, *ducere*) The General of an Army; a Leader or Commander of military Forces. *LL. Ed. Conf. c.* 35. *Du Cange* ſays, the *Heretochii* were the Barons of the Realm. ——— *Interſunt Epiſcopi*, *Comites*, *Vicecomites*, Heretochii, &c. Leg. H. 1.

Heretum, A Court or Yard for drawing up the Guards or military Retinue, which uſually attended our Nobility. *Hiſt. Dunelm.*

Hergripa, (Sax. *Hær*, *capillus*, and *grypan*, *capere*) Signifies the Pulling any one by the Hair; which was puniſhable by the Laws of *Hen.* 1. *c.* 94.

Herigaldis, A Sort of Garment called by that Name. *Blount.*

Heriot, (*Heriotum*) Is in the Sax. *Heregate*, derived from *Here*, i. e. *Exercitus*, an Army, and *Gate*, a Beaſt; and ſignified originally a Tribute given to the Lord of a Manor for his better Preparation for War. By the Laws of *Canutus*, at the Death of the great Men of this Realm, ſo many Horſes and Arms, were to be paid as they were in their reſpective Life-times obliged to keep for the King's Service. *Spelm.* Sir *Edw. Coke* makes *Heriot*, or *Heregat*, (from *Herus* Lord) the Lord's Beaſt: And it is now taken with us for the beſt Beaſt, whether it be Horſe, Ox, or Cow, that the Tenant dies poſſeſſed of, due and payable to the Lord of the Manor; and in ſome Manors, the beſt Goods, Piece of Plate, &c. *Kitch.* 133. There is *Heriot Service*, or *Heriot-Cuſtom*: *Heriot Service* is payable on the Death of Tenant in Fee-ſimple; and *Heriot-Cuſtom* upon the Death of Tenant for Life: When a Tenant holds by Service to pay a *Heriot* at the Time of his Death, which Service is expreſſed, and eſpecially reſerved in the Deed of Feoffment, this is *Heriot-Service*; and where *Heriots* have been cuſtomarily paid Time out of Mind, after the Death of Tenant for Life, this is *Heriot Cuſtom. Co. Lit.* 185. *Heriots* by Cuſtom are commonly paid for *Copyhold* Eſtates; and if an *Heriot* is reſerved upon a Leaſe, it is *Heriot-Service*, and incident to the Reverſion. *Lutw.* 1366, 1367. For a *Heriot* goes with the Reverſion, as well as Rent; and the Grantee of the Reverſion ſhall have it. 2 *Saund.* 166. Although a *Heriot* reſerved upon a Leaſe is called an *Heriot-Service*; yet it is not like the Caſe where a Man holds Land by the *Service of paying an Heriot*, &c. becauſe where a *Heriot* is reſerved on Leaſe, the proper Remedy is either a Diſtreſs, or Action of Covenant grounded on the Contract; for the Leſſor cannot ſeiſe, as the Lord of a Manor may do, the Beaſt of his Tenant who holds of him by *Heriot-Service. Keilw.* 82, 84. There may be a Covenant in Leaſes for Lives, &c. to render the beſt Beaſt, or ſo much in Money for an *Heriot*, at the Election of the Leſſor; in which Caſe the Leſſor muſt give Notice which he will accept, before Action may be brought for it, or a Diſtreſs taken, &c. 2 *Lill. Abr.* 19. For *Heriot-Service*, the Lord may diſtrain any Beaſt belonging to the Tenant on the Land: Alſo it has been held, that the Lord may diſtrain any Man's Beaſts which are upon the Land, and retain them 'till a *Heriot* is ſatisfied. 1 *Inſt.* 185. *Lit. Rep.* 33. And if the Tenant deviſeth away all his Goods, &c. yet the Lord ſhall have his *Heirot* on the Death of the Tenant. *Stat.* 13 *Eliz. cap.* 5. For *Heriot Cuſtom*, the Lord is to ſeiſe, not diſtrain; and he may ſeize the beſt Beaſt, *&c.* though out of the Manor, or in the King's Highway, becauſe he claims it as his proper Goods, by the Death of the Tenant, which he may ſeiſe in any Place where he finds it. *Kitch.* 267. 2 *Inſt.* 132. 2 *Nelſ. Abr.* 931. The Lord may properly ſeiſe for *Heriot Cuſtom*, and take a Diſtreſs for *Heriot-Service:* And for *Heriot-Cuſtom*, he may ſeiſe any where; but for *Heriot-Service*, on the Land only: Though it has been adjudged, that a *Heriot Cuſtom* or *Service*, may be ſeiſed any where; but one cannot diſtrain for them out of the Manor. *Plowd.* 96. *Keilw.* 84. 1 *Salk.* 356. Where a Woman marries and dies, the Lord ſhall have no *Heriot-Cuſtom*, becauſe a Feme Covert can have no Goods to pay as a *Heriot*. 2 *Leon.* 239. And when a *Heriot* is to be paid by a certain Life of his own Goods, an Aſſignee is not liable to pay the *Heriot*; his Goods not being the Goods of ſuch Life. *Cro. Car.* 313. 2 *Nelſ.* 932. If the Lord purchaſe Part of the Tenancy, *Heriot-Service* is extinguiſhed; but it is not ſo of *Heriot-Cuſtom*. 8 *Rep.* 105. There is this Difference between *Heriot* and *Relief*; *Heriot* has been generally a *Perſonal*, and *Relief* always a *predial* Service.

Heriſchild, (From the Sax, *Here*, and *Scyld*, i. e. *Scutum*) Military Service, or Knight's Fee.

Heriſtall, (Sax. *Here*, an Army; and *Stall*, *Statio*) A Caſtle. *Blount.*

Hermaphrodite, (*Hermaphroditus*) A Perſon that is both Man and Woman. *Lit Dict.* And as *Hermaphrodites* partake of both Sexes; they may give or grant Lands, or inherit as Heirs to any, and ſhall take according to the prevailing Sex. 1 *Inſt.* 2. 7.

Hermer, Among the *Saxons* was a great Lord; from the Sax. *Hera*, i. e. *Major*, and *Mære*, *Dominus*.

Hermitage, (*Hermitagium*) The Habitation of a Hermit: The *Hermitory* is ſaid to be the ſame; but in an old Charter Mention is made of *Capella*, *ſive Hermitorium*, where it ſhould ſignify a Place of Prayer belonging to an *Hermitage*. See *Heremitorium*.

Herring Silver, Seems to be a Compoſition in Money, for the Cuſtom of paying ſuch a Number of *Herrings*, for the Proviſion of a religious Houſe, *&c.* *Placit. Term. St. Trin.* 18 *Ed.* 1.

Herrings. It is unlawful to buy or ſell *Herrings* at Sea, before the Fiſhermen come into the Haven, and the Cable of the Ship be drawn to the Land. 31 *Ed.* 3. *Stat.* 2. No *Herrings* ſhall be ſold in any Veſſel, but where the Barrel contains 32 Gallons, and Half Barrel and Firkin accordingly; and they muſt be well packed, of one Time's Packing and Salting, and be as good in the Middle as at the Ends, on Pain of Forfeiting 3 *s.* 4 *d.* a Barrel, *&c.* by Stat. 22 *Ed.* 4. *cap.* 2. The Veſſels for *Herrings* are to be marked with the Quantity, and Place where Packed; and Packers to be appointed and ſworn in all Fiſhing Ports, *&c.* under the Penalty of 100 *l.* Stat. 15 *Car.* 2. *cap.* 16.

Heſia, An Eaſement.——*Uſque ad quandam* Heſiam *ante Meſſuagium*, *&c.* Chart. Antiq.

Heſta, Is a Corruption of the Lat. *Hecta*, ſignifying a little Loaf of Bread.

Heſtcorn, King *Athelſtane* in his Return from the *North*, after a Victory, went to *Beverley*, where he gave to God, *&c.* *Quaſdam avenas, vulgariter dictas* Heſtcorne, *percipiendas de Dominiis & Eccleſiis in illis partibus, quas, &c.* Mon. Angl. Tom. 2. p. 367.

Heſtha, A Capon, or young Cockerill.——*Quando Rex ibi veniebat, reddebat ei unaquæque Carucata* 200 Heſthas. *Domeſday.*

Heudelborth, From the Sax. *Healf*, i. e. *Dimidium*, & Borgh, *Debitor vel Fidejuſſor*) A Surety for Debt, *Quia qui fide jubet, Debitorem ſe quodammodo conſtituit.* Du Freſne.

Hexam and **Hexamſhire**, Anciently *Haguſtald*, was a County of itſelf, and likewiſe a Biſhoprick, endowed with great Privileges: But by the Stat. 14 *Eliz. c.* 13. it is enacted, that *Hexam* and *Hexamſhire*, ſhall be within and accounted Part of the County of *Northumberland.* 4 Inſt. 22.

Heymectus, A Net for catching of Conies; a *Hay-Net.* Placit. Temp. Ed. 3.

Hidage, (*Hydagium*) Was on extraordinary Tax, payable to the King for every *Hide* of Land. *Bracton* writes of it thus: *Sunt etiam quædam communes Præſtationes, quæ ſervitia non dicuntur, nec de Conſuetudine veniunt, niſi cum neceſſitas intervenerit, vel cum Rex venerit; ſicut ſunt* Hidagia, Coragia, & Carvagia, *ex conſenſu communi totius Regni introducta, &c. Bract. lib.* 2. *cap.* 6. This Taxation was levied not only in Money, but Proviſion of Armour, *&c.* And when the *Danes* landed at *Sandwich*, in the Year 994. King *Ethelred* taxed all his Land by *Hides*, ſo that every 310 Hides found one Ship furniſhed; and every 8 Hides found one Jack and one Saddle, to arm for the Defence of the Kingdom, *&c.* Sometimes the Word *Hidage* was uſed for the being quit of that Tax; which was alſo called *Hidegild*, and interpreted from the *Saxon* a Price or Ranſom paid to ſave one's Skin or Hide from Beating. *Sax. Dict.* See *Danegeld.*

Hide of Land, (*Hyda Terræ*, Sax. *Hydeland*, from *Hyden*, *tegere*) Is ſuch a Quantity of Land as might be plowed with one Plough in a Year; or as much as would maintain a Family. *Terms de Ley. Crompton* in his *Juriſd.* ſays, it contains an hundred Acres; and others hold it to be four Yard-Lands: But Sir *Edw. Coke* ſaid, that a *Hide*, or *Plough-Land*, Yard-Land, *&c.* contain no certain Number of Acres. *Co. Lit.* 69. The Diſtribution of *England* by *Hides of Land* is very antient; Mention being made thereof in the Laws of King *Ina*, *cap.* 14.

Hide and Gain, Signified arable Land; to *gain* the Land, being as much as to till it. *Co. Lit.* 85.

Hidel, A Place of Protection or Sanctury. *Stat.* 1 *Hen.* 7. *cap.* 6.

High Treaſon, (*Læſa Majeſtas.*) See *Treaſon.*

Highway, (*Via Regia*) Is a Paſſage for the King's People, for which Reaſon it is called the *King's Highway*; but the Freehold of the Soil is in the Lord of the Manor, or the Owner of the Land on each Side; and if there are Trees and other Profits there, they belong to him. *Dalt.* 76. Our Books mention three Kinds of Ways. 1ſt, A *Foot-way*, which is called *Iter, quod eſt jus eundi vel ambulandi hominis.* 2d, A Foot-way and Horſe way, which is termed *Actus ab agendo*; and this is called a pack and prime Way, becauſe it is both a Foot-way, which was the firſt or prime Way, and a pack or drift Way alſo. 3d, *Via*, or *Aditus*, which contains the other two, and likewiſe a Cart-way, *&c.* And this is either the King's *Highway* for all Men, or *Communis ſtrata*, belonging to a City or Town, *&c.* and is called by our ancient Writers *Chimin*, being a *French* Word for a Way. *Co. Lit.* 56. Any one of the aforementioned Ways, may properly be called the *Highway*; if common to all the King's People; and ſo may a private Way that leads from Town to Town, and is a Thorough-fare: If a Way leads to a Market-Town, is a Way for Travellers, and has a Communication with a great Road, *&c.* it is a *Highway*; but if it leads only to a Church, a Village, or the Fields, *&c.* there it is a *private Way. Co. Lit.* 56. *Ventr. Rep.* 189. A Foot-way common to all People, is a *Highway*, although it do not lead to a Market-Town: A common Street is a *Highway*; and ſo may a River be ſaid to be, that is common to all Men. *Ibid.* *Highways* which lead from one Town to another; and thoſe *Highways* that are Drift ways, or Cart-ways, leading from Market to Market, that are Ways for all Travellers, and great Roads, or do communicate with them, are only under the Care of Surveyors, as to Reparation, &c. 2 *Inſt.* 58. 1 *Ventr.* 189. A *Highway* lying within a Pariſh, the whole Pariſh is of common Right bound to repair it; except it appear that it ought to be repaired by ſome particular Perſon either *ratione Tenuræ*, or by Preſcription. 1 *Ventr.* 183. *Style* 163. The King by the Common Law may award his Commiſſion for amending the *Highways* and Bridges throughout the Realm. *Dalt.* 77. And all the Country ought to make good the Reparations of a *Highway*, where no particular Perſons are bound to do it; by Reaſon the whole Country have their Eaſe and Paſſage by the ſaid Way. *Co. Rep.* 13. By the ancient Common Law, Villages are to repair their *Highways*, and may be puniſhed for their Decay; and if any do injure, or ſtraiten the *Highway*, he is puniſhable in the King's Bench, or before Juſtices of Peace, in the Court Leet, &c. 27 *Aſſ.* 63. *Cromp. Juriſd.* 76. A Hamlet within a Pariſh is not obliged to repair a *Highway*, except it be by Preſcription, or for ſome other ſpecial Reaſon; becauſe of common Right the whole Pariſh is charged with it: But though a Hamlet be not bound to the Repairs of common Right, yet a Vill may. *Style* 163. Private Ways are to be repaired by the Village or Hamlet where they lie; and ſometimes by particular Perſons. 1 *Ventr* 189. Where a Pariſh is indicted for not repairing a *Highway*, they cannot plead Not guilty, and give in Evidence that ſuch a one is bound to repair it, either by Tenure, or Preſcription; for the Pariſh is chargeable *de Communi jure*, and they muſt plead the Preſcription, &c. if they would diſcharge themſelves. 1 *Ventr.* 256. 1 *Mod.* 112. The General Iſſue Not guilty, goes only to the being in Repair, or not; and a ſpecial Juſtification ought not to be given in Evidence upon the General Iſſue. 1 *Salk.* 287. On Indictment againſt a Pariſh, they can give nothing in Evidence upon Not guilty, but that the Way is in Repair: Though where a private Perſon is indicted for not repairing a *Highway*, he may give in Evidence that another is to repair, becauſe he is not bound of common Right as a Pariſh is. *Mich.* 8 *W.* 3. 3 *Salk.* 183. Though a *Highway* be not ſet forth in the Indictment to lead to any Market-Town, it has been adjudged no Objection; for every *Highway* leads to ſome Market-Town, or Vill, &c. Nor is it neceſſary to ſhew that the Proſecutors of a Man, for not amending an *Highway*, are Surveyors, &c. 2 *Roll. Rep.* 412. But the Indictment muſt ſhew with Certainty, in what Place a Nuſance was done, the Extent of it, &c. And the Fact is to be ſet forth in proper Terms, that the Court may judge of it. 1 *Hawk. P. C.* 220. An Indictment concerning the *Highways*, ought to ſet forth that it is the King's *Highway*, and for all the King's liege People; or it may be quaſhed. *Co. Lit.* 56. *Cro. Eliz.* 63. The Indictment muſt ſhew from what Place to what Place the *Highway* leads, &c. *Hill.* 9 *W.* *Style* 356. Upon an Indictment for not repairing a *Highway*, if the Defendant produce a Certificate before Trial, that the Way is repaired, he ſhall be admitted to a Fine: But after Verdict, the Certificate is too late, for then he muſt have a *Conſtat* to the Sheriff, who ought to return that the Way is repaired, becauſe the Verdict, which is a Record, muſt be anſwered by a Record. *Raym.* 215. And where the Defendants, indicted for not repairing a common Foot-way, confeſſed the Indictment, and ſubmitted to a Fine; it was held, that the Matter was not ended by their being fined, but that Writs of *Diſtringas* ſhall be awarded *in infinitum*, 'till the Court of *B. R.* is certified that the Way is repaired, as it was when it was at beſt; but the Defendants are not bound to put it in better Repair than it has been Time out of Mind. 1 *Salk.* 358. If a Defendant hath made a *Highway*, as good as it is capable of being made, it was ſaid in an extraordinary Caſe, this ſhall not diſcharge him, on an Information againſt him; though it may be a Mitigation of his Fine. 3 *Salk.* 183. Alſo it is no Excuſe for the Inhabitants of a Pariſh indicted at Common Law, for not repairing the *Highways*, that they have done the Work required by Statute; for the Statutes are made in Aid of the Common Law: And when the Statute-Work is not ſufficient, Rates and Aſſeſſments are to be made. *Dalt. c.* 26. The Preſentment of a Juſtice of Peace on the Statute of 5 *Eliz.* upon his own Knowledge of a *Highway* out of Repair, is of the ſame Effect as a Preſentment of twelve Men; but the Authority of Juſtices of Peace is limited only to common *Highways*, and not to private Ways; and the Preſentment of the Juſtices may be traverſed by the Defendants, &c. On a Preſentment of a *Highway* out of Repair, and that the Inhabitants of ſuch a Pariſh ought to repair it; upon a Traverſe to this Preſentment, the Jury found it was not a common *Highway:* And it was adjudged that the Inhabitants ought to have pleaded *Reparare non debent*, and that ſuch a Perſon, naming him, ought to repair; but by taking this Traverſe, the Preſentment is admitted to be good. 4 *Mod.* 38. A Preſentment before Juſtices of Peace of a Way out of Repair, &c. may be removed into *B. R.* And an Indictment for not repairing of *Highways*, may be thus removed by *Certiorari:* But by the Statute 3 & 4 *W.* & *M.* all Matters concerning *Highways*, &c. are to be tried and determined in the County where they lie; and no Preſentment, Indictment, or Order made by Virtue of this Act, ſhall be removed by *Certiorari* out of the County. Though if the Right or Title to repair ſuch Ways come in Queſtion, upon Suggeſtion and Affidavit made there of a *Certiorari* may be had to remove the Indictment into B. *R.* notwithſtanding the aforeſaid Statute 5 & 6 *W.* & *M. cap.* 11. In Caſes of Trials on Indictments, relating to the *Highways*, thoſe Perſons in the Pariſh who are no way liable to the Reparations will be good Evidence; but Perſons chargeable to the ſame will not. *Hill.* 14 & 15 *Car.* 2. See Stat. 1 *Ann. c.* 18. A Perſon may be indicted for not repairing a Houſe ſtanding upon a *Highway*, which is ruinous, and like to fall down, to the Danger of Travellers, whatever be his Tenure, which in ſuch Caſe is not material. 1 *Salk.* 357. And in Reſpect of Incloſure of Land, wherein a Way lies, particular Perſons may be liable to the general Charge of repairing a *Highway*. *H. P. C.* 144. 8 *H.* 7. 5. If any Perſon incloſe any Part of a *Highway*, or Waſte adjoining, he thereby takes upon him to keep the Way in Repair; but if afterwards he lays it open again, he ſhall be diſcharged from the Reparation, and the Pariſh is to repair it. 1 *Sid.* 464. *Cro. Car.* 306. Where a Man encloſes his Land on both Sides of a *Highway*, though he makes the Way better than was before, by the Encloſure, he is bound to keep it in Repair at his own Charges; and the Country is freed from the Charges of it, which before was bound to do it: And if a Perſon encloſe Land of one Side of the Way only, and it was antiently encloſed of the other Side; he that makes the new Incloſure, is to repair the whole Way; though if there hath not been any Incloſure of the other Side, then but half of the Way is to be repaired by him. *Cro. Car.* 366. 2 *Saund* 160. 1 *Danv. Abr.* 783. When any Perſon turns a *Highway*, or encloſes a Field to his own Benefit, leaving a Way, he is to repair the Way at his own Charge, and make it paſſable, although it were founderous before. *Cro. Car.* 306. If a *Highway* leading through a Field is founderous, Travellers may go out of the Track-way, notwithſtanding there be Corn ſown: And where it hath been uſed Time out of Mind for the King's Subjects to go by Outlets on the Lands next the *Highway*, when the Way is founderous, the Outlets are a Part of the Way, for the good Paſſage is the way. *Yelv.* 141. *Trin.* 10 *Car. B. R.* 1 *Danv.* 712. If there be a common Foot way through a Cloſe by Preſcription, and the Owner of the Cloſe ploughs up the Way, and ſows it, and lays Thorns at the Side of it, Paſſengers may go over another Foot-way in the ſame Cloſe, without being Treſpaſſers. *Yelv.* 142. And if a *Highway* is not ſufficient, any Paſſenger may break down the Incloſure of it, and go over the Land, and juſtify it till a ſufficient Way is made. 3 *Salk.* 182. One *Highway* cannot lawfully be ſtopped, and another laid out, without the King's Licence upon a Writ of *Ad quod Damnum*, after Return of the Inquiſition. *Cro. Car.* 266. *Vaugh.* 341. But this in ſome Meaſure is altered by the Statute 8 & 9 *W.* 3. To change an ancient *Highway*, there muſt be this Writ; or the Subjects cannot juſtify going there, nor are they liable to repair it, or the Hundred anſwerable for Robberies, &c. *Vaugh. Ibid.* Erecting a Gate croſs a *Highway*, though not locked, but opening and ſhutting at Pleaſure, is eſteemed a Nuſance; for it is not ſo free and eaſy a Paſſage, as if there had been no Gate: And the uſual Way of redreſſing Nuſances of this Kind, is by Indictment; but every Perſon may remove the Nuſance, by cutting or throwing it down, if there be Occaſion ſo to do; and it hath been held, that although there are many Gates croſs *Highways*, they muſt be anciently ſet up, and it ſhall be intended by Licence from the King upon the Writ *Ad quod Damnum*. *Cro. Car.* 184. All Manner of Injuries to *Highways* which render them leſs commodious to Travellers, are adjudged Nuſances; as Laying Logs of Timber in Ways, Erecting Gates, or making Hedges overthwart them, Permitting Boughs of Trees to hang over the Road; Digging Ditches, &c. 2 *Roll. Abr.* 137. If a Carrier carries an exceſſive Weight, as more than twenty Hundred, and thereby ſpoils the Way; this is a Nuſance. *Mich.* 17 *Car.* And drawing with more Horſes than allowed by Law, to the Injury of the *Highways*; or with Wheels under ſuch Breadth, &c. is puniſhable, and liable to certain Forfeitures of Horſes, by Stat. 1 *Geo.* 1. *c.* 11. 5 *Geo.* 1. *c.* 12. A Nuſance in a *Highway* is puniſhable by Indictment, Information, &c. And if in a common or private Way, by Action on the Caſe; and if a private Way in a Vill, &c. be ruinous and out of Repair, every Inhabitant has a Right to bring an Action. 1 *Vent.* 208. For avoiding Multiplicity of Suits, Indictments, &c. are to be had for Nuſances in *Highways*, and not Actions; but for any particular Damage, not common to others, a Man ſhall have Action on the Caſe. 1 *Inſt.* 56. An old Law has ordered that the *Highways* ſhould be enlarged, and all the Buſhes and ſmall Wood near to be cut down, that there might be no hiding Places for Thieves within 200 Foot of either Side; and if by Default of the ſame, any Robbery were done, the Lord of the Place to make it good; and if any Murder, he ſhall be fined, &c. *Stat.* 13 *Ed.* 1. *c.* 5.

For *repairing Highways, by Statute* 2 & 3 *P. & M. cap.* 8. it is enacted, That Conſtables and Churchwardens of Pariſhes, calling together the Pariſhioners, ſhall yearly elect two honeſt Perſons to be Surveyors of the *Highways*, who are authorized to order and direct the Perſons and Carriages that ſhall be employed in the Works for the Amendment of the *Highways*; and the Perſons choſen ſhall take upon them the Execution of the Office, on Pain of forfeiting 20 *s.* Alſo Days are to be appointed for Working on the Repairs of *Highways*; on which every Perſon having a Plough-land, (formerly 100 Acres, now 50 *l. per Annum*) or keeping a Draught or Plough, ſhall ſend out one Wain or Cart, furniſhed with Horſes, Oxen, Tools, &c. and two able Men with the ſame, on Pain of 10 *s.* for every Default; and every Houſholder, Cottager and Labourer, ſhall work on the ſaid Days for the Amendment of the *Highways*, under the Penalty of 1 *s.* 6 *d. per* Day. Stewards of Leets are empowered to enquire of all Offences againſt this Statute, and to aſſeſs Fines and Amerciaments; in Default thereof, the Juſtices of Peace in their Seſſions are to enquire of the ſaid Offences: And the Fines, which are leviable by Diſtreſs, and all Forfeitures, ſhall go towards the Repairing of the *Highways*. By the 18 *Eliz. cap.* 10. Perſons having a Plough-land in ſeveral Pariſhes, ſhall be charged with a Team only where they reſide; but every Perſon occupying and keeping in his Hands ſeveral Plough lands, in ſeveral Towns, or Pariſhes, ſhall be chargeable to find in each Town where the Lands lie, on Wain, &c. And it has been adjudged, that he who occupies ſeveral Plough-lands, ought to ſend a Team for each, whether he keep any Draught or not; that he who keeps a Draught and but two Horſes, is obliged to give his Attendance with it for repairing of the *Highways*; and a Clergyman keeping a Coach and Horſes, not a Team, is bound to ſet out a Wain towards the Repairs of the *Highways*; a Coach and Horſes doing as much Damage to the Ways as a Cart and Horſes; and Clergymen are not exempted from the publick Duties of the Nation. *Raym.* 186. *Dalt.* 105. 1 *Lev.* 139. A Man keeps a Cart for Hire, and goes with one or two Houſes; he ſhall ſend his Cart for the Amendment of the *Highways*, with as many Horſes as he goes withal: And Brickmakers, &c. in *Middleſex*, have been adjudged to ſend ſo many Draughts as they keep. *Mich.* 27 *Car.* 2. If a Man hath Plough-lands, though he hath no Draughts; or if he hath Draughts, and no Lands, he muſt ſend out Teams: But in ſuch Places where there is no Uſe of Carts and Teams for the Amendment of *Highways*, the Inhabitants ſhall ſend Horſes or other Carriages with able Perſons to work, under certain Penalties, by Stat. 22 *Car.* 2. *cap.* 12. And this Statute gives Power to Juſtices of Peace in their Seſſions, to enquire into the Value of Lands given for the Maintenance of *Highways*, &c. and to ſee that they are let to the full Value, and the Rents and Profits duly applied. And likewiſe the Juſtices at their general Quarter Seſſions, on their being ſatisfied that the common *Highways* cannot be repaired by Force of the Laws in Being, may cauſe one or more Aſſeſſments to be made and levied upon the Inhabitants, Owners and Occupiers of Lands, Tenements and Hereditaments, or any perſonal Eſtate, uſually rated to the Poor, towards the Repairing ſuch *Highways*; and ſuch Aſſeſſments ſhall be levied by Diſtreſs and Sale of Goods of the Perſons aſſeſſed, not paying the ſame within ten Days, &c. *Stat. Ibid.* And it has been reſolved, that it is the Occupier, and not the Owner of Land, who is chargeable with the Repairs of *Highways*: But it is otherwiſe where there is no Occupier, and the Owner ſuffers the Lands to lie freſh, &c. For in ſuch Caſe he ſhall be charged as if he had occupied them. 2 *Roll Rep.* 412. *Palm.* 389. By 5 *Eliz. c.* 13. Surveyors of the *Highways* may take and carry away the ſmall broken Stones of any Quarry, being already dug, without the Licence of the Owners, for the Amendment of the *Highways*; and they may dig Gravel in the Ground of any Perſon adjoining to the *Highway*, not being a Garden, Meadow, &c. provided they make not above one Pit of ten Yards ſquare in one Ground, and ſuch Pits be filled up in one Month; and may gather Stones upon any Lands in the Pariſh, to be employed in the Amendment of the Ways: And the Surveyors are alſo empowered to turn any Water-courſe or Spring, being in any *Highways*, into the Ditches of the Gronnds adjoining. The Hedges and Ditches adjoining to the *Highways*, ſhall from Time to Time be kept low and ſcoured; and the Trees and Buſhes growing in *Highways* cut down, that the Ways may lie open: There ſhall be ſix Days yearly appointed to be employed in the Reparation and Amondment of the *Highways*; of which Notice ſhall be given in the Church the next *Sunday* after *Eaſter:* And Surveyors of the *Highways* are to preſent Defaults within one Month, to the next Juſtice of Peace, on Pain of forfeiting 40*s.* and the ſaid Juſtice ſhall certify the ſaid Preſentment to the next General Seſſions of the Peace, at which Seſſions the Offender ſhall be fined; alſo here the Preſentment of a Juſtice in Seſſions on his own Knowledge, ſhall be a good Conviction, whereupon Fines may be aſſeſſed on Offenders, &c. and this Statute is made perpetual by 29 *Eliz. c.* 5. Juſtices of Peace, &c. are to appoint particularly the ſix Days for working on the *Highways* by Statute, and not generally between ſuch a Time and ſuch a Time; which Appointment is ill, and Perſons are not bound to come thereon. 1 *Salk.* 357. The Stat 3 & 4 *Will.* & *Mar. cap.* 12. ordains, That all the Laws and Statutes concerning the Repairing of the *Highways*, not thereby repealed or altered, ſhall be put in Execution: And on the 26th of *December* yearly, the Pariſh Officers and Inhabitants of every Pariſh are to aſſemble and make a Liſt of the Names of Perſons having 10*l. per Annum*, or perſonal Eſtate of 100*l.* or who rent 30*l. per Ann.* or if there be none ſuch, of the moſt ſufficient Inhabitants, and ſhall retnrn the ſaid Liſt to two Juſtices of Peace at a ſpecial Seſſions to be held on the 3d of *January*, or within 15 Days after; who are by Warrant to appoint two or more to be Surveyors of the *Highways* in every Pariſh, &c. for the enſuing Year: And if any Surveyor, being ſerved with the Warrant of Appointment of the Juſtices, ſhall neglect or refuſe to take upon him the Office, he ſhall forfeit 5*l.* and the Juſtices ſhall nominate another, &c. And every Surveyor ſhall within fourteen Days after the Acceptance of his Office, and afterwards every four Months, view the *Highways* and Roads, and make a Preſentment of the Condition thereof, on Oath, to ſome Juſtice; and give Notice of ſuch Defects and Annoyances, as he ſhall find, the next *Sunday* after Sermon; and if they are not removed or amended within thirty Days after, then the Surveyor ſhall do the ſame, and be reimburſed his Charges by the Party who ſhould have done it: The Juſtices of Peace in their reſpective Diviſions, are to hold a ſpecial Seſſions once in four Months for the *Highways*, and ſummon Surveyors, at which they ſhall make Preſentments; and account for Money coming to their Hands, which ought to be employed in amending the *Highways:* And on Oath made by Surveyors of Sums expended for Materials, &c. to mend the Ways, the Juſtices in their ſpecial Seſſions may cauſe a Rate to be made to reimburſe the ſame; alſo they may make a Rate for reimburſing any Inhabitant of a Pariſh on whom a Fine ſhall be levied: And in their General Quarter-Seſſions, by Force of this Act, they may order Aſſeſſments to be made on Lands, Tenements, &c. not exceeding 6*d.* in the Pound, &c. Every Cart-way leading to a Market-Town muſt be eight Foot wide at leaſt, and as near as may be level; and no Cauſey ſhall be under three Foot wide. Laying in any *Highway* not twenty Foot broad, any Stone, Timber, Dung, or other Matter to obſtruct it, incurs a Penalty of 5*s.* and the Occupier of Lands adjoining may remove and convert the ſame to his own Uſe; and no Tree or Buſh ſhall be permitted to grow in, or ſpread or hang over ſuch Way, under the like Penalty. Surveyors neglecting their Duty, required by this Statute, ſhall forfeit 40*s.* and Juſtices of Peace 5*l.* and Offences againſt this Act are to be proſecuted in ſix Months, &c. By 8 & 9 *W.* 3. *c.* 16. Juſtices of Peace at their Quarter-Seſſions have Power to order the Enlarging of any *Highway*; ſo as the Ground taken in do not exceed eight Yards in Breadth, and they do not pull down any Houſe, or take away the Ground of any Garden, &c. And a Jury ſhall be impanelled to enquire of the Value of the Ground taken into *Highways*, and aſſeſs Damages as a Recompence for Injuries; on the Payment of which, the Intereſt of ſuch Ground ſhall be deveſted out of the Owners, ond the Ground be taken to be a publick Way: The Juſtices may alſo cauſe Aſſeſſments to be made upon the Occupiers of Lands, &c. for the Purchaſe of the ſaid Ground to enlarge the ſaid *Highways.* And Perſons aggrieved by the Order of Juſtices in their Quarter Seſſions for enlarging *Highways*, may appeal to the Judges of Aſſiſe at the next Aſſiſes, &c. Surveyors of the *Highways*, by Precept from the Juſtices in their ſpecial Seſſions, are to fix a Stone or Poſt with Inſcriptions in large Letters, where two or more croſs Ways meet; as a Direction to Travellers to the next Market-Town, to which each of the Ways lead, on Pain of forfeiting 10*s.* to be employed in erecting ſuch Poſt: And if any Perſon ſhall pull up, cut down, or remove any Poſt, Block, or great Stone, or other Security ſet up for ſecuring Horſe and Foot Cauſeys, he ſhall forfeit 20*s.* leviable by Diſtreſs, &c. 7 & 8 *W.* 3. *cap.* 29. The 1 *Geo.* 1. *c.* 52. enacts, that the Laws for repairing of *Highways* ſhall be put in Force; and Surveyors of the *Highways* are every four Months, or oftner, if required by two Juſtices of Peace, to view all *Highways*, &c. and give an Account of their State and Condition to the Juſtices at their next ſpecial Seſſions, under the Penalty of 5*l.* And the Juſtices in their ſpecial Seſſions may order the Reparation of ſuch great Roads as moſt want Repairing to be firſt amended, and in what Manner. The Surveyors ſhall take the firſt and moſt convenient Time of the Year for Repairing the *Highways*, and perfect the ſame before Harveſt; and Fines, &c. are to be rightly applied for the Repairs of the *Highways.* Juſtices of Peace at their Quarter-Seſſions may make Aſſeſſments for Reparation of *Highways*, according to the Proportion limited by the Stat. 3 & 4 *Will.* & *Mar.* although the Statute-Work hath not been performed; but Money raiſed ſhall not excuſe the working on the Ways. Perſons neglecting to ſcour Ditches, thirty Days after Notice given thereof by the Surveyors, ſhall forfeit 2*s* 6*d.* for every eight Yards not ſcoured: And permitting Soil to lie in the *Highways*, incurs a Forfeiture not exceeding 5*l.* nor under 20*s.* And the Surveyors are to ſcour and keep open ſuch Ditches; or may make new ones through the adjoining Lands, and to remove all Annoyances out of the *Highways.* Juſtices of Peace in Cities and Corporations are empowered to execute the Laws relating to the *Highways.* Appeal lies from the ſpecial Seſſions, to the Quarter-Seſſions; and Perſons ſued for what they do in Purſuance of the Statutes, may plead the General Iſſue, and give the Act and the ſpecial Matter in Evidence, &c. By the 7 *Geo.* 2. *c.* 9. Where any *Highways* are deep and founderous, and the Hedges adjoining high, preventing their Drying by the Wind, &c. being preſented at the next Seſſions, the Juſtices of Peace there may order ſuch Hedges to be new made, or cut lower by the Owner, in proper Seaſon; in Default whereof, thirty Days after Notice, the Surveyors ſhall cauſe the ſame to be done, and Owners to repay them the Charge; or the Money expended may be levied by Juſtice's Warrant, by Diſtreſs, &c. See *Waggon.*

Form of an *Indictment for not* Repairing of a Highway.

THE *Jurors,* &c. *That the common King's* Highway *leading from and to,* &c. *in the Pariſh of* M. *in the County aforeſaid, the Day and Year,* &c. *was and ſtill is in great Decay, for Default of due Reparation*

ration and Amendment thereof, ſo that the Subjects of our Lord the King, paſſing or travelling through or along that Way, without Danger cannot paſs through the ſame, to the great Damage and common Nuſance of all the liege Subjects of our ſaid Lord the King paſſing through that Way; And that the Inhabitants of the Town of, &c. *of Right and by ancient Cuſtom ought to repair, and amend the ſaid* Highway, *when and ſo often as ſhould be neceſſary; againſt the Peace,* &c.

Highwaymen. A Reward of 40 *l.* is given for the Apprehending and Taking of a *Highwayman*, to be paid within a Month after Conviction, by the Sheriff of the County, &c. Stat. 4 & 5 *W* & *M.* Vide *Robbery*.

Hiis teſtibus, Words antiently added in Deeds, after the *In cujus rei Teſtimonium*; which *Witneſſes* were firſt called, then the Deed read, and their Names entered down: But this Clauſe of *Hiis Teſtibus* in the Deeds of Subjects, has been diſuſed ſince the Reign of King *Hen.* 8. Co. Lit. 6.

Hindeni Homines, (From the Sax. *Hindene*, i. e. *Societas*) A Society of Men: And in the Time of the *Saxons*, all Men were ranked into three *Claſſes*, and valued, as to Satisfaction for Injuries, &c. according to the Claſs they were in; the *higheſt* Claſs were valued at Twelve hundred Shillings, and were called *Twelfhindmen*; the *middle* Claſs valued at Six hundred Shillings, and called *Sexhindmen*; and the *loweſt*, at ten Pounds, or Two hundred Shillings, called *Twyhindmen:* And their Wives were termed *Hinda's*. Brompt. Leg. Alfred. cap. 12, 30, 31.

Hine, (*Sax.*) A Servant, or one of the Family; but it is properly a Term for a Servant in Huſbandry, and he that overſees the Reſt is called the *Maſter-hine*. Stat. 12 R. 2. c. 4.

Hinefare, (Sax. *Hine*, a Servant, and *Fare*, a Going or Paſſage) Signifies the Loſs or Departure of a Servant from his Maſter. ——*Si quis occidit hominem Regis & facit* Heinfarum, *dat Regi* 20 s. &c. Domeſday.

Hinegeld, *Significat quietantiam Tranſgreſſionis illata in ſervum tranſgredientem.* MS. Arth. Trevor, Ar.

Hirciſcunda, Is the Diviſion of an Inheritance among *Heirs*. Sax.

Hireman, A Subject, from the Sax. *Hiran*, i. e. *Obedire*, to obey; or it may be one who ſerves in the King's Hall, to guard him, from *Hird*, *Aula*, and *Man*, *Homo*.

Hith, or **Hyth**, (*Sax.*) A Port, Wharf, or little Haven, to embark or land Wares at; as *Queen-hith*, &c. Mon. Angl. Tom. 2. p. 142.

Hlaford, (*Sax.* ſignifying bountiful) Is the ſame as *Dominus* in *Latin*, i. e. Lord. *Leg. H.* 1.

Hlafordſocna, The Lord's Protection. —— *Nec Dominus homini libero* Hlafordſocnam *prohibeat*. Leg. Adelſtan. cap. 5.

Hlaſocner. (From the Sax. *Laga*, *Lex*, and *Socn*, *Libertas*) The Benefit of the Law.

Hloth, An unlawful Aſſembly from the Number of Seven to Thirty-five; and where one was accuſed of being in a Rout or Riot, he was to clear himſelf by a Mulct called *Hlothbota* or *Hlothbote*. Sax.

Hoaſtmen, Are an antient Fraternity, who deal in Sea-Coal, at *Newcaſtle upon Tyne*. Stat. 21 Jac. 1. cap. 3.

Hoblers or **Hobilers**, (*Hobelarii*) Were Light Horſemen; or certain Tenants bound by their Tenure to maintain a little light Horſe, for giving Notice of any Invaſion made by Enemies, or ſuch like Peril towards the Sea-ſide; of which Mention is made in the Stat. 18 *Ed.* 3. *c.* 7. 25 *Ed.* 3. *c.* 8. *Camd. Britan.* 272. They were to be *Ad omnem motum agiles*, &c. And we read, *Duravit. vocabulum uſque ad ætatem* H. 8. *Gentzdarmes* and *Hobelours*. Spelm.

Hock-Tueſday-Money, A Duty formerly paid to the Landlord, for giving his Tenants Leave to celebrate that Day, on which the *Engliſh Conquered* and expulſed the *Danes*; being the ſecond *Tueſday* after *Eaſter* Week.

Hockettor or **Hocqueteur**, Is an old *French* Word for a Knight of the Poſt; alſo a decayed Man. 3 *Inſt.* 175.

Hoga, Hogium, Hoch, A Mountain or Hill, from the Germ. *Hoogh, altus*; or from the Sax. *How.* —— *Edwinus invenit quendam* Hogam, &c. *& ibi ædificavit quandam villam quam vocavit* Stanhogiam, *poſtea* Stanhow. *Du Cange.*

Hogaſter, (*Hogaſtrum*) A little Hog; it alſo ſignifies a young Sheep: *Tertium ovile pro* Hogaſtris *annatis & juvenibus.* Fleta, lib. 2. c. 79.

Hogenhine, (*Sax.*) Is he that comes Gueſt-wiſe to an *Inn* or *Houſe*, and lies there the third Night, after which he is accounted of that Family. *Bract. lib.* 3. See *Third Night Awn-hind.*

Hogſhead, A Veſſel of Wine, or Oil, &c. containing in Meaſure 63 Gallons; Half a Pipe, and the fourth Part of a Ton. 1 *R.* 3. *c.* 13.

Hokeday, Called otherwiſe *Hock-Tueſday*, (*Dies Martis, quam Quindenam* Paſchæ *vocant*) Was a Day ſo remarkable in ancient Times, that Rents were reſerved payable thereon: And in the Accounts of *Magdalene College* in *Oxford*, there is a yearly Allowance *pro Mulieribus* Hockantibus, in ſome Manors of theirs in *Hampſhire*, where the Men *hock* the Women on *Monday*, & *contra* on *Tueſday*; the Meaning of it is, that on that Day the Women in Merriment ſtop the Ways with Ropes, and pull Paſſengers to them, deſiring ſomething to be laid out in pious Uſes. See *Hock-Tueſday-Money*.

Holde, (Sax. *Hold*, i. e. *Summus Præpoſitus*) A Bailiff of a Town, or City: Others are of Opinion that it ſignifies a General; for *Hold* in *Saxon* is alſo *ſummus Imperator*.

Holidays, Appointed by Statute. See 5 & 6 *Ed.* 6, &c.

Holm, (Sax. *Hulmus*, *inſula amnica*) An Iſle or Fenny Ground, according to *Bede*; or a River Iſland. And where any Place is called by that Name, or this Syllable is joined with any other in the Names of Places, it ſignifies a Place ſurrounded with Water; as the *Flatholmes* and *Stepholmes* in the *Severn* near *Briſtol:* But if the Situation of the Place is not near the Water; it may then ſignify a hilly Place; *Holm* in *Saxon* being alſo a Hill or Cliff. —— *Cum duobus* Holmis *in Campis de* Wedone. *Mon. Angl. Tom.* 2. *pag.* 262.

Holt, (*Sax.*) A Wood: Wherefore the Names of Towns beginning or ending with *Holt*, as *Buckholt*, &c. denote that formerly there was great Plenty of Wood at thoſe Places.

Homage, (*Homagium*) Is a *French* Word derived from *Homo*, becauſe when the Tenant does his Service to the Lord, he ſays, *I become your Man.* Co. *Lit.* 64. In the Orininal Grants of Lands and Tenements by way of *Fee*, the Lord did not only oblige his Tenants to certain Services; but alſo took a Submiſſion with Promiſe and Oath, to be true to him as their Lord and Benefactor: And this Submiſſion, which is the moſt honourable, being from a Freehold Tenant, is called *Homage*. *Stat.* 17 *Ed.* 2. The Lord of the Fee for which *Homage* is due, takes *Homage* of every Tenant, as he comes to the Land or Fee: But Women perform not *Homage* but by their Huſbands, as *Homage* eſpecially relates to Service in War; and a Corporation cannot do *Homage*, which is Perſonal, and they cannot appear but by Attorney: Alſo a Biſhop, or religious Man, may not do *Homage*, only Fealty; but the Archbiſhop of *Canterbury* does *Homage* on his Knees to our Kings at their Coronation; and it is ſaid the Biſhop of the *Iſle of Man* does *Homage* to the Earl of *Derby*; tho' *Fulbec* reconciles this, when he ſays that a religious Man may do *Homage*, but may not ſay to his Lord, *Ego devenio homo veſter*, I become your Man, becauſe he has profeſſed himſelf to be *God's Man*, but he may ſay, *I do unto you Homage, and to you ſhall be faithful and loyal.* Britton. cap. 68. There is *Homage* by *Ligeance: Homage* by Reaſon of *Tenure*; and *Homage Aunceſtrel: Homage* by Ligeance is inherent and inſeparable to every Subject. *Homage* by Tenure, is a Service made by Tenants to their Lords according to the Statute; and *Homage* Aunceſtrel, is where a Man and his Anceſtors have Time out of Mind held their Land of the Lord by *Homage*, and ſuch Service draws to it Warranty from the Lord, and Acquittal of all other Services to other Lords, *&c. Bract. lib.* 3. *F. N. B.* 269. *Litt. Sect.* 85. But according to Sir *Edw. Coke*, there muſt be a double Preſcription for *Homage* Aunceſtrel, both in the Blood of the Lord, and of the Tenant; ſo that the ſame Tenant and his Anceſtors, whoſe Heir he is, is to hold the ſame Land of the ſame Lord and his Anceſtors, whoſe Heir the Lord is, Time out of Memory, by *Homage, &c.* and therefore there is but little Land holden by *Homage Aunceſtrel*; tho' in the Manor of *Whitney* in *Herefordſhire*, there is one *Weſt* who holds Lands by this Tenure. *Co. Litt. Homage* Tenure is incident to a Freehold, and none ſhall do or receive *Homage*, but ſuch as have Eſtates in Fee-ſimple, or Fee-tail, in their own Right or Right of another. *Kitch.* 131. Seiſin of *Homage* is Seiſin of Fealty, and inferior Services, *&c.* And the Lord only ſhall take *Homage*, and not the Steward, whoſe Power extends but to Fealty. 4 *Rep.* 8. When a Tenant makes his *Homage* to the Lord, he is to be ungirt, and his Head uncovered, and his Lord ſhall ſit, and he ſhall kneel, and hold his Hands together between his Lord's Hands, and ſay; *I become your Man from this Day forward, for Life, for Member, and for wordly Honour, and unto you ſhall be true and faithful, and bear you Faith for the Lands that I hold of you,* (*ſaving the Faith that I owe to our Sovereign Lord the King:*) And the Lord ſo ſitting ſhall kiſs the Tenant, *&c.* 17 Ed. 3. Litt. Sect. 85.

Homage Jury, Is a Jury in a *Court-Baron*, conſiſting of Tenants that do *Homage* to the Lord of the Fee; and theſe by the *Feudiſts* are called *Pares Curiæ:* They enquire and make Preſentment of Defaults and Deaths of Tenants, Admittances and Surrenders, in the Lord's Court, *&c. Kitch.*

Homager, Is one that does or is bound to do *Homage* to another.

Homagio reſpectuando, Was a Writ to the Eſcheator, commanding him to deliver Seiſin of Lands to the Heir of the King's Tenant, notwithſtanding his *Homage* not done. *F. N. B.* 269. And the Heir at full Age was to do *Homage to the King*, or agree with him for reſpiting the ſame. *New Nat. Br.* 563.

Homagium reddere, To renounce *Homage*; was when the Tenant or Vaſſal made a ſolemn Declaration of diſowning his Lord, for which there was a ſet Form and Method preſcribed by the *Feudatory* Laws. *Bract. lib.* 2. *c.* 35.

Homeſoken, A Freedom that a Man hath in his Houſe or *Home*; which, as commonly ſaid, ſhould be his Caſtle, and not be invaded. See *Hamſoken*.

Homeſtall, Is taken for a Manſion-houſe. *Vide* Frumſtol.

Homicide, (*Homicidium*) Signifies the *Slaying* of a Man; and is divided into *Voluntary* and *Caſual:* Voluntary *Homicide* is that which is done with Deliberation, and a ſet Purpoſe to kill; and Caſual *Homicide* is where the Death of a Man happens by Chance, without any Intention to kill: The Former done out of Malice is *Murder*; and the Latter may be *Manſlaughter, Chancemedley*, &c. *Glanvil, lib.* 14. *cap.* 3. *Weſt's Symb. Sect.* 37. *Co. Litt. lib.* 3. *cap.* 8. See *Murder*, &c.

Hominatio, Is the Muſtering of Men; according to Mr. *Tate* in MS.

Homine Eligendo ad cuſtodiendam peciam ſigilli pro mercatoribus editi, Is a Writ directed to a Corporation, for the Choice of a new Perſon to keep one Part of the Seal appointed for *Statutes-Merchant*, when a Former is dead, according to the Statute of *Acton Burnel.* Reg. Orig. 178.

Homine capto in Withernamium, Is a Writ for the Apprehending of one who has taken any Man or Woman, and conveyed him or her out of the County, ſo that they cannot be replevied by Law. *Reg. Orig.* 79.

Homine Replegiando, Is an ancient Writ for bailing a Man out of Priſon: It lies where a Perſon is in Priſon, not by ſpecial Commandment of the King, or his Judges, or for any Crime or Cauſe irreplevиſable, directed to the Sheriff to cauſe him to be *replevied:* And if the Sheriff return on a *Homine Replegiando*, that the Defendant hath *eſloined* the Plaintiff's Body, ſo that he cannot deliver him; then the Plaintiff ſhall have a *Capias in Withernam* to take the Defendant's Body, and keep it *quouſque, &c.* And if the Sheriff return *Non eſt Inventus* on that Writ againſt the Body, the Plaintiff ſhall have a *Capias* againſt the Defendant's Goods, *&c. F. N. B.* 66. *New Nat. Br.* 151, 152. Where one Man takes away ſecretly, or keeps in his Cuſtody another Man againſt his Will, upon Oath made thereof, and a Petition to the Lord *Chancellor*, he will grant a Writ of *Replegiari facias*, with an *Alias* and *Pluries*, upon which the Sheriff returns an *Elongatus*, and thereupon iſſues out a *Capias in Withernam:* And when the Party is taken, the Sheriff cannot take Bail for him; but the Court where the Writ is returnable may, if they think fit, grant a *Habeas Corpus* to the Sheriff to bring him into Court and bail him, or remand him. 2 *Lill.* 23. In a *Homine Replegiando* it hath been adjudged, that it doth not differ from a common *Replevin*, on which the Sheriff muſt return a *Deliberari feci*, or an Excuſe why he doth not: That where he cannot make Deliverance, if he return an *Elongatus*, the Defendant is not concluded by that Return to plead *Non cepit*; and after the Return of an *Elongatus*, and a *Capias in Withernam*, if the Defendant pleads this Plea, he ſhall be bailed, for the *Withernam* is no Execution: And after a Defendant is bailed upon the *Capias in Withernam*, there may be a new *Withernam* againſt him. 2 *Salk.* 581. And it was held, that in a *Homine Replegiando* after an *Elongatus* returned, if the Defendant comes in *gratis*, and calls for a Declaration, and pleads *Non cepit*, he ſhall not be obliged to give Bail; but if he come in upon the Return of the *Capias*, he muſt give Bail, and ſhall not be admitted to it till he call for a Declaration, and plead *Non cepit. Ibid.* The Sheriff returned an *Elongavit* in a *Homine Replegiando*, and then a *Capias in Withernam* went forth; afterwards the Defendant having entered an Appearance, moved for a *Superſedeas* to the *Withernam*, and offered to plead *Non cepit*; which was oppoſed, unleſs he would give Bail to deliver the Perſon, in Caſe the Iſſue was found againſt him: Though it was ruled, that if any Property had been pleaded in the Party, then the Defendant ought to give Bail to deliver him; but he ſays he hath not the Perſon, and therefore *Non cepit* is a proper Plea, and he ſhall put in Bail to appear *de die in diem.* 4 *Mod.* 183. In this Caſe the Defendant ſhall not be compelled to *Gage Deliverance*; and a *Superſedeas* was granted to the *Withernam.* 5 W. & M.

Homines, Were a Sort of *Feudatary* Tenants, who claimed a Privilege of having their Cauſes and Perſons tried only in the Court of their Lord: And when *Gerrard de Camvil Anno* 5 *R.* 1. was charged with Treaſon and other Miſdemeanors, he pleaded that he was *Homo Comitis Johannis, &c.* and would ſtand to the Law and Juſtice of his Court. *Paroch. Antiq.* 152.

Homo. This *Latin* Word includes both Man and Woman, in a large or general Underſtanding. 2 *Inſt*. 45.

Hondhabend, (Sax. *Hond*, i. e. *Hand*, and *habens*) See *Handhabend.*

Honey. All Veſſels of *Honey* are to be mark'd with the Name of the Owner, and be of ſuch a Content, under Penalties; and if any *Honey* ſold, be corrupted with any deceitful Mixture, the Seller ſhall forfeit the *Honey*, &c. *Stat.* 23 *Eliz. c.* 8.

Honour, (Lat. *Honor*) Is eſpecially uſed for a more noble *Seigniory* or *Lordſhip*, on which other inferior Lordſhips and Manors do depend, by Performance of Cuſtoms and Services. Originally no Lordſhips were *Honours* but ſuch as belong'd to the *King*; though afterwards they were given in Fee to Noblemen: And it appears, that *Honours* have been created by Act of Parliament; for by the Statute 31 *Hen.* 8. *cap.* 5. the Manor of *Hampton-Court*, with divers Manors and Lands thereto annexed, were made an *Honour*; ſo *Ampthill* in the County of *Bedford*, and *Grafton* in *Northumberland* are *Honours*. 33 *H.* 8. *c.* 37, 38. and by 37 *H.* 8. *cap.* 18. the King is empowered by Letters Patent to crect four ſeveral *Honours*, viz. *Weſtminſter*, *Kingſton* upon *Hull*, *St. Oſithe* and *Donnington.* There are divers *Honours* in *England* beſides theſe; as *Lancaſter*, *Clare*, *Wallingford*, *Nottingham*, *Weſt* and *Eaſt Greenwich*, *Bedford*, *Windſor*, *Montgomery*, *Glouceſter*, *Arundel*, *Leiceſter*, *Hertford*, *Cheſter*, *Warwick*, and a great many others, mentioned by Authors, and in ancient Records. 4 *Inſt*. 224. This Word is taken in the ſame Signification in other Nations as with us; (but anciently *Honor* and *Baronia* ſignified the ſame Thing). *Uti* Manerium *plurimis gaudet* (*interdum Feodis*, *ſed plerumque*) *Tenementis*, *conſuetudinibus*, *ſervitiis*, *&c. Ita* Honor *plurima complectitur Maneria*, *plurima Feoda Militaria*, *plurima* Regalia, *&c. dictus etiam olim eſt* Feodum Regale, *tentuſque ſemper a* Rege *in Capite.* Spelm. A *Name* of Dignity or *Honour* may be entailed upon one and the Heirs Males of his Body; alſo it may be forfeited at the *Common Law*, and by the Stat. 26 *H.* 8. *c.* 13. as an Hereditament. 2 *Nelſ. Abr.* 934.

Honour-Courts, Are Courts held within ſuch *Honours*, mentioned in the Stat. 33 *Hen.* 8. *cap.* 37. And there is a *Court of Honour* of the *Earl Marſhal of England*, &c. which determines Diſputes concerning Precedency and Points of *Honour.* 2 *Hawk. P. C.* 11. This Court of *Honour*, which is alſo exerciſed to do Juſtice to *Heralds*, is a Court by Preſcription, and has a Priſon belonging to it, called the *White Lyon* in *Southwark.* 2 *Nelſ.* 935.

Honourary Services, Are thoſe as are incident to the Tenure of *Grand Serjeanty*, and commonly annexed to ſome *Honour.* *Stat.* 12 *Car.* 2. *c.* 29.

Hops. A Statute was formerly made againſt bringing any *Hops* mix'd with Soil, *&c.* into this Kingdom from Foreign Parts, on Pain to forfeit them; and Perſons uſing ſuch *Hops*, to loſe the Value. *Stat.* 1 *Jac.* 1. *c.* 18. There is a Duty of 1 *d.* in the Pound impoſed on *Hops*; and uſing Storehouſes without giving Notice, *&c.* incurs a Penalty of 50 *l.* and privately conveying away *Hops* from the Place of their Growth, is liable to a Forfeiture of 5 *s.* for every Pound. *Stat.* 9 *Ann. c.* 12. The Duty on *Hops* is continued; Places where they grow to be entered, on Pain of 40 *s.* an Acre: And Notice given of Bagging the *Hops*, &c. by 1 *Geo.* 1. *cap.* 2. If any Perſon ſhall mix Ingredients with *Hops* to alter the Colour or Scent, he ſhall forfeit 5 *l.* for every Hundred Weight; leviable by Juſtices of Peace. See Stat. 7 *Geo.* 2. *c.* 19. Cutting *Hop-binds* on Poles, Felony. 6 *Geo.* 2. *cap.* 37.

Hora Auroræ, The Morning Bell, or what we now call the *Four o' Clock Bell*, was called anciently *Hora Auroræ*; as our Eight o'Clock Bell, or the Bell in the Evening was called *Ignitegium* or *Coverfeu.* Cowel.

Hordera, (From the Sax. *Hord*, *Theſaurus*) A Treaſurer: And hence we have the Word *Hord* or *Hoard*, as uſed for Treaſuring or laying up a Thing. *Leg. Adelſtan. cap.* 2.

Hordeum Palmale, and *Hordeum Quadrageſimale*, *Beer-Barley*, of a large ſpreading Ear like a Hand; which in *Norfolk* is termed *Sprat Barley* and *Battledore*, and in the Marches of *Wales*, *Cymridge.* Chart. Dat. 43 Ed. 4.

Horn with Horn, (*Cornutum cum Cornuto*) Is when there is Common *per Cauſe de Vicinage*, or an Intercommoning of *horned Beaſts.* The promiſcuous Feeding of Bulls and Cows, *&c.* that are allowed to run together upon the ſame Common, is called *Horn with Horn*, or *Horn under Horn*; And in the *Conſtitutions* of *Robert Biſhop of Durham*, *Anno* 1276. where the Inhabitants of ſeveral Pariſhes let their common Herds run *Horn with Horn* upon the ſame open large Common; that there might be no Diſpute about the Right of Tithes, the Biſhop ordained, that the Cows ſhall pay Tithe to the Miniſter of the Pariſh where the Owner lived. *Spelm.*

Hornagium, Is ſuppoſed to be the ſame with *Horngeld.*

Horngeld, (from the Sax. *Horn*, *Cornu* and *Geld*, i. e. *Solutio*) Signifies a Tax within the *Foreſt*, to be paid for *horned Beaſts.* Cromp. Juriſd. 197. And to be Free of it is a Privilege granted by the King. ——— *Quietum eſſe de omni Collectione in Foreſta de* Beſtiis Cornutis, *&c.* 4 Inſt. 306. *Et ſint Quieti de omnibus* Geldis, Danegeldis, Wodgeldis, Horngeldis, *&c.* *Chart H.* 3.

Horners, No Stranger was to buy any *Engliſh* Horns gathered or growing in *London*, or within twenty-four Miles thereof, by the Stat. 4 *Ed.* 4. *c.* 8. And none may ſell *Engliſh Horns* unwrought to any Stranger, or ſend them beyond Sea, on Pain of forfeiting double Value: The Wardens of *Horners* in *London* may ſearch all Wares, *&c.* 7 *Jac.* 1: *cap.* 14.

Hors de ſon Fee, (Fr. *i. e.* out of his Fee) Is an Exception to avoid an Action brought for Rent or Services, *&c.* iſſuing out of Land, by him that pretends to be the Lord; for if the Defendant can prove that the Land is *without the Compaſs* of his *Fee*, the Action falls. *Broke.* In an *Avowry*, a Stranger may plead generally *Hors de ſon Fee*; and ſo may Tenant for Years: And ſuch Stranger to the *Avowry*, being made a Party, is at Liberty to plead any Matter in Abatement of it. 9 *Rep.* 30. 2 *Mod.* 104. A Tenant in Fee-ſimple ought either to diſclaim, or plead *Hors de ſon Fee.* 1 Danv. Abr. 655.

Horſes, were not to be convey'd out of the Realm without the King's Licence, *&c.* on Pain of Forfeiture, by an ancient Statute, 11 *H.* 7. *c.* 13. Perſons having Lands of Inheritance in Parks, *&c.* are to keep two Mares apt to bear Foals thirteen Hands high, for the Increaſe of the Breed of *Horſes*, in Pain of 40 *s.* for every Month they are wanting; and not ſuffer them to be leaped by ſtoned *Horſes* under fourteen Hands, on a certain Penalty. 27 *Hen.* 8. *c.* 6. And for the Preſervation of a Strong Breed of *Horſes*, Stone *Horſes* above two Years old are to be fifteen Hands high, or they ſhall not be put into Foreſts or Commons, where Mares are kept, upon Pain of Forfeiture; and ſcabbed or infected *Horſes* ſhall not be put into common Fields, under the Penalty of 10 *s.* leviable by the Lord of the Leet. 32 *H.* 8. *c.* 13. Stealing of any *Horſe*, Gelding or Mare, is Felony without Benefit of Clergy: But Acceſſaries to this Offence are not excluded Clergy. 1 *Ed.* 6. *cap.* 12. 2 & 3 *Ed.* 6. *c.* 23. And if any *Horſe* that is ſtolen be not ſold according to the Stat. 2 & 3 *P.* & *M. c.* 7. the Owner may take the *Horſe* again where-ever he finds him, or have Action of Detinue, *&c.* To prevent *Horſes* being ſtolen and ſold in private Places, the 2 & 3 *P.* & *M.* provides, that Owners of Fairs and Markets ſhall appoint

Toll-takers or Book-keepers, who are to enter the Names of Buyers and Sellers of *Horſes*, &c. And to alter the Property, the *Horſes* muſt be rid or ſtand in the open Fair one Hour; and all the Parties to the Contract muſt be preſent with the *Horſe*. And by 31 *Eliz. cap.* 12. Sellers of *Horſes* are to procure Vouchers of the Sale to them; and the Names of the Buyer, Seller and Voucher, and Price of the *Horſe* are to be entered in the Toll-taker's Book, and a Note thereof delivered to the Buyer: And if any Perſon ſhall ſell a *Horſe* without being known to the Book-keeper, or bringing a Voucher; or if any one ſhall vouch without knowing the Seller; or the Book-keeper ſhall make an Entry without knowing either; in either of theſe Caſes the Sale is void, and a Forfeiture is incurred of 5*l.* A *Horſe* ſtolen, tho' ſold according to the Direction of the Act, may be redeemed and taken by the Owner within ſix Months, repaying the Buyer what he ſhall ſwear he gave for the ſame. *Stat. Ibid.*

Horſes hired. Action of Treſpaſs and the Caſe lies for abuſing a *Horſe* hired, by immoderate Riding, &c. And a Difference has been made in our Law betwixt Hiring a Horſe, and Borrowing one to go a Journey; for in the firſt Caſe the Party may ſet his Servant, &c. upon the Horſe, but not in the ſecond. 1 *Mod.* 210.

Horſes for the King's Service. None ſhall take the *Horſe* of any Perſon to ſerve the King, without the Owner's Conſent, or ſufficient Warrant, on Pain of Impriſonment, &c. *Stat.* 20 *R.* 2. *c.* 5.

Horſe-Races, for ſmall Sums having encouraged Idleneſs, and impoveriſh'd the meaner Sort of People; it is ordain'd, that no Perſon ſhall run any *Horſe* at a *Race*, unleſs it be his own, nor enter more than one Horſe for the ſame Plate, upon Pain of forfeiting the Horſes; and no Plate is to be run for under 50*l.* Value, on the Penalty of 200*l.* Alſo every *Horſe-Race* muſt be begun and ended in the ſame Day, &c. *Stat.* 13 *Geo.* 2. *cap.* 19.

Horſtilers, (Fr. *Hoſteliers*) Is uſed for Inn-keepers: And in ſome old Books the Word *Hoſtlers* is taken in the ſame Senſe. 31 *Ed.* 3. *c.* 2. The Executors of *Horſtelers* are not chargeable, for their Faults. 1 *Keb.* 682.

Hoſpes generalis, A Great Chamberlain.—— *Volumus, quantum ad* Hoſpitia *pertinet, omnes indifferenter noſtro* Hoſpiti generali *obediant*, &c. Du Cange.

Hoſpitalers, (*Hoſpitalarii*) Were a certain Order of *Religious Knights* in this Kingdom, ſo called becauſe they built an *Hoſpital* at *Jeruſalem* wherein Pilgrims were received. The Inſtitution of their Order was firſt allowed by the *Pope* in the Year 1118. and confirmed by Parliament with many Privileges and Immunities; and Pope *Clement* the 5th transferred the *Templers* to them; which Order, by a Council held at *Vienna*, he afterwards ſuppreſſed. Theſe *Hoſpitalers* were otherwiſe ſtiled *Knights of St. John of Jeruſalem*; they are mentioned in the Stat. 13 *Ed.* 1. *c.* 42. and 9 *H.* 3. *c.* 37. And all the Lands and Goods of theſe Knights here in *England*, were given to the King, by the Stat. 32 *H.* 8. *c.* 34.

Hoſpitals. Any Perſon ſeiſed of an Eſtate in Fee-ſimple, may by Deed inrolled in *Chancery* erect and found an *Hoſpital* for the Suſtenance and Relief of the Poor, to continue for ever; and place ſuch Heads, &c. therein as he ſhall think fit: And ſuch *Hoſpital* ſhall be incorporated, and ſubject to ſuch Viſitors, &c. as the Founder ſhall nominate; alſo ſuch Corporations have Power to take and purchaſe Lands not exceeding 200*l. per Annum*, ſo as the ſame be not holden of the King, &c. and to make Leaſes for twenty-one Years, reſerving the accuſtomed yearly Rent: But no *Hoſpital* is to be erected, unleſs upon the Foundation it be endowed with Lands or Hereditaments of the clear yearly Value of 10*l. per Annum.* Stat. 39 *Eliz. c.* 5. It has been adjudged upon this Statute, that if Lands given to an *Hoſpital* be at the Time of the Foundation or Endowment of the yearly Value of 200*l.* or under, and afterwards they become of greater Value by good Huſbandry, Accidents, &c. they ſhall continue good to be enjoyed by the *Hoſpital*, although they be above the yearly Value of 200*l.* And Goods and Chattels, (Real or Perſonal) may be taken of what Value ſoever. 2 *Inſt.* 722. And if one give his Land then worth 10*l.* a Year to maintain Poor, &c. and the Land after comes to be worth 100*l.* a Year, it muſt all of it be employed to increaſe their Maintenance, and none of it may be converted to private Uſe. 8 *Rep.* 130. Alſo if one deviſeth the Rent of his Land for ſuch Uſes, it ſhall be taken largely for a Deviſe of the Rent then reſerved, or afterwards to be reſerved upon an improved Value. 9 *Jac.* Such only are to be Founders of *Hoſpitals* within the Act 39 *Eliz.* as are ſeiſed of any Eſtate in Fee, and who give the ſame at the firſt Foundation of the *Hoſpital* to the Incorporation of the *Hoſpital*, &c. But if a Man, as a Citizen of *London*, by Will deviſes that his Executors ſhall lay out 1000*l.* in the Purchaſe of Lands, &c. and that an *Hoſpital* ſhall thereupon be built and incorporated for the Suſtentation and Relief of poor impotent People, and dieth, whereupon the Executors purchaſe Lands of ſuch a Value, and cauſe the Eſtate to be conveyed to certain Perſons and their Heirs, and build an *Hoſpital*; in this and the like Caſes, the Perſons that have the Eſtate in the Lands are by the Purview of this Statute to be Founders, and do all Things that the Founder is appointed to do. *Inſt.* 724. If one deviſe ſo much a Year for the Poor, &c. leaving Aſſets in Goods, this is good, and the Executors will be forced to buy as much Land, and to aſſure it to that Uſe. *Trin.* 15 *Car.* And if a Deviſe be to the poor People maintained in the *Hoſpital* of St. *Laurence* in *Reading*, &c. (where the Mayor and Burgeſſes capable to take in Mortmain, do govern the *Hoſpital*) albeit the Poor not being a Corporation, are not capable by that Name to take; yet the Deviſe is good, and Commiſſioners appointed to enquire into Lands given to *Hoſpitals*, &c. may order him that hath the Land to aſſure it to the Mayor and Burgeſſes for the Maintenance of the *Hoſpital.* 43 *Eliz.* A Deed of Gift to a Pariſh generally, to maintain Poor or other charitable Uſe, is not good: But a Deviſe by Will is good, and the Churchwardens and Overſeers ſhall take it in Succeſſion; and in *London* the Mayor and Commonalty. 40 *Aſſ.* 26. A Gift muſt be to the Poor, and not to the aged or impotent of ſuch a Pariſh, without expreſſing their Poverty; for Poverty is the principal Circumſtance to bring the Gift within the Stat. 43 *Eliz.* Although at Common Law a Corporation may be of an *Hoſpital*, that is *in poteſtate* of certain Perſons to be Governors of the *Hoſpital*, and not of the Perſons placed therein: The ſafeſt Way upon the Act 39 *Eliz.* is firſt to prepare the *Hoſpital*, and to place the Poor therein, and to incorporate the Perſons therein placed; and after the Incorporation to convey the Lands, Tenements, &c. to the ſaid Corporation, by Bargain and Sale, or otherwiſe, between the Founder of the one Part, and the Maſter and Brethren, &c. of the other Part, in Conſideration of 5*s.* in Hand paid by the Maſter of the ſaid *Hoſpital*, &c. 2 *Inſt.* 724, 725. And the Founder cannot erect an *Hoſpital* for Years, Lives, or any other limited Time, but it muſt be for ever, according to the Stat. 39 *Eliz.* which Statute for erecting of *Hoſpitals* is made perpetual by 21 *Jac.* 1. *c.* 1.

Form of a Deed for erecting and *Founding an Hoſpital.*

THIS Indenture, *made*, &c. Between A. B. of &c. *Eſq; of the one Part, and* C. D. E. F. G. H. &c. *of*, &c. *of the other Part*, Witneſſeth, *That whereas* *as the ſaid* A. B. *being ſeiſed in Fee-ſimple, of and in a certain Meſſuage and Lands of the yearly Value of,* &c. *ſituate, lying and being in,* &c. *and now in the Poſſeſſion of him the ſaid* A. B. *of his charitable Affection and Diſpoſition,* Hath *erected and founded ſeveral Buildings and Edifices upon the ſaid Land adjoining to the aforeſaid Meſſuage together with the ſame, to be an Hoſpital for the Suſtentation and Relief of twenty poor and impotent Perſons, to have Continuance for ever.* And *the ſaid* A. B. *doth by theſe Preſents found, erect and eſtabliſh the ſame for an Hoſpital of poor and impotent People for ever; and according to the Power given to the ſaid* A. B. *by the Statute in that Caſe provided, the ſaid* A. B. *doth by theſe Preſents, covenant and grant, to and with the ſaid* C. D. E. F. *and* G. H. &c. *and hereby limit and appoint, that the ſaid Hoſpital, and the poor and impotent Perſons therein now plac'd by the ſaid* A. B. *viz.* J. K. L. M. N. O. P. R. S. T. *&c. together with the ſaid* C. D. E. F. G. H. &c. *and their Succeſſors, ſhall for ever hereafter be incorporated by the Name of the Maſter and Brethren of the Hoſpital of,* &c. *in the County aforeſaid.* And further, *the ſaid* A. B. *doth by theſe Preſents make and appoint the ſaid* C. D. *to be the preſent Maſter of the ſaid Hoſpital, and the ſaid* E. F. G. H. I. K. L. M. N. O. P. R. S. T. *&c. to be the preſent Brethren of the ſaid Hoſpital, and by the Name of Maſter and Brethren of the ſaid Hoſpital, they ſhall have full Power and lawful Capacity and Ability to purchaſe, take, hold, receive and enjoy, and to have to them and their Succeſſors for ever, as well Goods and Chattels, as Lands, Tenements and Hereditaments, being Freehold, of any Perſon or Perſons whatſoever, according to the Form and Effect of the Statutes in that Caſe made:* And *that the ſame Hoſpital, and the Perſons ſo being incorporated, founded and named, ſhall have full Power, and lawful Authority, by the ſaid Name of Maſter and Brethren,* &c. *to ſue and be ſued, implead and be impleaded, to anſwer and be anſwered unto, in all Manner of Courts and Places, as well Temporal as Spiritual, in all Manner of Suits whatſoever, and of what Kind or Nature ſoever ſuch Suits or Actions may or ſhall be.* And *the ſaid* A. B. *doth by theſe Preſents covenant and grant, and hereby appoint, that the ſaid Maſter and Brethren, and their Succeſſors for ever hereafter, ſhall have a common Seal with,* &c. *engraven thereon, whereby the ſaid Maſter and Brethren, and their Succeſſors ſhall or may ſeal any Inſtrument or Writing touching the ſame Corporation, and the Lands, Tenements and Hereditaments, Goods, or other Things thereto belonging, or in any wiſe touching or concerning the ſame:* And *that it ſhall be lawful for the ſaid* A. B. *during his Life, upon the Death or Removal of the ſaid Maſter, or any of the ſaid Brethren, to place one other in the Room of him that dieth or is removed; and after the Death of the ſaid* A. B. *it ſhall be lawful for the Rector or Parſon of the Pariſh of,* &c. *aforeſaid, and the Churchwardens of the ſame Pariſh for the Time being, for ever after the Deceaſe of the ſaid* A. B *upon the Death or Removal of the Maſter, or any of the Brethren of the ſaid Hoſpital, to place one other in the Room of him that dies, or is removed, ſucceſſively for ever.* And *the ſaid* A. B. *doth further hereby declare and appoint, that it ſhall be lawful for him the ſaid* A. B. *during his Life, and for the Rector or Parſon of the Pariſh of,* &c. *aforeſaid, for the Time being, after the Deceaſe of the ſaid* A. B. *to viſit the ſaid Hoſpital and inſpect into the Government and State thereof:* And laſtly, *that the Rents and Profits of the ſaid Meſſuage and Lands abovementioned, ſhall be yearly,* &c. *paid to the Maſter of the ſaid Hoſpital, and his Succeſſors, and be applied for the Maintenance of the twenty Brethren and poor impotent Perſons aforeſaid, and their Succeſſors, and to and for no other Purpoſe whatſoever.* In Witneſs, *&c.* See 10 *Rep.* 17 *&* 34. for a Form of a *Deed of Bargain and Sale.*

By 39 *Eliz. c.* 6. and 43 *Eliz. c.* 4. *Commiſſions* may be awarded to certain Perſons to enquire of Lands or Goods given to *Hoſpitals*; and the *Lord Chancellor* is empowered to iſſue Commiſſions to Commiſſioners for enquiring by a Jury, of all Grants, Abuſes, Breaches of Truſt, *&c.* of Lands given to charitable Uſes, who may make Orders and Decrees concerning the ſame, and the due Application thereof; and the Commiſſioners are to decree, that Recompence be made for Frauds and Breaches of Truſt, *&c.* ſo as their Orders and Decrees be certified into the Chancery; and the Lord Chancellor ſhall take Order for the Execution of the ſaid Judgments and Decrees, and after Certificate may examine into, annul, or alter them agreeable to Equity, on juſt Complaint: But this does not extend to Lands given to any College or Hall in the Univerſities, *&c.* nor to any *Hoſpital*, over which ſpecial Governors are appointed by the Founders; and it ſhall not be prejudicial to the Juriſdiction of the Biſhop or Ordinary, as to his Power of Inquiry into and reforming Abuſes of *Hoſpitals*, by Virtue of the Stat 2 *Hen.* 5. *&c* Theſe Commiſſioners may order Houſes to be repaired, by thoſe who receive the Rents; ſee that the Lands be let at the utmoſt Rent; and on any Tenant's committing Waſte, by cutting down and Sale of Timber, they may decree Satisfaction, and that the Leaſe ſhall be void. *Hill.* 11 *Car.* Where Money is kept back, and not paid, or paid where it ſhould not, they have Power to order the Payment of it to the right Uſe: And if Money is detained in the Hands of Executors, *&c* any great Length of Time, they may decree the Money to be paid with Damages for detaining it. *Duke Read.* 123. See 4 *Rep.* 104. The *Hoſpital* of *St. Croſs* near *Wincheſter*, and ſeveral other large *Hoſpitals*, were anciently founded by *particular Statutes*, or Acts of Parliament. And King *Charles* the firſt granted to the Mayor and Commonalty of *London* the keeping of *Bethlem Hoſpital*, and the Manors and Lands belonging to it. *Chart. K. Cha.* 1. Alſo there is now an *Hoſpital* in *London* for *Foundling Children*, under the Care of Governors and Guardians, who may purchaſe Lands or Tenements to the Value of 4000*l.* a Year: And they are to receive as many ſuch *Children*, as they think fit, which may be brought to the *Hoſpital*, and ſhall there be bred up and employ'd, or plac'd Apprentice to any Trade, or the Sea Service, the Males till the Age of 24, and Females till 21. They may likewiſe be let out or hired, *&c.* 13 *Geo.* 2. *cap* 29. See *Bath.*

Hoſpitium, Hath been uſed in the ſame Senſe with *Procuration* or Viſitation Money. *Brompt.* 1193.

Hoſtelagium, A Right to have Lodging and Entertainment, reſerved by Lords in the Houſes of their Tenants. *Cartular Radinges, MS.* 157.

Hoſterium, A Hoe, being an Inſtrument well known: *Et quieti de Aratro &* Hoſterio, *& ſepibus ſecandis, & Homagio faciendo, de Averiis, & de pannagio, & omnibus aliis conſuetudinibus, &c.* Chart. Hamon. Maſſy.

Hoſtiæ, Hoaſt Bread, or conſecrated Wafers in the *Holy Euchariſt*: And from this Word *Hoſtia*, Mr. *Somner* derives the Sax. *Huſel*, uſed for the Lord's Supper, and *Huſlian* to adminiſter that Sacrament; which were kept long in our old *Engliſh*, under *Houſel*, and to *Houſal.* Paroch. Antiq. 270.

Hoſtilaria, Was a Place or Room in Religious Houſes allotted to the Uſe of receiving Strangers. *Cartular. Eccleſ. Elien. MS.* 34

Hoſtilarius, An Officer appointed for the Care of the *Hoſtilaria.*

Hotchpot, (*In partem poſitio*) Is a Word brought from the Fr. *Hotchepot*, uſed for a confuſed mingling of divers Things together, and among the *Dutch* it ſignifies Fleſh cut into Pieces, and ſodden with Herbs or Roots; but by a Metaphor it is a Blending or Mixing of Lands given in Marriage, with other Lands in Fee falling by Deſcent: As if a Man ſeiſed of thirty Acres of Land in Fee, hath Iſſue only two Daughtets, and he gives with one of them ten Acres in Marriage to the Man that marries her, and dies ſeiſed of the other twenty Acres: Now ſhe that is thus married, to gain her Share of the reſt of the Land, muſt put her Part given in Marriage in *Hotchpot, i. e.* ſhe muſt refuſe to take the ſole Profits thereof, and cauſe her Land to be mingled with the other, ſo that an Equal Diviſion may be made of the whole between her and her Siſter, as if none had been given to her; and thus for her ten Acres ſhe ſhall have fifteen, otherwiſe her Siſter will have the twenty Acres of which her Father died ſeiſed. *Litt.* 55. *Co. Litt. lib.* 3. *cap.* 12. This ſeems to be a Right of waving a Proviſion, made for a Child in a Man's Life-time, at his Death, tho' as it depends upon *Frank Marriage*, and Gifts of Lands therein, it now ſeldom happens. But there is a bringing of Money into *Hotchpot*, upon the Clauſes and Intent of the Act of Parliament for Diſtribution of Inteſtates Eſtates. 22 & 23 *Car.* 2. Where a certain Sum is to be raiſed, and paid to a Daughter for her Portion, by a Marriage Settlement; this has been Decreed to be an Advancement by the Father in his Life-time, within the Meaning of the *Statute*, tho' future and contingent; and if the Daughter would have any further Share of her Father's Perſonal Eſtate, ſhe muſt bring this Money into *Hotchpot*; and ſhall not have both the one and the other. *Abr. Caſ. Eq.* 253. See 2 *Vern.* 638. By the Cuſtom of *London*, there is likewiſe a Term of *Hotchpot*, where the Children of a *Freeman* are to have an equal Share of one third Part of his Perſonal Eſtate, after his Death. *Preced. Canc.* 3.

Hovel, (*Mandra*) Is a Place wherein Husbandmen ſet their Ploughs and Carts out of the Rain or Sun. *Law Lat. Dict.*

Hounslow-Heath. A large *Heath* containing 4293 Acres of Ground, and extending into ſeveral Pariſhes; ſo much thereof as is the King's Inheritance, and fit for Paſture, Meadow, or other ſeveral Grounds, ſhall be of the Nature of *Copyhold Lands*; or the Steward of the Manor may let it for 21 Years, &c. and the Leſſees may improve the ſame. *Stat.* 37 *H.* 8. *c.* 2.

Hour, (*Hora*) Is a certain Space of Time of ſixty Minutes, twenty four of which make the natural Day. It is not material at what *Hour* of the Day one is born. 1 *Inſt.* 135. Vide *Fraction*.

Houſage, Is a Kind of Fee paid for *Houſing* Goods by a Carrier, or at a Wharf or Key, &c. *Shep. Epit.* 1725.

Houſe, (*Domus*) A Place of Dwelling or Habitation; alſo a Family or Houſhold. Every Man has a Right to Air and Light, in his own *Houſe*; and therefore if any Thing of infectious Smell, be laid near the *Houſe* of another, or his Lights be ſtopped up and darkned, by Buildings, &c. they are Nuſances puniſhable by our Laws. 3 *Inſt.* 231. 1 *Danv. Abr.* 173. But for a Proſpect, which is only Matter of Delight, no Action will lie for this being ſtopped. 11 *Co. Rep.* The dwelling *Houſe* of every Man, is as his Caſtle; therefore if Thieves come to a Man's *Houſe* to rob or kill him, and the Owner or his Servant kills the Thieves in defending him and his *Houſe*, this is not Felony, nor ſhall he forfeit any Thing. 2 *Inſt.* 316. A Man ought to uſe his own *Houſe*, ſo as not to damnify his Neighbour: And one may compel another to repair his *Houſe*, in ſeveral Caſes, by the Writ *de Domo Reparanda*. 1 *Salk. Rep.* 360. Doors of a *Houſe* may not be broke open on Arreſts, unleſs it be for Treaſon, or Felony, &c. *H. P. C.* 137. *Plowd.* 5. 5 *Rep.* 91. Riotouſly pulling down a *Houſe* is Felony excluded Clergy. *Stat.* 1 *Geo.* 1. *c.* 6. Stealing Lead, or Iron Bars, or Rails fixed to *Houſes*, &c. is Felony puniſhable by Tranſportation, by 4 *Geo.* 2. *cap.* 32. *Houſe*-burning, ſee *Arſon*.

Houſe of Correction. Juſtices of Peace in their Quarter-Seſſions, are to make Orders for erecting *Houſes* of Correction, and the Maintenance and Government of the ſame; and for the Puniſhment of Offenders committed thither. 39 *Eliz. cap.* 4. In every County of *England* there ſhall be a *Houſe of Correction* built at the Charge of the County, with Conveniencies for the ſetting of People to work, or every Juſtice of Peace ſhall forfeit 5*l.* And the Juſtices in Seſſions are to appoint Governors or Maſters of ſuch *Houſes of Correction*, and their Salaries, &c. which are to be paid Quarterly by the Treaſurer out of the County Stock: Theſe Governors are to ſet the Perſons ſent on Work, and moderately correct them, by Whipping, &c. and to yield a true Account every Quarter-Seſſions of Perſons committed to their Cuſtodies; and if they ſuffer any to eſcape, or neglect their Duty, the Juſtices may fine them. 7 *Jac.* 1. By late Statutes, on the Preſentment of the Grand Jury, at the Aſſiſes held for any County, or the Quarter-Seſſions, that there is no *Houſe of Correction*, or not a ſufficient Number of thoſe Houſes, &c. the Juſtices at their General or Quarter-Seſſions, may order Perſons to build, or enlarge any *Houſes of Correction*, or Purchaſe Houſes for that Purpoſe, or Land to erect them upon, and make convenient Backſides or Outlets thereto; and the Juſtices are to take Care, that ſuch Houſes provided within their Juriſdictions, ſhall be duly fitted up, and ſupply'd with all Neceſſaries, for Relieving, Setting to Work, and Correcting all Idle Perſons ſent to the ſame: Alſo two Juſtices of Peace appointed by the Seſſions, ſhall viſit them twice a Year, &c. Stat. 13 *Geo.* 2. *c.* 24. and 14 *Geo.* 2. The *Houſe of Correction* is chiefly for the puniſhing of idle and diſorderly Perſons; Parents of Baſtard Children, Beggars, Servants running away; Treſpaſſers, Rogues, Vagabonds, &c. Poor Perſons refuſing to Work are to be there whipped, and ſet to Work and Labour: And any Perſon who lives extravagantly, having no viſible Eſtate to ſupport himſelf, may be ſent to the *Houſe of Correction*, and ſet at Work there, and may be continued there until he gives the Juſtices Satisfaction in Reſpect to his Living; but not be whipped. 2 *Bulſt.* 351. *Sid.* 281. A Perſon ought to be convicted of Vagrancy, &c. before he is ordered to be whipped. *Ibid. Bridewell* is a Priſon for Correction in *London*, and one may be ſent thither. *Style* 27. See *County Rates*.

Houſe-bote, Signifies *Eſtovers*, or an Allowance of Timber out of the Lord's Woods, &c. for the repairing and upholding of a *Houſe* or Tenement: And this *Houſe-bote* is ſaid to be two-fold, *viz. Eſtoverium ædificandi*, and *Ardendi*. *Co. Litt.* 41. See *Common of Eſtovers*.

Houſe-breaking, or *Robbing* of *Houſes*. The Robbing any Perſon in his Dwelling *Houſe*, the Dweller, his Wife, Children, or Servants being therein, and put in Fear; this requires that there be ſomething taken, but not an actual *Breach* of the Houſe: But if they are not put in Fear, there muſt be a *Breaking*, and alſo a taking of Something, to make it Felony excluded Clergy. Stat. 23 *H* 8. 5 & 6 *Ed.* 6. 1 *Hale's Hiſt. P. C.* 548. Vide *Burglary*.

Houſholder, (*Pater-familias*) Is the Occupier of a Houſe, a Houſe-keeper or Maſter of a Family.

Hue and Cry, (*Huteſium & Clamor*) From the Fr. *Huer & Crier*, both ſignifying to cry out aloud, is a Purſuit of one who hath committed Felony by the *Highway*; for if the Party robbed, or any in the Company of one murdered or robbed, come to the Conſtable of the next Town, and require him to raiſe *Hue and Cry*, or to purſue the Offender, deſcribing him and ſhewing (as near as he can) which Way he is gone, the Conſtable ought forthwith to call upon the Pariſh for Aid in ſeeking the Felon; and if he be not found there, then to give the next Conſtable Warning, and he the next, until the Offender be apprehended, or at leaſt thus purſued to the Sea-ſide. *Bract. lib.* 3. *Stat.* 13 *Ed.* 1. of *Winton*, *c.* 3. 28 *Ed.* 3. *cap.* 11. 27 *Eliz. c.* 13. 3 *Inſt.* 117. The *Scotch* make *Hue and Cry* where a Robbery is done, by Horſemen and by blowing a Horn, and making an Outcry; after which, if the Offender will not yield himſelf to the King's Bailiff, he may be lawfully ſlain, &c. And no *Hue and Cry* by our Law ſhall be a good and lawful *Hue and Cry*, unleſs made by Horſemen and Footmen, &c. *Hue and Cry* is the Purſuit of an Offender from Town to Town, till he is taken; which all Perſons who are preſent where a Felony is committed, or a dangerous Wound given, are by Law bound to raiſe againſt the Offenders who eſcape; alſo a Man may raiſe *Hue and Cry* againſt one who ſets upon him in the Highway to rob him; and *Hue and Cry* ſhall be levied upon any Stranger who will not obey the Arreſt of the Watch in the Night; and in Foreſts, &c. againſt Offenders: But if a Man take upon him to levy *Hue and Cry*, without ſufficient Cauſe, he ſhall be puniſhed for the ſame. 2 *Hawk. P. C.* 75. A Perſon that levies *Hue and Cry*, according to Lord Chief Juſtice *Hale*, ought to give Notice to the Conſtable of a Felony committed, and ſuch reaſonable Aſſurance thereof, as the Caſe will bear; if he knows the Name of him who did it, he muſt tell the Conſtable the ſame; and if he know it not, but can give a Deſcription of him, then he muſt deſcribe his Perſon, Habit, or Horſe, or ſuch Circumſtances as he knows, which may conduce to his Diſcovery: If the Felony be done in the Night, ſo that theſe Things are unknown, he is to mention the Number of Perſons, or the Way they took; and if none of all theſe can be diſcovered, the Party muſt acquaint the Conſtable with the Fact, and deſire him to ſearch in his Town, and make *Hue and Cry* after ſuch as may be probably ſuſpected, &c. 2 *Hale's Hiſt. P. C.* 100, 101. If *Hue and Cry* be not againſt a Man certain, but by Deſcription of his Perſon, Clothes, &c. it juſtifies the Conſtable, or other Perſons following it, in apprehending the Perſon ſo deſcribed: And in Caſe of a *Hue and Cry* once raiſed and levied, on Suppoſal of Felony done, though in Truth there was none, yet thoſe that purſue it may proceed as if there had been really a Felony; for being levied upon ſuch Information, it is ſufficient if that is falſe. *Ibid.* 105. And there are two Kinds of *Hues and Cries*; by the Common Law, and by Statute; one for the King, and the other for the Party; and refuſing to make *Hue and Cry* is puniſhable by Fine and Impriſonment, &c. 2 *Inſt.* 172. By Statute of *Weſtm.* 1. 3 *Ed.* 1. *c.* 9. All Perſons are to be ready at the Summons of the Sheriff, and Cry of the County, to purſue and arreſt Felons and Robbers, &c. or be fined to the King: And if Default be in the Lord of a Franchiſe, the King ſhall ſeize his Franchiſe; but if in the Bailiff, he ſhall be impriſoned for a Year, and fined, &c. If the Inhabitants of any Hundred, after the *Hue and Cry* is made, neglect to purſue it, they ſhall anſwer one Moiety of the Damages recoverable againſt the Hundred where a Robbery is committed. 27 *Eliz. c.* 13. And if the County will not produce the Bodies of the Offenders, the whole Hundred ſhall be anſwerable for Robberies there committed, &c. 13 *Ed.* 1. Where a Robbery is done on the Highway, in the Day-time, of any Day except *Sunday*, the Hundred where committed is anſwerable for it: But Notice is to be given of it, with convenient Speed, to ſome of the Inhabitants of the next Village, to the Intent that they may make *Hue and Cry* for the apprehending of the Robbers, or no Action will lie againſt the Hundred: And in the making of *Hue and Cry*, diligent Search is to be made in all ſuſpected Houſes and Places, and not only Officers, but all others who ſhall purſue the *Hue and Cry*, may arreſt all ſuch Perſons as in their Search and Purſuit they ſhall find ſuſpicious, and carry them before ſome Juſtice of the Peace of the County where taken, to be examined where they were at the Time of the Robbery, &c. for in this Caſe, the Arreſt of a Perſon not guilty is lawful. 13 *Ed.* 1. 27 *Eliz.* And if any of the Robbers are taken within forty Days, and convicted, the Hundred ſhall be excuſed; if not, after the forty Days paſt, the Party robbed is to make Oath before a Juſtice of Peace of the County where the Robbery was done, of the Time and Place of the Robbery, and of what Sum he was robbed, and that he knew none of the Robbers; and then in twenty Days he may bring his Action againſt the Hundred by Original Writ, &c. which muſt be ſued out within a Year after the Robbery: If a Recovery is had againſt the Hundred, the Sheriff may levy his Execution, which is a Charge upon the Lands, on any one or more Inhabitants in the Hundred; but Juſtices of Peace at their Seſſions, may make a Rate or Tax upon the whole Hundred, to pay and reimburſe it; and Conſtables, &c. of every Town and Pariſh are to levy it proportionably on all the Inhabitants; alſo the like Tax may be made for a Moiety of Damages leviable where any Default ſhall be of freſh Purſuit after *Hue and Cry* made. 27 *Eliz.* 3 *Lev.* 320. 7 *Rep.* 7. By a late Statute, no Proceſs is to be ſerved againſt the Hundred, &c. for a Robbery committed, but on the High Conſtable, who ſhall give Notice of it in one of the principal Market-Towns, &c. and then enter an Appearance, and defend the Action; and if the Plaintiff recovers, Execution ſhall not go againſt any Inhabitant, or the Conſtable, but inſtead of ſerving it, the two next Juſtices are to cauſe a Taxation to be made upon every Pariſh within the Hundred, which ſhall be levied on the Inhabitants by Conſtables, and the Money paid over to the Sheriff, to the Uſe of the Party recovering, and the High Conſtable as to his Expences, &c. And the Perſon robbed is in twenty Days to give publick Notice in the *Gazette*, deſcribing the Circumſtances of the Robbery; and enter into Bond to pay Coſts, if Verdict be againſt him, &c. and no Hundred is chargeable, where any Robbers are taken in forty Days after ſuch Notice; alſo all Conſtables, &c. ſhall make *Hue and Cry*, or neglecting it ſhall forfeit 5*l.* And a Reward of 10*l.* is given, to be paid by the Hundred, for apprehending any Robber within the Time limited, and levied by the Juſtices as the other Money. Stat. 8 *Geo.* 2. *c.* 16. If he that is robbed, after *Hue and Cry*, makes no further Purſuit after the Robbers, Action lies againſt the Hundred. 4 *Leon.* 180. The Party robbed is not bound to purſue the Robbers himſelf, or to lend his Horſe for that Purpoſe; but ſtill has his Remedy againſt the Hundred, if they are not taken: Though if any of them are taken, either within forty Days after the Robbery, or before the Plaintiff recovers, the Hundred is diſcharged. *Sid.* 11. It has been held, that an Action lies againſt the Hundred for a Robbery in the Day-time, although not in the King's Highway, but in a private Way. *Hill.* 1 *Ann.* 1 *Mod.* 221. But not for a Robbery in the Morning, before it is light; and yet where it is before Sun-riſing, or after Sun-ſet, if it be ſo light that a Man's Face may be known, it well lies. 7 *Rep.* 6. *Cro. Jac.* 106. If a Party be robbed in the Night-time, when Perſons are at Reſt, the Hundred is not chargeable: And where a Perſon is ſeiſed by Day-light, but robbed in the Night, he is without Remedy. 3 *Leon.* 350. Though where Robbers forced a Coach out of the Way, in the Day-time, and afterwards robbed it in the Night, this was held a Robbery in the Day, and that Action lay againſt the Hundred. 1 *Sid.* 263. When a Man is robbed on a *Sunday*, on which Day Perſons are ſuppoſed to be at Church, and none ought to travel, the Hundred is not liable. 27 *Eliz.* But where a Robbery is done on a *Sunday*, though the Hundred is not chargeable, *Hue and Cry* ſhall be made, by Stat. 29 *Car.* 2. *c.* 7. And if a Perſon be robbed going to Church in a Country Town or Village, on a *Sunday*, which is a religious Duty required by Law, it has been lately held an Action lies againſt the Hundred; but not if one be robbed on that Day in other travelling for Pleaſure, *&c.* which is prohibited by Statute. 6 *Geo.* 1. *C. B.* per *King*, Chief Juſtice. And it was formerly ruled by three Judges on the Statute of *Winton*, where a Man was robbed on a *Sunday*, in Time of Divine Service, and made *Hue and Cry*, that the Hundred ſhould be charged; for many Perſons are neceſſitated to travel on this Day, as Phyſicians, *&c.* 2 *Cro.* 496. 2 *Roll.* 59. *Godb.* 280. See 2 *Nelſ. Abr.* 937, 938. If a Perſon be robbed in a Houſe, where he is preſumed to be at Safety by his own Care, the Hundred is not chargeable: A Robbery muſt be an open Robbery, that the Country may take Notice of it, to make the Hundred anſwerable. 7 *Rep.* 6. A Man is ſet upon and aſſaulted by Robbers in one Hundred, and carried into a Wood, *&c.* in another Hundred, near the Highway, and there robbed, the Action ſhall be brought againſt the Hundred where the Robbery was done, as particularly expreſſed in the Statute, and not the Hundred where the Man was taken or aſſaulted; becauſe the Aſſault is not the efficient Cauſe of the Robbery, as a Stroke is in Caſe of Murder. *Hill.* 1 *Ann. B. R.* 2 *Salk.* 614 But where Goods are taken from a Man in one Hundred, and opened in another, where they are firſt taken or ſeiſed, they are ſtolen, and the Robbery is committed. 2 *Lill. Abr.* 27. If a Servant is robbed of his Maſter's Money, he may ſue the Hundred on the Statute of *Winton* of *Hue and Cry*; or the Maſter may bring the Action, and the Man making Oath of the Robbery, and that he knew none of the Robbers, is ſufficient without the Oath of the Maſter. *Goldſ.* 24. *Cro. Car.* 26, 37, 336. Where a Servant is robbed, he muſt be examined and ſworn; but if the Maſter be preſent, it is a Robbery of him. *Show.* 241. 1 *Leon.* 323. If a Quaker be robbed, or a Man's Servant being a Quaker, and either refuſe to take the Oath of the Robbery, and that he did not know any of the Robbers, the Hundred is not anſwerable; for the Statute of *Eliz.* was made to prevent Combination between Perſons robbed and the Robbers. 2 *Salk.* 613. But the Maſter's Oath where his Servant is a Quaker, or otherwiſe, and being robbed in his Preſence, will maintain the Action in his own Name. *Carth* 146. And a Plaintiff had Judgment on his own Oath, though his Servant that was robbed with him, knew one of the Robbers. When a Carrier is robbed of another Man's Goods, he or the Owner may ſue the Hundred; but the Carrier is to give Notice, and make Oath, *&c.* though the Owner of the Goods brings the Action. 2 *Saund.* 380. Receivers General of Taxes, *&c.* being robbed, there muſt be Three in Company at leaſt to make Oath of the Robbery to maintain an Action againſt the Hundred. *Stat.* 6 *Geo.* 1. If an Action againſt the Hundred be diſcontinued, on a new Action brought there muſt be a new Oath taken within forty Days before the laſt Action brought. *Sid.* 139. In Action upon the Statute of *Hue and Cry*, the Declaration is good, though the Plaintiff doth not ſay, that the Juſtice of Peace who took the Oath lived *prope locum* where the Robbery was committed. *Mich.* 6 *W.* And Oath was made before a Juſtice of Peace of the County where the Robbery was done, in a Place of another neighbouring County; and it was held good. *Cro. Car.* 211. If a Juſtice of Peace refuſes to examine a Perſon robbed, and to take his Oath, Action on the Statute lies againſt the Juſtice. 1 *Leon.* 323. It is ſafe to ſay the Plaintiff gave Notice at ſuch a Place, near the Place where the Robbery was done; and though that Place where Notice is given be in another Hundred or County, yet it is good enough; for a Stranger may not know the Confines of the Hundred or County. *Cro. Car.* 41, 379. 3 *Salk.* 184. If there be a Miſtake of the Pariſh in the Declaration where the Robbery was, if it be laid in the right Hundred, it is well enough. 2 *Leon* 212. And though the Party puts more in his Declaration than he can prove, for ſo much as he can prove it ſhall be good. *Cro. Jac.* 348. Upon a Trial in theſe Caſes, the Party muſt file his Original, and be ſure to have a true Copy thereof, and Witneſſes to prove it; and he muſt alſo have the Affidavit or Oath, and a Witneſs to prove the Taking it. 2 *Lill. Abr.* 25. In theſe Actions, poor Perſons in a Hundred, and Servants, are good Witneſſes for the Hundred; but not thoſe Houſholders as are worth any Thing. 1 *Mod.* 73. And as Proof cannot be otherwiſe for the Plaintiff, he is allowed to be a Witneſs in his own Cauſe.

Huiſſier, An Uſher of a Court, or in the King's Palace, *&c.* See *Uſher.*

Huiſſerium, or *Uſſers*, Are Ships to tranſport Horſes; derived as ſome will have it, from the Fr. *Huis*, *i. e.* a Door; becauſe when the Horſes are put on Shipboard, the Doors or Hatches are ſhut upon them, to keep out the Water. *Brompton Anno* 1190.

Hulka, Is a Hulk, or ſmall Veſſel. *Walſingham*, *p.* 394.

Hull. The Mayor and Corporation of *Hull*, may take certain Cuſtoms for Fiſh; of every Perſon privileged, for the Laſt of Herrings 20*d.* for an Hundred of Salt Fiſh 4*d.* a Laſt of Sprats 8*d.* and greater Duties of Perſons not privileged. *Stat.* 33 *H.* 8. *c.* 33.

Humagium. A moiſt Place. *Mon. Angl. Tom.* 1. *pag.* 628.

Hundred, (*Hundredum, Centuria*) Is a Part of a County, ſo called, becauſe it contained ten Tithings, and a *Hundred* Families; or for that it found the King one *Hundred* able Men for his Wars. Theſe *Hundreds* were firſt ordained by King *Alfred*, the 29th King of the *Weſt-Saxons*; who took the Form of dividing Counties into *Hundreds* for better Government, from the Conſtitution of *Germany*, where *Centa* or *Centena* is a Juriſdiction over an *Hundred* Towns; and has the Puniſhment of capital Crimes. After the Diviſion of *England* into Counties by the afore-mentioned King, and the Government of each County given to a Sheriff; thoſe Counties were ſub-divided into *Hundreds*, of which the Conſtable was the chief Officer: And the Grants of *Hundreds* at firſt proceeded from the King to particular Perſons. 9 *Co.* 25. The Juriſdiction of the whole County remained to the Sheriff, until K. *Ed* 2. granted ſome *Hundreds* in Fee; and all *Hundreds* which were not before that Time granted by the Crown in Fee, were by Statute joined to the Office of Sheriff. By the Statute 14 *Ed.* 3. *c.* 9. *Hundreds* which were ſevered from the Counties were rejoined to the ſame; but neither of the Statutes extend to a Grant of the King of an *Hundred* in Fee, with *Retorna Brevium.* 1 Vent. 399. 2 Nelſ. Abr. 942. *Hundreds* it is ſaid, are Parcel of the Crown; and by the Grant of an *Hundred*, a Leet paſſes, and an implied Power of making a Bailiff to execute Proceſs, *&c.* But a *Hundred* cannot at this Day be ſeparated from the County except ſuch as were granted by King *Edward* 3. or his Anceſtors; it may not now be by Grant or Preſcription, though formerly derivative out of the County. 3 *Mod.* 199. Our *Hundreds* keep the Name, and remain in ſome Sort the ſame, as originally uſed; but their Juriſdiction is devolved to the County Court, ſome few excepted, which have been by Privilege annexed to the Court, or granted to ſome great Subjects, and remain ſtill in the Nature of a Franchiſe: This has been ever ſince the Statute 14 *Ed* 3. whereby the *Hundred Courts* anciently farmed out by the Sheriff to other Men, were reduced all or the moſt Part to the County Court, and ſo continue at preſent; ſo that where there are now any *Hundred* Courts, they are ſeveral

Franchiſes, wherein the Sheriff hath nothing to do by his ordinary Authority, unleſs they of the *Hundred* refuſe to do their Duty. *Weſt. Symb. lib.* 4. *ſect.* 288. They were formerly Juſtices of *Hundreds.* And the Word *Hundredum* is ſometimes taken for an Immunity or Privilege, whereby a Man is quit of Money or Cuſtoms due to the *Hundreds.* See *Turn. Hundred* chargeable for *Robberies,* vide *Hue and Cry.*

Hundredors, (*Hundredarii*) Are Perſons ſerving on *Juries,* or fit to be impanelled thereon for Trials, dwelling within the *Hundred* where the Land in Queſtion lies. *Stat.* 35 *H.* 8. *c.* 6. And Default of *Hundredors* was a Challenge or Exception to Panels of Sheriffs, by our Law; till the Stat. 4 & 5 *Ann. cap.* 16. ordained, that to prevent Delays by Reaſon of Challenges to Panels of Jurors for Default of *Hundredors, &c.* Writs of *Venire facias* for Trial of any Action in the Courts at *Weſtminſter,* ſhall be awarded of the *Body* of the proper *County* where the Iſſue is triable. *Hundredor* alſo ſignifies him that hath the Juriſdiction of the *Hundred*; and is in ſome Places applied to the *Bailiff* of an *Hundred.* 13 Ed. 1. c. 38. 9 Ed. 2. 2 Ed. 3. Horn's Mirror, lib. 1.

Hundred-lagh, (From the Sax. *Laga,* Lex) Is in *Saxon* the *Hundred* Court. *Manwood, par.* 1. *pag.* 1.

Hundred-peny, Was collected by the Sheriff or Lord of the *Hundred, in Oneris ſui ſubſidium.* Camd. 223.——*Eſt autem Pecunia quam Subſidii cauſa Vicecomes olim exigebat ex ſingulis Decuriis ſui Comitatus, quas* Tithingas *Saxones appellabant*; *ſic ex* Hundredis, Hundred-peny, *&c. Spelm. Gloſſ. Pence* of the *Hundred* is mentioned in *Domeſday.* And it is elſewhere called, *Hundredſeh.* Chart. K. Joh. Egidio Epiſc. Heref.

Hundred-Setena, Signifies Dwellers or Inhabitants of a *Hundred.* Charta Edgar. Reg. Mon. Ang. Tom. 1. pag. 16.

Hunting, of Game and Prey, ſee *Game* and *Deerſtealers.*

Hurrers. The Cappers and Hat makers of *London* were formerly one Company of the *Haberdaſhers,* called by this Name. *Stow's Surv. Lond.* 312.

Hurſt, Hyrſt, (*Sax.*) A Wood or Grove of Trees: And as the great Wood called *Andreſwald* extended through *Kent, Suſſex,* and *Hampſhire,* there are many Places in thoſe Counties which begin and end with this Syllable.

Hurſt-Caſtle, Is ſo called becauſe ſituated near the Woods: So *Hurſlega* is a woody Place; from whence probably is *Hurſley* a Village, where *Oliver Cromwell* had a Seat, near *Wincheſter.*

Hus and Hant, Words uſed in ancient Pleadings. ——Henricus P. *captus per querimoniam Mercatorum Flandriæ & Impriſonatus, offert Domino Regi* Hus & Hant *in Plegio ad Standum recto, & ad reſpondendum prædictis Mercatoribus & omnibus aliis, qui verſus eum loqui voluerint: Et diverſi veniunt qui manucapiunt quod dictus* Hen. P. *per* Hus & Hant *veniet ad ſummonitionem Regis vel Concilii ſui in Curia Regis apud* Shepway, *& quod ſtabit ibi Recto, &c. Placit. coram Concilio Dom. Reg. Anno* 27 H. 3. Rot. 9. See *commune Plegium, ſicut* Johannes Doe & Richardus Roe. 4 *Inſt.* 72.

Husband and Wife, Are made ſo by Marriage, and being thus joined, are accounted but one Perſon in Law. *Litt.* 168. See *Baron and Feme.*

Husbandry. There having been great Decay of *Husbandry* and Hoſpitality; it was enacted that one Half of the Houſes decayed ſhould be erected, and 40 Acres of arable Land laid to them, by the Perſon, his Heir, Executor, *&c.* who ſuffered the Decay; And they are to keep the Houſes and Land in Repair, by Stat. 39 *Eliz. c.* 1.

Husbrece, (From the Sax. *Hus,* a Houſe and *Brice,* a Breaking) Was that Offence formerly which we now call *Burglary.* Blount.

Huſcarle, A menial Servant: It ſignifies properly a ſtout Man, or a Domeſtick: Alſo the *Domeſtical* Gatherers of the *Danes* Tributes were anciently called *Huſcarles.* The Word is often found in *Domeſday,* where it is ſaid the Town of *Dorcheſter* paid to the Uſe of *Huſcarles* or *Houſecarles,* one Mark of Silver. *Domeſday*

Huſeans, (Fr. *Houſeau*) A Sort of Boot, or Buſkin made of coarſe Cloth, and worn over the Stockings, mentioned in the Stat. 4 *Ed.* 4. *c.* 7.

Husfaſtne, (Sax. *Hus,* i. e. Domus, & *Faſt,* fixus) Is he that holdeth Houſe and Land. ——*Et in Franco plegio eſſe debent omnes qui Terram & Domum tenent qui dicuntur* Husfaſtne, *&c. Bract. lib.* 3. *tract.* 2. *cap.* 10. See *Heordfeſte.*

Huſgable, (*Huſgablum*) Houſe-Rent, or ſome Tax or Tribute laid upon Houſes. *Mon. Angl. Tom.* 3. *p.* 254

Huſſeling People, Communicants, from the *Sax. Huſſel,* which ſignifies the Holy Sacrament: And in a Petition from the Borough of *Leominſter* to King *Edward* the Sixth, the Petitioners ſet forth that in their Town there were to the Number of 2000 *Huſſeling People, &c.*

Huſtings, (*Huſtingum,* from the Sax. *Huſtinge,* i. e. *Concilium,* or *Curia*) Is a Court held before the *Lord Mayor* and Aldermen of *London,* and is the principal and ſupream Court of the City: And of the great Antiquity of this Court, we find this honourable Mention in the Laws of King *Edward the Confeſſor: Debet etiam in* London, *quæ eſt caput Regni & Legum, ſemper Curia Domini Regis ſingulis ſeptimanis Die Lunæ* Huſtingis *ſedere & teneri*; *Fundata enim erat olim & ædificata ad inſtar, & ad modum & in memoriam Veteris Magnæ* Trojæ, *& uſque in hodiernum diem, Leges & Jura & Dignitates, & Libertates regiaſque conſuetudines antiquæ Magnæ* Trojæ, *in ſe continet: Et conſuetudines ſuas una ſemper inviolabilitate conſervat, &c.* Other Cities and Towns have alſo had a Court of the ſame Name; as *Wincheſter, York, Lincoln, &c.* Fleta, lib. 2. c. 55. 4 Inſt. 247. Stat. 10 Ed. 2. c. 1. See *Court of Huſtings.*

Hutilan. *Terras quietas ab omni* Hutilan *& omni alia Exactione.* Mon. Ang. Tom. 1. p. 586

Hybernagium, The Seaſon for ſowing Winter-Corn, between *Michaelmas* and *Chriſtmas*; as *Tremagium* is the Seaſon for Sowing the Summer-Corn in the Spring of the Year: Theſe Words were taken ſometimes for the different Seaſons; other Times for the different Lands on which the ſeveral Grains were ſowed; and ſometimes for the different Corn; as *Hybernagium* was applied to Wheat and Rye, which we ſtill call *Winter-Corn*; and *Tremagium* to Barley, Oats, *&c.* which we term *Summer-Corn:* This Word is likewiſe writ *Ibernagium* and *Thornagium.* Fleta, lib. 2. cap. 73. ſect. 18.

Hyde of Land, and **Hydegild.** See *Hide* and *Hidage.*

Hypothecate a Ship, (from the Lat. *Hypotheca,* a Pledge) Is to pawn the ſame for Neceſſaries; and a Maſter may *hypothecate* either Ship or Goods, for Relief when in Diſtreſs at Sea, for he repreſents the Traders as well as Owners: And in whoſe Hands ſoever a Ship or Goods *hypothecated* come, they are liable. 1 *Salk.* 34. 2 *Lill. Abr.* 195.

Hyth, A Wharf, *&c.* See *Hith.*

J

Jacens *hæreditas dicitur, antequam adita ſit*; An Eſtate in Abeyance. *Dig.*

Jack, A Kind of defenſive Coat-Armour worn by Horſemen in War, not made of ſolid Iron, but of many Plates faſtned together; which ſome Perſons by Tenure were bound to find upon any Invaſion. *Walſingham.*

Jactivus, (*Lat.*) Signifies he that loſeth by Default: *Placitum ſuum neglexerit*, *&c.* Jactivus *exinde remanſit.* Formul. Solen. 159.

Jamaica, An *American* Iſland, taken from the *Spaniards* in the Year 1655, mentioned in the Stat. 15 *Car.* 2. *c.* 5. See *Plantations.*

Jambeaux, Leg-Armour, from *Jambe*, Tibia. *Blount.*

Jampnum, Furze or Gorſe, and gorſy Ground; a Word uſed in *Fines* of Lands, *&c.* and which ſeems to be taken from the Fr. *Jaune*, *i. e.* yellow, becauſe the Bloſſoms of Furze or Gorze are of that Colour. 1 *Crok.* 179.

Jannum or **Jaun**, Heath, Whins, or Furze. *Placita* 23 *H.* 3. No Man can cut down Furze, or Whins in the *Foreſt*, without Licence. *Manwood*, *cap.* 25. *num.* 3.

Jaques, Small Money, according to *Staundford. S. P. C. c.* 30.

Jarrock, A Kind of Cork, mentioned in the Statute 1 *R.* 3. *c.* 8.

Jar, (Span. *Jarro*, *i. e.* a Pot made of Earth) With us is a large earthen Veſſel of Oil, containing twenty Gallons; or from eighteen to twenty-ſix Gallons, of Oil, Olives, *&c.*

Iceni, The People of *Suffolk*, *Norfolk*, *Cambridgeſhire* and *Huntingdonſhire.* Law Lat. Dict.

Ich Dien, (From the *German*) Is the Motto belonging to the Arms of the *Prince of Wales*, ſignifying *I ſerve:* It was formerly the Motto of *John*, King of *Bohemia*, ſlain in the Battle of *Creſſy*, by *Edward* the *Black Prince*; and taken up by him to ſhew his Subjection to his Father King *Edward* 3.

Icona, (*Iconia*) A Figure or Repreſentation of a Thing. *Matt. Pariſ.* 146. *Hoveden* 670.

Ictus orbus, A Maim, Bruiſe, or Swelling; any Hurt without breaking the Skin and ſhedding of Blood, which was called *Plaga:* It is mentioned in *Bracton*, *lib.* 2. *tract.* 2. *cap.* 5 *&* 24. And in the Laws of *Hen.* 1. *c.* 34.

Identitate nominis, Is a Writ that lies for him who is taken and arreſted in any perſonal Action, and committed to Priſon for another Man of the ſame Name; in ſuch Caſe he may have this Writ directed to the Sheriff, which is in Nature of a Commiſſion to enquire, whether he be the ſame Perſon againſt whom the Action was brought; and if not, then to diſcharge him. *Reg. Orig.* 194. *F. N. B.* 267. *Mich.* 25 *H.* 8. But when there are two Men of one Name, and one of them is ſued without any Name of Place, or Addition to diſtinguiſh him, this Writ will not lie; and where there are Father and Son, *&c.* of the ſame Name, if there is no Addition of *Junior*, the Perſon ſued is always taken for *Senior*, and if the Younger be taken for him, he may have Falſe Impriſonment. *Hob.* 330. A Writ *de Identitate Nominis*, it is ſaid, hath been allowed after Verdict and Judgment. *Cro. Jac.* 623. It lies alſo for wrongfully ſeizing Lands or Goods of a Perſon outlawed, for want of a good Declaration of his Surname; and Officers ſhall take Security, to anſwer the Value of what is ſeiſed, if the Party cannot diſcharge it, on Pain of double Damages. *Stat.* 37 *Ed.* 3. *c.* 2. And this Writ ſhall be maintainable by Executors, *&c.* by Stat. 9 *H.* 6. *c.* 4.

Ideot, (Lat. *Idiota*, *Indoctus*) Is uſed in our Law, for one who is a *natural Fool* from his Birth. By the Statute 17 *Ed.* 2. *c.* 9. The King ſhall have the Cuſtody of the Lands of an *Ideot* or natural Fool, taking the Profits during his Life, without committing Waſte, and finding him and his Family Neceſſaries; and after his Death ſhall render the Lands to the right Heir: And the King ſhall alſo have the Cuſtody of the Body, Goods and Chattels of an *Ideot*, after Office found, *&c.* The Cuſtody of the Body and Goods of the *Ideot* are given to the King by the Common Law; as the Cuſtody of the Lands is by the Statute *de Prærogativa Regis*, and the Uſe of them is in the King; but the Freehold is in the *Ideot:* If he alien his Land, the King ſhall have a *Scire facias* againſt the Alienee, and reſeiſe the ſame into his Hands, and the Inheritance ſhall be veſted in the *Ideot*; but this muſt be after he is found by Inquiſition to be an *Ideot.* 13 *Eliz. Dyer* 302. 5 *Rep.* 125. It has been adjudged, that the King ſhall have the Profit of an *Ideot*'s Lands only from the Time of the Inquiſition; but to prevent Incumbrances made by the *Ideot*, it ſhall have Relation to the Time of his Birth. 8 *Rep.* 170. By his Prerogative, and *Jure Protectionis ſuæ Regiæ*, the King hath the Lands, and it is ſaid the ſole Intereſt in granting the Eſtate of an *Ideot*, but not of a *Lunatick:* Though if a *Copyholder* be *Ideot*, his Copyhold-Eſtate ſhall be ordered by the Lord, and not by the King. *Co. Litt.* 126. *Dyer* 302. If a Perſon had once Underſtanding, and became a Fool by Chance or Misfortune; the King ſhall not have the Cuſtody of him. *Staundf. Prærog. c.* 9. 4 *Rep.* 124. And if one have ſo much Knowledge as to meaſure a Yard of Cloth, number twenty Pence, or rightly name the Days of the Week, or to beget a Child, *&c.* whereby it may appear he hath ſome Light of Reaſon, he ſhall not be accounted an *Ideot* by the Laws of the Realm. 4 *Rep.* Though where there was a general Finding of an *Ideot*, and afterwards ſaid for ſo many Years, and not from his Nativity; it was held good, and that what followed was Surpluſage. 3 *Mod.* 43. *Ideots* not having Underſtanding, are incapable to make a Will or Teſtament; and their Deeds, Grants and Conveyances are voidable, or may be made void: But what they do concerning Lands, *&c.* in a Court of Record, as Fines, Recoveries, Judgments, Statutes, *&c.* by them ſuffered and entered into, ſhall bind themſelves, and all others claiming under them. Yet the Judges ought not to ſuffer an *Ideot* to do any ſuch Act. 1 *Inſt.* 247. 2 *Inſt.* 483. 5 *Rep.* 111. 4 *Rep.* 125. 12 *Rep.* 124. By a late Statute Perſons being *Ideots*, Lunaticks, or *Non compos Mentis*, who are ſeiſed or poſſeſſed of Eſtates in Fee, or for Life or Years, in Truſt or by Way of Mortgage, are enabled to make Conveyances or Aſſignments of ſuch Eſtates, in ſuch Manner as the Lord Chancellor ſhall direct, on hearing of the Parties for whom ſuch *Ideots* or *Lunaticks* ſhall be ſeiſed in Truſt, *&c.* which Conveyances ſhall be good in Law, as if the *Ideots*, *&c.* had been of ſound Mind: And they may be compelled to convey ſuch Eſtates, in like Manner as other Perſons. *Stat.* 4 *Geo.* 2. *c.* 10. If an *Ideot* contracts Matrimony, it will bind him, and his Iſſues will be legitimate: And *Ideots* ſhall be bound to pay for Neceſſaries. 1 *Rol. Abr.* 357. 2 *Sid.* 112. A Diſcent on a Diſſeiſin, may take away the Entry of an *Ideot*; but after his Death his Heir may enter, *&c.* 4 *Rep.* 125. Alſo where an Heir is an *Ideot*, though of any Age, any Perſon may make a Tender for him. 1 *Inſt.* 206. *Ideots* cannot appear by Attorney, but when they ſue or defend any Action, they muſt appear in Perſon, and the Suit be in their Names, but followed by others. 2 *Sid.* 112, 335. *Ideots*, *&c.* ought not to be proſecuted for any Crime; becauſe they want Knowledge to diſtinguiſh Good and Evil. 1 *Inſt.* 247. 3 *Inſt.* 4, 108.

Ideota inquirendo vel Examinando, Is a Writ to examine whether a Perſon be an *Ideot.* The King having the Protection of his Subjects, and the Government of their Lands who are naturally defective in their Underſtanding; for this Purpoſe the Writ *de Idiota Inquirendo*, *&c.* is iſſued, directed to the Sheriff to call before him the Party ſuſpected of *Ideocy*, and to examine him and inquire by a Jury of twelve Men, who are to be on their Oaths, whether the Party is an *Ideot*, or not, *viz.* If he be of ſufficient Underſtanding and Diſcretion to manage his Eſtate, or not ſo; and if from his Birth he hath been a perfect *Ideot*, by Reaſon whereof the Cuſtody of his Lands and Tenements ought to belong to the King; or if by any Misfortune, he hath fell into ſuch Infirmity, &c. and by what, &c. and of his Age, and Lands, and who holds them, &c. and when the Inquiſition is taken, the Sheriff is to certify it into the *Chancery:* And the Party may be afterwards examined by the Lord Chancellor, &c. F. N. B. 232. Reg. Orig. 267. 9 Rep. 31.

Ides, (*Idus*) Are eight Days in every Month, ſo called; being the eight Days immediately after the *Nones*. In the Months of *March*, *May*, *July* and *October*, theſe eight Days begin at the eighth Day of the Month, and continue to the fifteenth Day: In other Months they begin at the ſixth Day, and laſt to the Thirteenth. But it is obſervable, that only the laſt Day is called *Ides*, the firſt of theſe Days is the *Eighth Ides*, the ſecond Day the *Seventh*, the Third the *Sixth*, *i. e.* the eighth, ſeventh, or ſixth Day before the *Ides*; and ſo it is of the Reſt of the Days: Wherefore when we ſpeak of the *Ides* of any Month in general, it is to be taken for the Fifteenth or Thirteenth of the Month mentioned. See *Calends*.

Idoneum ſe facere, (*Idoneus*, uſed for *Innocens*) Is to purge himſelf by Oath of a Crime, whereof he is accuſed. *Leg. H.* 1. *c.* 75. But he is ſaid in our Law to be *Idoneus Homo*, that has theſe three Things, Honeſty, Knowledge and Ability; and if an Officer, &c. be not *Idoneus*, he may be diſcharged. 8 *Rep.* 41. See *Preſentation*.

Jejunum, (*Purgatio per Jejunium*) We read of in the Laws of *Canutus*, *cap.* 7.

Jeofaile, Is compounded of the Fr. *J'ay faillé*, i. e. *Ego lapſus ſum*, and ſignifies an Overſight in Pleading or other Law Proceedings. It is when the Parties to any Suit have gone ſo far that they have joined Iſſue, which ſhall be tried, or is tried by a Jury or Inqueſt, and this Pleading or Iſſue is ſo badly pleaded or joined, that it will be Error if they proceed; then ſome of the Parties may by their Counſel ſhew it to the Court, as well after Verdict given and before Judgment, as before the Jury are charged; the Shewing of which Defects by the Counſel was often, when the Jury came into Court to try the Iſſue, by ſaying, *This Inqueſt ye ought not to take*; and if after Verdict, by ſaying, *To Judgment ye ought not to go*, &c. Therefore for avoiding the frequent Delays in Suits by ſuch Suggeſtions, ſeveral Statutes have been made. *Terms de Ley* 401. If the Plaintiff in an Action declares upon a Promiſe to find the Plaintiff, his Wife, and two Servants with Meat and Drink for three Years, upon Requeſt; and the Defendant pleads that he promiſed to find the Plaintiff and his Wife with Meat, &c. *abſque hoc*, that he promiſed to find for two Servants, and the Plaintiff replies, that he did promiſe to find, &c. for three Years next following; *Et hoc petit*, &c. and thereupon a Verdict is found for the Plaintiff; yet he ſhall not have Judgment; for the Promiſe in the Replication is not the ſame with that in the Declaration, which was traverſed by the Defendant, and ſo there is no Iſſue join'd, and therefore it is not helped by Statute. *Mich.* 19 & 20 *Eliz.* 3 *Leon.* 66. In an *Aſſumpſit*, the Defendant pleads Not guilty, and thereupon Iſſue is join'd, and found for the Plaintiff; he ſhall have Judgment, though this is an improper Iſſue in this Action, for as there is a Deceit alledged, Not guilty is an Anſwer thereto, and it is but an Iſſue miſ-joined, which is aided by Statute. *Cro. Eliz.* 407. If in Debt upon a ſingle Bill, the Defendant pleads Payment, without an Acquittance, and Iſſue is join'd and found for the Plaintiff; though the Payment without Acquittance is no Plea to a ſingle Bill, he ſhall have Judgment, becauſe the Iſſue was joined upon an Affirmative and a Negative, and a Verdict for the Plaintiff. *Mich.* 37 & 38 *Eliz.* 5 *Rep.* 43. An ill Plea and Iſſue may be aided by the Statute of *Jeofails*, after a Verdict: And if an Iſſue joined be uncertain and confuſed, a Verdict will help it. *Cro. Car.* 316. *Hob.* 113. The Statutes likewiſe help when there is no Original; and where there is no Bill upon the Fine, it is aided after Verdict by Statute: But when there is an Original, which is ill, that is not aided. *Cro. Jac.* 185, 480. *Cro. Car.* 282. The Statute of *Jeofails* 16 & 17 *Car.* 2. helps a Miſ-trial in a proper County; but not where the County is miſtaken. 1 *Mod.* 24. And theſe are the *Statutes of Jeofails*, which help Errors and Defects by Miſ-pleading in Records, Proceſs, Miſpriſions of Clerks, &c. By 32 *H.* 8. *c.* 30. it is enacted, that if the Jury have once paſſed upon the Iſſue, though afterwards there be found a *Jeofaile* in the Proceedings, yet Judgment ſhall be given according to the Verdict. The 18 *Eliz. c.* 14. ordains, that after Verdict given in any Court of Record, there ſhall be no Stay of Judgment, or Reverſal for Want of Form in a Writ, Count, Plaint, &c. or for Want of any Writ original or judicial; or by Reaſon of inſufficient Returns of Sheriffs, &c. But this is not to extend to Appeals of Felony, Indictments, &c. By the 21 *Jac.* 1. *c.* 13. if a Verdict ſhall be given in any Court of Record, the Judgment ſhall not be ſtayed or reverſed for Variance in Form between the original Writ or Bill and the Declaration, &c. or for Want of Averment of the Party's being living, ſo as the Perſon is proved to be in Life; or for that the *Venire facias* is in Part miſ-awarded; for Miſnoſmer of Jurors, if prov'd to be the Perſons returned; Want of Return of Writs, ſo as a Panel of Jurors be returned and annexed to the Writs; or for that the Return Officer's Name is not ſet to the Return, if Proof can be made that the Writ was returned by ſuch Officer, &c. The Stat. 16 & 17 *Car.* 2. *c.* 8. enacts, that Judgment ſhall not be ſtayed or reverſed after Verdict in the Courts of Record at *Weſtminſter*, &c. for Default in Form; or for that there are not Pledges to proſecute upon the Return of the original Writ, or becauſe the Name of the Sheriff is not returned upon it; for Default of alledging the Bringing into Court of any Bond, Bill or Deed, or of alledging or Bringing in Letters Teſtamentary, or of Adminiſtration; or for the Omiſſion of *Vi & Armis*, or *contra pacem*; miſtaking the Chriſtian Name or Surname of either Party, or the Sum of Money, Day, Month or Year, &c. in any Declaration or Pleading, being rightly named in any Record, &c. preceding; nor for Want of the Averment of *hoc paratus eſt verificare*, or for not alledging *prout pater per Recordum*; for that there is no right *Venire*, if the Cauſe was tried by a Jury of the proper County or Place; nor any Judgment after Verdict, by Confeſſion, *Cognovit actionem*, &c. ſhall be reverſed for Want of *Miſericordia* or *Capiatur*, or by Reaſon that either of them are entered, the one for the other, &c. But all ſuch Defects, not being againſt the Right of the Matter of the Suit, or whereby the Iſſue or Trial are altered, ſhall be amended by the Judges: Though not in Suits of Appeal of Felony, Indictments, Informations on penal Statutes, which are excepted out of the Act. The 22 & 23 *Car. c.* 4. made this Act perpetual. By 4 & 5 *Ann. c.* 16. all the Statutes of *Jeofaile* ſhall extend to Judgments entered by Confeſſion, *Nil dicit*, or *Non ſum Informatus* in any Court of Record; and no ſuch Judgment ſhall be reverſed, nor any Judgment or Writ of Inquiry of Damages thereon ſhall be ſtayed for any Defect which would have been aided by thoſe Statutes, if a Verdict had been given; ſo as there be an original Writ filed, &c. The 5 *Geo.* 1. *c.* 13. ordains, that after Verdict given, Judgment ſhall not be ſtayed or reverſed for Defect in Form or Subſtance, in any Bill or Writ, or for Variance therein, from the Declaration or any other Proceedings. See *Error*.

Jerſey and Guernſey Iſlands, Laws relating to. Vide *Iſle*.

Jeſſe, A large Braſs *Candleſtick*, with many *Sconces* hanging down in the Middle of a Church or Choir; which Invention was firſt called *Jeſſe*, from the Similitude of the Branches of thoſe of the *Arbor Jeſſe:* And this uſeful Ornament of Churches was firſt brought over into this Kingdom by *Hugh de Flory*, Abbot of St. *Auſtins* in *Canterbury*, about the Year 1100. *Chron. Will. Thorn.* 1796.

Jetſen, Jetſon, or **Jetſam**, (From the Fr. *Jetter*, i. e. *ejicere*) Is any Thing thrown out of a Ship, being in Danger of Wreck, and by the Waves driven to Shore. 5 *Rep.* 106. See *Flotſam*.

Jeſuits, &c. Born in the King's Dominions and ordained by the pretended Juriſdiction of *Rome*, remaining in *England*, or coming from beyond Sea into this Kingdom, and not ſubmittiag to ſome Biſhop or Juſtice of Peace within three Days, and taking the Oaths, are guilty of High Treaſon; and Receivers, Aiders and Harbourers of them, are guilty of Felony. *Stat.* 27 *Eliz. c.* 2. Perſons knowing Prieſts, *Jeſuits*, &c. and not diſcovering them to a Juſtice of Peace, ſhall be fined and impriſoned. 22 *Car* 2.

Jews, (*Judæi*) In former Times the *Jews* and all their Goods were at the Diſpoſal of the Chief Lord where they lived; who had an abſolute Property in them; and they might not remove to another Lord without his Leave: And we read that K. *Henry* 3. ſold the *Jews* for a certain Term of Years to *Earl Richard* his Brother. They were diſtinguiſhed from the *Chriſtians*, in their Lives-time, and at their Deaths; for they wore a Badge on their outward Garments, in the Shape of a Table, and were fined if they went abroad without ſuch Badges; and they were never buried within the Walls of any City, but without the ſame, and antiently not permitted to Burial in the Country. *Matt. Pariſ.* 521, 606, &c. There were particular Judges and Laws by which their Cauſes and Contracts were decided, and there was a Court of Juſtice aſſigned for the *Jews*. 4 *Inſt.* 254. A *Jew* may be a Witneſs by our Laws, being ſworn on the Old Teſtament. But by our antient Books, *Jews*, Hereticks, &c. are adjudged out of the Statutes allowing Benefit of Clergy. 2 *Hawk. P. C.* 338. The 53 *H.* 3. is called *Proviſiones de Judaiſmo*; and by the Statute 18 *Ed.* 1. the King had a Fifteenth granted him *pro expulſione Judæorum*. In the 16th Year of *Edw.* 1. all the *Jews* in *England* were impriſoned; but they redeemed themſelves, for a vaſt Sum of Money: Notwithſtanding which *Anno* 19. of that King, he baniſhed them all. *Stow's Surv. Lond. B.* 3. *p.* 54. And they remained in Baniſhment 364 Years; 'till *Oliver Cromwell* reſtored them to their Trade and Worſhip here. See Stat. 1 *Ann. c.* 30. concerning *Jewiſh* Parents refuſing Maintenance to a Proteſtant Child; and 10 *Geo.* 1. *c.* 4. by which *Jews* may take the Oaths to the Government, &c. Vide *Judaiſm*.

Jewels. All Diamonds and other *Jewels* may be imported or exported without paying any Cuſtom Duty, &c. But not to make void Duties granted the *Eaſt-India* Company, for *Jewels* brought from Places in their Limits. *Stat.* 6 *Geo.* 2. *c.* 7. See *Jocalia*.

Ignis Judicium, Purgation by Fire, or the old judicial fiery Trial.

Ignitegium, The Evening Bell to put out the Fire, in the Time of *Will.* 1. called *The Conqueror*. See *Curfew*.

Ignoramus, (*i. e.* We are ignorant) Is uſed by the *Grand Jury* impanelled on the Inquiſition of Cauſes criminal, when they reject the Evidence as too weak or defective to make good the Preſentment againſt a Perſon, ſo as to put him on the Trial, in which Caſe they write this Word on the *Bill of Indictment*; the Effect whereof is, that all farther Inquiry and Proceedings againſt that Party, for that Fault wherewith he is charged, is thereby ſtopped, and he is delivered without further Anſwer. 3 *Inſt.* 30.

Ignorance, (*Ignorantia*) Which is Want of Knowledge of the Law, ſhall not excuſe any Man from the Penalty of it. Every Perſon is bound at his Peril to take Notice what the Law of the Realm is; and *Ignorance* of it, though it be invincible, where a Man affirms that he hath done all that in him lies to know the Law, will not excuſe him. *Doct. & Stud.* 1. 46. And an Infant of the Age of Diſcretion ſhall be puniſhed for Crimes, though he be *ignorant* of the Law; but Infants of tender Age, have *Ignorance by Nature* to excuſe them; ſo Perſons *Non Compos* have *Ignorance* by the Hand of God. *Stud. Compan.* 83, 84. Though *Ignorance* of the Law excuſeth not, *Ignorance* of the Fact doth: As if a Perſon buy a Horſe or other Thing in open Market, of one that had no Property therein, and not knowing but he had Right; in that Caſe he hath good Title, and the *Ignorance* ſhall excuſe him. *Doct. & Stud.* 309. But if the Party bought the Horſe out of the Market; or knew the Seller had no Right, the Buying in open Market, would not have excuſed. *Ibid.* 5 *Rep.* 83. Alſo where a Man is to enter into Land, or ſeiſe Goods, &c. he muſt ſee that what he does be rightly done, or his *Ignorance* ſhall be no Excuſe. *Wood's Inſt.* 608.

Ikenild Street, One of the four famous Ways that the *Romans* made in *England*. See *Watling Street*.

Ilet, By Contraction *Ight*, ſignifies a little Iſland. *Blount*.

Illeviable, A Debt or Duty that cannot, or ought not to be levied; as *Nihil* ſet upon a Debt is a Mark for *illeviable*.

Illiterature. If an *illiterate* Man be to ſeal a Deed, he is not bound to do it, if none be preſent to read it, if required; and reading a Deed falſe, will make it void. 2 *Rep.* 3, 11. A Man may plead *Non eſt factum* to a Deed read falſe; as where a Releaſe of an Annuity was read to an *illiterate* Perſon, as a Releaſe of the Arrears only, &c. agreed to be releaſed. *Moor* 148. If there is a Time limited for a Perſon to ſeal a Writing, in ſuch Caſe *Illiterature* ſhall be no Excuſe, becauſe he might provide a skilful Man to inſtruct him; but when he is obliged to ſeal it upon Requeſt, &c. there he ſhall have convenient Time to be inſtructed. 2 *Nelſ. Abr.* 946.

Illuminare, To illuminate, or draw in Gold and Colours the initial Letters and occaſional Pictures in manuſcript Books. *Bromp. Anno* 1076.

Imbargo, (*Span.* in Lat. *Navium detentio*) Is a Stop, Stay, or Arreſt upon Ships or Merchandiſe, by publick Authority. *Stat.* 18 *Car.* 2. *c.* 5. This Arreſt of Shipping is commonly of the Ships of Foreigners in Time of *War* and Difference with States to whom they are belonging: But by an ancient Statute, foreign Merchants in this Kingdom are to have forty Days Notice to ſell their Effects and depart, on any Difference with a foreign Nation. 27 *Ed.* 3. *c.* 17. The King may grant *Imbargoes* on Ships, or employ the Ships of his Subjects, in Time of Danger, for the Service and Defence of the Nation; but a Warrant to ſtay a ſingle Ship, on a private Account, is no legal *Imbargo*. *Moor* 892. *Carth. Rep.* 297. Prohibiting Commerce in the Time of War; or of Plague, Peſtilence, &c. is a Kind of *Imbargo on Shipping*.

Imbaſing of *Money*, (from *Adultero* to corrupt or mingle) Signifies to mix Species with an *Allay* below the Standard of Sterling; which the King by his Prerogative may do, and yet keep it up to the ſame Value as before: *Inhanſing* of it, is when 'tis raiſed to a higher Rate, by Proclamation. 1 *Hale's Hiſt. P. C.* 192.

Imbezle, To ſteal, pilfer, or purloin; or where a Perſon entruſted with Goods, waſtes and diminiſhes them. The Word *Imbezle* is mentioned in ſeveral Statutes, particularly relating to Workers of Wool, *&c.* as the Stat. 7 *Jac.* 1. *c.* 1. 14 *Car.* 2. *c.* 31. and 1 *Ann* By the former of which, *Imbezlers* of Wool, Yarn, or other Materials for making of Cloth, are to make Satisfaction, or be whipp'd and put in the Stocks; and by the latter they are to forfeit double Damages, and be committed to the Houſe of Correction 'till paid, *&c.* By a late Statute, Perſons that *imbezil* or illegally diſpoſe of any Woollen, Linen, Fuſtian, Cotton, or Iron Materials; or Gloves, Leather, Shoes, *&c.* they are intruſted to work up, ſhall forfeit double the Value or be ſent to the Houſe of Correction, and there whipped, and kept to hard Labour fourteen Days; and for a ſecond Offence, forfeit four times the Value, *&c.* And Buyers and Receivers are liable to the ſame Penalties. *Stat.* 13 *Geo.* 2. *c.* 8. If any Servant *imbezils*, purloins, or makes away his Maſter's Goods, to 40 *s.* Value, it is made Felony without Benefit of Clergy, by 12 *Ann. c.* 7.

Immunities. King *Hen.* 3. by Charter granted to the Citizens of *London*, a general *Immunity* from all Tolls, *&c.* except Cuſtoms and Priſage of Wine. *Cit. lib.* 94.

Impalare, Is to put in a Pound, by the Laws of *Hen.* 1. *c.* 9.

Impanel, (*Impanellare Juratis*) Signifies the Writing and Entering into a Parchment Schedule by the Sheriff, of the Names of a Jury ſummoned to appear for the Performance of ſuch publick Service as Juries are employed in. *Impanulare* was ſometimes a Privilege granted that a Perſon ſhould not be *impanelled* or returned upon a Jury. —— *Non Ponatur nec* Impanuletur *in aliquibus Juratis, &c.* Paroch. Antiq. 657. See *Panel.*

Imparlance, (*Interlocutio, vel Licentia Interloquendi*) Is derived from the Fr. *Parler*, to ſpeak, and in the *Common Law* is taken for a Petition in Court of a Day to conſider, or adviſe what Anſwer the Defendant ſhall make to the Action of the Plaintiff; being a Continuance of the Cauſe 'till another Day, or a larger Time given by the Court. And *Imparlance* is either *General* or *Special*; *General*, when it is ſet down and entered in general Terms, without any ſpecial Clauſe, thus; *and now at this Day, to wit, on* Thurſday *next after the* Octaves *of* St. Hillary, *in this ſame Term, until which Day the aforeſaid* C. D. *the Defendant had Licence to* imparle *to the Bill aforeſaid, and then to anſwer*, &c. *Special Imparlance*, is where the Party deſires a farther Day to anſwer, adding alſo theſe Words; *Saving all Advantages, as well to the Juriſdiction of the Court, as to the Writ and Declaration*, &c. Kitch. 200. This *Imparlance* is had on the Declaration of the Plaintiff; and ſpecial *Imparlance* is of Uſe where the Defendant is to plead ſome Matters which cannot be pleaded after a general *Imparlance.* 5 Rep. 75. *Imparlance* is generally to the next Term; and if the Plaintiff amend his Declaration after delivered or filed, the Defendant may *imparl* to the next Term afterwards, if the Plaintiff do not pay Coſts; but if he pay Coſts, which are accepted, the Defendant cannot *imparl.* 2 *Lill. Abr.* 35. Alſo if the Plaintiff declares againſt the Defendant, but doth not proceed in three Terms after; the Defendant may *imparl* to the next Term. *Ibid.* The not delivering a Declaration in Time is ſometimes the Cauſe of *Imparlance* of Courſe: And where the Defendant's Caſe requires a ſpecial Plea, and the Matter which is to be pleaded is difficult; the Court will, upon Motion, grant the Defendant an *Imparlance*, and longer Time to put in his Plea, than otherwiſe by the Rules of the Court he ought to have: If the Plaintiff keeps any Deed, or other Thing from the Defendant, whereby he is to make his Defence, *Imparlance* may be granted till the Plaintiff delivers it to him, or brings it into Court, and a convenient Time after to plead. *Hill.* 22 *Car.* 1. *B. R.* An *Imparlance* being pray'd on a Defendant's Appearing to anſwer an Information, it was ſaid *Imparlance* was formerly from *Day to Day*, but now from one *Term to another*, on the Crown-Side; and it was ruled that the Defendant ſhould have the ſame Time to *imparl* that the Proceſs would have taken up, if he had ſtood out till the Attachment or *Capias*; for when he comes in upon that, he muſt plead *inſtanter.* 1 *Salk.* 367. *Mod. Caſes* 243. And if Proceſs had been continued, he might have been brought in the ſame Term upon an Attachment; and then there could be no *Imparlance*, but he ought to plead *inſtanter.* 2 *Nelſ. Abr.* 947. There are many Caſes wherein *Imparlances* are not allow'd; no *Imparlance* is granted in an *Homine Replegiando*; or in an Aſſiſe, unleſs on good Cauſe ſhewn: Nor ſhall there be an *Imparlance* in Action of ſpecial *Clauſum fregit*; though it is allowed in general Actions of Treſpaſs. *Hill.* 9 *W.* 3. 5 *Salk.* 186. Where an Attorney, or other privileged Perſon of the Court, ſues another, the Defendant cannot *imparl*, but muſt plead preſently: If the Plaintiff ſues out a ſpecial Original, wherein the Cauſe of Action is expreſſed, and the Defendant is taken on a ſpecial *Capias*, he ſhall not have an *Imparlance*, but ſhall plead as ſoon as the Rules are out. 2 *Lill.* 35, 36. As to Pleadings on *Imparlances*; a Plea to the Juriſdiction, may not be pleaded after general *Imparlance.* Raym. 34. After *Imparlance*, the Defendant cannot plead in Abatement; if he doth, and the Plaintiff tenders an Iſſue, whereupon the Defendant demurs, and the Plaintiff joins in Demurrer, ſuch Plea is not peremptory; becauſe the Plaintiff ought not to have joined in Demurrer, but to have moved the Court, that the Defendant might be compelled to plead in Chief. *Allen* 65. Though a Defendant may not plead in Abatement after a general *Imparlance*; yet if it appear by the Record that the Plaintiff hath brought his Action before he had any Cauſe, the Court *ex Officio* will abate the Writ. 2 *Lev.* 197. The Defendant cannot have *Oyer* of a Deed in a common Caſe, after *Imparlance*: And a Tender after *Imparlance*, is naught. 2 *Lev.* 190. *Lutw.* 238. If it appears upon the Record, that an *Imparlance* was due, and denied, it is Error; but then ſuch Error muſt appear on the Record. 3 *Salk.* 168. It has been held, that if the Defendant doth not appear on a *Dies Datus*, the Plaintiff ſhall not have Judgment by Default, as he may on *Imparlance*; becauſe the *Dies Datus* is not ſo ſtrong againſt him as an *Imparlance*; and therefore the Plaintiff muſt take Proceſs againſt the Defendant for not Appearing at the Time. *Moor* 79. 2 *Nelſ.* 947. By late *Orders* of Court, where a Defendant is arreſted by Proceſs out of *B. R.* in which the Cauſe of Action is ſpecially expreſſed; or a Copy of Proceſs is delivered, and the Plaintiff hath declared; the Defendant ſhall not have Liberty of *Imparlance*, without Leave firſt granted, but ſhall plead within the Time allowed a Defendant proſecuted by original Writ. *Ord. Hill.* 2 *Geo.* 2. And upon all Proceſſes returnable the firſt, or ſecond Return of any Term, the Declaration ſhall be delivered with Notice to plead in eight Days after Delivery, where the Defendant lives above twenty Miles from *London, &c.* without any *Imparlance*; and on Default of Pleading, the Plaintiff may ſign Judgment. *Ord. Cur. Trin.* 5 *&* 6 *Geo.* 2.

Imparſonee, (As *Parſon, Imparſonee*) Is he that is inducted into and in Poſſeſſion of a Benefice. See *Parſon.*

Impeachment, (from the Lat. *Impetere*) Is the Accuſation and Proſecution of a Perſon for Treaſon, or other Crimes and Miſdemeanors. Any Member of the Houſe of Commons may not only impeach any one of their own Body, but alſo any

Lord of Parliament, &c. And thereupon *Articles* are exhibited on the Behalf of the Commons, and Managers appointed to make good their Charge and Accuſation; which being done in the proper Judicature, Sentence is paſſed, &c. And it is obſerved, that the ſame Evidence is required in an *Impeachment* in Parliament, as in the ordinary Courts of Juſtice: But not in Bills of Attainder. *State Trials, Vol.* 4. 311. *Vol.* 1. 676. No Pardon under the Great Seal, can be pleaded to an *Impeachment* by the Commons in Parliament. 12 *W.* 3. *c.* 2.

Impeachment of Waſte, (*Impetitio Vaſti*, from the Fr. *Empeſchement*, i. e. *Impedimentum*) Signifies a Reſtraint from committing of Waſte upon Lands or Tenements; or a Demand of Recompence for Waſte done by a Tenant that hath but a particular Eſtate in the Land granted: But he that hath a Leaſe to hold *without Impeachment of Waſte*, hath by that ſuch an Intereſt given him in the Land, &c. that he may make Waſte without being *impeached* for it; that is, without being queſtion'd, or any Demand of Recompence for the *Waſte* done. 11 *Rep.* 82.

Impediments in Law. Perſons under *Impediments* are thoſe within Age, under Coverture, *Non Compos mentis*, in Priſon, beyond Sea, &c. who, by a Saving in our Laws, have Time to claim and proſecute their Rights, after the *Impediments* removed, in Caſe of *Fines* levied, &c. 1 *R.* 3. *c.* 7. 4 *H.* 7. *c.* 24. See Stat. *Limitations* 21 Jac. 1.

Impediatus, *Impediati Canes*, Dogs *lawed* in the Foreſts. Vide *Expediatus*.

Imperiale, A Sort of very fine Cloth. *Cowel.*

Impeſcatus, Impeached or accuſed. *Pat.* 18 *Edw.* 1.

Impetration, (*Impetratio*) Signifies an Obtaining any Thing by Requeſt and Prayer: And in our Statutes it is a Pre-obtaining of Church Benefices in *England* from the Court of *Rome*, which belong to the Gift and Diſpoſition of the King, and other Lay Patrons of this Realm; the Penalty where of was the ſame with *Proviſors*. 25 Ed. 3. 38 Ed. 4. cap. 1.

Impierment, Is uſed for Impairing or Prejudicing; as to the *Impierment* and Diminution of their good Names, &c. 23 *Hen.* 8. *c.* 9.

Implead, To ſue or proſecute by Courſe of Law; from the Fr. *Plaider*.

Implements, (From the Lat. *Impleo*, to fill up) Things of neceſſary Uſe in any Trade or Myſtery, without which the Work cannot be performed; alſo the Furniture of an Houſe, as all Houſhold Goods, *Implements*, &c. And *Implements* of *Houſhold* are Tables, Preſſes, Cupboards, Bedſteads, Wainſcot, and the like: In this Senſe, we find this Word often in Gifts and Conveyances of Moveables. *Terms de Ley* 403.

Implication, Is where the Law doth *imply* ſomething that is not declared between Parties in their Deeds and Agreement: And when our Law giveth any Thing to a Man, it giveth *Implicitly* whatſoever is neceſſary for the Enjoying of the ſame. The Want of Words in ſome Caſes may be help'd by *Implication*; and ſo one Word or Thing, or one Eſtate given, ſhall be implied by another: And there is an *Implication* in Wills and Deviſes of Lands, whereby Eſtates are gained; as if a Husband deviſes the Goods in his Houſe to his Wife, and that after her Deceaſe his Son ſhall have them, and his Houſe; though the Houſe be not deviſed to the Wife by expreſs Words, yet it hath been held that ſhe hath an Eſtate for Life in it by *Implication*, becauſe no other Perſon could then have it, and the Son and Heir being excluded, who was to have nothing 'till after her Deceaſe. 1 *Ventr.* 223. But where it may be reaſonably intended, that the Deviſor meant as well the one as the other, in ſuch Caſe his Intention ſhall never be conſtrued in Prejudice to the Heir at Law: For Inſtance; A Man deviſed Part of his Lands to his Wife for Life, and that the ſame and all the Reſt of his Lands ſhould remain to his youngeſt Son, and the Heirs of his Body, after the Death of the Wife; now here was no expreſs Deviſe of the Reſt of the Lands to his Wife, and ſhe ſhall not have them by *Implication*, becauſe the eldeſt Son and Heir at Law was not excluded, who ſhall have them during the Life of the Wife, 'till the Deviſe to the youngeſt Son takes Effect, for they ſhall deſcend to the Heir in the mean Time. *Moor* 123. Tho' *Croke*, who reports the ſame Caſe, ſays, it was adjudged the Wife ſhould have the Whole. *Cro. Eliz.* 15. Eſtates for Life, and Eſtates-tail, may be raiſed by *Implication* in Wills; a Teſtator had three Sons, the eldeſt Son dying, leaving his Wife with Child, to whom the Father deviſed an Annuity *in Ventre ſa mere*, and if his middle Son died before he had any Iſſue of his Body, Remainder over, &c. And it was reſolved, that ſuch Son had an Eſtate-tail by *Implication*. *Moor* 127. It is ſaid, a Fee-ſimple Eſtate ſhall not ariſe by *Implication* in a Will; though there is a perpetual Charge impoſed by the Deviſor on the Deviſee, &c. *Bridgm.* 103. Alſo it hath been adjudged, that where a particular Eſtate is deviſed by Will expreſly, a contrary Intent ſhall not be *implied* by any ſubſequent Clauſe. And *Implication* is either neceſſary, or poſſible; and where ever an Eſtate is raiſed by that Means in a Will, it muſt be by a neceſſary *Implication*; for the Deviſee muſt neceſſarily have the Thing deviſed, and no other Perſon whatſoever can have it. 1 *Salk.* 236. 2 *Nelſ. Abr.* 494. No *Implication* ſhall be allowed againſt an expreſs Eſtate, limited by expreſs Words, to drown the ſame. *Salk.* 266. There are *Conditions* and *Covenants*, *implied* by Law in Deeds and Grants: And *Implication* will ſometimes help Law Proceedings, and ſupply Defects. See *Intendment* and *Uſe*.

Importation, (*Importatio*) Is where Goods and Merchandize are brought into this Kingdom from other Nations. 12 *Car. c.* 4.

Impoſt, (Fr. from the Lat. *Impono*, i. e. *Injungere*) Is a Tribute or Cuſtom; but more particularly that Tax which the King receives for Merchandizes *imported* into any Port or Haven: And it may be diſtinguiſhed from *Cuſtoms*, which are rather the Profits ariſing to the King from Goods exported. 3 *Eliz. c.* 5.

Impoſſibility. A Thing which is *impoſſible* in Law, is all one with a Thing *impoſſible* in Nature: And if any Thing in a Bond or Deed be *impoſſible* to be done, ſuch Deed, &c. is void. 21 *Car.* 1. *B. R.* Yet where the Condition of a Bond becomes *impoſſible* by the Act of God, in ſuch Caſe it is held the Obligor ought to do all in his Power towards a Performance: As when a Man is bound to enfeoff the Obligee and his Heirs, and the Obligee dies, the Obligor muſt enfeoff his Heir. 2 *Co. Rep.* 74.

Impreſt-Money, (From the Prepoſition *In*, and Fr. *Preſt*, *paratus*) Is Money paid at the Inliſting of Soldiers.

Impretiabilis, Signifies invaluable, in which Senſe it is often mentioned in *Matt. Pariſ.*

Imprimery, (*Fr.*) A Print, or Impreſſion; and the Art of Printing, alſo a Printing-houſe are called *Imprimery*. Stat. 14 Car. 2. c. 33.

Impriſii, Are thoſe who ſide with, or take the Part of another, either in his Defence, or otherwiſe.——*Omnes Homines* & Impriſii *Domini* Ludovici, &c. Matt. Weſtm.——*Nos erimus* Impriſii *Regis*, &c. Matt. Pariſ. 127.

Impriſonment, (*Impriſonamentum*) Is a Reſtraint of a Man's Liberty under the Cuſtody of another; and extends not only to a Gaol, but a Houſe, Stocks, or where a Man is held in the Street, &c. for in all theſe Caſes the Party ſo reſtrained is ſaid to be a Priſoner, ſo long as he hath not his Liberty freely ly to go about his Buſineſs as at other Times. 1 *Inſt.* 253. *Impriſonment* according to Law, is according to the Common or Statute Law, or the Cuſtom of *England*; or by Proceſs, and Courſe of Law. 2 *Inſt.* 46. 50, 282. And no Perſon is to be *impriſoned*, but as the Law directs either by Command and Order of a Court of Record, or by lawful Warrant, or the King's Writ; by which one may be lawfully detained to anſwer the Law. 2 *Inſt.* 46. 3 *Inſt.* 209. At Common Law, a Man could not be *impriſoned* in any Caſe unleſs he were guilty of ſome Force and Violence; for which his Body was ſubject to *Impriſonment*, as one of the higheſt Executions of the Law: But *Impriſonment* is inflicted by Statute in many Caſes. 3 *Rep.* 11. Tho' ſee *Magna Chart.* 9 *H.* 3. *c.* 29. When-ever the Common Law, or any Statute doth give Power to *impriſon*, there it is lawful and juſtifiable; but he that doth it in Purſuance of a Statute, muſt be ſure exactly to follow the Statute in the Order and Manner of doing thereof. *Dyer* 204. 13 *E.* 11. A Juſtice of Peace may cauſe Offenders to be *impriſoned*; and may himſelf require any Man to give Security of the Peace or Good Behaviour, where he hath Cauſe, and if he refuſe may *impriſon* him. *Bro. Treſ.* 177. If a Warrant of Commitment be for *Impriſoning* a Man until farther Order, &c. it has been held ill; for it ſhould be till the Party is delivered by due Courſe of Law. 1 *Roll. Rep.* 337. It is the ſame when a Perſon is *impriſoned* on a Warrant, without ſhewing any Cauſe for which he is committed: And where a Perſon was committed to Priſon by Warrant from a Secretary of State, without aſſigning any Cauſe, &c. it was adjudged, that he ought to be diſcharged for that Reaſon; but then another Warrant was returned of the ſame Secretary, in which the firſt Warrant was recited, and that upon farther Examination, he commanded the Gaoler to detain him ſafely, for Suſpicion of High Treaſon; and it was ſaid this was no Cauſe to detain him, becauſe this ſecond Warrant referr'd to the Firſt, which was no Warrant at all; beſides, there was no ſpecial Cauſe of Suſpicion alledged, nor for what Species of Treaſon. *Palm.* 558. 1 *Roll. Rep.* 219. In all Actions *Quare Vi & Armis*, if Judgment be given againſt the Defendant, he ſhall be fined and *impriſoned*, becauſe to every Fine *Impriſonment* is incident; and therefore where the Defendant is fined for a Contempt to any Court of Record, he may be *impriſoned* till the Fine is paid. 8 *Rep.* 60. In what Caſes Perſons *impriſoned* may be delivered on Bail; or by the *Habeas Corpus* Writ, &c. See *Bail* and *Habeas Corpus*.

Impropriation, Is properly ſo called when a Benefice Eccleſiaſtical is in the Hands of a Layman; and *Appropriation*, when in the Hands of a Biſhop, College or Religious Houſe, though ſometimes they are confounded. There are computed to be in *England* 3845 *Impropriations*, and on the Diſſolution of Monaſteries they were granted to Lay Perſons by the King's Patents, &c. 31 *H.* 8. *Vide* Appropriation.

Impruiamentum, The Improvement of Lands. *Cartular. Abbat. Glaſton. MS. pag.* 50.

In auter Droit, In another's Right; as where *Executors* or *Adminiſtrators* ſue for a Debt or Duty, &c. of the Teſtator or Inteſtate.

Inborho and **Outborho**, (*Sax.*) The *Barony* belonging to *Patrick*, *Earl of Dunbar*, ſays *Camden*, was *Inborow and Outborow*, between *England* and *Scotland*; that is (as he believes) he was to allow and obſerve the *Ingreſs* and *Regreſs* of thoſe Perſons that travelled between the two Kingdoms; for *Engliſhmen*, in ancient Time, called an Entry, or Fore-court of a Houſe, *Inborow*. Camb. Britan.

Incaſtellare, To reduce a Thing to ſerve inſtead of a Caſtle; and it is often applied to Churches. ——*Qui poſt mortem Patris Eccleſiam* Incaſtellatam *retinebat.* Gervaſ. Dorob. Anno 1144.

In caſu Conſimili, & Proviſo. See *Caſu Conſimili*, &c.

Incendiaries, Burning of Houſes maliciouſly, to extort Sums of Money from thoſe, whom the Malefactors ſhould ſpare, was made Treaſon the firſt Year of King *Hen.* 6. 1 *Hale's Hiſt. P. P.* 270. The like Offences of firing Houſes, and ſending Letters demanding Money of Perſons, &c. is Felony, by Stat. 9 *Geo.* 1. Vide *Waltham Blacks.*

Incertainty, Is that which oppoſeth *Certainty*, where a Thing is ſo ambiguouſly ſet down, that one cannot tell how to underſtand it: And this is ſaid to be the Mother of Contention. The Queſtions of *Incertainty* ariſe ſometimes on Matter of Record; as Writs, Counts, Pleas, Verdicts, &c. and ſometimes on Deeds or Writings, or upon Contracts, &c. 5 *Rep.* 121. *Plowd.* 25. In Law Proceedings, *Incertainty* will make them void; for all Proceedings at Law are to be certain and affirmative, that the Defendant may be at a Certainty as to what he ſhould anſwer, &c. *Plowd.* 84. If the Count and Verdict in an Appeal be incertain, there can be no Judgment given thereon; and it is the ſame on an Indictment. 3 *Mod.* 121. *Incertainty* in Deeds renders them void; but ſometimes a Term for Years granted by Leaſe, may be made certain by Reference to a Certainty; and *Incertainty* may be reduced to Certainty, by Matter *ex poſt facto*, Implication, &c. *Plowd.* 6, 273. 6 *Rep.* 20. If there are two Men of one Name, and a Deviſe of Lands, &c. is to one of that Name, without any Diſtinction, it will be void for *Incertainty*; tho' perhaps an Averment may make it good. 2 *Bulſt.* 180. *Incertainty* in Declarations of Uſes of Fines of Lands, &c. is rejected in Law; for otherwiſe there would be no certain Inheritances. 9 *Rep.*

Inchanter, (*Incantator*) Is he that by *Charms* conjures the Devil; *Qui Carminibus vel Cantiunculis* Dæmonem *adjurat:* And they were anciently called *Carmina*, by Reaſon in thoſe Days their *Charms* were in *Verſe*. 3 Inſt. 44.

Inchantreſs, (*Incantatrix*) A Woman that uſes Charms and Incantations. See *Conjuration*.

Inchartare, Signifies to give or grant any Thing by an Inſtrument in Writing: *Conceſſit ipſi Comiti Terram ipſam &* inchartavit, *ut Poſſeſſio ſua*, &c. Matt. Pariſ. Anno 1252.

Inch of Candle, Is the Manner of ſelling Goods by Merchants; which is done thus: Firſt, Notice is to be given upon the *Exchange*, or other publick Place, of the Time of Sale; and in the mean Time, the Goods to be ſold are divided into Lots, printed Papers of which, and the Conditions of Sale, are alſo forthwith publiſhed; and when the Goods are expoſed to Sale, a ſmall Piece of Wax Candle, about an Inch long, is burning, and the laſt Bidder when the Candle goes out, is entitled to the Lot or Parcel ſo expoſed. If any Difference happens in adjuſting to whom a Lot belongs, where ſeveral bid together, the Lot is to be put up again; and the laſt Bidder is bound to ſtand to the Bargain, and take the Lot, whether good or bad. In theſe Caſes, the Goods are ſet up at ſuch a Price; and none ſhall bid leſs than a certain Sum, more than another hath before, &c. *Merch. Dict.*

Incident, (*Incidens*) Is a Thing neceſſarily depending upon, appertaining to, or following another that is more worthy or principal. A Court-Baron is inſeparably *incident* to a Manor; and a Court of Piepowders to a Fair: Theſe are ſo inherent to their Principals, that by the Grant of one the other is granted; and they cannot be extinct by Releaſe, or ſaved by Exception, but in ſpecial Caſes. *Kitch.* 36 1 *Inſt.* 151. Rent is *incident* to a Reverſion; Timber-Trees are *incident* to the Freehold, and alſo Deeds and Charters, and a Way to Lands; Fealty is *incident* to Tenures; Diſtreſs to Rent and Amercement, &c. 1 *Inſt.* 151. Tenant for Life or Years, hath *incident* to his Eſtate, Eſtovers of Wood. 1 *Inſt* 41. And there are certain *Incidents* to Eſtates-tail; as to be diſpuniſhable of Waſte, to ſuffer a Recovery, &c. 1 *Inſt.* 224. 10 *Rep.* 38, 39. *Incidents* are needful to the *Bene eſſe* of that to which they are *incident*; and the Law is tender of them. *Hob.* 39, 40.

Inclauſa, A Home-Cloſe, or Incloſure near the Houſe. *Paroch. Antiq. pag.* 31.

Incloſures. The throwing down *Incloſures*, is an Offence puniſhable by our ancient Laws and Statutes. 13 *Ed.* 1. *c.* 46. But if a Lord of a Manor *incloſe* Part of the Waſte or Common, and doth not leave ſufficient Room for the Commoners; they may break down ſuch *Incloſure*, or have Writ of Aſſiſe. 3 & 4 *Ed.* 6. Large Waſtes or Commons in the *Weſt-Riding* of the County of *York*, with the Conſent of the Lords of Manors, &c. may be *incloſed*, a ſixth Part whereof ſhall be for the Benefit of poor Clergymen, whoſe Livings are under 40 *l.* a Year, to be ſettled in Truſtees, who may grant Leaſes for twenty-one Years, &c. *Stat.* 12 *Ann. cap.* 4.

Incompatible, *Incompatibilitas Beneficiorum*, Is when Benefices cannot ſtand one with another, if they be with Cure and of ſuch a Value in the King's Books. *Whitlock's Read. p.* 4

Incontinency, (*Incontinentia*) Where Perſons are *vitious*, and have no Command of themſelves, is a Crime that may be committed in ſeveral Caſes, and there are divers Degrees thereof: As in Caſe of *Bigamy*, or having more Wives than one; *Rapes* of Women; *Sodomy*, or Buggery; getting *Baſtards*, &c. all which are puniſhed by Statute. See 25 *H.* 8. *c.* 6. 18 *Eliz. c.* 7. 1 *Jac.* 1. *Incontinency* of *Prieſts*, is puniſhable by the Ordinary, by Impriſonment, &c. 1 *H.* 7. *c.* 4

Incopolitus, Is made Uſe of for a Proctor, or Vicar. *Leg. Hen.* 1.

Incrementum, Increaſe or Improvement; to which was oppoſed *Decrementum* or Abatement.—— *Reddendo antiquam firmam & de* Incremento *xi s.* Paroch. Antiq. 164. And we read *Dedi* A. B. *quoddam* Incrementum *terræ meæ apud*, &c. where it is meant a Parcel of Ground incloſed out of a Common, or improved.

Incroachment, (Fr. *Accrochment*, i. e. a Graſping of a Thing) Signifies an unlawful Gaining upon the Right or Poſſeſſion of another Man. As where a Man ſets his Hedge or Wall too far into the Ground of his Neighbour, that lies next to him, he is ſaid to make *Incroachment* upon him: And a Rent is ſaid to be incroached, when the Lord by Diſtreſs or otherwiſe compels his Tenant to pay more than he owes; and ſo of Services, &c. 9 *Rep.* 33. And ſometimes this Word is applied to Power; for the *Spencers*, Father and Son, it is ſaid, *incroached* unto them *Royal Power* and Authority, *Anno* 1 *Ed.* 3. And the Admirals and their Deputies did *incroach* to themſelves divers Juriſdictions, &c. 15 *R.* 2. *c.* 3.

Incumbent, (From the Lat. *Incumbo*, to mind diligently) Is a Clerk who is reſident on his Benefice with Cure; and is ſo called, becauſe he does or ought to bend all his Study to the Diſcharge of the Cure of the Church to which he belongs. *Co. Litt.* 119. Where an *Incumbent* is put out without due Proceſs, he ſhall be at large to ſue for his Remedy at what Time he pleaſeth, &c. *Stat.* 4 *H.* 4. *cap.* 22. See *Church.*

Incurramentum, The *Incurring* or being ſubject to a Penalty, Fine or Amercement: So *Incurri alicui* is to be liable to another's legal Cenſure or Puniſhment.—— *Statutum eſt quod ejuſmodi Tenentes capitalibus Dominis vel Regi* incurrantur. *Weſtm.* 2. *cap.* 37.

Indebitatus Aſſumpſit, Is uſed in Declarations and Law Proceedings, where one is *indebted* unto another in any certain Sum; and the Law creates it: It is alſo an Action thereupon. *Practiſ. Attorn.* 2. *Edit.* 1. *pag.* 73. And it has been held, that the Action upon an *Indebitatus Aſſumpſit* lies in no Caſe, but where Debt will lie for the ſame Thing. 1 *Salk.* 23. See *Aſſumpſit.*

Indecimable, (*Indecimabilis*) That is not *Tithable*, or by Law ought not to pay Tithe. 2 *Inſt.* 490.

Indefeiſible, Is what cannot be *defeated* or made void; as a good and *Indefeiſible Eſtate*, &c.

Indefenſus, A Word ſignifying one that is impleaded, and refuſeth to make Anſwer: *Et prædictus* J *nihil ſciſit dicere contra ſectam dict.* Richardi, *nec voluit ponere ſe in Inquiſitionem aliquam*; *Conſideratum eſt quod tanquam* Indefenſus *ſit in miſericordia*, &c. Mich 50 H. 3. Rot. 4.

Indemnity. On the *Appropriation* of a Church to any College, &c. when the Archdeacon loſes for ever his Induction Money, the Recompence he receives yearly out of the Church ſo appropriate, as 12 *d.* or 2 *s.* more or leſs, as a Penſion agreed at the Time of the Appropriating, is called *Indemnity.* MS. in Bibl. Cotton. p 84. There is an *Indemnity* from Penalties; of Perſons who have neglected to read the Morning and Evening Prayers, according to the Book of Common Prayer, and to ſubſcribe the Declaration, &c. See Stat. 9 *Geo* 2. *c.* 6.

Indenture, (*Indentura*) Is a Writing containing ſome Contract, Agreement or Conveyance between two or more Perſons, being *indented* in the Top anſwerable to another Part, which hath the ſame Contents. *Co. Litt.* 229. If a Deed or Writing begins, *This Indenture*, &c. and is not indented, it is no *Indenture*; but it may work as a Deed Poll: But if the Deed is actually indented, and there are no Words importing an *Indenture*, it is nevertheleſs an *Indenture* in Law. *Wood's Inſt.* 223. *Cro Eliz.* 472. A Deed of Bargain and Sale of Freehold Lands, &c. muſt be by *Indenture*, inrolled, &c. *Stat.* 27 *H.* 8. *cap.* 16. Words in *Indentures*, though of one Party only, are binding to both Parties. *Cro Eliz.* 202, 657.

Indicavit, Is a Writ or Prohibition that lies for a *Patron* of a *Church*, whoſe Clerk is ſued in the Spiritual Court by another Clerk for *Tithes*, which do amount to a fourth Part of the Profits of the Advowſon; then the Suit belongs to the King's Courts, by the Stat. *Weſtm.* 2. *c.* 5. And the Patron of the Defendant, being like to be prejudiced in his Church and Advowſon, if the Plaintiff recovers in the Spiritual Court, hath this Means to remove it to the King's Court. *Reg. Orig.* 35. *Old Nat. Br.* 31. This Writ may be alſo purchaſed by the Parſon ſued; and is directed as well unto the Judge of the Court, as unto the Party Plaintiff, that they do not proceed, &c. But it is not to be had before the Defendant is libelled againſt in the Spiritual Court, the Copy of which ought to be produced in the Chancery, before the *Indicavit* is granted: And this Writ muſt be brought before Judgment given in the Spiritual Court; for after Judgment there, the *Indicavit* is void. *New Nat. Br.* 66, 101. The Writ *Indicavit* doth not lie of a leſs Part of the Tithes, &c. than a fourth Part of the Church; if they are not ſo much, this being ſurmiſed by the other Party, a *Conſultation* ſhall be had. *Ibid.* The Patron of the Clerk who is prohibited by the *Indicavit*, may have his Writ of *Right* of the *Advowſon of Diſmes*, &c.

Indiction, (*Indictio, ab indicendo*) Was the Space of fifteen Years, by which Computation Charters and publick Writings were dated at *Rome*; and likewiſe anciently in *England*, which we find not only in the Charters of King *Edgar*, but of King *Hen* 3. And by this Account of Time, which began at the Diſmiſſion of the *Nicene* Council, every Year ſtill increaſed one till it came to *Fifteen*; and then returned again, making the *Firſt*, *ſecond Indiction*, &c. *Dat. apud* Chippenham, 18 *Die* Aprilis, Indictione nona, *Anno Dom.* 1266.

Inditment, (*Indictamentum*, from the Fr. *Enditer*, i. e. *deferre nomen alicujus*) Is a Bill or Declaration

tion of Complaint drawn up in Form of Law, exhibited for ſome Offence criminal or penal, and preferred to a Grand Jury; upon whoſe Oath it is found to be true, before a Judge or others, having Power to puniſh or certify the Offence. *Terms de Ley* 293. *Lambard* ſays, an *Indictment* is an Accuſation, at the Suit of the King, by the Oaths of Twelve Men of the ſame County wherein the Offence was committed, returned to enquire of all Offences in general in the County, determinable by the Court, into which they are returned, and their Finding a Bill brought before them to be true: But when ſuch Accuſation is found by a Grand Jury, without any Bill brought before them, and afterwards reduced to a formed *Indictment*, it is called a Preſentment; and when it is found by Jurors returned to enquire of that particular Offence only which is indicted, it is properly called an Inquiſition. *Lamb. lib.* 4. *cap.* 5. And by *Pulton*, an *Indictment* is an Inquiſition taken and made by twelve Men, at the leaſt, thereunto ſworn, whereby they do find and preſent, that ſuch a Perſon, of ſuch a Place, in ſuch County, and of ſuch a Degree, hath committed ſuch a Treaſon, Felony, Treſpaſs, or other Offence, againſt the Peace of the King, his Crown and Dignity. *Pult.* 169. An *Indictment*, by Lord Chief Juſtice *Hale*, is nothing elſe but a plain, brief, and certain Narrative of an Offence committed by any Perſon, and of thoſe neceſſary Circumſtances, that concur to aſcertain the Fact and its Nature: And there is great Strictneſs required in *Indictments*, where Life is in Queſtion; and therefore very nice Exceptions thereto, are of later Times allowed. 2 *Hale's Hiſt. P. C.* 168, 169. A Bill of *Indictment* is ſaid to be an Accuſation for this Reaſon; becauſe the Jury that enquireth of the Offence, doth not receive it, until the Party that offereth the Bill appearing ſubſcribes his Name, and offers his Oath for the Truth of it: But it differs from an Accuſation in this, that the Preferrer of the Bill is not tied to the Proof of it, upon any Penalty, except there appear Conſpiracy. *Staundf. P. C. lib.* 2. *cap.* 23. Although a Bill of *Indictment* may be preferred to a Grand Jury upon Oath, they are not bound to find the Bill, if they find Cauſe to the contrary; and tho' a Bill of *Indictment* be brought unto them without Oath made, they may find the Bill if they ſee Cauſe: But it is not uſual to prefer a Bill unto them before Oath be firſt made in Court, that the Evidence they are to give unto the Grand Inqueſt to prove the Bill is true. *Paſch.* 23 *Car. B. R.* 2 *Lill. Abr.* 44. The Grand Jury are to find the Whole in a Bill, or reject it, and not find ſpecially for Part, &c. 2 *Hawk. P. C.* 210. According to the Common Law, every *Indictment* muſt be found by Twelve Men at the leaſt, every one of whom ought to be of the ſame County, and returned by the Sheriff, or other proper Officer, without the Nomination of any other, and to be Freemen, not under any Attainder of Felony, nor Outlaws, &c. And any one under Proſecution for a Crime, before he is indicted, may except againſt or challenge any of the Perſons returned on the Grand Jury; as being outlawed, returned at the Inſtance of the Proſecutor, or not returned by the proper Officer, &c. 2 *Hawk.* 215. By Statute, no *Indictment* ſhall be made but by Inqueſt of lawful Men returned by Sheriffs, &c. 11 *H.* 4. *cap.* 2. And if a Perſon not returned by the Sheriff on a Grand Jury, procures his Name to be read among thoſe of others who were actually returned, whereupon he is ſworn of the Jury; he may be indicted for it and fined, and the *Indictment* found by ſuch a Jury ſhall be void. *Stat.* 11 *Hen.* 4. *cap.* 9. 12 *Rep.* 98. 3 *Inſt.* 33. Sheriffs had formerly Power to take *Indictments*; which they did by Roll indented, one Part whereof remained with the *Indictors*. 13 *Ed.* 1. and 1 *Ed.* 3. Juſtices of Peace have no Power relating to *Indictments* for Crimes, but what is given them by Act of Parliament: And it is ſaid Juſtices of Peace in Seſſions, cannot on an *Indictment* try and determine the Offence in one and the ſame Seſſions in which the Offenders are *indicted. Hill.* 11 *Car. Cro. Car.* 430, 448. And *Indictments* before Juſtices of Peace, &c. may be removed into the Court of *B. R.* by *Certiorari:* But an *Indictment* removed by *Certiorari* into *B. R.* may be ſent back again into the County or Place whence removed, if there be Cauſe to do it. *Mich* 22 *Car.* Before the Stat. 3 *H.* 7. *c.* 1. it was the common Practice not to try any Man upon an *Indictment* of Murder, before the Year and Day were paſſed, to bring an Appeal, leſt that Suit ſhould be prevented: And Appeals are to be generally preferred to *Indictments.* 3 *H.* 7. 2 *Hawk.* 214. As an Appeal is ever the Suit of the Party; ſo an *Indictment* is always at the Suit of the King. 1 *Inſt.* 126. And till the Statute 1 *Ed.* 6. if a Man had been indicted and convicted of Felony, &c. and the King had died before Judgment, no Judgment could be given, becauſe it was at the Suit of the King; and the Authority of the Judges who ſhould give the Judgment was determined by his Death: But by that Statute Judgment may be given in the Time of another King. 7 *Rep.* 29. An *Indictment* is the King's Suit; for that the Party who proſecutes it, is a good Witneſs to prove it: And no Damages can be given to the Party grieved upon an *Indictment* or other criminal Proſecution, unleſs particularly grounded on ſome Statute; but the Court of *B. R.* by the King's Privy Seal may give to the Proſecutor a third Part of the Fine aſſeſſed for any Offence; and the Fine to the King may be mitigated, in Regard to the Defendant's making Satisfaction to a Proſecutor for Coſts of the Proſecution, and Damages ſuſtained by the Injury received. 2 *Hawk.* 210. No Man may be put upon his Trial for a capital Offence, except on an Appeal or *Indictment*, or ſomething equivalent thereto. *H. P. C.* 210. And all *Indictments* ought to be brought for Offences committed againſt the Common Law, or againſt ſome Statute; and not for every ſlight Miſdemeanor. *Trin.* 23 *B. R.* 2 *Lill.* 44. Where a Statute appoints a Penalty to be recovered by Bill, Plaint, or Information, it cannot be by *Indictment*, but as directed to be recovered: An *Indictment* will not lie where another Remedy is provided by Statute. *Cro. Jac.* 643. 3 *Salk.* 187. *Indictments* are for the Benefit of the Common-wealth, and the publick Good; and to be preferred for Criminal, not Civil Matters: They may be of High Treaſon, Petit Treaſon, Felony, Treſpaſs, and in all Sorts of Pleas of the Crown; but not of Injuries of a private Nature, which do not concern the King, and the publick. 1 *Inſt.* 126, 303. 4 *Rep.* 44 An *Indictment* lies againſt one for aſſaulting and ſtopping another on the Highway, being a Breach of the Peace. *Hill.* 22 *Car.* It lies for cheating a Perſon at Play, with falſe Dice, or any other Cheating: But it is not indictable for one Man to make a Fool of another, in the Caſe of Cheats getting Money, &c. tho' Action may be brought. 2 *Lill.* 44. 1 *Salk.* 479. *Indictment* will not lie for a private Nuſance, wherein Action on the Caſe only lies; and where a Perſon is indicted for Treſpaſs, which is not indictable at Law, but for which Action ſhould be had; or if a Man be indicted for ſcandalous Words, as Calling another Rogue, &c. ſuch *Indictments* are not good; for private Injuries are to be redreſſed by private Actions. 2 *Lill. Abr.* 42. But where a Perſon is beaten, he may proceed for this Treſpaſs by *Indictment*, or Information, as well as Action; but not both Ways. *Paſch.* 24 *Car. B. R* And where in an Action on the Caſe, a Defendant juſtifies for Words, as calling the Plaintiff Thief, &c. if on the Trial it be found for the Defendant, *Indictment* may be brought forthwith to try the Plaintiff for the Felony. *Mich.* 22 *Car. B. R.* 2 *Lill.* 44.

44. By *Holt* Chief Juſtice: If a Civil Action of Trover be brought for Goods taken, after Recovery the Party may be *indicted* for Treſpaſs or Felony, for the ſame Taking: But if the firſt Proſecution had been Criminal, as an *Indictment* for Treſpaſs, *&c* and the Crime appears to be Felony; there you cannot have Verdict or Judgment on the *Indictment* for Treſpaſs till the Felony is tried, it being the inferior Offence. *Mod. Caſ.* 77. And 'tis ſaid that Trover lies not for Goods ſtolen, until the Offender is convicted, *&c.* on *Indictment* of Felony. 1 *Hale's Hiſt. P. C.* 546. A Parſon may be indicted for Preaching againſt the Government of the Church, the Civil and Eccleſiaſtical Government being ſo incorporated together, that one cannot ſubſiſt without the other; and both centre in the King; wherefore to ſpeak againſt the Church, is within the Statute 13 *Car.* 2. *Sid.* 69. 2 *Nelſ. Abr.* 959. And a Parſon was indicted for pronouncing Abſolution to Perſons condemned for Treaſon, at the Place of Execution, without ſhewing any Repentance. 5 *Mod.* 363. Alſo a Perſon hath been indicted, and fined, *&c.* for Drinking Healths to the Memory of Traitors. 3 *Mod. Rep.* 52. *Indictments* ought to be more certain than common Pleadings in Law, becauſe they are more penal, and to be more preciſely anſwered unto. *Hill.* 23 *Car. B. R.* They muſt be preciſe and certain in every Point, and charge ſome Offence in particular, and not a Perſon as an Offender in general, or ſet down Goods, *&c.* ſtolen, without expreſſing what Goods; and it ought to be laid poſitively, not by Way of Recital, *&c.* or be ſupplied by Implication. *Cro. Jac.* 19 2 *Hawk. P. C.* 225, 226. *Indictments* muſt ſet forth the Chriſtian Name, Surname, and Addition of the Place of Reſidence of the Offender; the Certainty of the Time when the Offence was done, as the Day, Year, *&c.* and the Town or Place where; the Nature of the Offence, whether Treaſon, Felony, *&c* and the Value of the Thing by which it is committed, *&c.* And in *Indictment* of Murder, the Length and Depth of the Wound is to be expreſſed: The Value of Things ſtolen is to be ſpecified, that it may appear whether Grand or Petit Larceny; and of the Thing that does the Felony, which is forfeited to the King; and the Dimenſions of a Wound muſt be expreſſed, that it may be judged whether mortal. 1 *Hen.* 5. *cap.* 5. 2 *Inſt.* 318. *H. P. C.* 264. *Weſt's Symb. Sect.* 70. In Treaſon, according to our old Books, the *Indictment* muſt ſay *Proditorie*, and conclude *contra Ligeantiæ ſuæ debitum*; in Murder, it is to ſay *Murdravit*; and if the Killing was by Shooting, or with the Hand, *&c.* it muſt ſay *Percuſſit*; in Burglary, *Burglariter*, or *Burgalariter*; in Rape, *Rapuit*; in Felony, *Felonice*; in Larceny, *Felonice cepit*; Maihem, *Maybemavit*, *&c.* And in all theſe Caſes, and in Treſpaſſes, the *Indictment* ought to be *Vi & Armis*, and conclude *contra pacem*, which are Words to ſhew an Offence generally; and if the Offence is created by Statute, it muſt conclude *contra formam Statuti*, *&c.* 4 *Rep.* 39, 48. 5 *Rep.* 121. *H. P. C.* 206. Theſe Words the Law hath appropriated for the Deſcription of Offences, and none other will ſupply them: But the Omiſſion of *Vi & Armis & contra pacem*, is helped by Statute 4 & 5 *Ann.* Falſe *Latin*, in the former Courſe of Proceedings did not hurt an *Indictment*, if by any Intendment it could be made good; but if any Word was not *Latin*, or allowed by Law as a Word of Art; or if it had been inſenſible in a Point material, the *Indictment* was inſufficient. 5 *Rep.* 121. 2 *Cro.* 108. 3 *Cro.* 465. An *Indictment* ſhould not be ſet aſide for a falſe Concord between the Subſtantive and Adjective, *&c.* the Expreſſions being ſignificant to make the Senſe appear. 5 *Co. Rep.* 121. But an *Indictment* againſt Two or more, laying the Fact in the ſingular Number, as if againſt one, hath been held inſufficient for the Incertainty. 2 *Hawk.* 238. A Miſnomer of the Defendant's Surname, will not abate the *Indictment*, as it will in Caſe of the Name of Baptiſm; and if there be a Miſtake in Spelling, if it ſounds like the true Name, it is good. 1 *Hen.* 5. A Perſon may be indicted for Felony againſt an unknown Perſon; and when the Name of one killed is unknown, or Goods are ſtolen from a Perſon that cannot be known, it is ſufficient to ſay in the *Indictment* that one unknown was killed by the Perſon indicted, or that he ſtole the Goods of one unknown. *Wood's Inſt.* 624. But though an *Indictment* may be good for ſtealing the Goods *cujuſdam ignoti*, of a Perſon unknown, yet a Property muſt be proved in ſome Body at the Trial; otherwiſe it ſhall be preſumed to be in the Priſoner by his pleading Not guilty. *Mod. Caſ. in L. & E.* 249. Where a Perſon injured is known, his Name ought to be put into the *Indictment.* 2 *Hawk.* 232. If an *Indictment* be generally of Offences at ſeveral Times, without laying any one of them on a certain Day; as if it be laid between ſuch a Day and ſuch a Day, it hath been adjudged that the *Indictment* is void: But a Miſtake in not laying an Offence on the very ſame Day, on which it is afterwards proved upon the Trial, is not material upon Evidence. 2 *Hawk.* 236. And it is ſaid, the Crown is not bound to ſet forth the very Day, when Treaſon, *&c.* was committed: Evidence may be given of a treaſonable Conſpiracy, *&c.* at any Time before or after the Time alledged in the *Indictment*; where it is laid on ſuch a Day and divers other Days as well before as after, becauſe the Time is only a Circumſtance, and of Form ſome Day muſt be alledged; but it is not material. 1 *Salk.* 288. If no Town or Place be named where the Fact was done, the *Indictment* ſhall be void; though a Miſtake of the Place in laying the Offence, is of no Signification on the Evidence, if the Fact is proved at ſome other Place in the ſame County. *H. P. C.* 264. 1 *Hen.* 5. *cap.* 5. *Indictments* for Facts committed ought to be laid in the County where done; and the Town or Pariſh in which committed to be ſet forth, *&c.* And if upon Not guilty pleaded to an *Indictment*, it ſhall appear that the Offence was done in a County different from that in which the *Indictment* was found, the Defendant ſhall be acquitted. *H. P. C.* 203. *Kel.* 15. At Common Law, if a Man had died in one County of a Wound received in another, he could not regularly be indicted in either County, the Offence not being compleat in either; and no Jury could enquire of what happened out of the Limits of their own County: But by the Statute 3 *Ed.* 6. *cap.* 24. the Offence is to be indicted and tried by Jurors of the County where the Death happens. 2 *Hawk.* 220. It has been held, if a Perſon ſteals Goods in one County, and carries them into another, he may be indicted in the other County: And if a Perſon ſteals my Goods from another, who had ſtolen them before, he may be indicted as having ſtolen them from me, becauſe in Judgment of Law, the Poſſeſſion as well as Property always continued in me. 1 *Hawk.* 90. If there be an Acceſſary in one County, to a Felony committed in another, the Acceſſary may be indicted and tried in the ſame County wherein he was Acceſſary. *Stat.* 2 & 3 *Ed.* 6. Husband and Wife may commit a Treſpaſs, Felony, *&c.* and be indicted together; ſo for keeping a Bawdy-houſe, though the Houſe be the Husband's. *Hob.* 95. 1 *Salk.* 382. If an Offence wholly ariſes from any joint Act that is criminal of ſeveral Defendants, they may be all charged in one *Indictment* jointly and ſeverally, or jointly only; and ſome of the Defendants may be convicted, and others acquitted; for the Law looks on the Charge as ſeveral againſt each, though the Words of it purport a joint Charge againſt all: In other Caſes, the Offences of ſeveral Perſons muſt be laid ſeveral, becauſe the Offence of one cannot be the Offence of another; and every Man ought

to anſwer ſeverally for his own Crime. 2 *Hawk.* 240. A Perſon cannot be indicted barely of Suſpicion of Felony; but of the Crime itſelf: And three Offences may be joined in an *Indictment*, and the Party convicted of one Offence, though he is found Not guilty of the others. 1 *Hale's Hiſt. P. C.* 561, 610. On penal Statutes, ſeveral Things ſhall not be joined in the *Indictment*, &c. except it be in Reſpect of ſome one Thing, to which all of them have Relation. 2 *Hawk.* 241. When an *Indictment* is drawn upon a Statute, it ought to purſue the Words of it, if a private Act; but it is otherwiſe on a general Statute: It is beſt not to recite a publick Statute; the Recital is not neceſſary, for the Judges are bound *ex Officio* to take Notice of all publick Statutes, and Miſ-recitals are fatal; ſo that it is the ſureſt Way only to conclude generally *Contra formam Statuti*, &c. 4 *Rep.* 48. Though there be no Neceſſity to recite a publick Statute in an *Indictment*, yet if the Proſecutor take upon him to do it, and materially vary from the ſubſtantial Part of the Purview of the Statute, and conclude *Contra formam Statut. prædict.* he vitiates the *Indictment*. *Plowd.* 79, 83. *Cro. Eliz.* 236. But many Miſ-recitals may be ſalved by a general Concluſion *Contra formam Statuti*, without adding *prædict'*, &c. And Miſtakes may be helped by the conſtant Courſe of Precedents upon ſuch Statutes. 2 *Hawk.* 247. An *Indictment* is to bring the Fact making an Offence, within all the material Words of the Statute, or the Words, *Contra formam Statuti*, will not make it good. *Ibid.* 249. If a Word of Subſtance be omitted in the *Indictment*, the whole *Indictment* is naught; but it is otherwiſe where a Word of Form is omitted, or there is an Omiſſion of a ſynonymous Word, where the Senſe is the ſame, &c. *Ibid.* 246. Judgment ſhall not be given by Statute, upon an *Indictment* which doth not conclude *contra formam Statuti*: And Judgment by Statute ſhall never be given on an *Indictment* at Common Law, as every *Indictment* which doth not thus conclude ſhall be taken to be. 2 *Hawk.* 251. But where Perſons are indicted on the Statute of Stabbing, and the Evidence is not ſufficient to bring them within the Statute; they may be found Guilty of general Manſlaughter at Common Law, and the Words *contra formam Statut.* be rejected as uſeleſs: In ſome other Caſes the ſame has been alſo adjudged; though formerly it was held, that an *Indictment* grounded on a Statute, which would not maintain it, could not in any Caſe be maintained as an *Indictment* at Common Law. *Ibid.* *Indictments* may be amended the ſame Term wherein brought into Court, and not after: But criminal Proſecutions are not within the Benefit of the *Statutes of Amendments*; ſo that no Amendment can be made to an *Indictment*, &c. but ſuch only as is allowed by the Common Law. 2 *Lill.* 45. 2 *Hawk.* 244. The Body of a Bill of *Indictment* removed into *B. R.* may not be amended, except from *London* where a Tenor only of the Record is removed; though the Caption of an *Indictment* from any Place may, on Motion, be amended by the Clerk of the Aſſiſes, &c. ſo as to make it agree with the original Record. *Ibid.* And *Captions* of *Indictments* ought to ſet forth the Court in which, and the Jurors by whom, and alſo the Time and Place, at which the *Indictment* was found; and that the Jurors were of the County, City, &c. Alſo they muſt ſhew that the *Indictment* was taken before ſuch a Court as had Juriſdiction over the Offence indicted. 2 *Hawk.* 253. While the Jury who found a Bill of *Indictment* is before the Court, it may be amended by their Conſent in Matter of Form, the Name, or Addition of the Party, &c. *Kel.* 37. Clerks of the Aſſiſe and of the Peace, &c. drawing defective Bills of *Indictment*, ſhall draw new Bills without Fee, and take but 2 *s.* for drawing any *Indictment* againſt a Felon, &c. on Pain of forfeiting 5 *l.* *Stat.* 10 & 11 *W.* 3. *cap.* 23. If one material Part of an *Indictment* is repugnant to or inconſiſtent with another, the Whole is void; but where the Senſe is plain, the Court will diſpence with a ſmall Impropriety in the Expreſſion. *Ibid.* 228, 229. And many Objections to *Indictments*, are over-ruled. 5 *Rep.* 120. Where an *Indictment* is void for Inſufficiency; or if the Trial is in a wrong County, another *Indictment* may be drawn for the ſame Offence, whereby the Inſufficiency may be cured; and the *Indictment* may be laid in another County, 'tis ſaid, tho' Judgment be given. 4 *Rep.* 40. *H. P. C.* 244. By the Common Law, the Court may quaſh any *Indictment* for Inſufficiency, as will make the Judgment thereon erroneous: But the Court may refuſe to quaſh an *Indictment* preferred for the publick Good, though it be not a good *Indictment*, and put the Party to traverſe or plead to it. *Mich.* 22 *Car. B. R.* Alſo the Court will grant Time for the King's Counſel to maintain an *Indictment*, if they deſire it. Judges are not bound *ex debito Juſtitiæ* to quaſh an *Indictment*; but may oblige the Defendant either to plead or demur to it; and where *Indictments* are no good, the Parties indicted may avoid them by Pleading. 2 *Lill.* 42. 2 *Hawk.* 258. The Court doth not uſually quaſh *Indictments* for Forgery, Perjury, or Nuſances, notwithſtanding the *Indictments* are faulty; and it is againſt the Courſe of the Court to quaſh an *Indictment* for Extortion. 2 *Lill.* 41. 5 *Mod.* 31. If an *Indictment* be good in Part, though the other Part of it is naught, the Court will not quaſh it; for if an Offence ſufficient to maintain the *Indictment* be well laid, 'tis good enough, although other Facts are ill laid. *Latch* 173. *Poph.* 208. 1 *Salk* 384. One that is convicted upon an erroneous *Indictment*, cannot after the Conviction move to have the *Indictment* quaſhed; but muſt bring his Writ of Error to reverſe the Judgment given againſt him upon the *Indictment*. *Mich.* 22 *Car B. R.* An *Indictment* is quaſhed for the Inſufficiency in it; or becauſe no good Judgment can be given upon it: But if Judgment be given upon an erroneous *Indictment*, it is good againſt the Party till reverſed by Writ of Error. 2 *Lill.* 43. If the Party indicted is outlawed upon the *Indictment*, the Court will not quaſh the *Indictment*, though erroneous; but will force the Party outlawed to bring his Writ of Error to reverſe the Outlawry. *Mich.* 24 *Car. B. R.* The Stat. 7 *W.* 3. *cap.* 3 ordains, That no *Indictment* for Treaſon, &c. or any Proceſs thereon, ſhall be quaſhed, on Motion of the Priſoner, or his Counſel, for Miſ-writing, falſe *Latin*, &c. unleſs Exception be made before Evidence given in Court; nor ſhall any ſuch Defect, &c. after Conviction, be Cauſe to arreſt Judgment; though any Judgment given upon ſuch *Indictment* may be reverſed on a Writ of Error, &c. By the Statute of *Hen.* 5. *Indictments* ſhall abate for Omiſſions, by the Exception of the Party; and if no Advantage be taken by Exception, but he appears and pleads, he loſes the Benefit of the Law. 2 *Inſt.* 670. A Perſon indicted of Felony, &c. may plead generally Miſnomer, or wrongful Addition; a former Acquittal or Conviction; a Pardon, or other ſpecial Plea; or the General Iſſue; or may plead any Plea in Abatement of the *Indictment*, &c. 2 *Hawk.* 259. One indicted for Felony may have Counſel aſſigned him to ſpeak for him in Matter of Law only. 2 *Lill.* 44. And all Perſons indicted for High Treaſon, ſhall have a Copy of the *Indictment* before Trial, to adviſe with Counſel, &c. And ſuch *Indictments* are to be found in three Years after the Offence committed, except it be againſt the King's Perſon. 7 *W.* 3. Perſons indicted of Treaſon muſt be by the Oaths of two Witneſſes; but in other Caſes one Witneſs is enough. After a Perſon is indicted for Felony, the Sheriff is commanded to attach his Body by a *Capias*; and on Return of a *Non eſt Inventus*, a ſecond *Capias* ſhall be granted, and the Sheriff is to ſeiſe the Offender's

Chattels, *&c.* And if on that Writ a *Non eſt Inventus* is returned, an *Exigent* ſhall be awarded, and the Chattels be forfeited, *&c. Stat.* 25 *Ed.* 3. If an innocent Perſon be indicted of Felony, and will not ſuffer himſelf to be arreſted by the Officer who has a Warrant for it, he may be killed by the Officer, if he cannot be otherwiſe taken; for there is a Charge againſt him upon Record, to which at his Peril he is bound to anſwer. *Fitz. Coron.* 179, 261. A Perſon may be indicted twice at the ſame Time, where he hath committed two Felonies; and if he hath his Clergy for one, he may be hanged for the other. *Kel.* 30. And if there is an Indictment and Inquiſition againſt one for the ſame Offence, one found by the Coroner's Inqueſt, and another by the Grand Jury, he may be tried on both at the ſame Time: But if he be tried and acquitted upon the one, it may be pleaded in Bar on Trial for the other. *Kel.* 108. 1 *Salk.* 382. An *Indictment* being found in the proper County, may be heard and determined in any other County, by ſpecial Commiſſion. 3 *Inſt.* 27. When a Perſon is convicted upon an *Indictment* for Treſpaſs or Miſdemeanor, he is to appear in Court, on Judgment pronounced; and the Court having ſet a Fine upon him, will commit him in Execution, *&c.* 2 *Lill. Abr.* 41. *Forms of Indictments*, ſee *Murder*, *Felony*, *Burglary*, *&c.*

Inditor, Is he that indicteth another Man for any Offence; and *Indictee* is the Party that is indicted. 1 *Ed.* 3. *cap.* 11. 21 *Jac.* 1. *c.* 8.

Indiſtanter, A Word ſignifying without Delay. *Matt. Weſtm. Anno* 1244.

Indiviſum, Is uſed for that which two Perſons hold in common without Partition; as where it is ſaid he holds *pro indiviſo*, *&c.* Kitch. 241.

Indomit, Is Law *French* for boiſterous and ungovernable. *Law Fr. Dict.*

Indorſement, (*Indorſamentum*) Signifies any Thing written on the Backſide of a Deed; and Receipts for Conſideration Money, and the Sealing and Delivery, *&c.* on the Back of Deeds, are called *Indorſements*. *Weſt's Symb. par.* 2. *ſect.* 157. On Sealing of a Bond any Thing may be *indorſed* or ſubſcribed upon the Back thereof, as Part of the Condition; and the *Indorſement* and that ſhall ſtand together. *Moor* 679. There is alſo an *Indorſement* of *Bills* or *Notes*, of what Part thereof is paid, and when, *&c.* And in another Senſe it is a Writing a Man's Name only on the Backſide of *Bills of Exchange*, which paſſing from one Man to another, all the *Indorſers* are anſwerable as well as the Drawer. 3 & 4 *Ann. c.* 9.

Indowment, Of a Church, *&c.* See *Endowment.*

Inducement, Is what is alledged as a Motive or Incitement to a Thing; and in Law is uſed ſpecially in ſeveral Caſes, *viz.* there is *Inducement* to Actions, to a Traverſe in Pleadings, a Fact or Offence committed, *&c. Inducements* to Actions need not have ſo much Certainty as in other Caſes: A general *Indebitatus* is not ſufficient, where it is the Ground of the Action; but where it is but the *Inducement* to the Action, as in Conſideration of forbearing a Debt till ſuch a Day, (for that the Parties are agreed upon the Debt) this being but a collateral Promiſe, is good without ſhewing how due. *Cro. Jac.* 548. 2 *Mod.* 70. A Man ought to induce his Traverſe when he denies the Title of another, becauſe he ſhould not deny it till he ſhew ſome colourable Title in himſelf; for if the Title traverſed be found naught, and no Colour of Right appears for him who traverſed, there can be no Judgment given: But an *Inducement* cannot be traverſed, becauſe that would be a Traverſe after a Traverſe, and quitting a Man's own Pretence of Title, and falling upon another. *Cro.* 265, 266. 3 *Salk.* 357. An *Inducement* to a Traverſe muſt be ſuch Matter as is good and juſtifiable in *Law. Cro. Eliz.* 829. There is an *Inducement* to a Juſtification, when what is alledged againſt it is not to the Subſtance of the Plea, *&c. Cro. Jac.* 138. *Moor* 847. 2 *Nelſ. Abr.* 986.

Induction, (*Inductio*, i. e. a Leading into) Is the Giving a Parſon Poſſeſſion of his Church: And after the Biſhop hath granted Inſtitution, he iſſues out his Mandate to the Archdeacon to induct the Clerk, who thereupon either does it perſonally, or uſually commiſſions ſome neighbouring Clergyman for that Purpoſe; which is compared to Livery and Seiſin, as it is a Putting the Miniſter in actual Poſſeſſion of the Church, and of the Glebe Lands, which are the Temporalities of it. This *Induction* is done in the following Manner: One of the Clergymen commiſſioned takes the Perſon to be inducted by the Hand, lays it on the Key of the Church, and pronounces theſe Words; *By Virtue of this Commiſſion, I induct you into the real and actual Poſſeſſion of the Rectory of, &c. with all its Appurtenances.* Then he opens the Church door, and puts the Parſon into Poſſeſſion thereof, who commonly tolls a Bell, *&c.* and thereby ſhews and gives Notice to the People that he hath taken corporal Poſſeſſion of the ſaid Church: If the Key of the Church door cannot be had, the Clerk to be inducted may lay his Hand on the Ring of the Door, the Latch of the Church-gate, on the Church Wall, *&c.* and either of theſe are ſufficient: Alſo *Induction* may be made by Delivery of a Clod, or Turf of the Glebe, *&c. Countr. Parſ. Compan.* 21, 22. Ordinarily the Biſhop is to direct his Mandate to the Archdeacon, as being the Perſon who ought to induct or give Poſſeſſion unto the Clerks inſtituted to any Churches within his Archdeaconry: But tis ſaid, the Biſhop may direct his Mandate to any other Clergyman to make *Induction.* 38 *Ed.* 3. *cap.* 3. And by Preſcription, others as well as Archdeacons may make *Inductions. Parſ. Counſel.* 8. An *Induction* made by the Patron of the Church, is void; but Biſhops and Archdeacons may induct a Clerk to their Benefices of which they are Patrons, by Preſcription, *&c.* 11 *Hen.* 4. The Dean and Chapter of Cathedral Churches are to induct Prebends; though it hath been held, if the Biſhop doth induct a Prebend, it may be good at the Common Law. 11 *Hen.* 4. 7. 11 *Hen.* 6. In ſome Places a Prebend ſhall be in Poſſeſſion without any *Induction*; as at *Weſtminſter*, where the King makes Collation by his Letters Patent. If the King grants one of his free Chapels, the Grantee ſhall be put in Poſſeſſion by the Sheriff of the County, and not by the Biſhop: And no *Induction* is neceſſary to a *Donative*, where the Patron by Donation in Writing puts the Clerk into Poſſeſſion, without Preſentation, *&c.* 11 *Hen.* 4. If the Authority of the Perſon who made the Mandate for *Induction*, determines by Death or Removal, before the Clerk is inducted, the *Induction* afterwards will be void; as where before it is executed, a new Biſhop is conſecrated, *&c.* But if the Archbiſhop, during the Vacancy of a See, as Guardian of the Spiritualities, iſſue a Mandate to induct a Clerk to a Church, it is good though not executed before there is a new Biſhop. 2 *Lev.* 199. 1 *Ventr.* 309. *Induction* is a temporal Act; and if the Archdeacon refuſe to induct a Parſon, or to grant a Commiſſion to others to do it, Action of the Caſe lies againſt him, on which Damages ſhall be recovered; and he may likewiſe be compelled by Sentence in the Eccleſiaſtical Court to induct the Clerk, and ſhall anſwer the Contempt. 12 *Rep.* 128. It is *Induction* makes the Parſon compleat Incumbent, and ſettles and fixes the Freehold in him; and a Church is full by *Induction*, which cannot be avoided but by *Quare Impedit* at Common Law. 4 *Rep.* 79. 2 *Plowd.* 529. *Hob.* 15. A Biſhop ſued in the Court of Audience, to repeal an Inſtitution, after *Induction* had, and a *Prohibition* was granted; becauſe an Inſtitution is not examinable in the Spiritual Court after *Induction*, but then a *Quare Impedit* lies. *Moor* 860.

'Tis not the Admiſſion and Inſtitution, but *Induction* to a ſecond Benefice, which makes the firſt void, in Caſe of Pluralities, *&c.* *Moor* 12.

In eſſe, Is any Thing *in Being*; and the Learned make this Diſtinction between Things *in eſſe* and *in poſſe*; as a Thing that is not, but may be, they ſay is *in poſſe* or *in potentia*; but what is apparent and viſible, they alledge is *in eſſe*, *viz.* that it has a real Being, whereas the other is caſual, and but a Poſſibility. A Child before he is born or conceived, is a Thing *in poſſe*; after he is born, he is ſaid to be *in eſſe*, or actual Being. The Words *in eſſe* are mentioned in the Statute 21 *Jac.* 1. *cap.* 2. And where there muſt be Perſons *in eſſe*, to take by Grants, *&c.* See *Grants* and *Wills.*

Infaliſtatio, Was an antient Puniſhment of Felons, by throwing them among the Rocks and Sands, cuſtomarily uſed in Port-Towns. It is the Opinion of ſome Writers, that *Infaliſtatus* did imply ſome capital Puniſhment, by expoſing the Malefactor upon the Sands, till the next Tide carried him away, of which Cuſtom it is ſaid there is an old Tradition: However the Penalty ſeems to take Name from the Norman *Faleſe* or *Faleſia*, which ſignified not only the Sands, but rather the Rocks and Cliffs adjoining, or impending on the Sea-ſhore. *Mon. Ang. Tom.* 2. *pag.* 165.——*Commiſit Feloniam ob quam fuit ſuſpenſus, utlagatus, vel alio modo morti Damnatus, &c. vel apud* Dover Infaliſtatus, *apud* Southampton *ſubmerſus, &c.* Hengham parva, cap. 3.

Infamy, Which extends to Forgery, Perjury, Groſs Cheats, *&c.* diſables a Man to be a Witneſs, or Juror; but a Pardon of Crimes reſtores a Perſon's Credit to make him a good Evidence. 2 *Hawk. P. C.* 432, 433. Judgment of the Pillory makes *Infamy* by the Common Law; but by the Civil and Canon Law, if the Cauſe for which the Perſon was convicted was not infamous, it infers no *Infamy.* 3 *Lev.* 426.

Infangthef, Infangenetheof, (From the Saxon *Fang* or *Fangen*, i. e. *capere*, and *Theoſ*, *Fur*) Signifies a Privilege or Liberty granted unto Lords of certain Manors, to judge any Thief taken *within* their Fee. *Bract. lib.* 3. *cap.* 35. In ſome antient Charters, it appears that the Thief ſhould be taken in the Lordſhip, and with the Goods ſtolen, otherwiſe the Lord had not Juriſdiction to try him in his Court; though by the Laws of King *Edward the Confeſſor*, he was not reſtrained to his own People or Tenants, but might try any Man who was thus taken in his Manor: 'Tis true afterwards, the Word *Infangtheſ* ſignified *Latro captus in terra alicujus ſeiſitus de aliquo Latrocinio, de ſuis propriis hominibus.* 1 & 2 *P. & M. c.* 15. The Franchiſes of *Infangthef* and *Outfangthef*, to be heard and determined in Court-Barons, are antiquated, and gone long ſince. 2 *Inſt.* 31.

Infant, (*Infans*) In our Law is a Perſon under twenty-one Years of Age, whoſe Acts are in many Caſes either void, or voidable. 1 *Inſt.* 171. All Gifts, Grants, *&c.* of an *Infant*, which do not take Effect by Delivery of his Hand, are void; and if made to take Effect by Delivery of his own Hand, are voidable by himſelf, and his Heirs, and thoſe which ſhall have his Eſtate. 8 *Rep.* 44. Where an *Infant* makes a Deed and delivers it within Age, though he afterwards delivers it again at full Age, this ſecond Delivery and Deed are void; for the Deed muſt take Effect from the firſt Delivery. 3 *Rep.* 35. If an Infant bargain and ſell Lands by Deed indented and inrolled, he may avoid it. 2 *Inſt.* 673. And if an *Infant* makes a Feoffment, he may enter and avoid it; and if he dies, his Heir may enter, or have a *Dum fuit infra Ætatem*, *&c.* 1 *Inſt.* 247, 248. An *Infant* ſeiſed in Fee makes a Feoffment and dies, his Heir ſhall enter; and it is the ſame if ſeiſed in Tail Male. 8 *Rep.* 42. And Privies in Blood, as the Heir general or ſpecial, may avoid a Conveyance made by their Anceſtor during his Infancy. *Ibid.* But Privies in Eſtate, ſuch as the Donor of an Eſtate-tail where the Tenant in Tail dies without Iſſue; or Privies in Law, as the Lord by Eſcheat where there is no Heir, ſhall not avoid a Conveyance made by an *Infant.* 8 *Rep.* 43, 44. If a Man within Age ſeiſed in Right of his Wife, makes a Feoffment and dies, his Heir, cannot enter and avoid it, becauſe no Right deſcends to him; for the Baron, if he had lived, could have entered only in Right of his Wife. 8 *Rep.* 43. And no Perſon ſhall take Advantage of the Infancy of his Anceſtor, but he that hath a Right deſcending to him from that Anceſtor; though the Heir may take the Benefit of a Condition, notwithſtanding no Right deſcended to him from his Anceſtors. 8 *Rep.* 44. If Husband and Wife are both within Age, and they by Indenture join in a Feoffment, and the Husband dies, the Wife may enter and avoid the Deed, or have a *Dum fuit infra Ætatem.* 1 *Inſt.* 337. Though if there be two Jointenants within Age, and one of them makes a Feoffment in Fee of the Moiety during his Infancy, and dies, the Survivor cannot enter; but the Heir of the Feoffor may enter into the Moiety, *&c.* 8 *Rep.* 43. If an *Infant* exchanges Lands with another, and the other enters, the *Infant* may have Aſſiſe. 18 *Ed.* 4. 2. And where an *Infant* leaſes for Years, he may affirm the Leaſe, or bring Treſpaſs againſt the Leſſee for the Occupation. 18 *Ed.* 4. *Bro. Treſpaſs* 338. A Leaſe made by an *Infant* reſerving Rent, is voidable; but if there be no Rendring Rent, it is abſolutely void. *Latch* 199. If an *Infant* makes a Leaſe paying Rent, and after his coming of Age he accepts the Rent, the voidable Leaſe is made good; and an *Infant*'s Leaſe in Ejectment is good. 2 *Lill. Abr.* 55. 3 *Salk.* 196. A Leaſe made to an *Infant* may be avoided by waving the Land before the Rent-Day: But if where a Leaſe for Years is made to an *Infant*, rendring Rent, after the *Infant* coming of full Age he continues the Poſſeſſion of the Land, this will make him chargeable with the Rent incurred during his *Infancy. Cro. Jac.* 320. An *Infant* cannot ſurrender a future Intereſt, by taking a new Leaſe; his Surrender by Deed and by Acceptance of a ſecond Leaſe, are void, except there be an Increaſe of the Term; or a Decreaſe of the Rent; for where there is no Benefit comes to him, his Acts are merely void. *Cro. Car.* 502. If an *Infant* ſurrenders a Leaſe for Years to him in Reverſion, this is void, and cannot be made good by any Agreement at full Age. *Roll. Abr.* 728. An *Infant* may purchaſe, being intended for his Benefit; yet at his full Age he may confirm, or avoid it, by Agreement or otherwiſe; and if he agrees not when at Age, his Heirs after him, may diſagree to the ſame. 1 *Inſt.* 2, 172. An *Infant*'s Feoffment, or other Deed, may be avoided by Plea or Entry, after or before he is of full Age; but his Acts on Record, as his Fine levied, Recovery ſuffered, or Statute acknowledged, muſt be avoided by Matter of Record, *viz.* by Writ of Error, or *Audita Querela*, during his Minority. 3 *Salk.* 196. 1 *Inſt.* 380. An *Infant* confeſſed Judgment in an Action of Debt brought againſt him; and it was held, *Audita Querela* did not lie upon this Judgment, though it would on a Statute or Recognisance; but the Party ought to bring a Writ of Error in the Exchequer Chamber, by Virtue of the Statute 27 *Eliz.* *Moor* 460. *Infants* ought not to be received to levy Fines, though if they are admitted, their Fines are good and unavoidable, unleſs reverſed during their Minority. 1 *Inſt.* 233. If an *Infant* levy a Fine before the Juſtices, and the Cogniſees will not have it ingroſſed till after he is of Age; on producing a Note of the Caption, his Age may be examined; whereupon he may bring Writ of Error. *Moor* 189.

But where an *Infant* may levy a Fine, he may declare the Uſes of it alſo by Deed: And the *Infant*'s Declaration of Uſes, ſhall be good and binding to the *Infant* and his Heirs, ſo long as the Fine continues unreverſed. *Hob.* 224. 2 *Leon.* 193. 2 *Rep.* 58. 10 *Rep.* 42. It was held formerly that an *Infant* appearing by Guardian, could not ſuffer a Common Recovery. 10 *Rep.* 42. Though ſince it hath been allowed in many Caſes, and by all the Judges, that an *Infant* may ſuffer a Common Recovery by Guardian, and he ſhall not avoid it; for by Intendment he ſhall have Recompence in Value; and if it not for the Good of the *Infant*, he may he have Recompence over againſt his Guardian. 2 *Danv. Abr.* 772. A Common Recovery may be had againſt an *Infant*, being examined *ſole & ſecrete*; and he may ſuffer a Recovery by Guardian in open Court *Hob.* 169. 2 *Bulſt.* 255. 2 *Nelſ. Abr.* 994. A Recovery was ſuffered by an *Infant* by his Guardian. 1 *Leon.* It has been agreed, that if an *Infant* appear by Guardian, and ſuffer a Common Recovery, it ſhall not be reverſed for Error: But if he appear by Attorney, and ſuffer a Recovery, it is otherwiſe; for in ſuch Caſe he may reverſe it by Error when of full Age, becauſe it may be tried by a Jury whether he was an *Infant* when he made the Letter of Attorney, or not; whereas in the other Caſe it muſt appear by Inſpection, which cannot be after full Age. *Sid.* 321. 2 *Nelſ.* 995. A Recovery or Judgment by Default againſt an *Infant*, is erroneous; but the *Infant* muſt reverſe it by Writ of Error during his Minority. *Wood's Inſt.* 605. And if the Default be after Appearance, the Judgment ſhall not be reverſed. *Dyer* 104. If an *Infant* appears by Attorney, and not by Guardian, it is Error; for which a Judgment may be reverſed. 2 *Nelſ.* 998. But if an *Infant* appearing *per Guardianum* comes of Age pending the Suit, he may then plead *per Attornatum. Moor* 665. An *Infant* is to ſue by *Prochein Amy*, or Guardian; but always defend by Guardian. 1 *Inſt.* 135. He is not to appear by Attorney in his own Right; but if he be joint Executor with others of Age, they may make an Attorney for him: Reſolved where three Executors brought an Action by Attorney, one being within Age. 2 *Saund.* 212. Though it was lately adjudged, that an *Infant* may neither ſue nor be ſued as Executor by Attorney; for the *Infant*'s Diſability is adherent to his Perſon, and he has no Power to make an Attorney in any Caſe, who would not be anſwerable to him. *Fitzgib.* 1, 2. *Mich.* 1 *Geo.* 2. And it hath been held, if an Action be brought againſt three ſeveral Defendants, and one of them is an *Infant*, they may not all appear by Attorney; but he within Age muſt appear by Guardian, or it will be Error to reverſe the Judgment. *Style* 400. 1 *Lev.* 294. If Baron and Feme, where the Feme is an *Infant*, appear by Attorney, it is Error. 5 *Mod.* 209. When the Defendant in an Action is an *Infant*, the Plaintiff ſhall havo ſix Years to bring his Action in after the Defendant comes of Age: And if the Plaintiff be an *Infant*, he hath ſix Years likewiſe after his Age to ſue by the Statute of Limitations. *Lutw.* 243. And *Infants* are not bound by Nonclaim, *&c.* on Fines levied by others, within five Years, by the Stat. 13 *Ed.* 1. Nonclaim ſhall not bind an *Infant*, nor any Negligence, *&c.* he imputed to him; except in ſome particular Caſes, *viz.* in Caſe of a Fine where the Time begins in the Life of the Anceſtor; or of an Appeal of Death of his Anceſtor, where he brings not his Appeal within a Year and a Day, *&c.* 1 *Inſt.* 246, 380. *Wood's Inſt.* 13. Laches ſhall prejudice an *Infant*, if he preſents not to a Church in ſix Months. *Litt.* 402. All Acts of Neceſſity bind *Infants*; as Preſentations to Benefices, Admittances and Grants of Copyhold Eſtates, and Aſſenting to Legacies, *&c.* 3 *Salk.* 196. Conditions annexed to Lands, whether the Eſtate come by Grant or Diſcent, bind *Infants*: And where the Eſtate of an *Infant* is upon Condition to be performed by the *Infant*, if the Condition is broken during the Minority, the Land is loſt for ever. 1 *Inſt.* 233, 380. Though a Statute is not extendible againſt an *Infant*, yet Chancery will give Relief againſt *Infants.* 1 *Lev.* 198. And by Statute 7 *Ann. c.* 19. *Infants* ſeiſed of Eſtates in Fee in Truſt, or in Mortgage, on Petition of the Perſon for whom the *Infant* is ſeiſed in Truſt, or the Mortgagor, *&c.* by Order of the Court of Chancery, may make Conveyances of ſuch Eſtates, as Truſtees or Mortgagees of full Age. An *Infant* is much favoured by the Law; and therefore it doth give him many Privileges above others: If an *Infant* make Default in a real Action, he ſhall not loſe his Land, as another Man ſhall do; one who is an *Infant* ſhall not be amerced, nor find Pledges like one of full Age; and if he be Bail, he may be diſcharged by *Audita Querela, &c.* 1 *Inſt.* 272. 8 *Rep.* 61. On his Default at the *Grand Cape*, the *Infant* by Writ of Error may reverſe the Judgment given againſt him; unleſs it be in Caſe of a Judgment in Dower. *Dyer* 104. *Jenk Cent.* 47, 319, But an *Infant* may be diſſeiſed of his Lands: And a Warranty that deſcendeth upon any *Infant*, may bar him of his Entry; ſo a Remitter upon him; *contra* of a Deſcent; And if an *Infant* hath Franchiſes or Liberties, and do abuſe or diſuſe them, he ſhall forfeit them as a Man of full Age may do. 1 *Inſt.* 3. 133. 1 *And.* 311. *Bro.* 48. An *Infant* may bind himſelf Apprentice, and if he ſerve ſeven Years, have the Benefit of his Trade: If he be guilty of Miſbehaviour, the Maſter may correct him; or complain to a Juſtice of Peace, and have him puniſhed. *Cro. Car.* 179. *Stat.* 5 *Eliz.* And an *Infant* may bind himſelf to pay for Neceſſaries, as Meat, Drink, Apparel and Learning; but not by Bond with Penalty; though a Bill for Neceſſaries, without a Penalty, for the very Sum due, 'tis ſaid, will bind him. 2 *Inſt.* 483. 1 *Roll. Abr.* 729. 1 *Lev.* 86. *Infants* are not obliged to pay for Clothes, unleſs it be averred for their own Wearing, and that they were convenient and neceſſary for them to wear, according to their Degree and Eſtate. *Cro. Jac.* 560. Though upon Promiſe of an *Infant* to pay a Taylor for making of Clothes, it need not be averred for neceſſary Clothes, *&c. Noy* 85. Money laid out for Neceſſaries for an *Infant*, hath been allowed; when Money lent for that Purpoſe hath not. 5 *Mod.* 368. The *Infant* may buy, but cannot borrow any Money to buy Neceſſaries; for the Law will not truſt him with Money, but at the Peril of the Lender, who muſt lay it out for him in Neceſſaries, or ſee it thus laid out. 1 *Salk.* 386. Where Money is lent to an *Infant*, who employs it in buying Neceſſaries, yet he is not liable; becauſe the Foundation of the Contract is the Lending. 1 *Salk.* 279. One lends a Sum of Money to an *Infant*, to pay a Debt for Things neceſſary, as the *Infant* may miſapply it, he is therefore not liable at Law; yet he muſt be ſo in Equity, for that in this Caſe the Lender of the Money ſtands in the Place of the Perſon paid, *viz.* the Creditor for Neceſſaries; and ſhall recover in Chancery, as the other would by Law. 1 *Peer Williams* 559. An *Infant* is not bound by an Account concerning Neceſſaries for his Family, *&c.* for he may be miſtaken in an Account; and no Contract binds him but what concerns his Perſon. 2 *Roll. Rep.* 271. *Latch* 189. If an *Infant* makes a Contract *pro Victu & Veſtitu*, this ſhall be binding: And a Promiſe by an *Infant* to another, that if he will find him Meat, Drink and Waſhing, and pay for his Schooling, that he will pay him ſuch a reaſonable Sum yearly, Action one the Caſe lies upon this Promiſe. 2 *Danv.* 768. *Trin.* 3 *Car.* But in other Caſes, it is otherwiſe; though a Promiſe of a Perſon when at full Age, for Conſideration during Infancy, ſhall be binding, and *Aſſumpſit* lieth. 2 *Lev.*

144. 3 *Leon.* 215. A Perſon gave a Note, a few Days after of Age, for Things he had during his Infancy; on extraordinary Circumſtances, Equity ſet it aſide: Tho' its true, if an *Infant* takes up Goods, or borrows Money, and after he comes to Age, gives his Note or Promiſe for the Money, that is good at Law; But to prevent the Ruin of *Infants*, it may be convenient to give Relief. *Barnardiſt.* 4, 6. If an *Infant* delivers Money with his own Hand, it is voidable, and to be recovered by Action of Account. The *Infant* ſells Goods to another; he may make the Sale void, or have Debt, *&c.* for the Money. *Hob.* 77. 18 *Ed.* 4. 2. Alſo Treſpaſs lies for taking the Goods; but if he deliver the Thing with his own Hands, the Vendee is excuſed of the Treſpaſs: If an *Infant* ſell a Horſe, he may take it again, *&c.* *Roll.* 736. 3 *Rep.* 13. *Hob.* 96. Action will not lie againſt an *Infant* for Goods ſold to him, to ſell in his Shop. *Cro. Jac.* 494. And if one delivers Goods to an *Infant*, knowing him to be ſuch, the *Infant* ſhall not be charged in Trover and Converſion: But it is otherwiſe if delivered to him, not knowing him to be an *Infant.* 1 *Sid.* 129. Action lies not againſt an *Infant* Inn-keeper, for Goods loſt 2 *Danv.* 769. If an *Infant* accepts a Bill of Exchange, he may plead Infancy upon an Action brought againſt him. *Trin.* 3 *W.* 3. 3 *Salk.* 197. And if a Treſpaſs be done to an *Infant*, and he ſubmits to an Award, it is ſaid the Award ſhall not be binding to him. 2 *Danv.* 770. Agreements, *&c.* made by an *Infant*, altho' he be within a Day of his full Age, ſhall not bind him. *Plowd.* 364. Where an *Infant* enters into Bond, pretending to be of full Age, tho' he may avoid it by pleading his Infancy, yet he may be indicted for a Cheat. *Wood's Inſt.* 585. *Infants* committing a Treſpaſs againſt the Perſon or Poſſeſſion of another, muſt anſwer for the Damage in a Civil Action. *Hob.* 134. 2 *Roll Abr.* 547. And *Infants* being Tenants for Life or Years, are puniſhable for Waſte: An *Infant* ſhall be puniſhed for Battery, Slander, Cheating with falſe Dice, Perjury, not going to Church, *&c.* 3 *Salk.* 196. *Infants* under fourteen Years of Age are not generally puniſhable capitally for Crimes committed; but if they are of that Age, or under thoſe Years, having Maturity of Diſcretion, they may be puniſhed as Felons: But Execution of theſe for Felony is oftentimes reſpited in order to a Pardon; and if an *Infant* apparently wanting Diſcretion, be found guilty of Felony, the Juſtices may diſmiſs him without Pardon. 1 *Inſt.* 247. *Doct. and Stud. c.* 26. 1 *Hawk.* 2. An *Infant* is incapable of being a Parſon, Juror, Attorney, Steward, Bailiff, *&c.* But he may be a Mayor, Sheriff, Gaoler, *&c.* *Co. Lit.* 3. 3 *Salk.* 195. See *Age* and *Heir apparent.*

Infants when of Age. An *Infant* has been adjudged of *Age* the Day before his Birth-Day, for the Law will not make a fraction of a Day; and therefore, where a Perſon was born the *third* of *September*, and the *ſecond* of *September* 21 Years after he made is Will, it was held good; and that he was then of Age to deviſe his Lands. 1 *Ld. Raym.* 480. And it is ſaid ſuch Will ſhall take Effect tho' the Deviſor dies by Six at Night of that Day. 2 *Raym.* 1096.

Infancy of the King. The King cannot be an Infant by our Law. 1 *Inſt.* 43. And he ſhall never avoid his Grants, *&c.* in Reſpect of Infancy; for he cannot be a Minor, being as King a Body Politick. 2 *Danv. Abr.* 767. The Acts of a Mayor and Commonalty ſhall not be avoided by Reaſon of Infancy of the Mayor. *Cro. Car.* 557.

Infections, By caſting Garbage and Dung into Ditches, *&c.* how puniſhed. See Stat. 12 *R.* 2.

Infidels, (*Infideles*) Heathens; who may not be Witneſſes by the Laws of this Kingdom, becauſe they believe neither the Old or New Teſtament to be the Word of God, on one of which, Oaths muſt be taken. 1 *Inſt.* 6. 2 *Hawk. P. C* 434.

Infinity of Actions. The Lord of the Soil may have a ſpecial Action againſt him who ſhall dig Soil in the King's *Highway:* But one Subject may not have his Action againſt another for common Nuſances; for if he might, then every Man would have it, and ſo the *Actions* would be *infinite*, &c. 1 *Co. Inſt.* 56. 9 *Rep.* 113.

Infirmary, (*Infirmarius*) In Monaſteries there was an Apartment allotted for *infirm* or ſick Perſons; and he who had the Care of the *Infirmary* was called *Infirmarius.* Matt. Pariſ. *Anno* 1252.

In forma Pauperis, Suing Actions in. See *Forma Pauperis.*

Information, (*Informatio*) For the King, is the ſame which for a common Perſon is called Declaration; and it is not always brought directly by the King, or his Attorney General, and the Clerk of the Crown-Office, but frequently by ſome other Perſon, who informs as well for the King as for himſelf, upon the Breach of ſome Penal Law or Statute, wherein a Penalty is given to the Party that will ſue for the ſame: And it differs from an Indictment, which is found by the Oaths of twelve Men; and this is only the Allegation of the Officer, *&c.* *Terms de Ley* 406. *Informations* are either at the Suit of the King, or at the Suit of the King and of the Party, which is called an *Information Qui tam*, becauſe the *Informer* proſecutes *tam pro Domino Rege quam pro ſeipſo*; but theſe *Informations* will not lie on any Statute, which prohibits a Thing, as being an immediate Offence againſt the publick Good in general, under a certain Penalty, unleſs the Whole or Part of ſuch Penalty be expreſly given to him who will ſue for it, becauſe otherwiſe it goes to the King, and nothing can be demanded by the Party. 2 *Hawk. P. C.* 265. The King ſhall put no one to anſwer for a Wrong done principally to another, without Indictment or Preſentment; tho' of common Right *Informations*, or Actions in the Nature thereof, may be brought for Offences againſt Statutes, whether mentioned or not in ſuch Statutes, where other Methods of Proceeding are not particularly appointed. *Ibid.* 260. And wherever a Matter concerns the publick Government, and no particular Perſon is entitled to an Action, there an *Information* will lie. 1 *Salk.* 374. There may be an *Information* for the King againſt a Criminal, as well as Indictment; but it doth not lie for a Capital Crime except on the Statutes againſt Bankrupts, who may be convicted of Felony by Indictment or *Information*, by 5 *Geo.* 1. *c.* 4. *Wood's Inſt.* 630. It hath been alledged, that *Informations* began in the Reign of King *Hen.* 7. and are new Things with Reſpect to Indictments, and carry Hardſhips with them, *&c.* But it was adjudged, that the old Statutes enact, that Proceedings ſhall be by Preſentment or Indictment; an *Information* by the Attorney General is no more than a Preſentment, and that *Informations* were at Common Law. 5 *Mod.* 459. An *Information* may be brought for Offences and Miſdemeanors by the Common Law; as for Batteries, Conſpiracies, ſeducing Perſons, Nuſances, Contempts, Libelling, ſeditious Words, Abuſing the King's Commiſſion to the Oppreſſion of the Subject, *&c.* And in very many Caſes by Statute, wherein the Offender is liable to a Fine, or other Penalty. *Finch* 340. *Show.* 109. For Words ſpoke of a deceaſed King, which advance pernicious Doctrine and evil Tenets, and have an Influence on the preſent Government, *&c.* an *Information* lies, on which the Offender may be fined, and alſo corporally puniſhed. 2 *Ld. Raym.* 879. If the Marſhal of *B. R.* miſdemeans himſelf in his Office, he who is prejudiced by it may prefer an *Information* againſt him in that Court, where he ſhall be fined and ordered to make Satisfaction. *Hil.* 23 *Car.*

Car. B. R. For obtaining a Judgment againſt a Woman before Marriage, by Cheating and Fraud, whereby her Husband's Lands were afterwards extended, adjudged that *Information* lay, and the Judgment ſhould be ſet aſide, &c. *Sid.* 431. *Information* may be brought againſt the Inhabitants of any Town for not repairing of Highways; for going armed in Affray of the Peace, &c. and in general for any Offences againſt the publick Good, or againſt the Principles of Juſtice, *Information* lies; tho' not where a Complaint is trifling or vexatious, or wholly of a private Nature. 2 *Hawk.* 260, 262. If a Perſon exhibits his *Information* only for Vexation, the Defendant may bring *Information* againſt the *Informer* upon the Statute 18 *Eliz. c.* 5. 2 *Bulſt.* 18. An *Information* upon a Penal Statute muſt be ſued in one of the Superior Courts, and cannot be brought in any Inferior Court, becauſe the King's Attorney cannot be there to acknowledge or deny, as he can in a Superior Court. *Cro. Jac.* 538. All *Informations* on Penal Statutes, brought by an *Informer* where a Sum certain is given to the Proſecutor, muſt be brought in the proper County where the Offence was committed; and within a Year after the ſame: But a Party grieved, who is not a common *Informer*, is not obliged to bring his *Information* in the proper County, but may *inform* in what County he pleaſes. *Stat.* 31 *Eliz. c.* 3. *Cro. Eliz.* 645. And the King may exhibit an *Information* in two or three Years, and be good; though it will be naught in an *Informer. Cro. Jac.* 366. Where an *Information* is given by Statute, to be proſecuted at the Aſſizes, &c. the *Informer* on filing of his *Information* muſt make Oath before a Judge, that the Offence laid in the *Information* was not committed in any other County than that mentioned in the *Information*; and that he believes the Offence was committed within a Year next before the Filing of the *Information.* 21 *Jac.* 1. *c.* 4. And when an *Information* is ordered to be filed upon an Affidavit made, the Court will not ſuffer the Proſecutor to put any more or other Matter into the *Information* than what only is in his Affidavit. *Mich.* 9 *W.* 3. *B. R.* It has been reſolved, that the Stat. 21 *Jac.* 1. reſtrains the Juriſdiction of *B. R.* in Actions of Debt by common *Informers*, and that they cannot bring Debt upon the Statute in that Court, unleſs the Cauſe of Action ariſe in the County where the King's Bench ſits; but muſt in other Caſes proſecute by *Information* before Juſtices of Aſſiſe, &c. as the Statute directs. 1 *Salk.* 373. Offences created ſince the Statute 21 *Jac.* 1. *cap.* 4. are not within that Statute, to be proſecuted in the County where the Fact was done; ſo that *Informations* on ſubſequent penal Statutes are not reſtrained thereby. *Ibid.* By the Stat. 18 *Eliz. cap.* 5. *Informers* are to exhibit their Suits in proper Perſon, by Way of *Information*, or Original Action; they are not to compound with the Defendant, without the Conſent of the Court, on Pain of 10 *l.* Penalty, Pillory, &c. And if they diſcontinue or are Nonſuit, the Court ſhall immediately aſſign Coſts to the Defendant: But this Statute and the 21 *Jac.* 1. *c.* 4. do not extend to *Informations* of Officers, nor on the Statutes of Maintenance, Champerty, concerning Concealments of Cuſtoms, &c. and it extendeth not to Parties grieved, and thoſe to whom any Forfeiture is given in certain. *Ibid.* The 4 & 5 *W. & M. c.* 18. enacts, That *Informations* brought in the Crown-Office, for Treſpaſs, Battery, &c. are to be by Order of Court; and Recognizances to be entered into of 20 *l.* Penalty for the *Informer* to proſecute with Effect, &c. And in Caſe any Perſon againſt whom ſuch *Information* ſhall be exhibited ſhall appear and plead to Iſſue, and the Proſecutor do not proceed to Trial within a Year after Iſſue joined; or if it ſhall paſs for the Defendant, or the *Informer* procure a *Nolle proſequi*, &c. the Court is to award the Defendant Coſts; except it be certified that there was reaſonable Cauſe for the *Information.* An *Informer* upon a popular Statute ſhall never have Coſts, if not given by Statute; but the Party grieved in Action on the Statute ſhall, where a certain Penalty is given. 2 *Hawk.* 273. *Informations* by the Attorney General remain as they were at Common Law, notwithſtanding the Statute 4 & 5 *W. & M.* And when the Attorney General exhibits an *Information*, he does it *ex Officio*; whereas when the Clerk of the Crown does it, it is generally by Order of Court. 5 *Mod.* 464. Where a Penalty is divided by Statute between the King and the *Informer*, if the King prefers his *Information* before the *Informer*, he ſhall have the whole Penalty: But if the *Informer* prefers his *Information* firſt, the King cannot hinder him from his Proportion. 2 *Lill. Abr.* 60. If an *Informer* dies, the Attorney General may proceed in the *Information* for the King: Nonſuit of an *Informer* is no Bar againſt the King; and if the King's Attorney enter a *Nolle proſequi*, it is not any Bar *quoad* the *Informer. Cro. El.* 583. 1 *Leon.* 119. If two *Informations* are had on the very ſame Day, they mutually abate one another; becauſe there is no Priority to attach the Right of the Suit in one *Informer*, more than in the other. *Hob.* 138. An *Information* hath ſomewhat in it of an Indictment, *viz.* to alledge the Offence in particular, and alſo ſomething in Nature of an Action, to demand what is due; and if the *Informer* make no Demand, or demand what appears not to be his due, the *Information* is ill. *Hob.* 242. The ſame Certainty is requiſite in an *Information* as in an Indictment; and all the material Parts of the Crime muſt be as preciſely found in one as the other. 2 *Hawk.* 261. If an *Information* contain ſeveral Offences againſt a Statute, and be well laid as to ſome of them, but defective as to the reſt, the *Informer* may have Judgment for ſuch as is well laid. *Ibid.* 266. After a Plea pleaded to an *Information* for any Crime, the Defendant by Favour of the Court may appear by Attorney; alſo the Court may diſpenſe with the perſonal Appearance before Plea pleaded, except in ſuch Caſes where a perſonal Appearance is required by ſome Statute: And it is the ſame of Indictments for Crimes under the Degree of Capital. *Ibid.* 273. If a Defendant plead *Nil debet* to an *Information Qui tam*, &c. it is ſafeſt to ſay he owes nothing to the *Informer*, nor the King, which is an Anſwer to the Whole. On Breach of a Statute alledged from a Matter *in pais*, the Defendant may plead that he owes nothing, or Not guilty, &c. And if there be more than one Defendant, they ought to plead ſeverally and not jointly, Not guilty: But if it be alledged from a Matter of Record, the Record not being triably by the Country but by itſelf, ſuch Plea is not good. 2 *Hawk.* 276. *Bro. Iſſues*, 23. A Prior Suit depending, a Pardon or Releaſe may be pleaded to an *Information*: And if the Defendant hath Matter to plead in his Diſcharge, it hath been held that he ought to plead it ſpecially, and cannot give it in Evidence; tho' this ſeems to be contrary to the Statute 21 *Jac.* 1. A Replication to an *Information* on a ſpecial Plea in the Courts at *Weſtminſter*, is to be made by the Attorney General, and before Juſtices of Aſſize, by the Clerk of the Aſſiſe: Tho' the Replication to a General Iſſue in an *Information Qui tam* in the Courts at *Weſtminſter*, may be made in the Name of the Attorney General only; and in Actions *Qui tam*, moſt of the Precedents are that the Replication is to be made by the Plaintiff. 2 *Hawk.* 277. A Demurrer may be to an *Information Qui tam*, without the Attorney General. *Ibid.* *Informations* are not quaſhed for Inſufficiency, like Indictments; but the Defendant muſt demur to them. *Paſ.* 1650. 2 *Lill.* 59. Fines aſſeſſed in Court by Judgment on an *Information*, cannot be afterwards qualified or mitigated. *Cro. Car.* 251. The Stat. 9 *Ann. c.* 20. makes the Proceedings upon *Informations* in the Nature of a *Quo Warranto* more ſpeedy and effectual. *Vide* the Stat. *&c.*

Form of an *Information* by the Attorney General.

BE it remembered, *That* D. R. *Eſq; the Attorney General of our Sovereign Lord the King, who proſecutes for our ſaid Lord the King, being preſent in this Court, the Day of,* &c. *in his own Perſon for the ſaid Lord the King, gave the Court here to underſtand and be* informed; *That whereas all that,* &c. *yet one* A. C. *and* B. D. *little regarding the Laws and Statutes of our Lord the King that now is, but intending,* &c. *with Force and Arms, the Day and in the Year,* &c. *before the Day of exhibiting this* Information, *entered and intruded in and upon,* &c. *And the ſame Treſpaſs hitherto and yet contiues, in Contempt of the ſaid Lord the King, and againſt his Laws: Whereupon the ſaid Attorney General, of our ſaid Lord the King that now is, for the ſaid Lord the King prays the Advice of this Court in the Premiſſes; and that the ſaid* A. C. *and* B. D. *may come here to anſwer our ſaid Lord the King,* &c. *Upon which,* &c. *and the Sheriffs of the ſaid County, that they attach the ſaid* A. *and* B. *in Form aforeſaid, ſo as,* &c.

An *Information* for *Frauds* committed in the Revenue.

BE it remembred, *That* A. B. *who proſecutes as well for our Lord the King as for himſelf, came before our ſovereign Lord the King at* Weſtminſter, *the Day,* &c. *this ſame Term, in his proper Perſon; and as well for our ſaid Lord the King as for himſelf, giveth the Court here to underſtand and be* informed, *That one* C. D. *of,* &c. *Merchant, on the firſt Day of* April *in the Year,* &c. *and the Day of,* &c. *then next following, in a certain Ship called the* P. *of* S. *brought into this Kingdom of* England, *into the Port of,* &c *by Way of Merchandizing, thirty Hogſheads of Tobacco, of the Value,* &c. *as of the proper Goods of the ſaid* C. *And the ſaid thirty Hogſheads of Tobacco out of the ſaid Ship in the Port aforeſaid, to Land there carried, on the Days and Times aforeſaid, and the ſame then took away from thence, the Cuſtom, Subſidy and Poundage and other Duties to our ſaid Lord the King therefore due, not being paid, nor any Agreement or Compoſition had or made with the Collector thereof, with or by the Knowledge or Conſent of the Comptrollor or Superviſor in that Behalf aſſigned, or of one of them therein, againſt the Form of the Statute in that Caſe made and provided: Whereupon the ſaid* A. B. *who proſecutes as well,* &c. *prays the Advice of this Court; and that the ſaid* C. *may forfeit the Goods and Merchandizes aforeſaid, according to the Form of the Statute aforeſaid, and that the ſaid* A. *the Moiety of the Value of the ſaid Goods ſo forfeited may have,* &c. *And alſo that the ſaid* C. *may come here into this Court, to anſwer of and upon the Premiſſes,* &c. *and there are Pledges of proſecuting* John Doe *and* Richard Roe. *And hereupon it is commanded to the ſaid* C. *that all other Things omitted, and all Excuſes laid aſide, he be in his proper Perſon before our Lord the King at* Weſtminſter *on the Day,* &c. *next coming, to anſwer as well to our ſaid Lord the King, as to the ſaid* A. *who proſecutes,* &c. *of and in the Premiſſes, and further to do and receive what the Court of our ſaid Lord the King now here ſhall conſider of in this Particular,* &c.

Informer, (*Informator*) Is a Perſon as *informs* againſt or proſecutes in any of the King's Courts thoſe that offend againſt any Law or Penal Statute; and no Man may be an *Informer* who is diſabled by any Miſdemeanor. *Stat.* 31 *Eliz. c.* 5.

Infortiatum, Is one Part of the Digeſts of the *Civil Law*; according to *Benedict*, Abbot of the Monaſtery of *Peterborough*, in the Reign of K. *Hen.* 3.

Infugare, Signifies to put to Flight. *Leg. Canuti, cap.* 32.

Infula, Was antiently the Garment of a Prieſt, like that which we now call a Caſſock; ſometimes it is taken for a Coif.

Inge. This Syllable in the Names of Places, denotes Meadow or Paſture; and in the North, Meadows are called the *Inges* from the Sax. *Ing*, i. e. *pratum.*

Ingenium, Is an Inſtrument uſed in War, *Arte &* Ingenio *confectum*; from whence 'tis ſaid we derive the Word *Engine.*

Ingenuitas, Uſed for Liberty given to a Servant by Manumiſſion. *Leg. H.* 1. *c.* 89.

Ingenuitas Regni. *Ingenui, Liberi & Legales Homines*; Freeholders, and the Commonalty of the Kingdom: And ſometimes this Title was given to the Barons and Lords of the King's Council. *Eadmer. Hiſt. Nov. fol.* 70.

Ingreſs, Egreſs and Regreſs, Words in Leaſes of Land, to ſignify a free Entry into, Going forth of, and Returning from ſome Part of the Lands let; as to get in a Crop of Corn, *&c.* after the Term expired.

Ingreſſu, Is a *Writ of Entry*, whereby a Man ſeeks Entry into Lands or Tenements; and lies in many Caſes, having as many different Forms: This Writ is alſo called *Præcipe quod reddat*, becauſe theſe are formal Words inſerted in all Writs of Entry. See *Entry.*

Ingreſſus. The Relief which the Heir at full Age paid to the Head Lord, for *Entring* upon the Fee, or Lands fallen by the Death or Forfeiture of the Tenant, *&c.* was ſometimes called *Ingreſſus.* Blount.

In groſs. Advowſon *in groſs*, Villain *in groſs*, *&c.* See *Groſs.*

Ingroſſer, (*Ingroſſator*) Is one that buys and ſells any Thing by Wholeſale; and whoever ſhall get into his Hands by Buying, Contract or Promiſe, other than by Demiſe, Grant or Leaſe of Lands, any Corn growing, or other Corn or Grain; Butter, Cheeſe, Fiſh, or other dead Victuals whatſoever, within the Realm of *England*, to the Intent to ſell the ſame again, ſhall be reputed an unlawful *Ingroſſer*, by Stat. 5 *&* 6 *Ed.* 6. *c.* 14. Such Victual only as is neceſſary for the Food of Man, is within the Purview of the Statute; and therefore Apples and Fruits are not within the Meaning of it; and it has been holden, that Hops are not within the Statute. 3 *Inſt.* 195. *H. P. C.* 152. *Cro. Car.* 231. The Buying of Corn to make Starch of it, and then to ſell it, is not within the Intent of the Statute; becauſe it is not bought to be ſold again in the ſame Nature it was bought, but to be firſt altered by a Trade or Science; and by the like Reaſon the Buying of Corn to make Meal of it, and then to ſell it, is ſaid not to be within the Act; and Buying of Barley, with an Intent to make it into Malt, and after that to ſell it, had no Need of the Exception made for it in the ſaid Statute. 1 *Hawk. P. C.* 237. Foreign Corn and Victuals, except Fiſh and Salt, are exempted, and not within the Penalty of the Statute 13 *Eliz. cap.* 25. And licenſed Badgers are excepted; as are likewiſe Fiſhmongers, Butchers, Poulterers, *&c.* buying any Thing in their own Faculties, otherwiſe than by Foreſtalling, and ſelling the ſame again at reaſonable Prices by Retail. 1 *Hawk.* 240. Any Merchant, whether a Subject or Foreigner, bringing Victuals, or other Merchandize into this Kingdom, may ſell the ſame in Groſs; but he that buys them of him cannot do ſo, becauſe by ſuch Means the Price will be inhanſed, for the more Hands any Merchandize paſſeth through, the dearer it muſt grow, as every one will make a Profit of it: And if this were allowable, a rich Man might *ingroſs* into his Hands a whole Commodity, and then ſell it at what Price he ſhould think fit; which is of ſuch bad Conſequence, that the bare *Ingroſſing* of a whole Commodity with Intent to ſell it at an unreaſonable Price, is an Offence indictable at Common Law, whether any Part thereof be ſold by the *Ingroſſer*, or not. 3 *Inſt.* 196. *Cro. Car.* 231, 232. The Puniſhment of this Offence by Statute, is Forfeiture of the Goods for the firſt Offence, and two Months Impriſonment; double Value and ſix Months Impriſonment for the ſecond Offence; and Loſs of all Goods and Impriſonment at the King's Pleaſure, &c. for the third Offence. See *Foreſtaller.*

Ingroſſer of Deeds, Is a Clerk that writes Records or Inſtruments of Law in Skins of Parchment.

Ingroſſing of a Fine. The making of the Indentures by the *Chirographer*, and Delivery of them to the Party to whom the Fine is levied. *F. N. B.* 147.

Inhabitant, Is a Dweller or Houſholder in any Place; as *Inhabitants* in a Vill, are the Houſholders in the Vill. 2 *Inſt.* 702.

Inheritance, (*Hæreditas*) Is a Perpetuity in Lands or Tenements, to a Man and his Heirs: And the Word *Inheritance* is not only intended where a Man hath Lands or Tenements by Deſcent of *Heritage*; but alſo every Fee-ſimple, or Fee-tail, which a Perſon hath by Purchaſe, may be ſaid to be an *Inheritance*, becauſe his Heirs may *inherit* it. *Lit. Sect.* 9. And one may have *Inheritance* by Creation; as in Caſe of the King's Grant of Peerage, by Letters Patent, &c. *Inheritances* are Corporeal or Incorporeal; *Corporeal Inheritances* relate to Houſes, Lands, &c. which may be touched or handled; and *Incorporeal Inheritances* are Rights iſſuing out of, annexed to or exerciſed with Corporeal *Inheritances*, as Advowſons, Tithes, Annuities, Offices, Commons, Franchiſes, Privileges, Services, &c. 1 *Inſt.* 9. 49 There is alſo *ſeveral Inheritance*, which is where two or more hold Lands ſeverally; if two Men have Lands given to them and the Heirs of their two Bodies, theſe have joint Eſtate during their Lives; but their Heirs have ſeveral *Inheritances. Kitch.* 155. Without Blood none can *inherit*; and therefore it is that he who hath the whole and entire Blood, ſhall have an *Inheritance* before him who hath but Part of the Blood of his Anceſtor. 3 *Rep.* 41. The Law of *Inheritance* prefers the firſt Child before all others; the Male before the Female; and of Males the firſt born, &c. And as to *Inheritances*, if a Man *purchaſes* Land in Fee, and dies without Iſſue, thoſe of the Blood of the Father's Side ſhall *inherit*, if there be any; and for Want of ſuch, the Land ſhall go to the Heirs of the Mother's Side: But if it come to the Son by *Deſcent* from the Father, the Heirs of the Mother ſhall not *inherit* it. *Plowd.* 132. *Lit.* 4. 12. Goods and Chattels cannot be turned into an *Inheritance.* 3 *Inſt.* 19, 126. See *Deſcent* and *Fee-Eſtate.*

Inhibition, (*Inhibitio*) Is a Writ to forbid a Judge from farther Proceeding in a Cauſe depending before him, being in Nature of a Prohibition. 9 *Ed.* 2. *c.* 1. 24 *Hen.* 8. *c.* 12. 15 *Car.* 2. *c.* 9. *F. N. B.* 39. An *Inhibition* is moſt commonly iſſuing out of a Higher *Court Chriſtian* to an inferior, upon an Appeal: And *Inhibitions* are likewiſe on the Viſitations of Archbiſhops and Biſhops, &c. This *Inhibition* is either *Hominis* or *Juris*; 'tis *Ne viſitationem facias, vel aliquam Juriſdictionem Eccleſiaſticam contentionem vel voluntariam habeas:* Thus when the Archbiſhop viſits, he *inhibits* the Biſhop; and when a Biſhop viſits, he *inhibits* the Archdeacon; and this is to prevent Confuſion, and continues till the laſt Pariſh is viſited. Now after ſuch *Inhibition* by an Archbiſhop, if a Lapſe happens, the Biſhop cannot inſtitute, becauſe his Power is ſuſpended; but the Archbiſhop is to do it, &c. 2 *Inſt* 601. *Paſch.* 13 *Car. B. R.* 3 *Salk.* 201.

Inhoc, or Inhoke, (From *In*, within, and *hoke* a Corner or Nook) Signifies any Corner or Part of a common Field ploughed up and ſowed with Oats, &c. and ſometimes fenced in with a dry Hedge, in that Year wherein the reſt of the ſame Field lies fallow and common. It is called in the North of *England* an *Intock*, and in *Oxfordſhire* a *Hitchin*; and no ſuch *Inhoke* is now made without the joint Conſent of all the Commoners, who in moſt Places have their Share by Lot in the Benefit of it, except in ſome Manors, where the Lord has a ſpecial Privilege of ſo doing. *Kennet's Paroch. Antiq.* 297, &c. and his *Gloſſary.*

Injunction, (*Injunctio*) Is a Kind of Prohibition granted in divers Caſes; it is generally grounded upon an Interlocutory Order or Decree out of the Court of *Chancery* or *Exchequer*, to ſtay Proceedings in Courts at Law; and ſometimes it is iſſued to the Spiritual Courts. *Weſt Symb. Sect.* 25. It is likewiſe ſometimes uſed to give Poſſeſſion to a Plaintiff, for Want of the Defendant's Appearance, and may be granted by the *Chancery* or *Exchequer* to quiet Poſſeſſion of Lands; alſo where a privileged Perſon of the *Chancery* is ſued elſewhere; and to ſtay Waſte, &c. *Injunction* lies. If a Defendant by his Anſwer in *Chancery*, ſwears a certain Sum of Money is due to him, the Court will often not grant an *Injunction*, unleſs the Money be brought into Court: And an *Injunction* is obtained by Order, either upon Matter confeſs'd, or upon ſome Matter appearing of Record, or by Deed, Writing or other Evidence ſhewn in Court, from whence there is a Probability that the Party ought to be diſcharged in Equity; and ſometimes it is granted before Anſwer, when 'tis uſually only until Anſwer, and further Order, &c. A Delay of Proceedings for a conſiderable Time, is good Cauſe for ſetting aſide and diſſolving an *Injunction* to ſtay Proceedings at Law; but an *Injunction* may be revived on Cauſe ſhewn, and ſometimes the Court will revive it tho' diſſolved, where the Plaintiff's Caſe is hard, or Equity is evidently on his Side. *Pract. Sol.* 124, 125 If an *Injunction* be for ſtaying of Waſte, there muſt be Affidavit made of Waſte committed in Houſes, Lands, &c. belonging to the Complainant: And if it be to ſtay Suits in other Courts, it is granted on ſuggeſting ſome Matter, by Reaſon of which the Complainant is not able to make his Defence in the other Court, as for Want of Witneſſes, &c. or for that he is proſecuted at Law for what in Equity he ought not to pay; or that the other Court acts erroneouſly, denies him ſome rightful Advantage, and that if the Rigour of the Law takes Place, it is againſt Equity and good Conſcience, &c. *Ibid.* If an Attorney proceeds at Law, after he is ſerved with an *Injunction* to ſtay Proceedings, on Affidavit made thereof Interrogatories are to be exhibited againſt him, to which he muſt anſwer on Oath; and if it appears that he was duly ſerved with the *Injunction*, and hath proceeded afterwards contrary thereto, the Court of *Chancery* will commit the Attorney to the *Fleet-Priſon* for the Contempt. 2 *Lill. Abr.* 64. But if an *Injunction* be granted by the Court of Chancery in a Criminal Matter, the Court of *B. R.* may break it, and protect any that proceed in Contempt of it. *Mich.* 2 *Ann. Mod. Caſ.* 16. If a Cauſe at Law be at Iſſue, the *Injunction* may give Leave to go to Trial, and ſtay Execution, &c. The Writ of *Injunction* is directed to the Party proceeding, *ac omnibus & ſingulis Conſiliar. Attorn. Sollicitat' ſuis quibuſcunque*, &c. and concludes, *Injungen' Præcipimus quod ab omni ulteriori proſecutione quacunque ad communem Legem de, pro vel concernen. aliquib. Materiis in querimon: content.* &c. *deſiſtatis & quilibet veſtrum deſiſtat, ſub pœn.* &c.

Injury, (*Injuria*) Is a Wrong or Damage to a Man's Perſon or Goods. The Law puniſheth *Injuries*; and ſo abhors them, that it grants Writs of Anticipation for their Prevention, in Caſes of Combinations and Confederacy, &c. *Stud. Comp.* 93. But the Law will ſuffer a private *Injury* rather than a publick Evil; and the Act of God, or of the Law, doth *Injury* to none. 4 *Rep.* 124. *Co. Rep.* 148.

Inlagation, (*Inlagatio*, from the Sax. *In lagiam*, i. e. *Inlagare*) Signifies a Reſtitution of one outlawed, to the Protection of the Law, and Benefit of a Subject. *Bract. lib.* 3. *tract.* 2. *cap.* 14. *Leg. Canut. par.* 1. *c.* 2.

Inlagh, (Inlagatus, *vel Homo ſub Lege*) Is he that is of ſome *Frank Pledge*, and not Outlawed: It ſeems to be the contrary to *Utlagh.* Bract. tract. 2. lib. 3. c. 11.

Inland, Is ſaid to be *Terra Dominicalis, pars Manerii Dominica, terra* interior *vel incluſa*; for that which was let to Tenants was called *Outland.* In an antient Will there are theſe Words; To *Wulfee* I give the *Inland* or Demeans, and to *Elfey* the *Utlands* or Tenancy. *Teſtam. Britherici.* This Word was in great Uſe among the *Saxons*, and often occurs in *Domeſday.*

Inland Trade, A Trade wholly managed at Home in one Country. *Merch. Dict.*

Inlaſed, (From the Fr. *Enlaſſe*) Intangled or enſnared; it is uſed in the Champion's Oath. 2 *Inſt.* 247.

Inmates, Are thoſe Perſons that are admitted to dwell with and in the Houſe of another, and not being able to maintain themſelves. *Kitch.* 45. Theſe *Inmates* are generally idle Perſons harboured in *Cottages*; wherein it hath been common for ſeveral Families to *inhabit*, by which the Poor of Pariſhes have been increaſed; but ſuffering it is an Offence by Statute, liable to a Forfeiture of 10*s.* a Month, inquirable of in the Court Leet, *&c.* Stat. 31 *Eliz. c.* 7. If one have a Houſe wherein he dwells, and lets Part of it, ſo that there are ſeveral Doors into the Street; it is now as two Houſes, and the Under-Tenant ſhall not be accounted an *Inmate:* But 'tis otherwiſe if there be but one outer Door for both Families. 2 *Co. Inſt.* 378. A Man keeps his Daughter that is married, and her Husband, *&c.* by Covenant, and they have ſome Rooms in his Houſe, they are not *Inmates*; though if they live in one Cottage, and part the Houſe between them, and Diet themſelves ſeverally, they will be *Inmates* within the Statute. *Kitch.* 45. If a Perſon take another to Table with him; or let certain Rooms to one to dwell in, if he be of Ability, and not poor, he is no *Inmate. Ibid.* See *Cottage.*

Innamum, A Pledge ——Innama *non capiantur, niſi per communem aſſenſum.* Du Cange.

Innings, Lands recovered from the Sea in *Romney Marſh*, by Draining: Antient Records make Mention of the *Innings* of Archbiſhop *Becket, Boniface*, and others; and at this Day there is *Elderton's Innings*, &c. Where they are rendered profitable and termed *Gainage* Lands. *Vide* Law Sewers 31.

Innonia, (From the Sax. *Innan*, i. e. *Intus*) An Incloſure. *Spelm. Gloſſ.*

Innoteſcimus. This Word and *Vidimus* are all one; it ſignifies *Letters Patents*, ſo called, which are always of a Charter of Feoffment, or ſome other Inſtrument, not of Record, concluding *innoteſcimus per præſentes, &c.*

Innovations, Are thought dangerous by our Laws; and the ancient Judges of the Law have ever ſuppreſſed them, leſt the Quiet and Certainty of the Common Law ſhould be diſturbed. *Co. Lit.* 379. In the Reign of King *Ed* 3. the Judges ſaid, we will not change the Law, which always hath been uſed; and in the Time of K. *H.* 4. they declared, it would be better that it ſhould be turned to a Default, than that the Law ſhould be changed, or any *Innovation* made. *Ibid.* 303.

Innoxiare, To purge one of a Fault, and make him innocent. *Leg. Ethelred c.* 10.

Inns, (*Hoſpitia*) Were inſtituted for Lodging and Relief of Travellers; and at Common Law any Man might erect and keep an *Inn* or Alehouſe to receive Travellers, but now they are to be licenſed and regulated by Statute, by Juſtices of Peace, who are to take Recognizances for keeping good Orders, *&c.* 5 *&* 6 *Ed.* 6. *c.* 25. And if the Keeper of an *Inn* harbours Thieves or Perſons of a ſcandalous Reputation, or ſuffers frequent Diſorders in his Houſe; or ſets up a new *Inn*, in a Place where there is no Manner of Need of one, to the Hindrance of other antient and well governed *Inns*; or keep it in a Situation wholly unfit for ſuch a Purpoſe, he may by the Common Law be indicted and fined. *H. P. C.* 146. *Dalt.* 33, 34. *Inn-keepers* not ſelling their Hay, Oats, Beans, *&c.* and all Kinds of Victuals for Man and Beaſt, at reaſonable Prices, having Reſpect to the Price ſold in the Markets adjoining, without taking any Thing for Litter, they ſhall be fined for the firſt Offence, and for the ſecond be impriſoned for a Month; and for the third ſtand on the Pillory, *&c.* Stat. 21 *Jac.* 1. *c.* 21. Rates and Prices may be ſet on all Commodities ſold by *Inn-keepers*; and if they extort any unreaſonable Rates, they may be indicted. 2 *Cro.* 609. *Carthew* 150. If one who keeps a common *Inn*, refuſe to receive a Traveller as a Gueſt into his Houſe, or to find him Victuals or Lodging, upon his tendering a reaſonable Price for the ſame; the *Inn-keeper* is liable to render Damages, in an Action at the Suit of the Party grieved, and may alſo be indicted and fined at the Suit of the King: And it is ſaid, he may be compelled by the Conſtable of the Town to receive and entertain ſuch a Perſon as his Gueſts; and that it is not material whether he have any Sign before his Door or not, if he make it his common Buſineſs to entertain Travellers. 1 *Hawk. P. C.* 225. Action of the Caſe on an implied *Aſſumpſit* will lie againſt the Gueſt for Things had, where the *Inn-keeper* is obliged by Law to furniſh him with Meat, Drink, *&c.* And when a Gueſt calls for any Thing at an *Inn*, the *Inn-keeper* may juſtify Detaining of a Horſe, or other Thing, till he is paid his juſt Reckoning. *Dyer* 30. By the Cuſtom of the Realm, if a Man lies in an *Inn* one Night, the *Inn-keeper* may detain his Horſes until he is paid for the Expences; but if he gives the Party Credit for that Time, and lets him depart without Payment, then he hath waived the Benefit of the Cuſtom, and muſt rely on his other Agreement. *Trin.* 9 *Geo.* 1. *Mod. Caſ. in L. & E.* 172. A Perſon brings his Horſe to an *Inn*, and leaves him in the Stable there; the *Inn-keeper* may keep him till the Owner pay for the Keeping: And if he eat out as much as he is worth, the Maſter of the *Inn* after a reaſonable Appraiſement, may ſell the Horſe and pay himſelf. *Yelv.* 66. But if one bring ſeveral Horſes to an *Inn*, and afterwards takes them all away but one; the *Inn-keeper* may not ſell this Horſe for Payment of the Debt for the others, but every Horſe is to be ſold to ſatisfy what is due for his own Meat. 1 *Bulſt.* 207, 217. If any Theft be committed on a Gueſt that lodgeth in an *Inn*, by the Servants of the *Inn*, or by any other Perſons, (not the Gueſt's Servant or Companion) the *Inn-keeper* is anſwerable in Action on the Caſe: But if the Gueſt be not a Traveller, but one of the ſame Town, the Maſter of the *Inn* is not chargeable for his Servant's Theft; and if a Man is robbed in a private Tavern, the Maſter is not chargeable. 8 *Rep.* 32, 33. In this Action the *Inn-keeper* ſhall not anſwer for any Thing that is out of his *Inn*, but only for ſuch Things as are *infra Hoſpitium*, the Words of the Writ being *eorum Bona & Catalla infra* Hoſpitia *illa exiſtentia, &c.* But if the *Inn-keeper* put the Gueſt's Horſe to Graſs, without Orders for it, and the Horſe is ſtolen, he ſhall make it good. 8 *Rep* 34. The *Inn-keeper* ſhall not be charged, unleſs there be ſome Default in him or his Servant; for if he that comes with the Gueſt, or who deſires to lodge with him, ſteal his Goods, the Hoſt is not chargeable: Though if an *Inn-keeper* appoint one to lie with another, he ſhall anſwer for him. 2 *Shep. Abr.* 334. Although the Gueſt deliver not his Goods to the *Inn-keeper* to keep, *&c.* if they be ſtolen, he ſhall be charged: Not where the Hoſtler requires his Gueſt to put them in ſuch a Chamber under Lock and Key; if he ſuffers them to be in an outward Court, *&c. Ibid.* Any Perſon found tipling in an *Inn*, is adjudged within the Statutes againſt Drunkenneſs, 21 *Jac.* 1. 1 *Car.* 1. And *Inn-keepers* or Alehouſe keepers, permitting tipling in their Houſes, are liable to the Penalty of 10 *s. &c.* by Statute 1 *Jac.* 1. *c.* 9. 1 *Car.* 1. *c.* 14. See *Action on the Caſe* and *Gueſt*

Inns of Court, (*Hoſpitii Curiæ*) Are ſo called, becauſe the *Students* therein do not only ſtudy the Laws to enable them to practice in the *Courts at Weſtminſter*; but alſo purſue ſuch other Studies, as may render them better qualified to ſerve the King in his Court. *Forteſcue, cap.* 49. Of theſe (ſays Sir *Edward Coke*) there are four well known, *viz* The *Inner Temple, Middle Temple, Lincoln's Inn* and *Gray's Inn*; which with the two *Serjeants Inns*, and eight *Inns of Chancery*, viz. *Clifford's Inn, Symond's Inn, Clement's Inn, Lyon's Inn, Furnival's Inn, Staple's Inn, Bernard's Inn*, and *Thavie's Inn*, (to which is ſince added *New Inn*) make the moſt famous Univerſity for Profeſſion of the Law, or of any one human Science in the World. *Co. Litt.* Our *Inns of Court*, or Societies of the Law, which are famed for their Production of learned Men, are governed by Maſters, Principals, Benchers, Stewards, and other proper Officers; and have the Chief of them Chapels for Divine Service, and all of them publick Halls for Exerciſes, Readings and Arguments, which the Students are obliged to perform and attend for a competent Number of Years, before admitted to ſpeak at the Bar, *&c.* Theſe Societies or Colleges, nevertheleſs are no Corporation, nor have any judicial Power over their Members, but have certain Orders among themſelves, which by Conſent, have the Force of Laws; for lighter Offences, Perſons are only excommoned, or put out of Commons; for greater they loſe their Chambers, and are expelled; and when expelled out of one Society, ſhall never be received by any of the others. All the leſſer *Inns of Chancery*, are moſtly inhabited by Attornies, Solicitors and Clerks, and belong to ſome or other of the Principal *Inns of Court*, who have been uſed to ſend yearly ſome of their Barriſters to read to them. *Forteſcue.*

Innuendo, (From *Innuo*, to nod or beckon with the Head to one) Is a Word uſed in Declarations and Law Pleadings, to aſcertain a Perſon or Thing which was named before; as to ſay he (*Innuendo* the Plaintiff) did ſo and ſo, when as there was Mention before of another Perſon. 4 *Rep.* 17. An *Innuendo* is in Effect no more than a *Prædict'*, and cannot make that certain which was uncertain before; and the Law will not allow Words to be enlarged by an *Innuendo*, ſo as to ſupport an Action of the Caſe for ſpeaking of them. *Hob.* 2, 6, 45. 5 *Mod.* 345. An *Innuendo* may not enlarge the Senſe of Words, nor make a Supply, or alter the Caſe, where the Words are defective. *Hutt. Rep.* 44. In Slander, both the Perſon and ſcandalous Words ought to be certain, and not want an *Innuendo* to make them out: If a Plaintiff declares that the Defendant ſaid theſe Words, *Thou art a Thief and ſtoleſt a Mare, &c.* (*Innuendo* the Plaintiff) without an Averment that the Words were ſpoken *eidem Querenti*, this is not good; becauſe it doth not certainly appear of whom they were ſpoken, and the *Innuendo* doth not help it. *Paſch.* 11 *Car. B. R.* 1 *Danv. Abr.* 158. And if the Plaintiff alledge that the Defendant ſaid to him, *Thou art a forſworn Man, and didſt make a falſe Oath againſt me before Juſtice* Scawen, (*Innuendo Scawen*, a Juſtice of Peace) Action doth not lie, for it is not ſhewn that *Scawen* was a Juſtice of Peace, otherwiſe than by the *Innuendo*, and there may be a Man whoſe Name is *Juſtice Scawen. Mich.* 35 *Car.* 2. 3 *Lev.* 166. Alſo if one ſay of another he hath forſworn himſelf, (*Innuendo* before Juſtices of Aſſiſe, *&c.*) this *Innuendo* ſhall not make the Words actionable. 1 *Danv.* 157. A Man ſhall not be puniſhed for Perjury, by the Help of an *Innuendo.* 5 *Mod.* 344. And an *Innuendo* will not make Action for a Libel good; if the Matter precedent imports not Scandal, *&c.* to the Damage of the Party. *Mich.* 5 *Ann.* Where Action lies without any *Innuendo*, an *Innuendo* ſhall be repugnant and void. 1 *Danv.* 158.

Inoperatio, Is one of the legal Excuſes to exempt a Man from appearing in Court: *Cauſæ quæ ad excuſationem ſufficiunt, &c. hoc eſt, vel Infirmitatis, vel Domini Neceſſitatis, vel contramandationis, vel Regis implacitationis, vel* Inoperationis *cauſâ, viz.* on the Days in which all Pleadings are to ceaſe, or *in diebus non Juridicis.* Leg. H. 1. c. 61.

Inordinatus, Was antiently taken for one who died inteſtate; it is mentioned in *Matt. Weſtm.* 1246.

Inpeny and Outpeny, Money paid by the Cuſtom of ſome Manors on the Alienation of Tenants, *&c.* —— Inpeny and Outpeny *conſuetudo talis eſt in Villa de Eaſt* Radham, *de omnibus Terris quæ infra Burgagium tenentur, viz. Quod ipſe, qui vendiderit vel dederit dictam Tenuram alicui, dabit pro exitu ſuo de eadem tenurâ unum Denarium, & ſimile pro ingreſſu alterius; & ſi prædicti Denarii à retro fuerint, Ballivus Domini diſtringet pro eiſdem Denariis in eadem Tenura.* Regiſt. Prior. de Cokesford, p. 25.

Inqueſt, (*Inquiſitio*) Is an Inquiſition of Jurors, in Cauſes Civil and Criminal, on Proof made of the Fact on either Side, when it is referred to their Trial, being impanelled by the Sheriff for that Purpoſe; and as they bring in their Verdict, Judgment paſſeth; *For the Judge ſaith, the Jury finds the Fact thus, then is the Law thus, and ſo we judge.* Staundf. P.C. lib. 3. c. 12. There is an *Inqueſt of Office*, as well as on an Iſſue or the *Miſe* of the Party, *&c.* as in Caſes of Appeals of Robbery, the freſh Suit to entitle Reſtitution of Goods, is to be enquired of by *Inqueſt* of Office, which *Inqueſt* is chiefly for the Satisfaction of the Conſcience of the Judges. 2 *Hawk. P.C.* 169. Whether a Criminal be a Lunatick or not, ſhall be tried by an *Inqueſt* of Office, returned by the Sheriff of the County; and if it be found by the Jury that he only feigns himſelf Lunatick, and he refuſes to plead, he ſhall be dealt with as one ſtanding mute. *H. P. C.* 226. 1 *And.* 107. Where a Perſon ſtands mute without making any Anſwer, the Court may take an *Inqueſt* of Office, by the Oath of any twelve Perſons preſent, if he do ſo out of Malice, *&c.* But after the Iſſue is joined, when the Jury are in Court, if there be any Need for ſuch Inquiry, it ſhall be made by them, and not by an *Inqueſt* of Office. 2 *Hawk. P. C.* 327. If a Perſon attainted of Felony eſcape, and being retaken, denies he is the ſame Man, *Inqueſt* is to be made of it by a Jury before he is executed. *Ibid.* 463. By *Magna Charta*, nothing is to be taken for *Inqueſt* of Life or Member. 9 *H.* 3. *c.* 26.

Inquirendo. This is an Authority given in general to ſome Perſon or Perſons, to *inquire* into ſomething for the King's Advantage. *Reg.* 72.

Inquiſition, Is a Manner of Proceeding by Way of Search or Examination, and uſed in the King's Behalf, in Temporal Cauſes and Profits, in which Senſe it is confounded with *Office. Staundf. Prærog.* 51. This *Inquiſition* is upon an Outlawry found; in Caſes of Treaſon and Felony committed; upon a *Felo de ſe, &c.* to entitle the King to Forfeitures of Lands and Goods: And there is no ſuch Nicety required in an *Inquiſition* as in Pleading; becauſe an *Inquiſition* is only to inform the Court how Proceſs ſhall iſſue for the King, whoſe Title accrues by the Attainder, and not by the *Inquiſition*; and yet in the

Caſes of the King and a common Perſon, *Inquiſitions* have been held void for Incertainty. *Lane* 39. 2 *Nelſ. Abr.* 1008. It is ſaid there are two Sorts of *Inquiſitions*, one to inform the King, the other to veſt an Intereſt in him; the one need not be certain, but the other muſt, and where an *Inquiſition* finds ſome Parts well, and nothing as to others, it may be helped by *Melius Inquirendum.* 2 *Salk.* 469. There is a judicial Writ *Ad Inquirendum*, to inquire by a Jury into any Thing touching a Cauſe depending in Court; and *Inquiſition* is had upon *Extents* of Land, Writs of *Elegit*, where Judgment is had by Default, and Damages and Coſts are recovered, *&c.* *Finch* 484. 2 *Lill. Abr.* 65.

Inquiſition, *Ex Officio Mero*, Is one Way of proceeding in *Eccleſiaſtical Courts. Wood's Inſt.* 596. And formerly the Oath *Ex Officio* was a Sort of *Inquiſition.*

Inquiſitors, (*Inquiſitores*) Are Sheriffs, Coroners *ſuper viſum Corporis*, or the like, who have Power to enquire in certain Caſes; and by the Statute of *Weſtm.* 1. *Inquirors* or *Inquiſitors* are included under the Name of *Miniſtri.* 2 Inſt. 211.

Inrollment, (*Irrotulatio*) Is the Regiſtring or Entring in the Rolls of the Chancery, King's Bench, Common Pleas or Exchequer, or by the Clerk of the Peace in the Records of the Quarter-Seſſions, of any lawful Act; as a Statute or Recognizance acknowledged, a Deed of Bargain and Sale of Lands, *&c.* An *Inrollment* of a Deed may be either by the Common Law, or according to the Statute: And *Inrollments* of Deed ought to be made in Parchment, and recorded in Court, for Perpetuity's Sake. *Trin.* 23 *Car. Paſch.* 24 *Car.* 1. *B. R.* But the *Inrolling* a Deed doth not make it a Record, though it thereby becomes a Deed recorded; for there is a Difference between Matter of Record, and a Thing recorded to be kept in Memory; a Record being the Entry in Parchment of Judicial Matters controverted in a Court of Record, and whereof the Court takes Notice; whereas an *Inrollment* of a Deed is a private Act of the Parties concerned, of which the Court takes no Cognizance at the Time of doing it, although the Court gives Way to it. *Mich.* 21 *Car.* 1. 2 *Lill. Abr.* 69. Every Deed before it is *inrolled*, is to be acknowledged to be the Deed of the Party before a Maſter of the Court of Chancery, or a Judge of the Court where in *inrolled*; which is the Officer's Warrant for the *Inrolling* of the ſame: And the *Inrollment* of a Deed, if it be acknowledged by the Grantor, will be good Proof of the Deed itſelf upon a Trial. *Ibid.* A Deed may be *inrolled* without the Examination of the Party himſelf; for it is ſufficient if Oath is made of the Execution of the Deed: If two are Parties, and the Deed is acknowledged by one, the other is bound by it: And if a Man lives in *New York*, *&c.* and would paſs Lands in *England*, a nominal Perſon may be joined with him in the Deed who may acknowledge it here, and it will be binding. 1 *Salk.* 389. If the Party dies before it is *inrolled*, it may be *inrolled* afterwards: And *Inrollments* of Deeds operates by Virtue of the Statute of *Inrollments*; but if Livery and Seiſin, *&c.* be had before the *Inrolling*, it prevents the Operation of the *Inrollment*, and the Party ſhall be in by that, as the more worthy Ceremony to paſs Eſtates. 1 *Leon.* 5. 2 *Nelſ. Abr.* 1010. Although *Inrollment*, or Matter of Record, ſhall not be tried *per Pais*, yet the Time when the *Inrollment* of a Deed was made ſhall be thus tried. 2 *Lill.* 68. See *Bargain and Sale.*

Inrollment, Is ordained in divers Caſes by *Statute:* Of Bargains and Sales by 27 *H.* 8. *c.* 16. Deeds in Corporations, *&c.* 34 & 35 *H.* 8. *c.* 22. Of Writings in the Counties of *Lancaſter* and *Cheſter*, *&c.* 5 *Eliz. c.* 26. Grants from the Crown of Felons Goods, *&c.* 4 & 5 *W.* & *M. cap.* 22. Of Deeds and Wills made of Lands of Papiſts. 3 *Geo.* 1. *c.* 18.

Inſcriptiones, Were written Inſtruments by which any Thing was granted; as *Inſcriptiones Monaſterii*, *&c.* Blount.

Inſectator, A Proſecutor or Adverſary at Law. *Paroch. Antiq.* 388.

Inſervire, To reduce Perſons to Servitude: —— *Si ingenuus ancillam uxorem ceperit, & ſi ipſa poſtea fuerit* Inſervita. *Du Cange.*

Inſetena, (*Sax.*) An Inditch. Inſetenis, & *Watergangis*, *&c.* Ordin. Romn. Mariſ. p. 73.

Inſidiatores Viarum, Are Way-Layers; which Words are not to be put in Indictments, Appeals, *&c.* by Stat. 4 *H.* 4. *cap.* 2. And before this Statute, Clergy might be denied Felons charged generally as *Inſidiatores Viarum*, *&c.* See 23 *Car.* 2. *c.* 1.

Inſignia, Enſigns or Arms. See *Arms* and *Gentility.*

Inſilium, Evil Advice or Counſel. ——*Multaque Regis* Inſilia *adverſus Anglos dederunt.* Sim. Dunelm. Ann. 1003. *Inſiliarius* is an evil Counſellor: *Filius Regis cum ſuis Conſiliariis*, & Inſiliariis, *&c.*

Inſimul computaſſent, Is a Writ or Action of Account, which lies not for Things certain but only for Things uncertain. *Broke Acco.* 81. The common Declaration upon an *Inſimul computaſſent* is to ſay, That the Plaintiff and Defendant, ſuch a Day, Year and Place, Inſimul *inter ſe computaverunt de Diverſis Denariorum ſummis per ipſum* (the Defendant) *eidem* (the Plaintiff) *præantea ibidem debit. & inſolut. exiſten & ſuper compoto illo eidem* (the Defendant) *adtunc & ibidem inventus fuit in Arreragiis erga eundem* (the Plaintiff in ſo much) *prædictoque Defendente ſic in Arreragiis invent. exiſten. adtunc & ibidem in Conſideratione inde ſuper ſe Aſſumpſit*, *&c.*

Inſimul tenuit, Is one Species of the Writ of *Formedon*, brought againſt a Stranger by a Coparcener on the Poſſeſſion of the Anceſtor, *&c.* See *Formedon.*

Inſinuation, (*Inſinuatio*) Is a Creeping into a Man's Mind or Favour covertly; mentioned in the Stat. 21 *Hen.* 8. *cap.* 5. *Inſinuation of a Will* is among the *Civilians*, the firſt Production of it; or leaving it in the Hands of the Regiſter, in order to its Probate.

Inſolvent Debtors, Unable to pay their Debts, *&c.* See *Debtors.*

Inſpeximus, Is a Word uſed in *Letters Patent* giving Name to them, being the ſame with *Exemplification*, and called *Inſpeximus*, becauſe it begins *Rex omnibus*, *&c.* Inſpeximus *Irrotulamentum quarund. Literar. Patent'*, *&c.* 5 Rep.

Inſtallment, A Settlement, Eſtabliſhing, or ſure Placing in; as *Inſtallment* into Dignities, *&c.* 20 *Car.* 2. *c.* 2.

Inſtant, (Lat. *Inſtans*, *Inſtanter*) Is defined by the *Logicians* to be, *Unum indiviſibile in Tempore, quod non eſt Tempus, nec pars Temporis, ad quod tamen partes Temporis copulantur*; and though it cannot be actually divided, yet in Intendment of Law it may, and be applied to ſeveral Purpoſes: He who lays violent Hands upon himſelf commits no Felony 'till he is dead, and when dead he is not in Being ſo as to be termed a Felon; but he is ſo adjudged in Law *eo Inſtante*, at the very *Inſtant* of this Fact done. And there are many other like Caſes where the *inſtant* Time that is not dividable in Nature, in the Conſideration of the Mind is divided. *Plowden's Com.*

Inſtanter, (*Lat.*) Inſtantly or preſently. *Law Lat. Dict.*

Inſtaurum, Is uſed in antient Deeds for a Stock of Cattle; and we read of *Staurum* and *Inſtauramentum*, properly young Beaſts, *Store* or Breed. *Mon. Angl. Tom.* 1. *pag.* 548. *Inſtaurum* was commonly taken for the whole Stock upon a Farm, as Cattle, Waggons, Ploughs, and all other Implements of Husbandry. *Fleta, lib.* 2. *cap.* 72. And *Inſtaurum Eccleſiæ* is applied to the Books, Veſtments, and all other Utenſils belonging to a Church. *Synod. Exet. Ann.* 1287.

Inſtirpare, To plant or eſtabliſh. ——— *Non ſecurum eſt Gentem externam & turbidam* Inſtirpare. *Brompt.* 935.

Inſtitution, (*Inſtitutio*) Is when the Biſhop ſays to a Clerk, who is preſented to a Church Living, Inſtituo *te rectorem talis Eccleſiæ, cum Cura animarum, & accipe curam tuam & meam:* Or it is a Faculty made by the Ordinary, whereby a Parſon is approved to be inducted to a Rectory or Parſonage. If the Biſhop upon Examination finds the Clerk preſented capable of the Benefice, he admits and *inſtitutes* him; and *Inſtitution* may be granted either by the Biſhop under his Epiſcopal Seal; or it may be done by the Biſhop's Vicar General, Chancellor or Commiſſary; and if granted by the Vicar General, or any other Subſtitute, their Acts are taken to be the Acts of the Biſhop: Alſo the Inſtrument or Letters Teſtimonial of *Inſtitution* may be granted by the Biſhop, though he is not in his Dioceſe; to which ſome Witneſſes ſhould ſubſcribe their Names. 1 *Inſt.* 344. *Clergym. Law* 109. The Biſhop by *Inſtitution* transfers the Cure of Souls to the Clerk; and if he refuſeth to grant *Inſtitution*, the Party may have his Remedy in the *Court of Audience* of the Archbiſhop, by *Duplex Querela*, &c. for *Inſtitution* is properly cogniſable in the Eccleſiaſtical Court: Where *Inſtitution* is granted and ſuſpected to be void for Want of Title in the Patron, &c. a *Superinſtitution* hath been ſometimes granted to another, to try the Title of the preſent Incumbent by Ejectment. 2 *Roll. Abr.* 220. 4 *Rep.* 79. Taking a Reward for *Inſtitution* incurs a Forfeiture of double Value of one Year's Profit of the Benefice, and makes the Living void. *Stat.* 31 *Eliz. c.* 6. On *Inſtitution* the Clerk hath a Right to enter on the Parſonage-houſe and Glebe, and take the Tithes; but he cannot grant, let, or do any Act to charge them, 'till he is inducted into the Living: He is compleat Parſon as to the Spiritualty, by *Inſtitution*; but not as to the Temporalty, &c. By the *Inſtitution* he is only admitted *ad Officium*, to pray and preach; and is not entitled *ad Beneficium*, until formal Induction. *Plowd.* 528. The Church is full by *Inſtitution* againſt all common Perſons, ſo that if another Perſon be afterwards inducted, it is void, and he hath but a meer Poſſeſſion; but a Church is not full againſt the King till Induction. 2 *Inſt.* 358. 1 *Roll. Rep.* 151. When a Biſhop hath given *Inſtitution* to a Clerk, he iſſues his Mandate for Induction; and if the Archbiſhop ſhould *inhibit* the Archdeacon to induct the Clerk thus *inſtituted*, he may do it notwithſtanding. 4 *Rep.* The firſt Beginning of *Inſtitutions* to Benefices, was in a National Synod held at *Weſtminſter*, *Anno* 1124. For Patrons did originally fill all Churches by Collation and Livery; till this Power was taken from them by Canons. *Selden's Hiſt. of Tithes, cap.* 6 & 9 *pag.* 375. See *Induction.*

Inſuper, Is uſed by Auditors in their *Accounts* in the *Exchequer*; as when ſo much is charged upon a Perſon as due on his Account, they ſay ſo much remains *inſuper* to ſuch an Accountant. 21 *Jac.* 1. *cap.* 2.

Inſurance, Is where a Man for a Sum of Money paid him by a Merchant obliges himſelf to make good the Loſs of a Ship, &c. ſo far as the Value of the *Premium* extends. *Inſurances* are either Publick or Private; the firſt done at the publick Office of Aſſurance, and the Latter agreed upon between Merchant and Merchant in private: And all *Inſurances*, whether publick or private, muſt be made upon the Ship, or on the Goods, or upon Ship and Goods: And ſome *Inſurances* are to Places certain, and others General; in trading Voyages, where Ships deliver their Goods, at one Port, and take in freſh Cargoes, and then proceed to other Places, &c. which being dangerous, the *Premium* runs higher than that of any other certain Voyage. *Merch. Compan.* 90. Any Man may make a private Policy of *Inſurance*; and there is no fixed Price for the Rates of *Inſuances*, which riſe and fall according to the State of the Nation in Peace or War, the Seaſon of the Year, and other various Occurrences: In former Wars the Rates of *Inſurance* on a good Ship, from *London* to any Port or Place in the *Eaſt-Indies*, &c. and back, was 16 *per Cent.* but in the late War, in the Reign of K. *William*, the *Premium* of *Inſurance* for the like Voyage was about 22 *per Cent.* And when a Ship hath been long miſſing, and no Advice can be had where ſhe is, the *Premium* in Time of War will run very high; ſometimes 30 or 40 *per Cent.* but then theſe Words are inſerted in the *Inſurance*, *Loſt or not Loſt*; and in ſuch Caſe, if it happens at the Time the Subſcription is made, that the Ship is caſt away, the *Inſurers* muſt anſwer: But if the Party that cauſed the *Inſurance* to be made, ſaw the Ship wrecked, or had certain Intelligence of it, ſuch Subſcription will not be Obligatory; ſo likewiſe if the *Inſured* having a rotten Ship, ſhall *inſure* upon the ſame more than ſhe is worth, and afterwards going out of the Port ſhe is ſunk or wrecked, this will be adjudged fraudulent, and not oblige the *Inſurers* to anſwer. *Mich.* 26 *Car.* 2. *B. R.* And wilfully Caſting away, or making Holes in the Bottom of a Ship, &c. with Deſign to prejudice any *Inſurers*, Merchants, &c. is made Felony by *Stat.* 1 *Ann.* and 11 *Geo.* 1. Subſcriptions for *Inſurances* are generally for certain Sums; as 100 *l.* or 500 *l.* &c. at the *Premium* current; and if a Man inſures Goods to the Value of 5000 *l.* and he hath but 2000 *l.* remitted, now he having *inſured* a real Adventure, if a Loſs happens, by the Law Marine, all the *Inſurers* are compellable to anſwer *pro rata*: Though this is more by the Cuſtom of Merchants than by Law; and by ſome Opinions, only the firſt Subſcribers, who underwrit ſo much as the real Adventure amounted to, are to be made liable, and the Reſt to have their *Premiums* deducted, and be diſcharged. *Grot. Introd. Jur. Holl.* 212. If a Merchant freights out Wool, &c. which occaſions a Forfeiture of Ship and Lading; or if he lades contraband Goods knowingly, and afterwards *inſures* the ſame, and they are ſeiſed by the King's Officers; the *Inſurers* are not liable to bear the Loſs: But if Goods *inſured* are not contraband at the Time of the Lading and *Inſurance*, and after become ſuch, if they are then ſeiſed, the *Inſurers* are anſwerable. 12 *Car.* 2. 32. And if Goods and Merchandiſe be lawfully *inſured*, and afterwards the Ship becomes diſabled, by Reaſon of which, with the Conſent of the Supercargo or Merchant, they are re-laden into another Veſſel; and that Veſſel proves the Ship of an Enemy, by Reaſon of which, on her Arrival, ſhe is ſubject to Seizure; in this Caſe it is ſaid the *Inſurers* are liable, for that is an Accident within the Intention of the Policy of *Inſurance*, which mentions *Dangers of Seas, Enemies*, &c. Yet where Goods are *inſured* in a Ship bound to any foreign Port, and in the Voyage ſhe happens to be leaky or receive other Damage, and another Veſſel is freighted for the Preſervation of the Goods; and then the ſecond Veſſel is loſt at Sea, it is ſaid the *Inſurers* are diſcharged without a ſpecial Clauſe to make them liable. *Lex Mercat.* or *Merch. Compan.* 93. If a Ship be inſured from the Port of *London* to any foreign Place, and before the Ship breaks Ground ſhe happens to take Fire, and is conſumed, the *Inſurers* are not obliged to anſwer, unleſs the Words of the *Inſurance* are *At and from the Port of London*; for the Adventure did not commence till the Ship was gone from thence: Though if the Ship had broken Ground, and afterwards been driven by Storm back to the Port of *London*, and there had took Fire, the *Inſurers* muſt anſwer. *Rot. Scaccar.* 15 *Car.* 2. Goods are ſtolen or imbezilled on Ship-board, the Maſter, and not the *Inſurers* are liable: And when *Inſurers* are to anſwer, and it happens that ſome Part only of the Effects *inſured* are loſt, as in the Caſe of Ejections in a Storm, or other ſuch Accidents; then the *Inſurers* make an *Average* of it, and each Man pays ſo much *per Cent.* in Proportion to the Sum for which he ſubſcribed. If a Ship arrives ſafe, after the Adventure is born, generally the *Inſurers* receive their Money; but if a Loſs happens, the *Premium* is deducted with the uſual Abatement, and the *Inſured* receive about 80 *per Cent. &c.* And when Advice is received of the Loſs of the Ship or Goods, Application is to be made to the *Inſurers*, and the Vouchers to be produced; with which, if they are ſatisfied, they will pay the Money; but if they have reaſonable Ground to ſcruple it, the *Inſured* muſt wait a convenient Time, till the *Inſurers* can obtain a more ſatisfactory Advice; or if nothing can be heard of the Ship in any reaſonable Time, the *Inſurers* are obliged forthwith to pay the Money: Tho' if after that the Ship ſhall arrive in Safety, the Money is to be returned them by the *Inſured. Merch. Compan.* 91, 96, 97. A Merchant having *inſured* the greateſt Part of the Adventure of a Ship, if Advice is received of a Loſs, but with Hope of Recovery, whereby ſuch Merchant would have the Aſſiſtance of the *Inſurers*; he has a Privilege to make a Renunciation of the Lading to the *Inſurers*, and to come in himſelf in the Nature of an *Inſurer*, for ſo much as ſhall appear he hath born the Adventure of, beyond his Part of the Value *inſured*. *Inſurance* may be made on Men's Heads; as where a Man is in Danger of being taken into Slavery by the *Moors*, whereby a Ranſom muſt be paid for his Redemption, he may advance a *Premium*, in Conſideration of which the *Inſurer* muſt anſwer the Ranſom ſecured, if there be a Caption. *Mich.* 29 *Car. B. R.* Alſo Mens Lives may be *inſured* at Land: And Policies of *Inſurance* are uſed in other Matters, where Damage is feared; in Caſe of Houſes or Goods, from Loſs by Fire, *&c.*

Form of a Policy of Inſurance.

KNOW all Men *by theſe Preſents, That* A. B. *of,* &c. *Merchant, as well in his own Name, as for and in the Name and Names of all and every other Perſon and Perſons, to whom the ſame may or ſhall appertain, doth make Aſſurance and hereby cauſe himſelf and them, and every of them, to be* inſured, *loſt or not loſt, at and from the Port of* London *to,* &c. *in the Kingdom of,* &c. *and at and from thence back to* London, *upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, and other Furniture of and in the good Ship* Elizabeth, *Burden,* &c. *or thereabouts, whereof,* &c. *is Maſter, and alſo upon all Kinds of Goods and Merchandizes ſhipped on board the ſaid Ship; beginning the Adventure upon the ſaid Ship and Goods, from and immediately following the Day of the Date hereof, and ſo to continue and endure, until the ſaid Ship, with her ſaid Tackle, Apparel,* &c. *ſhall be arrived back at* London, *and hath there moored at Anchor twenty-four Hours.* And *it ſhall be lawful for the ſaid Ship in this Voyage to proceed and ſail to, and touch and ſtay at, any Ports or Places whatſoever, eſpecially at,* &c. *without Prejudice to this* Inſurance; *and the ſaid Ship and Goods,* &c. *for ſo much as concerns the* Inſured, *is and ſhall be rated and valued at,* &c. Sterling, *without further Account to be given by the Aſſureds for the ſame.* And *touching the Adventures and Perils, which we the* Inſurers *are content to bear, and do take upon us, they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Letters of Mart, and Repriſals at Sea, Arreſts, Reſtraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality ſoever, Barratry of the Maſter and Mariners, and all other Loſſes and Misfortunes that ſhall come to the Hurt or Damage of the ſaid Ship,* &c. *or any Part thereof.* And *in Caſe of any Misfortune, it ſhall be lawful for the* Inſured, *their Factors, Servants and Aſſigns, to ſue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the ſaid Ship,* &c. *or any Part thereof, without Prejudice to this* Inſurance; *to the Charges whereof we the* Inſurers *will contribute each of us according to the Rate and Quantity of his Sum herein aſſured.* And *ſo we the* Inſurers *are contented, and do hereby promiſe, and bind ourſelves, each for his own Part, our Heirs, Executors, Goods and Chattels, to the* Inſured, *their Executors, Adminiſtrators and Aſſigns, for the true Performance of the Premiſſes, confeſſing ourſelves paid the Conſideration due to us for this* Inſurance, *by,* &c. *at and after the Rate of,* &c. per Cent. *and in Caſe of Loſs, to abate,* &c. *And to pay without farther Proof,* &c. *more than this preſent Policy, any Uſe or Cuſtom to the contrary notwithſtanding.* In Witneſs, *&c.*

By 43 *Eliz. c.* 12. an *Office of Inſurance* was erected for deciding of Differences ariſing upon Policies of *Inſurance* in *London*; and a Court was to be held for that Purpoſe by Virtue of a Standing Commiſſion iſſued out by the Lord Chancellor to the Judge of the Court of Admiralty, the Recorder of *London*, two Doctors of the Civil Law, and two Common Lawyers, and eight Merchants; which Commiſſioners were to meet weekly, and to have Power to ſummon and examine Witneſſes, and hear and dermine all Cauſes in a ſummary Way, ſubject to Appeal to the Lord Chancellor, *&c.* And by Stat. 14 *Car.* 2. *c.* 25. ſeveral additional Privileges were granted to this Court, which was a Court of Equity, as well as of Law; but now there is no ſuch Court in Being, and Cauſes of this Nature are tried in the ordinary Courts. The 6 *Geo.* 1. *c.* 18. empowers his Majeſty to grant two Charters for *Inſurance* of Ships and Merchandize, *&c.* and to incorporate the Adventurers, in Conſideration of a large Sum of Money advanced; and all other Corporations for *Inſurance*, and their Policies, are declared void. By 11 *Geo.* 1. *c.* 30. Policies of *Inſurance* ſhall be made out and ſtamped in three Days after Ships are *inſured*, on Pain of 100 *l.* and promiſſory Notes for *Inſurance* ſhall be void, and nothing recovered thereon. Where any Perſon undertakes the *Inſuring* of *Wool* to be tranſported or agrees to pay Money for ſuch *Inſurance*, he is liable to forfeit 500 *l.* But one may be diſcharged of this Penalty, and have likewiſe the whole Forfeiture, on diſcovering, and convicting the other guilty Party, in ſix Months. *Stat.* 12 *Geo.* 2. *c.* 21.

Intakers, Were a Kind of Thieves in the *Northern* Parts of *England*, ſo called, becauſe they did *take in* and receive ſuch Booties as their Confederates the *Outpartners* brought to them from the Borders of *Scotland*; they are mentioned 9 *H.* 5. *cap.* 7.

Intendment of Law, (*Intellectus Legis*) The Underſtanding, Intention, and true Meaning of the Law. *Co. Lit.* 78. *Intendment* ſhall ſometimes ſupply that which is not fully expreſſed or apparent, and when a Thing is doubtful in ſome Caſes, *Intendment* may make it out; alſo a great many Things ſhall be *intended* after Verdict, in a Cauſe, to make a good Judgment: But *Intendment* cannot ſupply the Want of Certainty in a Charge in an Indictment for any Crime, *&c.* 5 *Rep.* 121. 2 *Hawk. P. C.* 227, 441. Sometimes a Thing is neceſſarily *intended* by what precedes or follows it; and where an indifferent Conſtruction may have two *Intendments*, the Rule is to take it moſt ſtrongly againſt the Plaintiff. *Show.* 162. Though if a Plaintiff declares, that the Defendant is bound to him by Obligation, it ſhall be *intended* that the Obligation was ſealed and delivered: If one is bound in a Bond to another, and in the *Solvend.* of the Bond it is not expreſſed unto whom the Money ſhall be paid, or if ſaid to the Obligor; the Law will *intend* it is to be paid to the Obligee: And where no Time is limited for Payment of the Money, it ſhall be *intended* to be preſently paid. 2 *Lill. Abr.* 71. *Paſch.* 24 *Car. B. R.* The *Intent* of Parties in Deeds, Contracts, *&c.* is much regarded by the Law; though it ſhall not take Place againſt the direct Rules of Law: The Law doth not in Conveyances of Eſtates, admit them regularly to paſs by *Intendment* and Implication; in Deviſes of Lands, they are allowed, with due Reſtrictions. *Vaugh.* 261, 262. Where Seiſin of an Inheritance is once alledged; it ſhall be *intended* to continue till the contrary is ſhewed. *Jones* 181. And a Court pleaded generally to be held *ſecund. Conſuetud.* ſhall be intended held according to the Common Law. *Com. Law. Com. Plac.* 276. *Goldsb.* 111. On an Act of Parliament, the *Intent* may be put in Iſſue; but the Common Law doth not allow of it. *Jenk. Cent.* 87, 88. See *Implication.*

Intendment of Crimes. In ancient Times felonious Attempts, *intending* the Death of another, were adjudged Felony; for the Will was taken for the Fact. *Bract.* 1. *E.* 3. But at this Day the Law does not generally puniſh *Intendments* to do ill, if the *Intent* be not executed; except it be in Caſe of Treaſon, where *Intention* proved by Circumſtances ſhall be puniſhed as if put in Execution. 3 *Inſt.* 108. And if a Perſon enter a Houſe in the Night, with *Intent* to commit Burglary, it is Felony: And by Statute, maliciouſly Cutting off or Diſabling any Limb or Member, with an *Intent* to disfigure, *&c.* is Felony. *Plowd.* 474. 23 *Car.* 2. *c.* 1. Where Aſſault and *Intent* to commit Robbery on the Highway, is made Felony and Tranſportation, ſee 7 *Geo.* 2. *c.* 21. *Intention* of Force and Violence makes Riots criminal. 3 *Inſt.* 9. Alſo where Men do Evil, and ſay they *intend* none; or if the *Intention* be only to beat, and they kill a Perſon, they are to be puniſhed for the Crime done. *Plowd.* 345. And if a Man entring a Tavern, *&c.* commit a Treſpaſs, the Law will judge that he *intended* it. 8 *Rep.* 147. *Vide* Murder.

Intenſione, Is a Writ that lies againſt him that enters into Lands after the Death of Tenant in Dower or for Life, *&c.* and holds out him in Reverſion or Remainder. *F. N. B.* 203.

Inter Canem & Lupum, Words uſed formerly in Appeals, to ſignify a Crime being done in the *Twilight*, i. e. *inter Diem & Noctem*, *&c. Plac. Trin.* 7 *Ed.* 1. This hath divers other Denominations; as in *Herefordſhire* they call it the *Mock-ſhadow*, corruptly the *Muck-ſhade*; and in the North, *Daylight's Gate*; others *betwixt Hawk and Buzzard.* Cowel.

Intercommoning, Is where the Commons belonging to two Manors lie contiguous, and the Inhabitants of both have, Time out of Mind, depaſtured their Cattle in each of them. *Terms de Ley* 411.

Interdict, Is an Eccleſiaſtical Cenſure, by which Perſons are prohibited to hear Divine Service, or to have the Sacraments adminiſtred them, or Burial. The *Canon Law*, with which the *Common Law* agrees, defines it thus: Interdictio *eſt Cenſura Eccleſiaſtica prohibens Adminiſtrationem Divinorum:* And ſo it is uſed in the Statute 22 *H.* 8. *c.* 12. There is an *Interdict* of *Places* as well as of *Perſons*; an *Interdict* of Place is when Divine Service is forbidden to be had in ſuch a Church, and is only with Regard to that Church or Place, ſo that the Perſons may be received into another Church, though not into their own; but an *Interdict* of Perſons follows them whereever they remove: And by a mixed *Interdict*, both the People and the Church, *&c.* are ſubjected to this Cenſure. Sometimes an *Interdict* is a general Excommunication of a whole Kingdom or Country: And *Knighton* tells us, that *Anno* 1208, the *Pope* excommunicated King *John* of *England*, and all his Adherents, *Et totam Terram Anglicanam ſuppoſuit* Interdicto, which begun the firſt Sunday after *Eaſter*, and continued above ſix Years; during all which Time nothing was done in the Churches beſides Baptiſm, and Confeſſions of dying People. The Form of an *Interdict*, as ſet down by *Du Cange*, is as follows, *viz.*

IN the Name of Chriſt, *We the Biſhop, in Behalf of the Father, Son, and Holy Ghoſt, and of St.* Peter, *the Chief of the Apoſtles, and in our own Behalf, do excommunicate and* interdict *this Church, and all the Chapels thereunto belonging, that no Man from henceforth may have Leave to ſing Maſs, or to hear it, or in any wiſe to adminiſter any Divine Office, nor to receive God's Tithes without our Leave; and whoſoever ſhall preſume to ſing or hear Maſs, or perform any Divine Office, or to receive any Tithes contrary to this* Interdict, *on the Part of God the Father Almighty, and of the Son, and of the Holy Ghoſt, and on the Behalf of St.* Peter, *and all the Saints, let him be accurſed and ſeparated from all Chriſtian Society, and from Entring into Holy Mother Church, where there is Forgiveneſs of Sins; and let him be* Anathema Maran atha *for ever with the Devils in Hell.* Fiat, Fiat, Fiat. *Amen.*

This ſevere Church Cenſure hath been of long Time diſuſed.

Interdicted of Water and Fire, Were antiently thoſe Perſons who ſuffered Baniſhment for ſome Crime; by which Judgment, Order was given, that no Man ſhould receive them into his Houſe, but deny them *Fire* and *Water*, the two neceſſary Elements of Life, which amounted as it were to a Civil Death; and this was called *Legitimum Exilium*, ſays *Livy.*

Intereſt, (*Intereſſe*) Is commonly taken for a Chattel Real, as a Leaſe for Years, *&c.* and more particularly for a *future* Term; in which Caſe, it is ſaid in Pleading, that one is poſſeſſed *De Intereſſe Termini.* Therefore an Eſtate in Lands is better than a Right or Intereſt in them: Though in legal Underſtanding an *Intereſt* extends to Eſtates, Rights and Titles, that a Man hath in or out of Lands, *&c.* ſo as by Grant of his whole *Intereſt* in ſuch Land, a Reverſion therein as well as Poſſeſſion in Fee-ſimple ſhall paſs. *Co. Litt.* 345.

Intereſt of Money, As diſtinguiſhed from the Principal, what lawful, *&c.* See *Uſury.*

Interlocutory Order, (*Ordo Interlocutorius*) Is that which decides not the Cauſe, but only ſome Incidental Matter, which happens between the Beginning and End of it; as where an Order is made in *Chancery*, for the Plaintiff to have an Injunction, *&c.* till the Hearing of the Cauſe: This, or any ſuch Order, not being *final*, is *Interlocutory.*—— Ordo Interlocutorius *non definit Controverſiam, ſed aliquid obiter, ad Cauſam pertinens, decernit.* Lanc. Inſt. Juris Canon. lib. 3.

Interlopers, Perſons that intercept the Trade of a Company of Merchants. *Merch. Dict.*

Interpleader In Actions, ſee *Enterpleader.*

Interrogatories, Are particular Queſtions demanded of Witneſſes brought in to be examined in a Cauſe, eſpecially in the Court of *Chancery.* And theſe *Interrogatories* muſt be exhibited by the Parties in Suit on each Side; which are either *direct* for the Party that produces them, or *counter* on Behalf of the adverſe Party; and generally both Plaintiff and Defendant may exhibit, direct and counter, or croſs *Interrogatories.* They are to be pertinent, and only to the Points neceſſary, and either drawn or peruſed by Counſel, and be ſigned by them; if they are leading, *viz.* ſuch as theſe, *Did you not do or ſee ſuch a Thing*, *&c.* the Depoſitions on them will be ſuppreſſed; for they ſhould be drawn, *Did you ſee, or did you not ſee*, *&c.* without leaning to either Side; and not only where they point more to one Side of the Queſtion than the other; but if they are too particular, they will be likewiſe ſuppreſſed: The Commiſſioners, *&c.* who examine the

Witneſſes on the *Interrogatories*, muſt examine to one *Interrogatory* only at a Time; they are to hold the Witneſſes to every Point *interrogated*; and take what comes from them on their Examinations, without asking any idle Queſtions, or putting down any impertinent Anſwers not relating to the *Interrogatories*, &c. Practiſ. Attorn. firſt Edit. 225. See *Depoſitions*.

Intertiare, In the *Saxons* Laws ſignified to ſequeſter, or put into a third Hand; as when any Thing was ſtolen and ſold to another, and afterwards demanded by the right Owner of him in whoſe Poſſeſſion it was found, it was then uſual to ſequeſter the Thing to a third Perſon, who was allowed to keep it till the Buyer produced the Seller, and ſo on to the Thief. *Leg. Inæ, c.* 27, 52. *LL. Ed. Confeſſ. c.* 25.

Inteſtates, (*Inteſtati*) Thoſe that die without making any Will or Diſpoſition of their Eſtates. Formerly he who died *Inteſtate* was accounted by the Churchmen damned, becauſe he was obliged by the *Canons* to leave at leaſt a tenth Part of his Goods to pious Uſes, for the Redemption of his Soul; and whoever neglected ſo to do, was adjudged to take no Care of his Salvation; and no Difference was made between a *Suicide* and an *Inteſtate*; for as the one forfeited his Goods to the King, ſo by the other they were forfeited to the chief Lord: But becauſe it often happened by ſudden Diſeaſes, that People died without making any Diſtribution of their Goods to pious Uſes; therefore by ſubſequent Canons, the Biſhops had Power to make ſuch a Diſpoſition, as the *Inteſtate* himſelf was bound to do; and 'tis ſaid by this Means the Spiritual Court came firſt to have Juriſdiction in Teſtamentary Caſes. *Matt. Pariſ. Anno* 1190. By the Stat. *Weſtm.* 2. Goods of *Inteſtates* were to be committed to the Ordinary, to anſwer the Debts of the Deceas'd, &c. And the 22 & 23 *Car.* 2. *cap.* 10. appoints a Diſtribution of *Inteſtate*'s Eſtates, after Debts and Funeral Expences are paid, among the Wife and Children of the Deceas'd; or for Want of ſuch, the next of Kin, &c. And the Act of Parliament doth immediately, upon the Death of the *Inteſtate*, veſt an Intereſt in the Perſons intitled; ſo that if any one dies before the Diſtribution, though within the Year, his Share ſhall go to his Executors or Adminiſtrators; and not to the Survivors and next of Kin to the *Inteſtate*. 1 *Lill. Abr.* 487. If a Man makes a Will and Executors, and they refuſe the Executorſhip, in ſuch Caſe he dies *quaſi Inteſtatus*. 2 Inſt. 397. See *Adminiſtrators*.

Inteſtates Eſtates, Are the Goods and Chattels of Perſons dying *Inteſtate*. 2 Lill. Abr. 73.

Intrare Mariſcum, Signifies to drain any low Ground, and by Dikes, Walls, &c. take *in* and reduce it to Herbage or Paſture; whence comes the Word *Innings*. Will. Thorn.

Intruſion, (*Intruſio*) Is when the Anceſtor dies ſeiſed of any Eſtate of Inheritance, expectant upon an Eſtate for Life, and then Tenant for Life dies, between whoſe Death and the Entry of the Heir, a Stranger *intrudes*. Co. Lit. 227.—— Intruſio *eſt, ubi quis, cui nullum jus competit in re nec ſcintilla juris, poſſeſſionem vacuam ingreditur*, &c. Bract. lib. 4. cap. 2. By which *Intruſion* ſignifieth an unlawful Entry into Lands or Tenements void of a Poſſeſſor, by him that hath no Right unto the ſame: And the Difference between an *Intruder* and an *Abator* is this, that an Abator entreth into Lands void by the Death of a Tenant in Fee; and an *Intruder* enters into Land void by the Death of Tenant for Life or Years. *F. N. B.* 203. And there is a Writ of *Intruſion*, that lies where the Tenant for Life, &c. dies; but if a Man doth *intrude* after the Death of ſuch a Tenant, he in Reverſion in Tail, ſhall not have this Writ, but is put to his *Formedon*: For it lieth only for him who hath the Reverſion in Fee-ſimple, &c. after the Death of Tenant for Life, or in Dower, &c. *New. Nat. Br.* 509. Alſo one having ſuch a Fee Eſtate in Remainder, ſhall have Writ of *Intruſion*; and the Aſſignee of the Remainder may bring it, as well as an Heir, &c. *Ibid.* As he that enters and keeps the right Heir from the Poſſeſſion of his Anceſtor is an *Intruder* puniſhable by Common Law; ſo he that enters upon the King's Lands and takes the Profits, is an *Intruder* againſt the King. *Co. Litt.* 277. For this *Intruſion* Information may be brought; but before Office found, he who occupies the Land ſhall not be ſaid to be an *Intruder*, for *Intruſion* cannot be but where the King is actually poſſeſſed, which is not before Office; though the King is entitled to the meſne Profits after the Tenant's Eſtate ended. *Moor* 295. By Stat. 21 *Jac.* 1: *cap.* 14. the Defendants may plead the General Iſſue in Informations of *Intruſion*, brought on Behalf of the King, and retain their Poſſeſſion 'till Trial; where the King hath been out of Poſſeſſion, and not received the Profits for twenty Years: And no *Scire facias* ſhall Iſſue, whereupon the Subject ſhall be forced to ſpecial Pleading, &c.

A Writ of *Intruſion*.

GEORGE the Second, &c. *To the Sheriff of* W. *Greeting: Command* A. B. *that he render to* C. D. *one Meſſuage and two Acres of Land with the Appurtenances in*, &c. *which he claimeth to be his Right and Inheritance, and into which the ſaid* A. *hath no Entry but by* Intruſion, *which into that he made after the Death of* L. B. *to whom* R. D. *Father or Brother of the ſaid* C. *whoſe Heir he is, that demiſed for the Life of the ſaid* L. B. *as he ſaith*, &c.

Intruſion de Gard, Was a Writ that lay where the Infant within Age entered into his Lands, and held out his Lord. *Old. Nat. Br.* 90.

Intruſione, Is the Writ brought againſt an *Intruder*; by him that hath Fee-ſimple, &c. *New Nat. Br.* 453.

Invadiare, To engage or mortgage Lands; and *Invadiations* were Mortgages of Land. —— *Confirmamus eis omnes Donationes, venditiones, &* Invadiationes, &c. *Mon. Ang. Tom.* 1. *pag.* 478.

Invadiatus, Is when a Perſon accuſed of any Crime, on it's not being fully proved, was put *ſub debita fidejuſſione*. Blount.

Invaſiones, In the Inquiſition of Serjeancies and Knights Fees, *Anno* 12 & 13 of King *John*, there are ſome Titles called *Invaſiones*; & Invaſiones *ſuper Regem*.

Inventiones, Is uſed in antient Charters for Treaſure-trove, Money or Goods *found* by any Perſons, and not challenged by the Owner; which by the Common Law is due to the King, who grants the Privilege to ſome particular Subjects.—— *Quod habeant* Inventiones *ſuas in Mari & in Terra.* Chart. K. *Ed.* 1. to the *Barons* of the *Cinque Ports*.

Inventory, (*Inventorium*) Is a Liſt or Schedule containing a true Deſcription of all the Goods and Chattels of a Perſon deceas'd at the Time of his Death, with their Value appraiſed by indifferent Perſons; which every Executor or Adminiſtrator ought to exhibit to the Biſhop or Ordinary at ſuch Time as he ſhall appoint. *Weſt. Symb lib.* 2. *pag.* 696. By 21 *H.* 8. *c.* 5. Executors and Adminiſtrators are required to make and deliver in upon Oath to the Ordinary, *Inventories* indented, of which one Part ſhall remain with the Ordinary, and the other Part with the Executor or Adminiſtrator: And the Intention of this Statute was for the Benefit of the Creditors and Legatees, that the Executor or Adminiſtrator might not conceal any Part of the perſonal Eſtate from them: Though as to the Valuation it is not excluſive, but the real Value found by a Jury; if they are undervalued, the Creditors may take them as apprais'd; and if over-valued, it ſhall not be prejudicial to the Executor. 2 *Nelſ. Abr.* 1015. But tho' generally all the perſonal Eſtate of the Deceas'd, of what Nature or Quality ſoever, ought to be put into the *Inventory*; yet Goods given away in the Life-time of the deceas'd Perſon, and actually in the Poſſeſſion of the Party to whom given, and the Goods to which a Husband is entitled as Adminiſtrator to his Wife, are not. 3 *Bulſtr.* 355. And notwithſtanding the Law requires that the *Inventory* be exhibited within three Months after the Death of the Perſon, if it is done afterwards, it is good, for the Ordinary may diſpence with the Time, and even whether it ſhall be exhibited, or not; as where Creditors are paid, and the Will perform'd, *&c. Raym.* 470. Theſe *Inventories* proceed from the *Civil Law*; and whereas by the old *Roman* Law, the Heir was obliged to anſwer all the Teſtator's Debts, *Juſtinian* ordained, that *Inventories* ſhould be made of the ſubſtance of the Deceas'd, and he ſhould be no further charged. *Juſtin. Inſt.* See *Executor.*

In ventre ſa mere, (*Fr.*) In the Mother's Belly, relating to which there is a Writ mentioned in the *Regiſter of Writs*, and in 12 *Car.* 2. *c.* 24. Infant *in ventre ſa mere*, is where a Woman is with Child at the Time of her Husband's Death; which Child, if he had been born, would be Heir to the Land of the Husband: And this is ſometimes privily, and ſometimes open and viſible. 1 *Shep. Abr.* 142. And the Law hath Conſideration of ſuch a Child, on Account of the apparent Expectation of his Birth: For a Deviſe to an Infant *in Ventre ſa mere*, ſhall be good by Way of future executory Deviſe. *Raym.* 164. He may be vouched in his Mother's Belly; and Action lies for Detainment of Charters from him as Heir, *&c. Hob.* 222. *Dyer* 186. And in all Caſes, where a Daughter or Female, comes into Land by Deſcent; there the Son born after, ſhall ouſt her and have the Land. 3 *Rep.* 61. *Plowd.* 375. But if the Daughter and Female Heir, cometh to Land in Nature of a Purchaſer; as on a Will of Lands given to *J. S.* and his Heirs, and he hath a Daughter when the Deviſor dies, his Wife being then with Child of a Son; in this Caſe the Daughter ſhall enjoy the Land, and not the after-born Son. 3 *Rep.* 61. 5 *E.* 4. 6. 9 *H.* 7. 24.

Inveritare, To verify or make Proof of a Thing. *Leg. Inæ, cap.* 16.

Inveſt and Inveſtiture, (From the Fr. *Inveſtir*) Signifies to give Poſſeſſion: Some define it thus, Inveſtitura *eſt alicujus in ſuum jus Introductio*; a Giving Livery of Seiſin or Poſſeſſion. The Cuſtoms and Ceremonies of *Inveſtiture* or giving Poſſeſſion, were long practiſed with great Variety: At firſt *Inveſtitures* were made by a Form of Words; and afterwards by ſuch Things which had moſt Reſemblance to what was to be transferred; as Lands paſſed by the Delivery of a Turf, *&c.* which was done by the Grantor to the Perſon to whom the Lands were granted: But in After-Ages, the Things by which *Inveſtitures* were made, were not ſo exactly obſerv'd. *Ingulph, pag.* 901. In the Church, it was the Cuſtom of old for Princes to promote ſuch as they liked to Eccleſiaſtical Benefices, and declare their Choice and Promotion by Delivery to the Perſons choſen of a Paſtoral Staff and Ring; the one a ſymbolical Repreſentation of their Spiritual Marriage with the Church; and the other of their Paſtoral Care and Charge, which was term'd *Inveſtiture*; after which they were conſecrated by Eccleſiaſtical Perſons. *Hoveden* tells us, that our King *Richard* being taken by the Emperor, gave this Kingdom to him, *&* Inveſtivit *eum inde per Pileum ſuum*; and that the Emperor immediately afterwards returned the Gift; *Et* Inveſtivit *eum per duplicem Crucem de auro.* Hoved. 724. And *Walſingham* ſays, that *John* Duke of *Lancaſter* was inveſted Duke of *Aquitane, per Virgam & Pileum, pag.* 343.

Invitatoria & Venitarium, Thoſe Hymns and Pſalms that were ſung in the Church to *invite* the People to Prayer: They are mentioned in the *Statute of St. Paul's* MS.

Invoice, A particular Account of Merchandize, with its Value, Cuſtom and Charges, *&c.* ſent by a Merchant to his Factor or Correſpondent in another Country. *Stat.* 12 *Car.* 2. *c.* 34.

Jobber, Is uſed for one that buys or ſells Cattle for others. 22 *&* 23 *Car.* 2. And there are *Stockjobbers*, who buy and ſell Stocks for other Perſons, *&c.*

Jocalia, (Fr. *Joyaux*) Jewels; derived from the Lat. *Jocus, Joculus*, and *Jocula*, which comprehend every Thing that delighteth; but in a ſpecial and more reſtrain'd Senſe, it ſignifies thoſe Things which are Ornaments to Women, and which in *France* they call their own; as Diamonds, Ear-Rings, Bracelets, *&c.* But in this Kingdom, a Wife ſhall not be entitled to Jewels, Diamonds, *&c.* on the Death of her Husband, unleſs they are ſuitable to her Quality, and the Husband leaves Aſſets to pay Debts, *&c.* 1 *Roll. Abr.* 911.

Jocarius, A Jeſter; as in an old Deed we read of *Jocarius Dom. Abbatis*; and *Joculator Regis*, the King's Jeſter. *Domeſd.*

Jocus partitus, Is when two Propoſals are made to a Perſon, and he hath Liberty to chuſe which he pleaſes.——*Nec poteſt tranſigere, nec paciſci, nec* Jocum partitum *facere, &c.* Bract. lib. 4. tract. 1. cap. 32.

Joinder, Is the Coupling or Joining of two in a Suit or *Action* againſt another: *Duorum in eadem Actione conjunctio. F. N. B.* 118. In all Perſonal Things, where Two are chargeable to Two, the one may ſatisfy it, and accept of Satisfaction, and bind his Companion; and yet one cannot have an Action without his Companion, nor both only againſt one. 2 *Leon.* 77. In *joint* Perſonal Actions againſt two Defendants, if they plead ſeverally, and the Plaintiff is nonſuit by one before he hath Judgment againſt the other, he is barred againſt both. *Hob.* 180. A Covenant to Two, not to do a Thing without their Conſent; one of them may bring an Action for his particular Damage. 2 *Mod.* 82. If a Man covenants with two or three ſeverally, which he may do, and it differs from a Bond; here it was held, they could not *join* in Action of Covenant. *March.* 103. But a Perſon, in Conſideration of a Sum of Money paid to him by *A.* and *B.* promiſes to procure their Cattle diſtrained to be delivered; if they are not delivered; one *joint* Action lies by the Parties, for the Conſideration cannot be divided. *Style* 156, 203. 1 *Danv. Abr.* 5. And if one Jointenant of Goods is robb'd, both may *join* in an Action: And where two Joint-owners of a Sum of Money are robb'd upon the Highway, they are to *join* in one Action againſt the Hundred. *Latch* 127. *Dyer* 307. 'Tis otherwiſe if they have ſeveral Properties. *Ibid.* Upon a joint Grievance all Parties may *join*; as the Inhabitants of a Hundred, *&c.* And where an Action againſt Owners of a Ship, in Caſe Goods damaged, *&c.* is *quaſi ex Contractu*, it muſt be brought againſt all of them. 3 *Lev.* 258. 3 *Mod.* 321. 2 *Salk.* 440. Tho' one Partner acts in Trade, where there are many Partners, Actions are to be brought againſt all the Partners jointly for his Acts. 1 *Salk.* 292. If two Men are Partners, and one of them ſells Goods in Partnerſhip, Action for the Money muſt be brought in both their Names. *Godb.* 244. But where there are two Partners in Merchandize, and one of them appoints a Factor, they may have ſeveral Writs of Account againſt him, or they may *join. Moor* 188. And if one of the Merchants dies, the Survivor is to bring the Action. 2 *Salk*. 444. If one Man calls two other Men Thieves, they ſhall not *join* in an Action againſt him; and one joint Action will not lie againſt ſeveral Perſons for Speaking the ſame Words: For the Wrong done to one is no Wrong to the other; and the Words of the one are not the Words of the other. 1 *Danv*. 5. *Palm*. 313. So it is in Aſſault and Battery. On a *joint* Trepaſs the Plaintiff may declare ſeverally; but it remains joint till ſevered by the Declaration. 2 *Salk*. 454. A Man cannot declare in an Action againſt one Defendant for an Aſſault and Battery, and againſt another for Taking away his Goods; becauſe the Treſpaſſes are of ſeveral Natures. But where they are done by two Perſons jointly at one Time, they may be both guilty of the Whole. *Styl*. 153. 10 *Rep*. 66. If two Men procure another to be indicted falſly of Barretry, he may have Action againſt them both jointly; and it is the ſame if Two conſpire to maintain a Suit, though one only gives Money, *&c.* *Latch* 262.

Joint Actions. In Perſonal Actions, ſeveral Wrongs may be *join'd* in one Writ; but Actions founded upon a Tort, and on a Contract, cannot be *joined*, for they require different Pleas and different Proceſs. 1 *Keb*. 847. 1 *Ventr*. 366. And where there is a Tort by the Common Law, and a Tort by Statute, they may not be *joined*; though where ſeveral Torts are by the Common Law, they may be *joined*, if Perſonal. 3 *Salk*. 203. A general Action of Treſpaſs, and ſpecial Action of the Caſe, may be *joined* in one Action: Trover and *Aſſumpſit* may not be *joined*; but in an Action againſt a common Carrier, the Plaintiff may declare in *Caſe* upon the Cuſtom of the Realm, and alſo upon Trover and Converſion, for Not guilty anſwers to both. 1 *Danv. Abr*. 4. And any Actions may be *joined*, where the Plea of Not guilty goes to all. 8 *Rep*. 47. But as to Carriers, ſee 1 *Ventr*. 365. And Judgment was arreſted in *Aſſumpſit*, in ſuch a Caſe. 1 *Salk*. 10. Ejectment and Battery cannot be *joined*; but after Verdict, where ſeveral Damages were found, the Plaintiff was allowed to releaſe thoſe for the Battery, and had Judgment for the Ejectment. 1 *Danv*. 3. Although Perſons may *join* in the Perſonality, they ſhall always ſever in Actions concerning the Reality; and Waſte being a mix'd Action ſavouring of the Reality, that being more worthy draws over the Perſonality with it, in any Action brought. 2 *Mod. Rep* 62. A Perſon cannot as Adminiſtrator, *&c. join* an Action for the Right of another, with any Action in his own Right; becauſe the Coſts will be entire, and it cannot be diſtinguiſhed how much he is to have as Adminiſtrator, and how much for himſelf. 1 *Salk*. 10.

Joinder of Counties. There can be no *Joinder of Counties* for the Finding of an Indictment: Tho' in Appeal of Death, where a Wound was given in one County, and the Party died in another, the Jury ought to be returned jointly from each County, before the Statute 2 & 3 *Ed*. 6. *c*. 24. But by that Statute the Law is altered; for now the Whole may be tried either on Indictment or Appeal, in the County wherein the Death is. 2 *Hawk. P. C.* 323, 403. Where ſeveral Perſons are arraigned upon the ſame Indictment or Appeal, and ſeverally plead Not guilty, the Proſecutor may either take out *Joint Venire's* or ſeveral. *H. P. C.* 256. But after a *Joint Venire*, ſeveral ones cannot be taken out.

Joint Executors, Are accounted in Law but as one ſingle Perſon, and Acts done by any of them ſhall be taken to be the Acts of every one of them; for they all repreſent the Perſon of the Teſtator. 2 *Nelſ Abr*. 1026. If two *Joint Executors* have a Leaſe for Years, one of them may ſell the Term without the other's Joining, becauſe both are poſſeſſed of it as one Perſon in Right of the Teſtator; and this is the Reaſon why one of them cannot aſſign the Term to the other; and for which Cauſe one *Joint Executor* cannot compel his Companion to account. *Cro. Eliz*. 347. *Sid*. 33. If one *joint Executor* gives an Acquittance or Releaſe, the other is bound by it; as they are but one *Executor* to the Teſtator, wherefore each hath an Authority over the whole Eſtate. 2 *Brownl*. 183. *Kelw*. 23. But if a Releaſe is procured of one *joint Executor* by Fraud, for a leſs Sum than due; Relief may be had in Equity: And *joint Executors* ſhall not be charged by the Acts of their Companions, any farther than they are actually poſſeſs'd of the Goods of the Teſtator. *Moor* 620. *Cro. Eliz*. 318. 2 *Leon*. 209. Though if *joint Executors* by Agreement among themſelves, agree that each ſhall intermeddle with ſuch a Part of the Teſtator's Eſtate; in this Caſe each of them ſhall be chargeable for the Whole by the Agreement as to Receipts, *&c. Hardr*. 314. Alſo it has been decreed in Chancery, that if two or more *Executors* join in a Receipt, and one of them only receives the Money, each of them is liable for the Whole, as to Creditors at Law; but as to Legatees, and thoſe who claim Diſtribution, who have no Remedy but in Equity, the Receipt of one Executor ſhall not charge the other. 1 *Salk*. 318. Two *joint Executors* cannot plead diſtinct Pleas, becauſe their Teſtator, if Living, who was but one Perſon, on Action brought againſt him, could have but one Plea. *Raym*. 123. Where two *joint Executors* have commenc'd a Suit, and one of them dies pending the Action, it ſhall abate, though he ſo dying had been ſummoned and ſevered; the Law is the ſame where they are Defendants: And all the Executors are to be named in an Action brought by *joint Executors*, or the Action ſhall abate; but where one *Executor* is under Age, if it be ſpecially ſet forth in the Declaration, it may be good, though he be not joined in the Action. 2 *Nelſ*. 1027. It is held, where there are two *joint Executors*, and one has poſſeſſed himſelf of a Moiety of the Goods, and then dies, in that Caſe the Survivor ſhall have all. 2 *P. Williams* 352. See *Executors*.

Joint Fines. If a whole Vill is to be fined, a *Joint Fine* may be laid, and it will be good for the Neceſſity of it; but in other Caſes, Fines for Offences are to be ſeverally impos'd on each particular Offender, and not jointly upon all of them. 1 *Rol. Rep*. 33. 11 *Rep*. 42. *Dyer* 211.

Joint Inditements, May be ſometimes had: If Offences of ſeveral Perſons ariſe from a *joint* Criminal Act, without any Regard to any particular perſonal Default or Defect of either of the Defendants; as the *joint* Keeping of a Gaming-houſe; or unlawful Hunting and carrying away Deer; or for Maintenance, Extortion, *&c.* an *Indictment* or Information may charge the Defendants jointly. 1 *Ventr*. 302. 2 *Hawk. P. C.* 240. When there are more Defendants than one in an Information, they may not exhibit a *Joint Plea* of *Not guilty*; but are to plead ſeverally, that neither they nor any of them are guilty, *&c.* 21 *H*. 6. 20. 2 *Roll. Abr*. 707.

Joint Lives. A Bond was made to a Woman *Dum ſola*, to pay her ſo much yearly as long as ſhe and the Obligor ſhould live together, *&c.* Afterwards the Woman married, and Debt being brought on this Bond by Husband and Wife, the Defendant pleaded, that he and the Plaintiff's Wife did not live together; but it was adjudged that the Money ſhould be paid during their *joint Lives*, ſo long as they were living at the ſame Time, *&c.* 1 *Lutw*. 555. And a Perſon in Conſideration of Receiving the Profits of the Wife's Lands on Marriage, during their *joint Lives*, was to pay a Sum of Money yearly, in Truſt for the Wife, though it was not ſaid every Year during, *&c.* It was held, that the Payment ſhall be intended to continue every Year alſo during their *joint Lives*. 1 *Lutw*. 459. Leaſe for Years to Husband and Wife, if they or any Iſſue of their Bodies ſhould ſo long live, has been adjudged ſo long as either the Husband, Wife, or any of their Iſſue ſhould live; and not only ſo long as the Husband and Wife, &c. ſhould *jointly live*. *Moor* 339. The Word *Or* may be taken disjunctively or diſtributively for either; when the Word *And*, which requires a Joining and Coupling ſhall not.

Jointenants, (*Simul Tenentes*, or *Qui conjunctim tenent*) Are thoſe that come to, and hold Lands or Tenements jointly by one Title; and theſe *Jointenants* muſt jointly plead, and be jointly ſued and impleaded, which Property is common to them and Coparceners; but *Jointenants* have a ſole and peculiar Quality of Survivorſhip, which Coparceners have not; for if there be two or three *Jointenants*, and one has Iſſue, and dies, he, or thoſe *Jointenants* that Survive ſhall have the whole. *Litt.* 277, 280. 1 *Inſt.* 180. They are called *Jointenants*, not only becauſe Lands are conveyed to them jointly by one and the ſame Title; but for that they take by Purchaſe only; whereas an Eſtate in Coparcenary is always by Deſcent. *Ibid.* Where a Man is ſeiſed of Lands and Tenements, and makes a Feoffment to Two or more, and their Heirs; or makes a Leaſe to them for Life; or where Two or more have a joint Eſtate in Poſſeſſion, in a Chattel Real or Perſonal; or a joint Eſtate in a Debt, Duty, Covenant, Contract, &c. it is a *Jointenancy*, and the Part of him that dieth goeth not to his Heir or Executor; but the Whole to the Survivors or Survivor: But an Exception is to be made as to joint Merchants, for their Stock or Debts which they have in Partnerſhip; which go to the Executor of him that dies, by the Law Merchant, and not the Survivor. *Litt.* 277, 281. 1 *Inſt.* 181. If a Father make a Deed of Bargain and Sale of Lands to his Son, To hold to him and his Heirs, &c. to the Uſe of the Father and Son, and their Heirs and Aſſigns for ever, they are *Jointenants*. 2 *Cro.* 83. And if the Father deviſes Lands to his Eldeſt and other Sons, they are *Jointenants* and not Tenants in Common. *Goldſ.* 28. *Poph.* 52. And a Man having only two Daughters, who were his Heirs, deviſed his Land to them and their Heirs; and it was adjudged they were *Jointenants*, becauſe they have it by the Deviſe in another Manner than the Law would have given it them, which would have been as Coparceners by Deſcent; but here the Survivor ſhall have the Whole. *Cro. Eliz.* 431. A Man deviſed Lands to his Wife for Life, and after her Death to his three Daughters, and the Heirs Males of their Bodies, &c. The Wife and the two eldeſt Daughters died; and it was held that the ſurviving Daughter ſhould have the Whole for her Life, the three Siſters being *Jointenants* for Life, and ſeveral Tenants in Tail of the Inheritance. *Lee* 47. A Deviſe to two jointly and ſeverally is a *Jointenancy*. *Poph.* 52. If Lands are deviſed to Two equally, and their Heirs, they are *Jointenants*; but if it had been to Two, equally to be divided between them, it generally makes a Tenancy in Common. 2 *And.* 17. But by *Holt* Ch. Juſtice, the Words *Equally to be divided*, do not make a Tenancy in Common in a Deed, but a *Jointenancy*; though they might in a Will. 1 *Salk* 390 And it is ſaid a Term for Years of Goods deviſed to Two *equally*, makes a Tenancy in Common, and not *Jointenancy*; but Land deviſed to Two *equally*, makes a *Jointenancy*. 3 *Cro.* 697. 3 *Salk.* 205. A Deviſe to Two equally to be divided, *Habendum* to them and the Heirs of the Survivor, is a *Jointenancy*. *Style* 211, 434. Lands are given by Will to two Perſons, and the Survivor of them, and their Heirs, equally to be divided between them Share and Share alike; it is held that the firſt Part of the Deviſe makes them *Jointenants* for Life, and the latter Words import a Tenancy in Common, ſo as they are Tenants in Common of the Inheritance. 2 *Peere Williams* 280, 282. Where a Perſon deviſed, that all his Eſtate at a certain Place, ſhould after his Wife's Deceaſe, come to and be equally divided among other Relations, and their Heirs for ever: In this Caſe of *Jointenancy*, nothing ſhall ſurvive but what did originally veſt in the firſt Takers; and if the Perſons all die before the Time their Intereſts commence, the Lands will never be veſted in them. *Barnardiſt.* 396. One by Will gives the Reſidue of his perſonal Eſtate to three Perſons, it is a *Jointenancy*, and the Survivor takes the whole; and where a Surplus of ſuch Eſtate is deviſed to *A.* and *B.* after the Debts and Legacies are paid, on one's Dying, it will ſurvive. 2 *Peere Williams* 347. Two or more purchaſe Land, and advance the Money in equal Parts, and take a Conveyance to them and their Heirs; this makes a *Jointenancy* with the Chance of Survivorſhip: But where the Proportions of Money are not equal, they are in Nature of Partners; and though the legal Eſtate ſurvives, the Survivor ſhall be as a Truſtee for the others, in Reſpect of the Sums paid by each. *Abr. Caſ. Eq.* 291. So if where two having purchaſed *jointly*, afterwards one lays out a conſiderable Sum on Improvements, &c. and dies, in *Equity* it ſhall be a Lien on the Lands, and a Truſt for the Repreſentative of him that advanced it. *Ibid.* A Rent of 10*l.* a Year is granted to *A.* and *B.* to hold to one until he marry, and to the other till he is preſented to ſuch a Church; it was holden they were *Jointenants*, and that if either of them die before Marriage or Preſentment, the Rent ſhall ſurvive. 1 *Inſt.* 180. If Lands are given to two Men, and the Heirs of their Bodies, the Remainder to them and their Heirs; they ſhall be *Jointenants* for Life, Tenants in Common of the Eſtate-tail, and *Jointenants* of the Fee ſimple. 1 *Co. Inſt.* 183. But where a Remainder is limited to the right Heirs of two Perſons, in this Caſe they ſhall take ſeverally, though the Words be joint. 5 *Rep.* 8. Land is granted to a Man, and ſuch Woman as ſhall be his Wife; here is no *Jointenancy*, but the Man will have the Whole: Tho' if one make a Feoffment in Fee to the Uſe of himſelf, and of ſuch Wife as he ſhall after marry, for their Lives; when he takes a Wife, they are *Jointenants*. *Co. Litt.* 188. 1 *Rep.* 101. One Perſon is in by the Common Law, and another by Limitation of Uſe, yet they may be *Jointenants* by Virtue of a Deed of Grant, &c. *Jenk. Cent.* 330. Lands given in the Premiſſes of a Deed to Three, to hold to one for Life, Remainder to another for Life, Remainder to the Third for Life, they are not *Jointenants*, but ſhall take ſucceſſively. *Dyer* 160. There may be a *Jointenancy*, tho' there is not equal Benefit of Survivorſhip on both Sides. 1 *Inſt.* 181. When a Fee ſimple Eſtate is limited by a new Conveyance, there one may have the Fee, and another an Eſtate for Life; but when two Perſons are Tenants for Life firſt, and one of them gets the Fee-ſimple, there the Jointure is ſevered. 2 *Rep.* 6. If a Reverſion deſcend upon one *Jointenant*, the Jointure is ſevered, and by Operation of Law they are then Tenants in Common. 1 *Bulſt.* 113. And a Diverſity has been taken, that where the Reverſion comes to the Freehold, the Jointure is deſtroyed, but when the Freehold comes to him in Reverſion, and to another, it is otherwiſe. *Cro. Eliz.* 470, 743. Two Infants are *Jointenants*, and one of them makes a Feoffment of his Moiety; this will be a Severance of the *Jointenancy*. *Bro. Jointen.* 13. A *Jointenant* in Fee grants a Leaſe for Life, and then dies; it ſevers the Jointure: Tho' if the Tenant for Life die before either of the *Jointenants*, then it is *in Statu quo prius*. Co Litt. 193. If there be two *Jointenants* in Fee, and one makes a Leaſe for Life to a Stranger, the Freehold and Reverſion is ſevered from the Jointure: But in Caſe one ſuch *Jointenant* leaſes for Years, the Jointure of the Inheritance is not ſevered; and the other *Jointenant* ſhall have the Reverſion by Survivorſhip.

Lut. 729, 1173. Two *Jointenants* are of a Leaſe for twenty-one Years, and one lets his Part but for three Years, the Jointure is ſevered, ſo that Survivorſhip ſhall not take Place. 1 *Inſt.* 188, 192. In Caſe three Perſons are jointly intereſted in a Term, and one of them Mortgages his third Part; by this it has been held, the *Jointenancy* was ſevered. 1 *Salk.* 158. But where one *Jointenant* of Lands, in order to ſever the *Jointenancy*, and provide for his Wife, makes a Deed of Gift of his Moiety to her; this being made to the Wife, and ſo void in Law, cannot be made good. *Preced. Canc.* 124. If two *Jointenants* be of a Term, and one commits Felony, or is outlawed, &c. the Jointure will be ſevered; for the King ſhall have the Moiety by the Forfeiture: And if the *Jointenancy* is of perſonal Things, all will be forfeited. *Plowd.* 410. Where there are ſeveral *Jointenants* in Fee tail, and ſome of them ſuffer a common Recovery of the Whole, the Eſtate of the others is turn'd to a Right; and contingent Remainders may be deſtroy'd, and a new Eſtate gained thereby. *Sid.* 241. And if one *Jointenant* levies a Fine, it ſevers the *Jointenancy*; but it doth not amount to an actual Turning out of his Companion. 1 *Salk.* 286. A *Jointenant* in Fee makes a Leaſe for Years of the Lands to begin preſently, or *in futuro*, and dies, it is a Severance of the *Jointenancy*, and cannot be avoided by the Survivor; becauſe immediately by Force of the Leaſe, the Leſſee hath a Right in the ſame Land, of all that to the Leſſor belongs. *Litt.* 286. And it has been held, that where a *Jointenant* in Fee or for Life, makes a Leaſe for Years to commence after his Death, it is good againſt the Survivor. 2 *Cro.* 91. 2 *Nelſ. Abr.* 1037. But it has been alſo adjudged not good. *Moor* 776. *Noy* 157. See 2 *Vern* 323. If there are two *Jointenants* for Life, it is ſaid each of them hath an Eſtate for his own Life, and for the Life of his Companion; and for that Reaſon if one of them make a Leaſe, it ſhall continue not only during the Life of the Leſſor, but after his Death during the Life of his Companion, as long as the original Eſtate out of which it was derived: Though it hath been reſolved, that ſuch a *Jointenant* hath only an Eſtate for his own Life, and a Poſſibility of ſurviving his Companion to be entitled to his Part; and therefore if he grants over his Eſtate, that Poſſibility is gone; and if he dies, the Eſtate of the Grantee ſhall revert to him in Reverſion. 1 *Roll.* 441. *Jones* 55. 3 *Salk.* 204, 205 If one *Jointenant* grants a Rent-charge, &c. out of his Part, and dies, the Survivor ſhall have the whole Land diſcharged: For he hath the Land by Survivorſhip; and not Diſcent from his Companion. *Litt.* 286. 1 *Co. Inſt.* 184. And if one *Jointenant* in Fee make a Leaſe for Years, reſerving a Rent, and dieth; the Survivor ſhall have the Reverſion, but not the Rent, becauſe he claims by Title paramount. 1 *Inſt.* 185. *Jointenants*, as to the Poſſeſſion of Lands in Jointure, are ſeiſed by Intireties of the Whole, and of every Part equally, (and the Poſſeſſion of one *Jointenant* is the Poſſeſſion of both) but as to the Right of the Land, they are ſeiſed only of Moieties, and therefore if one grant the Whole, a Moiety only paſſeth. 1 *Bulſt.* 3. *Cro. Eliz.* 809. *Jointenants* cannot ſingly diſpoſe of more than the Part that belongs to them; where they join in a Feoffment, in Judgment of Law each of them gives but his reſpective Part; and ſo it is of a Gift in Tail, Leaſe for Life, &c. And for a Condition broken, they ſhall only enter on a Moiety of the Lands. 1 *Inſt.* 186. Every *Jointenant* hath a Right as to his own Share, to ſeveral Purpoſes, as to give, leaſe, forfeit, &c. But a Deviſe of Land, whereof the Deviſor is jointly ſeiſed, is void; the Will not taking Effect till after Death, and the Title of the Survivor cometh by the Death. 1 *Inſt.* 186. *Litt.* 287. One *Jointenant* may leaſe to his Companion: But one *Jointenant* cannot make a Feoffment, or grant to another *Jointenant*; though he may releaſe. 1 *Vent.* 78. *Raym.* 187. By whatever Means one *Jointenant* comes to the Eſtate of his Companion, by Conveyance, &c. from him, it may enure by Way of Releaſe. 2 *Cro.* 649. Action of Treſpaſs or Trover may not be brought by one *Jointenant* againſt his Companion, becauſe the Poſſeſſion of one is the Poſſeſſion of the other. 1 *Salk.* 290. Before the Stat. 3 & 4 *Ann. c.* 16. one *Jointenant* had no Remedy againſt his Companion to recover Damages for what he had received more than his Share; and a *Jointenant* might prejudice his Companion in the Perſonalty, by Reaſon of the Privity and Truſt between them, though not in the Reality; but that Statute gives Action of Account to one *Jointenant* or Tenant in Common, his Executors or Adminiſtrators, againſt the other as Bailiff or Receiver, his Executors, &c. One *Jointenant* may diſtrain for Rent alone; and he may avow in his own Right, and as Bailiff to the others, but he cannot avow ſolely; and he may not bring Debt alone. 5 *Mod.* 73, 150. If a *Jointenant* in Fee-ſimple is indebted to the King, and dieth; the Lands cannot be extended in the Hands of the Survivor, who claimeth not from his Companion, but from the Feoffor, &c. 1 *Inſt.* 185. Where there are two *Jointenants*, and one is indebted to the King, and dieth, the other ſhall hold the Land diſcharged of the Debt: But if Husband and Wife have a Term jointly, and the Husband is indebted to the King, and dieth, in ſuch Caſe the Term ſhall be ſubject to the Debt, becauſe the Husband might have diſpoſed of the whole Eſtate. *Plowd.* 321. Judgment in Action of Debt is had againſt one *Jointenant* for Life, who before Execution releaſes to his Companion; adjudged that the Moiety is ſtill liable to the Judgment during the Life of the Releaſor; but if he had died before Execution, the Survivor ſhould have had the Land diſcharged of the Debt and Judgment. 6 *Rep.* 78. Husband and Wife were *Jointenants*, and Action was brought againſt the Husband alone, who made Default; thereupon the Wife prayed to be received; but it was not allowed, becauſe ſhe was not a Party to the Writ; but he in Reverſion may be received, and plead *Jointenancy* in Abatement of the Writ. *Moor* 242. If a Feme Sole and *A. B.* purchaſe a Term for Years jointly, and afterwards they intermarry, the *Jointenancy* continues. *Dyer* 318. 2 *Nelſ. Abr.* 1035. And where there are two Women *Jointenants* of a Leaſe for Years, and one taketh Husband, and dies, the Term ſhall ſurvive; if the Husband hath not aliened her Part, and ſevered the Jointure: But it is otherwiſe in Caſe of Goods, veſted in the Husband by Marriage. 1 *Inſt.* 185. If a *Jointenant* doth not alienate his Part, to bar the Survivorſhip; *Jointenants* ſometimes enter into Covenants not to take Advantage of each other by Survivorſhip. *Wood's Inſt.* 148. When there are two *Jointenants*, and one aliens his Part, the Alienee and the other *Jointenant* are Tenants in Common; for they claim by ſeveral Titles. *Litt.* 292, 319, 321. And *Jointenants* and Tenants in Common of Inheritance, by Statute are to make Partition, as Coparceners; alſo *Jointenants* and Tenants in Common for Life or Years, may be compelled to do the ſame by Writ of Partition, &c. 31 *H.* 8. *c.* 1. 32 *H.* 8. *c.* 32. 8 & 9 *W.* 3. *c.* 31.

The *King* cannot be *Jointenant* with any Perſon, becauſe none can be equal with him. 1 *Inſt* 1. *Finch* 83. And a Corporation cannot be *jointly* ſeiſed of any Eſtate with another. 2 *Lev.* 12.

Jointures of Lands. A *Jointure* is a Settlement of Lands and Tenements made to a Woman in Conſideration of Marriage; or it is a Covenant, whereby the Husband or ſome Friend of his, aſſureth to the Wife, Lands or Tenements, for Term of her Life: It is ſo called, either becauſe it is granted

Ratione Junctura in Matrimonio, or for that Land in Frank Marriage was given *jointly* to Huſband and Wife, and after to the Heirs of their Bodies, whereby the Huſband and Wife, were made as it were *Jointenants* during the Coverture. 3 *Rep.* 27. By ſome a *Jointure* is defined to be a Bargain and Contract of Livelihood, adjoined to the Contract of Marriage; being a competent Proviſion of Freehold Lands or Tenements, *&c.* for the Wife, to take Effect after the Death of the Huſband, if ſhe herſelf is not the Cauſe of the Determination or Forfeiture of it. 1 *Inſt.* 36. 4 *Rep.* 2, 3. And to the Making of a perfect *Jointure* within the Statute 27 *H.* 8. *c.* 10. to bar Dower, ſeveral Things are to be obſerved: 1. It muſt be made to take Effect for the Life of the Wife in Poſſeſſion or Profit, preſently after the Deceaſe of her Huſband. 2. It is to be for the Term of her own Life, or a greater Eſtate; but it may be limited to continue no longer than ſhe remains a Widow, *&c.* 3. It muſt be made for herſelf, and to none other in Truſt for her. 4. It is to be expreſſed to be in Satisfaction of her whole Dower, and not a Part of it. 5. It may be made before or after Marriage: If it be made before, the Wife cannot waive it, and claim her Dower at Common Law; but if it be made after Marriage, ſhe may, at the Huſband's Death; unleſs the *Jointure* be made by Act of Parliament. 1 *Inſt.* 36. 4 *Rep.* 1. All other Settlements in Lieu of *Jointure*, not made according to the Statute, are *Jointures* at Common Law, and no Bars to claim of Dower: And a *Jointure* was no Bar of Dower before this Statute; as a Right or Title to a Freehold cannot be barred by Acceptance of a collateral Satisfaction. 1 *Inſt.* 36. A Father made a Settlement to the Uſe of himſelf for Life, and afterwards to the Uſe of his Son and his Wife, for their Lives, for the *Jointure* of the Wife; this was adjudged no *Jointure* to bar the Wife of her Dower, becauſe it might not commence immediately after the Death of the Huſband, who might die in the Life-time of the Father. 2 *Cro.* 489. So if a Feoffment be made to the Uſe of the Huſband for Life, Remainder to another for Years, Remainder to the Wife for Life for her *Jointure. Ibid.* But a Feoffment in Fee upon Condition that the Feoffee ſhall make another Feoffment to the Uſe of the Son of the Feoffor, and to his the Son's Wife in Tail, Remainder to the right Heirs of the Feoffor, which Feoffment is made accordingly; this is a good *Jointure* within the Statute, and Bar to the Dower of the Wife. *Moor* 28 An Eſtate ſettled in *Jointure*, coming from the Anceſtors of the Wife, and not of the Purchaſe of the Huſband or his Anceſtors, is not within the Statute 11 *H.* 7. as to Diſcontinuances, Alienations, *&c.* Where a Father of the intended Wife, in Conſideration of Marriage, *&c.* covenanted to aſſure Lands to the Huſband and Wife, his, the Covenantor's Daughter, and the Heirs of her Body, *&c.* this was held no *Jointure*, within the Meaning of the Statute 11 *H.* 7. *c.* 20. being an Advancement of the Woman by her own Father. 2 *Cro.* 264. 2 *Lill. Abr.* 80. And an Eſtate in Fee-ſimple conveyed to a Woman for her *Jointure*, was not any *Jointure* within that Statute; which never extended to Lands granted to Women in Fee: But an Eſtate in Fee, conveyed to a Woman for her *Jointure*, and in Satisfaction of her Dower, is a *Jointure* within the Statute 27 *H.* 8. 4 *Rep.* 3. Yet an Eſtate for Life is the uſual *Jointure:* And an Eſtate for Life upon Condition, may bar the Wife if ſhe accepts it; as a *Jointure* to a Woman on Condition to perform the Huſband's Will, was judged good, where the Wife entered and agreed to the Eſtate. 3 *Rep.* 1, 2, *&c.* If no Inheritance is reſerved to the Huſband and his Heirs, but the Eſtate is limited to the Wife for Life, or in Tail, the Remainder to a Stranger; it is not a *Jointure* within the Stat. 11 *H.* 7. though made by the Huſband or his Anceſtor. *Cro. Eliz.* 2. A Huſband covenanted to ſtand ſeiſed of Lands, to the Uſe of himſelf and his Heirs, till the Marriage ſhould take Effect; and afterwards to himſelf, his Wife, and their Heirs; and it was adjudged a good *Jointure* within the Statute 27 *H.* 8. *Dyer* 248. A Deviſe to a Wife for Life, or in Tail, for her *Jointure*, is good within this Statute: But a Deviſe to a Wife generally, without expreſſing what Eſtate, is not good; becauſe it cannot be averred to be for her *Jointure.* 3 *Rep.* 1. Though where an Aſſurance was made to a Woman, and it was not expreſſed to be made for her *Jointure*; it was held it might be averred to be made for that Purpoſe, which is not traverſable. *Owen* 33. If Land is deviſed by the Huſband to the Wife by Will, it is but a Benevolence: Yet if a Huſband deviſes Land to his Wife, for Life, *&c.* as a *Jointure* in Satisfaction of Dower, and ſhe accepts it after his Death, ſhe will be barred. *Bro. Dow.* 69. 4 *Rep.* 4. *Dyer* 220. A Man makes his Wife a *Jointure* after Marriage; and afterwards by Will deviſes, that ſhe ſhall have a third Part of all his Lands, with her *Jointure*; here the Wife will have the third Part of all as a Legacy, and if ſhe waves her *Jointure*, ſhe may have a third Part of the Reſidue for Dower. *Dyer* 62. If a Maſter in Conſideration of Service done by his Servant, grants Lands to the Servant and a Woman he intends to marry, and the Heirs of their Bodies; creating an Eſtate-tail; this is not a *Jointure*; not being a Gift of the Huſband, or any of his Anceſtors, but of his Maſter, and in Conſideration of Service, which will not make the Huſband ſuch a Purchaſer as the Law requires. *Moor* 683. But as to Conſiderations, if an Eſtate is ſettled in *Jointure* upon a Woman, in Conſideration of Money paid, and alſo of a Marriage to be had; the Marriage ſhall be looked upon to be the Conſideration. *Cro Jac.* 474. A Huſband, Tenant in Tail, Remainder to his Wife for Life, makes a Feoffment in Fee to the Uſe of himſelf and his Wife for Life, for her *Jointure*; it is no Bar to the Wife's Dower, becauſe it may be avoided by a *Remitter* to her firſt Eſtate for Life. *Moor* 872. If Lands are conveyed to a Woman before Marriage, in Part of her *Jointure* only, and after Marriage other Lands are granted in full; it is ſaid ſhe may waive and refuſe the Lands conveyed to her after Coverture, and retain her firſt *Jointure* Lands and Dower alſo 3 *Rep.* 1, 5. 2 *Nelſ. Abr.* 1039. Where a *Jointure* is made of Lands, according to the Direction of the Statute of *H.* 8. before Coverture, and after the Huſband and Wife alien them by Fine, ſhe ſhall not have Dower in any other Lands of her Huſband; but 'tis otherwiſe where the *Jointure* is made after Marriage, when the Wife's Eſtate is waiveable, and her Election of chooſing comes not till the Death of the Huſband. 1 *Inſt.* 36. A Man levies a Fine of his Land, and it is granted back again to him and his Wife for her *Jointure*, and to the Heirs of the Huſband; then he and his Wife levy a Fine to another Uſe, the Wife if ſhe ſurvive her Huſband, will have Dower notwithſtanding the Fine. 1 *And* 350. If the Huſband make a Leaſe of Lands to his Friends, for any Number of Years, in Truſt for his Wife and Children, that ſhe ſhall have 100*l.* a Year out of it, or in any ſuch Manner; by this ſhe may have the Proviſion, which is no *Jointure*, and likewiſe her Dower. By *Bridgman* Ch. Juſt. An Eſtate is made to a Huſband in Tail, with Remainder to the Wife for Life, and Remainder to others; this is not ſuch a *Jointure*, as with her Acceptance within the Statute will hinder her from Dower; and though the Huſband die without Iſſue, it will not help it, but the Wife ſhall be endowed in his other Land: But if the Eſtate were made to the Huſband and Wife for their Lives, it would be otherwiſe. 13 *Jac.* 1. *B. R.* 2 *Shep. Abr.* 74. After the Death of the Huſband,

band, the Wife may enter into her *Jointure*, and is not driven to a real Action, as ſhe is to recover Dower by the Common Law; and upon a lawful Eviction of her *Jointure*, ſhe ſhall be endowed according to the Rate of her Husband's Lands, whereof ſhe was dowable at Common Law. 1 *Inſt.* 37 *Stat.* 27 *H.* 8. If ſhe be evicted of Part of her *Jointure*, ſhe ſhall have Dower *pro tanto.* A Wife's *Jointure* ſhall not be forfeited by the Treaſon of the Husband: But Feme Coverts committing Treaſon or Felony, may forfeit their Jointures; and being convict of Recuſancy, they ſhall forfeit Two Parts in Three of their *Jointures* and Dower, by Statute 3 *Jac.* 1. *c.* 4. If a Woman conceals her *Jointure*, and brings Dower and recovers it, and then ſets up her *Jointure*, ſhe is barred of her *Jointure*; and by bringing Writ of Dower for her Thirds, the Wife waives the Benefit of Entry into Lands, ſo as to hold them in *Jointure*. Cro. Eliz. 128, 137. 3 Rep. 5. See *Marriage.*

Jointreſs or **Jointureſs**, Is ſhe who hath an Eſtate ſettled on her by the Husband to hold during her Life, if ſhe ſurvive him. 17 *H.* 8 *c.* 10. 1 *Inſt* 46. When Eſtates ſettled on a Wife are a *Jointure*, if the *Jointreſs* makes any Alienation of them by Fine, Feoffment, *&c.* with another Husband, it is a Forfeiture of the ſame; but if they are not a Jointure by Law, it is otherwiſe. 2 *Nelſ.* 1040. A *Jointreſs* within the Statute may make a Leaſe for forty Years, *&c.* if ſhe ſo long live; and alſo for Life, and be no Forfeiture, though ſhe levies a Fine *Sur Cognizance de Droit*, *&c.* *Cro. Jac.* 688. 3 *Rep.* 50. 1 *Lill.* 81. In other Caſes, if ſhe levies a Fine, it is a Forfeiture; and if a *Jointreſs* within the Statute 11 *H.* 7. *c.* 20. ſuffer a Recovery covinouſly to bar the Heir, the Heir may enter preſently, *&c.* 2 *Leon.* 206. 1 *Plowd.* 42.

Jour, (Fr.) A Day, uſed in Heads of our old Law; *touts jours* for ever. *Law Fr. Dict.*

Journal, Is a Day-Book or Diary of Tranſactions, uſed in many Caſes: As by Merchants and other Tradeſmen in their Accounts; by Mariners in Obſervations at Sea, *&c.*

Journals of Parliament, Are not Records, but Remembrances, and have been of no long Continuance *Hob. Rep.* 109.

Journchoppers, Were Regrators of *Yarn*, which formerly perhaps was called *Journ:* They are mentioned in the Stat. 8 *H.* 6. *c.* 5.

Journeyman, (From the Fr. *Journée, i. e.* A Day, or Day's Work) Was properly one that wrought with another by the Day; though it is extended by Statute to thoſe alſo that covenant to work with others in their Trades or Occupations by the Year. 5 *Eliz.* *c.* 4.

Journeys Accounts, (*Dietæ Computatæ*) Is a Term in the Law thus underſtood; if a Writ abates by the Death of the Plaintiff or Defendant, or for falſe *Latin*, Want of Form, *&c.* the Plaintiff ſhall have a new Writ by *Journeys Accounts*, *i. e.* within as little Time as he poſſibly can after the Abatement of the firſt Writ; and this ſecond Writ ſhall be a Continuance of the Cauſe, as if the firſt Writ had not been abated. *Terms de Ley* 414. When the new Writ is purchaſed, which muſt be *recenter*, the Plaintiff is to recite in an Entry upon the Roll, that the former Writ was abated, and ſhew for what: *Super quo per Dietas Computat. recenter tulit quoddam aliud Breve*, *&c.* 6 *Rep.* 10. This Writ is to be brought preſently; and fifteen Days is held a convenient Time for the Purchaſe of the new Writ. 2 *Lill. Abr.* 83. 1 *Lut.* 297. Judicial Writs ſhall never be had by *Journeys Accounts*; becauſe they never abate for Form. 6 *Rep.* 10. The Abatement of the Writ muſt be without the Default of the Plaintiff, or a ſecond Writ may not be purchaſed by *Journeys Accounts:* If a Writ abates for the Plaintiff's Default, in his miſtaking the Name of the Vill, *&c.* he ſhall not have a Writ of *Journey's Accounts*; but where it abates by Default of the Clerk, for any Variance or Want of Form, in ſuch Caſe he may have it. 6 *Rep* 10. And when an Outlawry is diſcharged or reverſed, the Plaintiff may have Writ of *Journeys Accounts*; for there is no Default in him. *Cro. Jac.* 590. The Writ muſt be brought for the ſame Thing, and in the ſame Court, as the firſt Writ.

Ipſo Facto, Is where the ſame Perſon obtains Two or more Preferments in the Church with Cure, not qualified by Diſpenſation, *&c.* the firſt Living is void, *ipſo facto, viz.* without any declaratory Sentence, and the Patron may preſent to it. *Dyer* 275. And there is not only *Deprivation* of a Clergyman *ipſo facto*; but for Crimes in ſtriking Perſons in a Church or Church-yard, the Offenders are to be excommunicated *ipſo Facto.* *Stat.* 5 *&* 6 *Ed.* 6. *c.* 4. An *Eſtate* or Leaſe may be *ipſo facto* void by Condition, *&c.* 1 *Inſt* 45, 215.

Ipſwich, The Bailiffs and Port-men, *&c.* of *Ipſwich*, may tax every Houſe in reaſonable Sums to be yearly paid, towards finding a Miniſter within every Pariſh, and for the Reparation of the Churches: Alſo the Streets there ſhall be paved, by the Landlords of Houſes, or Tertenants, under certain Penalties. Stat. 13 *Eliz.* *c.* 24.

Ire ad largum, To go at large, to eſcape, or be ſet at Liberty. *Blount.*

Ireland, Is a diſtinct Kingdom from *England*, but ſubordinate to it in Government; and by *Poyning's Law* enacted in *Ireland*, *Anno* 10 *Hen.* 7. all the Statutes of *England*, till that Time were declared in Force in *Ireland*; and by ſpecial Words our Statutes ſtill may bind the People of *Ireland*, notwithſtanding they have Parliaments of their own, who make Laws and Statutes, being affirmed here by the King and Council. 1 *Inſt.* 141. 2 *Inſt.* 2. 3 *Inſt.* 18. In the Proceedings of the *Iriſh* Parliament; firſt the Lieutenant and Council certify to the King the Cauſes and Conſiderations of all ſuch Acts, as ſeem good to them to be paſſed in Parliament; and Licence under the Great Seal of *England*, is had and obtained to ſummon and hold a Parliament in *Ireland:* If the Acts are affirmed, or altered or changed here, they are tranſcribed and returned into *Ireland* under the Great Seal; and all that paſſes ought to be inrolled here in the Chancery. 12 *Rep.* 111, 112. Treaſon committed in *Ireland*, by an *Iriſh* Peer, is not triable in *England*, becauſe he is entitled to a Trial by his Peers, which cannot be in *England*, but *Ireland.* *Dyer* 360. But the Houſe of Lords of *England*, have Power to reverſe or affirm the Decrees of the Court of Chancery, *&c.* of *Ireland:* And the *King's Bench* here may reverſe a Judgment given in *B. R.* in *Ireland*, by directing a Writ of Error to the Chief Juſtice there, to ſummon the Party to appear here, *&c.* By Statute 17 *Ed.* 1. *c.* 1. No Pardon for the Death of a Perſon, or for Felony, ſhall be granted by the Juſtices of *Ireland*, but at the King's Command, and under his Seals. By 34 *Ed.* 3. *c.* 18. all Kinds of Merchandizes may be exported and imported from and to *Ireland*, by Aliens as well as Denizens: But Wool, and Woollen Manufactures, *&c.* are prohibited to be exported from thence into foreign Parts by a modern Statute. And by the 32 *Car.* 2. *c.* 2. Cattle, Butter, Cheeſe, *&c.* are not to be imported from *Ireland* into this Kingdom, on Pain of Forfeiture to the Poor. The Statute 1 *W. & M.* *c.* 9. enacted and declared, That the pretended Parliament aſſembled at *Dublin*, was an unlawful Aſſembly; and that all Acts done by them are void: All Cities, Boroughs, *&c.* were reſtored by this Statute to their Privileges, and the Proceedings againſt them vacated; and all Proteſtants reſtored to their Poſſeſſions, *&c.* By 3 *W. & M.* *c.* 2. Members of Parliament, Officers in the Government, Eccleſiaſtical Perſons, Lawyers, *&c.* in *Ireland*, are to take the Oaths, or be liable to

Forfeitures. The Statute 1 *Ann. c.* 32. ordains, that Perſons educated in the Popiſh Religion in *Ireland*, of eighteen Years of Age, ſhall take the Oaths, or be diſabled to take Lands by Deſcent, Deviſe, *&c.* Proteſtant Families being *Palatines*, ſettled in *Ireland*, are declared Naturalized on their taking the Oaths to the Government. 1 *Geo.* 1. *c.* 29. And by 6 *Geo.* 1. *cap.* 5 the Juriſdiction of the *Houſe of Lords in Ireland* to reverſe Judgments or Decrees given in the Courts of that Kingdom, was wholly taken away. See Stat. 4 *Geo.* 2. *cap.* 15.

Iriſhmen, Coming to live in *England*, by an antient Statute, were to give Security for their Good Behaviour. 2 *Hen.* 6. *c.* 8.

Iron, Made in this Kingdom, or brought into *England* and ſold, ſhall not be exported, on Pain of forfeiting the Value; and Juſtices aſſigned by the King have Power to enquire of ſuch as ſell *Iron* at too dear a Price, and puniſh them. 28 *Ed.* 3. *c.* 5. None ſhall convert to Coal or other Fuel, for the making of *Iron* Metal, any Trees of ſuch a Size; or within a certain Compaſs of *London*, under Penalties by Statute: Nor ſhall any new *Iron* Mills be ſet up in *Suſſex*, *Surrey* or *Kent*. 1 *Eliz. c.* 15. 13 *&* 27 *Eliz. Engliſh Iron* may be exported, by Stat. 5 *&* 6 *W. & M. c.* 17.

Irony In *Libels*, makes them as properly Libels as what is expreſſed in direct Terms. *Hob.* 215. 1 *Hawk* 193, 194.

Irregularity, (*Irregularitas*) Signifies Diſorder, or going out of Rule: And in the *Canon Law*, it is uſed for an Impediment to the Taking of *Holy Orders*; as where a Man is baſe born, notoriouſly defamed of any Crime, where he is maimed, or much deformed in Body, *&c.*

Irreplebiable or **Irreplebiſable**, That neither may nor ought to be replevied or delivered on Sureties. 13 *Ed.* 1. *c.* 2. It is againſt the Nature of a Diſtreſs for Rent, to be *Irreplevisſable.* 1 *Inſt.* 145.

Iſinglaſs, A Kind of Fiſh Glue, brought from *Iſeland*, uſed by ſome Perſons in the Adulterating of Wine; but for that prohibited by Stat. 12 *Car.* 2. *cap.* 25.

Iſle, (*Inſula*) Is Land incloſed in and environed with the Sea, or freſh Water. There are ſeveral Iſlands belonging to *England*; as the Iſles of *Jerſey* and *Guernſey*, *Iſle of Man*, *&c.* The Iſles of *Jerſey* and *Guernſey* are not bound by our Acts of Parliament, except they are ſpecially named; nor do our original Writs run into thoſe Iſlands: But the King's Commiſſion under the Great Seal runs there, to redreſs any Injuries or Wrongs; yet the Commiſſioners muſt judge according to the Laws and Cuſtoms of thoſe *Iſles*: And for Controverſies ariſing in Law, among the King's Subjects in the *Iſles* of *Jerſey* and *Guernſey*, *&c.* the King and his Privy Council are the proper Judges, without Appeal. 4 *Inſt.* 286, 287. *Wood's Inſt.* 2. 458. Inhabitants of thoſe *Iſles* of *Jerſey* and *Guernſey*, may import into *Great Britain*, Goods of their own Growth and Manufacture, Cuſtom free. Stat. 3 *Geo.* 1. *c.* 4. The *Iſle of Man* is a diſtinct Territory from *England*, and out of the Power of our Chancery, or of Original Writs which iſſue from thence; it has been granted by Letters Patent under the Great Seal to divers Subjects, and their Heirs, and hath peculiar Laws and Cuſtoms: And in the Caſe of the *Earl of Derby*, it was adjudged, that no Man had any Inheritance in this *Iſle*, but the Earl and the Biſhop; and that they are governed by Laws of their own, ſo that no Statute made in *England* did bind there without expreſs Words, in the ſame Manner as in *Ireland.* 1 *Inſt*, 9. 4 *Inſt.* 284. 7 *Rep.* 21. 2 *And.* 115. By Statute, the Commiſſioners of the Treaſury are impowered to treat with the *Earl of Derby* for the Purchaſe of all Right to the ſaid *Iſland*, for the Uſe of his Majeſty: And no Wine, Brandy, Tobacco, *Eaſt-India* Goods, *&c.* ſhall be brought from the *Iſle of Man* into *Great Britain* or *Ireland*, on Pain of Forfeiture, *&c.* 12 *Geo.* 1. *c.* 28. An *Iſland* in the Sea that has no Owner, by the Law of Nations, belongs to him that firſt finds it. *Juſtin. Inſt. lib.* 2. *Vide* Plantations.

Iſlet, A ſmall Iſland. See *Ilet.*

Iſſue, (*Exitus*, from the Fr. *Iſſuer*, i. e. *Emanare*) Hath divers Significations in Law, as ſometimes it is taken for the Children begotten between a Man and his Wife; ſometimes for Profits growing from Amerciaments and Fines; and ſometimes for the Profits of Lands and Tenements: But it generally ſignifies the Point of Matter, *iſſuing* out of the Allegations and Pleas of the Plaintiff and Defendant in a Cauſe, to be tried by a Jury of twelve Men. 1 *Inſt.* 126. 11 *Rep* 10. The *Iſſues* concerning Cauſes are of two Kinds; upon Matter of Fact, or Matter of Law: An *Iſſue* in Fact is where the Plaintiff and Defendant have agreed upon a Point to be tried by a Jury; and *Iſſue* in Law is where there is a Demurrer to a Declaration, Plea, *&c.* and a Joinder in Demurrer, which is an *Iſſue* at Law to be determined by the Judges. 1 *Inſt.* 71, 72. As to *Iſſues* of Fact, *viz.* whether the Fact is true or falſe, which are triable by the Jury, they are either General or Special; *General*, when it is left to the Jury to try whether the Defendant hath done any ſuch Thing as the Plaintiff lays to his Charge; as when he pleads *Not guilty* to a Treſpaſs, *&c.* *Special* is when ſome ſpecial Matter, or material Point alledged by the Defendant in his Defence, is to be tried; as in Aſſault and Battery, where the Defendant pleads that the Plaintiff ſtruck firſt, *&c.* 1 *Inſt.* 126. And when ſpecial Matter is alledged by the Defendant, both Parties join thereupon, and ſo go to a Trial by the Jury, if it be *Quæſtio facti*; or to a Demurrer, if it be *Quæſtio juris.* There is alſo a General *Iſſue*, wherein the Defendant may give the ſpecial Matter in Evidence, for Excuſe or Juſtification, by Virtue of ſeveral Statutes, made for avoiding of Prolixity and Captiouſneſs of Pleading; and upon the General *Iſſue* in ſuch Caſes, the Defendant may give any Thing in Evidence, which proves the Plaintiff hath no Cauſe of Action. 1 *Inſt.* 283. Matter amounting to the General *Iſſue*, and ſpecial Matter of Juſtification, have been joined in one entire Plea, and held good. 3 *Lev* 41. And where there is an *Iſſue* upon Not guilty, and there are other *Iſſues* upon Juſtifications, the Trial of the General *Iſſue* of Not guilty is but Matter of Form, and the Subſtance is upon the ſpecial Matter. *Cro. Jac.* 599. In real Actions, Cauſes grown to *Iſſue* are tried by a Jury of twelve Men of the County where the Cauſe of Action ariſes; and in criminal Caſes, *Iſſues* ought to be tried in the County where the Offence was committed; but this hath admitted of ſome Alteration by Statute. 3 *Inſt.* 80, 135. 2 *Rep.* 93. The Place ought not to be made Part of the *Iſſue*, in a tranſitory Action; it is not material, as it is in Real and Mix'd Actions. *Trin.* 24 *Car. B. R.* If the Place is material, and made a Part of the *Iſſue*, there the Jury cannot find the Fact in another Place, becauſe by the ſpecial Pleading, the Point in *Iſſue* is reſtrained to a certain Place; but upon the General *Iſſue* pleaded, the Jury may find all local Things in another County; and where the Subſtance of the *Iſſue* is found, it is good, and the Finding more may be Surpluſage. 6 *Rep.* 46. If an *Iſſue* is of two Matters in two Counties, Trial may be in one County, by the Stat. 21 *Jac.* for that Statute extends to Caſes where the Matter in *Iſſue* ariſes in two Counties, and the Trial is by one only, as well as where the Matter in *Iſſue* ariſes in two Places in one County, and the Trial is by one. 2 *Lev.* 121. 2 *Nelſ. Abr.* 1050. Every *Iſſue* is to be joined in ſuch a Court that hath Power to try it, otherwiſe the *Iſſue* is not well joined; for if the Cauſe cannot be tried, the *Iſſue* is fruitleſs, and if it be tried, the Trial is *coram non judice.* 21 *Car. B. R.* 2 *Lill. Abr.* 84. Where an *Iſſue* is not joined, there cannot be a good Trial, nor ought Judgment to be given. 2 *Nelſ. Abr.* 1042. All *Iſſues* are to be certain and ſingle, and joined upon the moſt material Thing in the Cauſe; that all the Matter in Queſtion between the Parties may be tried. 23 *Car. B. R.* 2 *Lill.* 85. An immaterial *Iſſue* joined, which will not bring the Matter in Queſtion to be tried, is not helped after Verdict by the Statute of *Jeofails*; but there muſt be a Repleader: But an unformal *Iſſue* is helped. 18 *Car.* 2. *B. R.* The Statute 32 *Hen.* 8. *c.* 30. helps Misjoining of *Iſſues.* A Repleader may be awarded after Verdict, for the Badneſs and Incertainty of the *Iſſue:* And a Judgment may be reverſed in Error, being on an immaterial *Iſſue.* 2 *Lutw.* 1608. 2 *Lev.* 194. On a joint Treſpaſs by many Perſons, there muſt be only one *Iſſue* joined: And if ſeveral Offences are alledged againſt the Defendant, he ought to take all but one by *Proteſtation*, and offer an *Iſſue* upon that one, and no more. *Moor* 80. But in Action for Damages, according to the Loſs which the Plaintiff hath ſuſtained, every Part ought to be put in *Iſſue.* 1 *Saund.* 269. In Action upon the Caſe for Service done for a Time certain, the Defendant ought to put in *Iſſue* all the Time alledged in the Declaration. 2 *Lutw.* 268. And upon a General *Iſſue* in Waſte, the Plaintiff muſt ſhew his Title. *Ibid.* 1547. Though when any ſpecial Point is in *Iſſue*, the Plaintiff is not obliged to ſet forth any other Matter. *Cro. Eliz.* 320. If there are ſeveral Things in a Declaration, upon which an *Iſſue* may be joined, and it is joined in any of them, it is good; and an Affirmative and an implied Negative will make a good *Iſſue. Style* 151, 210. There muſt be in every *Iſſue* an Affirmation on the one Part, as that the Defendant owes ſuch a Debt, &c. and a Denial on the other Part, as that he oweth not the Debt, &c. And though the Matter contradicts, yet there muſt be a Negative and Affirmative of it, to make a right *Iſſue.* 1 *Ventr.* 213. Alſo a Negative ſhould be as broad and full as the Affirmative, or it is no Negative to make an *Iſſue*; as if a Defendant pleads a Grant of four Acres, and two Acres only are denied, &c. 1 *Roll. Rep.* 86. It has been held, that *Iſſue* ought not to be joined on a Traverſe only, without anſwering in the Affirmative, &c. 2 *And.* 6. 102. But where the Matter which is the *Giſt* or Cauſe of the Action is found, it has been adjudged good after Verdict, though there was no Negative and Affirmative to make the *Iſſue*; as where in Debt upon Bond the Defendant pleads Payment, and concludes to the Country, without giving the Plaintiff Opportunity to deny the Payment, if the Jury in ſuch Caſe find the Money paid, it is good after Verdict. *Sid.* 341. If ſeveral *Iſſues* are joined, and the Jury give a Verdict but as to one of them, the Whole is diſcontinued: And where there are two *Iſſues* joined, one good and the other bad, if entire Damages are given upon the Trial on both *Iſſues*, it will be Error; but if ſeveral Damages are found, the Plaintiff may releaſe the bad Damages, and have Judgment for the Reſt. 2 *Lill. Abr.* 87, 88. And it is ſaid Judgment may be entered as to one Part of the *Iſſue*; and a *Nolle proſequi* to another Part of the ſame *Iſſue*, where it may be divided. *Paſ. h.* 23 *Car. B. R.* There may be a Plea to *Iſſue* to Part, and a Demurrer to Part; which have no Dependance on each other. 1 *Saund.* 338. Where the Declaration of the Plaintiff is good, and the Plea of the Defendant is ill; if the Plaintiff in his Replication tender an *Iſſue* upon ſuch ill Plea, and a Trial is had, and it is found for the Plaintiff, he ſhall have Judgment. *Cro. Car.* 18. And when a Plea is naught, that the Plaintiff might have demurred upon it, and he doth not, but takes *Iſſue*, and it is found for the Defendant; this is aided by the Statute of *Jeofails*, and the Defendant ſhall have Judgment: So likewiſe where the Replication is naught, and *Iſſue* is taken upon it, and found for the Plaintiff, he ſhall have Judgment. *Cro. Eliz* 455. *Cro. Jac.* 312. If *Iſſue* be taken on a dilatory Plea, &c. and found againſt the Defendant, final and peremptory Judgment ſhall be given; but it is otherwiſe upon a Demurrer. *Raym.* 118. A good *Iſſue* is offered to the Defendant, he ought not to plead over; and if he plead over, the Plaintiff ſhall have Judgment. 1 *Saund.* 338, 318. If he does not join *Iſſue*, but demurs, it is the ſame. *Lutw.* A Plea being pleaded to the Plaintiff's Declaration, and the Plaintiff's Attorney's Hand ſet to it, then the *Iſſue* is joined between the Plaintiff and Defendant, and not before: And the Plaintiff's Attorney is alſo to be paid by the Defendant's Attorney for entering the Plea; and for Paper-Books, in ſpecial Pleadings, &c. 2 *Lill.* 87, 88. And when *Iſſue* is joined between the Parties, it cannot be afterwards waved, if it be a good *Iſſue*, without the Conſent of both Parties: But where the Defendant pleads the General *Iſſue*, and it is not entered, he may within four Days of the Term, wave that *Iſſue*, and plead ſpecially; and when the Defendant pleads in Abatement, he may at any Time after wave his Plea of ſpecial Matter, and plead the General *Iſſue*, unleſs there be a Rule made for him to plead as he will ſtand by it. 12 *W.* 3. *B. R.* 3 *Salk.* 211. If the Plaintiff neglects to enter the *Iſſue*, the Term it is joined, the Defendant in the firſt five Days of the next Term, may alter his Plea, and plead *de novo:* And if the Plaintiff will not try the *Iſſue* after joined, in ſuch Time as he ought by the Courſe of the Court, the Defendant may give him a Rule to enter it; which if he does not he ſhall be nonſuit, &c. 2 *Lill.* 84. In the Joining of *Iſſue*, the Common Law requires, 1ſt, a Plea ſufficient in Law; and 2dly, a Traverſe in contradictory Terms; otherwiſe the Verdict of the Jury is of no Force. *Jenk. Cent.* 69. And if the Tender of the *Iſſue* comes on the Part of the Plaintiff, the Form of it is; *And this he prays may be inquired by the Record*; or *by the Country*; and when on the Part of the Defendant, *And of this he puts himſelf upon the Country*; and *The Plaintiff likewiſe*, &c.

Iſſues on Sheriffs, Are for Neglects and Defaults, by Amercement and Fine to the King, levied out of the *Iſſues* and Profits of their Lands; and double or treble *Iſſues* may be laid on a Sheriff for not returning Writs, &c. But they may be taken off before eſtreated into the *Exchequer*, by Rule of Court, on good Reaſon ſhewn. 2 *Lill. Abr.* 89. *Iſſues* ſhall be levied on *Jurors*, for Non-appearance; though on reaſonable Excuſe proved by two Witneſſes, the Juſtices may diſcharge the *Iſſues.* Stat. 35 Hen. 8. cap. 6. See 1 *Keb.* 475.

Itinerant, (*Itinerans*) Travelling or taking a Journey: And thoſe were anciently called *Juſtices Itinerant*, who were ſent with Commiſſion into divers Counties to hear Cauſes.

Itinerary, (*Itinerarium*) A Commentary concerning Things falling out in Journies. *Law Lat. Dict.*

Jubilee, (*Annus Jubilæus*) The moſt ſolemn Time of Feſtival at *Rome*, when the Pope gives his Bleſſing and Remiſſion of Sins. It was firſt inſtituted by *Boniface* the 8th, in the Year 1300, who granted a plenary Indulgence and Remiſſion of Sins to all thoſe that ſhould viſit the Churches of St. *Peter* and St. *Paul* at *Rome* in that Year, and ſtay there fifteen Days; and this he ordered to be obſerved once in every hundred Years; which Pope *Clement* the 6th reduced to fifty Years, *Anno* 1350. and to be held upon the Day of Circumciſion of our Saviour: And *Urban* the 4th in the Year 1389, ordained it to be kept every thirty-three Years, that being the Age of our Saviour: After which, Pope

Sixtus the 6th reduced it to twenty-five Years. In Imitation of the Grand *Jubilee* of *Rome*, the Monks of *Chriſt-Church* in *Canterbury*, every fiftieth Year invited a great Concourſe of People to come thither, and viſit the Tomb of *Thomas Becket*. And King *Edw.* 3. in the fiftieth Year of his Age, which was 1362, cauſed his Birth-day to be obſerved at Court, in the Nature of a *Jubilee*; giving Pardons, Privileges, and other civil Indulgences.

Jubileus. Becauſe when the *Jubilee* was firſt inſtituted, it was ordered to be kept every hundred Years; therefore *Jubilæus* ſignified afterwards a Man one hundred Years old.

Judaiſm, (*Judaiſmus*) The Cuſtom, Religion, or Rites of the *Jews*: Alſo the Income heretofore accruing from the *Jews* to the King: And the Word *Judaiſm* was formerly uſed for a Mortgage; and ſometimes taken for Uſury. 9 *Ed.* 2.

Judge, (*Judex*) Is a Chief Magiſtrate in the Law, to try Civil and Criminal Cauſes, and puniſh Offences. He is appointed with a certain Juriſdiction; and our King hath the Nomination and Appointment of *Judges*. 2 *Inſt.* 56. A *Judge* at his Creation takes an *Oath*, That he will ſerve the King, and indifferently miniſter Juſtice to all Men, without Reſpect of Perſons; take no Bribe, give no Counſel where he is a Party, nor deny Right to any, though the King by his Letters, or by expreſs Words command the contrary, *&c.* and he is anſwerable in Body, Land and Goods. 18 *Ed.* 3. *c.* 1. *Judex eſt Lex Loquens*, and ought to judge by Laws, and not by Examples: By *Glanvil* a *Judge* is called *Juſticia in abſtracto*, becauſe he ſhould be as it were Juſtice itſelf. *Co. Lit.* 71. 7 *Rep.* 4. And all the Commiſſions of *Judges* are bounded with this Limitation, *Facturi quod ad Juſtitiam pertinet ſecundum Legem & Conſuetudinem Angliæ.* There are ancient Precedents of *Judges*, that were fined when they tranſgreſs'd the Laws, tho' commanded by Warrants from the King; and it is ſaid that Earl *Typteſt*, who was a Chancellor, was beheaded, for acting upon the King's Warrant againſt the Law. *Burnet's Rich.* II. *pa.* 38. The *Judges* are to give Judgment according to Law and what is alledged and proved: And they have a private Knowledge, and a judicial Knowledge, though they cannot judge of their own private Knowledge, but may uſe their Diſcretion; but where a Judge has a judicial Knowledge, he may and ought to give Judgment according to it. *Plowd.* 82. King *Henry* 4. demanded of *Judge Gaſcoigne*, if he ſaw one in his Preſence kill *A. B.* and another Perſon who was not culpable, ſhould be indicted of this, and found Guilty before him, what he would do in this Caſe; To which he anſwered, That he ought to reſpite the Judgment againſt him, and relate the Matter to the King, in order to procure him a Pardon; for there he cannot acquit him, and give Judgment according to his private Knowledge. *Ibid.* And the ſame King *Henry*, when his eldeſt Son the Prince, was by the Lord Chief Juſtice committed to Priſon, for a great Miſdemeanor, thanked God that he had a Son of that Obedience, and a *Judge* of that Courage and Impartiality. *Stow.* The King in all Caſes doth *judge* by his *Judges*; who ought to be of Counſel with Priſoners: And if they are doubtful or miſtaken in Matter of Law, a Stander-by may be allowed to inform the Court, as *Amicus Curiæ.* 2 *Inſt.* 178. Our *Judges* are to execute their Offices in proper Perſon, and cannot act by Deputy, or transfer their Power to others; as the *Judges* of Eccleſiaſtical Courts may. 1 *Roll. Abr.* 382. *Bro. Judges*, 11. Yet where there are divers *Judges* of a Court of Record, the Act of any one of them is effectual; eſpecially if their Commiſſion do not expreſly require more. 2 *Hawk.* 3. Though what a Majority rules when preſent, is the Act of the Court. If on a Demurrer or ſpecial Verdict, the *Judges* are divided in Opinion, two againſt two, the Cauſe muſt be adjourned into the *Exchequer Chamber.* 3 *Mod.* 156. And a Rule is to be made for this Purpoſe, and the Record certified, *&c.* 5 *Mod.* 335. In Fines levied all the *Judges* of *C. B.* ought to be particularly named: But Writs of *Certiorari* to remove Records out of that Court, *&c.* are directed to the Chief Juſtice, without naming his Companions. 1 *H.* 7. 27. *Jenk. Cent.* 167. When a Record is before the *Judges*, they ought *ex officio* to try it: And they are to take Notice of Statutes, and of the Terms, *&c.* *Ibid.* 298, 215. No *Judge* of any Court is compellable to deliver his Opinion before-hand, in Relation to any Quſtion which may after come judicially before him. 3 *Inſt.* 29. *Judges* of the Common Law, have no ordinary Juriſdiction to examine Witneſſes at their Chambers; tho' by Conſent of Parties, and Rule of Court, they may on Interrogatories; and ſome Things done by *Judges* at their Chambers, in Order to Proceedings in Court, are accounted as done by the Court. They are to have a Paper of the Cauſes, which are to be ſpoken to in Court, ſent to them by the Attornies the Day before ſpoken to, that they may be prepared; and where ſpecial and doubtful Matter ariſes upon reading the Record of a Cauſe, ſo that the *Judges* are not for the Preſent ſatisfied of the Law, they will order Paper-Books to be made and delivered them, by the Attornies on both Sides, containing Copies of the Record, that they may the better conſider of the Matters in Diſpute. 2 *Lill. Abr.* 90, 91. A *Judge* ſhall not be generally excepted againſt, or challenged; or have any Action brought againſt him, for what he does as *Judge.* 1 *Inſt.* 294. 2 *Inſt.* 422. And to kill a *Judge* of either Bench, or of Aſſiſe, *&c.* in his Place adminiſtring Juſtice, is Treaſon: Alſo drawing a Weapon only upon a *Judge*, in any of the Courts of Juſtice, the Offender ſhall loſe his Right-hand, forfeit his Lands and Goods, and ſuffer perpetual Impriſonment. 25 *Ed.* 3. *cap.* 2. 2 *Inſt.* 549. *Judges* are not in any Way puniſhable for a mere Error of Judgment: And no Action will lie againſt a *Judge* for an erroneous Judgment; or for a wrongful Impriſonment, *&c.* 2 *Hawk.* 4. 1 *Mod.* 184. The *Judges* of Courts of Record are freed from all Proſecutions whatſoever, except in the Parliament, where they may be puniſhed, for any Thing done by them in ſuch Courts as *Judges*; this is to ſupport their Dignity and Authority, and draw Veneration to their Perſons, and Submiſſion to their Judgments: But if a *Judge* will ſo far forget the Dignity and Honour of his Poſt, as to turn Solicitor in a Cauſe which he is to *judge*, and privately and extrajudicially tamper with Witneſſes, or labour Jurors, he may be dealt with according to the ſame Capacity to which he ſo baſely degrades himſelf. 12 *Rep.* 24. *Vaugh.* 138. *S. P. C.* 173. Bribery in *Judges* is puniſhable by Loſs of Office, Fine and Impriſonment; and by the Common Law, Bribery of *Judges* in Relation to a Cauſe depending before them, has been puniſhed as Treaſon. 1 *Leon.* 295. *Cro. Jac.* 65. 1 *Hawk.* 170. A *Judge* ignorantly condemns a Man to Death for Felony, when it is not Felony; for this Offence, the *Judge* ſhall be fined and impriſoned, and loſe his Office. *Jenk. Cent.* 162. If a *Judge* who hath no Juriſdiction of the Cauſe, give Judgment of Death and award Execution, which is executed, ſuch *Judge* is guilty of Felony; and alſo the Officer who executes the Sentence. *H. P. C.* 35. 10 *Rep.* 76. And if Juſtices of Peace, on Indictment of Treſpaſs, arraign a Man of Felony, and *judge* him to Death, and he is executed, it is Felony in them. *H. P. C.* 35. *Dalt. cap.* 98. A *Judge* ought not to *judge* in his own Cauſe, or in Pleas where he is Party. 8 *Rep.* 118. And no one ſhall be *Judge* of Aſſiſe in the County where born, or he doth inhabit, under the Penalty of 100 *l.* but this is altered by a late Statute; and is not to prejudice any

Judge in the Courts of *Weſtminſter*, in hearing and determining Aſſiſes in thoſe Courts; nor ſhall it extend to Officers in Corporations, but that they may be Juſtices of Aſſiſe, &c. in Places where they dwell. *Stat.* 33 *H.* 8. *cap.* 24. See 12 *Geo.* 2. *cap.* 27. The *Judges*, Serjeants and King's Attorney, ſhall be paid their Salaries by the Lord Treaſurer, at *Eaſter* and *Michaelmas.* 10 *H.* 6. And the Salary of the Chief Juſtice, uſed to be 1500 *l. per Annum*; and of the other *Judges*, no more than 1000 *l.* a Year; but now the former has 500 *l. per* Term, and the inferior *Judges* 375 *l.* each Term; to which they are intitled, though they do not ſit one Day in the Term. *Judges* and Officers in Courts, may be increaſed or diminiſhed, as Need ſhall require. *Stat.* 14 *E.* 3. *c.* 5.

Judger. In *Cheſhire*, to be *Judger* of a Town, is to ſerve on the Jury there. *Leiceſter*'s *Hiſt. Antiq.* 302.

Judgment, (*Judicium, quaſi Juris dictum*) Is the Determination or Sentence of the Judges upon the Suit, &c. and the antient Words of *Judgments* are, *Conſideratum eſt per Curiam*, &c. becauſe *Judgment* is ever given by the Court upon due Conſideration had of the Record and Matter before them. 1 *Inſt.* 39. Of *Judgments* ſome are final, and ſome not, &c. And a *Judgment* may be given not only upon Trial of the Iſſue; but by *Default*, *Nihil dicit*, *Confeſſion*, or on *Demurrer*; and *Outlawry* is a *Judgment* in it ſelf. 1 *Inſt.* 167. 2 *Inſt.* 236. *Finch* 457. There is likewiſe *Judgment* for *Departing in Deſpight of the Court*, without Leave in common Recoveries, &c. And after an Iſſue joined in a Cauſe to be tried by the Plaintiff and Defendant, the Plaintiff may, if he will, without going to Trial or any Verdict, accept of a *Judgment* from the Defendant, which *Judgment* muſt be by *Relicta Verificatione cognovit actionem*: But on this *Judgment* Error may be brought without putting in of Bail, which it may not on *Judgment* after Verdict. 2 *Lill. Abr.* 104. *Judgment* is ſometimes had with a *ceſſat Executio*; and if the Defendant gives a *Judgment*, with Stay of Execution, till a certain Day, the Plaintiff may notwithſtanding ſue forth a *Capias* or *Fieri facias* into the County where the Action is laid, returnable before the Day, to enable him at that Day to take a *Teſtatum* againſt the Defendant; though he ſhall not in that Caſe ſue out a *Capias* to warrant a *Scire facias* againſt the Bail. *Paſch.* 22 *Car.* 2. If Debt be brought againſt an Executor upon the Bond of the Teſtator, and he pleads *Plene Adminiſtravit*, this is a Confeſſion of the Debt; and the Plaintiff may have Judgment with a *Ceſſat Executio* till the Defendant hath Aſſets. 4 *Rep.* 2 *Nelſ. Abr.* 1052. On *Interlocutory Judgments*, upon dilatory Pleas, it is in many Caſes *Reſpondeat Ouſter*, to anſwer over; and if the Plaintiff or Defendant die after interlocutory *Judgment*, the Action ſhall not abate. *Stat.* 8 & 9 *W.* 3. *cap.* 10. *Judgment* upon a Demurrer to a Declaration, &c. is no Bar to any other Action; becauſe it is not on the Merits, and the Plaintiff may afterwards make his Declaration right, and then proceed. 2 *Lill.* 113. But other *Judgments* may be pleaded in Bar to any other Action for the ſame Cauſe; and *Judgment* in an inferior Court, may be alledged in Bar to an Action in a ſuperior Court. 2 *Lev.* 93. A *Judgment* on *Nil dicit*, in Caſe, Treſpaſs, or Covenant, &c. is not a perfect *Judgment* until Writ of Enquiry of Damages taken out and executed upon it; of which Notice is to be given the Defendant, and the Time of Execution, &c. But in Debt, it is a perfect *Judgment* as ſoon as ſigned, &c. and there needs no Writ of Enquiry. 2 *Lill.* 105. Where Damages are given upon a *Judgment* without Trial, there ſhall iſſue out a Writ of Enquiry of Damages; and when *Judgment* is given on Trial of the Iſſue, the Court gives Damages, without Writ of Enquiry. 1 *Inſt.* 167. *Judgment* final ought not to be given upon Default in real Actions; but a *Grand Cape* upon Default before Appearance, and a *Petit Cape* on Default after Appearance. 1 *Lev.* 105. In every Caſe the Party in *Judgment* ought to be *in Miſericordia*, or a *Capiatur* be againſt him; unleſs the Defendant comes *primo die placiti*, and confeſſes the Action; or it may be aſſigned for Error by either Party. *Cro. Jac.* 211. And if in Debt, Part is found for the Plaintiff, and the Defendant acquitted of the Reſidue, the *Judgment* muſt be *Quod Quer. in Miſericordia* for that Part whereof the Defendant is acquitted. *Cro. Eliz.* 699. But the Statute 4 & 5 *W.* & *M.* takes away the *Capiatur* in Treſpaſs, Aſſault, falſe Impriſonment, &c. and there is in Lieu thereof 6 *s.* 8 *d.* paid to the Secondary for the Fine before he ſigns *Judgment.* All *Judgments* given in any Court of Record, muſt be duly entered: The Plaintiff's Attorney, four Days after the *Poſtea* is brought into Court, if the Rule for *Judgment* is out, may enter *Judgment* for his Client by the Courſe of the Court. 2 *Lill. Abr.* 95. After a Rule to ſign *Judgment*, there ought to be four Days excluſive of the Day on which the Rule was made, before the *Judgment* is ſigned, that the Party may have a reaſonable Time to bring Writ of Error: In *C. B.* they never give Rules for ſigning *Judgment*, but ſtay till the *quarto die poſt*, which makes but four Days incluſive. *Mod. Caſ.* 241. A Plaintiff got his Judgment ſigned on the very Day, but it was not executed till after the ſixth Day, ſo that the Defendant had Time enough to bring a Writ of Error, or move any Thing in Arreſt of *Judgment*: But the Court of *B. R.* held the Signing of the *Judgment* to be irregular, it being before the Day allowed by the Rules of the Court; and though Execution was taken out afterwards, the *Judgment* was ſet aſide. 5 *Mod. Rep.* 205. *Judgment* cannot be entered until after the *Poſtea* is brought in and entered in the Office, and a Rule given thereupon for the Defendant to ſhew Cauſe why *Judgment* ſhould not be entered againſt him; and that he may have Liberty to find out what he can to arreſt the *Judgment.* 2 *Lill.* 115. If a *Diſtringas* is returnable within Term, and the Party, &c. is tried two or three Days only before the End of the Term, the *Judgment* ſhall be entered that very Term, though there be not four Days to move in Arreſt of *Judgment.* 1 *Salk.* 77. But if Verdict be given after Term, no *Judgment* can be given on it till the next Term following; for the *Judgment* is the Act of the Court, and the Court ſits not but in Term. *Mich.* 22 *Car. B. R.* If Verdict paſs for the Plaintiff, and he will not enter his *Judgment*; the Defendant by Motion of Court may oblige him to it. 2 *Lill. Abr.* 97. The Defendant may enforce the Plaintiff to enter his *Judgment*, to the End he may plead it to another Action. *Latch* 216. 1 *Danv.* 722. *Palm.* 281. *Judgments* are not only to be ſigned by a Judge, but entered of Record; before which they are not *Judgments*: And in a *Judgment* given to recover a Sum of Money, the Sum muſt be entered in Words at Length; and not in Figures, which may be eaſily altered; and a *Judgment* was reverſed, becauſe the Time when given was in Figures, and the Sum recovered expreſſed in Figures, &c. But the Court may amend their *Judgments* of the ſame Term, becauſe the Term is but as one Day in Law; though they may not do it in another Term. 2 *Lill.* 103. 3 *Lev.* 430. If a *Judgment* be unduly obtained, the Court will *vacate* the *Judgment*, and reſtore the Party damnified; if not puniſh the Offender: But it is againſt the Courſe of the Court to vacate a *Judgment* the laſt Day of the Term. *Paſch.* 1656. By Statute, if the Plaintiff die before *Judgment*, it ſhall not hinder the *Judgment* being entered, provided it be done within two Terms after Verdict. 17 *Car.* 2. *cap.* 8. A *Judgment* entered in *C. B.* ſhall relate to the *Eſſoin*-Day of the Term, and be a *Judgment* from that

Time: But a *Judgment* in *B. R.* ſhall relate only to the firſt Day of the Term. *Cro. Car.* 102. If a Rule be given for the Defendant to plead at a certain Day, and he do not plead accordingly, the Plaintiff may enter *Judgment* againſt him, without moving the Court; though in real Actions, and criminal Cauſes, on Indictments, &c. there muſt be Motion in Court for a peremptory Rule. 2 *Lill.* 116. Yet a Plaintiff, after he hath ſigned *Judgment* againſt the Defendant, may waive it if he will, and accept of a Plea from the Defendant. *Trin.* 23 *Car. B. R.* If a *Judgment* be obtained, but the Plaintiff doth not take out Execution within a Year and a Day, the *Judgment* muſt be revived by *Scire facias:* And if the *Judgment* be not above ſeven Years ſtanding, a *Scire facias* may be had to revive it without Motion. *Paſch.* 24 *Car. B. R.* If any Thing be entered in a *Judgment*, which is not mentioned in the Plaintiff's Declaration, the *Judgment* is not good. 2 *Lill.* 104. And where it appears upon the Record, that the Plaintiff hath no Cauſe of Action, he ſhall never have *Judgment*. 8 *Rep.* 120. Alſo if it appeareth to the Court that the Plaintiff hath recovered a Verdict without Cauſe of Action, the Court may give *Judgment* for the Defendant. 1 *Plow.* 66. Although it appear to the Court that the Defendant's Title is not good, if the Plaintiff in his Declaration hath not ſet forth a good Title for himſelf, the Court ſhall never give him *Judgment*. 2 *Lill.* 98. Tho' the Plaintiff deſtroys the Defendant's Title, if he gives him another Title by Pleading, &c. the Defendant ſhall have *Judgment*; for the Court are to judge upon the whole Record. 8 *Rep.* 90. But if Action of Treſpaſs is brought for Treſpaſs done in Lands belonging to ſuch a Houſe, and it appears at the Trial that the Plaintiff had no Title to the Houſe, the Court cannot give *Judgment* to turn him out of Poſſeſſion, becauſe that was not judicially before them. 3 *Salk.* 213. In Debt on Specialty, the whole and exact Sum muſt be demanded; or the *Judgment* upon it will not be good. 3 *Mod.* 41. If more be in the *Judgment* than the Plaintiff demands, it is erroneous; though this may be helped by a *remiſit Dampna* for Part. 2 *Lill.* 27. Where one recovers on Action for divers Things, and hath Verdict upon the Whole, but doth wave ſome one or more of the Things for which his Action was brought, and hath a ſpecial *Judgment*; in this Caſe he muſt releaſe his Damages to all, and yet he may have Coſts of Suit. *Ibid.* If Iſſue is found againſt one Party in a Suit, and not againſt the other, *Judgment* may be for the Plaintiff to recover againſt him where the Matter is found; and a *Nil capiat per Billam* be entered againſt the Plaintiff as to the other. 1 *Saund.* 216. And when ſeveral Damages are recovered againſt ſeveral Defendants, the Plaintiff may enter a *Nolle Proſequi* as to one of the Defendants, &c. and have *Judgment* againſt one only for the Damages againſt him. 3 *Mod.* 101. In Treſpaſs and Aſſault againſt three Perſons, they plead ſeverally, and are found Guilty, and entire Damages are given, the *Judgment* is good; and where there is but one *Judgment* for the Damages againſt ſeveral, the Plaintiff may make his Election againſt which he will take his *Judgment*. *Cro. Jac.* 384. *Cro. Eliz.* 118. If one entire *Judgment* is given againſt two ſeveral Perſons, and one of them is an Infant, the whole *Judgment* is void; (which being entire cannot be divided) except the Infant be joint Executor with the other Party. 2 *Lill.* 100. When a *Judgment* is entire, it cannot be divided, to make one Part of it good, and another Part thereof erroneous; but if it be not an entire *Judgment*, it may. *Ibid.* On Action where Damages are to be recovered, if the Declaration be good in Part, and inſufficient in Part, and the Defendant Demurs upon the entire Declaration; the Plaintiff ſhall have *Judgment* for that which is well laid, and be barred for the Reſt. 2 *Saund.* 379. And if in Action of Debt upon three Bonds, it appears that one of them is forfeited, &c. the Plaintiff ſhall have *Judgment* for the other two. 1 *Saund.* 286. Where a *Judgment* is partly by the Common Law, and partly by Statute, the *Judgment* at Common Law may remain and be compleat, without the other. 1 *Salk.* 24. Every *Judgment* ought to be compleat and formal: One *Judgment* cannot determine another *Judgment*; and the Judges will not give a Judgment againſt Law, although the Plaintiff and Defendant do agree to it. 1 *Salk.* 213. *Cro. Eliz.* 817. *Trin.* 23 *Car. B. R.* In Actions perſonal, *Judgment* given againſt the Plaintiff upon any Plea to Bar him, is peremptory. *Jenk. Cent.* 52. If the Defendant doth not deny the Debt, or other Matter in Suit, but endeavours to elude the Action by inſufficient Pleading: In this Caſe, if it be found for the Plaintiff, he ſhall have *Judgment*; but not *vice verſa*, if for the Defendant, becauſe the Matter of the Suit is not fully and ſufficiently denied, but in ſome Meaſure confeſſed by the inſufficient Plea. *Ibid.* 70. *Judgment* may not be given for the Plaintiff upon an inſufficient Bar, if the Replication be ſo, and ſhew no Title; but a Judgment ſhall not be ſet aſide for Miſ-pleading a Point collateral to the Iſſue. *Hob.* 8, 128. In Debt upon an Obligation, the Defendant pleaded that he delivered it on a Condition to be performed by the Plaintiff, which he had not done, and therefore it was not his Deed; the Jury found for the Defendant, that the Condition was not performed, yet the Plaintiff had Judgment: For the Defendant's Plea confeſſes it to be his Deed, and the Verdict does not diſprove it, and Iſſue is Deed or no Deed, &c. *Jenk. Cent.* 102. Here the Plaintiff hath his *Judgment* upon the Defendant's Confeſſion, not upon the Verdict. *Ibid.* A *Judgment* contrary to the Verdict found in the Cauſe is generally void; for it is to be warranted by the Verdict. *Mich.* 22 *Car. B. R.* If a Verdict is imperfect, *Judgment* cannot be given upon it; and for the Incertainty of the Verdict, *Judgment* may be void. 2 *Lill.* 111. *Raym.* 220. Action of Debt lies upon a good *Judgment*, as well after Writ of Error brought as before. *Raym.* 100. 2 *Mod.* 127. And 'tis ſaid Debt lies in the *Marſhalſea*, or in any other Courts, upon a *Judgment* in *B. R.* or *C. B.* and if a *Nul tiel Record* is pleaded, the Iſſue ſhall be tried by *Certiorari* and *Mittimus* out of the Chancery. 1 *Salk.* 209. Though 'tis held otherwiſe. 439. In Actions of Debt on Bonds, a Rule may be made to ſtay Proceedings on Payment of Principal, Intereſt and Coſts; but not in Actions of Debt upon *Judgments*; yet the Defendant may plead a Tender & *uncore priſt. Mod. Ca.* 60. If a *Judgment* is recovered jointly againſt three Defendants, the Plaintiff cannot bring Action of Debt upon that *Judgment* againſt one alone. 2 *Leon.* 220. And it has been held, that there is this Difference where Execution is ſued out upon a *Judgment*, and where an Action of Debt is brought upon it; that if the Plaintiff brings Debt, he muſt have good Ground for his Action, or he ſhall not recover; but he may have Execution upon a voidable *Judgment*; and it ſhall ſtand good till the *Judgment* is reverſed. 1 *Leon.* 82. A Plaintiff ſhall not have a new Action of Debt on the ſame Bond, &c. after *Judgment* had on it, as long as the *Judgment* is in Force. 6 *Rep.* 2. 2 *Nelſ. Abr.* 1056. An erroneous *Judgment* in Chancery, is reverſable in *B. R. Dyer* 315. And if the Houſe of Lords reverſe a *Judgment* of *B. R.* the Lords are to enter the new *Judgment*, and not the Court of *B. R.* who by the firſt *Judgment* had executed their Authority. *Trin.* 6 *Ann B. R.* 1 *Salk.* 403. *Judgments* are to continue, till they ſhall be attaint by Error. *Stat.* 4 *H.* 4. *cap.* 23. And after Verdict given in any Court of Record, there ſhall be no Stay of *Judgment*, for Want of Form in a Writ, Count, &c. or miſtaking the Name of either

Party, Sum of Money, Day, Month, Year, &c. rightly named in any Writ or Record preceding, &c. 18 *Eliz. cap.* 14. 16 & 17 *Car.* 2. The Stat. 8 & 9 *W.* 3. orders *Judgment* for Coſts, upon Demurrers, and on ſuing Writs of Error, where the former *Judgment* is affirmed, &c. And the Statutes of Jeofails extend to *Judgments* upon *Nihil dicit*, Confeſſion, & *Non ſum Informatus*, &c. 4 & 5 *Ann.* See *Error*, *Jeofail* and *Iſſue*.

Judgments acknowledged for Debts. The Courſe for one to acknowledge a *Judgment for Debt*, is for him that doth acknowledge it to give a general Warrant of Attorney to any Attorney or ſome particular Attorney of that Court where the *Judgment* is to be acknowledged, to appear for him at his Suit, againſt the Party who is to have the *Judgment* acknowledged unto him; and alſo to file common Bail, and receive a Declaration, and then plead *Non ſum Informatus*, &c. or to let it paſs by *Nihil dicit*; whereupon *Judgment* is entered for Want of a Plea. 2 *Lill.* 105. If one gives a Warrant of Attorney to confeſs *Judgment*, and dies before it is confeſſed, this is a Countermand of the Warrant. 1 *Ventr.* 310. And if a Feme Sole gives Warrant of Attormey to confeſs *Judgment*, and marries before it is entered, the Warrant is alſo countermanded; and *Judgment* ſhall not be entered againſt Husband and Wife. 1 *Salk.* 399. A Man under Arreſt gives Warrant of Attorney to confeſs a *Judgment* in B. R. if no Attorney for the Defendant is then preſent, the Court of *B. R.* on a Suppoſition that the *Judgment* was obtained by Force or Fear, will ſet aſide the ſame. 1 *Salk.* 402. It has been adjudged, that if one under Arreſt gives a Warrant to confeſs *Judgment*, if an Attorney be not by, it is ill: And ſo it is if one be ſeemingly diſcharged, with Deſign that he ſhould give a Warrant of Attorney to confeſs a *Judgment:* But if one arreſted by Proceſs of an inferiour Court, gives a Warrant for confeſſing *Judgment* in that Court, *B. R.* will not ſet it aſide, tho' an Attorney be not preſent. *Mich.* 2 *Ann. Mod. Caſ* 85. And where one has been in Priſon ſome Time, and he confeſſes *Judgment* to his Creditor voluntarily, that *Judgment* ſhall ſtand, altho' there be no Attorney. *Fareſly*, *Rep.* 115. A *Judgment* confeſſed upon Terms, being in Effect conditional, the Court will ſee the Terms performed: But where a *Judgment* is acknowledged abſolutely, and a ſubſequent Agreement is made, this does not affect the *Judgment*, and the Court will take no Notice of it. *Ib.* 400. A Man gave Bond and *Judgment*, defeaſanced upon Payment of Money on ſuch a Day, and it was agreed that Execution ſhould not be ſued out before; but a *Fieri facias* was ſued out a Month before and executed, upon Demand and Non-payment of the Money: And though this was a Breach of the Agreement, ſince it was for a juſt Debt, the Court would not undo any Thing, for Fear it ſhould fruſtrate the *Judgment. Mod. Caſ.* 49. If a Warrant be to enter *Judgment* as of ſuch a Term, or any Time after; the Attorney may enter it at any Time during Life; but without thoſe Words the *Judgment* muſt be entered the Term expreſſed in the Warrant: And if no Term be mentioned, it may be intended the next Term. 1 *Mod.* 1. Or it has been held, it may be entered within a Year after the Date of it: And if *Judgment* upon a Warrant of Attorney be not entered within the Year, it cannot be done without Leave of the Court, on Motion and Affidavit made of the Party's being living, and the Debt not ſatisfied. 2 *Lill. Abr.* 118. 2 *Show.* 253. It is dangerous to take a *Judgment* acknowledged in the Vacation, as of the preceding Term; and if any ſuch Judgment be taken, the Warrant of Attorney to confeſs the ſame muſt bear Date before, or in the Term whereof it is confeſſed: But the ſafeſt Way is to make it a *Judgment* of the ſubſequent Term; though common Practice is otherwiſe. 2 *Lill.* 103. By *Holt* Chief Juſtice, if one will enter a *Judgment* as of a precedent Term, he muſt actually enter it before the *Eſſoin* Day of the ſucceeding Term: And if *Judgment* be ſigned in *Hillary* Term, and in the ſubſequent Vacation the Defendant ſells Lands, if before the *Eſſoins* of *Eaſter* Term, the Plaintiff enters his *Judgment*, it ſhall affect the Lands in the Hands of the Purchaſer; and if one enters *Judgment* ſo in Vacation, when the Party is dead, the *Judgment* ſhall be good by Relation, if he was living in the precedent Term. 1 *Salk.* 401. *Law Securities* 74. On Complaints for Delay of Entring *Judgments*, the ſame ſhall be examined into by Commiſſioners and ordered to be entered, &c. by the Statute 14 *Ed.* 3. and by 29 *Car.* 2. *c.* 3. Judges that ſign *Judgments* of Lands, are to ſet down the Day of the Month and Year of their ſo doing upon the Paper or Record; and they are to be *Judgments* againſt Purchaſers *bona fide* only from that Signing. If any Perſon having acknowledged or ſuffered a *Judgment* as a Security for Money, afterwards on borrowing other Money of another, mortgage his Lands, &c. without giving Notice of ſuch *Judgment*, unleſs he pay it off in ſix Months, he ſhall forfeit his Equity of Redemption, &c. 4 & 5 *W. & M.* The particular Times of entring *Judgments* of Debt, by Confeſſion, *Non ſum Informatus*, &c. and docketting them after every Term, by the Clerks of Courts, &c. is directed under the Penalty of 100 *l.* by Stat. 4 & 5 *W. & M. cap.* 20. And no *Judgment* ſhall affect Purchaſers of Lands or Mortgagees till docketted; nor have any Preference againſt Heirs, Executors, &c. in the Adminiſtration of Eſtates. *Ibid.* Upon ſigning *Judgment* 6 *s.* 8 *d.* to be paid the proper Officer, in Satisfaction of the *Capiatur* Fine, &c. 5 & 6 *W. & M. c.* 12. To Search for *Judgments* a Fee is paid of 4 *d.* a Term.

Form of a *Warrant* of Attorney to *confeſs Judgment.*

To Mr. *A.* B. and *C. D.* Attornies of his Majeſty's Court of *Common Pleas* at *Weſtminſter*, or to any other Attorney of the ſame Court.

THESE *are to deſire and authorize you, (or any other Attorney of the ſaid Court of Common Pleas) to appear for me* E. F. *of*, &c. *in the ſaid Court, this preſent* Eaſter-*Term, or any other ſubſequent Term, at the Suit of* G. H. *of*, &c. *and thereupon to confeſs* Judgment *againſt me unto the ſaid* G. H. *by* Non ſum Informatus, Nil dicit, *or otherwiſe, in an Action of Debt for* 500 l. *of lawful* Britiſh *Money, together with Coſts of Suit: And for your or any of your ſo doing, this ſhall be your ſufficient Warrant.* In Witneſs, &c.

On *Judgments*, a Releaſe of Errors is uſually entered into at the Time of the Warrant of Attorney given, or *Judgment* had. And in caſe of ſeveral *Judgments*, if Two are given in one Term, and the laſt is firſt executed, that Creditor hath the beſt Title. *Latch* 53. When a *Judgment* is ſatisfied, it is to be acknowledged on Record by Attorney, &c. Acknowledging a *Judgment* in the Name of another, who is not privy or conſenting to the ſame, is Felony. *Stat.* 21 *Jac.* 1. *cap.* 26.

Judgment in criminal Caſes. No Man can be Attainted of Treaſon or Felony, but on *Judgment* by expreſs Sentence, or by Outlawry, or Abjuration. 2 *Hawk.* 447. And a Perſon ſhall not have two *Judgments* for one Offence; for in Outlawry which is a *Judgment*, Execution ſhall be awarded againſt the Offender, but no Sentence pronounced. *Finch* 389, 467. But one convicted of a ſcandalous Libel, had *Judgment* to pay a Fine, and to go to all the Courts in *Weſtminſter-hall* with a Paper in his Hat ſignifying his Crime; and on his Behaving impudently, his Puniſhment was encreaſed. 1 *Salk* 401.

461. No *Judgment* or Puniſhment can be inflicted unknown to our Laws; but only by Act of Parliament. *Daliſ.* 20. And the Law makes no Diſtinction, in fixed and ſtated *Judgments*, between a Peer and a Commoner; or between a common and ordinary Caſe and one extraordinary. 2 *Hawk.* 443. *Judgment* cannot be given for a corporal Puniſhment, in the Abſence of the Party. 1 *Salk.* 400. Though Perſons may have *Judgment* to be fined in their Abſence, having a Clerk in Court to undertake for the Fine. 1 *Salk.* 56. *Judgment* in High Treaſon is for the Offender to be drawn, hanged, his Entrails taken out and burnt, his Head cut off, and Body quartered, *&c.* In Petit Treaſon, to be drawn to the Place of Execution and hanged: And a Woman in all Caſes of High and Petit Treaſon, to be drawn and burnt. A Man or Woman for Felony, is to be hanged by the Neck till dead. Miſpriſion of Treaſon is liable to Impriſonment for Life. In *Præmunire*, the Party offending is to be out of the King's Protection, and his Body to remain in Priſon during the King's Pleaſure, *&c.* And for Miſpriſion of Felony, Fine and Impriſonment is inflicted. 2 *Hawk.* 443, 444. For Crimes and Miſdemeanors of an infamous Nature; Perjury or Forgery at Common Law, Groſs Cheats, Conſpiracy, keeping Bawdy-houſes, *&c.* the *Judgments* are diſcretionary in the Court, by Fine, Pillory, Whipping, *&c.* 2 *Hawk.* 445.

Judgment arreſted, In Civil and Criminal Caſes. See *Arreſt of Judgment.*

Judgment or Trial by the Holy Croſs, Was a Trial in Eccleſiaſtical Cauſes, anciently in Uſe among our *Saxon* Anceſtors. *Creſſ. Church Hiſt.* 960.

Judicatores terrarum, Are Perſons in the County Palatine of *Cheſter*, who on a Writ of Error out of Chancery, are to conſider of the Judgment given there, and reform it; and if they do not, and it be found erroneous, they forfeit 100 *l.* to the King by the Cuſtom. *Dyer* 348. *Jenk. Cent.* 71.

Judicium Dei, The Judgment of God in Trials, *&c.* See *Dei Judicium.*

Judicial Proceedings. No *Judicial Proceedings*, commenced or proſecuted in the Stile of *Oliver Lord Protector*, &c. were abateable by his Majeſty K. *Charles* the Second's re-aſſuming the Government: And a pretended Act of Parliament, for turning the Books of the Law, and Proceedings of Courts of Juſtice, into *Engliſh*, was declared to be in Force, by Stat. 12 *Car.* 2. *c.* 3. See *Proceſs.*

Jugulator, A Cut-throat, or Murderer. ——— *Statutum eſt preterea ut nullus occultus* Jugulator, *quales* Murderers *appellant*, *&c. Chartam de Regia gratia obtineret.* Tho. Walſingh. 343.

Jugum terræ, A Yoke of Land, and contains Half a Plough Land, according to *Domeſday.* 1 Inſt. 5.

Juncaria, (From the Lat. *Juncus*) Soil or Ground where Ruſhes grow. *Cum Piſcariis, Turbariis,* Juncariis, *&c. ad Meſſuagium pertin'.* Pat. 6 Ed. 3.

Jura Regalia, Or the Rights of the King. See *Regalia.*

Jurats, (*Jurati*) Are in Nature of Aldermen, for the Government of many Corporations. As *Romney Marſh* is incorporate of one Bailiff, twenty-four *Jurats*, and the Commonalty thereof, by Chart. 1 *Ed.* 4. And we read of the *Mayor* and *Jurats* of *Maidſtone*, *Rye*, *Winchelſea*, &c. Alſo *Jerſey* hath a Bailiff and twelve *Jurats*, or ſworn Aſſiſtants, to govern that Iſland. The Name is taken from the *French*; for in *France*, among others, there are *Major & Jurati*, *&c.* They are mentioned in the Stat. 2 & 3 *Ed.* 6. *c.* 30. And ſee 13 *Ed.* 1. *cap.* 26.

Juridical Days, (*Dies Juridici*) Days in Court, on which the Law is adminiſtred. See *Day.*

Juriſdiction, (*Juriſdictio*) Is an Authority or Power, which a Man hath to do Juſtice, in Cauſes of Complaint brought before him: Of which there are two Kinds; the one, which a Perſon hath by Reaſon of his Fee, and by Virtue thereof doth Right in all Plaints, concerning the Lands within his Fee; the other is a *Juriſdiction* given by the Prince to a Bailiff, as divided by the *Normans*; and by him whom they called a Bailiff, we may underſtand all that have Commiſſion from the King to give Judgment in any Cauſe. *Cuſtum. Normand. cap.* 2. The Courts and Judges at *Weſtminſter* have *Juriſdiction* all over *England*; and are not reſtrained to any County or Place: But all the other Courts are confined to their particular *Juriſdictions*; which if they exceed, whatever they do is erroneous. 2 *Lill. Abr.* 120. There are three Sorts of *Inferior Juriſdictions*; the Firſt whereof is *Tenere Placita*, which is the loweſt, and the Party may either ſue there, or in the King's Courts: The ſecond is *Conuſance of Pleas*; and by this a Right is veſted in the Lord of the Franchiſe to hold Pleas; and he is the only Perſon that can take Advantage of it, by claiming his Franchiſe: The third Sort is an *Exempt Juriſdiction*; as where the King grants to ſome City, that the Inhabitants ſhall be ſued within their City, and not elſewhere; though there is no *Juriſdiction*, which can withſtand a *Certiorari* to the ſuperior Courts. 3 *Salk.* 79, 80. And a Court ſhall not be preſumed to have a *Juriſdiction*, where it doth not appear to have one. 2 *Hawk.* 59. If an Action is brought in a Corporate Town, and the Plaint ſheweth not that the Matter ariſes *infra Juriſdictionem* of the Court, it will be wrong, though the Town be in the Margin; but the County ſerves in the Margin for the Superior Courts. *Jenk. Cent.* 322. Although a Caſe be debated and have Judgment in the Spiritual Court, yet the King's Courts may afterwards diſcuſs the ſame Matter. *Artic. Cleri*, Stat. 9 *Ed.* 2. *c.* 6. In ſome Cauſes, the *Spiritual* and *Temporal* Courts have a *concurrent Juriſdiction.* See *Courts*, *&c.*

Juris utrum, Is a Writ which lies for the Parſon of a Church, whoſe Predeceſſor hath alienated the Lands and Tenements thereof. *F. N. B.* 48. And the Writ *Juris utrum*, ſhall be granted to try whether free Alms belong to a Church, where they are transferred, *&c.* by Stat. 18 *Ed.* 1. *c.* 24. If a Man intrude into Lands and Tenements, after the Death of a Parſon, the Succeſſor ſhall have this Writ: So if a Parſon be diſſeiſed of Lands, Parcel of his Rectory, and dieth, his Succeſſor ſhall have a *Juris utrum. New Nat. Br.* 109. But if a Perſon receive Rent of the Tenant of the Land, which is aliened by his Predeceſſor, he ſhall not himſelf have a Writ of *Juris utrum*; but his Succeſſor ſhall have it. *Ibid.* 111. A Vicar ſhall have a *Juris utrum* againſt a Parſon for the Glebe of his Vicarage, which is Part of the ſame Church: And the Plaintiff ought to be named Parſon or Vicar, or ſuch Name in Right of which he bringeth his Action. *Ibid.*

Juror, (*Jurator*) Is one of thoſe Perſons that are ſworn on a *Jury*; and the Law requires the Returning of able and ſufficient *Jurors.* 16 & 17 Car. 2.

Jury, (*Jurata*, from the Lat. *Jurare*, to ſwear) Signifies a certain Number of Men ſworn to inquire of and try the Matter of Fact, and declare the Truth upon ſuch Evidence as ſhall be delivered them in a Cauſe: And they are ſworn Judges upon Evidence in Matters of Fact. The Privilege of Trial by *Jury*, is of great Antiquity in this Kingdom; ſome Writers will have it that *Juries* were in Uſe among the *Britains*; but it is more probable that this Trial was introduced by the *Saxons*: Yet ſome ſay that we had our Trials by *Jury* from the *Greeks*; (the firſt Trial by a *Jury* of Twelve, being in *Greece*.) By the Laws of King *Ethelred*, it is apparent that *Juries* were in Uſe many Years before

fore the Conqueſt; and they are as it were incorporated with our Conſtitution, being the moſt valuable Part of it; for without them no Man's Life can be impeach'd, (unleſs it be by Parliament) and no one's Liberty or Property ought to be taken from him. And theſe *Juries* are not only uſed in the Circuits of the Judges, but in other Courts and Matters: As if a Coroner inquire how a Perſon killed came by his Death, he doth it by *Jury*; and the Juſtices of Peace in their Quarter-Seſſions, the Sheriff in his County-Court, the Steward of a Court-Leet or Court-Baron, *&c.* if they inquire of any Offence, or decide any Cauſe between Party and Party, they do it in like Manner: And at the General Aſſiſes there are uſually many *Juries*, becauſe there are a great many Cauſes, both Civil and Criminal, commonly to be tried; whereof one is called the *Grand Jury*, and the reſt *Petit Juries*, of which it is ſaid there ſhould be one for every Hundred. *Lamb. Eiren. pag.* 384. Anciently the *Jury* as well in Common Pleas, as Pleas of the Crown, were twelve Knights, according to *Glanvill* and *Bracton*: And to make a *Jury* in a Writ of Right, called the Grand Aſſiſe, there muſt be Sixteen, *viz.* four Knights, and twelve others, *Finch* 412. The *Grand Jury* generally conſiſts of twenty-four Men of greater Quality than the other, choſen indifferently out of the whole County by the Sheriff; and the *Petit Jury* conſiſteth of twelve Men, of equal Condition with the Party indicted, impanelled in Criminal Caſes, called the *Jury of Life and Death*: The Grand *Jury* finds the Bills of Indictment againſt Criminals; and the Petit *Jury* convicts them by Verdict, in the Giving whereof all the Twelve muſt agree; and according to their Verdict the Judgment paſſeth. 3 *Inſt.* 30, 31, 221. By the Common Law, *Jury-men* are to be returned, in all Caſes for Trial of General Iſſues, from the County where the Fact was done. *S. P. C.* 154. And *Jury-men* are to be Freemen, indifferent, and not outlawed or infamous; Aliens, Men attainted of any Crime, ought not to ſerve on *Juries*; and Infants, Perſons ſeventy Years old, Clergymen, Apothecaries, *&c.* are exempted by Law from ſerving upon *Juries*. 3 *Inſt.* 221. 2 *Inſt.* 447. Barons of the Realm, and all above them, are not to ſerve in any ordinary *Jury*; and others may have this Privilege by Writ, or the King's Grant, *&c.* 6 *Rep.* 53. 1 *Brownl.* 30. But ſuch as have Charters of Exemption, ſhall notwithſtanding be ſworn upon great Aſſiſes, and in Attaints, *&c.* when their Oath is requiſite. 52 *H.* 3. *c.* 14. By Statute, Jurors empanelled are to be the next Neighbours, moſt ſufficient and leaſt ſuſpicious; or the Officer ſhall forfeit double Damages. 28 *Ed.* 1. *cap.* 9. Their Qualification by 13 *Ed.* 1. was 40 *s. per Annum* Eſtate; which was increaſed to 4 *l. per Annum* by 27 *Eliz. cap.* 6. and is made 10 *l. per Annum* Freehold or Copyhold within the ſame County, by 4 *&* 5 *W. & M. cap.* 24. But all Cities, Boroughs, and Corporate Towns, are excepted out of this laſt Act: And Trials of Felons in Corporations may be by Freemen worth 40 *l.* in Goods, by the 23 *Hen.* 8. *c.* 13. Panels of *Juries* returned to inquire for the King, may be reformed by the Judges of Gaol-delivery, *&c.* 3 *Hen.* 8. *c.* 12. *Jurymen* not appearing ſhall forfeit Iſſues, if they have no reaſonable Excuſe for their Defaults, *viz.* 5 *s.* on the firſt Writ, upon the ſecond 10 *s.* and the third Writ 13 *s.* 4 *d.* 35 *H.* 8. *cap.* 6. Though no *Jury* is to appear at *Weſtminſter* for a Trial, when the Offence was committed thirty Miles off; except the Attorney General require it. 18 *Eliz. cap.* 5. Conſtables of Pariſhes, *&c.* at *Michaelmas* Quarter-Seſſions yearly, are to return to the Juſtics of Peace, Liſts of the Names and Places of Abode of Perſons qualified to ſerve on *Juries*, between the Age of Twenty-one and Seventy, atteſted upon Oath, on Pain of forfeiting 5 *l.* And the Juſtices of Peace ſhall order the Clerk of the Peace to deliver a Duplicate of thoſe Liſts to the Sheriff, *&c.* And Sheriffs are to impanel no other Perſons, under the Penalty of 20 *l.* *&c.* 7 *&* 8 *W.* 3. *cap.* 32. 3 *Ann. cap.* 18. No Sheriff, Bailiff, *&c.* ſhall return any Perſon to ſerve on a *Jury*, unleſs he hath been duly ſummoned ſix Days, before the Day of Appearance; nor ſhall take any Money or other Reward to excuſe the Appearance of any *Juryman*, on Pain of forfeiting 10 *l.* 4 *&* 5 *W. & M.* If a Trial is for any Thing which concerns the Sheriff or Under-Sheriff, the Coroner is to return the *Jury*. And the Proceſs to bring in the *Jury* in B *R.* is a *Diſtringas jurat'*, and in *C. B. Venire fac' & Habeas Corpora Jurator'*: Upon the *Venire*, the Sheriff, *&c.* returns the *Jury* in a Panel, or little Piece of Parchment, annexed to the Writ, and then goes the Writ of *Habeas Corpora* to bring in the *Jury*; and where after Iſſue joined, a Suit is continued on the Roll, the Proceſs is to be continued from Time to Time againſt the Jurors. *Br. Diſcontin.* If the Sheriff return twelve Jurors only according to the Writ, where he ought to have returned twenty-four according to Uſage, for ſpeeding the Trial in Caſe of Challenge, Death, or Sickneſs, *&c.* he ſhall be amerced. *Jenk. Cent.* 172. And the firſt twelve Men returned upon a *Jury* that do appear, are to be ſworn and try the Cauſe, if not challenged, *&c.* 2 *Lill. Abr.* 126. But great Alteration is made in this Part of our Law, by the late Statute. Liſts of Jurors qualified according to the Acts 4 *&* 5 *W. & M.* 7 *&* 8 *W.* 3. and 4 *Ann.* are now to be made from the Rates of each Pariſh, and fixed on the Doors of Churches, *&c.* twenty Days before the Feaſt of St. *Michael*, that publick Notice may be given of Perſons qualified omitted, or of Perſons inſerted who are not ſo, *&c.* and the Liſts being ſet right by the Juſtices of Peace in Quarter-Seſſions, Duplicates are to be delivered to the Sheriffs of Counties, by the Clerks of the Peace; the Names contained in which ſhall be entered aphabetically by the Sheriffs in a Book, with their Additions, and Places of Abode, *&c.* If any Sheriff ſhall return other Perſons to ſerve on *Juries*; or the Clerk of the Aſſiſe record any Appearance, when the Party did not appear, they ſhall be fined by the Judges, not above 10 *l.* nor leſs than 40 *s.* The like Penalty for taking Money to excuſe Perſons from ſerving; and the Sheriffs may be fined 5 *l.* for returning Jurors, who have ſerved two Years before, *&c.* Sheriffs, on the Return of Writs of *Venire facias*, are to annex a Panel of the Names of a competent Number of Jurors named in the Liſts, not leſs than forty-eight in any County, nor more than ſeventy-two (without Direction of the Judges) who ſhall be ſummoned to ſerve at the Aſſiſes, *&c.* and the Names of the Perſons impanelled ſhall be writ in ſeveral diſtinct Pieces of Paper, of equal Size, and be delivered by the Under-Sheriff to the Judge's Marſhal, who is to cauſe them to be rolled up all in the ſame Manner, and put together in a Box; and when any Cauſe ſhall be brought on, ſome indifferent Perſon is to draw out twelve of the ſaid Papers of Names, who not being challenged, ſhall be the *Jury* to try the Cauſe; but if any Perſons are challenged and ſet aſide, or ſhall not appear, then a further Number to be drawn till there is a full *Jury*, *&c.* Where a Cauſe comes on, before the *Jury* in any other have given their Verdict, the Court ſhall order twelve of the Reſidue of the Papers to be drawn, *&c.* And Jurors making Default in Appearance, ſhall be fined, not exceeding 5 *l.* nor under 40 *s.* *Stat.* 3 *Geo.* 2. *c.* 25. Perſons having Eſtates for Five hundred Years, or ninety-nine Years, or other Term determinable on Lives, *&c.* of the yearly Value of 20 *l.* are declared Qualified to ſerve on *Juries*, and to be inſerted in the Freeholder holders Book, &c. And Sheriffs of any County, or City, ſhall not impanel Perſons on any *Jury* for the Trial of Capital Offences, that would not be qualified in Civil Cauſes: In *London*, Jurors to be Houſe-keepers, having Lands or Goods worth 100*l.* who may be examined on Oath, &c. *Ibid.* Leaſeholders on Leaſes where the Rent is 50*l.* a Year, are liable to ſerve upon *Juries* in the County of *Middleſex*; but no Perſon ſhall be returned as a Juror, that hath ſerved two Terms before in that County, by Stat. 4 *Geo.* 2. *c.* 7. *Vide* the Statutes. Either the Plaintiff or Defendant may uſe their Endeavours for any *Juryman* to appear; but one who is not a Party to the Suit, may not: And an Attorney was thrown over the Bar, becauſe he had given the Names of ſeveral Perſons in Writing to the Sheriff, whom he would have returned on the *Jury*, and the Names of others whom he would not have returned. *Moor* 882. If a *Juryman* appear, and refuſe to be ſworn, or refuſe to give any Verdict, if he endeavours to impoſe upon the Court, or is guilty of any Miſbehaviour after Departure from the Bar, he may be fined, and Attachment iſſue againſt him. 2 *Hawk. P. C.* 145, 146. After a Juror is ſworn, he may not go from the Bar until the Evidence is given, for any Cauſe whatſoever, without Leave of the Court; and with Leave he muſt have a Keeper with him. 2 *Lill.* 123, 127. A Witneſs may not be called by the *Jury* to recite the ſame Evidence he gave in Court, when they are gone from the Bar. *Cro. Eliz.* 189. Nor may a Party give a Brief or Notes of the Cauſe to the *Jury* to conſider of; if he doth, he and the Jurors may be fined. *Moor* 815. The *Jurymen* are not to meddle with any Matters which are not in Iſſue; but they may find a Thing of their own Knowledge, which is not given in Evidence. 3 *Leon.* 121. When the Evidence is given, the *Jury* are to be kept together till they bring in their Verdict, without Speech with any, and without Meat or Drink, Fire or Candle, otherwiſe than with Leave of the Court, by Conſent of the Parties; and the Court may give them Leave to eat or drink at the Bar, but not out of Court. 1 *Inſt.* 227. If *Jurymen* after ſworn, either before or after they are agreed of their Verdict, eat and drink, the Verdict may be good; but they are finable: And if it be at the Charge of either Parties, the Verdict is void. *Daliſ.* 10. *Cro. Jac.* 21. If they agree to caſt Lots for their Verdict, or to bring in Guilty or Not Guilty, as the Court ſhall ſeem inclined, they may be fined. 2 *Lev.* 205. *Cro. Eliz.* 779. But a *Jury* have been permitted to recall their Verdict; as where one was indicted of Felony, the *Jury* found him Not guilty, but immediately before they went from the Bar, they ſaid they were miſtaken, and found him Guilty, which laſt was recorded for their Verdict. *Plowd.* 211. *Juries* are finable, if they are unlawfully dealt with to give their Verdict; but they are not finable for giving a Verdict contrary to the Evidence, or againſt the Direction of the Court; for the Law ſuppoſes the *Jury* may have ſome other Evidence than what is given in Court, and they may not only find Things of their own Knowledge, but they go according to their Conſciences. *Vaugh.* 153. 3 *Leon.* 147. It has been held, where a Perſon was acquitted of a Robbery by the *Jury*, that the Court of *B. R.* may impoſe a Fine on a *Jury*, who finds a Verdict contrary to the Direction of the Judges, though Juſtices of Aſſiſe could not fine them, only for Miſdemeanors in Eating, or Drinking, &c. *Bendl.* 153. 2 *Nelſ. Abr.* 1061. Attaint may lie againſt a *Jury* in a Civil Cauſe, for going contrary to Evidence, in Caſe of any Corruption. *Vaugh.* 144. And Jurors are ſubject to no Proſecution for giving their Verdicts, except by Way of Attaint for a falſe Verdict; in which Caſe being found Guilty, they are puniſhable by Loſs of Lands and Goods, their Houſes to be raſed, and their Bodies caſt into Priſon, and the Party is to be reſtored to all that he loſt by the Verdict; but this Puniſhment is altered by the Stat. 23 *Hen.* 8. *cap.* 3. 2 *Hawk.* 147. For a falſe Verdict, in that Point which is meerly out of the Iſſue, the *Jury* may not be ſued. *Hob.* 114, 227, 53. If a *Jury* find Matter not in Iſſue, or pertinent, it will be void: So if it be againſt Law and Senſe, &c. They are to adjudge upon the Evidence given; but the Jurors may not contradict what is agreed in Pleading between the Parties; if they do, it ſhall be rejected; and where the *Jury* finds the Fact, but conclude upon it contrary to Law, the Court may reject the Concluſion. 1 *And* 41. 10 *Rep.* 56. *Co. Lit.* 22. *Hob.* 222. The *Jury* may find a Thing done in another County, upon a General Iſſue; and foreign Matters done out of the Realm, &c. *Moor. ca.* 238. *Godb.* 33. Jurors having once given their Verdict, altho' it be imperfect, ſhall not be ſworn again in the ſame Iſſue, unleſs it be in Aſſiſe. 2 *Cro.* 210. If a *Juryman* is guilty of Bribery, he is diſabled to be of any Aſſiſes or *Juries*, and to be impriſoned and ranſomed at the King's Will. 5 *Ed.* 3. *cap.* 10. *Jurymen* accuſed of Bribery, are to be tried preſently by a *Jury* then taken. 34 *Ed.* 3. *cap.* 8. And if a Juror takes any Thing of either Party to give his Verdict, he ſhall pay ten Times as much as taken; or ſuffer a Year's Impriſonment. 38 *Ed.* 3. *cap.* 12. But *Jurymen*, where there is a full *Jury*, and they try the Cauſe, are to have their Charges allowed them. 2 *Lill.* 125. If a *Jury* take upon them the Knowledge of the Law, and give a general Verdict, it is good; but in Caſes of Difficulty it is beſt and ſafeſt to find the ſpecial Matter, and leave it to the Judges to determine what is the Law upon the Fact. 1 *Inſt.* 30. A *Jury* ſworn and charged in Caſe of Life and Member, cannot be diſcharged till they give a Verdict: In Civil Caſes, it is otherwiſe; as where Nonſuits are had, &c. And ſometimes when the Evidence hath been heard, the Parties doubting of the Verdict, do conſent that the *Jury* ſhall be drawn or diſcharged. 1 *Inſt.* 154, 227.

Special Jury, Is where it has been conceived an indifferent impartial *Jury* would not be returned between Party and Party by the Sheriff; then the Court upon Motion orders the Sheriff to attend the *Secondary of B. R.* with his Book of Freeholders of the County, and the Secondary in the Preſence of the Attornies on both Sides, is to ſtrike a *Jury*: And when a Cauſe of Conſequence is to be tried at the *Bar*, the Court of *B. R.* on Motion and Affidavit made, will make a Rule for the Secondary to name forty-eight Freeholders; and each Party is to ſtrike out Twelve, one at a Time, the Plaintiff or his Attorney beginning firſt, and the Remainder are to be the *Jury* for the Trial; and this is called a *Special Jury*. *Trin.* 23 *Car. B. R.* 2 *Lill.* 123. The Nomination of a *Special Jury* before the Secondary, is to be in the Preſence of the Attornies on each Side; but if either of them refuſe to come, then the Secondary may proceed *ex parte*, and he ſhall ſtrike Twelve for the Attorney who makes Default. *Trin.* 8 *W.* 3. *B. R.* It has been alſo adjudged, that if a Rule is made for a *Special Jury*, and it is not expreſſed that the Maſter of the Office or Secondary ſhall ſtrike forty-eight Freeholders, and that each of the Parties ſhall ſtrike out Twelve; in ſuch Caſe the Maſter may ſtrike the Twenty-four, and neither of the Parties ſtrike out any. 1 *Salk.* 405. This is never done in a capital Cauſe. *T. Jones* 222. A *Special Jury* may be granted to try a Cauſe at Bar, without the Conſent of Parties; but never at the *Niſi prius*, unleſs good and ſufficient Cauſe be ſhewn by Affidavit. *Paſch.* 10 *Geo.* 1. A Rule may be made for a good *Jury*, and that a Special Verdict may be found, &c. *Mod. Caſ. in L. & E.* 221. By the late Act, in Trials of Iſſues on Indictments, &c.

and in all Actions whatſoever, on the Motion of any Proſecutor, Plaintiff or Defendant, &c. the Courts at *Weſtminſter* may order a *Special Jury* to be ſtruck, in ſuch Manner as upon Trials at Bar: And when any *Special Jury* ſhall be ordered by Rule of the ſaid Courts in any Cauſe ariſing in any City, &c. the Jury is to be taken out of Liſts or Books of Perſons Qualified, which ſhall be produced and brought by Sheriffs, &c. before the proper Officer, as the Freeholders Book is for ſtriking *Juries* in Cauſes ariſing in Counties. *Stat.* 3 *Geo.* 2. The Juſtices of Aſſiſe for the Counties Palatine of *Cheſter*, *Lancaſter*, &c. upon Motion in Behalf of the King, or any Proſecutor, or Defendant, in an Indictment, Information, or any Suit, may appoint a Jury to be ſtruck for Trial of Iſſues in like Manner as *Special Juries* in the Courts of Law at *Weſtminſter*. 6 *Geo.* 2. *c.* 23. And by this Statute, the 3 & 4 *Geo.* 2. are made perpetual. Touching the Affairs of *Merchants*, where two Merchants are Plaintiff and Defendant, a *Jury* of Merchants may be returned to try the Iſſue between them. The Court was moved that a *Jury* of Merchants might be returned to try an Iſſue between two Merchants, and it was granted; becauſe it was conceived they might have better Knowledge of the Matters in Difference than others who were not of that Profeſſion. *Hill.* 21 *Car. B. R.* When an *Alien* is Plaintiff or Defendant in a Cauſe, the *Jury* ought to be half Foreigners, and half *Engliſh*; but it is not neceſſary that the Foreigners be all of the ſame Country. 2 *Lill.* 125. And if the Trial is by all *Engliſh* Jurors, it is not Error; where the Party ſlips his Time, and does not pray Trial by an equal Number of Aliens, &c. See *Challenge, Verdict.*

Trial by Jury, Was anciently called *Duodecim virale Judicium.*

Jurrock, Is ſaid to be a Kind of Cork, mentioned in the Statute 1 *R.* 3. *c.* 8.

Jus, Signifies Law or Right, Authority and Rule. *Litt. Dict.*

Jus accreſcendi, Is the Right of Survivorſhip between Jointenants. *Litt.* 280. 1 *Inſt.* 180.

Jus Anglorum, The Laws and Cuſtoms of the *Weſt Saxons*, in the Time of the *Heptarchy*, by which the People were for a long Time governed, and which were preferred before all others, were termed *Jus Anglorum.*

Jus Coronæ, The Right of the *Crown*; and it is Part of the Law of *England*, though it differs in many Things from the general Law relating to the Subject. 1 *Inſt.* 15. The King may purchaſe Lands to him and his Heirs, but he is ſeiſed thereof *in Jure Coronæ*; and all the Lands and Poſſeſſions whereof the King is thus ſeiſed, ſhall follow the Crown, in *Diſcents*, &c.

Jus Duplicatum, Is where a Man hath the Poſſeſſion of any Thing, as well as a Right to it. *Bract. lib.* 2.

Jus Gentium, Is the Law by which Kingdoms and Society in general are governed. *Selden.*

Jus Hæreditatis, The Right or Law of Inheritance.

Jus Habendi & Retinendi, Right to have and retain the Profits, Tithes, and Offerings, &c. of a Rectory or Parſonage. *Hugh's Parſon's Law* 188.

Jus Patronatus, Is a Commiſſion granted by the Biſhop to ſome Perſons to inquire into who is the rightful *Patron* of a *Church*. If two Patrons preſent their Clerks, the Biſhop ſhall determine who ſhall be admitted by *Right of Patronage*, &c. on Commiſſion of Inquiry of ſix Clergymen, and ſix Laymen, living near to the Church; who are to inquire on Articles as a Jury, Whether the Church is void? Who preſented laſt? Who is the rightful Patron, &c. But if Coparceners ſeverally preſent their Clerks, the Biſhop is not obliged to award a *Jus Patronatus*, becauſe they preſent under one Title; and are not in like Caſe where two Patrons preſent under ſeveral Titles. 5 *Rep.* 102. 1 *Inſt.* 116. The Awarding a *Jus Patronatus* is not of Neceſſity, but at the Pleaſure of the Ordinary, for his better Information who hath the Right of Patronage; for if he will at his Peril take Notice of the Right, he may admit the Clerk of either of the Patrons, without a *Jus Patronatus.* 1 *Leon.* 168. A Biſhop may award a *Jus Patronatus* with a ſolemn Premonition to all Perſons, *Quorum Intereſt*, &c. where he knows not who is the Patron, to give Notice of an Avoidance by Deprivation, &c. *Hob.* 318 This Inquiry by *Jus Patronatus* is to excuſe the Ordinary from being a Diſturber.

Jus Poſſeſſionis, A Right of Seiſin or Poſſeſſion; and a Parſon hath a Right to the Poſſeſſion of the Church and Glebe, for he hath the Freehold, and is to receive the Profits to his own Uſe. *Parſ. Law* 188.

Jus Preſentationis. The Right of the Patron of preſenting his Clerk unto the Ordinary to be Admitted, Inſtituted and Inducted into a Church. *Ibid.*

Jus Recuperandi, Intrandi, &c. A Right of Recovering and entring Lands, &c.

All theſe *Rights*, following the Relation of their Objects, are the Effects of the *Civil Law*. Co. Litt. 266.

Juſta, A certain Meaſure of Liquor, *Quaſi* Juſta *Menſura*; being as much as was ſufficient to drink at once. *Mon. Angl. Tom.* 1. *pag.* 149.

Juſts, (Fr. *Jouſte, i. e. Decurſus*) Were Exerciſes between martial Men and Perſons of Honour, with Spears on Horſeback; and differed from *Tournaments*, which were all Sorts of military Contentions, and conſiſted of many Men in Troops; whereas *Jouſts* were uſually between two Men ſingly. They are mentioned in the Stat. 24 *H.* 8. *c.* 13. and are now diſuſed. See *Tournament.*

Juſtice, (*Juſtitia*) Is a conſtant righteous Inclination to give every one his due; or the Act of doing what is Right and Juſt. *Chamb.* The Delaying *Juſtice* is an Obſtruction to and Kind of Denial thereof; but this is underſtood, of unneceſſary and unjuſt Delay, for ſometimes it is convenient for the better finding out the Truth, and Preparation of Parties, that they may not be ſurpriſed. *Forteſcue's Laud. Leg. Angl.*

Juſtice, (*Juſticiarius*) Signifies an Officer deputed by the King to adminiſter *Juſtice*, and do Right by Way of Judgment; and is called *Juſtice*, becauſe in antient Time the Latin Word for him was *Juſtitia*, and for that he hath his Authority by Deputation, and not *Jure Magiſtratus. Glanvil, lib.* 2. *c.* 6. In the *King's Bench* and *Common Pleas*, there are *Chief Juſtices*; the former of which, is called *Capitalis Juſticiarius Banci Regii, vel ad Placita coram Rege tenenda*, hath the Title of Lord whilſt he enjoys his Office, and is ſtiled *Capitalis Juſticiarius*, becauſe he is Chief of the Reſt; and for this Reaſon he hath uſually the Title of *Lord Chief Juſtice of England.* This *Juſtice* was anciently created by Letters Patent under the Great Seal; but is now made by Writ in this ſhort Form: *Rex*, &c. Roberto Raymond *Mil. Salutem, Sciatis quod conſtituimus vos* Juſticiarium noſtrum Capitalem *ad Placita coram nobis Tenenda, quamdiu vos bene geſſeritis*, &c. *Teſte*, &c. And the ancient Dignity of this ſupreme Magiſtrate was very great; he had the Prerogative to be Vicegerent of the Kingdom, when any of our Kings went beyond Sea, being choſen to this Office out of the greateſt of the Nobility; and had the Power alone, which afterwards was diſtributed to three other great Magiſtrates, that is, he had the Power of the Chief *Juſtice* of the *Common Pleas*, of the *Chief Baron* of the *Exchequer*, and the *Maſter* of the *Court of Wards*; and he commonly ſat in the King's Palace, and there executed that Authority which was formerly performed *per Comitem Palatii*, in determining Differences which happened between the Barons and other great Perſons of the Kingdom, as well as Cauſes Criminal and Civil between other Men: But King *Richard* 1ſt, firſt diminiſhed his Power, by appointing two other *Juſtices*; to each whereof he aſſigned a diſtinct Juriſdiction, *viz.* to one the *North* Parts of *England*, and to the other the *South*; and in the Reign of K. *Edward* 1. they were reduced to one Court, with a further Abridgment of their Authority, both as to the Dignity of their Perſons, and Extent of their Juriſdiction; for no more were choſen out of the Nobility as antiently, but out of the Commons, who were Men of Integrity, and skilful in the Laws of the Land; whence it is ſaid the Study of the Law dates its Beginning. *Origines Judiciales.* In the Time of King *John*, and other of our antient Kings, it often occurs in Charters of Privilege, *Quod non ponatur reſpondere, niſi coram nobis, vel* Capitali Juſticia *noſtra*: And this high Officer hath at this Time a very extenſive Power and Juriſdiction in Pleas of the Crown; and is particularly intruſted with not only the Prerogative of the King, but the Liberty of the Subject. The *Chief Juſtice* of the Common Pleas hath alſo the Title of Lord whilſt he is in Office, and is called *Dominus Juſticiarius Communium Placitorum, vel Dominus Juſticiarius de Banco*; who with his Aſſiſtants did originally, and doth yet, hear and determine all *Common Pleas*, in Civil Cauſes, as diſtinguiſhed from the King's Pleas, or Pleas of the Crown. *Bract. lib.* 3. The *Chief Juſtices* are inſtalled or placed on the Bench by the Lord *Chancellor*; and the other *Juſtices* by the Lord Chancellor and the Lord *Chief Juſtices* Beſides the Lords Chief *Juſtices*, and the other *Juſtices* of the Courts at *Weſtminſter*, there are many other Juſtices commiſſioned by the King to execute the Laws; as Juſtices of Aſſiſe, of the *Foreſt*, of *Niſi Prius*, *Oyer and Terminer*, *&c.* all of them treated of under their *Heads*; and *Juſtices of Peace*, *&c.*

Juſtices of the Peace, (*Juſticiarii ad Pacem*) Are thoſe that are appointed by the King's Commiſſion to keep the Peace of the County where they dwell; and are rather *Commiſſioners of the Peace*, of whom ſome of the greater Quality are of the *Quorum*, becauſe Buſineſs of Importance may not be diſpatched without the Preſence of them, or one of them. *Juſtices of Peace, Polidore Virgil* tells us, had their Beginning in the Reign of *William* 1ſt, called the Conqueror; but Sir *Edward Coke* was of Opinion, that in the ſixth Year of K. *Ed.* 1. *Prima fuit Inſtitutio Juſticiariorum pro Pace conſervanda.* Mr. *Prynne* affirms, that in the Reign of King *Hen.* 3. after the Agreement made between that King and his Barons, Guardians *ad Pacem conſervandam* were conſtituted: And Sir *Henry Spelman* differs from both theſe, being of Opinion that they were not made until the Beginning of the Reign of King. *Ed.* 3. when they were thought neceſſary for ſuppreſſing Commotions, which might happen upon the Dethroning of King *Ed.* 2. It is certain the general Commiſſion of the Peace, by Statute, began 1 *Ed.* 3. Though before that Time there were particular Commiſſions of the Peace to certain Men, in certain Places; though not throughout *England*. 2 *Nelſ. Abr.* 1063. Heretofore there were *Conſervators of the Peace* at the Common Law, elected by the County, upon a Writ directed to the Sheriff: But the Election of Conſervators is transferred by Statutes from the People, to the King; and at length *Juſtices of Peace* are created Conſervators of the Peace by Commiſſion or Letters Patent under the Great Seal: The Power of conſtituting them is only in the King; though they are generally made at the Diſcretion of the Lord Chancellor or Lord Keeper, by the King's Leave; and the King may appoint in every County in *England* and *Wales* as many as he ſhall think fit. 1 *Inſt.* 174, 175. At firſt the Number of *Juſtices* were not above three or four in a County. 18 *Ed.* 3. Afterwards the Number was limited to ſix in every County; whereof two were to be of the beſt Quality, (ſuch as we now call of the *Quorum*) two Men of the Law, and two others. And after there was to be one Lord, and three or four of the moſt worthy of the County, with ſome learned in the Law. 34 *Ed.* 3. By the Statute 14 *R.* 2. eight *Juſtices of Peace* were to be aſſigned in every County: And the Number of *Juſtices* has greatly increaſed ſince their firſt Inſtitution; Mr. *Lambard* above one hundred Years ago complaining of their exceſſive Number; and after him the learned *Spelman* takes Notice that there were above Threeſcore in each County: They are now without Limitation; and their prodigious Increaſe with the unſuitable Appointment many Times made of Perſons for this Truſt, hath rendred the Office contemptible in the Eye of our beſt Gentry, for whom it was originally intended: And therefore it hath been propoſed, that in each County there ſhould be eight Honorary *Juſtices* conſtituted of Men of Quality, who ſhould not be obliged to an Attendance any farther than their Zeal for *Juſtice*, and Love for their Country ſhall incline them; and the like Number of acting *Juſtices*, Gentlemen capable of Buſineſs, who ſhould conſtantly attend, and be intitled to a Reward for their Pains, and upon any Neglect be ſubject to Penalties. *Lambard's Juſt.* By Statute, *Juſtices of Peace* muſt be reſident in the County; are to be the moſt ſufficient Perſons, and of the beſt Reputation; and they are to have 20*l.* *per Annum* in Lands as a Qualification, and if they act without ſuch Qualification, (except Lawyers) they ſhall forfeit the Sum of 20*l.* And they were formerly to be allowed 4*s.* a Day during their Attendance at the Quarter-Seſſions, to be paid by the Sheriffs of Counties. 12 *R.* 3. 2 *H.* 5. 18 *H.* 6. Now the Qualification of *Juſtices of Peace* is 100*l.* *per Ann.* Eſtate, Freehold or Copyhold, in Poſſeſſion, for Life or greater Eſtate, or certain Term of 21 Years, above Incumbrances; or acting as *Juſtices* ſhall incur the Forfeiture of 100*l.* And Attornies, *&c.* are incapable to be in the Commiſſion of the Peace. 5 *Geo.* 2. *Juſtices of Peace* are to hold their Seſſions four Times a Year, *i. e.* the firſt Week after *Michaelmas*, the *Epiphany*, *Eaſter*, and St. *Thomas* called *Becket*, being the 7th of *July*. Stat. 2 *H.* 5. They are *Juſtices* of Record, for none but *Juſtices* of Record can take a Recognizance of the Peace: And their Power ariſes from their Commiſſion, or from Statutes. By Virtue of theſe Words in their Commiſſion, *viz.* *Sciatis quod aſſignavimus vos conjunctim & diviſim & quemlibet veſtrum Juſticiarios noſtros ad Pacem noſtram in Comitatu noſtro S. Conſervandam, &c.* every *Juſtice of Peace* hath a ſeparate Power, and may do all Acts concerning his Office apart and by himſelf; and even may commit a Fellow-*Juſtice* upon Treaſon, Felony, or Breach of the Peace: And this is the ancient Power which Conſervators of the Peace had at Common Law. But it has been held, that one *Juſtice of Peace* cannot commit another *Juſtice*, for Breach of the Peace; though the *Juſtices* in Seſſions may do it. *Lamb. Juſt.* 385. *Jenk. Cent.* 174. By Virtue of another *Aſſignavimus*, or Clauſe in the Commiſſion, two or more *Juſtices of the Peace* (one of the *Quorum*) have a joint Power to inquire by Jury of all Offences mentioned in the Commiſſion; to take Indictments, and grant Proceſs thereupon; and to hear and try the Offences; which are Matters to be tranſacted at the Quarter-Seſſions. And by the Statutes they may act in many Caſes where their Commiſſion doth not reach; the Statutes themſelves being a ſufficient Commiſſion. *Lamb. lib.* 4. *Wood's Inſt.* 79, 80. The Stat. 4 *H.* 7. *c.* 12. 33 *H.* 8. *c.* 10. and 37 *H.* 8. *c.* 7. give them a further general Power than is expreſſed either in their Commiſſion, or in any particular Statute. The particular Statutes are to be executed as they direct; wherein if no expreſs Power is given to any one *Juſtice*, he can admoniſh only, and if not obeyed, may make Preſentment of the Offence upon the Statute, and with his Fellow-*Juſtices* hear and determine it in Seſſions; or he may bind the Offender to the Peace, or the good Behaviour: Some Statutes empower one *Juſtice of Peace* alone to act; ſome require two, three, four *Juſtices*, *&c.* And where a ſpecial Authority is given to *Juſtices of Peace*, it muſt be exactly purſued; or the Acts of the *Juſtices* will not be good. 2 *Salk.* 475. A *Juſtice of Peace*'s Oath for the Execution of his Office, is as follows: ‘You ſhall ſwear, That in the Office of a *Juſtice of Peace* in and for the County of, *&c.* in all and every the Articles in his Majeſty's Commiſſion enjoined and to you directed, you will do equal Right to the Rich and Poor, according to your Knowledge, and the Laws and Statutes of this Realm; you ſhall not be Counſel to any Perſon, in any Quarrel depending before you; you ſhall hold your Seſſions according to the Direction of the Statutes in that Caſe made; and you ſhall cauſe to be entered the Iſſues, Fines and Amerciaments that ſhall happen to be made, and all Forfeitures, without any Concealment, and ſend an Account of them to the King's *Exchequer*; you ſhall not ſpare any one for Gift or other Cauſe, nor take any Thing for doing the Buſineſs of your Office, but the Fees and Allowances accuſtomed and fixed by Acts of Parliament, *&c.* And in all Things you ſhall well and truly do and execute the Office of a *Juſtice of Peace.*’ Dalt. Juſt. If a *Juſtice of Peace* does not obſerve the Form of Proceeding directed by Statute, it is *coram non judice*, and void: But if he acts according to the Direction of the Statutes, neither the *Juſtices* in Seſſions nor *B. R.* can reverſe what he has done. *Jones* 170. The Power of *Juſtices* is *Miniſterial* when they are commanded to do any Thing by a ſuperior Authority, as by the Court of *B. R.* *&c.* In all other Caſes they act as *Judges*: But they muſt proceed according to their Commiſſion, *&c.* And a *Juſtice* is to exerciſe his Authority only within the County where he is appointed by his Commiſſion; not in any City which is a County of itſelf or Town Corporate, having their proper *Juſtices*, *&c.* though in other Towns and Liberties he may. *Dalt.* When a *Juſtice of Peace* acts to compel another to perform any Thing required by Law, as where he impriſons or commands any one to be impriſoned, *&c.* he cannot act out of the Juriſdiction of his County: but he may take Informations any where to prove Offences in the County where committed, and he principally reſides, or take a Recognizance to proſecute. *Cro. Car.* 213. And by a late Statute, *Juſtices* of any County, dwelling in a City that is in itſelf a County within the County at large, may grant Warrants, take Informations, make Orders, *&c.* at their own Dwelling-Houſes, though out of the County, *&c.* 9 *Geo.* 1. *c.* 7. Alſo *Juſtices of Peace* may do all Things relating to the Laws for Relief of the Poor, the Paſſing and Puniſhing Vagrants, the Repairs of the Highways, or concerning Parochial Taxes or Rates, although ſuch *Juſtices* are rated to the Taxes, within any Place where they execute their Office: But no *Juſtice* ſhall act in determining any Appeal to the Quarter-Seſſions, from any Order that relates to the Pariſh where he is ſo charged Stat. 16 *Geo.* 2. *c.* 18. On Appeals to *Juſtices of Peace* in the Seſſions, they are to cauſe Defects in Form in Orders, *&c.* to be rectified without Charge, and then determine the Matters according to the Merits of the Caſe; and their Proceedings ſhall not be removed into *B. R.* without entering into Recogniſance of 50 *l.* to proſecute with Effect, and pay Coſts if affirmed, *&c.* by Statute 5 *Geo.* 2. *c.* 19. No *Certiorari* ſhall iſſue to remove any Order, made by *Juſtices of Peace* of any County, *&c.* or at the Quarter Seſſions, unleſs it be applied for within ſix Months, and proved on Oath that ſix Days Notice in Writing was given to the *Juſtices*, by whom the Order was made, that they or the Parties concerned may ſhew Cauſe againſt it. 13 *Geo.* 2. *c.* 18. A Man may be a *Juſtice of Peace* in one Part of *Yorkſhire*, and yet be no *Juſtice of Peace* in every Part of the County; this County being divided into ſeparate Ridings. *Hill.* 22 *Car. B. R.* *Juſtices of Peace* have Power by their Commiſſion to hear and determine Felonies and Treſpaſſes, *&c.* 13 *Ed.* 3. *c.* 2. But this is by a ſpecial Clauſe in their Commiſſion; otherwiſe they cannot do it. *H. P. C.* 165. And if a Commiſſion of *Oyer* and *Terminer* iſſues to hear and determine Felonies, that determines the Commiſſions of *Juſtices of Peace* as to Felonies, tho' not as to the Peace, *&c.* The Stat. 1 *&* 2 *Ph. & M.* *c.* 13. directs *Juſtices of Peace* to take Examinations in Caſes of Felony and Murder, and to certify them to the *Juſtices* of Gaol-Delivery, *&c.* ſince which they forbear to try great Felonies. *H. P. C.* 166. *Juſtices of Peace* may take an Information againſt Perſons committing Treaſon; iſſue Warrants for their Apprehenſion, and commit them to Priſon, *&c.* They commit all Felons in order to Trial; and bind over the Proſecutors to the Aſſiſes: And if they do not certify Examinations and Informations to the next Gaol-Delivery; or do not bind over Proſecutors, *&c.* they ſhall be fined. *Dalt. c.* 11. For Petit Larceny, and ſmall Felonies, the *Juſtices* in their Quarter-Seſſions may try Offenders; other Felonies being of Courſe try'd at the Aſſiſes: And in Caſe of Felonies, and Pleas upon Penal Statutes, they cannot hold Cogniſance without an expreſs Power given them by the Statutes. *Juſtices of Peace* in their Seſſions cannot try a Cauſe the ſame Seſſions, without Conſent of Parties, *&c.* for the Party ought to have convenient Time, or it will be Error. *Cro. Car.* 317. *Sid.* 334. Nor can the Seſſions of *Juſtices* refer a Matter which ought to be tried, to be determined by another Seſſions; yet they may refer a Thing to another to examine, and make Report to them for their Determination. 2 *Salk.* 477. The Seſſions is all as one Day, and the *Juſtices* may alter their Judgments at any Time while it continues. *Ibid.* 494. 'Tis incident to the Office of a *Juſtice of Peace* to commit Offenders: And a *Juſtice* may commit a Perſon that doth a Felony in his own View, without Warrant; but if it be on the Information of another, he muſt make a Warrant under Hand and Seal for that Purpoſe. If a *Juſtice* iſſues a Warrant to arreſt a Felon, and the Accuſation be falſe, the *Juſtice* is excuſed, where a Felony is committed: If there be no Accuſation, Action will lie againſt the *Juſtice.* 1 *Leon.* 187. A *Juſtice* makes a Warrant to apprehend a Felon, though he is not indicted, he who executes the Warrant ſhall not be puniſhed; And if one brings another before a *Juſtice* on Suſpicion of Felony, notwithſtanding it happen to be without juſt Cauſe, no Action lies. 13 *Rep.* 76. *Cro. Jac.* 432. If Complaint and Oath be made before a *Juſtice of Peace*, by one of Goods ſtolen, and that he ſuſpects they are in ſuch a Houſe, and ſhews the Cauſe of his Suſpicion; the *Juſtice* may grant a Warrant to the Conſtable, *&c.* to ſearch in the Place ſuſpected, and ſeize the Goods and Perſon in whoſe Cuſtody they are found, and bring them before him, or ſome other *Juſtice* to give an Account how he came by them; and farther to abide ſuch Order, as to Law ſhall appertain. But in this Caſe, a general Warrant to ſearch all Places, whereof a Perſon and Officer have Suſpicion; tho' Warrants of this Kind have been granted, yet it is not ſafe to grant them. 2 *Hale's Hiſt. P. C.* 114. The Search on theſe Warrants, ought to be in the Day-time, and Doors may be broke open by Conſtables to take the Goods; which are to be depoſited in the Hands of the Sheriff, *&c.* till the Party robbed hath proſecuted the Offender, to have Reſtitution. *Ibid.* 150, 151. A *Juſtice of Peace* may make a Warrant to bring a Perſon before himſelf only, and it will be good; though it is uſual to make Warrants to bring the Offenders before him or any other *Juſtice* of the County, *&c.* And if a *Juſtice* directs his Warrant to a private Perſon, he may execute it. 5 *Rep.* 60. 1 *Salk.* 347. If a *Juſtice* grants his Warrant beyond his Authority, the Officer muſt obey; but if it be where the *Juſtice* has no Authority, the Officer is puniſhable if he executes it. *Juſtices of Peace* may make and perſwade an Agreement in petty Quarrels and Breaches of the Peace, where the King is not intitled to a Fine: Though they may not compound Offences, or take Money for making Agreements. *Noy* 103. *Juſtices* may not intermeddle with Property; if they do, Action lies againſt them and the Officers who execute their Orders. 3 *Salk* 217. But for Detainer of Goods, in ſmall Matters of poor People, not of Ability to go to Law, in ſome Places *Juſtices* interpoſe and grant Warrants to do Juſtice. *Mod. Juſt.* 167. A *Juſtice of Peace* hath a diſcretionary Power of binding to the good Behaviour; and may require a Recognizance with a great Penalty of one for his Keeping of the Peace, where the Party bound is a dangerous Perſon, and likely to break the Peace, and do much Miſchief. *Paſch.* 1652. 2 *Lill. Abr.* 131. And where a Perſon is to be bound to the good Behaviour, for Default of Sureties he may be committed to Gaol. But a Man giving Security for keeping the Peace in *B. R.* or the Chancery, may have a *Superſedeas* to the *Juſtices* in the Country not to take Security; and ſo where a Perſon hears of a Warrant out againſt him, gives Surety of the Peace to any other *Juſtice, &c.* If one make an Aſſault upon a *Juſtice of Peace*, he may apprehend the Offender, and ſend him to Gaol till he finds Sureties for the Peace; and a *Juſtice* may record a forcible Entry upon his own Poſſeſſion: In other Caſes he cannot judge in his own Cauſe. *Wood's Inſt.* 81, Where a Man abuſeth a *Juſtice* by Words, before his Face or behind his Back, in Relation to his Office, he may be bound to the good Behaviour; and if a *Juſtice of Peace* be abuſed in the Execution of his Office, the Offender may be alſo indicted and fined. *Cromp.* 149 4 *Rep.* 16. To ſay of a *Juſtice of Peace* he doth not underſtand Law, *&c.* is indictable: And Contempts againſt *Juſtices* are puniſhable by Indictment and Fine at the Seſſions. 3 *Mod.* 139. 1 *Sid.* 144. But abuſing a *Juſtice* out of his Office, by Words that do not relate to his Office, ſeems to ſtand only as in the Caſe of other Perſons. *Juſtices* ſhall not be regularly puniſhed for any Thing done by them in Seſſions as Judges: And if a *Juſtice of Peace* be ſued for any Thing done in his Office, he may plead the general Iſſue, and give the ſpecial Matter in Evidence; and if a Verdict goes for him, or the Plaintiff be Nonſuit, he ſhall have double Coſts. Stat. 21 *Jac.* 1. Tho' if a *Juſtice of Peace* is guilty of any Miſdemeanor in his Office, Information lies againſt him in *B. R.* where he ſhall be puniſhed by Fine and Impriſonment. *Sid.* 192. If a Perſon be never ſummoned by *Juſtices of Peace*, to be heard and make his Defence, before the Juſtices make any Order againſt him, it is a Miſbehaviour for which an Information will lie againſt them: But it has been held, that it is not abſolutely neceſſary to ſet it out in the Order. *Trin.* 11 *Geo.* 1. The Court of *B R.* will grant an Information againſt a *Juſtice of Peace* on Motion, for ſending a Servant to the Houſe of Correction without ſufficient Cauſe; if the *Juſtice* do not ſhew good Cauſe, *&c. Mod. Caſ. in L. and E.* 45, 46. And for Contempt of Laws, *&c.* Attachment may be had againſt *Juſtices of Peace* in *B. R.* on Motion of the Attorney General, *&c.* A *Juſtice of Peace* fined a Thouſand Marks, for corrupt Practices, ſee 1 *Keb.* 727. If a new Commiſſion is made and granted for *Juſtices of Peace*, out of which ſome of the *Juſtices* in the old Commiſſion are omitted, yet what Acts they do as *Juſtices* are lawful till the next Seſſions, at which the new Commiſſion is publiſhed, and when the new Commiſſion is publiſhed, they are to take Notice of it, and not act further. *Moor* 187. By granting a new Commiſſion, Diſcharge under the Great Seal, Acceſſion of another Office, and by the Death of the King, the Power and Offices of *Juſtices of Peace* determine. 4 *Inſt.* 165. But till then they are empowered to act in a great many *particular Caſes* by Statute, as follows, *viz.*

Juſtices of Peace are to licenſe *Alehouſes*, and iſſue Warrants to levy the Penalty of 20*s.* on Perſons keeping Alehouſes, without Licence; 10*s.* on Victuallers, *&c.* permitting Tipling, and 3*s.* 4*d* on Tiplers; alſo a Sum not above 40*s.* nor under 10*s.* for ſelling Ale in Veſſels not mark'd, or under Meaſure; and they are to take Recognizances for good Order; ſuppreſs unlawful Alehouſes, *&c.* 5 *&* 6 *Ed.* 6 21 *Jac.* 1. 3 *Car.* 1. 11 *&* 12 *W.* 3. They are to reconcile Differences between Maſters and *Apprentices*; and commit diſorderly Apprentices to the Houſe of Correction, *&c.* And to conſent to the Binding poor Boys out Apprentice, and Apprentices to the Sea-Service. 5 *&* 43 *Eliz* 2 *Ann.* *Juſtices* are to grant Warrants againſt Perſons ſeducing *Artificers* to go out of the Kingdom, and bind them over to the Aſſiſes, or Seſſions, where they ſhall be fined not exceeding 100*l.* And *Juſtices* may in their Seſſions require Security from *Artificers*, not to depart the Realm, *&c.* 5 *Geo.* 1. To bind to the good Behaviour Perſons riding unlawfully *Armed.* 2 *Ed.* 3. *Badgers* are to be licenſed by three *Juſtices* in Seſſions. 5 *Eliz.* Two *Juſtices* are to *bail* Perſons for Manſlaughter, Felony, *&c.* where bailable by Law. 1 *&* 2 *P. & M.* One *Juſtice* may enter *Bakers* Houſes and examine their Bread; and if it be deficient in Goodneſs or Weight, may ſeiſe and give it to the Poor, and a Penalty of 5*s. per* Ounce is inflicted for Under-Weight: *Juſtices* are likewiſe to aſcertain the Aſſiſe and Weight of Bread, *&c.* 8 *Ann.* 1 *Geo.* 1. See 3 *Geo.* 2. *Juſtices of Peace* ſhall iſſue Warrants for apprehending and committing *Bankrupts*, after they are certified to be ſuch, *&c.* 5 *Geo.* 1. Examine *Baſtardy*; and the two next *Juſtices* are to make Orders for keeping the Child, and charge the Father or Mother with Weekly Payments towards the ſame, *&c.* and commit lewd Women to the Houſe of Correction. 18 *Eliz.* 7 *Jac.* 1. 13 *&* 14 *Car.* 2. A *Juſtice* is to iſſue his Warrant to apprehend the Father of a *Baſtard*-Child, to give Security to perform Orders made, *&c.* but if the Woman die, or miſcarry, *&c.* he ſhall be diſcharged. 6 *Geo.* 2. *Beer* and Ale ſhall be ſold at ſuch Rates, as ſhall be thought reaſonable by *Juſtices of Peace*; on Pain of forfeiting 6*s.* 8*d.* a Barrel, *&c.* 23 *H* 8. In their *Eaſter* Quarter-Seſſions yearly the *Juſtices* of Peace are to appoint Searchers of *Bricks* and *Tiles*; who ſhall make Preſentments of ſuch as are made contrary to the Statutes, *&c.* 12 *Geo.* 1. 3 *Geo.* 2. *Juſtices* in Seſſions may order Aſſeſſments for Repairs of *Bridges*, and cauſe the ſame to be levied; and alſo determine Annoyances. They may likewiſe purchaſe Ground, near to any County Bridge, the better to rebuild or enlarge it. 22 *H.* 8. 14 *Geo.* 2. The *Juſtices of Peace* in their Seſſions have Power to hear and determine the Offence of *Buggery*, by Stat. 25 *H.* 8. A Penalty of 100*l.* *&c.* for *Burning* Houſes, thro' Negligence or Careleſneſs, is leviable by Warrant of two *Juſtices.* 6 *Ann.* *Juſtices* are to iſſue their Warrants to levy the Forfeiture of 5 *l.* for *Burying* Perſons otherwiſe than in Woollen, *&c.* 30 *Car.* 2. They are to levy 6 *s.* 8 *d.* on *Butchers* killing Meat on a *Sunday*; and double Value for ſelling their Goods at unreaſonable Rates; and ſelling corrupt Meat, ſhall be fined. 3 *Car.* 1. 15 *Car.* 2. The Penalty of 5 *l.* inflicted on Taylors making or uſing Cloth *Buttons* or Button-holes, is levied by Order of *Juſtices*; and one or more *Juſtices* may ſummon Parties, examine and convict, and levy the Penalty of 40 *s.* *per* Dozen on Perſons wearing *Cloth-Buttons*, *&c.* 8 *Ann.* 7 *Geo.* 1. To hear and determine Complaints againſt thoſe as uſe or wear any printed *Callico*, contrary to Law, and levy the Penalty of 5 *l.* by Diſtreſs, ſubject to Appeal to the Seſſions. 7 *Geo.* 1. *Candles* are to be examined by *Juſtices*; and Penalties levied by them, for deceitful mixing Tallow or other Stuff with Wax, *&c.* Alſo to levy Forfeitures for not making Entries of Candles, and Work houſes, *&c.* to pay the Duty. 11 *H.* 6. 23 *Eliz.* 8 *Ann.* 11 *Geo.* 1. *Juſtices* are to levy 5 *l.* Penalty on *Carriers*, *&c.* taking more for Carriage of Goods than aſſeſſed in Seſſions; and 20 *s.* of Carriers travelling on a *Sunday:* And on Proof before a *Juſtice* of more than ſix Horſes uſed by Carriers in Waggons, *&c.* the *Juſtice* is to iſſue his Warrant for Delivery to the Seiſor of the Horſes forfeited. 3 *Car.* 1. 3 & 4 *W.* & *M.* 5 *Geo.* 1. To take Recognizances with Sureties on *Certiorari's* to pay Coſts, if the Conviction be affirmed. 4 & 5 *W.* & *M.* Perſons not repairing to *Church* every *Sunday* are to forfeit 1 *s.* for every Offence; and Diſturbing a Congregation, or Miſuſing a Teacher, incurs a Forfeiture of 20 *l.* leviable by *Juſtices of Peace*, by Diſtreſs, *&c.* 1 *Eliz.* 1 *W.* & *M.* *Juſtices* are to levy 20 *s.* on *Clothiers*, not paying their Work-People in Money: And the ſame Penalty on Buyers of Cloth refuſing to take it according to the Meaſure, marked on the Seal by the Mill-man; but if it contains not the Quantity, the Seller ſhall forfeit a ſixth Part: Makers of deceitful Cloth ſhall forfeit 5 *l.* and faulty Cloths expos'd to Sale, are liable to Forfeiture; *Juſtices* are to appoint Overſeers and Searchers of Cloth; and puniſh the Combinations of Weavers for advancing their Wages, *&c.* A *Juſtice of Peace* may grant his Warrant to ſearch for Cloth taken from Tenters, *&c.* in the Night, and to levy the Forfeiture for ſuch Offence. 3 & 4, 5 & 6 *Ed.* 6. 39 *Eliz.* 21 *Jac.* 1. 10 *Ann.* 1 & 12 *G.* 1. 15 *G.* 2. To levy the Penalty of 20 *s.* on *Coachmen*, demanding more than their Fare, giving abuſive Language, *&c.* alſo to order Satisfaction by Perſons refuſing to pay a Coachman his juſt Fare, and for defacing Coaches, *&c.* 9 *Ann.* 1 *Geo.* 1. *Juſtices of Peace* of the ſeveral Counties, *&c.* may ſet the Price of *Coals* ſold by Retail: And Coal-Sacks are to be ſealed and marked, and be of a certain Length and Breadth, under 20 *s.* Penalty, recovered before the *Juſtices* 16 & 17 *Car.* 2. 3 *Geo.* 2. A *Juſtice* may ſummon Dealers in *Coffee*, *&c.* not making due Entries of Wares ſold, and levy the Penalties inflicted. 10 *Geo.* 1. They are to levy 20 *s.* on *Conſtables*, for not apprehending Vagrants; and 40 *s.* on them for not putting the Acts in Force againſt unlicenſed Alehouſe-keepers, *&c.* and to appoint and ſwear Conſtables. 13 *Car.* 2. 11 & 12 *W.* 3. 12 *Ann.* *Juſtices of Peace*, *&c.* may break and enter Houſes where *Conventicles* are kept; and fine Perſons aſſembled, and the Preachers therein, and alſo the Perſons in whoſe Houſes the Meetings are held: And the *Juſtices* neglecting their Duty, incur a Forfeiture of 100 *l.* But Proteſtant Diſſenters are excepted. 22 *Car.* 2. 1 *W.* & *M.* In the Quarter-Seſſions, *Juſtices of Peace* may enquire of Defaults and Extortions of *Coroners*, *&c.* and fine them. 1 *Hen.* 8. *Juſtices* are to aſcertain the Price of *Corn*, for which a Bounty is allowed for Exportation, *&c.* 2 *Geo.* 2. And Perſons violently hindering others from buying Corn, or ſeizing any Horſe, or Carriage loaden therewith, on the Way to a Sea-port Town to be tranſported, *&c.* Two *Juſtices* may impriſon the Offenders three Months, or not leſs than one Month, and cauſe them to be whipt: Alſo a *Juſtice* is to examine Perſons endamaged upon Oath, in order to the Hundred's making it good, *&c.* 11 *Geo.* 2. But Corn may not now be exported, under divers Penalties. 14 *Geo.* 2. Perſons erecting *Cottages* without laying four Acres of Land to them, (except in Cities, or for Labourers in Mines, Cottages erected on the Waſte by Order of *Juſtices*, *&c.*) are to forfeit 10 *l.* and 40 *s.* a Month, leviable by Order of the *Juſtices* in Seſſions. 31 *Eliz.* Two *Juſtices* are to view the Eſtreats of Sheriffs, before they iſſue them out of the *County Court*; and Officers levying more than is contained in the Eſtreats, ſhall forfeit 40 *s.* 11 *H.* 7. In the Seſſions Juſtices order general *County Rates* to be made on every Pariſh, to raiſe Money as a County Stock. 12 *Geo.* 2. The Offences of *Curriers*, refuſing to curry Leather, which makes them liable to forfeit 10 *s.* and currying Skins inſufficiently, *&c.* 6 *s.* 8 *d.* Penalty, are puniſh'd by *Juſtices of Peace* in their Seſſions. And a *Juſtice* ſhall levy the Penalty of 5 *l* if they do not curry the Leather within ſo many Days after ſent them. 1 *Jac.* 1. 12 *Geo.* 2. One *Juſtice* may commit Perſons reſiſting the Officers of the *Cuſtoms* till the Quarter-Seſſions, where they may be fined 100 *l.* But ſuch Offenders, being ſo many in Number, armed, *&c.* are guilty of Felony by a late Act: *Juſtices* may iſſue Warrants for apprehending Perſons, and ſeiſing Goods, where they are landed without Entry; commit Carmen, *&c.* Seiſures of Goods clandeſtinely run, out of the Limits of the *Exciſe Office* in *London*, are to be heard and determined before Two or more *Juſtices of the Peace*; and *Juſtices* may levy the Penalty of 20 *l.* on Perſons receiving ſuch Goods. 13 & 14 *Car.* 2. 6 *Geo.* 1. 8 & 10 *Geo.* 1. One or more *Juſtices* ſhall ſend to the Houſe of Correction, ſuſpected Perſons lurking within 5 Miles of the Sea Coaſts, for a Month; and levy treble Value by Diſtreſs of Watermen, Porters, *&c.* having Run-Goods in their Cuſtody, and for Want of Diſtreſs, commit them for three Months, to be whipt and kept to hard Labour; alſo to commit Perſons offering any Tea, Brandy, or other Goods to Sale, without a Permit, *&c.* 9 *Geo.* 2. To determine Offences of *Deer-ſtealers*; and grant Warrant to levy the Penalty of 20 *l.* for unlawful hunting of Deer in any Park, *&c.* and 30 *l.* for every Deer taken and killed: And they are to ſend out their Warrants to ſearch for Deer ſtolen: Deer-ſtealers robbing Foreſts or Parks, armed and with Faces blacked or diſguiſed, charged with Offences by Information on Oath, are to ſurrender themſelves to a *Juſtice*, and make Diſcovery of their Accomplices, or be Guilty of Felony. And two *Juſtices of Peace* may certify Informations to a Secretary of State, in order to a Proclamation for their Surrendring, *&c.* alſo *Juſtices* in Seſſions ſhall give Certificates of Perſons killed or wounded in the apprehending ſuch Deer-ſtealers, to intitle a Reward of 50 *l.* 1 *Jac.* 1. 3 & 4 *W.* & *M.* 5 & 9 *Geo.* 1. A *Juſtice* may require a *Diſſenter* from the Church, to ſubſcribe the Declaration 20 *Car.* 2. and to take the Oaths, *&c.* and if he refuſe, the Juſtice may commit him, *&c.* 1 *W.* & *M.* Two *Juſtices of Peace* ſhall grant Warrants to ſearch Houſes of *Diſtillers* for private Stills, and levy Penalties, *&c.* And Diſtillers ſelling Brandy by Retail in their Houſes, are to be licenſed by *Juſtices* as Alehouſe-keepers. 10 & 11 *W.* 3. 2 *Geo.* 2. Alſo a *Juſtice* ſhall commit to the Houſe of Correction, *&c.* Perſons ſelling Spirituous Liquors or Strong Waters, without Licence from the Commiſſioners of Exciſe, and not paying the Penalty of 10 *l.* 16 *Geo.* 2. Two *Juſtices* to examine and inquire into the Value of Goods fraudulently carried away, to avoid *Diſtreſs* for Rent, being under 50 *l.* Value, and order the Offender to pay double Value, &c. or commit him for ſix Months: And they may adminiſter an Oath of Goods concealed in any Houſe, whereupon it may be broke open, to diſtrain the ſame. And where Tenants at a Rack-Rent, in Arrear one Year's Rent, leave Lands, &c. unoccupied, ſo that there is no Diſtreſs; two *Juſtices* may view the Premiſſes, and if on Notice and a ſecond View, the Rent be not paid, the Leaſe to be void. 11 *Geo.* 2. *Juſtices* are to order 5 *s.* to be levied on Perſons convicted of *Drunkenneſs*, by Diſtreſs; and for Want of Diſtreſs the Offender is to be ſet in the Stocks. 21 *Jac.* 1. The Penalties inflicted on *Dyers* for dying Cloths deceitfully, &c. not exceeding 5 *l.* are leviable by Two or more *Juſtices*, by Diſtreſs; and out of the Juriſdiction of the Dyers Company, the *Juſtices of Peace* in Seſſions appoint Searchers of dyed Cloths, to examine the ſame, &c. 13 *Geo.* 1. To put the Laws in Execution relating to the *Exciſe*, and levy the Penalty of 50 *l.* on Brewers fitting up or altering any Copper, Cooler, &c. without giving Notice; or keeping any private Storehouſe; and all other Penalties and Forfeitures concerning the Duty of Exciſe. 12 & 15 *Car.* 2. 8 & 9 *W.* 3. *Juſtices* have Power in their Seſſions to inquire of *Eſcapes*. 1 *R.* 3. Perſons ſuſpected to have procured Money, &c. by *Falſe Tokens*, or counterfeit Letters, may be committed by two *Juſtices* and puniſhed in the Quarter-Seſſions. 33 *H.* 8. If Witneſſes in Caſe of *Felony*, &c. refuſe to be bound in a Recognizance to appear and give Evidence, a *Juſtice* ſhall commit them; or they may be bound to the Good Behaviour: Two or more *Juſtices of Peace* by Appointment of Judges, may contract with any Perſon to tranſport *Felons*, ordered for Tranſportation, and cauſe them to be delivered by the Gaolers, &c. 2 & 3 *P.* & *M.* 4 *Geo.* 1. They are to iſſue their Warrants for levying a Penalty not exceeding 10 *s.* of Perſons taking *Fiſh* in any River, without the Conſent of the Owner, for the Uſe of the Poor, and award a Recompence, not exceeding treble Damages, to the Party grieved; and Angles, Nets, &c. of Perſons not being Makers and Sellers, ſhall be ſeiſed, &c. To levy a Sum not under 20 *s.* nor above 5 *l.* of Perſons taking Salmon or Trout out of Seaſon, under Size, &c. And the Penalty of 20 *s.* for uſing Nets to deſtroy the Spawn or Fry of Fiſh; or ſelling any Sea Fiſh, under certain Lengths: And to impriſon for three Months Offenders breaking down Fiſh-Ponds, &c. 1 & 5 *Eliz.* 22 & 23 *Car.* 2. 4 & 5 *W.* & *M.* 4 & 5 *Ann.* 1 *Geo.* 1. One *Juſtice* may impriſon Perſons making a *forcible Entry* on Lands, command the Sheriff to return a Jury to enquire thereof, and order Reſtitution, &c. And if the Sheriff, &c. neglect his Duty in Caſe of forcible Entries, he ſhall forfeit 40 *l.* recoverable in the Quarter-Seſſions. 15 *R.* 2. 8 *H.* 6. 21 *Jac.* 1. The Offences of *Foreſtallers*, Ingroſſers, &c. are inquirable of by *Juſtices* in the Seſſions, by which the Forfeitures are leviable. 5 & 6 *Ed* 6. *Juſtices* may examine into the Aſſiſe of *Fuel*, &c. and not being of juſt and good Aſſiſe, ſhall be ſeiſed as forfeited to the Poor. 7 *Ed* 6. 43 *Eliz.* If any Perſon take Pheaſants, &c. in another Man's Ground, he ſhall forfeit 10 *l.* recoverable before *Juſtices* in Seſſions: And killing any Pheaſant, Partridge, or other *Game*; or not giving a good Account how he came by them, to forfeit 20 *s.* &c. which a *Juſtice* is to levy. Perſons keeping Guns to kill *Game*, not having 100 *l. per Annum* Eſtates, &c. ſhall forfeit 10 *l.* And one *Juſtice* may grant a Warrant to ſeiſe Guns, Dogs, &c. of unqualified Perſons; and alſo to ſearch Houſes and ſuſpected Perſons for Game: Higlers, Carriers, Victuallers, &c. having in their Cuſtody Hare, Pheaſant, Partridge, &c. or buying or ſelling any Game, incur a Forfeiture of 5 *l.* leviable by *Juſtices*; and Game-keepers are to be licenſed, and their Names entered with the Clerk of the Peace, under the Penalty of 5 *l.* Alſo Game-keepers muſt be Perſons qualified, or Servants to Lords of Manors, under the like Penalty. 11 *H.* 7. 1 *Jac.* 1. 22 & 25 *Car.* 2. 4 & 5 *W.* & *M.* 5 *Ann.* 3 *Geo.* 1. A *Juſtice of Peace* may enter unlawful *Gaming houſes*, and commit to Priſon the Keepers thereof, &c. And the Seſſions may inflict a Penalty of 40 *s.* a Day on the Maſters keeping them, and 6 *s.* 8 *d.* a Time on the Gameſters reſorting to them, &c. *Juſtices* may bind to the good Behaviour Gameſters having no viſible Eſtate; and commit them 'till they find Sureties not to play for the future. 33 *H.* 8. 9 *Ann.* 2 *Geo.* 2. The Ace of Hearts, Pharaoh, and Baſſet, &c. declared to be Lotteries by Cards and Dice; the Penalties and Forfeitures on Perſons that ſet up ſuch *Games*, and are Adventurers therein, *Juſtices of Peace* may order to be levied by Diſtreſs. 12 *G.* 2. *Juſtices* are to commit Offenders to the common *Gaol*; or by a late Act, they may commit Vagrants and Perſons charged with ſmall Offences, to the common Gaol, or Houſe of Correction: To iſſue Warrants for ſeizing Goods of Offenders to bear the Expence of their Conveyance to Gaol; and levy Money for building and repairing Gaols, &c. 5 *H.* 4. 3 *Jac.* 1. 11 & 12 *W.* 3. 6 *Geo.* 1. *Juſtices* in Seſſions may hear and determine all Offences relating to *Goldſmiths* ſelling of Silver, contrary to the Statute 2 *H.* 6. *c.* 14. To give Oaths, and levy Penalties for not entering Goldſmith's Plate, &c. 6 *Geo.* 1. They are to ſummon Perſons keeping more *Gunpowder* in their Houſes in *London* and *Weſtminſter* than allowed by Law; and examine them, &c. and they not removing it in twenty-four Hours, are liable to a Penalty of 20 *s. per* Hundred: And Perſons carrying Gunpowder thro' the Streets, not doing it in covered Carriages, ſhall forfeit the ſame, on Conviction before two *Juſtices*. 5 & 11 *Geo.* 1. A *Juſtice* ſhall iſſue his Warrant to make Searches for any dangerous Quantity of Gunpowder, and may break open Places to ſeiſe it; and order the Powder to be removed, &c. 15 *Geo.* 2. To levy the Penalty of 12 *l.* on *Hawkers*, Pedlars, &c. trading without Licenſe, and 5 *l.* on Perſons refuſing to produce a Licence. 8 & 9 *W.* 3. Perſons taking more for *Hay*, &c. in the King's Progreſs, than Prices ſet, ſhall forfeit 40 *s.* on Conviction before one *Juſtice*: And offering any Hay to be ſold within the Bills of Mortality, between the laſt of *Auguſt* and firſt of *June*, which doth not weigh 56 Pounds a Truſs, &c. incurs a Penalty of 2 *s.* 6 *d.* for every Truſs, to be levied by Warrant of a *Juſtice*. 13 *Car.* 2. 2 *W.* & *M.* *Hedge-breakers* are to render ſuch Damages, and pay a Fine not exceeding 10 *s.* as a *Juſtice* ſhall appoint, or be ſent to the Houſe of Correction: Perſons not giving a good Account how they came by ſtolen Wood, are liable to the ſame Penalty; and Buyers of Wood ſtolen to pay treble Damages. Perſons cutting or ſpoiling Timber-Trees, Fruit-Trees, &c. ſhall be committed to the Houſe of Correction for three Months, and be whipped in the next Market-Town once a Month, &c. by Order of *Juſtices*. 43 *Eliz.* 15 *Car.* 2. 1 *Geo.* 1. *Juſtices of Peace* are to levy the Penalty of 5 *l.* on Surveyors of the *Highways* neglecting their Duty in viewing the Roads, &c. And 40 *s.* not making Preſentments every four Months. Alſo 10 *s.* a Day on Perſons keeping Teams, not ſending them to work; and not exceeding 5 *l.* nor under 10 *s.* of Perſons laying Soil in the Highways, &c. Two *Juſtices* to nominate Surveyors; *Juſtices* are to hold a Seſſions for the Highways once in four Months, under the Penalty of 5 *l.* And the Seſſions may order Rates and Aſſeſſments for repairing the Highways; alſo the *Juſtices* there have Power to order the enlarging Highways; and the Reparation of thoſe great

Roads which moſt want Repairing, to be repaired firſt, &c. and by a late Statute, they may order Hedges to be new made or cut, adjoining to deep and founderous Ways, &c. 2 & 3 *P.* & *M.* 5 *Eliz.* 13 & 14 *Car.* 2. 3 & 4 *W.* & *M.* 8 & 9 *W.* 3. 1 *Geo.* 1. 7 *Geo.* 2. *Juſtices* of Peace in their Seſſions, may adjudge when *Highways* are repaired by Turnpikes; and commit Offenders relating to them, &c. 8 *Geo.* 1. 1 *Geo.* 2. A Penalty of 5 *s* for every Pound of *Hops* conveyed away privately from the Place of Growth, ſhall be levied by Warrant of one *Juſtice:* And 5 *l.* *per* Hundred, for mixing unlawful Ingredients with *Hops*, to alter the Colour, &c. 9 *Ann.* 7 *Geo.* 2. *Juſtices* in Seſſions are to puniſh Offences againſt the 32 *H.* 8. for putting Horſes into Commons, &c. under fifteen Hands high: And the Forfeiture of 5 *l.* of Perſons ſelling *Horſes* in a Fair or Market, without producing Vouchers of Sale to Toll-takers, is leviable by *Juſtices:* And *Juſtices* ſhall take the Oaths of Witneſſes to prove a ſtolen Horſe to be the Owner's, &c. 31 *Eliz.* *Juſtices* are to make Orders in their Seſſions for erecting *Houſes of Correction*, and Puniſhment of Offenders, &c. And not being a Houſe of Correction in every County, the *Juſtices* ſhall forfeit 5 *l.* each: They may order more ſuch Houſes to be built, where there are not ſufficient, or others to be enlarged, on Preſentment of the Grand Jury at the Aſſiſes, &c. And the *Juſtices of Peace* ſhall ſee that the Houſes of Correction are well fitted up, and ſupplied with all Neceſſaries, &c. A *Juſtice* may commit any idle Perſon to the Houſe of Correction. 39 *Eliz.* 1 *Jac.* 1. 13 & 14 *Geo*, 2. Informers compounding with Offenders, &c. it ſhall be inquired into by *Juſtices* of Peace: Tho' they cannot try an *Information*, without Power by ſome Statute. 18 *Eliz.* *Juſtices* are at *Midſummer* Seſſions to iſſue Warrants to Conſtables, to prepare Liſts of Freeholders to ſerve on *Juries* qualified by Law, &c. And Liſts of Jurors ſhall be ſet Right by *Juſtices* in Seſſions, being certified thither by Conſtables, and then Duplicates delivered to Sheriffs, &c. 7 & 8 *W.* 3. 4 *Ann.* 3 *Geo.* 2. One *Juſtice* may impriſon *Labourers* for a Month, departing without Licence: And *Juſtices* in Seſſions are to aſſeſs the Wages of Labourers, &c. 5 *Eliz.* 1 *Jac.* 1. To levy the Penalty for Defaults in hanging out *Lamps*, in the Streets, in *London* and within the Bills of Mortality. 2 *W.* & *M.* One or more *Juſtices* for the City of *London*, on Conviction of Perſons breaking down any Lamps, or damaging the Poſts, Iron, &c. to cauſe the Penalty of 40 *s.* &c. to be levied on Offenders by Diſtreſs, and for Want thereof, commit them to the Houſe of Correction for three Months. 9 *Geo.* 9. Searchers and Triers of *Leather* are to be appointed in all Places by Mayors and *Juſtices* of Corporations, &c. under the Penalty of 40 *s.* And Perſons hindering the Search, incur a Forfeiture of 5 *l.* Buying tanned Leather before ſearched, the ſame ſhall be forfeited, &c. the Penalties recoverable before the *Juſtices* in the Quarter-Seſſions: Journeymen Shoemakers purloining or imbeziling Leather, ſhall be ordered by *Juſtices* to make Satisfaction for Damages, leviable by Diſtreſs; alſo the *Juſtices* are to make Warrants to ſearch for ſuch Leather, and reſtore it, &c. 1 *Jac.* 1. 9 *Geo.* 1. 13 *Geo.* 2. One *Juſtice* may grant a Warrant to ſearch for any Book taken out of a Pariſh *Library*; and order it to be reſtored. 7 *Ann.* A *Juſtice* to iſſue his Warrant, for levying 20 *s.* Penalty, for annoying *Lincoln's-Inn-Fields* Square with Filth; and 40 *s.* upon Perſons that uſe any Sports, ride Horſes, or break down Fences, &c. erected there. 8 *Geo.* 2. Perſons ſetting up private *Lotteries*, ſhall forfeit 500 *l.* leviable by Two or more *Juſtices of the Peace*, &c. who have Power to ſuppreſs unlawful Lotteries; and ſetting up Lotteries under Grants of any foreign Prince, is liable to 200 *l.* Forfeiture; ſubject to appeal to Seſſions. The like Penalty *Juſtices* ſhall levy on Perſons keeping Offices, or publiſhing Propoſals for any Sale of Houſes, Goods, &c. by way of *Lottery*, Cards or Dice, and 50 *l.* on the Adventurers; alſo the *Juſtices of Peace* forfeit 10 *l.* for not doing what is required. 8 & 9 *Geo* 1. 6 *Geo.* 2. 12 *Geo.* 2. *Juſtices* in Seſſions may reſtrain a ſuperfluous Number of Maltſters; examine into the Goodneſs of *Malt*, which is not to be mingled bad with good, &c. One *Juſtice* may levy the Penalty of 10 *l.* on Malſters not entering their Malt, for Payment of the Duties; and two *Juſtices* levy the Forfeiture of 50 *l.* for altering Steeping Veſſels, without giving Notice to the Office of *Exciſe*, &c. but the Penalties may be mitigated, ſo as not to be leſs than double Duty. 2 & 3 *Ed.* 6. 39 *Eliz.* 8 & 9 *W.* 3. 2 *Ann.* 1 *Geo.* 1, &c. To grant Certificates of Malt having paid Duty, loſt or deſtroyed by Fire, caſt away in Barges, &c. in order to its being repaid. 9 *Geo.* 1. *Meaſures*, &c. Selling by that are falſe and unlawful, to levy the Penalties; and the Statutes for aſcertaining Meaſures are to be given in Charge by *Juſtices*, at the Quarter-Seſſions. 16 *Car.* 1. 22 & 23 *Car.* 2. 11 & 12 *W.* 3. To ſend to the Houſe of Correction for one Month, Perſons drawing up Floodgates in Wears or Locks, for preſerving *Navigation.* 8 *Geo.* 2. A *Juſtice* may bind *Night-walkers* to the good Behaviour, &c. 13 *Ed.* 1. *Nonconformiſts* to the Church of *England*, being in any Office, &c. on Information before a *Juſtice* of Peace, to forfeit 40 *l.* and their Offices, &c. 10 *Ann.* See 5 *Geo.* 1. Two *Juſtices* may ſummon Perſons ſuſpected of Diſaffection to the Government, and tender them the *Oath* of Supremacy, and Abjuration, &c. And they may ſummon any Perſons to appear and take the *Oaths*; *Juſtices* in the Quarter Seſſions are to adminiſter the Oaths to Officers in the Government. 1 *Eliz.* 25 *Car.* 2. 1 & 13 *W.* 3. 1 *Ann.* 1 *Geo.* 1. *Papiſts* ſhall take the Oaths in the Seſſions of the *Juſtices*, or in Default regiſter their Eſtates, on Pain of Forfeiture, &c. And all Perſons of eighteen Years of Age muſt take the Oaths, or regiſter their Eſtates as Papiſts, under Penalties. 1 *Geo.* 1. and 9 & 10 *Geo.* 1. *Juſtices* of Peace are to conſent to Petitions to the King and *Parliament*, &c. and to adminiſter Oaths to returning Officers of Members of Parliament, &c. 13 *Car.* 2. 9 *Ann.* The Act againſt Bribery and Corruption, in electing Members of *Parliament*, muſt be read once a Year by Order of *Juſtices* at their Seſſions; as well as by Sheriffs, &c. at Elections. 2 *Geo.* 2. A Fine of 20 *l.* and ſix Months Impriſonment, Pillory, &c. for wilful *Perjury*, &c. may be inflicted by the Quarter-Seſſions. 5 *Eliz.* At *Michaelmas* Seſſions, *Juſtices* are to appoint Searchers of *Pewter* and Braſs, to ſee it is lawful Metal. 25 *H.* 8. *Juſtices of Peace* may tax Inhabitants of Places towards Relief of poor Perſons having the *Plague*; and cauſe ſuch infected Perſons to be whipped as go Abroad, &c. The *Juſtices* and Head Officers ſhall appoint Searchers and Keepers of Perſons, &c. Alſo *Juſtices* may order Watches to prevent any one's coming on Shore from Ships which are to perform Quarentine. 1 *Jac.* 1. 9 *Ann.* 7 *Geo.* 1. Two *Juſtices* may determine in a ſummary Way, Offences of *Players*, that act without Licence, or contrary to the Prohibition of the Lord Chamberlain, &c. and levy the Penalty of 50 *l.* by Diſtreſs and Sale of Goods; or for Want thereof, commit Offenders to the Houſe of Correction for ſix Months. 10 *Geo.* 2. *Juſtices* are to appoint Overſeers of the *Poor* yearly in *Eaſter* Week, on Pain of 5 *l.* who ſhall meet once a Month under the Penalty of 20 *s.* A *Juſtice* may conſent to Overſeers, &c. ſetting up a Trade for employing the Poor; and iſſue his Warrant for relieving a poor Perſon by a weekly Allowance: And *Juſtices* may make a Tax for Relief of the Poor, &c. who muſt wear Badges, or be ſent to the Houſe of Correction: *Juſtices* are to make Orders for re moving Perſons coming into Pariſhes, and renting under 10*l.* a Year, &c. not coming by Certificate; and Overſeers refuſing to receive a Perſon removed by Order of *Juſtices* ſhall forfeit 5 *l.* The Goods of Perſons leaving poor Children on the Pariſh may be ſeiſed by *Juſtices* Warrant: But *Juſtices of Peace* are not to order Relief to poor Perſons till Oath is made of reaſonable Cauſe, and that the Party was refuſed to be relieved by the Overſeers, &c. *Juſtices* in Seſſions are to award Coſts on Appeals concerning Settlements of Poor. Witneſſes to make Oath of the ſigning Certificates, that poor Perſons are Pariſhioners at another Place, &c. before the *Juſtices*, and then the Certificates to be allowed as Evidence; and Overſeers ſhall be reimburſed the Charges of removing back Certificate Perſons, leviable by a *Juſtice*'s Warrant. 43 *Eliz.* 3 *Car.* 1. 13 & 14 *Car.* 2. 2, 3 & 4 *W.* & *M.* 8 & 9 *W.* 3. 5 & 9 *Geo.* 1. 3 *Geo.* 2. By an old Statute, *Juſtices of Peace* in their Quarter-Seſſions may lay a ſmall Tax on every Pariſh in the County, for Relief of *poor Priſoners.* 14 *Eliz.* All Sums under 5 *l.* due for *Poſtage* of Letters, are recoverable before two *Juſtices* in the ſame Manner as ſmall Tithes. 9 *Ann.* Publiſhers of falſe *Prophecies* ſhall forfeit 10 *l.* and be impriſoned a Year, being convicted at the Seſſions of the Peace. 5 *Eliz.* Perſons making *Purveyance* of Victuals for the King, &c. on Pretence of any Warrant, upon Complaint of the Party grieved, ſhall be committed by one *Juſtice* till the next Seſſions. 12 *Car.* 2. The Declaration of Fidelity and the Chriſtian Belief, is to be ſubſcribed by *Quakers* before two *Juſtices* of Peace, for them to be entitled to the Benefit of the Statute 1 *W.* & *M.* &c. 7 & 8 *W.* 3. 8 *Geo.* 1. *Recogniſances* are taken by *Juſtices* in many Caſes; and Recogniſances for the Peace muſt be certified by the *Juſtices* at the next Quarter-Seſſions, &c. 3 *H.* 7. *Juſtices* may commit Popiſh *Recuſants* refuſing to take the Oaths, and to appear and make the Declaration. 30 *Car.* 2. And their Arms, &c. ſhall be ſeiſed: Recuſants not repairing to their uſual Places of Reſidence, or removing above five Miles from thence, are to abjure the Kingdom; and the Seſſions ſhall make Proclamation for Recuſants to ſurrender themſelves. 35 *Eliz.* 3 & 7 *Jac.* 1. 1 *W.* & *M.* *Juſtices* in the Quarter-Seſſions are to ſwear *Regiſters*, and two *Juſtices* ſign the Books of Regiſter of Deeds in *Yorkſhire*, &c. 6 & 7 *Ann.* If any Perſons deny the Chriſtian *Religion* to be true, &c. Information is to be made thereof before a *Juſtice* of Peace, within four Days after the Words ſpoken. 9 & 10 *W.* 3. The two next *Juſtices*, with the Sheriff and Power of the County, ſhall ſuppreſs *Riots*, record and certify them, &c. And Perſons guilty of heinous Riots, ſhall ſuffer one Year's Impriſonment: One *Juſtice* may require Rioters aſſembled to the Number of Twelve to diſperſe; and if they continue together an Hour after Proclamation, it is Felony: *Juſtices* not inquiring of Riots, or neglecting their Duty therein, ſhall be fined. 13 *H.* 4. 2 *H.* 5. 1 *Geo.* 1. One *Juſtice of Peace* is to examine Perſons robbed upon Oath, when a *Robbery* is committed; and grant Warrants to make Hue and Cry after the Robbers, &c. Two *Juſtices* may ſet a Tax on the Hundred where the Robbery is done, to anſwer it; and when Money is recovered againſt the High Conſtable, &c. 27 *Eliz.* 28 *Ed.* 3. 8 *Geo.* 2. Three *Juſtices* are to take Informations againſt Contemners of the *Sacrament*, ſend out a Writ of *Capias exigend'*, &c. againſt them to appear, and upon their Appearing may fine and impriſon them. 1 *Ed.* 6. One or more *Juſtices* to grant Warrants for levying the Forfeiture of 10 *l.* on Perſons not fixing Stamps to every Piece of *Sail Cloth* by them made; and alſo 5 *l.* for wilfully cutting off, or obliterating them. 9 *Geo.* 2. *Juſtices* in Seſſions are to ſet the Prices of *Salt*; and levy the Penalty of 5 *l.* for ſelling it at a greater Price, or under Weight, &c. And *Juſtices* may levy 40 *l.* Penalty for not entering Salt-Pits, in order to Payment of the Duty on Salt, &c. 9 & 10 *W.* 3. 5 & 6 *W.* 3. 9 *Ann.* 5 & 7 *Geo.* 2. One *Juſtice* may levy a Penalty of 10 *l.* on *Scavengers* in *London*, &c. duly choſen, refuſing to ſerve; and 40 *s.* for not bringing their Carts to take away the Dirt; alſo 3 *s.* 4 *d.* a Day of Houſekeepers not ſweeping the Streets before their Doors *Wedneſdays* and *Fridays*, &c. The Scavenger's Tax is to be allowed by two *Juſtices*; and the Quarter-Seſſions may appoint Scavengers, and order Aſſeſſments in any City or Market-Town. 2 *W.* & *M.* 1 *Geo.* 1. See 2 *Geo.* 2. *Schoolmaſters* not repairing to Church or allowed by the Ordinary, ſhall be impriſoned a Year, and Perſons retaining them forfeit 10 *l.* a Month, recoverable before *Juſtices* of Peace in the Seſſions. 23 *Eliz.* A *Juſtice* may iſſue his Warrant to apprehend *Seamen*, deſerting from Ships after Contracts made, and commit them to the Houſe of Correction, &c. 2 *Geo.* 2. Unmarried Perſons refuſing to go to Service, are to be ſent to the Houſe of Correction, by *Juſtices*; and *Servants* departing without giving a Quarter's Warning, ſhall be bound over to the Seſſions; and two *Juſtices* may commit them till they give Security to ſerve the Time agreed: Maſters putting away Servants, without giving a Quaater's Warning, ſhall forfeit 40 *s.* Servants aſſaulting their Maſters, are to be impriſoned one Year, or leſs; and if a Servant be abuſed by the Maſter, &c. *Juſtices* may diſcharge him. 5 *Eliz.* In the Seſſions *Juſtices* are to ſwear Commiſſioners of *Sewers*; and on their Commiſſion being determined, ſix *Juſtices* may execute the Laws concerning them, &c. 13 *Eliz.* A *Juſtice* is to levy 20 *l.* Forfeiture on Perſons removing Piles, uſed for preventing Inundations, by Diſtreſs, &c. 10 *Geo.* 2. *Juſtices* of Peace make Proceſſes againſt *Sheriffs*, on Information of a Party grieved, &c. 23 *H.* 6. To levy the Penalty of 5 *l.* for firing Guns in Merchant *Ships* in the River *Thames*, after Sunſet, &c. or melting combuſtible Matter therein: And the like Penalty of Ballaſtmen, refuſing to work for Wages appointed, &c. 5 *Geo.* 2. 6 *Geo.* 2. If any *Shoemaker* make Shoes or Boots of Leather that is inſufficient, or ſew them ſlight and ill, &c. he forfeits 3 *s.* 4 *s.* and the Value of the Wares, when convicted in the Seſſions of the *Juſtices.* 1 *Jac.* 1. On Proof that Winders of Silk delivered by *Silkthrowers*, detain or purloin the ſame, &c. a *Juſtice* ſhall order Recompence to be made. 13 & 14 *Car.* 2. One *Juſtice* may relieve ſuch as have more Soldiers quartered on them than they ought, and has Power to regulate Quarters; and *Juſtices* in Seſſions are to appoint the Pay of Soldiers for Victuals, &c. in their Quarters: *Juſtices* may commit Perſons permitting themſelves to be falſly muſtered, and Deſerters; levy the Penalty of 5 *l.* for harbouring Deſerters, &c. During the Wars, three *Juſtices of Peace* had Power to ſend Warrants to Conſtables to bring before them able-bodied Men, having no lawful Callings, or viſible Means for their Maintenance, and deliver them over to the Officers to ſerve in the Army. *Juſtices* are to provide Carriages on the March of Soldiers; and in Seſſions may tax Pariſhes towards relieving Maimed Soldiers, &c. 43 *Eliz.* 2 & 3 & 12 *Ann.* 1 *Geo.* 1. No *Juſtice* having a military Office ſhall be concerned in quartering Soldiers in the Company under his Command, &c. by 3 *Geo.* 2. And a *Juſtice* is to certify that a *Soldier* was liſted voluntarily, by his free Aſſent; and give him the Oath of Fidelity, &c. 8 *Geo.* 2. 13 *Geo* 2. To levy the Penalty of 5 *l.* for making or ſelling of *Squibs*, &c. and 20 *s.* on Perſons throwing them. 9 & 10 *W.* 3. Two *Juſtices* may hear and determine Forfeitures not exceeding 20 *l* upon any of the Statutes relating to the *Stamp-Duty*; and iſſue Warrants to levy the Penalty by Diſtreſs, &c.

9 *Ann.* And *Juſtices* ſhall commit to the Houſe of Correction for three Months, ſuch Perſons as ſell News Papers, not being ſtamped. 16 *Geo.* 2. They are to cauſe 5 *s.* to be levied on thoſe who do any worldly Labour on a *Sunday*; and the ſame Penalty on Perſons uſing Boats, without the Allowance of a *Juſtice of Peace*; Perſons preſent at Bull-baitings, *&c.* on a *Sunday*, ſhall forfeit 3 *s.* 4 *d.* 29 *Car.* 2. The Writ *Supplicavit* iſſuing out of Chancery, *&c.* for taking Sureties of the Peace, is directed to *Juſtices* and the Sheriff. 1 *Ed.* 3. For profane *Swearing* one *Juſtice* ſhall grant his Warrant to levy the Penalty of 1 *s.* for the firſt Offence, and double for the ſecond, *&c.* of Servants, Labourers and common Soldiers, and 2 *s.* of others, or ſet the Offenders in the Stocks; and a *Juſtice* neglecting his Duty is to forfeit 5 *l.* 21 *Jac.* 1. 6 *&* 7 *W.* 3. The *Juſtices* in the Seſſions, levy Penalties of *Tanners* over Liming, or unlawfully tanning Hides, *&c.* 1 *Jac.* 1. And the Penalty of 50 *l.* on Tanners for not entering their Tan-yards, *&c.* for paying the Duty on Leather, is levied by *Juſtices.* 9 *Ann.* Journeymen *Taylors* making Contracts for advancing their Wages, are to be committed to the Houſe of Correction; and *Juſtices* may order Payment of their lawful Wages, and puniſh thoſe Taylors who give more than allowed; alſo inflict a Puniſhment on Journeymen Taylors leaving their Work unfiniſhed, 7 *Geo.* 1. On Complaint to two *Juſtices* by a Judge of the Eccleſiaſtical Court, they have Power to commit a Defendant in a Suit for *Tithes*, for Contumacy, *&c.* 27 *&* 32 *H.* 8. Small *Tithes* under 40 *s.* with-held, are to be determined by two *Juſtices of the Peace*, upon Complaint; and the *Juſtices* may ſummon Perſons, examine them on Oath, *&c.* and order an Allowance for the Tithes, with 10 *s.* Coſts: Quakers refuſing to pay Tithes, under 10 *l.* is likewiſe determinable by *Juſtices.* 7 *&* 8 *W.* 3 and this is made to extend to any Tithes or Church Rates of Quakers, by 1 *Geo.* 1. If any *Tobacco* is planted in *England, Juſtices* ſhall grant Warrants to ſearch for and deſtroy it; and the Perſons planting it, incur a Penalty of 40 *s. per* Rod: Perſons employed in cutting Walnut-Tree Leaves, *&c.* to reſemble Tobacco, are to be committed to the Houſe of Correction by *Juſtices.* 12 *Car.* 2. 22 *&* 23 *Car.* 2. 1 *Geo.* 1. Warrants not to be iſſued by the Lieutenancy for levying *Trophy-Money*, till the *Juſtices* in Seſſions have allowed the Accounts, and certified the ſame. 12 *Ann.* 1 *Geo.* 1. Two *Juſtices* may grant Warrants to levy the Penalty of 5 *l.* on Perſons aſſaulting Toll Collectors, and paſſing through a *Turnpike* Gate without paying, *&c.* *Juſtices* likewiſe levy the Penalty upon Perſons having their Waggons over loaden beyond ſuch a Weight, and a Forfeiture for hindering the Weighing. And one *Juſtice* may take Informations of the Damage, on breaking down Turnpikes, to be paid by the Hundred. 8 *Geo.* 2. 14 *Geo.* 2. One *Juſtice* is to examine *Vagrants*, and grant Paſſes to their Places of Settlemment or Birth; and to give Certificates to Conſtables, aſcertaining how they are to be paſſed, *&c.* ſend Vagrants wandring and idle Perſons to the Houſe of Correction; alſo commit *vagabond Rogues* for ſix Months, and order them to be publickly whipped as often as they think fit: They may levy a Penalty not exceeding 40 *s.* nor under 10 *s.* on Perſons permitting Vagrants to lodge in their Houſes, or Outhouſes, *&c.* and a Forfeiture of 5 *l.* upon Maſters of Ships importing any Vagrant, or Vagabond, or refuſing to tranſport them back: And *Juſtices* in Seſſions are to appoint Rates for conveying of Vagrants, *&c.* 13 *Geo.* 2. *Victuallers* are to ſell their Victuals at reaſonable Prices, appointed by *Juſtices* of Peace in the *Eaſter* and *Michaelmas* Seſſions; or ſhall be puniſhed by Fine, *&c.* 21 *Jac.* 1. A *Juſtice* may levy a Penalty not above 10 *s.* for killing Conies on the Borders of *Warrens*, *&c.* 22 *&* 23 *Car.* 2. The *Juſtices* of Peace for *Middleſex*, *&c.* may determine Offences of *Watermen* on the *Thames*, and levy Penalties, *&c.* 29 *Car.* 2. 11 *&* 12 *W.* 3. 4 *Geo.* 2. 10 *Geo.* 2 *Juſtices* ſhall cauſe Night *Watches*, to be kept for arreſting ſuſpected Perſons, *&c.* 4 *H.* 7. Rates and Aſſeſſments for maintaining the *Watch*, and Beadles, *&c.* in large Pariſhes of *Weſtminſter*, ſhall be allowed by two *Juſtices*; who may commit Collectors not accounting, 'till they pay over the Money, *&c.* 9 *Geo.* 2. To levy 5 *s.* of Perſons keeping *Weights* and Meaſures, not according to the Standard; and 5 *l.* of Clerks of Markets, for falſe Sealing of Weights, *&c.* 8 H. 6. 16 *Car.* 1. *Juſtices* of Peace are appointed Commiſſioners for executing the Acts for levying the *Window Tax*; and two *Juſtices* may act therein. 8 *Ann.* Three *Juſtices* may appoint Collectors; and are to cauſe the Duties on Windows to be re-aſſeſſed and levied on Pariſhes anſwerable for the Collectors, where there is any Arrear. 6 *Geo.* 1. *Juſtices* have Power to inquire into *Wine* ſold at reaſonable Rates, ſet by the Lord Chancellor, *&c.* 28 *H.* 8. And two *Juſtices* to licence Retailers of *Engliſh* made *Wines.* 10 *Geo.* 2. Perſons employed in the Manufactures of *Wool*, &c. imbeziling Yarn or other Materials, ſhall forfeit double the Value, or be ordered by *Juſtices of Peace* to be ſent to the Houſe of Correction, and there whipped; and for the ſecond Offence forfeit four Times the Value. 1 *Ann.* 13 *Geo.* 2. The *Juſtices* near the Sea-Coaſts are to command Conſtables to be aiding in the Preſervation of Ships from *Wrecks*; and if any Perſons enter Ships, without Leave, two *Juſtices* may order them to make double Satisfaction, *&c.* Alſo to give Teſtimonials or Paſſes to ſhipwrecked Perſons. 12 *Ann.*

Juſtices of Peace within Liberties, (*Juſticiarii ad Pacem infra Libertates*) Are ſuch in Cities, and other Corporate Towns, as the others are of the County; and their Authority is all one within the ſeveral Territories and Precincts, having beſides the Aſſiſe of Ale and Beer, Wood, Victuals, *&c.* 27 *H.* 8. *c.* 25. But if the King grant to a Corporation, that the Mayor and Recorder, *&c.* ſhall be *Juſtices of Peace* within the City; if there be no Words of Excluſion, *Juſtices* of the County have concurrent Juriſdiction with them; and the King, notwithſtanding his Charter, may grant a Commiſſion of the Peace ſpecially in that City or County. 2 *Hale's Hiſt. P. C.* 47. Alſo where the *Juſtices* of any Corporate Town, deny doing Right; *Juſtices of the Peace* of the County, may inquire into it, as hath been lately adjudged. *Mod. Caſ.* 164. The *Juſtices of Peace* in Cities, or Towns Corporate, may commit Perſons apprehended within their Liberties to the Houſe of Correction of the County, *&c.* which Perſons ſhall be liable to the like Correction and Puniſhment, as if committed there by any *Juſtice* of the ſame County. *Stat.* 15 *Geo.* 2. *c.* 24. *Juſtices* of Cities and Corporations, are not within the Qualification Act. 5 *Geo.* 2. See *Mayors.*

Juſtices of Trail baſton, Were *Juſtices* appointed by King *Ed.* 1. during his Abſence in the *Scotch* and *French* Wars. They were ſo ſtiled, ſays *Hollinſhead*, of *trailing* or drawing the Staff of *Juſtice*; or for their ſummary Proceeding, according to Sir *Edward Coke*, who tell us, they were in a Manner *Juſtices in Eyre*; and it is ſaid, they had a *Baſton*, or Staff delivered to them as the Badge of their Office, ſo that whoever was brought before them was *Traile ad Baſton, traditus ad Baculum*; whereupon they had the Name of *Juſtices de Trail-Baſton*, or *Juſticiarii ad trahendum Offendentes ad Baculum vel* Baſton. Their Office was to make Inquiſition thro' the Kingdom on all Officers and others, touching Extortion, Bribery, and ſuch like Grievances; of Intruders into other Mens Lands, Barretors, Robbers and Breakers of the Peace, and divers other Offenders; by

Means of which Inquiſitions, ſome were puniſhed with Death, many by Ranſom, and the reſt flying the Realm, the Land was quieted, and the King gained great Riches towards the Support of his Wars. *Mat. Weſtm. Anno* 1305. A Commiſſion of *Trail Baſton* was granted to *Roger de Grey*, and others his Aſſociates, in the Reign of King *Edw.* 3. *Spelm. Gloſſ.*

Juſtice-Seat, Is the higheſt Court that is held in a Foreſt, and always held before the Lord *Chief Juſtice in Eyre* of the Foreſt, upon Warning forty Days before; and there Fines are ſet for Offences, and Judgments given, *&c. Manwood's Foreſt Law, c.* 24. The Fine and Amercement of the *Juſtices in Eyre*, for falſe Judgment, or other Treſpaſs, ſhall be aſſeſſed by the ſaid Juſtices upon the Oaths of Knights, and other honeſt Men, and be eſtreated into the Exchequer. *Stat.* 3 *Ed.* 1. *c.* 18. And *Juſtices in Eyre* ſhall appoint a Time for delivering in all Writs by the Sheriff, *&c.* 13 *Ed.* 1. *c.* 10.

Juſticier, A *Juſtice* or *Juſticer*; as the Lord *Birmingham* was *Juſticier of Ireland.* Cron. Angl. In the Court of *King's Bench*, Juſtice was anciently adminiſtred ſometimes by the King, and ſometimes by the *High Juſticier*; who was an Officer of very great Authority. 2 *Hawk.* 6.

Juſticies, Is a Writ directed to the Sheriff in ſome ſpecial Caſes by Virtue of which he may hold Plea of Debt in his County Court for a large Sum; whereas otherwiſe by his ordinary Power he is limited to Sums under 40 *s. F. N. B.* 117. *Kitch.* 74. It is called *Juſticies*, becauſe it is a Commiſſion to the Sheriff to do a Man *Juſtice* and Right, beginning with the Word *Juſticies, &c. Bract. lib.* 4. makes Mention of a *Juſticies* to the Sheriff of *London*, in a Caſe of Dower; and it lies in Account, Annuity, Cuſtoms and Services, *&c. New Nat. Br.* In Debt, the Writ runs thus: *The King, To the Sheriff of* S. *Greeting: We command you, that you* Juſtice A. B. *that juſtly and without Delay he render to* C. D. *five Pounds, which to him he oweth, as it is ſaid, and as reaſonably he can ſhew, that he ought to render him; that no more Clamour thereof we may here, for Default of Juſtice,* &c.

Juſtification, (*Juſtificatio*) Is a Maintaining or Shewing good Reaſon in Court why one did ſuch a Thing which he is called to anſwer. *Broke.* And Pleas in *Juſtification*, are to ſet forth ſome ſpecial Thing, whereby the Party *juſtifies* what he hath done, concerning Lands or Goods; as that he did it by Authority: And this may be by the Law, or from another Perſon; wherein to make it right, there muſt be good Authority, which is to be exactly purſued. *Shep. Epitom.* 1041. *Juſtification* may be in Treſpaſs, and under Writs, Proceſſes, *&c.* But a Perſon cannot *juſtify* a Treſpaſs, unleſs he confeſſeth it; for he ought to plead the ſpecial Matter, and confeſs and *juſtify* what he hath done: And where it cannot be pleaded, *Juſtification* may be given in Evidence. 3 *Salk.* 218. Where a Defendant *juſtifies* in Treſpaſs, on his Poſſeſſion, by Virtue of any Eſtate, he muſt ſhew his Title; but when the Matter is collateral to the Title to the Land, it is otherwiſe. 2 *Mod.* 70. If a Sheriff, or other Officer, *juſtifies* by Virtue of any returnable Writ, he is to ſhew that the Writ was returned; though he need not, if the Writs are not returnable Writs. 1 *Salk.* 409. And it muſt be ſhewed from what Courts Writs iſſue. *Ibid.* 517. *Juſtification* may be by the Command of an Officer, to aid him; but the Command is traverſable: If a *Juſtification* is made for ſeveral Cauſes, and ſome of them are good, and ſome not good; that ſhall not make the whole *Juſtification* void, but for theſe only, and it ſhall be good for the reſt. 2 *Nelſ. Abr.* 1067. When the Action concerns a tranſitory Thing, if the Defendant do *juſtify* the Taking or Doing in one Place; this is a *Juſtification* in all Places: If the Action concern a local Thing, a *Juſtification* in one Place is not a *Juſtification* in another Place; for in the former Caſe the Place is not material, but the meer Doing or Taking of the Thing is the Subſtance; and in the latter the Place is material, as the Defendant may be able to *juſtify* to one Place, and not in another. *Paſch.* 24 *Car. B. R.* 2 *Lill. Abr.* 134. If the Matter of the *Juſtification* is local, there the Defendant ought to ſhew the Cauſe ſpecially and traverſe the Place; but not where it is tranſitory. *Cro. Eliz.* 667. If one have Corn upon the Lands of another, and he take it, and the Owner of the Ground ſues him, he muſt *juſtify*, and may not plead Not guilty. 5 *Rep.* 85. In Action for entering a Cloſe, and taking Corn; the Defendants may *juſtify* they did it as Servants to the Parſon; and that the Corn was Tithe, ſevered from the Nine Parts, *&c.* Though this was ſaid to amount only to the General Iſſue. 2 *Keb.* 44. A Man may plead in *Juſtification*, that Land is his Freehold, on making an Entry thereon, *&c.* That one entered a Houſe, to apprehend a Felon; or by Warrant, to levy a Forfeiture; to take a Diſtreſs, *&c.* And in Aſſault, that he did it by Neceſſity, *&c. Lib. Ent. Shep. Epitome* 1041. Words ſpoken may be *juſtified*, becauſe ſpoken in a legal Way; and for Words the Defendant may *juſtify* in an Action; but not in an Indictment, *&c.* 1 *Danv.* 162. 3 *Salk.* 226. There is a *juſtifiable Homicide, &c.* and *juſtifiable Aſſault.* See *Aſſault.*

Juſtificators, (*Juſtificatores*) Are a Kind of *Compurgators*, or thoſe that by Oath *juſtify* the Innocency, or Oaths of others; as in the Caſe of Waging of Law: And we read in ***Spelman***, who leaves this Word without Explication.—— *Will. Rex Angliæ H. Camerario &* Juſtificatoribus *ſuis, omnibus ſuis fidelibus Norf. Salutem: Inquirite per Comitatum quis juſtius hujuſmodi Foriſfacturam haberet tempore Patris mei, ſive Abbas Rameſiæ, &c.*

Juſtitia, A Judge; alſo a Statute or Ordinance; and ſometimes a Juriſdiction, as antiently uſed. *Leg. Hen.* 1. *c.* 42. See *Juſtice.*

Juſticias facere, Signifies to hold Plea of any Thing. *Selden.*

K.

KAIA, *Area in littore onerandarum atque exonerandarum Navium cauſa, è compactis tabulis trabibuſque (clavium inſtar) firmata.* Spelm.

Kaiagium. *Portorium quod* Kaiæ *nomine exigit Telonarius:* The Toll-Money paid for loading or unloading Goods at a *Key* or Wharf. *Pat.* 20 *Ed.* 3. See *Key.*

Kalendar Month, Conſiſts of thirty or thirty-one Days, (except *February*, which hath but eight and twenty, and in a Leap-Year nine and twenty) according to the *Kalendar*; twelve of which Months, make a Year. *Stat.* 16 *Car.* 2. *c.* 7.

Kalendæ, Rural Chapters or Conventions of the Rural Deans and Parochial Clergy, ſo called becauſe formerly held on the *Kalends*, or firſt Day of every Month. *Paroch. Antiq.* 640.

Kalends, The Beginning of a Month, *&c.* See *Calends.*

Kantref, (*Brit.*) In *Wales* a *Cantred* or Hundred —— *Le premier Conquereur des treis* Kantrefs *de la terre de Brecknock, &c.* Mon. Angl. Tom. 1. fol. 319.

Karle, (*Sax.*) Is a Man, and with any Addition a Servant or Clown; as the *Saxons* called a Domeſtick Servant, a *Huskarle:* From whence comes the modern Word *Churle. Domeſd.*

Karrata fœni, A Cart-Load of Hay. *Mon. Angl. Tom.* 1. *p.* 548. See *Caretta.*

Kebbars, The Refuſe of Sheep drawn out of a Flock, *Oves rejiculæ*; likewiſe called *Cullers. Cooper's Theſaur.*

Keelage, (*Killagium*) A Privilege to demand Money for the Bottom of Ships reſting in a Port or Harbour. *Rot. Parl.* 21 *Ed.* 1.

Keelmen, Are mentioned among Mariners, Seamen, *&c.* in the Statute 7 & 8 *W.* 3. *c.* 21.

Keels, To carry Coals, *&c.* Vide 6 & 7 *W.* 3.

Keep. A ſtrong Tower or Hold in the Middle of any Caſtle or Fortification, wherein the Beſieged make their laſt Efforts of Defence, was formerly in *England* called a *Keep:* And the inner Pile within the Caſtle of *Dover*, erected by K. *Hen.* 2. about the Year 1153. was termed the *King's Keep*; ſo at *Windſor*, *&c.* It ſeems to be ſomething of the Nature with what is called abroad a *Citadel.*

Keeper of the Foreſt, (*Cuſtos Foreſtæ*) Or chief *Warden* of the Foreſt, hath the principal Government over all Officers within the Foreſt; and warns them to appear at the Court of *Juſtice Seat*, on a general Summons from the Lord Chief Juſtice in *Eyre. Manwood, Part* 1. *p.* 156.

Keeper of the Great Seal, (*Cuſtos magni ſigilli*) Is a Lord by his Office, ſtiled *Lord Keeper of the Great Seal of England*, and is of the King's Privy Council: Through his Hands paſs all Charters, Commiſſions and Grants of the King, under the *Great Seal*; without which Seal many of thoſe Grants and Commiſſions are of no Force in Law, for the King is by Interpretation of Law a Corporation, and paſſeth nothing but by the *Great Seal*, which is as the Publick Faith of the Kingdom, in the high Eſteem and Reputation juſtly attributed thereto. The *Great Seal* conſiſts of two Impreſſions, one being the very Seal itſelf with the Effigies of the King ſtamped on it; the other has an Impreſſion of the King's Arms in the Figure of a Target, for Matters of ſmaller Moment, as Certificates, *&c.* that are uſually pleaded *Sub pede Sigilli.* And anciently when the King travelled into *France* or other Foreign Kingdoms, there were two *Great Seals*; one went with the King, and another was left with the *Cuſtos Regni*, or the Chancellor, *&c.* If the *Great Seal* be altered; the ſame is notified in the Court of *Chancery*, and publick Proclamation made thereof by Sheriffs, *&c.* 1 *Hale's Hiſt. P. C.* 171, 174. The *Lord Keeper* of the *Great Seal*, by Statute 5 *Eliz. c.* 18. hath the ſame Place, Authority, Preheminence, Juriſdiction and Execution of Laws, as the *Lord Chancellor of England* hath, and he is conſtituted *Per traditionem magni ſigilli*, *&c.* and by taking his Oath. 4 *Inſt.* 87.

Keeper of the Privy Seal, (*Cuſtos privati ſigilli*) Is that Officer through whoſe Hands all Charters, Pardons, *&c.* paſs, ſigned by the King, before they come to the Great Seal; and ſome Things which do not paſs that Seal at all: He is alſo of the Privy Council, but was anciently called only *Clerk of the Privy Seal*; after which, he was named *Gardien del Privy Seal*; and laſtly, *Lord Privy Seal*, and made one of the Great Officers of the Kingdom. 12 *R.* 2. *c.* 11. *Rot. Parl.* 11 *H.* 4. *Stat.* 34 *H.* 8. *c.* 4. The *Lord Privy Seal* is to put the Seal to no Grant without good Warrant; nor with Warrant, if it be againſt Law, or inconvenient, but that he firſt acquaint the King therewith. 4 *Inſt.* 55. The Fees of the Clerks under the *Lord Privy Seal*, for Warrants, *&c.* Vide Stat. 27 *H.* 8. See *Privy Seal.*

Keepers of the Liberties of England, By Authority of Parliament. Vide *Cuſtodes Libertatis.*

Kendal, An antient Barony written *Concangium.* MS.

Kennets, A Sort of coarſe *Welch Cloth*, mentioned in the Stat. 33 *H.* 8. *c.* 3.

Kerhere, Signifies a Cuſtom to have a Cart-way; or a Commutation for the cuſtomary Duty for *Carriage* of the Lord's Goods. *Cowel.*

Kernellare domum, (From Lat. *Crena*, a Notch) To build a Houſe formerly with a Wall or Tower, *Kernelled* with Crannies or Notches, for the better Convenience of ſhooting Arrows, and making other Defence. *Du Freſne* derives this Word from *Quarnellus*, or *Quadranellus*, a four-ſquare Hole or Notch; *ubicunque patent* Quarnelli *ſive feneſtræ:* And this Form of Walls and Battlements for military Uſes might poſſibly have its Name from *Quadrellus* a four-ſquare Dart. It was a common Favour granted by our Kings in ancient Times, after Caſtles were demoliſhed for Prevention of Rebellion, to give their chief Subjects Leave to fortify their Manſion-Houſes with *Kernelled* Walls.——*Licentiam dedimus Johanni de H. Quod ipſe manſum ſuum de B. in Com. &c. Muro de Petrâ & calce firmare* & Kernellare *poſſit. Dat.* 12 *Sept.* 1312. Paroch. Antiq. 353.

Kernellatus, Fortified or embattelled, according to the old Faſhion; and the Duke of *Lancaſter* claimed to him and his Heirs, *Caſtrum ſuum de Halton* Kernellatum. 31 *Ed.* 3. *Pl. de quo Warrant. apud Ceſtriam.* And we read *Caſtrum duplici muro* Kernellatum, *&c. Surv. Dutch. Cornw.*

Kernes, Idle Perſons, Vagabonds. *Ordin. Hibern.* 31 *Ed.* 3. *m.* 11, 12.

Key. The lawful *Keys* and Wharfs for the Lading or Landing of Goods belonging to the *Port of London*, are the following, *viz. Cheſter's Key*, *Brewer's Key*, *Galley Key*, *Wool Dock*, *Cuſtom-houſe Key*, *Bear Key*, *Porter's Key*, *Sab's Key*, *Wiggan's Key*, *Young's Key*, *Ralph's Key*, *Dice Key*, *Smart's Key*, *Somer's Key*, *Hamond's Key*, *Lyon's Key*, *Botolph Wharf*, *Graunt's Key*, *Cock's Key*, and *Freſh Wharf*; beſides *Billingſgate*, for Landing of Fiſh and Fruit; and *Bridge-houſe* in *Southwark*, for Corn and other Proviſion, *&c.* but for no other Goods or Merchandiſe. Deal Boards, Maſts and Timber, may be landed at any Place between *Lime-houſe* and *Weſtminſter*; the Owner firſt paying or compounding for the Cuſtoms, and declaring at what Place he will land them. *Lex Mercat.* 132, 133.

Keyles, (*Cyuli* or *Ciules*) A Kind of Long Boats of great Antiquity, mentioned in the Stat. 23 *H.* 8. *c.* 18.

Keyus, A Guardian, Warden or Keeper: *Mon. Ang. Tom.* 2. *p.* 71. And in the *Iſle of Man* the twenty-four chief Commoners, who are the Conſervators of the Liberties of the People, are called the *Keys* of the Iſland.

Kichel, A Plum-Cake, given by Godfathers and Godmothers to their God-Children on asking them Bleſſing; according to old Cuſtom. *Blount.*

Kidders, Are thoſe that badge or carry Corn, dead Victuals, or other Merchandiſe, up and down to ſell; every Perſon being a common Badger, *Kidder*, Lader or Carrier, ſays the Statute 5 *Eliz. cap.* 12.

Kiddle or **Kidel**, (*Kidellus*) A Dam or Wear in a River, with a narrow Cut in it, for the laying of Pots and other Engines to catch Fiſh. The Word is ancient, for in *Magna Charta*, *c.* 24. we read, *Omnes* Kidelli *deponantur per* Thameſiam & Medweyam, *& per totam Angliam, niſi per Coſteram Maris:* And by King *John*'s Charter, Power was granted to the City of *London*, *De* Kidellis *amovendis per Thameſiam & Medweyam.* A Survey was ordered to be made of the Wears, Mills, Stanks and *Kidels* in the great Rivers of *England.* 1 *Hen.* 4. Fiſhermen of late corruptly called theſe Dams *Kettels*; and they are much uſed in *Wales*, and on the Sea-Coaſts of *Kent.*

Kidnapping, Is a Stealing and Conveying away of a Man, Woman or Child; and is an Offence at Common Law, puniſhable by Fine, Pillory, *&c. Raym.* 474. Alſo if a Maſter of a Ship, *&c.* ſhall, during his being abroad, force any Man aſhore, and willingly leave him behind, he ſhall ſuffer three Months Impriſonment. 11 & 12 *W.* 3. *c.* 7.

Kilderkin, A Veſſel of Ale, *&c.* containing the eighth Part of an Hogſhead.

Kilketh, Was an ancient ſervile Payment, made by Tenants in Huſbandry.——Kilketh *pro qualibet Hundreda 2 denar. MS.*

Killythſtallion, Is where Lords of Manors were bound by Cuſtom to provide a *Stallion* for the Uſe of their Tenants Mares. *Spelman's Gloſſ.*

Kilth. *Ac omnes annuales Redditus de quadam conſuetudine in, &c. vocat'* Kilth. *Pat. 7 Eliz.*

Kindred, Are a certain Body of Perſons of Kin or related to each other. There are three Degrees of Kindred in our Law; one in the Right Line deſcending, another in the Right Line aſcending, and the Third in the Collateral Line; and the Right Line deſcending, wherein the Kindred of the Male Line are called *Agnati*, and of the Female Line *Cognati*, is from the Father to the Son, and ſo on to his Children in the Male and Female Line; and if no Son, then to the Daughter, and to her Children in the Male and Female Line; if neither Son nor Daughter, or any of their Children, to the Nephew and his Children; and if none of them to the Niece and her Children; if neither Nephew nor Niece, nor any of their Children, then to the Grandſon or Grandaughter of the Nephew; and if neither of them, to the Grandſon or Grandaughter of the Niece; and if none of them, then to the Great Grandſon or Great Grandaughter of the Nephew and of the Niece, *&c. & ſic ad infinitum.* The Right Line aſcending is directly upwards; as from the Son to the Father or Mother; and if neither Father nor Mother, to the Grandfather or Grandmother; if no Grandfather or Grandmother, to the Great Grandfather or Great Grandmother; if neither Great Grandfather or Great Grandmother, to the Father of the Great Grandfather, or the Mother of the Great Grandmother; and if neither of them, then to the Great Grandfather's Grandfather, or the Great Grandmother's Grandmother; and if none of them, to the Great Grandfather's Great Grandfather, or Great Grandmother's Great Grandmother, *& ſic in infinitum.* The Collateral Line is either deſcending by the Brother and his Children downwards, or by the Uncle upwards: It is between Brothers and Siſters, and to Uncles and Aunts, and the reſt of the *Kindred*, upwards and downwards, a-croſs and amongſt themſelves. 2 *Nelſ. Abr.* 1077, 1078. If there are no *Kindred* in the Right deſcending Line, the Inheritance of Lands goes to the collateral Line; but it never aſcends in the Right Line upwards, if there are any *Kindred* of the collateral Line, though it may aſcend in that Line: And there is this Difference between the Right Line deſcending and the collateral Line; that the Right of Repreſentation of *Kindred* in the Right deſcending Line reaches beyond the Great Grandchildren of the ſame Parents; but in the collateral Line, it doth not reach beyond Brothers and Siſters Children; for after them there is no Repreſentation among Collaterals. In the Right aſcending Line the Father or Mother are always in the firſt Degree of *Kindred*; and by the Civil Law, if the Son died without Iſſue, his Father or Mother ſucceeded, and after them his Brother or Siſter, Uncle, Aunt, *&c.* But in Caſe of Purchaſe by the Son, if he died without Iſſue, his Father or Mother could not inherit, but his Brother or Siſters, *&c.* by which it appears, that the Father cannot ſucceed the Son immediately, though he is the next of *Kin*. It is a conſtant Rule in the collateral Line, that they who are of the Whole Blood are firſt admitted; but after Brothers and Siſters Children, the neareſt in Degree in *Kindred* is to be conſidered, and not whether they are of the Whole or Half Blood; as for Inſtance; there were two Brothers of the Whole Blood, and one of the Half Blood, thoſe of the Whole Blood died, each of them leaving Iſſue a Son, then one of the Sons died without Iſſue; in this Caſe his Uncle of the Half Blood ſhall be admitted before the other ſurviving Son of his Brother by the whole Blood: Yet if a Man purchaſe Lands and dies without Iſſue, it ſhall never go to the half Blood in the collateral Line; though it is otherwiſe in Caſe of a Deſcent from a common Anceſtor. 2 *Nelſ. Abr. Ibid.* The Children of the Brothers and Siſters of the Half Blood, ſhall exclude all other collateral Aſcendants, as Uncles and Aunts, and all remoter *Kindred* of the whole Blood in the collateral Line; but then the Brothers of the half Blood, and their Children, ſhall ſucceed equally *per Stirpes*, and not *per Capita*, according to the diſtinct Number of their ſeveral Perſons. *Ibid.* There are ſeveral Rules to know the Degrees of *Kindred*; in the aſcending Line, take the Son and add the Father, and it is one Degree aſcending, then add the Grandfather, and it is a ſecond Degree, a Perſon added to a Perſon in the Line of Conſanguinity making a Degree; and if there are many Perſons, take away one, and you have the Number of Degrees, as if there are four Perſons, it is the third Degree, if five the Fourth, *&c.* ſo that the Father, Son, and Grandchild, in the deſcending Line, though three Perſons, make but two Degrees: To know in what Degree of *Kindred* the Sons of two Brothers ſtand, begin from the Grandfather and deſcend to one Brother, the Father of one of the Sons, which is one Degree, then deſcend to his Son the Anceſtor's Grandſon, which is a ſecond Degree; and then deſcend again from the Grandfather to the other Brother, Father of the other of the Sons, which is one Degree, and deſcend to his Son, *&c.* and it is a ſecond Degree; thus reckoning the Perſon from whom the Computation is made, it appears there are two Degrees, and that the Sons of two Brothers are diſtant from each other two Degrees: For in what Degree either of them is diſtant from the common Stock, the Perſon from whom the Computation is made, they are diſtant between themſelves in the ſame Degree; and in every Line the Perſon muſt be reckoned from whom the Computation is made. If the *Kindred* are not equally diſtant from the common Stock; then in what Degree the moſt remote is diſtant, in the ſame Degree they are diſtant between themſelves, and ſo the *Kin* the moſt remote maketh the Degree; by which Rule, I, and the Grandchild of my Uncle, are diſtant in the third Degree, ſuch Grandchild being diſtant three Degrees from my Grandfather, the neareſt common Stock. *Wood's Inſt.* 48, 49. The Common Law agrees in its Computation with the Civil and Canon Law, as to the right Line; and only with the Canon Law as to the collateral Line. *Ibid.*

King, (*Rex*, from Lat. *Rego* to Rule, in Sax. *Cyning* or *Coning*) Is a Monarch or Potentate, who rules ſingly and ſovereignly over a People; or he that has the higheſt Power and Rule in the Land. The *King* is the Head of the Commonwealth; and the learned *Bracton* tells us, *Rex eſt Vicarius & Miniſter Dei in Terra, omnes quidem ſub eo, & ipſe ſub nullo niſi tantum ſub Deo.* Bract. lib. 1. c. 8. But our *King* on his Coronation, takes an *Oath* of the following Purport, *viz.* To govern the People of this Kingdom, according to the Statutes in Parliament agreed on, and the Laws and Cuſtoms of the ſame; to his Power cauſe Law and Juſtice in Mercy to be executed in all his Judgments; to maintain to the utmoſt of his Power the Laws of God, the true Profeſſion of the Goſpel and the Proteſtant reformed Religion eſtabliſhed by Law; and preſerve to the Biſhops and Clergy their Rights and Privileges, as by Law are appertaining to them: This is the obligatory Oath of our *Kings*, as regulated to be taken by 1 *W. & M.* And the Coronation Oaths, in former Times, were undoubtedly a Contract between the *King* and the People in this Nation. The Nature of the Government of our *King*, says *Forteſcue*, is not only *Regal*, but

Political: If it were meerly the former, *Regal*, he would have Power to make what Alterations he pleaſed in our Law, and impoſe Taxes and other Hardſhips upon the Subject, whether they would or no; but his Government being *Political*, he cannot change the Laws of the Realm, without the People's conſenting thereto, nor Burthen them againſt their Wills. *Forteſcue's Laud. Leg. Angl.* 17. It is alſo ſaid by the ſame Writer, that the *King* is appointed to protect his Subjects in their Lives, Properties and Laws; for which End and Purpoſe he has the Delegation of Power from the People: Likewiſe our *King* is ſuch by the Fundamental Law of the Land; by which Law, the meaneſt Subject enjoys the Liberty of his Perſon, and Property in his Eſtate; and it is every Man's Concern to defend theſe, as well as the *King* in his lawful Rights. *Forteſcue.* A late Author has endeavour'd to prove the original Contract between the *King* and the People, from the Prophet *Samuel's* Conference with the *Iſraelites*; who refuſed a *King* offered unto them, and inſiſted upon one like all the other Nations: And taking Notice of the Breaches made in the Conſtitution of this Kingdom in ſeveral Reigns, and the Neceſſity of their being redreſſed, affirms that it is the original Power and Conſtitution of the States of the Kingdom, to re-inſtitute the regal Eſtate, as well where *Kings* act arbitrarily and break thro' the Conſtitution, as where there is no immediate Heir to ſucceed the *King*, ſo that the Throne is actually vacant; and without this I take it there is no perfect Conſtitution. *Britann. Conſtitut.* In *King John's Magna Charta* of Liberties, there was a Clauſe making it lawful for the Barons of the Realm to chuſe twenty-five Barons to ſee the Charter obſerved by the *King*; with Power, on any Juſtice or other Miniſter of the *King's* failing to do Right, and acting contrary thereto, for four of the ſaid Barons to addreſs the *King*, and pray that the ſame might be remedied; and if the ſame were not amended in forty Days, upon the Report of the four Barons to the Reſt of the Twenty-five, thoſe twenty-five Barons with the Commonalty of the whole Land, were at Liberty to diſtreſs the *King*, take his Caſtles, Lands, *&c.* until the Evils complain'd of ſhould be remedied, according to their Judgment; ſaving the Perſon of the *King*, Queen, and their Children: And when the Evils were redreſſed, the People were to obey the *King* as before. *King John's Magna Chart. cap.* 73. But this Clauſe, and ſome others in Favour of Liberty, are omitted out of *King Henry* 3d's *Magna Charta*; though in a Statute made at *Oxford*, *Anno* 42 *Hen.* 3. to reform Miſgovernments, it was enacted, that twenty-four Great Men ſhould be named, Twelve by the *King*, and Twelve by the Parliament, to appoint Juſtices, Chancellors, and other Officers, to ſee *Magna Charta* obſerved. The *Barons Wars* mentioned in our antient Hiſtories, ſeem to have proceeded in ſome Meaſure from a like Power granted to them as by the Charter of King *John*; and probably the Parliament's Wars from their Example. Sir *Edward Coke* tells us, that if there be a *King* regnant in Poſſeſſion of the Crown, although he be but *Rex de facto*, and not *de Jure*, yet he is *Seignior le Roy*; and another that hath Right, if he be out of Poſſeſſion, is not within the Meaning of the Stat. 11 *H.* 7. *c.* 1. for the Subjects to ſerve and defend him in his Wars, *&c.* And a Pardon, *&c.* granted by a *King de Jure*, that is not likewiſe *de facto*, is void. 3 *Inſt.* 7. A *King* that uſurps the Crown, grants Licenſes of Alienation or Eſcheats, it will be good againſt the *rightful King*; ſo of Pardons, and any Thing that doth not concern the *King's* ancient Patrimony, or the Government of the People: Judicial Acts in the Time of ſuch a One, bind the right *King* and all who ſubmitted to his Judicature. The Crown was toſſed between the two Families of *York* and *Lancaſter* many Years; and yet the Acts of *Royalty* done in the Reign of the ſeveral Competitors, were confirmed by the Parliament: And theſe Reſolutions were made, becauſe the common People cannot judge of the *King's* Title, and to avoid Anarchy and Confuſion. *Jenk. Cent.* 130, 131. Every *King* for the Time being, has a Right to the People's Allegiance, who 'tis ſaid are bound by the Statute 11 *H.* 7. to defend him in his Wars againſt every Power whatſoever, and ſhall incur no Pains or Forfeitures thereby. 1 *Hawk. P. C.* 36. And a *King* out of Poſſeſſion, we are bound by the Duty of our Allegiance to reſiſt. *Ibid.* But in the Caſe of *King Charles* the Second, who was kept out of the Exerciſe of the *Kingly* Office by Traitors and Rebels, it was adjudged that he was *King* both *de facto* and *de Jure*; and all the Acts which were done to the Keeping him out, were High Treaſon. *Kel. Rep.* 15. There may be ſome *Kings de facto*, to whom it may be dangerous to do any Service, *viz.* Such as ſhall depoſe a rightful *King:* And according to the *Lord Chief Juſtice Hale*, if the right Heir of the Crown be in actual Exerciſe of the Sovereignty in one Part of the Kingdom, and a Uſurper in the Exerciſe of it in another, the Law adjudgeth him in the Poſſeſſion of the Crown that hath the true Right; and the other is not a *King de facto*, but a Diſturber and no *King:* This was the Caſe between *King Ed.* 4. and *Hen.* 6. And the like was held as to Queen *Mary*, who openly laid Claim to the Crown, and was proclaimed Queen; at the ſame Time the Lady *Jane* was proclaimed Queen at *London* on the Nomination of *King Ed.* 6. ſo that both being *de facto* in Poſſeſſion of the Crown, the Law adjudged the Poſſeſſion in *Mary*, who had the Right to the ſame. *State Trials* 932. It is High Treaſon to conſpire againſt the *King*, Queen, *&c.* And a Perſon may be guilty of Treaſon againſt a *King*, though he be not in the Poſſeſſion of the Crown. The Dignity of the *King of England* is Imperial; and our *Kings* have placed on their Heads an Imperial Crown: *King Edgar* wrote himſelf *Imperator & Dominus*, *&c.* But no *King* of *England* uſed any Seal of Arms till the Reign of *Rich.* 1. before that Time, the Seal was the *King* ſitting in a Chair of State on one Side of the Seal, and on Horſeback on the other Side; but this *King* ſealed with a Seal of two Lions, and *King John* was the firſt that bare three Lions, and afterwards *Ed.* 3. quarter'd the Arms of *France*, which has been continued down to this Time. Alſo *King Henry* 8. was the firſt to whom Majeſty was attributed; before which our *Kings* were called *Highneſs*, *&c.* *Lex Conſtitut.* 47, 48. The eldeſt Son of the *King* of *England* is Prince of *Wales*, Duke of *Cornwal*, *&c.* and the younger Sons are born Dukes and Earls of what Places the *King* pleaſes. *K. Hen.* 2. took his Son into a Kind of ſubordinate Regality with him, ſo that there was *Rex Pater* and *Rex Filius*; but he did not deveſt himſelf of his Sovereignty, but reſerved to himſelf the Homage of his Subjects. And notwithſtanding this *King*, by Conſent of Parliament, created his Son *John King* of *Ireland*; and *King Rich.* 2. made *Robert de Vere* Duke of *Ireland*; and *Edw.* 3. made his eldeſt Son Lord of *Ireland*, with Royal Dominion; yet it has been held, that the *King* cannot regularly make a *King* within his own *Kingdom.* 4 *Inſt.* 357, 360 *Hen. de Beauchamp*, Earl of *Warwick*, was by *King Henry* 6. Crown'd *King of Wight Iſland*; but it was reſolved, that this could not be done without Conſent of Parliament, and even then our greateſt Men have been of Opinion, that the *King* could not by Law create a *King* in his own Kingdom, becauſe there cannot be two *Kings* of the ſame Place: And afterwards the ſame *King Henry* made the ſame Earl of *Warwick Primus Comes totius Angliæ.* A *King* cannot reſign or diſmiſs himſelf of his Office of *King*, without the Conſent of his Parliament; nor could *Hen.* 2. without ſuch

Conſent, divide the Sovereignty: There is a ſacred Band between the *King* and his Kingdom, that cannot be diſſolved without the free and mutual Conſent of both in Parliament; and though in Foreign Kingdoms there have been Inſtances of voluntary Ceſſions and Reſignations, which poſſibly may be warranted by their ſeveral Conſtitutions, by the Laws of *England*, the *King* cannot reſign his Sovereignty without his Parliament. *Sir Matt. Hale's Hiſt. Coronæ.* If a *King* hath a Kingdom by Title of Deſcent, where the Laws have taken good Effect and Rooting; or if a *King* Conquers a Chriſtian Kingdom, after the People have Laws given them for the Government of the Country to which they ſubmit, no ſucceeding *King* can alter the ſame without the Parliament. *Coke's* 7 *Rep.* 17. It is nevertheleſs held, that conquered Countries may be governed by what Laws the *King* thinks fit, and that the Laws of *England* do not take Place in ſuch Countries, until declared ſo by the Conqueror, or his Succeſſors; here in caſe of Infidels their Laws do not ceaſe, but only ſuch as are againſt the Law of God; and where the Laws are rejected or ſilent, they ſhall be governed according to the Rule of Natural Equity. 2 *Salk. Rep.* 411, 412, 666. Our *Kings* have diſtributed their whole Power of Judicature to the Courts of Juſtice; which Courts by immemorial Uſage have gained a known and ſtated Juriſdiction, that no *King* can alter without an Act of Parliament. 2 *Hawk. P. C.* 2. But as it has been reſolved, that the Succeſſor of every *King* begins his Reign on the very Day that the former *King* died; therefore all Patents of Judges, Sheriffs, Juſtices of Peace, &c. determine by the Death of the *King*. Tho' *vide Stat.* 1 *Ann. c.* 8. The *Kings* of *England* not having the whole Legiſlative Power, if the *King* and Clergy make a Canon, though it binds the Clergy *in re Eccleſiaſtica*, it does not bind Laymen; for they are not repreſented in the Convocation, but in Parliament: In the primitive Church, the Laity were preſent at all Synods; and when the Empire became Chriſtian, no Canon was made without the Emperor's Conſent, and indeed the Emperor's Conſent included that of the People, he having in himſelf the whole Legiſlative Power; but the *Kings* of this Kingdom have it not. 2 *Salk. Rep.* 412, 673. Religion, Juſtice, and Truth, are the Supporters of the Crowns of *Kings*. See *Crown*.

King's Prerogative. The Statute of the *King's Prerogative* 17 *Ed.* 2. contains not the *King's* whole *Prerogative*, but only ſo much thereof as concerns the Profit of his Coffers, for his *Prerogative* extends much further; and the *King* hath divers Rights of Majeſty peculiar to himſelf, which the Learned in the Law term *Sacra Sacrorum*, *viz.* Sacred and inſeparable, and which are many and various *Staundf. Prærog. Reg. Plowd.* 314. Sir *Henry Spelman* calls the King's Prerogative, *Lex Regiæ Dignitatis*; and a great many *Prerogatives* ariſe to the *King* from the Reaſon of the *Common Law*; which allows that to be Law almoſt in every Caſe for the *King*, which is not ſo for the Subject: But the *King's Prerogative* does not extend to any Thing injurious to his Subjects; for the *King* by our Law can do no Wrong. *Finch* 85. 1 *Inſt.* 19. The *King's Prerogative* is incident to his Crown, and as antient as that it ſelf; and hath in it a Preſcription, and is not only the Law of the *Exchequer*, but the Law of the Land: This *Prerogative* of the *King* is of a very large Extent; it reacheth to all Perſons Eccleſiaſtical and Civil, as he is *Perſona mixta*, ſo is his Power and *Prerogative.* 7 *Rep.* 14. It is the *King's Royal Prerogative* to make War or Peace: And as Head of the State he calls, continues, prorogues and diſſolves Parliaments; and all Statutes are to have his Royal Aſſent, which he may refuſe to give to a Bill; though his Denial is not an expreſs Negative, but that he will adviſe upon it. 1 *Inſt.* 110, 165. His Proclamation in calling or diſſolving Parliaments, declaring War and Peace, &c. has the Effect of a Law; but he cannot by Proclamation introduce new Laws, yet he may inforce old ones diſcontinued. 3 *Inſt.* 162. 2 *Inſt.* 743. Is was antiently held, that the *King* might ſuſpend or alter any particular Law that was hurtful to the Publick: And he may diſpenſe with a Penal Statute, wherein his Subjects have not any Intereſt. 4 *Inſt.* 7. *Rep.* 36. Acts of Parliament do not bind the *King*, if he be not ſpecially named; unleſs they concern the Commonwealth, ſuppreſs Wrong or Fraud, &c. in which Caſes they do; but he may take the Benefit of any Statute, tho' not named. 5 *Rep.* 14. 11 *Rep.* 71. 7 *Rep.* 32. And a *Prerogative* given generally to one *King*, or any Thing to be done to one, goes of Courſe to others. *Raym.* 212. He determines Rewards and Puniſhments; moderates Laws, and pardons Offenders: But the *King* cannot pardon Murder, where Appeal is brought by the Subject. 2 *Inſt.* 316. And Pardons of Felony, &c. ſhall be granted only where the *King* may lawfully do it, according to his Coronation Oath. 14 *Ed.* 3. The *King* may lay Imbargo's on Shipping; but then it muſt be *pro bono Publico*, and not for the private Advantage of any particular Traders. 1 *Salk.* 32. And though the *King* hath an Intereſt in every Subject, and a Right to his Service; he cannot diſcharge the Right of a Subject, or hinder him of a Remedy the Law gives him. *Holt* Ch. Juſt. 1 *Salk.* 19, 168. It is held that the *King* is *Cuſtos totius Regni Angliæ*: And he may, if he ſee Cauſe, open or ſhut the Sea-Ports, and forbid the Paſſage of his Subjects over Sea without Licenſe, &c. 12 *Rep.* 34. He may not diſpoſe of the Ports to any Subject; but ſhall appoint Officers for the Cuſtody thereof, under him. 11 *Rep.* 86. It is his *Prerogative* alone to diſpoſe and govern the Militia of the Nation: And he hath the Command of all Forts, and Places of Strength, &c. and Authority in making and caſting of Ordnance. 21 *Jac.* 1. *c.* 3. The *King* is the Fountain of Honour, and has the ſole Power of conferring Dignities and honourable Titles; as to make Dukes, Earls, Barons, Knights of the Garter, &c. He names, creates, makes and removes the great Officers of the Government. 1 *Inſt.* 165. All Writs, Proceſſes, Commiſſions, &c. are in the *King's* Name; and he may make Courts, which ſhall proceed according to the Common Law. *Jenk. Cent.* 285. He may create Univerſities, Colleges, Counties, Boroughs, Fairs, Markets, &c. No Foreſt, Chaſe or Park, can be made, or Caſtle built, without the *King*'s Leave. 4 *Inſt.* 294. The *King* may incorporate a whole City, Pariſh, &c. or Part of it, and grant and annex to ſuch Corporations divers Franchiſes: Tho' they may not under Colour thereof, ſet up a Monopoly. *Godb.* 253. *Noy* 182. And he may incorporate a Town, and enable them to chuſe Burgeſſes of Parliament; but this Part of the *Prerogative* of increaſing the Number of Parliament-men, ſeems to be given up by late *Kings*. *Hob.* 14. As ſupreme Head of the Church, our *King* hath Power to call a national or provincial Council; and by his Royal Aſſent the Canons made in Convocation have the Force of Laws: And to him the laſt Appeal is made. *Danv.* 73. 4 *Inſt.* 325. He hath the ſupreme Right of Patronage all over *England*; and is the Founder and Patron of all Biſhopricks, &c. ſo that none can be made Biſhop but by his Nomination: He not only founds Churches, but licenſes others to found them, exempt from the Ordinary's Juriſdiction; and he hath the Tithes of Foreſts and Places extraparochial, which he may grant by Letters Patent: Alſo the *King* ſhall pay no Tithes; though his Leſſee ſhall pay them. *Wood's Inſt.* 18. 1 *Cro.* 511. The *King* hath Power to make an Alien free-born, and to grant Letters of ſafe Conduct to foreign Parts:

He can put a Value upon the Coin, which is made by his Authority; and make foreign Coin current by Proclamation: And to make Money, the Law gives the *King* all Mines of Gold and Silver. *Plowd.* 314. He is the General Guardian of Ideots and Lunaticks; and ſhall have the Lands of Felons, *&c.* convict; alſo the Goods of Felons and Fugitives; Goods and Chattels of Pirates; Wreck of the Sea, *&c.* *Stat.* 17 *Ed.* 2. *cap.* 1. 9 *H.* 3. 4 *Inſt.* 136. The *King* is Lord paramount of all the Lands in *England*; and all Eſtates for Want of Heirs, or by Forfeiture eſcheat to him: All Lands are ſaid to be holden of the *King*; as by Conſtruction of Law they are originally derived from the Crown. 1 *Inſt.* 1. Lands in the *King*'s Poſſeſſion, are free from Tenure; and the *King* may not be Jointenant with any. *Finch* 83. The Grant of the *King* is taken moſt ſtrongly againſt a Stranger, and favourably for him: And he may avoid his own Grants for Deceit, *&c.* *Plowd.* 243. The *King* may grant a Thing in Action, which another cannot; and reſerve a Rent to a Stranger, *&c.* He cannot grant or take any Land, (not caſt upon him by Deſcent) but by Matter of Record: And the *King* may not grant an Annuity to charge his Perſon, which is not chargeable like the Perſon of a Subject; tho' he may grant it out of the Revenues of Exciſe, *&c.* 4 *Rep.* 54. 2 *Inſt.* 186. 1 *Salk.* 58. Where the Title of the *King* and of a common Perſon concurs, his Title ſhall be preferred. 1 *Inſt.* 30. No Diſtreſs can be made upon the *King*'s Poſſeſſion; but he may diſtrain out of his Fee in other Lands, *&c.* and may take Diſtreſſes in the Highway. 2 *Inſt.* 131. An Heir ſhall pay the *King*'s Debt, though he is not named in the Bond: And the *King*'s Debt ſhall be ſatisfied before that of a Subject, for which there is a *Prerogative* Writ. 1 *Inſt.* 130, 386. By the Stat. 25 *Ed.* 3. *c.* 19. a common Perſon may ſue the *King*'s Debtor, notwithſtanding he hath a Protection, and recover Judgment againſt him; but he cannot have Execution, unleſs he give Security to pay the *King*'s Debt: If he take out Execution before, and levy the Money, the ſame may be ſeiſed to ſatisfy the Debt of the *King*. *Godb.* 190. 2 *Nelſ. Abr.* 1081, 1082. If a Debtor has not a Writ of Protection, he may be in Execution for a common Perſon as well as the *King*: And it hath been adjudged, that although the *King* hath a *Prerogative* by the Common Law, to have his Debt firſt ſatisfied, that muſt be when it is in equal Degree with the Debt of his Subject; and by the Stat. 33 *H.* 8. *c.* 39. the *King*'s Debt ſhall be preferred, ſo as there is no Judgment, *&c.* *Cro. Car.* 283. *Hardr.* 23. Goods and Chattels may go in Succeſſion to the *King*; though they may not to any other ſole Corporation. 1 *Inſt.* 90. In whoſeſoever Hands the Goods of the *King* come, their Lands are chargeable, and may be ſeiſed for the ſame: And the *King* is not bound by Sale of his Goods in open Market. 2 *Inſt.* 713. No Preſcription of Time runs againſt the *King*; he is not within the Statute of Limitation of Actions. 11 *Rep.* 74. Action lies not againſt the *King*; but a Petition inſtead of it, to him in the Chancery: And it is lawful for any Subject to petition the *King* for Redreſs, where he finds himſelf grieved by any Sentence or Judgment. 2 *Inſt.* 187. *Hob.* 220. There are no Coſts againſt the *King*; no Entry will bar him; and no Judgment is ever final againſt him, but with a *Salvo Jure Regis*: And in the Caſe of others, the *King* may iſſue a Command to the Judges, not to proceed till he is adviſed; where his Title may be prejudiced, *&c.* *Litt.* 178. *Finch* 460. The *King*'s Title is not to be tried, without Warrant from the *King*, or Aſſent of the Attorney General. 2 *Inſt.* 424. The *King* may have ſuch Proceſs in his Suit, as no other Perſon but himſelf can have in any Caſe. 1 *Rep.* 18. *Finch* 476. He may plead ſeveral Matters, without being double, and the Parties ſhall anſwer them all. *Bro. Doub. pl* 57. And in his Pleading, he need not plead an Act of Parliament, as a Subject is bound to do. 4 *Rep.* 75. The *King* may ſue in what Court he pleaſes, and cannot be nonſuit, as he is ſuppoſed to be preſent in all his Courts: He is not bound to join in Demurrer on Evidence; and the Court may direct the Jury to find the Matter ſpecially. *Finch* 82. 5 *Rep.* 104. The *King*'s only Teſtimony of any Thing done in his Preſence, is of as high a Nature and Credit as any Record; whence it is, that in all original Writs or Precepts ſent out for the Diſpatch of Juſtice, he uſeth no other Witneſſes than himſelf, as *Teſte meipſo*, *&c.* The *King* cannot be a Minor; and in him the Law will ſee no Defect, Negligence or Folly. 1 *Inſt.* 41, 57. There are ſome other *Prerogatives* belonging to our *Kings*; but the Judges at *Weſtminſter* ought to judge of Matters of *Prerogative* relating to the *King*, as they do Matters concerning other Perſons. *Noy* 181. *Plowd.* 136. The *King* may not by Petition, Bill, *&c.* diſpoſe of any Man's Lands or Goods: Nor ſhall he take that he hath Right to, which is in the Poſſeſſion of another, but by due Courſe of Law. *Winch* 9 He may not command a Man to Priſon, againſt the Writs and Proceſs of Law. 12 *Rep.* 66. The Law is the Rule of the *King's Prerogative*; which ought to be grounded upon Antiquity, or otherwiſe it may be an Incroachment on the Liberty of the Subject. *Rex eſt anima Legi, & Lex eſt anima Regi.* 2 Inſt. 262. See *Debt to the King*, *Grants of the King*, &c.

King's Bench, (*Bancus Regius*, from the *Sax. Banca*, a Bench or Form) Is the Court or Judgment-Seat where the King of *England* was ſometimes wont to ſit in his own Perſon; and was therefore moveable with the Court or King's Houſhold, and called *Curia Domini Regis*, or *Aula Regis*: And by Stat. 28 *Ed.* 1. *c.* 5. this Court is to follow the King. King *Hen.* 3. ſat in Perſon with the Juſtices *in Banco Regis* ſeveral Times, being ſeated on a High Bench, and the Judges in a lower one at his Feet: And the *King's Bench* was originally the only Court in *Weſtminſter Hall*; out of which the Courts of *Common Pleas* and *Exchequer* ſeem to have been derived. 2 *Hawk. P. C.* 6. This Court hath ſupreme Authority, the King being ſtill preſumed by Law to ſit there as Judge of the Court, though he doth judge by his Judges; and the Proceedings are ſuppoſed to be *Coram nobis*, that is before the King himſelf, for which Reaſon all Writs in this Court are made ſo returnable, and not *coram Juſticiariis noſtris*, as is the Form in the *Common Pleas*. 4 *Inſt.* 73. It conſiſts of a Lord Chief Juſtice (who is Lord Chief Juſtice of *England*) created by Writ, and three other Juſtices created by Letters Patent; and according to antient Writers, the Lord Chief Juſtice hath had three, four, or five Juſtices for his Aſſiſtants. *Forteſcue, cap.* 51. The Juſtices of *B. R.* are the Sovereign Juſtices of *Oyer* and *Terminer*, Gaol-Delivery, and of Eyre, and Coroners of the Land; and their Juriſdiction is general all over *England*: By their Preſence the Power of all other Juſtices in the County, during the Time of this Court's Sitting in it, is ſuſpended; for *in Præſentia Majoris ceſſat Poteſtas minoris*; but ſuch Juſtices may proceed by Virtue of a ſpecial Commiſſion, *&c.* *H. P. C* 156. 4 *Inſt.* 73. 2 *Hawk. P. C.* 32. It is theſe Juſtices who have a Sovereign Juriſdiction over all Matters of a criminal and publick Nature, judicially brought before them, to give Remedy either by the Common Law or by Statute: And their Power is original and Ordinary; when the King hath appointed them, they have their Juriſdiction from the Law. 1 *Hawk.* 152. 4 *Inſt.* 74. Whatſoever Crime is againſt the publick Good, tho' it doth not injure any particular Perſon, comes within the Cogniſance of the Juſtices of this Court; and no private Subject can ſuffer any Kind of unlawful Violence or Injury againſt his Perſon, Liberty,

berty, or Poſſeſſions, but he may here have a proper Remedy, and not only for Satisfaction of Damages, but the exemplary Puniſhment of the Offender: This Court is the *Cuſtos morum* of all the Subjects of the Realm; and where it meets with any Offence contrary to the firſt Principles of common Juſtice, may inflict a ſuitable Puniſhment. 2 *Hawk.* 6. It is in the Diſcretion of the Juſtices of *B. R.* to inflict Fine and Impriſonment, and infamous Puniſhment on Offenders; and they may commit to any Priſon they think fit, and the Law doth not ſuffer any other Court to remove or bail any Perſons impriſoned by them. 1 *Sid.* 145. 1 *Mod.* 666. The Court of *B. R.* may proceed on Indictments found before other Courts, and removed into this in the ſame Manner as on Indictments or Informations commenced in this Court; though the Court before whom ſuch Indictments were found be determined, *&c.* And notwithſtanding certain Juſtices were appointed to execute a Statute on which the Proceedings were had; nor doth a Statute which appoints certain Crimes to be tried before certain Judges, exclude the Juriſdiction of the Judges of *B. R.* without expreſs negative Words: But if a Statute creates a new Offence, no Way taken Notice of by the Common Law, and erects a new Juriſdiction for its Puniſhment, *&c.* it may be otherwiſe. 2 *Hawk. P. C.* 7. The Stat. of 8 *H.* 6. which provides an Inquiry and Reſtitution in forcible Entry, appropriates it to Juſtices of Peace; and other Commiſſioners have no Power to inquire thereof: But the Judges of *B. R.* are within this Statute; for the King ſits there, and where he ſits *eſt plenitudo poteſtatis.* Kelw. 159. Jenk. Cent. 197. In the County where the *King's Bench* ſits, there is every Term a Grand Inqueſt, who are to preſent all Criminal Matters ariſing within that County, and then the ſame Court proceeds upon Indictments ſo taken; or if in Vacation, there be any Indictment of Felony before the Juſtices of Peace, *Oyer and Terminer* or Gaol-Delivery there ſitting, it may be removed by *Certiorari* into *B. R.* and there they proceed *de die in diem*, &c. 2 *Hale's Hiſt. P. C.* 3. To this Court it regularly belongs to examine Errors of all Judges and Juſtices in their Judgments and Proceedings; the Court of Exchequer excepted. *F. N. B.* 20, 21. It hath been held, that a Writ of Error lies in *B. R.* of an Attainder before the Lord High Steward. 1 *Sid.* 208. And upon Judgment given in the Chancery, as well as other Courts, Writ of Error in ſome Caſes will lie returnable in the Court of *King's Bench. Practiſ. Attorn.* 1*ſt Edit.* 185. But on Proceedings in *B. R.* by original Writ, Error lies not but to the Parliament. The Court of *B. R.* being the higheſt Court of Common Law, hath Power to reform inferior Courts, reverſe erroneous Judgments given therein, and puniſh the Magiſtrates and Officers for Corruption, *&c.* 2 *Hawk.* 8. It may award Execution, not only againſt Perſons attainted there, but alſo againſt Perſons attainted in Parliament, or any other Court; when the Record of their Attainder or a Tranſcript is removed, and their Perſons brought thither by *Habeas Corpus. Cro. Car.* 176. *Cro. Jac.* 495. Pardons of Perſons condemned by former Juſtices of Gaol-Delivery, ought to be allowed in *B. R.* the Record and Priſoner being removed thither by *Certiorari* and *Habeas Corpus.* 2 *Hawk.* 27. This Court grants *Habeas Corpus's* to relieve Perſons wrongfully impriſoned; and may bail any Perſon whatſoever: A Perſon illegally committed to Priſon by the King and Council, or either Houſe of Parliament, may be bailed in *B. R.* and in ſome Caſes on legal Commitments; alſo Perſons committed by the Lord Chancellor, *&c.* 2 *Hawk.* 110, 111. Writs of *Mandamus* are granted by this Court, to reſtore Officers in Corporations, Colleges, *&c.* unjuſtly turn'd out; and Freemen wrongfully disfranchiſed: Alſo *Quo Warranto's* againſt Perſons or Corporations, uſurping Franchiſes and Liberties againſt the King; and on Miſuſer of Privileges, to ſeiſe the Liberties, *&c.* And in *B. R.* the King's Letters Patent may be repealed by *Scire facias*, *&c.* This Court in ancient Times was ordinarily exerciſed in all Criminal Matters, and Pleas of the Crown; leaving private Contracts and civil Action to the Common Pleas, and other Courts. 4 *Inſt.* 70. It is now divided into a *Crown-ſide* and a *Plea-ſide*; the one determining Criminal, and the other Civil Cauſes: The Crown-ſide determines all Criminal Matters, (wherein the King is Plaintiff) as Treaſons, Felonies, Murders, Rapes, Robberies, Riots, Breaches of the Peace, and all Cauſes proſecuted by Way of Indictment, Information, *&c.* And into the Court of *B. R.* Indictments from all Inferior Courts and Orders of Seſſions, *&c.* may be removed by *Certiorari*; and Inquiſitions of Murder are certified of Courſe into this Court, as it is the ſupreme Court of Criminal Juriſdiction: Hence alſo iſſue Attachments, for diſobeying Rules or Orders, *&c.* 4 *Inſt.* 71, 72. On the Plea-ſide, it holds Plea of all perſonal Actions proſecuted by Bill or Writ, as Actions of Debt, Detinue, Covenant, Account, Actions upon the Caſe, and all other perſonal Actions, Ejectment, Treſpaſs, Waſte, *&c.* againſt any Perſon in the Cuſtody of the Marſhal of the Court, as every one ſued here is ſuppoſed to be; and in all perſonal Actions for or againſt any Officer, Miniſter or Clerk of the Court, who in reſpect of their neceſſary Attendance have the Privilege of the Court. *Ibid* It has been held, that Action upon the Statute of *Wincheſter*, of Robbery, does not lie by Original in the Court of *B. R.* becauſe it is a Common Plea; but it has been adjudged otherwiſe, and allowed on Bill. 2 *Danv. Abr.* 279, 282. An Appeal in *B. R.* muſt be arraigned on the Plea-ſide; except it come in by *Certiorari*, when it is ſaid it ought to be arraigned on the Crown-ſide. 2 *Hawk.* 308. Where the Court of *B. R.* proceeds on an Offence committed in the ſame County wherein it ſits, the Proceſs may be made returnable immediately; but when it proceeds on an Offence removed by *Certiorari* from another County, there muſt be fifteen Days between the Teſte and Return of every Proceſs, *&c.* 9 *Rep.* 118. 1 *Inſt* 134. 1 *Sid.* 72. The Court of *B. R.* may ſit and hear and determine Cauſes, after Term is ended. *Jenk. Cent* 62.

The *Officers of the King's Bench* are, on the Crown-ſide, the *Clerk of the Crown*, and the *Secondary* of the Crown: And on the Plea-ſide there are a great many Clerks and Officers; as two chief Clerks or *Prothonotaries*, and their *Secondary* and Deputy, the *Cuſtos Brevium*, two *Clerks of the Papers*, the *Clerk of the Declarations*, *Signer* and *Sealer* of Bills, the *Clerk of the Rules*, *Clerk of the Errors*, the *Clerk of the Bails*, *Filizers*, the *Marſhal* of the Court, and the *Cryer.* The *Prothonotaries* are Maſters of the *King's Bench* Office, and their Clerks are the proper Attornies here, who enter all Declarations, Pleas, and other Proceedings. Their *Secondary* conſtantly attends the Sitting of the Court, to receive Matters referred to him by the Judges, to be examined and reported to the Court; he ſigns all Judgments, taxes Coſts, and gives Rules to anſwer, *&c.* And he alſo informs the Court in Point of Practiſe. Their *Deputy* has the Cuſtody of the Stamp, for ſigning all Writs, *&c.* and keeps Remembrances of all Records; Writs return'd are filed in his Office, and common Bails, *&c.* The *Cuſtos Brevium* files Originals and other Writs whereon Proceedings are had to Outlawry; examines and ſeals all Records of *Niſi prius* for Trials at the Aſſiſes, and has ſeveral Clerks under him for making up Records throughout *England.* The *Clerks of the Papers* make up the Paper-Books of all ſpecial Pleadings and Demurrers, which the Plaintiff's Attorney commonly ſpeaks for, and afterwards gives Rule for the Defendant's Attorney to bring to him again to be entered, *&c.* The *Clerk of the Declarations* files all Declarations, and continues them on the Back from the Term of Declaring 'till Iſſue is joined. The *Signer and Sealer* of Bills keeps a Book of Entry of the Names of the Plaintiffs and Defendants in all ſuch Writs and Proceſſes; and the Defendants enter ther Appearances with him. The *Clerk of the Rules* takes Notice of all Rules and Orders made in Court, and afterwards draws them up and enters them in a Book at large; and with him alſo are given all Rules of Courſe on a *Cepi Corpus*, *Habeas Corpus*, Writs of Inquiry, *&c.* and he or the Clerk of the Papers files all Affidavits uſed in Court, and makes Copies of them. The *Clerk of the Errors* allows all Writs of Error, and makes *Superſedeas's* thereupon into any County, and tranſcribes and certifies Records. The *Clerks of the Bails* and *Poſteas*, file the Bail-Pieces, and mark the *Poſteas*, *&c.* The *Filizers* of Counties make the meſne Proceſs after the Original, in ſuing to the Outlawry; and have the Benefit of all Proceſs and Entries thereupon. The *Marſhal*, by himſelf or Deputy always attends the Court, to receive into his Cuſtody ſuch Priſoners as ſhall be committed. The *Cryer* makes Proclamations of Summoning and Adjourning the Court, calls Nonſuits, and ſwears Jurymen, Witneſſes, *&c.*

See more of *King's Bench* under *Court*, &c. *Lord Chief Juſtice*, vide *Juſtice*.

King's Houſhold. In the Reign of King *Ed.* 3. 16,000 *l.* *per Annum* and no more, was appointed for the *King's Houſhold:* And *Anno* 29 *H.* 6. the Charge of the *Houſhold* was reduced to 12,000 *l.* a Year. But in Q. *Elizabeth*'s Reign, the Profits of the Kingdom being very much advanced, 40,000 *l.* *per Annum* was allowed for her *Houſhold.* And on the Reſtoration of K. *Charles* 2. the Parliament for the Honour of the King and Kingdom, ſettled on his Majeſty 200,000 *l.* *per Annum.* In the Reigns of King *William* 3. and Queen *Anne* 700,000 *l.* a Year was allotted for the Support of the *Houſhold*, and ordinary Charge of the Civil Liſt. And his Majeſty King *George* 1. had the like Sum of 700,000 *l.* *per Annum* ſettled upon him by Parliament, ariſing out of the Duties of Exciſe, Wine-Licence, Poſt-Office, *&c.* Alſo to his preſent Majeſty K. *George* 2. The Duty of Exciſe on Ale, Beer, *&c.* is granted with a further Subſidy of Tonnage, and the yearly Sum of 120,000 *l.* out of the Aggregate Fund, for Support of the *Houſhold* and Dignity of the Crown: ſo as to make the Revenue 800,000 *l.* *per Annum*, and Deficiencies to be made good by Parliament. See the Statutes 13 *&* 14 *W.* 3. 1 *Ann. c.* 7. 1 *Geo.* 1. 1 *Geo.* 2. *c.* 1.

King's Palace, The Limits of the *King's Palace* at *Weſtminſter*, extends from *Charing-Croſs* to *Weſtminſter Hall*, and ſhall have ſuch Privileges as the antient Palaces. *Stat.* 28 *H.* 8. If any Perſon ſhall ſtrike another in the *King's Palace*, he ſhall have his Right-hand cut off, be impriſoned during Life, and alſo be fined. 32 *H.* 8. *c.* 12.

King's Silver, Is the Money which is paid to the *King* in the Court of *Common Pleas*, for a Licence granted to any Man to levy a *Fine* of Lands, Tenements or Hereditaments to another Perſon: And this muſt be compounded according to the Value of the Land, in the Alienation-Office, before the Fine will paſs. 2 *Inſt.* 511. 6 *Rep.* 39, 43.

Kintal, Is a Weight in Merchandize. See *Quintal.*

Kintlidge. A Term uſed among Merchants and Sea-faring Perſons, for a Ship's Ballaſt. *Merch. Dict.*

Kipe, (From the *Saxon*, *Cypa*) Is a Basket or Engine made of Oſiers, broad at one End, and narrower by Degrees, uſed in *Oxfordſhire* and other Parts of *England* for the Taking of Fiſh; and fiſhing with thoſe Engines is called *Kipping.* We read that no Salmon ſhall be taken between *Graveſend* and *Henley* upon *Thames* in *Kipper-time*, *viz.* between the 3d of *May* and the *Epiphany.* Rot. Parl. 50 Ed. 3.

Kirby's Queſt, Is an ancient Record remaining with the Remembrancer of the *Exchequer*; ſo called from its being the *Inqueſt* of *John de Kirby*, Treaſurer to King *Ed.* 1.

Kirk-mote, A Synod; and ſometimes it has been taken for a Meeting in the Church or Veſtry. *Blount.*

Knave, An old *Saxon* Word, which had at firſt a Senſe of Simplicity and Innocence, for it ſignified a Boy; Sax. *Cnapa*, whence a *Knave-Child*, *i. e.* a Boy, diſtinguiſhed from a Girl in ſeveral old Writers; afterwards it was taken for a Servant Boy, and at length for any Servant Man: Alſo it was applied to a Miniſter or Officer, that bore the Weapon or Shield of his Superior, as *Scild Knapa*, whom the *Latines* called *Armigerum*, and the *French*, *Eſcuyer*, 14 *E.* 3. *c.* 3. And it was ſometimes of old made Uſe of as a titular Addition; as *Johannes* C. filius *Willielmi C.* de *Derby*, Knave, *&c.* 22 *Hen.* 7. 36. The Word is now perverted to the hardeſt Meaning, *viz.* A falſe and deceitful Fellow.

Knight, (Sax. *Cnyt*, Fr. *Chevalier*, Lat. *Miles*, *&* *Eques Auratus*, from his gilt Spurs uſually worn) In its Original it is ſaid to be properly a Servant; but there is now but one Inſtance where 'tis ſo taken, and that is of *Knights of the Shire*, who ſerve for their Country in Parliament: In all other Caſes it ſignifies one that bears Arms, who for his Virtue and martial Proweſs, is by the King ſingled from the Rank of Gentlemen, and exalted to a higher Step of Dignity. He who ſerved the King in any Civil or Military Office, was antiently called *Miles* which is often mention'd in the old Charters of the *Anglo-Saxon* Kings; but the Word was after reſtrained to him that ſerved only upon ſome military Expedition, or rather to ſuch who by Reaſon of their Tenure were bound to ſerve in the Wars; (for formerly all Perſons having a *Knight's Fee* of Land might be compelled to be made *Knights*, as appears by the Stat. 1 *Ed.* 2. repealed by 17 *Car.* 1.) And he that by his Office or Tenure was obliged to perform any military Service, was furniſhed by the Chief Lord with Arms, and ſo *adoptabatur in militem*; which the *French* call *Adouber*, and we to *Dub* ſuch a Perſon a *Knight*, *&c.* The Manner of making *Knights* is thus, ſhortly expreſs'd by *Camden: Noſtris vero temporibus, qui Equeſtrem Dignitatem ſuſcipit, flexis genibus leviter in humero percutitur, Princeps his verbis Gallice affatur:* Sus vel Sois Chevalier au nom. de Dieu, *i. e. Surge aut ſis Eques in nomine Dei:* This is meant of *Knights Bachelors*, which is the loweſt, but moſt ancient Order of *Knighthood* with us. Of *Knights* there have been reckoned two Sorts, *Knights Spiritual* and *Temporal*; the *Spiritual Knights*, are ſo called by Divines in Regard of their Spiritual Warfare; the *Temporal Knighthood*, conſiſts of *Knights of the Sword*, *Knights Baneret*, *of the Bath*, *Knights of the Garter*, *&c. Selden's Titles of Honour, pag.* 770. The Privilege belonging to *Knights.* See *Ferne's Glory of Generoſity* 116.

Knights-Baneret, (*Milites Vexillarii*) Are made only in Time of *War*, and is a high Honour: And tho' *Knighthood* is commonly given for ſome perſonal Merit, which therefore dies with the Perſon; yet *John Coupland*, for his valiant Service performed againſt the *Scots*, had the Honour of *Banaret* conferr'd on him and his Heirs for ever, by Patent. 29 *Ed.* 3. See *Baneret.*

Knights of the Bath, (*Milites Balnei*) Have their Names from their *Bathing* the Night before their Creation. In ancient Times before *Knights* went into the Service, it was uſual for them to go into a Bath and waſh themſelves, and afterwards they were girt with a Girdle; which Cuſtom was conſtantly obſerved, eſpecially at the Inauguration of our Kings, on which Times *Knights* were made, who for that Reaſon were called *Knights of the Bath:* This Order of *Knights* was introduced by King *Hen.* 4. and revived in the Reign of King *Geo.* 1. with great Ceremony; thirty-ſeven of theſe *Knights* being then made, having each three honorary Eſquires; and they now wear a red Ribbon a-croſs their Shoulders; have a Prelate of the Order, who is the Biſhop of *Rocheſter*, ſeveral Herals, and other Officers, &c.

Knights of the Chamber, (*Milites Cameræ*) Seem to be ſuch *Knights Bachelors* as are made in Time of Peace, becauſe *Knighted* in the King's Chamber, and not in the Field: They are mentioned in *Rot. Parl.* 28 *Ed.* 3. 2 *Inſt.* 666.

Knights of the Garter, (*Equites Garterii,* or *Periſcelidis*) Are an Order of *Knights*, founded by King *Ed.* 3. who after he had obtained many notable Victories, for furniſhing this honourable Order, made Choice in his own Realm, and all *Europe*, of Twenty-five the moſt excellent and renowned Perſons for Virtue and Honour, and ordained himſelf and his Succeſſors, Kings of *England*, to be the Sovereigns thereof, and the reſt to be Fellows and Brethren. *Smith's Repub. Ang. lib.* 1. *cap.* 20. And according to *Camden* and others, this Order was inſtituted upon *King Edward the Third's* having great Succeſs in a Battle, wherein the *King's Garter* was uſed for a Token: But *Polydore Virgil* gives it another Original, and ſays, that this King in the Height of his Glory, the Kings of *France* and *Scotland* being both Priſoners in the *Tower* of *London* at one Time, firſt erected this Order, *Anno* 1350, from the *Counteſs of Saliſbury*'s dropping her *Garter*, in a Dance before his Majeſty, which the King taking up, and ſeeing ſome of his Nobles ſmile, he ſaid *Honi ſoit que mal y penſe*, interpreted, *Evil be to him that Evil thinketh*, which has ever ſince been the *Motto* of the *Garter*, declaring ſuch Veneration ſhould be done to that ſilken Tie, that the beſt of them ſhould be proud of enjoying their Honours that Way. *Camden* in his *Britannia* ſaith, that this Order of *Knights* received great Ornament from King *Ed.* 4. And King *Charles* 1. as an Addition to their Splendor, ordered all the *Knights* Companions to wear on their upper Garment, the Croſs incircled with the *Garter* and *Motto*. The Honourable Society of this Order is intitled to St. *Geogre*; and they are a College or Corporation, having a great Seal, &c. The Site of the College is the Royal Caſtle of *Windſor*, with the Chapel of St. *George*, and the Chapter-houſe in the ſaid Caſtle, for their Solemnity on St. *George*'s *Day*, and at their Feaſts and Inſtallations. Beſides the King their Sovereign, and Twenty-five Companions, *Knights of the Garter*, they have a Dean and Canons, &c. and twenty-ſix poor *Knights*, that have no other Subſiſtence but the Allowance of this Houſe, which is given to them in Reſpect of their daily Prayer to the Honour of God and St. *George*; and theſe are vulgarly called *Poor Knights of Windſor*. There are alſo certain Officers belonging to the Order; as *Prelate of the Garter*, which Office is inherent to the *Biſhop of Wincheſter* for the Time being; the *Chancellor of the Garter*, who is the *Biſhop of Sarum*; *Regiſter*, always *Dean of Windſor*; the Principal *King at Arms*, called *Garter*, to manage and marſhal their Solemnities; and the *Uſher* of the Garter, being likewiſe Uſher of the *Black Rod*. A *Knight of the Garter* wears daily Abroad, a blue Garter decked with Gold, Pearl, and precious Stones on the Left-Leg; and in all Places of Aſſembly, upon his Coat on the Left-ſide of his Breaſt, a Star of Silver Embroidery; and the Picture of St. *George*, enamelled upon Gold and beſet with Diamonds, at the End of a blue Ribbon that croſſes the Body from the Left-Shoulder; and when dreſſed in his Robes, a Mantle, Collar of *SS*, &c.

Knights-Fee, was heretofore ſo much Inheritance in Land, as was ſufficient to maintain a *Knight*. This was 20 *l.* a Year, by the Statute 1 *Ed.* 2. *c.* 1. But Sir *Thomas Smith* in his *Repub. Angl.* rates it at 40 *l. per Ann.* And Sir *Edward Coke* ſays a *Knight's Fee* contained 680 Acres. 2 *Inſt.* 596. And when the Eſtate of a *Knight* was eſteemed 20 *l.* by the Year, then the State of a Baron was 400 Marks; that of an Earl 400 *l. per Ann.* of a Marqueſs 800 Marks; and 800 *l.* a Year for a Duke. 2 *Co. Inſt.* 7, 8, 9. In *England*, at the Time of *William* called the *Conqueror*, there were ſixty thouſand two hundred and fifteen *Knight's Fees*; whereof Twenty-eight thouſand and fifteen were in the Poſſeſſion of Religious Houſes. *Stow's Annals* 285. *Bract. lib.* 5.

Knights of St. John of Jeruſalem, (*Milites Sancti Johannis Hieroſolymitani*) Had their Beginning about the Year 1119, and their Denomination from *John, Patriarch of Alexandria*, tho' vowed to St. *John Baptiſt*, their Patron. They had one general Prior, for the Government of the whole Order within *England* and *Scotland*; who was the firſt Prior of *England*, and ſate in the Lords Houſe of Parliament. Their primary Foundation and Abode was firſt in *Hieruſalem*, and then in the *Iſle of Rhodes*, until they were expelled thence by the *Turks*; ſince which their Chief Seat is the *Iſle of Malta*. See 32 *H.* 8. and *Hoſpitalers*.

Knights of Malta. Theſe *Knights* took their Name and Original from the Time of their Expulſion from *Rhodes*, *Anno* 1523. The Iſland of *Malta* was then given them by the Emperor *Charles* 5. where they now reſide, and are therefore called *Knights of Malta:* They have done great Exploits againſt the Infidels, eſpecially in the Year 1595.

Knights of Rhodes. The *Knights of St. John of Jeruſalem*, after they removed to *Rhode* Iſland. 32 *H.* 8. *c.* 24.

Knights Service, (*Servitium Militare*) Was a Tenure whereby ſeveral Lands in this Kingdom were held of the King; which drew after it Homage, and Service in War, Eſcuage, Wardſhip, Marriage, &c. The *Knights Service in Capite*, or in Chief, was Service, by which the Tenant was bound to ſerve the King in his Wars: And if he held of a common Perſon, then he was to go with his Lord in the Wars. But it is taken away by Statute 12 *Car.* 2. *cap.* 24. See *Chivalry*.

Knights of the Shire, (*Milites Comitatus*) Otherwiſe called *Knights of Parliament*, are two *Knights* or Gentlemen of Worth, choſen on the King's Writ, *in pleno Comitatu*, by the Freeholders of every County that can diſpend 40 *s.* a Year; and theſe, when every Man that had a *Knight*'s Fee was cuſtomarily conſtrained to be a *Knight*, were obliged to be *Milites gladio cincti*, for ſo runs the Writ at this Day; but now *Notabiles Armigeri* may be choſen. *Stat.* 1 *Hen.* 5. *c.* 1. 10 *H.* 6. *c.* 2. 23 *H.* 6. *c.* 6. Their Expences were to be born by the County, during their Sitting in Parliament, by the 35 *H.* 8. *c.* 11. And as to their Qualifications, they are to have 600 *l. per Annum* Freehold Eſtate, &c. Vide 9 *Ann. c.* 5. and *Parliament*.

Knights Templars, (*Milites Templarii*) Were a Religious Order of *Knights*, inſtituted in the Year of our Lord 1119, and ſo called, becauſe they dwelt in Part of the Buildings belonging to the *Temple* at *Jeruſalem*, and not far from the Sepulchre of our Saviour: They entertain'd Chriſtian Strangers and Pilgrims, and in their Armour led them through the *Holy Land*, to view the ſacred Monuments of Chriſtianity, without Danger from Infidels. This Order was far ſpead in Chriſtendom, particularly here in *England*, where it flouriſhed in the Time of King *Hen.* 2. And had in every Nation a particular Governor or Maſter, but at length ſome of them at *Jeruſalem* falling away to the *Saracens* from Chriſtianity, the whole Order was ſuppreſſed by *Clemens quintus*, *Anno* 1307. And their Subſtance given partly to the *Knights of St. John of Jeruſalem*, and partly to other Religious. *Caſſan. de gloria Mundi, par.* 9. Theſe *Knight* at firſt wore a white Garment; and afterwards in the Pontificate of *Pope Eugenius*, it was ordained that they ſhould wear a Red Croſs: In antient Records they were alſo called *Fratres Militiæ Templi Solomonis.* Mon. Angl. Tom. 2. p. 554.

Knights of the Thiſtle. The honourable the *Scotch* Knighthood, the *Knights* whereof wear a Green Ribbon over their Shoulders, and are otherwiſe honourably diſtinguiſhed.

Knighten-Court, An Honour Court held by the *Biſhop of Hereford* at his Palace there, twice a Year; wherein Lords of Manors, and their Tenants holding by *Knights* Service of the Honour of that Biſhoprick, were Suitors. *Butterfield's Serv.* 244.

Knighten-gild, Was a *Gild* or Company in *London*, conſiſting of nineteen *Knights*, which King *Edgar* founded, giving them a Portion of void Ground lying within the Walls of the City, now called *Potſoken Ward.* Stow. 151.

Known-men. The *Lollards* in *England*, called Hereticks, for oppoſing the Church of *Rome* before the Reformation, went commonly under the Name of *Known-men*, and *Juſt Faſt-men*; which Title was firſt given them in the Dioceſe of *Lincoln*, by *Biſhop Smith, Anno* 1500.

Kylyw, Signifies ſome liquid Thing; and in the *North* it is uſed for a Kind of liquid Victuals. It is mentioned as an Exaction of Foreſters, &c. *Mon. Angl. Tom.* 1. *pag.* 722.

Kyſte, (*Sax.*) A Coffin or Cheſt for Burial of the Dead. *Ex Reg. Epiſc. Lincoln. MS.*

Kyth, Is uſed for Kin or Kindred. *Cognatus.*

L.

LAAS, (*Laqueus, à Lax,* i. e. *Fraus*) A Net, Gin, or Snare. *Litt. Dict.*

Label, (*Appendix, Lemniſcus*) Is a narrow Slip of Paper or Parchment, affixed to a Deed, Writing or Writ, hanging at and out of the ſame; and an appending Seal is called a *Label.*

Labina, Signifies watry Land; *in qua facile* labitur.——— *Jamque diverſi Ligei noctanter tranſeuntes in Aquis &* Labinis *periclitantur.* Mon. Ang. Tom. 2. pag. 372.

Laborariis, Is an antient Writ againſt Perſons refuſing to ſerve and do *Labour*, who have no Means of Living; or againſt ſuch as having ſerv'd in the Winter, refuſe to ſerve in the Summer. *Reg. Orig.* 189.

Labourers, Conſpiring together concerning their Work or Wages, ſhall forfeit 10 *l.* for the firſt Offence, 20 *l.* for the Second, &c. And if not paid, be ſet on the Pillory. *Stat.* 2 & 3 *Ed.* 6. *c.* 15. Juſtices of Peace, and Stewards of Leets, &c. have Power to hear and determine Complaints relating to Nonpayment of *Labourers* Wages. 4 *Ed.* 4. 1. And *Labourers* taking Work by the Great, and leaving the ſame unfiniſhed, unleſs for Non-payment of Wages, or where they are employed in the King's Service, &c. are to ſuffer one Month's Impriſonment, and forfeit 5 *l.* The Wages of *Labourers* is to be yearly aſſeſſed for every County by the Sheriff, and Juſtices of Peace in the *Eaſter Seſſions*, and in Corporations by the Head Officers, under Penalties. 5 *Eliz. cap.* 4. And the Sheriff is to cauſe the ſaid Rates and Aſſeſſments of Wages to be proclaimed. 1 *Jac.* 1. *c.* 6. All Perſons fit for *Labour*, ſhall be compelled to ſerve by the Day, in the Time of Hay or Corn Harveſt; and *Labourers* in the Harveſt-time may go to other Counties, having Teſtimonials. From the Middle of *March* to the Middle of *September*, *Labourers* are to work from Five a Clock in the Morning till Seven or Eight at Night, being allowed two Hours for Breakfaſt and Dinner, and half an Hour for Sleeping the three hot Months; and all the Reſt of the Year from Twilight to Twilight, except an Hour and a Half for Breaſtfaſt and Dinner, on Pain of forfeiting 1 *d* for every Hour abſent. 4 *Eliz.* If any *Labourer* ſhall make an Aſſault upon his Maſter, he ſhall ſuffer and be puniſhed as a Servant making ſuch Aſſault. *Ibid.*

Lacerta, A Word ſignifying a Fathom. *Domeſday.*

Laches, (From the Fr. *Laſcher*, i. e. *Laxare*, or *Laſche*, ignavus) In our Law ſignifies Slackneſs or Negligence; as it appears in *Littleton*, where *Laches of Entry* is a Neglect in the Heir to enter. And probably it may be an old *Engliſh* Word; for when we ſay there is *Laches* of Entry, it is all one as if it were ſaid, there is a *Lack* of Entry; and in this Signification it is uſed. *Litt.* 136. No *Laches* ſhall be adjudged in the Heir within Age; and regularly *Laches* ſhall not bar either Infants or Feme Coverts, for not Entry or Claim, to avoid Deſcents; but *Laches* ſhall be accounted in them, for Non-performance of a Condition annexed to the State of the Land. *Co. Lit.* 146.

Laſta, A Defect in the Weight of Money; whence is derived the Word *Lack.* Du Freſne.

Lada, Hath divers Significations; 1ſt, From the Sax. *Lathian*, to convene or Aſſemble, it is taken for a *Lath*, or Court of Juſtice. 2dly, It is uſed for Purgation by Trial, from *Ladian*; and hence the *Lada ſixplex*, and *Lada triplex* or *Lada plena*, among the *Saxons*, mentioned in the Laws of King *Ethelred* and K. *Hen.* 1. 3dly, *Lada* is applied to a *Lade* or Courſe of Water; *Camden* uſes *Water-lade*, or Water-courſe: And *Spelman* ſays, that *Lada* is a Canal to carry Water from wet Grounds: Sometimes *Lada* ſignifies a broad Way. *Spelm. Gloſſ. Mon. Angl. Tom.* 1. *pag.* 854.

Ladies. For the Order of Trial of Dutcheſſes, Counteſſes, and Baroneſſes for Treaſon, when indicted thereof. See *Stat.* 2 *Hen.* 4. *c.* 14.

Lafordſwick, (Sax. *Hlaford*, i. e. *Dominus*, and *Swic*, proditio, Infidelitas erga Dominum) A Betraying one's Lord or Maſter. This Word is found in King *Canutus*'s Laws, *c.* 61. And in the Laws of King *Hen.* 1. *Quædam Placita emendari (viz. Quædam Crimina expiari) non poſſunt*, Husbrech, Openthefe, Eberemorth, & Lafordſwick. *Leg. H.* 1. *c.* 13.

Laga, (Sax. *Lag*) Signifies Law: And from hence we deduce *Saxonlage, Danelage*, &c.

Lagan, Is Goods ſunk in the Sea, from the Sax. *Liggan, cubare:* When Mariners in Danger of Shipwreck caſt Goods out of the Ship, and becauſe they know they are heavy and ſink, faſten a Buoy or Cork to them, that they may find and have them again; if the Ship be loſt, theſe Goods are called *Lagan*, and ſo long as they continue upon the Sea, belong to the Lord Admiral; but if they are caſt away upon the Land, they are then a Wreck, and belong to the Lord intitled to the ſame. 5 *Co. Rep.* 106. At firſt *Lagan* was that Right which the Chief Lord of the Fee had to take Goods caſt on Shore by the Violence of the Sea, &c. *Bract. lib* 3. *cap.* 2.

Lageman, (*Lagamannus*) *Homo habens Legem*, or *Homo Legalis ſeu Legitimus*; ſuch as we call now, *Good Men of the Jury*. The Word is frequently uſed in *Domeſday*, and the Laws of *Edward the Confeſſor*, *cap.* 38. thus: *Poſtea inquiſiſſet Juſtitia per* Lagamannos, & *per Meliores homines de Burgo*, &c. Sir *Edw. Coke* ſays, a *Lageman* was he who had *Socam & Sacam ſuper Homines ſuos, i. e.* that had a Juriſdiction over their Perſons and Eſtates; of which Opinion were *Somner* and *Lambard*, and that it ſignified the *Thanes*, called afterwards *Barons*, who ſat as Judges to determine Mens Rights in Courts of Juſtice. *In Senatus conſult. de Monticolis Walliæ, cap.* 3. it is ſaid

Let twelve *Laghmen*, which *Lambard* renders *Men of Law*, *viz*. Six *Engliſh* and ſix *Welch*, do Right and Juſtice, *&c. Blount.*

Lagen, (*Lagena*) In antient Time was a Meaſure of Wine, *&c.* the *Lieutenant* of the *Tower* has the Privilege to take *unam* Lagenam *Vini*, *ante malum & retro*, of all Wine Ships that come up the *Thames:* And Sir *Peter Lieceſter*, in his Antiquities of *Cheſhire*, interprets *Lagena Vini*, a Bottle of Wine. —— —— *Donatio inſuper de Sex* Lagenis *olei annuatim.* Chart. 2 *Ed.* 3.

Laghday, or *Lahday*, A Time of open Court. See *Law-day.*

Laghſlite, Lagſlite, Lahſlite, (Sax. *Lag*, Lex, & *Slite*, Ruptio) A Breaking or Tranſgreſſing of the Law; and ſometimes the Puniſhment inflicted for ſo doing. *Leg. H.* 1. *c.* 13.

Laia, A broad Way in a Wood; the ſame with *Lada*. Mon. Ang. Tom. 1. pag. 483.

Lairwite, Lecherwite, and **Legergeldum**, from the Sax. *Lagan*, i.e. Concumbere, & *Wite*, Mulcta) *Pœna vel Mulcta Offendentium in Adulterio & Fornicatione*; and the Privilege of puniſhing Adultery and Fornication did anciently belong to the Lords of ſome Manors, in Reference to their Tenants. *Fleta*, *lib.* 1. *c.* 47. 4 *Inſt.* 206.

Lammas-Day, Is the *firſt* Day of *Auguſt*, ſo called *quaſi Lamb-maſs*; on which Day the Tenants that held Land of the Cathedral Church of *York*, (which is dedicated to *St. Peter ad Vincula*) were bound by their Tenure to bring a live Lamb into the Church at High Maſs. It is otherwiſe ſaid to come from the Sax. *Hlafmaſſe*, viz. *Loaf-maſs*, as on that Day the *Engliſh* made an Offering of Bread made with new Wheat. 23 *Hen.* 8. *c.* 4.

Lamps. Houſe-keepers in *London*, and within the weekly Bills of Mortality, living in Streets, are to hang out *Lamps* every Night till Twelve a-Clock, from *Michaelmas* to *Lady day*, under the Penalty of 2 *s.* for every Default. *Stat.* 2 *W. & M.* And by a late Statute, a convenient Number of Glaſs *Lamps* ſhall be put in ſuch Places of the City of *London*, as the Mayor and Aldermen, *&c.* ſhall think fit; to be kept lighted and burning, from Sun-ſet to Sun-riſing, throughout the Year: And Rates made on Houſes, the loweſt 7 *s.* and not above 20 *s. per Ann.* for defraying the Charges of them. Every Alderman, with Conſent of his Deputy and Common Council, may contract yearly for the ſetting up *Lamps*; and their Lighting, Trimming, *&c.* And Perſons maliciouſly breaking down, or extinguiſhing any *Lamp*, ſhall forfeit 40 *s.* for the firſt Offence, and 50 *s.* for the Second, *&c.* leviable by Juſtices, or be ſent to the Houſe of Correction. *Stat.* 9 *Geo.* 2. *c.* 20.

Lancaſter, Was erected into a County Palatine *Anno* 50 *Ed.* 3. and granted by the King to his Son *John* for Life, that he ſhould have *Jura Regalia*, and a King like Power to pardon Treaſons, Outlawries, *&c.* and make Juſtices of Peace and Juſtices of Aſſiſe within the ſaid County, and all Proceſſes and Indictments to be in his Name; but theſe Royalties are abridged by the Stat. 27 *H* 8. *c.* 24. There is a Seal for the *County Palatine*, and another for the *Dutchy*, *i. e.* Such Lands as lie out of the County Palatine, and yet are Part of the Dutchy; for ſuch there are, and the Dukes of *Lancaſter* held them, but not as *Counties Palatine*, for they had not *Jura Regalia* over thoſe Lands. 2 *Lutw.* 1236. 3 *Salk* 110, 111. The Statute 37 *H.* 8. *c.* 16 annexes Lands to the Dutchy of *Lancaſter*, for the Enlargement of it. Fines levied before the Juſtices of Aſſiſe of *Lancaſter*, of Lands in the County Palatine, ſhall be of equal Force with thoſe acknowledged before the Juſtices in the Common Pleas. 37 *H.* 8. *c.* 19. And Proceſs againſt an Outlawed Perſon in the County Palatine of *Lancaſter*, is to be directed to the Chancellor of the Dutchy, who ſhall thereupon iſſue like Writs to the Sheriff, *&c.* 5 & 6 *Ed.* 6. 26. The Statute 17 *Car.* 2. concerning Cauſes of Replevin ſhall be of Force in the Court of Common Pleas for the County Palatine of *Lancaſter*. 19 Car. 2. 5.

Lanceti. Theſe were *Agricolæ quidam, ſed ignotæ ſpeciei.* Spelm.

Land, (*Terra*) Signifies generally not only arable Ground, Meadow, Paſture, Wood, Moors, Waters, *&c.* but alſo Meſſuages and Houſes; for in conveying the *Land*, the Buildings paſs with it. *Co. Lit.* 4. 19. In a more reſtrained Senſe it is arable Ground: And the *Land* of every Man in the Law is ſaid to be incloſed from other, though it lie in the open Field; ſo that for any Treſpaſs therein, he ſhall have the Writ *Quare Clauſum fregit*, &c. *Doct. and Stud.* 8. In a Grant, *Land* may extend to Meadow, or Paſture, *&c.* But in Writs and Pleadings, it ſignifies arable only. 1 *Vent.* 260.

Landboc, (From the Sax. *Land and Boc*, Liber) Was a *Charter* or Deed whereby *Land* was held. *Sic Anglo-Saxones Chartas & Inſtrumenta nuncuparunt, prædiorum ceſſiones, jura & firmitates continentia.* Spelm. Gloſſ.

Landcheap, (Sax. *Land-ceap*, from *Ceapan*, to buy and ſell) An ancient cuſtomary Fine, paid at every Alienation of Land lying within ſome Manor, or Liberty of a Borough; as at *Malden* in *Eſſex*, there is to this Day a Cuſtom called by the ſame Name, that for certain Houſes and Lands ſold within that Place, thirteen Pence in every Mark of the Purchaſe-Money ſhall be paid to the Town; and this Cuſtom of *Land-cheap*, they claim (*inter alia*) by a Grant from the *Biſhop of London*, made *Anno* 5 H. 4.

Landea, A Ditch in *Marſhy* Lands to carry Water into the Sea. —— *Vera judicia & awarda faciat de Valliis*, Landeis, & *Watergagiis.* Du Cange.

Landefricus, The Lord of the Soil. *Leg. Ethelred. cap.* 6.

Landegandman, Was one of the inferior Tenants of a Manor; it is uſed in *Cuſtumar. de Hecham.* Spelm.

Land-gable, A Tax or Rent iſſuing out of Lands; according to *Domeſday*, *Cenſus prædialis vel tributum, quod à prædiis colligitur:* And it is ſaid to be a Quit-Rent for the Site of a Houſe, or the Land whereon it ſtood, being the ſame with what we now call Ground-Rent. *Domeſd. Lincoln.*

Landimers, *Agrimenſores*, Meaſurers of Land, ſo called of old; Landimera *autem eſt Terræ limes vel Meta:* From the Sax. *Gemara*, i. e. *Terminus*; and hence we ſay *Meers.*

Landirecta. In the *Saxon* Times the Duties which were laid upon all that held Land, were term'd *Trinoda neceſſitas*, *viz.* Expedition, *Burghbote* and *Brigbote*; which Duties the *Saxons* did not call *Servitia*; becauſe they were not Feodal ariſing from the Condition of the Owners, but *Landirecta*, Rights that charged the very Land, whoever did poſſeſs it. *Spelm. of Feuds.*

Landlord, Is he of whom Lands or Tenements are holden; and a *Landlord* may diſtrain on the Lands of common Right, for Rent, Services, *&c.* *Co. Litt.* 57, 205. In *London*, if a Tenant commit Felony, *&c.* whereby his Goods and Chattels become forfeit; the *Landlord* ſhall be paid his Rent for two Years, before all other Debts except to the King, out of the Goods found in the Houſe. *Priv. Lond.* 75.

Land-Tax, Granted by Parliament. Vide *Tax.*

Land-tenant, Is he that poſſeſſes Land let, or hath it in his manual Occupation. 14 *Ed.* 3. *Stat.* 1. *cap.* 3. See *Tertenant.*

Langemanni, Are Lords of Manors, as interpreted by Sir *Ed. Coke.* 1 *Inſt.* 5. They are mentioned in *Domeſd.*

Langeolum, An under Garment made of Wool, formerly worn by the Monks, which reach'd down to their Knees; ſo called becauſe *Lanea fit.* Mon. Angl. Tom. 1. pag. 419.

Lanis de creſcentia Walliæ traducendis abſque Cuſtuma, &c. An antient Writ that lies to the Cuſtomer of a Port, to permit one to paſs Wool without paying Cuſtom, he having paid it before in *Wales*. Reg. Orig. 279

Lano niger, A Sort of baſe Coin, formerly current in this Kingdom. *Memorand. in Scaccario.* Mich. 22 Ed. 1.

Lapis Marmorius, A Marble Stone about twelve Foot long and three Foot broad, placed at the upper End of *Weſtminſter-hall*, where was likewiſe a Marble Chair erected on the Middle thereof, in which our Kings anciently ſat at their Coronation-Dinner, and at other Times the Lord Chancellor.—— *Qui quidam* Henricus de Cliff, (*Clericus Rotulorum*) *in Magna Aula* Weſtm. *apud* Lapidem Marmorium *in præſentia Domini Cancellarii, præſtitit Sacramentum*, &c. *Clauſ. Ed.* 2. *m.* 1. *Dorſo.* Over this marble Table are now erected the Courts of Chancery and King's Bench. *Orig. Juridical.* 37.

Lapſe, (*Lapſus*) Is a Slip or Omiſſion of a Patron to preſent to a Church, within Six Months after it becomes void; in which Caſe we ſay, that Benefice is in *Lapſe* or *lapſed*. 13 *Eliz. c.* 12. And *Lapſe* is defined to be a Title given to the Ordinary to collate to a Benefice, on the Patron's Negligence in Preſenting within ſix Months; and alſo to be a Devolution of a Right of Preſenting from the Patron to the Biſhop; from the Biſhop to the Archbiſhop; and from the Archbiſhop to the King. *Wood's Inſt.* 158. If after an Avoidance, the Patron doth not preſent in ſix Months, the Ordinary hath the next ſix Months to collate to the Benefice; and if he doth not collate in ſix Months, then the Metropolitan hath further ſix Months; and if he doth not collate within his ſix Months, it then devolves to the Crown. 2 *Roll. Abr.* 360. *Hob.* 30. 4 *Rep.* 17. And the Computation of the ſix Months is by the Kalendar Months, excluſive of the Day in which the Church becomes void. 6 *Rep.* 62. Where a Patron preſents his Clerk before the Biſhop hath collated, the Preſentation is good nothwithſtanding the ſix Months are paſt, and ſhall bar the Biſhop, who cannot take any Advantage of the *Lapſe*: And ſo if the Patron makes his Preſentation before the Archbiſhop hath collated, though twelve Months are paſt: But if the Biſhop collates after twelve Months, this bars not the Archbiſhop. 2 *Rol. Abr.* 369. 2 *Inſt.* 273. If a Biſhop doth not collate to Benefices of his own Gift, they *lapſe* at the End of ſix Months to the Archbiſhop; and if the Archbiſhop neglects to collate within ſix Months, to a Benefice of his Gift, the King ſhall have it by *Lapſe*. *Dr. & Stud. cap.* 36. And if a Church continues void ſeveral Years by *Lapſe*, the Succeſſor of the King may preſent. *Cro. Car.* 258. But if the King hath a Title to preſent by *Lapſe*, and he ſuffers the Patron to preſent, and the Preſentee dies, or reſigns before the King hath preſented, if the Preſentation is real and not by Covin, he hath loſt his Preſentation, for *Lapſe* is but for the firſt and next Turn; and by the Death of the Incumbent, a new Title is given to the Patron; though it has been adjudged that the King in ſuch Caſe may preſent at any Time as long as that Preſentee is incumbent. 2 *Cro.* 216. 7 *Rep. Moor* 244. When the Patronage of the Church is litigious, and one Party doth recover againſt the other in a *Quare Impedit*, if the Biſhop be not named in the Writ, and ſix Months paſs while the Suit is depending, *Lapſe* ſhall incur to the Biſhop: If the Biſhop be named in the Writ, then neither the Biſhop, Archbiſhop or King, can take the Benefice by *Lapſe*; and yet it is ſaid if the Patron within the ſix Months brings a *Quare Impedit* againſt the Biſhop, and then the ſix Months paſs without any Preſentation by the Patron, *Lapſe* ſhall incur to the Biſhop. 2 *Roll. Abr.* 365. 6 *Rep.* 52. 1 *Inſt.* 344. *Hob.* 270. Though where the Biſhop is a Diſturber, or the Church remains void above ſix Months by his Fault, there ſhall be no *Lapſe*. 1 *Inſt.* 344. A Clerk preſented being refuſed by the Biſhop for any ſufficient Cauſe, as Illiterature, ill Life, &c. he is to give the Patron Notice of it, that another may be preſented in due Time, otherwiſe the Biſhop ſhall not collate by *Lapſe*; becauſe he ſhall not take Advantage of his own Wrong, in not giving Notice to the Patron as he ought to do by Law. *Dyer* 292. And if an Avoidance is by Reſignation, which muſt neceſſarily be to the Biſhop by the Act of the Incumbent; or by Deprivation, which is the Act of the Law, *Lapſe* ſhall not incur to the Biſhop, till ſix Months after Notice given by him to the Patron: When the Church becomes void by the Death of the Incumbent, &c. the Patron muſt preſent in ſix Months without Notice from the Biſhop, or ſhall loſe his Preſentation by *Lapſe*. *Dyer* 293, 327. 1 *Inſt.* 135. 4 *Rep.* 75. In the Caſes of Deprivation and Reſignation, where the Patron is to have Notice before the Church can *lapſe*, the Patron is not bound to take Notice from any Body but the Biſhop himſelf, or other ordinary, which muſt be perſonally given to the Party, if he live in the ſame County; and ſuch Notice muſt expreſs in certain the Cauſe of Deprivation, &c. If the Patron live in a foreign County, then the Notice may be publiſhed in the Pariſh Church, and affixed on the Church-door. *Cro. Eliz.* 119. *Dyer* 328. In ſuch Caſes that there ought to be Notice, if none is given by the Biſhop or Archbiſhop in a Year and half, whereby *Lapſe* would come to the King if it had been given; here the *Lapſe* ariſeth not to the King, when no Title aroſe to the inferior Ordinary. *Dyer* 340. And it has been adjudged, that *Lapſe* is not an Intereſt, like the Patronage, but an Office of Truſt repoſed by Law in the Ordinary; and the End of it is, to provide the Church a Rector, in Default of the Patron: And it cannot be granted over; for the Grant of the next *Lapſe* of ſuch a Church, either before it falls or after, is void. *F. N. B.* 34. Alſo if *Lapſe* incurs, and then the Ordinary dies, the King ſhall preſent, and not the Ordinary's Executors, becauſe it is rather an Adminiſtration, than an Intereſt. 25 *Ed.* 3. 4. *Mallor. Q. Imped.* 118. A *Lapſe* may incur againſt an Infant or Feme Covert, if they do not preſent within ſix Months. 1 *Inſt.* 246. But there is no *Lapſe* againſt the King, who may take his own Time, and Plenarty ſhall be no Bar againſt the King's Title, becauſe *Nullum tempus occurit Regi.* 2 *Inſt.* 273. *Dyer* 351. By Preſentation and Inſtitution, a *Lapſe* is prevented; tho' the Clerk is never inducted: And a Donative cannot *lapſe*, either to the Ordinary or the King. 2 *Inſt.* 273.

Larceny, (Fr. *Larrecin*; Lat. *Latrocinium*) Is a Theft or Felony of another's Goods, in his Abſence; and in Reſpect of the Thing ſtolen, it is either great or ſmall: *Grand Larceny* is a felonious Taking and carrying away the perſonal Goods of another, above the Value of 12 *d.* not from the Perſon, or by Night, in the Houſe of the Owner; and *Petit Larceny* is when the Goods ſtolen do not exceed the Value of 12 *d.* It agrees with Grand *Larceny* in all Things except only the Value of the Goods; ſo that wherever any Offence would be Grand *Larceny*, if the Thing ſtolen was above 12 *d.* Value, it is Petit *Larceny*, if it be but of that Value, or under. *H. P. C.* 60, 69. If two Perſons ſteal Goods to the Value of 13 *d.* it is Grand *Larceny* in both; and if one at different Times ſteals divers Parcels of Goods from the ſame Perſon, which together exceed the Value of 12 *d.* they may be put together in one Indictment, and the Offender found Guilty of Grand *Larceny*; but this is very ſeldom done: On the contrary, the Jury ſometimes, where it is an Offender's firſt Offence, &c. find it ſpecially, as they may, that the Goods are of but 10 *d.* Value; whereby it will be only Petit *Larceny*, though the Offender is indicted for ſtealing Things of the Value of 30 or 40*s*. *H. P. C.* 70. *Pult.* 125. 3 *Inſt.* 109. *Hetl. Rep.* 66. And Grand *Larceny* is a Felony puniſhed with Death; Petit Larceny only with Whipping, or other Corporal Puniſhment, &c. But the Offenders may have the Benefit of Tranſportation by Statute. There is not only *Simple Larceny*, by taking away the Goods of another, but a *mix'd* or complicated *Larceny*, which has a further Degree of Guilt in it, and is either a Taking from the Perſon, or from the Houſe; as in Caſe of Robbery, Burglary, &c. Alſo there is a *Private Larceny* from a Man's Perſon, without his Knowledge; or an *Open Larceny* with his Knowledge; Private, by picking the Pocket, &c. Openly, where a Thief takes off my Hat, or Periwig, from my Head, and runs away with it: And as to Private *Larceny* from the Perſon above 12*d*. it is excluded Clergy, if laid in the Indictment as done *clam & ſecrete*, &c. according to the Words of the Stat. 8 *Eliz.* but otherwiſe it is not; Open *Larceny* with Knowledge, by the Common Law is within the Benefit of Clergy. *H. P. C.* 75. *Dalt. cap.* 110. 3 *Inſt.* 68. *Dyer* 224. Of all moveable Goods, the Property whereof is in any Perſon, Felony, or *Larceny* may be committed; as Money, Houſhold-ſtuff, Hay, Corn and Trees ſevered from the Ground, &c. But the Goods ſtolen muſt be mere Perſonal, to make it *Larceny*; for if it be of any Thing in the Realty, or fixed to the Freehold; as Corn, or Fruit growing, not ſevered, Lead on a Church, &c. it is not *Larceny*. 3 *Inſt.* 109. 8 *Rep.* 33. *Dalt.* 372. And of Paper and Parchment, on which Conveyances are written concerning Lands, or Obligations, &c. *Larceny* cannot be committed. *Wood's Inſt.* 366. But ſee Stat. 2 *Geo.* 2. *c.* 25. as to ſtealing of Bonds and Notes; and the 4 *Geo.* 2. *c.* 32. againſt ſtealing and taking away Lead, or Iron Bars from Houſes, &c. Where a Perſon finds the Goods of another that are loſt, and converts them to his own Uſe, it is no *Larceny*. *H. P. C.* 61. To take away Goods the Owner of which is unknown, ſometimes is no *Larceny*; ſuch as Treaſure-Trove, Wrecks, Waifs, Strays, before Seiſure by the Perſon who hath a Right to the ſame; though in other Caſes, a Man may be guilty of *Larceny* in taking away Goods, the Owner whereof is not known. *Dalt.* 370. 3 *Inſt.* 208. *H. P. C.* 67. And in ſome extraordinary Caſes, the Law will rather feign a Property, where in Strictneſs there is none, than ſuffer an Offender to eſcape Juſtice. 1 *Hawk. P. C.* 94. A Man may commit *Larceny* by taking away his own Goods in the Hands of another; where the Owner delivers Goods to a Carrier, and afterwards ſecretly ſteals them from him, with an Intent to charge him for them, &c. becauſe the Carrier had a ſpecial Property, and the Poſſeſſion for a Time. 3 *Inſt.* 110. *Dalt.* 373. *Pult.* 126. To make the Crime of *Larceny*, there muſt be a felonious Taking; or an Intent of ſtealing the Thing, when it comes firſt to the Hands of the Offender, at the very Time of the Receiving. 3 *Inſt.* 107. *Dalt.* 367. And if one intending to ſteal Goods, gets Poſſeſſion of them by Ejectment, Replevin, or other Proceſs at Law unduly obtained, by falſe Oath, &c. it is a felonious Taking. 3 *Inſt.* 64. *Kel. Rep.* 43, 44. If a Man hath Poſſeſſion of Goods once lawfully, though he afterwards carry them away with an ill Intention, it is no *Larceny*: Where a Taylor imbezils Cloth delivered to him, to make a Suit of Clothes, &c. it is not Felony. *H. P. C.* 61. 5 *Rep.* 31. And if I lend a Perſon my Horſe to go to a certain Place, and he goes there, and then rides away with him, it is not *Larceny*; but Remedy is to be had by Action for the Damage: Tho' if one comes on Pretence to buy a Horſe, and the Owner gives the Stranger Leave to ride him, if he rides away with the Horſe, it is Felony; for here an Intention is implied. *Wood's Inſt.* 364, 365. In the above Caſes, there is a lawful Poſſeſſion by Delivery, to extenuate the Offence: But Perſons having the Poſſeſſion of Goods by Delivery, may in ſome Inſtances be guilty of Felony, by taking away Part thereof; as if a Carrier open a Pack, and take out Part of the Goods; a Miller, who has Corn to grind, takes out Part of the ſame, with an Intent to ſteal it, &c. in which Caſes, the Poſſeſſion of Part, diſtinct from the Whole, was gained by Wrong, and not delivered by the Owner, &c. *H. P. C.* 62. *S. P. C.* 25. 1 *Hawk. P. C.* 90. If a Lodger hath the Poſſeſſion of Goods and Furniture in a Houſe, by the Conſent and Delivery of the Owner, the Taking away, Imbeziling or Purloining thereof, with an Intent to ſteal them, is Felony and *Larceny*. *Stat.* 3 & 4 *W. & M. cap.* 9. And by Statute, if a Servant being of the Age of 18 Years, and not an Apprentice, goes away with Goods of his Maſter or Miſtreſs delivered him to keep; or being in his Service imbezils them, or converts them to his own Uſe, with Intention to ſteal them, it is Felony, if the Goods are of the Value of 40*s*. or above. 21 *H.* 8. *c.* 7. Alſo if one Servant delivers the Goods to another Servant, this is a Delivery by the Maſter; yet if the Maſter or another Servant delivers a Bond, or Cattle to ſell, and the Servant goes away with the Bond, and receives the Money thereon due, or receives the Money for the Cattle ſold, and goes away with the ſame, this is no Felony or *Larceny* within the Statute. *Dalt.* 388. *H. P. C.* 62. 3 *Inſt.* 105. So if a Servant receives his Maſter's Rents; for the Maſter did not deliver the Money to the Servant, and it muſt be of Things delivered to keep: And if Goods delivered to the Servant to keep, are under 40*s*. Value, and he goes away with them, this is only a Breach of Truſt, by Reaſon of the Delivery; but if the Goods were not delivered to him, it is Felony and *Larceny* to go away with or imbezil them, though under the Value of 40*s*. &c. *Dalt.* 369. See 12 *Ann. c.* 7. A Perſon that hath the bare Charge of Goods, and not the Poſſeſſion; as a Butler that hath the Charge of Plate, a Shepherd of Sheep, a Servant who hath the Charge of a Chamber by Delivery of the Key to him, &c. may be guilty of *Larceny*. 3 *Inſt.* 108. If the Goods of a dead Perſon are ſtolen, it is Felony and *Larceny*: But where Servants in a Houſe imbezil them after their Maſter's Deceaſe, this ſeems not to be Felony; becauſe the Things were in ſome Meaſure in their Cuſtody; though if they appear not on Proclamation, they ſhall be attainted of Felony, by Statute 33 *H.* 6. *c.* 1. 1 *Hale's Hiſt. P. C.* 515. A Man puts a Child of ſeven Years old to take Goods and bring them to him, and he carries them away; the Child is not guilty by Reaſon of his Infancy, yet it is *Larceny* in the other. *Ibid.* 514. If a Man reduced to extreme Neceſſity (not owing to his own Unthriftineſs) ſteals Victuals meerly to ſatisfy his preſent Hunger, and keep him from Starving, by our ancient Books, this is neither Felony nor *Larceny*. 1 *Hawk. P. C.* 93. An Acquittal of *Larceny* in one County, may be pleaded in Bar of a ſubſequent Proſecution for the ſame Stealing in another County: And an Averment that the Offences in both Indictments are the ſame, may be made out by Witneſſes, or Inqueſt of Office, without putting it to Trial by Jury; though that of later Years hath been the uſual Method. 2 *Hawk. P. C.* 370. But it is no Plea in Appeal of *Larceny*, that the Defendant hath been found Not guilty in Action of Treſpaſs brought againſt him by the ſame Plaintiff for the ſame Goods, for *Larceny* and Treſpaſs are entirely different; and a Bar in an Action of an inferior Nature, will not bar another of a ſuperior. *Ibid.* 371. If a Perſon be indicted for Felony or *Larceny* generally, and upon the Evidence it appears that the Fact is but a bare Treſpaſs, he cannot be found Guilty and have Judgment on the

Treſpaſs, but ought to be indicted anew; though it may be otherwiſe where the Jury find a ſpecial Verdict, or when the Fact is ſpecially laid, *&c.* In Treſpaſs where the Taking is felonious, no Verdict ought to be given, unleſs the Defendant hath before been tried for the Felony. 2 *Hawk.* 440. All Felony includes Treſpaſs, ſo that if the Party be Guilty of no Treſpaſs in taking the Goods, he cannot be guilty of Felony or *Larceny* in carrying them away; and in every Indictment of *Larceny*, there muſt be the Words *Felonice cepit & aſportavit, &c. H. P. C.* 61. 1 *Hawk.* 89. See *Felony.*

Larderarius Regis, The King's *Larderer*, or Clerk of the Kitchen. *Cowel.*

Larding Money. In the Manor of *Bradford* in the County of *Wilts*, the Tenants pay to their Lord a ſmall yearly Rent by this Name; which is ſaid to be for Liberty to feed their Hogs with the Maſt of the Lord's Woods, the Fat of a Hog being called *Lard:* Or it may be a Commutation for ſome cuſtomary Service of carrying Salt or Meat to the Lord's *Larder.* This was called *Lardarium* in old Charters; *& Decimam* Lardarii *de Haga.* Mon. Angl. Tom. 1. p. 321.

Larons, (*Fr.*) Thieves; mentioned in the Statute for View of Frank-pledge. 18 *Ed.* 2.

Laſſatinus, Often occurs in *Walſingham*, and ſignifies, an Aſſaſſine or Murderer. *Anno* 1271.

Laſt, (Sax. *Hlæſtan*, i. e. *Onus*, Fr. *Leſt*) Denotes a Burden in general, and particularly a certain Weight or Meaſure of Fiſh, Corn, Wool, Leather, Pitch, *&c.* As a *Laſt* of White Herrings, is twelve Barrels, of Red Herrings, twenty Cades or Thouſand, and of Pilchards, ten Thouſand; of Corn, ten Quarters, and in ſome Parts of *England* twenty-one Quarters; of Wool, twelve Sacks; of Leather, twenty Dickers, or ten Score; of Hides or Skins, twelve Dozen; of Pitch, Tar or Aſhes, fourteen Barrels; of Gunpowder, twenty-four Firkins, weighing a hundred Pound each, *&c. Stat.* 32 *Hen.* 8. *cap.* 14. 1 *Jac.* 1. *c.* 33. 15 *Car.* 1. *c.* 7.

Laſt, In the Marſhes of *Kent*, is a Court held by the twenty-four *Jurats*, and ſummoned by the Bailiffs; wherein Orders are made to lay and levy Taxes, impoſe Penalties, *&c.* for the Preſervation of the ſaid Marſhes. *Hiſt. of Imbanking and Draining, f.* 54.

Laſtage, (*Laſtagium*) A Cuſtom exacted in ſome Fairs and Markets, to carry Things bought where one will, by the Interpretation of *Raſtal:* But it is taken for the Ballaſt or Lading of a Ship, by the Stat. 21 *R.* 2. *cap.* 18.——*Omnes Homines* London. *ſint quieti & liberi, &c. de Theolonio, & Paſſagio,* & Laſtagio, *& ab omnibus aliis Conſuetudinibus. Diploma* Hen. 1. *de Libertatibus* London. And *Laſtage*, ſays another Author, is properly that Cuſtom which is paid for Wares ſold by the *Laſt*; as Herrings, Pitch, *&c.*

Laſt Heir, (*Ultimus Hæres*) *Quippe Rex omnium Hæredum ultimus eſt, uti oceanus omnium fluviorum receptaculum.* Bract. lib. 7. cap. 17. See *Heir.*

Laterare, To lie Side-ways in Oppoſition to lying End-ways; uſed in the Deſcription of Lands. *Chart. dat. Ann.* 1317.

Lathe, Leth, (*Læſtum, Leda*, Sax. *Læthe*) Is a great Part of a County, containing three or four Hundreds, or Wapentakes; as it is uſed in *Kent* and *Suſſex.* Leg. Ed. Confeſſ. c. 35.——*Et ſint quieti de ſectis Comitatuum,* Leth, *Hundred. & auxiliis vicecomitum.* Pat. 1 H. 4. par. 8. m. 8. See *Lada.*

Lathreve, Leidgreve or **Trithingreve,** Was an Officer under the *Saxon* Government, who had Authority over a third Part of the County; and whoſe Territory was therefore called *Trithing*, otherwiſe a *Leid* or *Leithen*, in which Manner the County of *Kent* is ſtill divided; and the *Rapes* in *Suſſex* ſeem to anſwer the ſame. As to the Juriſdiction of this Officer, thoſe Matters that could not be determined in the Hundred-Court, were thence brought to the *Trithing*, where all the principal Men of three or more Hundreds being aſſembled by the *Lathreve* or *Trithingreve* did debate and decide it; or if they could not, then the *Lathreve* ſent it up to the County-Court, to be there finally determined.——*Suoque olim ſubaudiens magiſtratui quem* Ledgrevium *appellabant.* Spelm. ant. Government of England.

Latin. There are three Sorts of *Latin.* 1. *Good Latin*, allowed by Grammarians and Lawyers. 2. *Falſe* or incongruous *Latin*, which Times paſt would abate original Writs; though not make void any judicial Writ, Declaration or Plea, *&c.* And 3. Words of *Art*, known only to the Sages of the Law, and not to Grammarians, called *Lawyers Latin.* 1 *Lill. Abr.* 146, 147. *Stat.* 36 *Ed.* 3. Formerly the Uſe of a Word not *Latin* at all, or ſo in the Senſe in which uſed, might in many Caſes be helped by an *Anglice*; tho' where there was a proper *Latin* Word for the Thing intended to be expreſſed, nothing could help an improper one. 2 *Hawk. P. C.* 239. And when there was no *Latin* for a Thing, Words made which had ſome Countenance of *Latin*, were allowed good, as *Velvetum*, *Anglice* Velvet, *&c.* 10 *Rep.* 133. See *Indictment*, and *Proceſs.*

Latinarius, An Interpreter of *Latin*, or *Latiner*, from the Fr. *Latinier*; and heretofore he that underſtood *Latin*, which in the Time of the *Romans* was the prevailing Language, might be a good Interpreter. 2 *Co. Inſt.* 515.

Latitat, Is a Writ whereby all Men are originally called to anſwer in perſonal Actions in the *King's Bench*; having its Name upon a Suppoſition that the Defendant doth *lurk and lie hid*, and cannot be found in the County of *Middleſex* to be taken by *Bill*, but is gone into ſome other County, to the Sheriff of which this Writ is directed, to apprehend him there. *F. N. B.* 78. *Terms de Ley* 421. The Original of it is this; In ancient Time, while the *King's Bench* was moveable, when any Man was ſued a Writ was ſent forth to the Sheriff of the County where the Court was reſident called a Bill of *Middleſex*, to take him; and if the Sheriff returned *Non eſt inventus*, then was a ſecond Writ ſued out, that had theſe Words, *Cum Teſtatum eſt quod* Latitat, *&c.* and thereby the Sheriff was commanded to attach the Party in any other Place, where he might be found: And when the Tribunal of the King's Bench came to be ſettled at *Weſtminſter*, the ſame Courſe was obſerved for a long Time; but afterwards, by the Contrivance of Clerks, it was deviſed to put both theſe Writs into one, and ſo attach the Defendant upon a Fiction that he was not in the County of *Middleſex*, but lurking elſewhere; and that therefore he was to be apprehended by the Sheriff of the County where he was ſuſpected to be and lie hid. It is called a *Teſtatum* Writ, iſſuing out of *B. R.* grounded upon a Bill of *Middleſex*, ſuppoſed to be ſued out before, and returned *Non eſt inventus:* And a *Latitat* out of the *King's Bench* is in Nature of the Original Writ *Clauſum fregit*; on which the Practice is in the *Common Pleas*, 2 *Lill. Abr.* 147. A *Latitat* cannot iſſue into the County of *Middleſex*, except the Court remove out of *Middleſex* into another County, for in the County where the Court of *B. R.* is, the Proceſs muſt be by *Bill*, and out of the County by *Latitat. Ibid.* If the Writ of *Latitat* is iſſued during Term-Time, the *Teſte* thereof is to be the firſt Day of the Term; and if in the Vacation, it muſt be the laſt Day of the Term preceding: A Note is to be made of it on Paper for the Officer, and the *Latitat* being filled up, is to be carried with the Note to the *King's Bench Office*, and there the Writ is ſigned; from whence it is carried to the Seal-Office, where it is ſealed, and the Day ſtamped on the Back-ſide; and then a Warrant is to be procured from the Sheriff of the County to execute the Writ. *Practiſ. Solic.* 217. And when any Perſon ſhall ſue forth of *B. R.* any *Latitat*, *Alias* and *Pluries* againſt any Perſon, who thereupon appears and puts in Bail; if the Plaintiff do not declare within three Days, or after Declaration he diſcontinues, *&c.* the Judges ſhall award Damages. Stat. 8 *Eliz. c.* 2.

Form of a *Writ of Latitat* out of *B. R.*

GEORGE *the Second, by the Grace of God, King of* Great Britain, France *and* Ireland, *Defender of the Faith*, &c. *To the Sheriff of* South'ton *Greeting: Whereas we lately commanded our Sheriff of* Middleſex, *that he ſhould take* C. D. *and* E. F. *if they ſhould be found in his Bailiwick, and ſafely keep them, ſo that he might have their Bodies before Us at* Weſtminſter, *at a certain Day now paſt, to anſwer to* A. B *in a Plea or Action of Treſpaſs; and alſo to a Bill of the ſaid* A. *to be exhibited againſt the ſaid* C. *according to the Cuſtom of our Court before us, for a Debt of Ten Pounds: And our ſaid Sheriff of* Middleſex, *at that Day made a Return to us, that the ſaid* C. *and* E. *were not to be found in his Bailiwick; whereupon on the Behalf of the ſaid* A. *it is teſtified in our Court before us, that the ſaid* C. *and* E. *lurk and wander up and down in your County. Therefore we command you, that you take them, if they are to be found in your Bailiwick, and keep them ſafely, ſo as you have their Bodies before us at* Weſtminſter, *on* Wedneſday *next after three Weeks of Saint* Michael, *to anſwer to the ſaid* A. *in the Plea and Bill aforeſaid; and have you there then this Writ. Witneſs* Robert *Lord* Raymond *at* Weſtminſter, *the Day, &c.*

Latro, *Latrocinium*, He who had the ſole Juriſdiction *de Latrone* in a particular Place: It is mentioned *in Leg. Will.* 1. See *Infangthef.*

Lavatorium, A Laundry, or Place to waſh in, applied to ſuch a Place in the Porch or Entrance of Cathedral Churches, where the Prieſts and other officiating Members were obliged to waſh their Hands before they proceeded to Divine Service: And in the Statutes of St. *Paul's* Church in *London*, it was ordained, *ut Sacriſta* Lavatorium *in veſtibulo per ſervientes frequenter mundari faciat.* Liber Statut. Eccl. Paul. London. MS. f. 59.

Laudare, To adviſe or perſuade. *Leg. Edw. Confeſſ. cap.* 39. —— *Rex Angliæ aſſignabat ei in terra ſua ad* Laudem *& Conſilium Regis* Franciæ, *&c. Hoveden, p.* 729. *Laudare* ſignifies alſo to arbitrate; and *Laudator*, an Arbitrator. *Knight. p.* 2526.

Laudum, An Arbitrament, or Award. *Walſingham, p.* 60.

Laverbread. In the County of *Glamorgan* and ſome other Parts of *Wales*, they make a Sort of Food of a Sea-Plant, which ſeems to be the Oyſtergreen, or Sea Liverwort; and this they call *Laverbread.*

Launcegays, A kind of offenſive Weapons now diſuſed, and prohibited by the Stat. 7 *R.* 2. *c.* 13.

Laund, or **Lawnd**, (*Landa*) An open Field, without Wood. *Blount.*

Laurels, Pieces of Gold coined in the Year 1619, with the King's Head *laureated*, which gave them the Name of *Laurels*; the Twenty-Shilling Pieces whereof were marked with XX. The Ten-Shillings X. and the Five-Shilling Piece with V. *Camd. Annal. Jac.* 1. *MS.*

Law, (In Sax. *Lag*, Lat. *Lex*, from *Lego* or *Legendo*, chooſing, or rather *à Ligando*, binding) Is the Rule and Bond of Men's Actions: Or 'tis a Rule for the well governing of a Civil Society, to give to every Man that which doth belong to him. According to *Bracton*, *Lex eſt Sanctio juſta, jubens Honeſta & prohibens Contraria:* And the Divine Schoolman ſays, *Lex Humana eſt quoddam dictamen rationis, quo diriguntur humani actus.* The *Law* is *Rectum*, as it diſcovers that which is crooked or wrong; and theſe three Qualities are incident to the *Law*, *viz.* It muſt be *Juſta, Jubens Honeſta, Prohibens Contraria:* And *Juſta* requires five Properties; *Poſſibilis, Neceſſaria, Conveniens, Manifeſta, nullo privata commodo.* 2 *Co. Inſt.* 56, 587. *Laws* are ſaid to be *Arbitrary*, or *Natural Laws*; the laſt of which are eſſentially juſt and good, and bind every where and in all Places where they are obſerved: Arbitrary *Laws* are either concerning ſuch Matter as is in itſelf morally indifferent, in which Caſe both the *Law* and the Matter, and Subject of it is likewiſe indifferent, or concerning the natural *Law* itſelf, and the Regulating thereof; and all arbitrary Laws are founded in Convenience, and depend upon the Authority of the Legiſlative Power which appoints and makes them, and are for maintaining publick Order: Thoſe which are natural *Laws*, are from God; but thoſe which are arbitrary, are properly human and poſitive Inſtitutions. *Selden on Forteſcue, cap.* 17. The learned *Selden* tells us, that the *Laws* of any Country began, when there firſt began to be a State in the Land: And that we may conſider the World as one univerſal Society, and then that *Law* by which Nations are governed, is called *Jus gentium*; if we conſider the World as made up of particular Nations, the *Law* which regulates the publick Order and Right of them, is termed *Jus publicum*; and that *Law* which determines the private Rights of Men, is called *Jus civile. Ibid.* No *Law* can oblige a People without their Conſent; now this Conſent is either *Verbis* or *Factis*, *i. e.* it is expreſſed by Writing, or implied by Deeds and Actions; and where a *Law* is grounded on an implied Aſſent, *rebus & factis*, it is either Common *Law*, or Cuſtom, if it is univerſal, it is Common *Law*; and if particular to this or that Place, then it is Cuſtom. 3 *Salk. Rep.* 112. The *Law* in this Land hath been variable; the *Roman Laws* were in Uſe antiently in *Britain*, when the *Romans* had ſeveral Colonies here, each of which was governed by the *Roman Laws:* Afterwards we had the *Laws* called *Merchenlage*, Weſt *Saxonlage* and *Danelage*; all reduced into a Body, and made one by King *Edw. Confeſſ. Magn. Chart. cap.* 1. *&* 14. *Camd. Britan.* 94. At preſent the *Laws* of *England* are divided into three Parts: 1. The *Common Law*, which is the moſt ancient and general *Law* of the Realm, and common to the whole Kingdom; being appropriate thereto, and having no Dependance upon any Foreign *Law* whatſoever. 2. *Statutes* or Acts of Parliament, made and paſſed by the King and the Lords and the Commons in Parliament; being a Reſerve for the Government to provide againſt new Miſchiefs ariſing through the Corruption of the Times: And by this the Common *Law* is amended where defective, for the Suppreſſion of publick Evils; though where the Common *Law* and Statute *Law* concur or interfere, the Common *Law* ſhall be preferred. 3. *Particular Cuſtoms*; but they muſt be particular, for a general Cuſtom is Part of the Common *Law* of the Land. *Co. Lit.* 15, 115. There is another Diviſion of our *Laws*, more large and particular; as into the Prerogative or *Crown Law*; the *Law* and Cuſtom of *Parliament*; the *Common Law*; the *Statute Law*; Reaſonable *Cuſtoms*; the *Law* of *Arms*, War and Chivalry; *Eccleſiaſtical* or Canon *Laws*; *Civil Law*, in certain Courts and Caſes; *Foreſt Law*; the Law of *Marque* and *Repriſal*, the *Law* of *Merchants*; the *Law* and Privilege of the *Stannaries*, *&c.* But this large Diviſion may be reduced to the common Diviſion; and all is founded on the *Law* of Nature or Reaſon, and the revealed *Law* of God, as all other *Laws* ought to be. 1 *Co. Inſt.* 11. The Law of Nature, is that which God at Man's Creation infuſed into him, for his Preſervation and Direction; and this is *Lex æterna*, and may not be changed: And no *Laws* ſhall be made or kept, that are expreſly againſt the *Law* of God, written in his Scripture; as to forbid what he commandeth, *&c.* 2 *Shep. Abr.* 356. As to the *Law* of Nature, it is generally the *Law* of all Places, Perſons and Times, without Alteration; and has the ſame Force all the World over: But it is limitable, as Circumſtances require; and limited *Law* of Nature, is the *Law* now uſed in every State. All Laws derive their Force *a Lege Naturæ*; and thoſe which do not, are accounted as no Laws. *Forteſcue.* No *Law* will make a Conſtruction to do wrong: And there are ſome Things that the *Law* favours, and ſome it diſlikes; it favoureth thoſe Things that come from the Order of Nature. 1 *Inſt.* 183, 197. Alſo our *Law* hath much more Reſpect to Life and Liberty, Freehold, Inheritance, Matters of Record, and of Subſtance; than to Chattels, Things in the Perſonalty, Matters not of Record, or Circumſtances. *Ibid.* 137. 4 *Rep.* 124. The Uſe of the *Law* is to ſecure the Property of what we enjoy; and the Objects of it concern Perſons, their Eſtates, Crimes and Miſdemeanors, Courts of Juſtice, &c. See *Common Law.*

Law Hath alſo a *ſpecial* Signification, wherein it is taken for that which is lawful with us, and not elſewhere; as Tenant by the *Curteſy of England*, is called Tenant by the *Law of England.*

Law of Arms, (*Lex Armorum*) Is that *Law* which gives Precepts how to proclaim War, make and obſerve Leagues and Treaties, to aſſault and encounter an Enemy, and puniſh Offenders in the Camp, &c. The *Law* and Judgment of Arms are neceſſary between two ſtrange Princes of equal Power, who have no other Method of determining their Controverſies, becauſe they have no ſuperior or ordinary Judge, but are ſupreme and publick Perſons; and by the *Law of Arms*, Kings obtain their Rights, Rebels are reduced to Obedience, and Peace is eſtabliſhed: But when the *Law of Arms* and War do rule, the Civil *Laws* are of little or no Force. *Treat. Laws* 57. It is a Kind of *Law* among all Nations, that in Caſe of a ſolemn War, the Prince that conquers gains a Right of Dominion, as well as Property over the Things and Perſons he has ſubdu'd; and 'tis for this Reaſon, becauſe both Parties have appealed to the higheſt Tribunal that can be, *viz.* the Trial by *Arms and War*; wherein the great Judge and Sovereign of the World, in a more eſpecial Manner, ſeems to decide the Controverſy. *Hale's Hiſt. L.* 73, 74. Common Things concerning *Arms* and War, are under the Cognizance of the Conſtable and *Marſhal of England.* 13 R. 2.

Law-Books. All Books writ in the *Law*, are either *Hiſtorical*, as the *Year-Books*; *Explanatory*, ſuch as *Staundford*'s Treatiſe of the Prerogative Royal; *Miſcellaneous*, as the Abridgments of the Law; or *Monological*, being on one certain Subject, ſuch as *Lambard*'s Juſtice of Peace, &c. *Fulbeck's Parall. cap.* 3. And our Books of *Reports*, have ſuch great Weight with the Judges, that many of them are as highly valued, as the *Reſponſa Prudentum* among the *Romans*, which were *Authoritative. Wood's Inſt.* 10. *Authors* of *Law-Books.* Vide *Common Law.*

Law-Day, (*Lagedayum*) Called alſo *View of Frank-pledge*, or *Court-Leet*, was any Day of open Court; and commonly uſed for the Courts of a County or Hundred. *Et quietæ ſint de Sectis Comitatuum & Hundredorum noſtrorum, de viſu Franci plegii &* Lawdayorum, &c. *Chart* 39 *Hen.* 3.

Lawing of Dogs, Is the Cutting off ſeveral Claws of the Fore-feet of Dogs in the *Foreſt.* Chart. Foreſt. *c.* 6. See *Expeditate.*

Lawleſs Court, Is a Court held on *Kingſhill*, at *Rochford* in *Eſſex*, on *Wedneſday* Morning next after *Michaelmas* Day yearly, at Cock crowing; at which Court, they whiſper, and have no Candle, nor any Pen and Ink, but a Coal: And he that owes Suit or Service there, and appears not, forfeits double his Rent: This Court is mentioned by *Camden*, who ſays, that the ſervile Attendance was impoſed on the Tenants, for conſpiring at the like unſeaſonable Time to raiſe a Commotion. *Camd. Britan.* 441. It belongs to the Honour of *Raleigh*, and is called *Lawleſs*, becauſe held at an unlawful Hour; or *Quia dicta ſine Lege.* The Title of it is in Rhime, and in the *Court-Roll* runs thus:

Kingſhill *in* Rochford } ſſ. *Curia de Domino Rege,*
Dicta ſine Lege,
Tenta eſt ibidem
Per ejuſdem Conſuetudinem,
Ante ortum ſolis
Luceat niſi polus,
Seneſcallus ſolus,
Nil ſcribit niſi colis
Toties voluerit
Gallus ut cantaverit,
Per cujus ſoli ſonitus
Curia eſt ſummonita:
Clamat clam pro rege
In Curia ſine Lege,
Et niſi citò venerint
Citiùs pœnituerint,
Et niſi clam accedant
Curia non attendat,
Qui venerit cum lumine
Errat in regimine,
Et dum ſunt ſine lumine,
Capti ſunt in Crimine,
Curia ſine Cura.
Jurati de Injuria.

Tenta ibidem die Mercurii (ante Diem) proximi poſt Feſtum Sancti Michaelis *Anno regni Regis,* &c.

Lawleſs Man, (*Exlex*) Is he that is an Out-law. *Pro exlege tenebitur, cum Principi non obediat nec Legi, & tunc utlagabitur ſicut ille qui eſt extra Legem, ſicut* Laugheleſs Man. *Bract. lib.* 3. *c.* 11.

Law of Marque, (from the Germ. *March*, i. e. *Limes*) Is where they that are driven to it, do take the Shipping and Goods of that People of whom they have received Wrong, and cannot get ordinary Juſtice in another Territory, when they can take them within their own Bounds and Precincts. *Stat.* 27 *Ed.* 3. *c.* 17.

Law Merchant, (*Lex Mercatoria*) Is a ſpecial *Law* differing from the Common *Law* of *England*, proper to Merchants, and become a Part of the *Laws* of the Realm. And the *Charta Mercatoria* 31 *Ed.* 1. grants this perpetual Privilege to *Merchants*, coming into this Kingdom: *Quod omnes Balivi, Miniſtri Feriarum, Civitatum, Burgorum & Villarum Mercatoriarum Mercatoribus antedictis comparentibus coram eis celerem Juſtitiam faciant de die in diem ſine dilatione; ſecundum* Legem Mercatoriam, *de univerſis & ſingulis quæ per eandem Legem poterunt terminari.* See 13 *Ed.* 1. and 27 *Ed.* 3. *c.* 8. *Co. Litt.* 182. See *Cuſtom of Merchants.*

Law-Proceedings, Of all Kinds, as Writs, Proceſſes, Pleadings, &c. are to be in the *Engliſh* Language from the 25th of *March* 1733, by a late Act 4 *Geo.* 2. Vide *Proceſs.*

Law Spiritual, (*Lex Spiritualis*) Is the Eccleſiaſtical *Law*, allowed by our *Laws* where it is not againſt the Common *Law*, nor the Statutes and Cuſtoms of the Kingdom: And regularly according to ſuch Eccleſiaſtical or *Spiritual Laws*, the Biſhops and other Eccleſiaſtical Judges proceed in Cauſes within their Cogniſance. *Co. Litt.* 344. It was alſo called *Law Chriſtian*; and in Oppoſition to it, the *Common Law* was often called *Lex Terrena*, &c.

Lawyer, (*Legiſta, Legiſperitus, Juriſconſultus*) By the *Saxons* called *Lahman*, is a *Counſellor*, or one learned in the Law. And *Lawyers*, ſuch as Counſellors, Attornies, &c. are within the Act 3 *Jac.* 1. againſt Extortion; but it has been held only to extend to Officers. 2 *Keb.* 548.

Lay-Fee, (*Feodum Laicum*) Lands held in Fee of a *Lay-Lord*, by the common Services to which military Tenure was ſubject; as diſtinguiſhed from the *Eccleſiaſtical* Holding in *Frankalmoign*, diſcharged from thoſe Burdens. *Kennet's Gloſſ*

Layman, Is one that is not of the Clergy; and the *Latin* Word *Laicus* ſignifies as much as *Populus*, that which is common to the People, or belongs to the *Laity* Lit. Dict.

Layſtall, (*Sax.*) A Place to lay Dung or Soil in. *Stat.* 22 & 23 *Car.* 2.

Lazzi. The *Saxons* divided the People of the Land into three Ranks: The firſt they called *Edhilingi*, which were ſuch as are now Nobility: The Second were termed *Frilingi*, from *Friling* ſignifying he that was born a Freeman, or of Parents not ſubject to any Servitude, which are the preſent Gentry: And the Third and Laſt were called *Lazzi*, as born to Labour, and being of a more ſervile State than our Servants, becauſe they could not depart from their Service without the Leave of the Lord; but were fixed to the Land where born, and in the Nature of Slaves: And hence the Word *Lazzi*, or *Lazy*, ſignifies thoſe of a ſervile Condition. *Nithardus de Saxonibus*, *lib.* 4.

Lea of Yarn, A Quantity of Yarn, ſo called; and at *Kidderminſter* it is to contain 200 Threads on a Reel four Yards about. 22 & 23 *Car.* 2.

League, Is an Agreement between Princes, &c. Alſo a Meaſure of Way by Sea, or an Extent of Land containing three Miles in moſt Countries abroad. Breakers of *Leagues* and Truces, and how puniſhed for Offences done upon the Seas. See *Stat.* 2 *H.* 5. and 4 *H.* 5. *c.* 7.

Leche, or **Leak**, (From *Sax Leccian*, to let out Water) In the Biſhoprick of *Durham* is uſed for a Gutter; ſo in *Yorkſhire* any Slough or watry Hole upon the Road, is called by this Name: And hence the Water-Tub to put Aſhes in to make a Lee for Waſhing of Cloaths, is in ſome Parts of *England* termed a *Leche.* Cowel.

Leakage, Is an Allowance of Twelve *per Cent.* to Merchants importing Wine, out of the Cuſtoms; and of two Barrels in Twenty-two of Ale to Brewers, &c. out of the Duty of Exciſe. *Merch. Dict.*

Leap, A Net, Engine or Wheel, made of Twigs, to catch Fiſh in. 4 & 5 *W.* & *M.* *c.* 23. See *Lepa.*

Leap-Year, Every fourth Year, having one Day more than other Years. *Vide* Biſſextile.

Leaſe, (From *Locatio* letting, or rather *Dimiſſio*, from the Fr. *Laiſſer*, i. e. *Dimittere*, to depart with) Is a Demiſe or Letting of Lands, Tenements or Hereditaments to another, for Term of Life, Years, or at Will, for a Rent reſerved. *Co. Litt.* 43. *Leaſes* are either in *Writing*, or by Word of Mouth, when they are called *Leaſes Parol*; and it is ſaid not to be material whether any Rent is reſerved upon a *Leaſe* for Life, or Years, except in the Caſe of *Leaſes* by Tenant in Tail, &c. according to the Statute 32 *H.* 8. A *Leaſe* for Life requires Livery of Seiſin; and generally to the Making of a good *Leaſe*, ſeveral Things neceſſarily concur; there muſt be a Leſſor, not reſtrained to make a *Leaſe*; a Leſſee not diſabled to receive it; a Thing demiſed which is demiſable, and a ſufficient Deſcription of the Thing demiſed, &c. If it be for Years, it muſt have a certain Commencement and Determination, it is to have all the uſual Ceremonies, as Sealing, Delivery, &c. and there muſt be an Acceptance of the Thing demiſed. *Litt.* 56. 1 *Inſt.* 46. *Plowd.* 273, 523. A Demiſe having no certain Commencement is void: For every Contract ſufficient to make a *Leaſe*, ought to have Certainty in Commencement, in the Continuance, and in the End. *Vaugh.* 85. 6 *Rep.* 35. A *Leaſe* at Will is at the Will of the Leſſor or Leſſee; or regularly at the Will of both Parties. 1 *Inſt.* 55. All Eſtates, Intereſts of Freehold, or Terms for Years in Lands, &c. not put in Writing, and ſigned by the Parties, ſhall have no greater Effect than as Eſtates at Will; unleſs it be of *Leaſes* not exceeding three Years from the Making, wherein the Rent reſerved ſhall be Two Thirds of the Value of the Thing demiſed. *Stat.* 29 *Car.* 2. *cap.* 5. *Leaſes* exceeding three Years muſt be made in Writing, and if the Subſtance of a *Leaſe* be put in Writing, and ſigned by the Parties, though it be not ſealed, it ſhall have the Effect of a *Leaſe* for Years, &c. *Wood's Inſt.* 266. Articles with Covenants to let and make a *Leaſe* of Lands, for a certain Term, at ſo much Rent, hath been adjudged a Leaſe. *Cro. Eliz.* 486. In a Covenant with the Words *Have*, *Poſſeſs* and *Occupy* Lands, in Conſideration of an yearly Rent, without the Word Demiſe; and it was held a good *Leaſe:* And a Licence to occupy, take the Profits, &c. which paſſeth an Intereſt amounts to a *Leaſe.* 3 *Bulſt.* 204. 3 *Salk.* 223. If I ſay, you ſhall have a *Leaſe* of my Lands in *D.* for Years, paying 20 *s.* a Year Rent, make ſuch *Leaſe*, and I will ſeal it; it is a good *Leaſe Parol. Moor, cap.* 31. An Agreement of the Parties, that the Leſſee ſhall enjoy the Lands, will make a *Leaſe:* But if the Agreement hath a Reference to the *Leaſe* to be made, and implies an Intent not to be perfected till then; it is not a perfect *Leaſe* until made afterwards. *Bridg.* 13. 2 *Shep. Abr.* 374. If a Man on Promiſe of a *Leaſe* to be made to him, lays out Money on the Premiſſes, he ſhall oblige the Leſſor afterwards to make the Leaſe; the Agreement being executed on the Leſſee's Part: Where no ſuch Expence hath been, a bare Promiſe of the *Leaſe* for a Term of Years, tho' the Leſſee have Poſſeſſion, ſhall not be good without ſome Writing. *Preced. Can.* 561. A Perſon ſeiſed of an Eſtate in Fee-ſimple, in his own Right, of any Lands or Tenements, may make a *Leaſe* of it for what Lives or Years he will; and he that is ſeiſed of an Eſtate-tail in Lands, may make a *Leaſe* of it for his own Life, but not longer; except it be by Fine or Recovery, or *Leaſe* warranted by the *Stat.* 32 *H.* 8. And if Tenant in Tail, or for Life, make a *Leaſe* generally, it ſhall be conſtrued for his own Life. 1 *Inſt.* 42. He that is ſeiſed of an Eſtate for Life, may make a *Leaſe* for his Life, according as he is ſeiſed; alſo he may make a *Leaſe* for Years of the Eſtate, and it ſhall be good as long as the Eſtate for Life doth laſt: One poſſeſſed of Lands for Years, may make a *Leaſe* of all the Years, except one Day, or any ſhort Part of of the Term; it is to be granted for a leſs Term than the Maker hath in the Lands; for if all the Eſtate is granted, it is an Aſſignment: And if Leſſee for Years makes a *Leaſe* for Life, the Leſſee may enjoy it for the Leſſor's Life, if the Term of Years laſts ſo long; but if he gives Livery and Seiſin upon it, this is a Forfeiture of the Eſtate for Years. *Wood's Inſt.* 267. Jointenants, Tenants in Common, and Coparceners, may make *Leaſes* for Life, Years, or at Will, of their own Parts, and ſhall bind their Companions; And in ſome Caſes, Perſons as are not ſeiſed of Lands in Fee, &c. may make *Leaſes* for Life or Years, by ſpecial Power enabling them to do it, when the Authority muſt be exactly purſued. *Ibid.* But there is a Difference, where there is a general Power to make *Leaſes*, and a particular Power. 8 *Rep.* 69. A *Leaſe* for Life cannot be made to commence *in futuro*, by the Common Law; becauſe Livery cannot be made to a future Eſtate: Tho' where a *Leaſe* is made for Life, *Habendum* at a Day to come, and after the Day, the Leſſor makes Livery, there it ſhall be good; and a *Leaſe* in Reverſion may be made for Life, which commences at a Day that is future. 5 *Rep.* 94. *Hob.* 314. 1 *Inſt.* 5. A *Leaſe* for Years may begin from a Day paſt, or to come, as *Michaelmas* laſt, *Chriſtmas* next, three or four Years after, or after the Death of the Leſſor, &c. Though a Term cannot commence upon a Contingency, which depends on another Contingency. 1 *Inſt.* 5. 1 *Rep.* 156. If one make a *Leaſe* for Years; after the Death of *A. B.* if he die within ten Years; this is a good *Leaſe*, in Caſe he dies within that Time, otherwiſe not. *Plowd.* 70. And where a Man has a *Leaſe* of Lands for eighty Years, and he grants it to another to hold for thirty Years, to begin after his Death; it will be good for the whole thirty Years, provided there be ſo many of the eighty to come at the Time of the Death of the Leſſor. *Bro. Grant*, 54. 1 *Rep.* 155. A *Leaſe* made from the Leſſor's Death, until *Anno Domini* 1760 is good: And if a *Leaſe* be during the Minority of *J. S.* or until he ſhall come to the Age of Twenty-one Years; theſe are good *Leaſes*; and if he die before his full Age, the *Leaſe* is ended. *Hob.* 174. A Perſon grants a Rent of 20*l.* a Year, till an hundred Pounds be paid, 'tis a *Leaſe* of the Rent for five Years. *Co. Litt.* 42. If a Man makes a *Leaſe* of Land to another, until he ſhall levy out of the Profits one hundred Pounds, or he is paid that Sum, &c. This will be a *Leaſe* for Life, determinable on the Payment of the hundred Pounds, if Livery and Seiſin be made: But if there is no Livery, it will not be good for Years, but void for Incertainty. 21 *Aſſiſ.* 18. *Plowd.* 27. 6 *Rep.* 35. A *Leaſe* for Years to ſuch Perſon as *A. B.* ſhall name, is not good: Though it may be for ſo many Years, as he ſhall name; not as ſhall be named by his Executors, &c. for it muſt be in the Life-time of the Parties. *Hob.* 173. *Moor, ca.* 911. And if a Man makes a *Leaſe* to another for ſo many Years as a third Perſon ſhall name, when the Years are named by ſuch Perſon, it is good for ſo many Years. 1 *Inſt.* 45. So if a Perſon lets his Lands for as many Years as he hath in the Manor of *D.* and he hath then a Term for ten Years, this is a good *Leaſe* for ten Years; and in the like Caſes, by referring to a Certainty, it may be made good and certain. *Ibid.* A *Leaſe* may be made for Life or Years, of any Thing that lies in Livery or Grant; but *Leaſes* for Years ought to be made of ſuch Lands, &c. whereunto the Leſſor may come to diſtrain; not of Incorporeal Inheritances. 1 *Inſt.* 47. And they may be for the Term of one thouſand Years, or any Number of Years, Months or Weeks; or be from Week to Week, &c. for one, two or three Years, and be good for thoſe Years: And a Tenant for Half a Year, or a Quarter of a Year, is Tenant for Years. 1 *Inſt.* 6. If one makes a *Leaſe* for a Year, and ſo from Year to Year, it is a *Leaſe* for two Years; and afterwards it is but an Eſtate at Will. 1 *Mod.* 4. 1 *Lutw.* 213. And if from three Years to three Years, it is a good *Leaſe* for ſix Years: Alſo if a Man make a *Leaſe* for Years, without ſaying for how many, it may be good for two Years, to anſwer the plural Number. *Wood's Inſt.* 265. A Leſſee hath a Term for a Year by Parol, and ſo from Year to Year, ſo long as both Parties pleaſe; if the Leſſee enters on a ſecond Year, he is bound for that Year, and ſo on: And if there is a *Leaſe* by Deed for a Year, and ſo from Year to Year as long as both Parties agree, this is binding but for one Year; though if the Leſſee enters upon the ſecond Year, he is for that Year bound: If 'tis for a Year, and ſo from Year to Year, ſo long as both Parties agree till ſix Years expire; this is a *Leaſe* for ſix Years, but determinable every Year at the Will of either Party: But if it is for a Year, and ſo from Year to Year till ſix Years determine, this is a certain *Leaſe* for ſix Years; adjudged by *Holt* Chief Juſtice. *Mod. Ca.* 215. If *A.* make a *Leaſe* of Land to *B.* for ten Years; and it is agreed between them, that he ſhall pay fifty Pounds at the End of the ſaid Term, and if he do ſo, and pay fifty Pounds at the End of every ten Years; then the ſaid *B.* ſhall have a perpetual Demiſe and Grant of the Lands, from ten Years to ten Years continually following, *extra memoriam hominum*, &c. Tho' this be a good *Leaſe* for the firſt ten Years; as for all the reſt it is incertain and void: By Covenant, a further *Leaſe* may be made for the like Term of Years, *Plowd.* 192. 2 *Shep. Abr.* 376. A Parſon makes a *Leaſe* of his Glebe for ſo many Years as he ſhall be Parſon, this cannot be made certain; but if he makes a *Leaſe* for three Years, and ſo from three Years to three Years, ſo long as he ſhall be Parſon, it is a good *Leaſe* for ſix Years, if he continue Parſon ſo long. 6 *Rep.* 35. 3 *Cro.* 511. And if one make a *Leaſe* for twenty-one Years, if the Leſſee ſhall ſo long live; this is a good *Leaſe* for Years, and a Certainty in an Uncertainty. 1 *Inſt.* 46. A *Leaſe* made to a Man for ſeven Years, if *D.* ſhall live ſo long, who is dead when the *Leaſe* is made; by this the Leſſee hath an abſolute *Leaſe* for ſeven Years. 9 *Rep.* 63. *Leaſe* for Life is granted, and ſays that if the Leſſee within one Year do not pay 20 *s.* then he ſhall have but a Leaſe for two Years; here if he pays not the Money, he ſhall have only the two Years, altho' Livery of Seiſin be had thereon. 1 *Inſt.* 218. If a *Leaſe* be made to *A. B.* during his own Life, and the Lives of *C.* and *D.* it is one entire Eſtate of Freehold, and ſhall continue during the three Lives, and the Life of the Survivor of them; and though the Leſſee can have it no longer than his own Life, yet his Aſſignee ſhall have the Benefit of it ſo long as the other two are living. 5 *Rep.* 13. *Moor* 32. Where one grants Land by *Leaſe* to *A. B.* and *C. D.* to hold to them during their Lives, although the Words *and the longeſt Liver of them* be omitted, they ſhall hold it during the Life of the longeſt Liver. 5 *Rep.* 9. A *Leaſe* is made to a Perſon for ſixty Years, if *A. B.* and *C. D.* ſo long live; and afterwards *A. B.* dies, by his Death the *Leaſe* is determined. Though if the *Leaſe* be made to one for the Lives of *A. B.* and *C. D.* the Freehold doth not determine by the Death of one of them; and if in the other Caſe of a Term, the Words *or either of them* be inſerted in the *Leaſe*, it will be good for both their Lives. 13 *Rep.* 66. A *Leaſe* was made to a Man for ninety-nine Years, if he ſhould ſo long live; and if he died within the Term, the Son to have it for the Reſidue of the Term: This was adjudged void as to the Son, becauſe there can be no Limitation of the Reſidue of a Term which is determined. *Cro. Eliz.* 216. But if the Words of the *Leaſe* be, To hold during the Reſidue of the ninety-nine Years, and not during the reſt of the Term, in this Caſe it may be good to the Son alſo. 1 *Rep.* 153. *Dyer* 253. A *Leaſe* was made for Twenty-one Years, if the Leſſee lived ſo long, and in the Service of the Leſſor; the Leſſor died within the Term, and yet it was held that the *Leaſe* continued, for it was by the Act of God that the Leſſee could ſerve no longer. *Cro. Eliz.* 643. If a *Leaſe* be to a Man, and to her whom he ſhall take to be his Wife, it is void: Becauſe there ought to be ſuch Perſons at the Time of the Commencement of the *Leaſe* which might take. 4 *Leon.* 158. When a *Leaſe* in Reverſion is granted as ſuch after another *Leaſe*, and that *Leaſe* is void by Raſure, &c. the reverſionary *Leaſe*, expectant upon the *Leaſe* for Years that is void, is void alſo. *Cro. Car.* 289. But where a Man recites a *Leaſe*, when in Truth there is no *Leaſe*; or a *Leaſe* which is void, and miſrecites the ſame in a Point material, and grants a further *Leaſe* to commence after the Determination thereof; in ſuch Caſe the new *Leaſe* ſhall begin from the Time of Delivery. *Dyer* 93. 6 *Rep.* 36. *Vaugh.* 73, 80, &c. A *Leaſe* that has an impoſſible Date for its Commencement, is ſaid to be void; and an uncertain Limitation makes the *Leaſe* void, becauſe it being Part of the Agreement, the Court cannot determine what the Contract was. 1 *Mod.* 180. Though it hath been adjudged, where a *Leaſe* bears a Date which is impoſſible, the Term ſhall begin from the Delivery, as if there was no Date. 1 *Inſt.* 40. If a *Leaſe* be to hold from the Day of the Date, the Day itſelf is excluded; otherwiſe the Day of Delivery is incluſive. 5 *Rep.* 2. A Man makes a *Leaſe* for Years to one, and afterwards makes a *Leaſe* for Years to another of the ſame Land; the ſecond *Leaſe* is not void; but ſhall be good for ſo many Years thereof, as ſhall come after the firſt *Leaſe* ended. *Noy's Max.* 67. And if one make a *Leaſe* for Years, and afterwards the Leſſor enters upon the Lands let, before the Term is expired, and makes a *Leaſe* of theſe Lands to another; this ſecond *Leaſe* is a good *Leaſe* until the Leſſee doth re-enter, and then the firſt *Leaſe* is revived, and he is in thereby. 2 *Lill. Abr.* 152. It hath been held, that a *Leaſe* may be void as to one, and ſtand good to another: And *Leaſes* voidable, or void for the Preſent, may after become good again. 1 *Inſt.* 46. 3 *Rep.* 51. If a *Leaſe* be made to two, to hold to them and two others, it is voidable as to the two other Perſons; and when the two firſt die, the *Leaſe* is at an End. 2 *Leon.* 1. A *Leaſe* which is only voidable, and not abſolutely void, muſt be made void by the Leſſor by Re-entry; but if a *Leaſe* be void abſolutely, there needs no Re-entry: And as a voidable *Leaſe* is made void by Re-entry, and putting out the Leſſee; ſo it is affirmed by accepting and receiving the Rent, which acknowledges the Leſſee to be Tenant. 21 *Car. B. R.* 2 *Lill.* 149. If a Leſſor accepts of Rent of an Aſſignee of a *Leaſe*, having Knowledge of the Aſſignment, he may not afterwards charge the Leſſee with the Rent in Action of Debt. 3 *Rep.* 23. And where a Leſſee for Years accepts of a leſs Term from the Leſſor, even by Word, it is ſaid this is a Surrender of the Term which he had by Deed. *Style* 448. When a Term for Years in *Leaſe*, and a Fee-ſimple, meet in one Perſon, the *Leaſe* is drowned in the Inheritance; yet in ſome Caſes it may have Continuance, to make good Charges and Payments, &c. *Poph.* 39. 2 *Nelſ. Abr.* 1100. If a *Leaſe* for Years is made to a Man and his Heirs, it ſhall go to his Executors. 1 *Inſt.* 46, 388. And a *Leaſe* for Years, notwithſtanding it be a very long *Leaſe*, cannot be intailed; but may be aſſigned in Truſt, to ſeveral Uſes. 2 *Lill. Abr.* 150. If ſuch a *Leaſe* comes to be limited in Tail, the Law allows not a preſent Remainder to be limited thereupon. *Ibid.* Leſſee for Years, though for never ſo great a Term, has only a Chattel; but Tenant for Life hath a Freehold. 1 *Inſt.* 6. A *Leaſe* is ſealed by the Leſſor, and the Leſſee hath not ſealed the Counterpart, Action of Covenant may be brought upon the *Leaſe* againſt the Leſſor: But where the *Leaſe* is ſealed by the Leſſee, and not the Leſſor, nothing operates. *Yelv.* 18. *Owen* 100. If the Leſſor only ſeal one Part of the *Leaſe*, the Leſſee is as much bound by it as if he did ſeal it. *Finch* 109. A Man out of Poſſeſſion, cannot make a *Leaſe* of Lands, without entring and ſealing the *Leaſe* upon the Land. *Daliſ* 81. The Leſſee is to enter on the Premiſſes let; and ſuch Leſſee for Years is not in Poſſeſſion, ſo as to bring Treſpaſs, &c. until actual Entry; but he may grant over his Term before Entry. 1 *Inſt.* 46. 2 *Lill.* 160. A Leſſee of a future Intereſt never enters by Virtue of his Term, but enters before, and continues after the Commencement of the Term; and if then the Leſſor ouſts him, the Leſſee may aſſign over his Term off from the Land. 1 *Lev.* 47. But a *Leaſe* to begin at *Michaelmas*, if the Leſſee enters before *Michaelmas*, and continues the Poſſeſſion immediately, it is a Diſſeiſin. *Ibid.* 46. If a *Leaſe* be made of a Cloſe of Land, by a certain Name, in the Pariſh of *A.* in the County of *B.* whereas the Cloſe is in another County, the ſaid Pariſh extending into both Counties; ſuch a Leaſe is good to paſs ſuch Land: Though where a Houſe is leaſed without a Name, and the Pariſh is miſtaken; it hath been held otherwiſe. *Dyer* 292, 276. Land and Mines are *leaſed* to a Tenant; this only extends to the open Mines, and the Leſſee ſhall not have any others, if there are ſuch: And if Land and Timber are demiſed, the Leſſee is not empowered to ſell it. 2 *Lev.* 184. 2 *Mod.* 193. A Man makes a *Leaſe* of Lands for Life, or Years, the Leſſee hath but a ſpecial Intereſt in the Timber-Trees, as annexed to the Land, to have the Maſt and Shadow for his Cattle; and when they are ſevered from the Lands, or blown down with Wind, the Leſſor ſhall have them as Parcel of his Inheritance. 4 *Rep.* 62. 11 *Rep.* 81. If an Houſe falls down by Tempeſt, &c. the Leſſee hath an Intereſt to take the Timber to re-edify it for his Habitation. 4 *Rep.* 63. And every Leſſee for Years, &c. may take of Timber neceſſary Plough-bote, Houſe-bote, Fire-bote, &c. without doing Waſte. 1 *Inſt.* 41. And Tenants ſuffering Houſes to be uncovered, or in Decay; taking away Wainſcot, &c. fixed to the Freehold, unleſs put up by the Leſſee, and taken down before the Term is expired; cutting down Timber-Trees to ſell; permitting young Trees to be deſtroyed by Cattle, &c. Ploughing up Ground that Time out of Mind hath not been Ploughed; not keeping Banks in Repair, &c. are Waſte. 1 *Inſt.* 52. *Dyer* 37. 1 *Salk.* 368. Leſſees are bound to repair their Tenements, except it be mentioned in the Leaſe to the contrary. *Noy's Max.* Tho' a Leſſee for Years is not obliged to repair the Houſe let to him which is burnt by Accident; if there be not a ſpecial Covenant in the *Leaſe*, that he ſhall leave the Houſe in good Repair at the End of the Term: Yet if the Houſe be burnt by Negligence, the Leſſee ſhall repair it, although there be no ſuch Covenant. *Paſch.* 24 *Car. B. R.* A Leſſee at Will is not bound to ſuſtain or repair, as Tenant for Term of Years is: If the Houſe of ſuch a Tenant is burnt down by Negligence, Action lies not againſt the Tenant; but Action lies for voluntary Waſte, in pulling down Houſes, or cutting Wood, &c. 5 *Rep.* 13. By Stat. 6 & 10 *Ann.* c. 14. no Action ſhall be brought againſt any Perſon in whoſe Houſe any Fire ſhall accidentally begin, or any Recompence be made by ſuch Perſon for Damage; ſo as not to extend to, or make void any Agreement between Landlord and Tenant; and negligent Firing of Houſes is liable to Penalties. A Leſſor who hath Fee, cannot reſerve Rent to any other but himſelf, his Heirs, &c. And if he reſerves a Rent to his Executors, the Rent ſhall be to the Heir, as Incident to the Reverſion of the Land. 1 *Inſt.* 47. The Leſſor may take a Diſtreſs on the Tenements letten for the Rent; or may have Action of Debt for the Arrears, &c. Alſo Land *leaſed* ſhall be ſubject to thoſe lawful Remedies which the Leſſor provides for the Recovery of his Rent, Poſſeſſion, &c. into whoſe Hands ſoever the Land comes. *Cro. Jac.* 300. And as to the Leſſee, if Leſſee for Years loſes his *Leaſe*, if it can be proved that there was ſuch a Term let to him by *Leaſe*, and that it is not determined, he ſhall not loſe his Term; ſo it is of any other Eſtate in Lands, if the Deed that created it be loſt, for the Eſtate in the Land is derived from the Party that made it, and not from the Deed otherwiſe than inſtrumentally and declarative of the Mind and Intent of the Party, &c. 2 *Lill. Abr.* 152. If a Perſon be in Poſſeſſion of the Lands of another, and hath uſually paid Rent for them; the Proof of a Quarter or Half Year's Rent paid, will be good Evidence of a *Leaſe* at Will, though it cannot be expreſly proved that the Lands were demiſed at Will to him in Poſſeſſion; it ſhall be preſumed the Rent was received by the Owner of the Land upon ſome private Contract. *Ibid.* 151. Lands are *leaſed* at Will, the Leſſee cannot determine his Will before or after the Day of Payment of the Rent, but it muſt be done on that very Day; and the Law will not allow the Leſſee to do it to the Prejudice of the Leſſor, as to the Rent; nor that the Leſſor ſhall determine his Will to the Prejudice of the Leſſee, after the Land is ſowed with Corn, *&c.* *Sid.* 339. *Lev.* 109. For where Leſſee at Will ſows the Land, if he does not himſelf determine the Will, he ſhall have the Corn: And where Tenant for Life ſows the Corn, and dies, his Executors ſhall have it; but it is not ſo of Tenant for Years, where the Term ends before the Corn is ripe, *&c.* 5 *Rep.* 116. The Leſſor and Leſſee, where the Eſtate is at Will, may determine the Will when they pleaſe; but if the Leſſor doth it within a Quarter, he ſhall loſe that Quarter's Rent; and if the Leſſee doth it, he muſt pay a Quarter's Rent. 2 *Salk.* 413. By Words ſpoken on the Ground by the Leſſor, in the Abſence of the Leſſee, the Will is not determined; but the Leſſee is to have Notice. 1 *Inſt.* 55. If a Man makes a *Leaſe* at Will, and dies, the Will is determined; and if the Tenant continues in Poſſeſſion, he is Tenant at Sufferance. *Ibid.* 57. But where a Leſſor makes an Eſtate at Will to two or three Perſons, and one of them dies; it has been adjudged this doth not determine the Eſtate at Will. 5 *Rep.* 10. Tenant at Will grants over his Eſtate to another, it determines his Will. 1 *Inſt.* 57. No Tenant ſhall take *Leaſes* of above two Farms, in any Town, Village, *&c.* nor hold two, unleſs he dwell in the Pariſh, under Penalties and Forfeitures, by Stat. 25 *H.* 8. *c.* 13. See 21 *H.* 8. *cap.* 13. There is a late *Statute* for the more effectual preventing Frauds committed by Tenants; and for the more eaſy Recovery of Rents, and Renewal of *Leaſes*; by which *Chief Leaſes* of Lands may be renewed on Surrender, without the ſurrendring of the Under *Leaſes*, &c. 4 *Geo.* 2. *c.* 28. And how *Leaſes* of Lands, *&c.* left uncultivated, may become void, for Non-payment of Rent, on View of two Juſtices of Peace, *&c.* by the late Act 11 *Geo.* 2. *cap.* 19. See the Purport of theſe Statutes, under *Rent.*

Leaſes by Statute. There are three Kinds of Perſons, who may make Leaſes for Life or Years by Statute, that could not do ſo heretofore, *viz.* Tenants in Tail, Husband and Wife of the Wife's Land, and Perſons ſeiſed of Land in Right of the Church. By the Stat. 32 *H.* 8. *c.* 18. *Tenants in Tail* are enabled to make *Leaſes* on the following Conditions, *i. e.* They are to be made by Deed indented; to begin from the Time of Making, or ſome ſhort Time after, as *Michaelmas* next, *&c.* If there be an old Leaſe in Being, it muſt be abſolutely ſurrendered, or expire within a Year after the making of the New; they muſt not exceed three Lives or twenty-one Years, from the making, or be for both, but may be for leſs Terms; they are to be of Lands manurable or corporeal, out of which a Rent may be legally iſſuing; and of ſuch Lands or Tenements which have been moſt commonly let to Farm by the Space of twenty Years; the accuſtomed yearly Rent, paid within twenty Years is to be reſerved; and they are not to be made without Impeachment of Waſte, *&c.* It has been held on this Statute, that where a new Thing is demiſed with Lands accuſtomably let, tho' there be great Increaſe of Rent, the *Leaſe* is void: But more Rent than the accuſtomed Rent, may be reſerved. 5 *Rep.* 5. 6 *Rep.* 37. And the *Leaſes* according to the Statute bind the Iſſues in Tail; but not thoſe in Reverſion or Remainder: For if Tenant in Tail makes a *Leaſe* warranted by the Statute, and dies without Iſſue, the *Leaſe* as to him in Reverſion or Remainder is void; though by a common Recovery, *Leaſes* may be made to bind him in Remainder, *&c.* *Wood's Inſt.* 267. A Guardian during the Minority of an Infant Tenant in Tail, who was but one Year old, made a *Leaſe* for twenty Years; and it was adjudged not good by the Stat. 32 *H.* 8. to bind the Iſſue in Tail; and it is the ſame in the Caſe of Tenant in Dower, Tenant by the Curteſy, or Husband ſeiſed in Right of his Wife, becauſe they have no Inheritance. *Dyer* 271. The Statute impowers a Husband to make Leaſes of Land in Tail, held in his Wife's Right, ſo as in ſuch *Leaſes* the Conditions aforementioned are obſerved, and the Wife be made a Party to and ſeal the *Leaſes*; and the Rent is to be reſerved to the Husband and Wife, and her Heirs, *&c.* If a *Leaſe* of the Wife's Land is not warranted by the Statute, it is a good *Leaſe* againſt the Husband, though not againſt the Wife: The Husband and Wife cannot bind him in Reverſion or Remainder. 1 *Inſt.* 362. *Biſhops, Spiritual Perſons, &c.* ſeiſed in Fee in Right of their Churches, may make Leaſes of their Spiritual Livings for three Lives, or one and twenty Years, having all the Qualities required by the Statute, in caſe of *Leaſes* made by Tenants in Tail. 32 *H.* 8. And *Leaſes* otherwiſe made are to be void; but not againſt the Biſhops, *&c.* making them, only againſt their Succeſſors. 3 *Rep.* 59. A Biſhop, *&c.* may make *Leaſes* of Lands for twenty-one Years, or three Lives, according to the Statute, without Confirmation of Dean and Chapter; and at Common Law might make them for any longer Time, without Limitation, with Confirmation of Dean and Chapter; but this is reſtrained by the Statutes 1 *Eliz. c.* 19. and 13 *Eliz. c.* 10. Such Confirmation will now make good concurrent *Leaſes* for twenty-one Years, *&c.* upon *Leaſes* for Years; though a Biſhop cannot make a concurrent *Leaſe* for Life or Lives. *Wood's Inſt.* 273. If a Biſhop have two Chapters, as there may be two or more to one Biſhoprick; both Chapters muſt comfirm *Leaſes* made by the Biſhop. 1 *Inſt.* 131. A *Leaſe* by a Biſhop made to begin preſently for twenty-one Years, when there is an old *Leaſe* in Being, is good, notwithſtanding the Statute of 1 *Eliz. Moor, ca.* 241. But if ſuch *Leaſe* is to commence at a Day to come, it will be void. 1 *Leon.* 44. *Leaſe* for three Lives of a Biſhop of Tithes, is void againſt the Succeſſor; altho' the uſual Rent be duly reſerved. *Moor, ca.* 1078. 2 *Cro.* 173. *Leaſes* of a Dean and Chapter are good, without Confirmation of the Biſhop. *Dyer* 273. 2 *Nelſ. Abr.* 1096. Where there is a Chapter, and no Dean, they may make Grants, *&c.* and are within the Statute. 1 *Mod.* 204. And a Prebendary is ſeiſed in Right of the Church within the Equity of the Statute 32 *H.* 8. 4 *Leon.* 51. A Prebendary's *Leaſe* confirmed by the Archbiſhop, who is his Patron, is good without Confirmation of Dean and Chapter. 3 *Bulſtr.* 290. But where a Prebendary made a *Leaſe* for Years of Part of his Prebend, and this was confirmed by Dean and Chapter; becauſe it was not confirmed likewiſe by the Biſhop, who was Patron and Ordinary of the Prebend, the *Leaſe* was adjudged void. *Dyer* 60. If a Prebendary hath Rectories in two ſeveral Dioceſes belonging to his Prebend, and his *Leaſe* of them is confirmed by the Biſhop, Dean and Chapter of the Dioceſe of which he is Prebendary, it is good, tho' not confirmed by the other. *Sid.* 75. A Chancellor of a Cathedral Church may make a *Leaſe*, and 'tis ſaid it will be good againſt the Succeſſor, tho' not confirmed, *&c.* *Ibid.* 158. If a Parſon or Vicar makes a *Leaſe* for Life or Years, of Lands uſually letten, reſerving the cuſtomary Rent, *&c.* it muſt be confirmed by Patron and Ordinary, for they are out of the Statute 32 *H.* 8. And if the Parſon and Ordinary make a *Leaſe* for Years of the Glebe to the Patron; and afterwards the Patron aſſigns this *Leaſe* to another, ſuch Aſſignment is good, and is a Confirmation of that *Leaſe* to the Aſſignee. 5 *Rep.* 15. Antient Covenants in former *Leaſes* may be good to bind the Succeſſor, ſo as to diſcharge the Leſſee from Payment of Penſions, Tenths, *&c.* but of any new Matter they ſhall not. 1 *Vent.* 223. By the Stat. 13 *Eliz. c.* 20. the *Leaſe* of a Parſon is not good for any longer Time than the Parſon's Reſidence upon his Living, without Abſence four-ſcore Days in any Year; and an Incumbent offending contrary to this Act, ſhall loſe a Year's Profit of the Benefice, *&c.* 4 *Rep.* 403. A *Leaſe* for Years of a ſpiritual Perſon, will be void by his Death, if it is not according to the Statutes; and a *Leaſe* for Life is voidable by Entry, *&c.* of the Succeſſor: And ſo in like Caſes, *Leaſes* not warranted by Statute, are void or voidable on the Deaths of the Makers: Acceptance of Rent on a void *Leaſe* ſhall not bind the Succeſſor. 2 *Cro.* 173. On College *Leaſes*, a third Part of the Rent is to be reſerved in Corn, *&c.* 18 *Eliz. c.* 6. By 14 *Eliz. c.* 11. it is ordained, that the 13 *Eliz. c.* 10. ſhall not extend to *Leaſes* of the Maſters and Fellows of Colleges, *&c.* of Houſes in Corporation Towns, which may be made for forty Years, *&c.* But the 18 *Eliz. c.* 11. makes void *Leaſes* of Maſters and Fellows of Colleges, Deans and Chapters, Maſters of Hoſpitals, *&c.* where another *Leaſe* for Years is in Being, and not to be expired or ſurrendered within three Years; and *Leaſes* of ſuch Perſons are to be made for twenty-one Years or three Lives, reſerving the accuſtomed Rents, *&c.* Biſhops are out of this Statute. If a Biſhop be not Biſhop *de Jure*, *Leaſes* made by him to charge the Biſhoprick, are void; though all judicial Acts by him are good. 2 *Cro.* 353. And where a Biſhop makes a *Leaſe*, which may tend to the Diminution of the Revenues of the Biſhoprick, *&c.* which ſhould maintain the Succeſſor; there the Deprivation or Tranſlation of the Biſhop, is all one with his Death. 1 *Inſt.* 329. Alſo all Aſſurances and Demiſes of Biſhops Lands to the King, ſhall be void. 1 *Jac.* 1. *c.* 3. Perſons for whoſe Lives Eſtates are held by *Leaſe*, *&c.* remaining beyond Sea, or being abſent ſeven Years; if no Proof be made of their being alive, ſhall be accounted dead. 19 *Car.* 2. *c.* 6.

Leaſes of the King. *Leaſes* made by the King, of Part of the Dutchy of *Cornwall*, are to be for three Lives, or thirty-one Years, and not be made diſpuniſhable of Waſte, whereon the ancient Rent is to be reſerved; and Eſtates in Reverſion, with thoſe in Poſſeſſion, are not to exceed three Lives, *&c.* 13 *Car.* 2. *c.* 4. All *Leaſes* and Grants made by Letters Patent, or Indentures under the Geat Seal of *England*, or Seal of the Court of Exchequer, or by Copy of Court-Roll, according to the Cuſtom of the Manors of the Dutchy of *Cornwal*, not exceeding one, two or three Lives, or ſome Term determinable thereon, *&c.* are confirmed; and Covenants, Conditions, *&c.* in *Leaſes* for Lives or Years, ſhall be good in Law, as if the King were ſeiſed in Fee-ſimple. *Stat.* 1 *Jac.* 2. *c.* 9. See 5 *&* 6 *W. & M. c.* 18. 12 *Ann. c.* 22. And *Leaſes* from the Crown of Lands in *England* and *Wales*, and under the Seals of the Dutchy of *Lancaſter*, &c. for one, two or three Lives, or Terms not exceeding fifty Years, are allowed Time for Inrollment, *&c.* by 10 *Ann. c.* 18. *Leaſes* made by the Prince of *Wales* of Lands, *&c.* in the Dutchy of *Cornwal*, for three Lives, or Thirty-one Years, on which is reſerved the moſt uſual Rent paid for the greateſt Part of twenty Years before, ſhall be good againſt the King, the Prince and their Heirs, *&c.* and the Conditions of ſuch Leaſes be as effectual, as if the Prince had been ſeiſed of an abſolute Eſtate in Fee-ſimple in the Lands. Stat. 10 *Geo.* 2. *c.* 29.

Form of a *Leaſe of a Houſe in* London.

THIS Indenture *made the Day*, &c. Between A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *That for and in Conſideration of the Rent and Covenants herein after reſerved and contained, on the Part and Behalf of the ſaid* C. D. *his Executors and Adminiſtrators, to be paid, kept and performed, he the ſaid* A. B. Hath *demiſed, granted, and to Farm letten, and by theſe Preſents doth demiſe, grant, and to Farm let unto the ſaid* C. D. All *that Meſſuage or Tenement, ſituate*, &c. *and known by the Sign of*, &c. *with all and ſingular Cellars, Sollars, Chambers, Rooms, Lights, Ways, Waters, Eaſements, Profits, Commodities and Appurtenances, to the ſaid Meſſuage or Tenement belonging or appertaining; together with the Uſe of the Goods in the Schedule hereto annexed mentioned;* To have and to hold *the ſaid Meſſuage or Tenement, and all and ſingular the Premiſſes, with their and every of their Appurtenances herein before mentioned, or intended to be hereby demiſed unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, from the Feaſt of*, &c. *for and during and unto the full End and Term of fourteen Years, from thence next enſuing, and fully to be compleat and ended:* Yielding and paying *therefore yearly and every Year, during the ſaid Term, unto the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, the Rent or Sum of twenty Pounds of lawful Money of* Great Britain, *on the four moſt uſual Feaſts or Terms in the Year, (that is to ſay) the Feaſt of St.* Michael *the Archangel, the Birth of our Lord Chriſt, the Annunciation of the Bleſſed Virgin* Mary, *and the Nativity of St.* John *the* Baptiſt, *by even and equal Portions.* And *if it ſhall happen the ſaid yearly Rent of twenty Pounds, or any Part thereof, ſhall be behind and unpaid by the Space of eight and twenty Days next after any of the ſaid Feaſt Days, on which the ſame ought to be paid as aforeſaid, (being lawfully demanded) that then and at all Times then after, it ſhall and may be lawful to and for the ſaid* A. B. *his Executors, Adminiſtrators and Aſſigns, into the ſaid demiſed Meſſuage or Tenement and Premiſſes, or into any Part thereof, in the Name of the Whole, to re-enter, and the ſame to have again, repoſſeſs and enjoy, as in his and their former Eſtate, and the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, thereout and from thence to expel and put out; any Thing herein contained to the contrary thereof in any wiſe notwithſtanding.* And *the ſaid* C. D. *for himſelf, his Executors, Adminiſtrators and Aſſigns, doth covenant and grant to and with the ſaid* A. B. *his Executors, Adminiſtrators and Aſſigns, by theſe Preſents, that he the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, ſhall and will, during the ſaid Term hereby demiſed, well and truly pay, or cauſe to be paid unto the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, the ſaid yearly Rent or Sum of twenty Pounds, on the Days and Times, and in Manner and Form abovementioned, for Payment of the ſame, according to the Reſervation thereof as aforeſaid, and the true Intent and Meaning of theſe Preſents.* And alſo, *that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, or ſome or one of them, ſhall and will, at his or their own proper Coſts and Charges, well and ſufficiently repair, uphold, ſupport, maintain and keep the ſaid Meſſuage, or Tenement and Premiſſes, with the Glaſs Windows, Pavements, Privies, Sinks, Gutters, and Wydraughts belonging to the ſame, in, by, and with all and all Manner of needful and neceſſary Reparations and Amendments whatſoever, when and as often as Need or Occaſion ſhall be or require during the Term, (the Caſualty of Fire, which may burn down or deſtroy the ſaid Meſſuage or Tenement and Premiſſes, or any Part thereof, only excepted;) And the ſaid Meſſuage or Tenement and Premiſſes, being ſo well and ſufficiently repaired, upheld, ſupported, maintained, and kept at the End of the ſaid Term, or other ſooner Determination of this preſent Demiſe, unto the ſaid* A. B. *his Executors, Adminiſtrators and Aſſigns, ſhall and will peaceably and quietly leave and yield up (except as is before excepted) and ſhall and will then alſo leave unto the ſaid* A. B. *his Executors*, &c. *all ſuch Goods as are mentioned in the ſaid Schedule hereto annexed, in as good Condition as they are now in, reaſonable Uſage of them*, &c. *excepted.* And further, *That it ſhall and may be lawful to and for the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, or any of them, with Workmen or others, or without, twice in every Year, during the Continuance of this Demiſe, at ſeaſonable Times in the Day-time, to enter and come into and upon the ſaid demiſed Premiſſes,* *or any Part thereof, and view, ſearch and ſee the State and Condition of the Reparations of the ſame; and of all Defects, Defaults, and Want of Repairs, then and there found, to give or leave Notice or Warning in Writing, at and upon the ſaid demiſed Premiſſes, to and for the ſaid* C. D. *for the Repairing and Amending of the ſame within the Space of three Months then next following: In which ſaid Space or Time of three Months, after every or any ſuch Notice or Warning, he the ſaid* C. D. *for himſelf, his Executors, Adminiſtrators and Aſſigns, doth hereby covenant and grant to and with the ſaid* A. B. *his Executors, Adminiſtrators and Aſſigns, well and ſufficiently to repair and amend the Defects and Want of Reparations ſo to be found as aforeſaid, (except as is before excepted)*; And alſo, *that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, ſhall and will at all Times hereafter, during the Term hereby demiſed, bear, pay and diſcharge all Taxes, Charges, Impoſitions and Pariſh Duties, which ſhall be taxed, charged, impoſed or aſſeſſed upon the ſaid Meſſuage or Tenement aforeſaid, or any Part thereof.* And *the ſaid* A. B. *for himſelf, his Executors, Adminiſtrators and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, paying the ſaid yearly Rent of twenty Pounds above reſerved in Manner aforeſaid, and performing all and every the Covenants and Agreements herein before contained, which on his or their Parts and Behalfs, are or ought to be paid, done and performed, ſhall and may peaceably and quietly, have, hold, uſe, occupy, poſſeſs and enjoy the ſaid Meſſuage or Tenement and Premiſſes hereby demiſed, for and during the Term hereby granted, without any lawful Let, Suit, Trouble, or Interruption of or by the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, or any of them, or by any other Perſon or Perſons lawfully claiming, or to claim by, from, or under him, them, or any of them, or by or through his, their, or any of their Acts, Means or Procurement.* In Witneſs, *&c.*

A *Leaſe for Ninety-nine Years,* if three Lives live ſo long.

THIS Indenture *made,* &c. Between A. B. *of,* &c. *Eſq; of the one Part, and* C. D. *of,* &c. *Yeoman, of the other Part,* Witneſſeth, *That the ſaid* A. B. *as well for and in Conſideration of the Surrender of a former Leaſe granted by,* &c. *unto the ſaid* C. D. *of the Meſſuage or Tenement and Premiſſes herein after demiſed, for the Term of Ninety-nine Years, determinable on the Deceaſes of,* &c. *as alſo for, and in Conſideration of the Sum of,* &c. *of lawful* Britiſh *Money to him the ſaid* A. B. *in hand paid by the ſaid* C. D. *at and before the Sealing and Delivery of theſe Preſents, the Receipt whereof he the ſaid* A. B. *doth hereby acknowledge, and thereof doth acquit and diſcharge the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, by theſe Preſents*; hath *demiſed, granted, and to Farm letten, and by theſe Preſents doth demiſe, grant, and to Farm let, unto the ſaid* C. D. All *that Meſſuage or Tenement, with all thoſe Lands,* &c. *ſituate, lying and being in,* &c. *And all Houſes, Outhouſes, Ways, Waters, Water-courſes, Eaſements and Appurtenances,* &c. *to the ſaid Meſſuage or Tenement, Lands and Premiſſes bolonging or any Ways appertaining, (except all Timber Trees, and Trees fit and proper to be raiſed and preſerved for Timber, now ſtanding, growing or being, or which ſhall hereafter ſtand, grow or be, in or upon the ſaid Premiſſes, or any Part thereof; with free Liberty for the ſaid* A. B. *his Heirs and Aſſigns, to fell, cut down, take and carry away the ſame, at all ſeaſonable Times)*; To have and to hold *the ſaid Meſſuage or Tenement, Lands and Premiſſes above granted, and every Part and Parcel thereof with the Appurtenances, (except before excepted) unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, from the Day of the Date of theſe Preſents, for and during, and unto the full End and Term of Ninety-nine Years, from thence next enſuing, and fully to be compleat and ended, if he the ſaid* C. D. *and* E. *his Wife, and* T. D. *his Son, or any or either of them, ſhall ſo long happen to live*; Yielding and Paying *therefore yearly, during the ſaid Term, unto the ſaid* A. B. *his Heirs and Aſſigns, the Rent of,* &c. *at and upon the Feaſts of,* &c. *by even and equal Portions:* And alſo Yielding and Paying *at and upon the Death or Deceaſe of the ſaid* C. D. *the beſt Beaſt or Goods of the ſaid* C. D. *or the Sum of,* &c. *for and in the Name of an Heriot; and alſo at and upon the Death or Deceaſe of the ſaid* E. *his Wife, (ſhe dying after the ſaid* C. D.) *the beſt Beaſt or Goods, or the Sum of,* &c. *for and in the Name of another Heriot; and alſo at and upon the Death or Deceaſe of the ſaid* T. D. *(he dying ſucceſſively after the ſaid* C. D. *and* E.) *the beſt Beaſt or Goods, or the Sum of,* &c. *for and in the Name of another Heriot:* And *doing Suit and Service to and at all and every the Court and Courts of the ſaid* A. B. *his Heirs and Aſſigns, to be from Time to Time, during the ſaid Term, holden in and for the Manor of,* &c. *and there be ordered and juſtified in all Things touching the ſaid Premiſſes, as other the Tenants of the ſaid Manor, for their reſpective Eſtates are, ſhall or ought to be.* And *if it ſhall happen the ſaid yearly Rent of,* &c. *or Sums of Money reſerved for Heriots, or any Part thereof, to be behind and unpaid by the Space of twenty-one Days next after either of the ſaid Feaſts or Days of Payment on which the ſame ought to be paid as aforeſaid, (being lawfully demanded) and no ſufficient Diſtreſs or Diſtreſſes, in or upon the ſaid Premiſſes, can or may be found whereby the ſame may be levied, that then and from thenceforth it ſhall and may be lawful to and for the ſaid* A. B. *his Heirs and Aſſigns, into the ſaid Meſſuage or Tenement, Lands and Premiſſes hereby demiſed, with the Appurtenance, to re enter, and the ſame to have again, re-poſſeſs and enjoy, as in his or their former Right and Eſtate; any Thing herein contained to the contrary notwithſtanding.* And *the ſaid* C. D. *for himſelf, his Executors, Adminiſtrators and Aſſigns, doth covenant and grant to and with the ſaid* A. B. *his Heirs and Aſſigns, that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, ſhall and will well and truly pay or cauſe to be paid unto the ſaid* A. B. *his Heirs or Aſſigns, the ſaid yearly Rent and Heriots above reſerved, at the Days and Times, and in the Manor and Form above expreſſed, according to the true Intent and Meaning of theſe Preſents.* And alſo, *that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, at his and their own proper Coſts and Charges, ſhall and will from Time to Time, and at all Times, during the ſaid Term hereby granted, well and ſufficiently repair, maintain, ſuſtain, uphold, amend, hedge, ditch, cleanſe and keep the ſaid Meſſuage or Tenement, Lands and Premiſſes hereby demiſed, and every Part and Parcel thereof, with the Appurtenances, in and with all Manner of needful and neceſſary Reparations and Amendments whatſoever, when and as often as Need ſhall require; and the ſame ſo well and ſufficiently repaired, maintained, ſuſtained, upheld, amended, hedged, ditched, cleanſed and kept, at the End, Expiration or other Determination of the ſaid Term hereby granted, unto the ſaid* A. B. *his Heirs and Aſſigns, ſhall and will peaceably and quietly leave and yield up.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, by theſe Preſents, that (by and under the yearly Rent, Heriots, Covenants and Agreements before, in, and by theſe Preſents mentioned and contained) he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, ſhall and may peaceably and quietly have, hold, occupy, poſſeſs and enjoy the ſaid Meſſuage or Tenements, Lands and Premiſſes above-mentioned, and every Part and Parcel thereof with the Appurtenances (except before excepted) for and during the ſaid Term hereby granted, without any Interruption or Denial of the ſaid* A. B. *his Heirs or Aſſigns, or of any other Perſon or Perſons whatſoever lawfully claiming or to claim any Right, Title or Intereſt, from, by or under him, them, or any or either of them.* In Witneſs, *&c.*

A

A *Freehold Leaſe for three Lives*, Differs from the preceding *Chattel Leaſe* only in this, *viz.* That the *Habendum* is to the Leſſee, his Heirs and Aſſigns, for and during the natural Lives of him the ſaid *C. D. E.* his Wife, and *T. D.* his Son, and during the Life natural of every and either of them longeſt living. And in every *Covenant*, the Leſſee covenants for himſelf, his Heirs and Aſſigns; and the Covenants are the ſame as in the foregoing Leaſe; with the Addition of a *Letter of Attorney* at the End, to deliver Poſſeſſion and Seiſin, as in a Deed of Feoffment.

Leaſe and Releaſe, Is a Conveyance of Right or Intereſt in Lands or Tenements, to another that hath the Poſſeſſion thereof. *A comp. Conv.* 1 *Vol.* 129. Though the Deed of *Feoffment* was the uſual Conveyance at Common Law; yet ſince the Stat. of *H.* 8. of Uſes, the Conveyance by *Leaſe and Releaſe* has taken Place of it, and is become a very common Aſſurance to paſs Lands and Tenements; for it amounts to a Feoffment, the Uſe drawing after it the Poſſeſſion without actual Entry, *&c.* and ſupplying the Place of Livery and Seiſin, required in that Deed: In the making it, a Leaſe or Bargain and Sale for a Year, or ſuch like Term, is firſt prepared and executed; to the Intent that by Virtue thereof the Leſſee may be in actual Poſſeſſion of the Lands intended to be conveyed by the Releaſe, and thereby and by Force of the Statute 27 *H.* 8. *c.* 10. for transferring of Uſes into Poſſeſſion, be enabled to take and accept a Grant of the Reverſion and Inheritance of the ſaid Lands, *&c.* to the Uſe of himſelf and his Heirs for ever: Upon which the Releaſe is accordingly made, reciting the Leaſe, and declaring the Uſes: And in theſe Caſes, a Pepper-Corn Rent in the Leaſe for a Year is a ſufficient Reſervation to raiſe an Uſe, to make the Leſſee capable of a Releaſe. 2 *Vent.* 35. 2 *Mod.* 262. When an Eſtate is conveyed by *Leaſe and Releaſe*, in the Leaſe for a Year there muſt be the Word *Bargain and Sell* for Money, and 5 *s.* for any other Sum, though never paid, is a good Conſideration, whereupon the Bargainee for a Year is immediately in Poſſeſſion on the Executing of the Deed, without actual Entry: If only the Words *Demiſe, Grant and to Farm Let* are uſed, in that Caſe the Leſſee cannot accept of a Releaſe of the Inheritance until he hath actually entered and is in Poſſeſſion. 2 *Lill. Abr.* 435. But where *Littleton* ſays, that if a Leaſe is made for Years, and the Leſſor releaſes to the Leſſee before Entry; ſuch Releaſe is void, becauſe the Leſſee had only a Right, and not the Poſſeſſion; and ſuch Releaſe ſhall not enure to enlarge the Eſtate, without the Poſſeſſion: Tho' this is true at Common Law, it is not ſo now upon the Statute of Uſes. 2 *Mod.* 250, 251. And if a Man make a Leaſe for Life, Remainder for Life, and the firſt Leſſee dieth; on which, the Leſſor releaſes to him in Remainder, before Entry; this is a good Releaſe to enlarge the Eſtate, he having an Eſtate in Law capable of Enlargement by Releaſe, before Entry had. 1 *Inſt.* 270. No Perſon can make a Bargain and Sale, who hath not Poſſeſſion of the Lands: But it is not neceſſary to Reſerve a Rent therein; becauſe the Conſideration of Money raiſes the Uſe If a Leaſe be without any ſuch Conſideration, the Leſſee hath not any Eſtate till Entry, nor hath the Leſſor any Reverſion; and therefore a Releaſe will not operate, *&c.* 1 *Inſt.* 270, 278. *Cro. Jac.* 169. 1 *Mod.* 263. On Leaſe at Will, a Releaſe ſhall be good by Reaſon of the Privity between the Parties: But if a Man be only Tenant at Sufferance, the Releaſe will not Enure to him; and as to the Perſon who hath the Reverſion it is void, for ſuch Tenant hath not any Poſſeſſion, there being no Eſtate in him. *Litt. Sect.* 461, 462. *Cro. Eliz.* 21. *Dyer* 251. It is neceſſary in all Caſes where a Releaſe of Lands is made, that the Eſtate be turned to a Right; as in a Diſſeiſin, *&c.* where there are two Rights, a Right of Poſſeſſion in the Diſſeiſor, and a Right to the Eſtate in the Diſſeiſee; now when the Diſſeiſee hath releaſed to the Diſſeiſor, here the Diſſeiſor hath both the Rights in him, *viz.* The Right to the Eſtate, and alſo to the Poſſeſſion: Or elſe it is requiſite that there be Privity of Eſtate between the Tenant in Poſſeſſion and the Releſſor; for a Releaſe will not operate without Privity. 2 *Lill.* 435. A Releaſe made by one that at the Time of the Making thereof had no Right, is void; and a Releaſe made to one that at the Time of Making thereof hath nothing in the Lands, is alſo void, becauſe he ought to have a Freehold, or a Poſſeſſion, or Privity. *Noy's Max.* 74. He that makes a Releaſe muſt have an Eſtate in himſelf, out of which the Eſtate may be derived to the Releſſee; the Releſſee is to have an Eſtate in Poſſeſſion in Deed or in Law, in the Land whereof the Releaſe is made, as a Foundation for the Releaſe; there muſt be Privity of Eſtate between the Releſſor and Releſſee; and be ſufficient Words in Law not only to make the Releaſe, but alſo to create and raiſe a new Eſtate, or the Releaſe will not be good. 1 *Inſt.* 22. A Releaſe to a Man and his Heirs will paſs a Fee ſimple; and if made to a Man, and the Heirs of his Body, by this the Releſſee hath an Eſtate-tail: But a Releaſe of a Man's Right in Fee-ſimple, is not ſufficient to paſs a Fee-ſimple. 1 *Inſt.* 273. And if a Perſon releaſe to another all his Right which he hath in the Land, without uſing any more Words, as *To hold to him and his Heirs, &c.* the Releſſee hath only an Eſtate for Life. *Dyer* 263. A Releaſe made to a Tenant in Tail, or for Life, of Right to Land, ſhall extend to him in Reminder or Reverſion. 1 *Inſt.* 267. By Releaſe of all a Man's Right unto Lands, all Actions, Entries, Titles of Dower, Rents, *&c.* are diſcharged; though it bars not a Right that ſhall deſcend afterwards: And a Releaſe of all Right in ſuch Land, will not diſcharge a Judgment not executed; becauſe ſuch Judgment doth not veſt any Right; but only makes the Land liable to Execution. 8 *Rep.* 151. 3 *Salk* 298. 'Tis ſaid a Releaſe of all one's Title to Lands, is a Releaſe of all one's Right. *Lit.* 509. 1 *Inſt.* 292. By a Releaſe of all Entries, or Right of Entry, a Man hath into Lands, without more Words, the Releſſor is barred of all Right or Power of Entry into thoſe Lands; and yet if a Man have a double Remedy, *viz.* a Right of Entry, and an Action to recover, and then releaſe all Entries, by this he is not barred and excluded his Action; nor doth a Releaſe of Actions bar the Right of Entry. *Plowd.* 484. 1 *Inſt.* 345. A Releaſe made by Deed Poll, of Right to Lands, *&c.* needs no other Execution than Sealing and Delivery; and will operate without Conſideration: But 'tis convenient to put a valuable Conſideration therein; leſt it ſhould be judg'd fraudulent by Statute. *Litt. Sect.* 445. *Lill. Convey.* 248. 230. *Cro. Jac.* 270. A Releaſe that doth enure by Way of Paſſing away an Eſtate, or Extinguiſhment, may be made upon Condition or with a Defeaſance, ſo as the Condition, *&c.* be contained in the Releaſe, or delivered at the ſame Time with it: And there may be a Recital, Covenants, Warranty, *&c.* inſerted in this Releaſe; tho' it is ſaid the Deed is good, without any ſuch Additions. *Accom. Convey.* Vol. 1. In a *Leaſe and Releaſe* to make a Tenant to the *Præcipe* to ſuffer a Recovery, where the Releaſe is made to *A. B.* and his Heirs, (*viz.* the Tenant to the *Præcipe*) it muſt be alſo ſaid to the Uſe of him the ſaid *A. B.* and his Heirs and Aſſigns for ever; for the Releſſee muſt be abſolute Tenant of the Freehold. 2 *Vent.* 312. *Lill. Convey anc.* 251. And a Releaſe made on Truſt, muſt be to *A. B.* his Heirs and Aſſigns, to the only Uſe and Behoof of the Releſſee, his Heirs and Aſſigns for ever; in Truſt for *C. D.* who is to be a Party to the Deed, and the Purchaſe Money to be paid by the

Ceſtui que Truſt: If the Words *to the Uſe, &c.* are not inſerted in the Releaſe, the Eſtate doth not execute by the Statute of Uſes, and the Truſt is void. *Lill. Ibid.* 251. 233. A *Leaſe and Releaſe* make but one Conveyance, being in the Nature of one Deed. 1 *Mod.* 252.

Form of a *Leaſe for a Year*, to ground a *Releaſe*.

THIS Indenture *made*, &c. Between A. B. *of* &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, witneſſeth, *that the ſaid* A. B. *for and in Conſideration of the Sum of* 5 s. *of lawful* Britiſh *Money to him in Hand paid by the ſaid* C. D. *the Receipt whereof is hereby acknowledged, he the ſaid* A. B. *hath granted, bargained and ſold, and by theſe Preſents doth grant, bargain and ſell unto the ſaid* C. D. All *that Meſſuage or Tenement, commonly called or known*, &c. *with the Rights, Members and Appurtenances, ſituate, lying and being in*, &c. *in the County of*, &c. *And all Houſes, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Paſtures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courſes, Eaſements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatſoever to the ſaid Meſſuage or Tenement belonging, or in any Wiſe appertaining, or which now are or formerly have been accepted, reputed, taken, known, uſed, occupied or enjoyed, to or with the ſame, or as Part, Parcel or Member thereof, or of any Part thereof; and the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Premiſſes abovementioned, and of every Part and Parcel thereof; with the Appurtenances:* To have and to hold *the ſaid Meſſuage or Tenement, Lands, Hereditaments and Premiſſes above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, from the firſt Day of this Inſtant*, &c. *for and during and unto the full End and Term of one whole Year, from thence next and immediately enſuing and following, and fully to be compleat and ended:* Yielding and paying *therefore one Pepper-Corn in and upon the Feaſt of St.* Michael *the Archangel, if demanded:* To the Intent *that by Virtue of theſe Preſents, and by Force of the Statute for transferring of Uſes into Poſſeſſion, he the ſaid* C. D. *may be in the actual Poſſeſſion of all and ſingular the ſaid Premiſſes above-mentioned, with the Appurtenances, and thereby be enabled to accept and take a Grant and Releaſe of the Reverſion and Inheritance thereof, to him and his Heirs, to the only proper Uſe and Behoof of him the ſaid* C. D. *his Heirs and Aſſigns for ever.* In Witneſs, *&c.*

Form of a *Releaſe and Conveyance* of Lands.

THIS Indenture *made*, &c. Between A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *that the ſaid* A. B. *for and in Conſideration of the Sum of Five hundred Pounds of lawful Money of* Great Britain, *to him in Hand paid by the ſaid* C. D. *the Receipt whereof the ſaid* A. B. *doth hereby confeſs and acknowledge, and for divers other good Cauſes and Conſiderations him thereunto moving; he the ſaid* A. B. *hath granted, bargained and ſold, aliened, releaſed and confirmed, and by theſe Preſents doth fully, freely and abſolutely grant, bargain and ſell, alien, releaſe and confirm unto the ſaid* C. D. (*in his actual Poſſeſſion now being, by Virtue of a Bargain and Sale to him thereof made for one Year, by Indenture bearing Date the Day next before the Day of the Date of theſe Preſents, and by Force of the Statute for transferring of Uſes into Poſſeſſion*) *and to his Heirs and Aſſigns for ever*, All *that Meſſuage or Tenement, commonly called or known*, &c. *with the Rights, Members and Appurtenances thereof, ſituate, lying and being in*, &c. *And all Houſes, Edifices, Buildings, Gardens, Orchards, Lands, Meadows, Commons, Paſtures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courſes, Eaſements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatſoever to the ſaid Meſſuage or Tenement belonging, or in any wiſe appertaining, or which now are or formerly have been accepted, reputed, taken, known, uſed, occupied or enjoyed, to or with the ſame, or as Part, Parcel or Member thereof, or of any Part thereof; and alſo the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of all and ſingular the ſaid Premiſſes above-mentioned, and of every Part and Parcel thereof, with the Appurtenances; and alſo all the Eſtate, Right, Title, Intereſt, Claim and Demand whatſoever, as well in Equity as in Law, of him the ſaid* A. B. *of, in and to all and ſingular the ſaid Premiſſes, and of, in and to every Part and Parcel thereof, with the Appurtenances; and alſo all Deeds, Evidences and Writings, touching or concerning the ſaid Premiſſes only, or only any Part thereof, together with true Copies of all other Deeds, Evidences and Writings, which do concern the ſaid Premiſſes, or any Part thereof jointly, with any other Lands or Tenements, now in the Cuſtody or Poſſeſſion of him the ſaid* A. B. *or which he can or may get or come by without Suit in Law; the ſaid Copies to be made and written at the Requeſt, Coſts and Charges of the ſaid* C. D. *his Heirs and Aſſigns;* To have and to hold *the ſaid Meſſuage or Tenement, Lands, Hereditaments, and all and ſingular the Premiſſes above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Heirs and Aſſigns, that he the ſaid* A. B. *now is the true, lawful and rightful Owner of the ſaid Meſſuage, Lands, Tenements, Hereditaments and Premiſſes above-mentioned, and of every Part and Parcel thereof, with the Appurtenances.* And alſo *that he the ſaid* A. B. *now is lawfully and rightfully ſeiſed in his own Right, of a good, ſure, perfect, abſolute and indefeaſible Eſtate of Inheritance in Fee-ſimple, of and in all and ſingular the Premiſſes above mentioned, with the Appurtenances, without any Manner of Condition, Mortgage, Limitation of Uſe and Uſes, or other Matter, Cauſe or Thing, to alter, change, charge, or determine the ſame.* And *that he the ſaid* A. B. *now hath good Right, full Power, and lawful Authority, in his own Right, to grant, bargain, ſell, and convey the ſaid Meſſuage, Lands, Tenements, Hereditaments, and all and ſingular the Premiſſes above mentioned with the Appurtenances, unto the ſaid* C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever, according to the true Intent and Meaning of theſe Preſents.* And alſo *that he the ſaid* C. D. *his Heirs and Aſſigns, ſhall and may at all Times for ever hereafter, peaceably and quietly have, hold, occupy, poſſeſs and enjoy all and ſingular the ſaid Meſſuage, Lands, Tenements, Hereditaments and Premiſſes above-mentioned, with the Appurtenances, without the Let, Trouble, Hindrance, Moleſtation, Interruption, and Denial of him the ſaid* A. B. *his Heirs or Aſſigns, and of all and every other Perſon or Perſons whatſoever:* And that freed *and diſcharged, or otherwiſe well and ſufficiently ſaved and kept harmleſs and indemnified of and from all former and other Bargains, Sales, Gifts, Grants, Leaſes, Mortgages, Jointures, Dowers, Uſes, Wills, Intails, Fines, Poſt-Fines, Iſſues, Amerciaments, Seizures, Bonds, Annuities, Writings Obligatory, Statutes Merchant and of the Staple, Recognizances, Extents, Judgments, Executions, Rents and Arrearages of Rent, and of and from all other Charges, Eſtates, Rights, Titles, Troubles and Incumbrances whatſoever had, made, committed, done or ſuffered, or to be had, made, committed, done, or ſuffered, by the ſaid* A. B *or any other Perſon or Perſons whatſoever, claiming or to claim, by, from or under him, them, or any of them.* And further, *that he the ſaid* A. B. *and his Heirs, and all and every other Perſon and Perſons and his and their Heirs, any Thing having or claiming in the ſaid Premiſſes above-mentioned, or any Part thereof, by, from or under him, ſhall and will from Time to Time, and at all Times hereafter, upon the reaſonable Requeſt, and at the Coſts and Charges of the ſaid* C. D. *his Heirs or Aſſigns, make, do and exe-*

cute, or cauſe or procure to be made, done and executed, all and every ſuch further and other lawful and reaſonable Act and Acts, Thing and Things, Device and Devices, Conveyance and Conveyances in the Law whatſoever, for the further, better, and more perfect granting, conveying and aſſuring of all and ſingular the ſaid Premiſſes above-mentioned, with the Appurtenances, unto the ſaid C. D. *his Heirs and Aſſigns, to the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever, as by the ſaid* C. D. *his Heirs or Aſſigns, or his or their Counſel learned in the Law, ſhall be reaſonably deviſed or adviſed and required.* And laſtly, *it is covenanted, granted, concluded and agreed upon by and between the ſaid Parties to theſe Preſents, and the true Meaning hereof is, and it is hereby ſo declared, that all and every Fine and Fines, Recovery and Recoveries, Aſſurance and Aſſurances, Conveyance and Conveyances in the Law whatſoever already had, made, levied, ſuffered, executed and acknowledged, or at any Time hereafter to be had, made, levied, ſuffered, executed and acknowledged, by and between the ſaid Parties to theſe Preſents, or either of them, or by or between them, or either of them, and any other Perſon or Perſons whatſoever, of the ſaid Premiſſes above-mentioned, with the Appurtenances, or any Part thereof, either alone by itſelf, or jointly with any other Lands, Tenements or Hereditaments,* ſhall be *and enure, and ſhall be adjudged, eſteemed and taken to be and enure, as for and concerning all and ſingular the Premiſſes above-mentioned, with the Appurtenances, to and for the only proper Uſe and Behoof of the ſaid* C. D. *his Heirs and Aſſigns for ever, according to the true Intent and Meaning of theſe Preſents, and to and for none other Uſe, Intent or Purpoſe whatſoever.* In Witneſs, *&c.*

Leat. A Trench to convey Water to or from a Mill; mentioned in the Stat. 7 *Jac.* 1. *c.* 19.

Leather. There are ſeveral Statutes relating to *Leather*; as the 27 *H.* 8. *c.* 14. directs Packers to be appointed for *Leather* to be tranſported: But the 18 *Eliz. c.* 9. prohibits the Shipping of *Leather*, on Penalty of Forfeiture, *&c.* Though by 20 *Car. c.* 5. Tranſportation of *Leather* is allowed to *Scotland*, *Ireland*, or any foreign Country, paying a Cuſtom or Duty; which Statute is continued by divers ſubſequent Acts. No Perſon ſhall ingroſs *Leather* to ſell again, under the Penalty of Forfeiture: None but Tanners are to buy any rough Hides of *Leather*, or Calves-Skins in the Hair, on Pain of Forfeiture; and no Perſon ſhall foreſtal Hides, under the Penalty of 6 *s.* 8 *d.* a Hide. *Leather* not ſufficiently tanned, is to be forfeited. In *London*, the Lord Mayor and Aldermen are to appoint and ſwear Searchers of *Leather*, out of the Company of *Shoemakers*, &c. And alſo Triers of inſufficient *Leather*; and the ſame is to be done by Mayors, *&c.* in other Towns and Corporations; and Searchers allowing inſufficient *Leather*, incur a Forfeiture of 40 *s.* *Shoemakers* making Shoes of inſufficient *Leather*, are liable to 3 *s.* 4 *d.* Penalty. 1 *Jac.* 1. *c.* 22. Red tanned *Leather* is to be brought into open *Leather* Markets, and ſearched and ſealed before expoſed to Sale, or ſhall be forfeited; and Contracts for Sale otherwiſe to be void. 13 *&* 14 *Car.* 2. *c.* 7. Hides of *Leather* are adjudged the Ware and Manufacture of the *Currier*, and ſubject to Search, *&c.* All Perſons dealing in *Leather* may buy tanned *Leather* ſearched in open Market; and any Perſon may buy or ſell *Leather* Hides or Skins by Weight. 1 *W. & M. c.* 33. Duties are granted on *Leather*, and Entries to be made of Tan-Yards, under the Penalty of 50 *l.* and *Tanners* and *Leather-Dreſſers* uſing any private Tan-Yards, or concealing Skins, *&c.* ſhall forfeit 20 *l.* leviable by Juſtices of the Peace, by Diſtreſs, *&c.* 9 *Ann. c.* 11. See 5 *Geo.* 1. *c.* 2. and 9 *Geo.* 1. *c.* 27. Vide *Tanners.*

Leccator, A debauched Perſon, *Lecher*, or Whoremaſter. —— *Sciant, quod ego Johannes Conſtabularius Ceſtriæ dedi Hugoni de Dutton & Hæredibus ſuis Magiſtratum omnium* Leccatorum *& Meretricum in, &c. Salvo Jure meo mihi & hæredibus meis.* Ann. 1220.

Lecherwite, A Fine on Adulterers and Fornicators. See *Lairwite.*

Lectrinum, Is taken for a Pulpit. *Mon. Angl. Tom.* 3. *p.* 243.

Lecturer, (*Prælector*) A Reader of *Lectures*; and in *London*, and other Cities, there are *Lecturers* who are Aſſiſtants to the *Rectors* of Churches in Preaching, *&c.* Theſe *Lecturers* are choſen by the Veſtry, or chief Inhabitants of the Pariſh, and are uſually the Afternoon Preachers: The Law requires, that they ſhould have the Conſent of them by whom they are employed, and likewiſe the Approbation and Admiſſion of the Ordinary; and they are, at the Time of their Admiſſion, to ſubſcribe to the Thirty-Nine Articles of Religion, *&c.* required by the Stat. 14 *Car.* 2. They are to be licenſed by the Biſhop, as other Miniſters, and a Man cannot be a *Lecturer* without a Licence from the Biſhop or Archbiſhop; but the Power of a Biſhop, *&c.* is only as to the Qualification and fitneſs of the Perſon, and not as to the Right of the *Lectureſhip*; for if a Biſhop determine in Favour of a *Lecturer*, a *Prohibition* may be granted to try the Right. *Mich.* 12 *W.* 3. *B. R.* If *Lecturers* preach in the Week Days, they muſt read the Common Prayer for the Day when they firſt preach, and declare their Aſſent to that Book; they are likewiſe to do the ſame the firſt *Lecture* Day in every Month, ſo long they continue *Lecturers*, or they ſhall be diſabled to preach till they conform to the ſame: And if they preach before ſuch Conformity, they may be committed to Priſon for three Months, by Warrant of two *Juſtices of Peace*, granted on the Certificate of the Ordinary. 13 *&* 14 *Car.* 2. *c.* 4. *Right Clerg.* 338. Where *Lectures* are to be preached or read in any Cathedral or Collegiate Church, if the *Lecturer* openly at the Time aforeſaid, declare his Aſſent to all Things in the Book of Common Prayer, it ſhall be ſufficient; and Univerſity Sermons or *Lectures* are excepted out of the Act concerning *Lectures.* There are *Lectures* founded by the Donations of pious Perſons, the *Lecturers* whereof are appointed by the Founders; without any Interpoſition or Conſent of Rectors of Churches, *&c.* tho' with the Leave and Approbation of the Biſhop; ſuch as that of Lady *Moier* at St. *Paul*'s, &c.

Lectures of *Divinity*, *Law*, *Phyſick*, &c. in the Univerſities of *Oxford* and *Cambridge.* Vide *Regius Profeſſor.*

Lecturnium, (*Lectorium*) The Deſk or Reading Place in Churches. *Statut. Eccl. Paul. Lond. MS.* 44

Ledgrave, The chief Man of the *Lathe* or *Lethe.* See *Lathreve.*

Ledo, (*Ledona*) The riſing Water or Increaſe of the Sea —— *Ledo ſex Horas inundationis, & totidem receſſus habet, &c.*

Leet, (*Leta*, From the Sax. *Lite*, i. e. *Parvus*, *quaſi* a Little Court; or from the *Germ. Laet*, a Country Judge) In whoſe Manor ſoever kept, is accounted the King's Court; becauſe the Authority thereof to puniſh Offences was originally belonging to the Crown, and thence derived to inferior Perſons. *Stat.* 18 *Ed.* 2. 4 *Inſt.* 261. By the Laws of King *Edward*, according to *Lambard*, this was a Court of Juriſdiction above the Wapentake or Hundred; but many Lords of Manors, with their Courts-Baron, have likewiſe *Leets* adjoined. *Britton*, *c.* 28. *Kitch.* 6 See *Court-Leet.*

Leets or **Leits,** Meetings appointed for the Nomination or Election of Officers; often mentioned in Archbiſhop *Spotſwood*'s Hiſtory of the Church of *Scotland.*

Lega & Lacta. Anciently the Allay of Money was ſo called. *Debita nummi temperies, quam veteres* Legam & Lactam *appellabant.* Spelm.

Legabilis, Signifies what is not entailed as Hereditary; but may be bequeathed by Legacy, in a Laſt Will and Teſtament. *Articuli propoſit. in Parliamento coram Rege, Anno* 1234.

Legacy, (*Legatum*) Is a particular Thing given by a Man's Laſt Will and Teſtament; and he to whom ſuch *Legacy* is given, is called a *Legatee*; and there is a *Reſiduary Legatee.* It ſeems neceſſary, that the Legatee ſhould be born at the Time of making the Will; and it has been adjudged where *Legacies* were given to a Man's Children, that thoſe who were born afterwards ſhould have no Share thereof. 1 *Bulſt.* 153. But it has been otherwiſe decreed in Chancery. 1 *Ch. Rep.* 301. A Man deviſed 200*l.* a-piece to the two Children of *A. B.* at the End of ten Years after the Death of the Teſtator; afterwards the Children died within the ten Years; and it was held a *lapſed* Legacy: For there is a Difference where a Deviſe is to take Effect at a future Time, and where the Payment is to be made at a future Time; and whenever the Time is annexed to the *Legacy* itſelf, and not to the Payment of it, if the *Legatee* dies before the Time happens, 'tis a lapſed *Legacy.* 2 *Salk.* 415. A Beqeuſt of Money to one at the Age of twenty one, or Day of Marriage, without ſaying to be paid at that Time, and the *Legatee* dies before the Term; this is a lapſed *Legacy:* And ſo it is if the Deviſe had been to her when ſhe ſhall marry; or when a Son ſhall come of Age, and they die before. *Godb.* 182. 2 *Vent.* 342. But a Deviſe of a Sum of Money, to be paid at the Day of Marriage, or Age of twenty-one Years; if the *Legatee* die before either of theſe happen, the *Legatee*'s Adminiſtrator ſhall have it, becauſe the *Legatee* had a preſent Intereſt, though the Time of Payment was not yet come; and 'tis a Charge on the Perſonal Eſtate which was in Being at the Teſtator's Death; and if it were diſcharged by this Accident, then it would be for the Benefit of the Executor, which was never intended by the Teſtator. 2 *Ventr.* 366. 2 *Lev.* 207. A Father bequeathed Goods to his Son, when he ſhould be of the Age of twenty-one Years, and if he die before that Time, then his Daughter ſhould have them; afterwards the Father died, and then the Son died before he was of Age; adjudged, that the Daughter ſhould have the Goods given in *Legacy* immediately, and not ſtay till her Brother would have been of Age, if he had lived. 1 *And.* 33. And where a *Legacy* was deviſed to an Infant, to be paid when he ſhall come of Age, and he died before that Time; it was ruled that his Adminiſtrator ſhould have it preſently, and not ſtay until the Infant ſhould have been of Age, if he had lived. 1 *Leon.* 278. In a Caſe of this Nature, it has been decreed in Equity, that altho' the Adminiſtrator ſhould have the *Legacy*, yet he muſt wait for it till ſuch Time as the Child would have come to twenty-one. 2 *Vern.* 199. Where a *Legacy* is to ariſe out of the Real Eſtate, it ſhall not go to the Repreſentative of the *Legatee*; but ſink in the Inheritance: And yet where 1000*l.* was given by a Perſon out of Lands, to his Daughter, and Intereſt to be computed from his Death, *&c.* here tho' the *Legatee* died before the Time appointed for paying the ſame, it was held the *Legacy* ſhould be raiſed notwithſtanding; and the Lord Chancellor ſaid, that this *Legacy* was a veſted one. 2 *Vern. Rep.* 617. *Barnardiſt.* 328, 330. A Perſon by Will, *&c.* gives a Portion or *Legacy* to a Child, payable at twenty-one Years of Age, out of a real and perſonal Eſtate, and the Child dies before the *Legacy* becomes payable; in that Caſe, ſo much thereof as the perſonal Eſtate will pay, ſhall go to the Child's Executors or Adminiſtrators: But ſo far as the *Legacy* is charged upon the Land, 'tis ſaid it ſhall ſink. 2 *P. Williams* 613. Alſo if a *Legacy* be given to one, to be paid out of ſuch a Fund, and the ſame fails; it has been reſolved, that it ought to be paid out of the Perſonal Eſtate, and the failing of the Manner appointed for Payment ſhall not defeat the *Legacy.* 1 *Peere Williams* 779. One by Will diſpoſes of his Eſtate in *Legacies*, and afterwards by Parol, or Word of Mouth, gives a Bill for a certain Sum, to be delivered over to another, if he the Teſtator ſhould die of that Sickneſs; this is adjudged good, but it being in the Nature of a *Legacy*, may be deemed fraudulent againſt Creditors. *Ibid.* 405, 406. If a *Legacy* when due be paid to the Father of an Infant, it is no good Payment; and the Executor may be obliged in Equity to pay it over again: And where any Legacy is bequeathed to a Feme Covert, paying it to her alone, is not ſufficient, without her Husband. 1 *Vern.* 261. As an Executor is not obliged to pay a *Legacy*, without Security given him by the *Legatee* to refund, if there are Debts, becauſe the *Legacy* is not due till the Debts are paid, and a Man muſt be juſt before he is charitable; ſo in ſome Caſes, the Executor may be compelled to give Security to the *Legatee* for the Payment of his *Legacy*; as where a Teſtator bequeathed 1000*l.* to a Perſon, to be paid at the Age of Twenty-one, and made an Executor, and died, afterwards the *Legatee* exhibited a Bill in Equity againſt the Executor, ſetting forth that he had waſted the Eſtate, and praying that he might give Security to pay the *Legacy* when it ſhould become due; and it was ordered accordingly. 1 *Ch. Rep.* 136, 257. If a *Legacy* is deviſed, and no certain Time of Payment, and the *Legatee* is an Infant, he ſhall have *Intereſt for the Legacy* from the Epiration of one Year after the Teſtator's Death; for ſo long the Executor ſhall have, that he may ſee whether there are any Debts, and no Laches ſhall be imputed to the Infant: But if the *Legatee* be of full Age, he ſhall have no Intereſt but from the Time of the Demand of his *Legacy:* Where a *Legacy* is payable at a Day certain, it muſt be paid with Intereſt from that Day. 2 *Salk.* 415. 2 *Nelſ. Abr.* 1114. A Perſon gives a *Legacy* charged upon Land, which yields Rents and Profits, and there is no Day of Payment mentioned, the *Legacy* ſhall carry Intereſt from the Teſtator's Death, becauſe the Land yields Profit from that Time: Tho' were it charged on the Perſonal Eſtate and the Will mentions no Time for paying it, there the *Legacy* bears Intereſt only from the End of a Year, after the Death of the Teſtator; which is ſaid to be the ſettled Difference. 2 *Peere Williams* 26. It has been decreed in *Equity*, that altho' a *Legacy* be deviſed to be paid at a certain Time, it carries Intereſt only from ſuch Time as it is demanded: 'Tis otherwiſe of a Debt; and in ſuch Caſe Non-payment at the Day, has been held no Breach, without Demand and Refuſal. *Preced. Canc.* 161. See *Abr. Caſ. Eq.* 286. One having a *Legacy* given him, payable within a Year, knew nothing of it till a great while afterwards, when the Executor publiſhed it in the *Gazette*; here Chancery would allow no Intereſt but the bare *Legacy.* *Preced. Canc.* 11. The Aſſent or Agreement of the Executor is firſt to be obtained before any *Legacy* can be taken; until then the *Legatee* may not meddle with the *Legacy*, becauſe the Executor is to pay Debts before *Legacies*, *&c.* *Wood's Inſt.* 329. And this is the Reaſon why no Property can be transferred to the *Legatee*, without the Executor's Aſſent: If the Executor refuſes to aſſent to a *Legacy*, he may be obliged to it by a Court of Equity, or the Spiritual Court. *March, Rep.* 19. *Legacies* being Gratuities, and no Duties, Action will not lie at Common Law for the Recovery of a *Legacy*; but Remedy is to be had in the Chancery or Spiritual Court. *Allen* 38. The Cognizance of a *Legacy* properly belongs to the Spiritual Courts, for ſuch Bequeſts were not good by the Common Law; but this is to be underſtood, where a *Legacy* is deviſed generally: If 'tis payable out of the Land, or out of the Profits of the Land, an Action of the Caſes lies at Common Law; but the uſual Remedy is in Chancery. *Sid.* 44. 3 *Salk.* 223. By *Holt* Ch. Juſt. A *Legatee* may maintain an Action of Debt at Common

mon Law againſt the Owner of Land, out of which the *Legacy* is to be paid; and ſince the Statute of Wills gives him a Right, by Conſequence he ſhall have an Action at Law to recover it. 2 *Salk.* 415. And ſometimes the Common Law takes Notice of a *Legacy*, not directly, but in a collateral Way; as where the Executor promiſed to pay the Money, if the *Legatee* would forbear to ſue for the *Legacy*, this was adjudged a good Conſideration to ground an Action; but that it would not lie for a *Legacy in Specie*, which would be to deveſt the Spiritual Court of what properly belonged to their Juriſdiction, by turning Suits which might be brought there into Actions on the Caſe. *Raym.* 23. If Security is given by Bond to pay a *Legacy*, in ſuch Caſe an Action at Law is the proper Remedy; by giving the Bond, the *Legacy* is as it were extinct and becomes a Debt at Common Law, and the *Legatee* can never afterwards ſue for it in the Spiritual Court. *Yelv.* 39. For the Recovery of a Debt or ſuch like Thing in Action, given by Way of *Legacy*, it is beſt to make the *Legatee* Executor as to that Debt, *&c.* or he muſt have a Letter of Attorney to ſue in the Executor's Name. *Wood's Inſt.* 330. Where a Teſtator gives his Debtee a *Legacy* greater than his Debt, it ſhall be taken in Satisfaction of it: Tho' where the *Legacy* is leſs, it ſhall not be deemed as any Part thereof; but as a *Legacy* is a Gift, ſometimes the *Legatee* has been decreed both. 1 *Salk.* 155. 2 *Salk.* 508. If a greater *Legacy*, is given by a Codicil, to the ſame Perſon that was Legatee in the Will, it ſhall not be a Satisfaction, unleſs ſo expreſſed. 1 *Peere Williams* 424. The Name of a *Legatee* being very falſly Spelt, it was referred to a Maſter in Chancery, to examine who was the Perſon intended. *Ibid.* 425. Some Perſons are incapable of taking by *Legacy*, by ſeveral Statutes; as the 13 *W.* 3. *c.* 6. relating to Officers, Lawyers, *&c.* not taking the Oaths; and 5 *Geo.* 1. *c.* 27. concerning Artificers going abroad, *&c.* See *Executor* and *Wills*.

Legalis homo, Is uſed for him who ſtands *Rectus in Curia*, not outlawed, excommunicated, or infamous; and in this Senſe are the Wards *Probi & Legales Homines:* Hence alſo *Legality* is taken for the Condition of ſuch a Man. *Leg. Ed. Conf. c.* 18.

Legalis Moneta Angliæ, Lawful Money of *England*, is Gold or Silver Money coined here by the King's Authority, *&c.* 1 *Inſt.* 207. See *Coin.*

Legate, (*Legatus*) An Ambaſſador or *Pope's Nuncio.* And there are two Sorts of *Legates*, a *Legate a Latere*, and *Legatus natus*; the Difference between whom is thus: *Legatus a Latere* was uſually one of the Pope's Family veſted with the greateſt Authority in all Eccleſiaſtical Affairs over the whole Kingdom where he was ſent; and during the Time of his *Legation*, he might determine even thoſe Appeals which had been made from thence to *Rome: Legatus natus* had a more limited Juriſdiction, but was exempted from the Authority of the *Legate a Latere*; and he could exerciſe even his Juriſdiction in his own Province. The Popes of *Rome* had formerly in *England* the Archbiſhops of *Canterbury* their *Legatos natos*; and upon extraordinary Occaſions, ſent over *Legatos a Latere.*

Legatary, Legatory, Is the ſame with *Legatee* of a Will. 27 *Eliz. c.* 16.

Legem facere, To make Law, or Oath: *Legem habere*, to be capable of giving Evidence upon Oath; *Minor non habet* Legem. *Selden's Notes on Hengh.* 133.

Legergild, (*Legergildum*) See *Lecherwite* and *Lairwite.*

Legioſus. Litigious, and ſo ſubjected to a Courſe of Law. *Cowel.*

Legitimation, (*Legitimatio*) A making lawful or *Legitimate*; and Naturalization, *&c.* makes a Foreigner a lawful Subject of the State.

Leipa, A Departure from Service.——*Si quis à Domino ſuo ſine Licentia diſcedat, ut* Leipa *emendatur & redire cogatur.* Leg. Hen. 1. cap. 43.

Lent, (From the Germ. *Lentz.* i.e. *Ver*, the Spring Faſt) Is a Time of Faſting for forty Days, next before *Eaſter*; mentioned in the Stat. 2 & 3 *Ed.* 6. *cap.* 19 And firſt commanded to be obſerved in *England* by *Ercombert*, ſeventh King of *Kent*, before the Year 800. *Baker's Chron.* 7. No Meat was formerly to be eaten in *Lent*, or on *Wedneſdays* or other fiſh Days, but by Licence, under certain Penalties. 27 *Eliz. cap.* 7. And Butchers were not to kill Fleſh in the *Lent*, unleſs for victualling Ships, *&c.* See *Quadrageſima.*

Lep and Lace, (*Leppe & Laſſe*) Is a Cuſtom in the Manor of *Writtel* in *Com. Eſſex*, that every Cart which comes over *Greenbury* within that Manor, (except it be the Cart of a Nobleman) ſhall pay 4*d.* to the Lord. This *Greenbury* is conceived to have been anciently a Market-Place; on which Account this Privilege was granted. *Blount.*

Lepa, A Meaſure which contained the third Part of two Buſhels: Whence we derive a *Seed-leap.* Du Cange.

Leporarius, A Greyhound for the Hare. *Concedo eis duos* Leporarios, *&c. ad* Leporem *capiendum in Foreſta noſtra de* Eſſexia. *Mon. Ang. Tom.* 2 *fol.* 283.

Leporium, Is a Place where Hares are kept together. *Mon. Angl. Tom.* 2. *fol.* 1035.

Leproſo amovendo, An ancient Writ that lies to remove a *Leper* or *Lazar*, who thruſts himſelf into the Company of his Neighbours in any Pariſh, either in the Church, or at other publick Meetings, to their Annoyance. *Reg. Orig.* 237. The Writ lieth againſt thoſe *Lepers* that appear outwardly to be ſuch, by Sores on their Bodies, Smell, *&c.* and not againſt others: And if a Man be a *Leper*, and keep within his Houſe, ſo as not to converſe with his Neighbours; he ſhall not be removed. *New Nat. Br.* 521.

Le Roy le veut, Words by which the *Royal Aſſent* is ſignified by the Clerk of the Parliament to publick Bills; and to a private Bill the King's Anſwer is, *Soit fait comme il eſt deſire.*

Le Roy ſe Aviſera. And by theſe Words to a Bill, preſented to the King by his Houſes of Parliament, are underſtood his Denial of that Bill.

Leſchewes, Trees fallen by Chance, or Windfalls. *Broke's Abr.* 341.

Leſia, A Leaſh of Greyhounds, now reſtrained to the Number of Three, but formerly more. *Spelm.*

Leſpegend, (Sax. *Leſ-pegen*) *Baro Minor. Hominibus quos Angli* Leſpegend *nuncupant, Dani vero* Young Men *vocant, &c.* Conſtitut. Canut. de Foreſta, Art. 2.

Leſſa, A Legacy; and from this Word alſo *Leaſe* is derived. *Mon. Ang. Tom.* 1. *pag.* 562.

Leſſor and Leſſee, The Parties to a Leaſe. See *Leaſe.*

Leſtage, Mentioned in ſome Writers, is the ſame as *Laſtage.*

Leſues or Leſwes, Is a Word ſignifying Paſtures, in many Places of *England*, and often inſerted in Deeds and Conveyances. *Domeſd.*

Letare Jeruſalem, Was uſed for the cuſtomary Oblations made on *Midlent Sunday*, when the proper Hymn was *Lætare Jeruſalem*, *&c.* by the Inhabitants within a Dioceſe to the Mother Cathedral Church; and theſe voluntary Offerings on that Day, were by Degrees ſettled into an annual Compoſition or pecuniary Payment, charged on the Parochial Prieſt, who was preſumed to receive them from the People of his Congregation, and obliged to return them to the Cathedral Church; and this among other Burdens was at length thrown on the oppreſs'd Vicars, as appears by the Ordination of the Vicarage of *Erdele*, in the Archdeaconry of *Huntingdon*, *Anno* 1290, where it is provided, *Qui quidem Vicarius* *ſolvet Synodalia*, Lætare Jeruſalem, *&c.* From the antient Cuſtom of Proceſſions at that Time, began the Practice which is ſtill retained in many Parts of *England*, of *Mothering*, or going to viſit Parents on *Midlent Sunday*. See *Quadrageſimalia.*

Letters of Abſolution, (*Literæ Abſolutoriæ*) Or abſolvatory Letters, were ſuch in former Times, when an Abbot releaſed any of his Brethren *ab omni ſubjectione & Obedientia, &c.* And made them capable of entering into ſome other Order of Religion. *Mon. Faverſhamenſi, pag.* 7.

Letter of Attorney, (*Litera Attornati*) Is a Writing, authoriſing an *Attorney* to do any lawful Act in the Stead of another: As to give Seiſin of Lands; receive Debts, or ſue a third Perſon, *&c.* And *Letters of Attorney* are either General or Special. *Weſt. Symb. par.* 1. *Stat.* 7 *R.* 2. *c.* 13. The Nature of this Inſtrument is to give the Attorney the full Power and Authority of the Maker, to accompliſh the Act intended to be perform'd: And ſometimes theſe Writings are *revocable*, and ſometimes not ſo; but when they are revocable, it is uſually a bare Authority only; and they are *irrevocable* when Debts, *&c.* are aſſigned to another, in which Caſe the Word *irrevocable* is inſerted. In Caſes of *Letters of Attorney*, the Authority muſt be ſtrictly purſued: If it be to deliver Livery and Seiſin of Lands between certain Hours, and the Attorney doth it before or after; or in a Capital Meſſuage, and he does it in another Part of the Land, *&c.* the Act of the Attorney to execute the Eſtate ſhall be void. *Plowd.* 475. But notwithſtanding the ancient Opinions for purſuing Authorities with great Strictneſs and Exactneſs, yet in Caſe of Livery and Seiſin they have been always favourably expounded of later Times, unleſs where it hath appeared, that the Authority was not purſued at all; as if a *Letter of Attorney* be made to three, two cannot execute it, becauſe they are not the Parties delegated, and they do not agree with the Authority. 2 *Mod. Rep.* 79. Where the Attorney does leſs than the Authority mentions, it is void: It is ſaid if he doth more, it may be good for ſo much as he had Power to do. 1 *Inſt.* 258. There were two Attornies made jointly and ſeverally, to deliver Seiſin of Lands, *&c.* and one of them delivered Seiſin of Part of the Land, and after another Attorney being Tenant thereof for Years, gave Livery of the other Part of the Land: This was held good, tho' made at ſeveral Times. 1 *And.* 247. And if a Man make a Deed of Feoffment of Lands in divers Counties, with ſuch a *Letter of Attorney*, the Livery muſt be at ſeveral Times; otherwiſe it cannot be made. *Ibid.* See 1 *Leon.* 260, 192. If a Mayor and Commonalty make a Feoffment of Lands, and execute a *Letter of Attorney* to deliver Seiſin; the Livery and Seiſin, after the Death of the Mayor, will be good, by Reaſon the Corporation dieth not. 1 *Inſt.* 52. In other Caſes, by the Death of the Party giving it, the Power given by *Letter of Attorney* generally determines. A Perſon made a *Letter of Attorney* to a Creditor to receive all his Wages and Pay due from a Ship, and afterwards died at Sea; this Authority was adjudged to be ſo determined, that all the reſt of the Creditors ſhould have a Share in his Adminiſtration. *Preced. Canc.* 125. 2 *Vern.* 391.

Letters Claus, (*Literæ Clauſæ*) *Cloſe Letters*, oppos'd to *Letters Patent*; being commonly ſealed up with the King's Signet or Privy Seal; whereas the *Letters Patent* are left open and ſealed with the Broad Seal.

Letter of Credit, Is where a Merchant or Correſpondent writes a *Letter* to another, requeſting him to credit the Bearer with a certain Sum of Money. *Merch. Dict.*

Letters of Exchange, (*Literæ Cambii*) *Reg. Orig.* 194. See *Bills of Exchange.*

Letter of Licence, Is an Inſtrument or Writing made by Creditors to a Man that hath failed in his Trade, allowing him longer Time for the Payment of his Debts, and protecting him from Arreſts in going about his Affairs. Theſe *Letters of Licence* give Leave to the Party to whom granted to reſort freely to his Creditors, or any others, and to compound Debts, *&c.* And the Creditors covenant, that if the Debtor ſhall receive any Moleſtation or Hindrance from any of them, he ſhall be acquitted and diſcharged of his Debt againſt ſuch Creditor, *&c.* See my *Accomp. Conveyanc. Vol.* 1.

Letters of Marque, Are extraordinary Repriſals for Reparation to Merchants taken and deſpoiled by Strangers at Sea, grantable by the Secretaries of State, with the Approbation of the King and Council; and uſually in Time of War, *&c.* *Lex Mercat.* 173. If a *Letter of Marque* wilfully and knowingly take a Ship and Goods belonging to another Nation, not of that State againſt whom the Commiſſion is awarded, but of ſome other in Amity, this amounts to a downright Piracy. *Roll. Abr.* 530. See *Repriſal.*

Letters Patent, (*Literæ Patentes*) Sometimes called *Letters Overt*, are Writings of the King ſealed with the Great Seal of *England*, whereby a Perſon is enabled to do or enjoy that which otherwiſe he could not; and ſo called, becauſe they are *open* with the Seal affixed, and ready to be ſhewn for Confirmation of the Authority thereby given. 19 *H.* 7. *cap.* 7. And we read of *Letters Patent* to make Denizens, *&c.* 32 *Hen.* 6. *c.* 16. 19 *Hen.* 3. *c.* 18. *Letters Patent* may be granted by common Perſons, but in ſuch Caſe they are properly *Patents*; yet for Diſtinction, the King's *Letters Patent* have been called *Letters Patent Royal.* Anno 2 H. 6. *c.* 10. *Letters Patent* conclude with *Teſte me ipſo, &c.* 2 Inſt. 78. See *Patents.*

Levant and Couchant, Is a Law-Term for Cattle that have been ſo long in the Ground of another, that they have *lain down*, and are *riſen again* to feed; in ancient Records writ *Levantes & Cubantes.* When the Cattle of a Stranger are come into another Man's Ground, and have been there a good Space of Time, (ſuppoſed to be a Day and a Night) they are ſaid to be *Levant and Couchant. Terms de Ley* 424. 2 *Lill. Abr.* 167. Beaſts of a Stranger on the Lord's Ground may be diſtrained for Rent, though they have not been *Levant* and *Couchant*; but it is otherwiſe if the Tenant of the Land is in Fault in not keeping up his Mounds, by Reaſon whereof the Beaſts eſcape upon the Land. *Wood's Inſt.* 190. See *Diſtreſs.*

Levanum, (From the Lat. *Levare*, to make lighter) Is leavened Bread.

Levari facias, A Writ directed to the Sheriff for levying a Sum of Money upon a Man's Lands and Tenements, Goods and Chattels, who has forfeited his Recognizance. *Reg. Orig.* 298. This Writ is given by the Common Law, before the Statute *Weſtm.* 2. *cap.* 18. gave the Writ of *Elegit*; and a *Levari facias* commands the Debt to be levied *de exitibus & proficuis Terræ, &c.* And Cattle of a Stranger on the Land have been held Iſſues of the Land, which is Debtor. 1 *Salk.* 395. On a Judgment in an inferior Court, and a *Levari facias*, whereupon a Warrant was made to levy the Debt *de Terris & Catallis*, it was adjudged that the Precept ought to be to levy the Money *de Terris, Bonis & Catallis, &c.* 2 *Lutw.* 1410. A *Levari facias* in Debt lies againſt a Parſon, directed to the Biſhop, *&c.* to levy the Money of his Spiritual Goods. 13 *H.* 4. 17. When a Year and Day is paſt, after the Day of Payment by the Recognizance, there ſhould be anciently a *Writ of Debt*; but now a *Scire facias, &c.*

Form of a *Writ* of *Levari facias*.

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: Becauſe* A. B. *of*, &c. *ought to have paid* C. D. *twenty Pounds, at the Feaſt of St.* Michael, *in the Year of our Reign*, &c. *as it appears to us by Inſpection of the Rolls of our Chancery, and that hath not yet paid to him, as is ſaid: We command you, that the aforeſaid Money of the Lands, Goods and Chattels of the ſaid* A. *in your Bailiwick, without Delay*, you cauſe to be levied, *ſo that you may have it in our Chancery the Morrow of the Nativity of St.* John Baptiſt *next coming, whereſoever then it ſhall be, to the aforeſaid* C. *there to be delivered*; *and this in no wiſe omit: And have you there this Writ*, &c.

There is a *Levari facias damna Diſſeiſitoribus*, for the levying of Damages, wherein the Diſſeiſor has formerly been condemned to the Diſſeiſee. *Reg. Orig.* 214. Alſo *Levari facias Reſiduum debiti*, to levy the Remainder of a Debt upon Lands and Tenements, or Chattels of the Debtor, where Part has been ſatisfied before. *Reg. Orig.* 299. And a *Levari facias quando Vicecomes retornavit quod non habuit emptores*, commanding the Sheriff to ſell the Goods of the Debtor, which he has taken, and returned that he could not ſell. *Reg. Orig.* 300.

Levari fœnum, Signifies to make Hay; and *Una Levatio fœni*, was one Day's Hay-making; a Service paid to Lords by their inferior Tenants. *Paroch. Antiq.* 320.

Leuca, Is a Meaſure of Land, conſiſting of fifteen hundred or two thouſand Paces; and in the *Monaſticon*, it is four hundred and eighty Perches, which is a Mile. *Mon. Ang. Tom.* 1. *pag.* 313.

Leucata, Has the ſame Signification: *De Boſco, &c. continen. unam* Leucatam *in Latitudine, & dimidium in Longitudine.* Mon. Angl. Tom. 1.

Levy, (*Levare*) Is uſed in the Law for to collect, or exact; as to levy Money, &c. And ſometimes to erect, or caſt up; as to levy a Ditch, &c. And to *levy* a Fine of Land, is the uſual Term: In ancient Time, the Word *Rere* a Fine, was made Uſe of. 17 *H.* 6.

Lewdneſs, Is puniſhable by our Law by Fine, Impriſonment, &c. And *Mich.* 15 *Car.* 2. a Perſon was indicted for open *Lewdneſs* in ſhewing his naked Body in a Balcony, and other Miſdemeanors, and was fined 2000 Marks, impriſoned for a Week, and bound to the Good Behaviour for three Years. 1 *Sid.* 168. In Times paſt, when any Man granted a Leaſe of his Houſe; it was uſual to inſert an expreſs Covenant, that the Tenant ſhould not entertain any *lewd* Women, &c. See *Bawdy-houſe.*

Lex, A Law for the Government of Mankind in Society. *Litt. Dict.* And it is alſo taken for a Purgation. *Leg. H.* 1. *c.* 62.

Lex Brehonia, The *Brehon* or *Iriſh* Law, overthrown by K. *John.*

Lex Bretoiſe, Was the Law of the ancient *Britains*, or *Marches of Wales.* Lex Marchiarum.

Lex Deraiſnia, Deraiſnia *eſt* Lex *quædam in* Normannia *conſtituta, per quam in ſimplicibus querelis inſecutus factum, quod a parte adverſa ei objicitur, ſe non feciſſe declarat.* And it is the Proof of a Thing, which one denies to be done by him, where another affirms it; defeating the Aſſertion of his Adverſary, and ſhewing it to be againſt Reaſon or Probability: This was uſed among the *Old Romans*, as well as the *Normans.* Grand Cuſtumar. c. 126.

Lex Judicialis, Is properly *Purgatio per Judicium Ferri*; ſometimes called *Judicium.* Leg. H. 1.

Lex Sacramentalis, i. e. *Purgatio per Sacramentum.* Leg. H. 1. c. 9.

Lex Talionis, Is *Juris poſitivi*; and the *Taliones* among the *Jews*, were converted into pecuniary Eſtimates, ſo that the Price of an Eye, &c. loſt was allowed to the Perſon injured. 1 *Hale's Hiſt. P. C.* 12.

Lex Wallenſica, The Law of *Wales.* Stat. Walliæ.

Ley, The *French* Word for Law, as *Les Termes de la Ley.*

Ley gager, Is uſed for *Wager of Law.* 1 Car. 1. cap. 3.

Leys, Paſture Grounds in ſeveral Counties of this Kingdom are called *Leys*, and ſo uſed in *Domeſd.*

Libel, (*Libellus*) Signifies literally a little Book; but by Uſe, it is the original Declaration of any Action in the *Civil Law.* 1 *Hen.* 5. *cap.* 3. 2 *Ed.* 6. *c.* 13. It ſignifieth alſo a ſcandalous Report of any Man ſpread abroad, or otherwiſe unlawfully publiſhed, and then called *Famoſus Libellus*, an infamous *Libel*: And this is either *in Scriptis, aut ſine Scriptis*; *in Scriptis* is when any Writing is compoſed or publiſhed to another's Diſgrace, &c. And *ſine Scriptis*, where the Perſon is painted in a ſhameful Manner, with a Fool's Coat, Aſſes Ears, &c. or a Gallows, or other ignominious Sign is fixed at his Door. 3 *Inſt.* 174. *Seneca* calls defamatory *Libels Contumelioſi Libelli*, and *Bracton Carmina Famoſa*; contumelious *Libels*, and infamous Rhimes, which flow from Malice; and the *Romans* would not permit their Lives and Fame to be ſubject to the Injury and Scandal of Poets; for they made an Ordinance, that whoſoever ſhould preſume to compoſe any ſuch Verſes, were to be puniſhed with Death. *Treat. of Laws* 75. 'Tis obſerved in our Law, that a *Libel* is the greateſt Degree of Scandal, and does not die like Words which may be forgot, an Action for which is confined to the Perſon; but the Cauſe of Action for Scandal in a *Libel* ſurvives. 5 *Rep.* 125. A *Libel* in a ſtrict Senſe is a malicious Aſperſion of another, expreſſed in Printing or Writing; and tending either to blacken the Memory of one who is dead, or the Reputation of one that is alive, and to expoſe him to publick Hatred, Contempt, or Ridicule: But in a larger Signification, it may be applied to any Defamation whatſoever. *Ibid.* 121. All *Libels* are made againſt private Men, or Magiſtrates, and publick Perſons; and thoſe againſt Magiſtrates deſerve the greateſt Puniſhment: If a *Libel* be made againſt a private Man, it may excite the Perſon *libelled*, or his Friends, to revenge and break the Peace; and if againſt a Magiſtrate, it is not only a Breach of the Peace, but a Scandal to the Government, and ſtirs up Sedition. *Ibid.* And although a private Perſon or Magiſtrate be dead at the Time of Making the *Libel*, yet it is puniſhable; as it has a Tendency to the Breach of the Peace. *Hob.* 215. And with Regard to this Conſideration, it is far from being a Juſtification of a *Libel*, that the Contents thereof are true, or that the Perſon upon whom made had a bad Reputation; ſince the greater Appearance there is of Truth in any malicious Invective, ſo much the more provoking it is. 5 *Rep.* 125. *Moor* 627. It is not material whether the Matter be true or falſe, if the Proſecution be by Information or Indictment; but in Action on the Caſe, one may juſtify that the Matter is true. 5 *Rep.* 125. *Hob.* 253. When any Man finds a *Libel*, if it be againſt a private Perſon, he ought to burn it, or deliver it to a Magiſtrate; and where it concerns a Magiſtrate, he ſhould deliver it preſently to a Magiſtrate. *Ibid.* If a *Libel* be found in a Houſe, the Maſter cannot be puniſhed for Framing, Printing and Publiſhing it; but it is ſaid he may be indicted for having it, and not delivering it to a Magiſtrate. 1 *Vent.* 31. If a Printer print a *Libel* againſt a private Perſon, he may be indicted and puniſhed for it; and ſo he may who prints a *Libel* againſt a Magiſtrate, and much more one who does it againſt the King and State: Nor can a Perſon in ſuch a Caſe excuſe himſelf by ſaying they were dying Speeches, or the Words of dying Men; for a Man may at his Death juſtify his Villany; and he who publiſhes it is puniſhable: And it is no Excuſe for the Printing or Publiſhing a *Libel*, to ſay that he did it in the Way of Trade, or to maintain his Family. *State Trials*, 1 *Vol.* 982, 986. Alſo if Bookſellers, *&c.* publiſh or ſell *Libels*, tho' they know not the Contents of them, they are puniſhable. It has been reſolved, that where Perſons write, print, or ſell, any Pamphlets, ſcandalizing the Publick, or any private Perſons, ſuch *libellous* Books may be ſeiſed, and the Perſons puniſhed by Law; and all Perſons expoſing any Books to Sale, reflecting on the Government, may be puniſhed: Alſo Writers of News, though not ſcandalous, ſeditious, or reflecting on the Government, if they write falſe News, are indictable and puniſhable. *State Trials*, 2 *Vol.* 477. One was indicted for a *Libel* in ſcandalizing the King's Witneſſes, and reflecting on the Juſtice of the Nation, and had Judgment of Pillory and Fine. *Ibid.* 3 *Vol.* 50. A Perſon for *libelling* the *Lord Chancellor Bacon*, affirming that he had done Injuſtice, and other ſcandalous Matter, was ſentenced to pay 1000 *l.* Fine, to ride on a Horſe with his Face to the Tail from the *Fleet* to *Weſtminſter*, with his Fault written on his Head, to acknowledge his Offence in all the Courts at *Weſtminſter*, ſtand in the Pillory, and that one of his Ears ſhould be cut off at *Weſtminſter*, and the other in *Cheapſide*, and to ſuffer Impriſonment during Life. *Poph.* 135. One who exhibited a *Libel* againſt a *Lord Chief Juſtice*, directed to the King, calling the Chief Juſtice, *Traitor*, *perjured Judge*, *&c.* had Judgment to ſtand in the Pillory, was fined 1000 Marks, and bound to the Good Behaviour during Life. *Cro. Car.* 125. The *Petition* of the *Seven Biſhops* in the Reign of King *James* 2. againſt the King's Declaration, ſetting forth, that it was founded on a diſpenſing Power, which had been declared illegal in Parliament, *&c.* was called a ſeditious *Libel* againſt the King; and they refuſing to give Recognizances to appear in *B. R.* were committed to the *Tower*; but being after tried at Bar, were acquitted. 3 *Mod.* 212. The Printing of a Petition to a Committee of Parliament, (which would be a *Libel* againſt the Party complained of, were it made for any other Purpoſe) and delivering Copies thereof to the Members of the Committee, is not the Publication of a *Libel*, being juſtified by the Order and Courſe of Proceedings in Parliament. 1 *Hawk. P. C.* 196. And ſcandalous Matter in legal Proceedings by Bill, Petition, *&c.* in a Court of Juſtice, amounts not to a *Libel*, if the Court hath Juriſdiction of the Cauſe. *Dyer* 285. 4 *Rep.* 14. But he who delivers a Paper full of Reflections on any Perſon, in Nature of a Petition to a Committee, to any other Perſons except the Members of Parliament who have to do with it, may be puniſhed as the Publiſher of a *Libel.* 1 *Hawk.* 196. And by the better Opinion, a Perſon cannot juſtify the Printing any Papers which import a Crime in another, to inſtruct Counſel, *&c.* but it will be a *Libel. Sid.* 414. Sending an abuſive Letter to one, without publiſhing it to others, is no *Libel*; but if it be ſent to a third Perſon, or any Ways diſperſed, it is a Publication of the *Libel:* And though ſending a ſcandalous Letter to the Party himſelf is not a *Libel*, nor can any Action be brought upon it, becauſe it is no Publication; yet it is an high Offence. 12 *Rep.* 34. 1 *Lev.* 139. 2 *Brownl.* 157. It is an Offence againſt the King's Peace, puniſhable by Indictment; and if Copies of it are afterwards diſperſed, it aggravates the Crime, or rather makes it a new Crime, for which the Party may have an Action. *Poph.* 35. *Hob.* 62. Writing a Letter to a Man, and abuſing him for his publick Charities, *&c.* is a *libellous* Act, puniſhable by Indictment. *Hob.* 215. And a private *Libel*, for a private Matter, as a Letter ſcandalizing a Perſon courting a Woman, is indictable, and fineable to the King. *Sid.* 270. No Writing is eſteemed a *Libel*, unleſs it reflect upon ſome particular Perſon; and a Writing full of obſcene Ribaldry, is not puniſhable by any Proſecution at Common Law; but the Author may be bound to the Good Behaviour, as a Perſon of evil Fame. 1 *Hawk.* 195. Where a Writing inveighs againſt Mankind in general, or againſt a particular Order of Men, this is no *Libel*; it muſt deſcend to Particulars and Individuals, to make it a *Libel*. *Trin.* 11 *W.* 2. *B. R.* But a general Reflection on the Government is a *Libel*, though no particular Perſon is reflected on: And the Writing againſt a known Law is held to be criminal. *State Trials*, 4 *Vol.* 672, 903. According to *Holt* C. Juſt. ſcandalous Matter is not neceſſary to make a *Libel*; it is enough if the Defendant induces an ill Opinion to be had of the Plaintiff, *&c.* And if a Man ſpeak ſcandalous Words, unleſs they are put in Writing, he is not guilty of a *Libel*; for the Nature of a *Libel* conſiſteth in putting the infamous Matter into Writing. 2 *Salk.* 417. 3 *Salk.* 226. A defamatory Writing, expreſſing only one or two Letters of a Man's Name, if it be in ſuch a Manner that from what goes before and follows after, it muſt be underſtood by the natural Conſtruction of the Whole, to ſignify and point at ſuch a particular Perſon, is as properly a *Libel* as if the whole Name were expreſſed at large. *Trin.* 12 *Ann.* 1 *Hawk.* 194. Printing or Writing may be *libellous*, though the Scandal is not charged directly, but obliquely and ironically; and where a Writing pretends to recommend to one the Characters of ſeveral great Men for his Imitation, inſtead of taking Notice of what they are generally famous for, pitches on ſuch Qualities only which their Enemies charge them with the Want of; as by propoſing ſuch a one to be imitated for his Learning, who is known to be a good Soldier, but an illiterate, *&c.* this will amount to a *Libel. Ibid.* In the making of *Libels*, if one Man dictates, and another writes a *Libel*, both are guilty; for the Writing after another ſhews his Approbation of what is contained in the *Libel*; and the firſt Reducing a *Libel* into Writing may be ſaid to be the Making it, but not the Compoſing: If one repeats, another writes, and a third approves what is written, they are all Makers of the *Libel*; becauſe all Perſons who concur to an unlawful Act are guilty. 5 *Mod.* 167. The Making a *Libel* is the Genus; and Compoſing and Contriving is one Species; Writing, a ſecond Species; and procuring to be written, a Third; and one may be found guilty of Writing only, *&c.* 2 *Salk.* 419. If one writes a Copy of a *Libel*, and does not deliver it to others, the Writing is no Publication: But it has been adjudged, that the Copying a *Libel*, without Authority, is Writing a *Libel*, and he that thus writes it, is a Contriver; and that he who hath a written Copy of a known *Libel*, if it is found upon him, this ſhall be Evidence of the Publication; but if ſuch *Libel* be not publickly known, then the bare having a Copy is not a Publication. 2 *Salk.* 417. 2 *Nelſ. Abr.* 1122. Writing a Copy of a *Libel* is Writing of a *Libel*, as it has the ſame pernicious Conſequence; and if the Law were otherwiſe, Men might write Copies, and print them with Impunity. 2 *Salk.* 419. And when a *Libel* appears under a Man's own Handwriting, and no Author is known, he is taken in the Manner, and it turns the Proof upon him; and if he cannot produce the Compoſer, it is hard to find that he is not the very Man. *Ibid.* If one reads a *Libel*, or hears it read, and laughs at it, it is not a Publiſhing; for before he reads or hears it read, he cannot know it to be a *Libel:* Though if he afterwards reads or repeats it, or any Part thereof, in the Hearing of others, it is a Publication of it; yet if Part of it be repeated in Mirth, without any malicious Purpoſe of Defamation, it is ſaid to be no Offence. 9 *Rep.* 59. *Moor* 862. Every one convicted of Publiſhing a *Libel*, ought to be eſteemed the Contriver or Procurer: The Procurer and Writer of a *Libel* have been held to be both Contrivers; alſo the Procuring another to publiſh it, and the Publiſher, are both Publiſhers: And the Contriver, Procurer, and Publiſher of a *Libel*, are puniſhable by Fine, Impriſonment, Pillory, or other corporal Puniſhment, at the Diſcretion of the Court, according to the Heinouſneſs of the Crime, *&c.* *Moor* 627. 5 *Rep.* 125. 3 *Inſt.* 174. 3 *Cro* 17. In Informations and Law Proceedings there are two Ways of deſcribing a *Libel*, by the Senſe, and by the Words; the firſt is *cujus Tenor ſequitur*, and the ſecond *Quæ ſequitur in hæc Anglicana verba*, *&c.* in which the Deſcription is by particular Words, and whereof every Word is a Mark, ſo that if there is any Variance, it is fatal; in the other Deſcription by the Senſe, it is not material to be very exact in the Words, becauſe the Matter is deſcribed by the Senſe of them. 2 *Salk.* 660. One great Intention of the Law in prohibiting *Libels* againſt Perſons, is to reſtrain Men from endeavouring to make themſelves their own Judges of Complaints, and to oblige them to refer the Deciſion thereof to the Law, *&c.*

Libel, in the *Spiritual* Court. If upon a *Libel* for any Eccleſiaſtical Matter, the Defendant make a Surmiſe in *B. R.* to have a *Prohibition*, and ſuch Surmiſe be inſufficient the other Party may ſhew it to the Court, and the Judges will diſcharge it. 1 *Leon.* 10, 128. This *Libel* uſed in Eccleſiaſtical Proceedings, conſiſts of three Parts. 1. The major Propoſition, which ſhews a juſt Cauſe of the Petition. 2. The Narration or minor Propoſition. 3. The Concluſion, or concluſive Petition, which conjoins both Propoſitions, *&c.* and the Form of it is as follows: *In the Name of God, Amen*, Before you the Worſhipful *T. F.* Doctor of Laws, Principal Official of the Conſiſtory Court of *York*, *&c.* The Party *C. D.* againſt *A. B.* alledgeth, complaineth, and propoundeth, *&c.* *Imprimis*, he doth propound, that the ſaid *C. D.* was and is a Man very honeſt, juſt and upright, of good Fame, Life and Converſation, aſperſed or defamed with no Crime, except what is afterwards mentioned; and is commonly reputed and eſteemed as ſuch, *&c.* *Item*, That notwithſtanding the Premiſſes, the ſaid *A. B.* out of a malign Spirit, in the Month of, *&c.* in this preſent Year 1734, within the Pariſh of, *&c.* maliciouſly, and with an Intent of defaming and injuring the ſaid *C. D.* hath defamed and injured him, and ſaid ſome reproachful and defamatory Words of and againſt him the ſaid *C. D.* and eſpecially theſe Words following, *viz.* That, *&c.* (here ſet forth the Words) and the Party doth propound and Article, as to ſuch Time and Manner of ſpeaking the Words, *&c.* *Wherefore*, Proof being made in and upon the Premiſſes, the Party *C. D.* doth requeſt and petition that the ſaid *A. B.* for ſuch his Raſhneſs, may be corrected and puniſhed; and alſo that he may be condemned in Charges, made in this Cauſe on the Behalf of the ſaid *C. D.* *&c.* (or to diſown the ſaid defamatory Words, *&c.*) or otherwiſe that Right and Juſtice may be adminiſtred, *&c.*

Libera Batella, Signifies a free Boat.——— *Per* Liberam Batellam, *hoc eſt, habere unam Cymbam ad Piſcand. ſubter Pontem Ceſtriæ, &c. & ibidem cum omni genere retium.* Plac. in Itin. apud Ceſtriam. 14 *H.* 7.

Libera Chaſca habenda, Is a judicial Writ granted to a Perſon for a *free Chaſe* belonging to his Manor; after Proof made by Inquiry of a Jury, that the ſame of Right belongs to him. *Reg. Orig.* 36.

Libera Piſcaria, A Free Fiſhery, which being granted to one, he hath a Property in the Fiſh, *&c.* 2 *Salk.* 637. See *Fiſhing*.

Liber Taurus, A free Bull. *Compertum per Jur. quod* Will de H. *fuit ſeiſitus de* Libero Tauro *habendo in, &c. Ideo Conſideratum eſt, quod prædictus* Will. *recuperet damna ſua quæ taxantur per Jur. ad* 10 *s. pro imparcatione ejuſdem Tauri, &c.* Norf. 16 Ed. 1.

Liberate, Is a Writ that lies for the Payment of an yearly Penſion, or Sum of Money granted under the Great Seal, and directed to the Treaſurer and Chamberlains of the Exchequer, *&c.* for that Purpoſe. In another Senſe it is a Writ to the Sheriff of a County, for the Delivery of Poſſeſſion of Lands and Goods extended, or taken upon the Forfeiture of a Recognizance. Alſo a Writ iſſuing out of the *Chancery* directed to a Gaoler for Delivery of a Priſoner that hath put in Bail for his Appearance. *F. N. B.* 132. 4 *Inſt.* 116. This Writ is moſt commonly uſed for Delivery of Goods, *&c.* on an *Extent*; and by the Extent the Conuſee of a Recognizance hath not any abſolute Intereſt in the Goods, until the *Liberate*. 2 *Lill.* 169. It has been adjudged, that where an Extent is upon a Statute-Merchant, there needs no *Liberate*, for the Sheriff may deliver all in Execution without it; but where an Extent is upon a Statute-Staple, or a Recogniſance, there muſt be a Return made of ſuch an Extent, and then a *Liberate* before there can be a Delivery in Execution. 3 *Salk.* 159. See *Extent.*

Liberatio, Is taken for Money, Meat, Drink, Clothes, *&c.* yearly given and *delivered* by the Lord to his Domeſtick Servants. *Blount.*

Libertate probanda, Is an ancient Writ that lay for ſuch as being demanded for Villeins offered to prove themſelves free; directed to the Sheriff that he ſhould take Security of them for the Proving of their Freedom before the Juſtices of Aſſiſe, and that in the mean Time they ſhould be unmoleſted. *F. N. B.* 77. *Villenage*, and the Appendixes thereof, *viz.* Writs *De nativo habendo, Libertate probanda, &c.* were of old great Titles in the Books of the Law, but are now antiquated.

Libertatibus allocandis, A Writ lying for a Citizen or Burgeſs, impleaded contrary to his *Liberty*, to have his Privilege allowed. *Reg. Orig.* 262. And if any do claim a ſpecial Liberty to be impleaded within a City or Borough, and not elſewhere, there may be a ſpecial Writ *de Libertatibus allocandis*, to permit the Burgeſſes to uſe their Liberties, *&c.* Theſe Writs are of ſeveral Forms, and may be uſed by a Corporation, or by any ſingle Perſon, as the Caſe ſhall happen. *New Nat. Br.* 509, 510. The Barons of the *Cinque Ports*, *&c.* may ſue forth ſuch Writs, if they are delayed to have their Liberties allowed them. *Ibid.*

Libertatibus exigendis in Itinere, An ancient Writ whereby the King commands the *Juſtices in Eyre* to admit of an Attorney for the Defence of another Man's Liberty. *Reg. Orig.* 19.

Libertas Eccleſiaſtica, Church Liberty, is a frequent Phraſe in old Writers who treat of Eccleſiaſtical Immunities. The Right of Inveſtiture, extorted from our Kings by the *Papal* Power, was at firſt the only Thing challenged by the Clergy as their *Libertas Eccleſiaſtica*; but by Degrees under the Title of Church Liberty, they contended for a Freedom of their Perſons and Poſſeſſions from all ſecular Power and Juriſdiction, as appears by the Canons and Decrees of the Councils held by *Boniface*, Archbiſhop of *Canterbury*, at *Merton*, *Anno* 1258. And at *London*, *A. D.* 1260, *&c.*

Liberty, (*Libertas*) Is a Privilege held by Grant or Preſcription, by which Men enjoy ſome Benefit beyond the ordinary Subject. *Bract.* But in a more general Signification, it is ſaid to be a Power to do as one thinks fit; unleſs reſtrained by the Law of the Land: And it is well obſerved, that human Nature is ever an Advocate for this *Liberty*; it being the Gift of God to Man in his Creation, and therefore

fore every Thing is deſirous of it, as a Sort of Reſtitution to it's Primitive State. *Forteſcue* 96. 'Tis upon that Account the Laws of *England* in all Caſes favour *Liberty*, and which is counted very precious, not only in Reſpect of the Profit which every one obtains by his *Liberty*; but alſo in Reſpect of the Publick. 2 *Lill. Abr.* 169. The People of this Kingdom, are to enjoy their ancient *Liberties*, without Impeachment, by the Statute of *Magna Charta.* No Freeman ſhall be impriſoned or condemned, without Trial by his Peers, or the Law. *Magn. Chart. c.* 19. Likewiſe no Perſon is to be arreſted, *&c.* without Proceſs at Law: And Matters which concern *Liberty* are to be ſpeedily determined, *&c.*

Liberty to hold Pleas, Signifies to have a Court of one's own; and to hold it before a Mayor, Bailiff, *&c.* See *Franchiſe.*

Liblacum, The Manner of Bewitching any Perſon; alſo a barbarous Sacrifice. *Leg. Athelſtan. 6.*

Libra penſa, A Pound of Money in Weight: In former Times, it was uſual not only to tell the Money, but to weigh it; for beſides the King, ſeveral Cities and Places, and ſome Noblemen, had their Mints and the Coinage of Money, which being often very bad, therefore although the Pound conſiſted of 20*s.* as now, they weighed it notwithſtanding. *Gale's Hiſt. Britan.* 761. We read in *Domeſday* Regiſter, *reddit nunc trigint. Libras arſas & penſatas*; and that ſometimes People took their Money *ad Numerum*, by Tale, in the current Coin upon Content; and ſometimes they rejected the common Coin by Tale, and would melt it down to take it by Weight *ad Scalam*, when purified from the Droſs and too great Allay; for which Purpoſe they had in thoſe Days always a Fire ready in the Exchequer to burn the Money and then weigh it. *Domeſd.*

Library, Where a *Library* is erected in any Pariſh, it ſhall be preſerved for the Uſes directed by the Founder: And Incumbents and Miniſters of Pariſhes, *&c.* are to give Security therefore, and make Catalogues of the Books, *&c.* None of the Books ſhall be alienable, without Conſent of the Biſhop, and then only where there is a Duplicate of ſuch Books: If any Book ſhall be taken away and detained, a Juſtice's Warrant may be iſſued to ſearch for and reſtore the ſame: Alſo Action of Trover may be brought in the Name of the proper Ordinary, *&c.* And Biſhops have Power to make Rules and Orders concerning *Libraries*, appoint Perſons to view their Condition, and inquire of the State of them in their Viſitations. *Stat.* 7 *Ann. cap.* 14.

Librata terræ, Is a Quantity of Land containing four *Oxgangs:* But ſome ſay it is ſo much Ground only as is worth yearly 20*s.* of current Money. *Skene.* See *Fardingdeal.*

Licence, (*Licentia*) Is a Power or Authority given to a Man to do ſome lawful Act: And is a perſonal Liberty to the Party to whom given, which cannot be transferred over; but it may be made to a Man, or his Aſſigns, *&c.* 12 *H.* 7. 25. There may be a parol *Licence*, as well as by Deed in Writing; but if it be not for a certain Time, it paſſes no Intereſt. 2 *Nelſ. Abr.* 1123. And if there be no Time certain in the *Licence*; as if a Man *licenſe* another to dig Clay, *&c.* in his Land, but doth not ſay for how long, the *Licence* may be countermanded; though if it be until ſuch a Time, he cannot. *Poph.* 151. If a Leſſor *licences* his Leſſee, (who is reſtrained by Covenant from aliening without *Licence*) to alien, and ſuch Leſſor dies before he aliens, this is no Countermand of the *Licence:* So it is if the Leſſor grants over his Eſtate. *Cro. Jac.* 103. But where a Lord of a Manor for Life granteth a *Licence* to a Copyhold Tenant to alien, and dieth; the *Licence* is deſtroyed, and the Power of *Alienation* ceaſeth. 1 *Inſt.* 52. Copyhold Tenants leaſing their Copyhold for a longer Time than one Year, are to have a *Licence* for it; or they incur a Forfeiture of their Eſtates. 1 *Inſt.* 63. If any *Licence* is given to a Perſon and he abuſes it, he ſhall be adjudged a Treſpaſſer *ab initio.* 8 Rep. 146. *A.* grants to B. a Way over his Ground, or *Licence* to go through it to Church; by this none but B. himſelf may go in it: But if one give me *Licence* to go over his Land with my Plough, or to cut down a Tree therein, and take it away; by this, I may take what Help is needful to do the ſame. So if it be to hunt and kill and carry away Deer; not if it be to hunt and kill only. 12 *H.* 7. 25. 13 *H.* 7. 8 *Co. Rep.* 146. By *Licence* a Man may practice *Phyſick* and *Surgery* in *London*; and do divers other Things, by Statute 3 *H.* 8. *c.* 7, *&c.*

Licence to alien in Mortmain. Alienations in *Mortmain* to Eccleſiaſtical Perſons, *&c.* are reſtrained by ſeveral Statutes; but the King may grant *Licences* to any Perſon or Bodies Politick, *&c.* to *alien* or hold Lands in *Mortmain.* 27 Ed. 1. 7 & 8 W. 3. c. 37. See *Mortmain.*

Licence to ariſe, (*Licentia ſurgendi*) Is a Liberty or Space of Time given by the Court to a Tenant to *ariſe* out of his Bed, who is eſſoined *de malo lecti* in a real Action: And it is alſo the Writ thereupon. *Bracton.* And the Law in this Caſe is, that the Tenant may not ariſe or go out of his Chamber, until he hath been viewed by Knights thereto appointed, and hath a Day aſſigned him to appear: the Reaſon whereof is, that it may be known, whether he cauſed himſelf to be eſſoined deceitfully, or not; and if the Demandant can prove that he was ſeen abroad before the View or *Licence* of the Court, he ſhall be taken to be deceitfully eſſoined, and to have made Default. *Bracton, lib.* 5. *Fleta, lib.* 6. *cap.* 10.

Licence to found a Church, granted by the King. See *Church.*

Licence to go to Election of Biſhops is by *Conge de' Eſlire* directed to the Dean and Chapter to elect the Perſon named by the King, *&c. Reg. Writs* 294. *Stat.* 25 *H.* 8. *c.* 20.

Licence of the King to go beyond Sea, may be revoked before the Time expires, becauſe it concerns the publick Good. *Jenk. Cent.* See *Ne exeat Regnum.*

Licence of Marriage. Biſhops have Power to grant *Licences* for the Marrying of Perſons; and Parſons marrying any Perſon without Publiſhing the Bands of Matrimony, or without *Licence*, incur a Forfeiture of 100 *l.* *&c.* by Statute 7 & 8 *W.* 3. *cap.* 35.

Licence to erect a Park, Warren, &c. See *Park* and *Warren.*

Licentia concordandi, Is that Licence for which the *King's Silver* is paid on paſſing a Fine, mentioned in the Statute 12 *Car.* 2. *c.* 12.

Licentia Transfretandi, Is a Writ or Warrant directed to the Keeper of the Port of *Dover*, or other Sea Port, commanding them to let ſuch Perſons paſs over Sea, who have obtained the King's Licence thereunto. *Reg. Orig.* 193.

Lidford Law, Is a *proverbial* Speech, intending as much as to hang a Man firſt, and judge him afterwards.

Liege, (*Ligeus*) Is uſed for *Liege Lord*, and ſometimes for *Liege Man: Liege Lord* is he that acknowledgeth no Superior; and *Liege Man* is he which oweth Allegiance to his *Liege Lord.* 34 & 35 *H.* 8. The King's Subjects are called *Liege People*, becauſe they owe and are bound to pay Allegiance to him. *Stat.* 8 *H.* 6. *c.* 10. 14 *H.* 8. *c.* 2. But in antient Times, private Perſons, as Lords of Manors, *&c.* had their *Lieges.* *Skene* ſaith, that this Word is derived from the Ital. *Liga*, a Bond or League; others derive it from *Litis*, which is a Man wholly at the Command of the Lord. *Blount.*

Ligeance, (*Ligeantia*) Is the true and faithful Obedience of a Subject to his Sovereign: And is alſo applied to the Territory and Dominion of the *liege Lord*; as Children born out of the *Ligeance* of the King, &c. *Stat.* 25 *Ed.* 3. *Co. Litt.* 129.

Ligeancy, (*Ligeantia*) Is ſuch a Duty or Fealty, as no Man may owe or bear to more than one Lord; and therefore it is uſed for that Duty and Allegiance, which every good Subject oweth to his *liege* Lord the King. It has been thus defined, Ligeantia *eſt Vinculum arctius inter Subditum & Regem utroſque invicem connectens; hunc ad Protectionem & juſtum regimen, illos ad Tributa & debitam ſubjectionem.* As there is a mutual Connection of Dominion and Fidelity between Lords and Tenants, ſo there is a higher and greater Connection between the King and Subject: For the Subject oweth to the King his faithful Obedience and ought to prefer the Service of his Prince and Country before the Safety of his Life; and the Sovereign is to protect and defend his Subjects. *Forteſcue.* See *Allegiance.*

Lien, (*Fr.*) Is a Word uſed in the Law, of two Significations: *Perſonal Lien,* ſuch as a Bond, Covenant or Contract; and *Real Lien,* a Judgment, Statute, Recognizance, which oblige and affect the Land. *Terms de Ley* 427.

Lieu, Inſtead or in Place of another Thing. *Lit. Dict.* And when one Thing doth come in the Place of another, it ſhall be of the ſame Nature as that was; as in Caſe of an Exchange, &c. 2 *Shep. Abr.* 359.

Lieu conus, In Law Proceedings, ſignifies a Caſtle, Manor, or other notorious Place, well known and generally taken Notice of by thoſe that dwell about it. 2 *Lill. Abr.* 641. A *Venire facias,* for a Jury to appear, may be from a *Lieu Conus:* And a Fine or Recovery of Lands in a *Lieu Conus,* is good; but it is ſaid in a *Scire fac.* to have Execution of ſuch Fine, the Vill or Pariſh muſt be named. 2 *Cro.* 574. 2 *Mod. Rep* 48, 49.

Lieutenant, (*Locum tenens*) Is the King's Deputy, or he that exerciſes the King's or any Other's Place, and repreſents his Perſon; as the *Lieutenant of Ireland. Stat.* 4 *Hen.* 4. *c.* 6. and 2 & 3 *Ed* 6. *c.* 2. The *Lieutenant of the Ordnance.* 39 *Eliz. cap.* 7. And the *Lieutenant of the Tower,* an Officer under the *Conſtable,* &c. And the Word *Lieutenant* is uſed for a military Officer, next in Command to the Captain.

Life, (*Vita*) Is common Nature; and the *Life* of every Man is under the Protection of the Law. *Wood's Inſt.* 11. A Leaſe made to a Perſon *during Life,* is determinable by a civil Death; but if it be to hold during *natural Life,* it will be otherwiſe. 2 *Rep.* 48.

Life-Rent, A Rent which a Man receives for Term of *Life,* or for Suſtentation of it. *Skene.*

Lighter-men, Are thoſe that carry away by Water, Dung and Rubbiſh, or Coals, &c. in *Lighters,* from the City of *London.* 22 & 23 *Car.* 2.

Light-Houſe, A uſeful *Light* to be placed in a *Light-houſe* erected on the *Ediſtone,* by the Maſter, Wardens and Aſſiſtants of *Trinity-houſe* of *Deptford-Strond*; and Maſters of Ships paſſing by the ſame, are to pay a certain Tonnage Duty, &c. *Stat.* 4 & 5 *Ann.* The like Act concerning the *Light-houſe* built by *William Trench,* Eſq; on the Iſland or Rock called *Skerries,* near *Holyhead* in the County of *Angleſea.* 3 *Geo.* 2. *cap.* 36.

Lights, Stopping *Lights* of a Houſe is a Nuſance; but ſtopping a Proſpect is not, being only Matter of Delight, not of Neceſſity: And a Perſon may have either an *Aſſiſe of Nuſance* againſt the Perſon erecting any ſuch Nuſance, or he may ſtand on his own Ground and abate it. 9 *Rep.* 58. 1 *Mod.* 54. If a Man has a vacant Piece of Ground, and builds thereupon a Houſe, with good *Lights,* which he ſells or lets to another; and after he builds upon Ground contiguous, or lets the ſame to another Perſon, who builds thereupon to the Nuſance of the *Lights* of the firſt Houſe, the Leſſee of the firſt Houſe may have an Action of the Caſe againſt ſuch Builder, &c. And though formerly they were to be *Lights* of an antient Meſſuage, that is now altered. *Mod. Ca.* 116, 314.

Lignagium, Signifies the Right which a Man hath to the cutting of Fuel in *Woods*; and ſometimes it is taken for a Tribute or Payment due for the ſame.

Lignum Vitæ, An Apothecary's Drug, of great Price. *Lignum vitæ* of the Product of the *Britiſh* Plantations in *America* may be imported free from all Cuſtoms and Impoſitions. *Stat.* 1 *Geo.* 1. *c.* 17.

Ligula, A Copy or Tranſcript of a Court-Roll or Deed; mentioned by Sir *John Maynard* in his *Mem. in Scaccar.* 12 *Ed.* 1.

Limitation, (*Limitatio*) Is a certain Time aſſign'd by Statute, within which an *Action* muſt be brought: And *Limitation* of Time is two fold, *viz.* To make Title to an Inheritance by the Common Law; and in Writs, by ſeveral Statutes. 1 *Inſt.* 115. There is a *Limitation* in *Real* and *Perſonal* Actions; and in the former, he that will ſue for any Lands or Hereditaments, ought to prove that he or his Anceſtors were ſeiſed of the Lands ſued for by Writ of *Aſſiſe,* or he cannot maintain his Action: And this is called *Limitation of Aſſiſe.* *F. N. B.* 77. *Stat. Weſt.* 1. *c.* 38. The Seiſin of one's Anceſtor in a Writ of *Right,* was formerly to be from the Time of King *R.* 1. In *Aſſiſe of Novel Diſſeiſin* from *Hen.* 3d's Voyage into *Gaſcoign*; and in a *Mortdanceſtor,* Writ of *Aiel,* &c. from the Coronation of King *H.* 3. by 3 *Ed.* 1. *c.* 39. No Perſon ſhall have any Writ of Right, or make any Title or Claim to any Lands, &c. of the Poſſeſſion of his Anceſtors, but of a Seiſin within ſixty Years, next before the Teſte of the Writ, &c. In *Aſſiſe of Mortdanceſtor,* Writ of *Entry ſur Diſſeiſin,* or rather poſſeſſory Action, upon the Poſſeſſion of an Anceſtor, it muſt be within fifty Years; and upon the Party's own Poſſeſſion, within thirty Years, and the Plaintiff is barred, not proving ſuch Poſſeſſion, &c. 32 *H.* 8. *c.* 2. This Statute extends not to a Writ of Right of Advowſon, &c. by Stat. 1 *M. c.* 5. The 21 *Jac.* 1. *c.* 16. ordains, that all Writs of *Formedon,* &c. for Title to Lands *in Eſſe,* ſhall be ſued and proſecuted within twenty Years after the Title had: But there is a Proviſo in the Statutes, to relieve Infants, Feme Covers, Perſons beyond Sea or in Priſon, and the Heirs of ſuch Perſons, ſo as they commence their Suits within the Times limited after their Impediments are removed. It has been held, that the Act 32 *H.* 8. doth not extend to Rent or Services, &c. out of Land: And one that hath been out of Poſſeſſion for ſixty Years, if his Entry is not taken away, may enter and bring his Action for his own Poſſeſſion. *Wood's Inſt.* 557. If a Man hath been in Poſſeſſion twenty Years, without Interruption, and afterwards another gets into Poſſeſſion, he may bring an Ejectment; becauſe twenty Years Poſſeſſion is a good Title in him to maintain Action of Ejectment, as if he had at that Time been actually poſſeſſed: Tho' if the Plaintiff be out of Poſſeſſion more than twenty Years, where there is an Actual Diſſeiſin, and not a Diſſeiſin by Perception of Profits, &c. only, he is barred by the Statute of *Limitations.* 2 *Salk.* 421, 423. By Statute, Actions of Debt, Actions upon the Caſe, (except for Words) Actions of Account (except concerning Merchandiſe) of Detinue, Trover and Treſpaſs, are to be commenced within ſix Years after the Cauſe of Action, and not after; Actions of Aſſault and Battery, wounding and Impriſonment, within four Years; and for Slander within two Years after the Cauſe of Action, &c. 21 *Jac.* 1. *c.* 16. If theſe perſonal Actions are not brought in the Time *limited* by this Statute, they are barred: And the Statute of *Limitations* is a good Bar to Suit for Seamen's Wages, if it is well pleaded. *Mod. Ca.* 26. 4 & 5 *Ann. c.* 16. The Exception in the Statute of *Limitations*, as to Action of Accounts, extends to Accounts current only between Merchants; for when an Account is ſtated and balanced, Debt lies, and the Action muſt be brought within ſix Years: The Statute is not pleadable to an Account current, but it is to an Account ſtated. 1 *Mod.* 70, 268. 2 *Saund.* 124. When Money is to be paid as a Truſt, it is not within the Statute of *Limitations. March* 151. 2 *Ventr.* 345. See 2 *P. Williams.* Where Debt is brought againſt a Sheriff for Money levied in Execution of a Judgment, it is not within the Statute; becauſe the Action is brought againſt the Defendant as an Officer, and the Law creates no Contract. 2 *Mod.* 213. If the Conſideration of a Promiſe is executory, or Money is to be paid on Requeſt, &c. it is not material when the Promiſe was made, but when the Cauſe of Action did ariſe; and the Defendant ought to plead that *Cauſa Actionis non accrevit infra ſex annos*, &c. 2 *Salk.* 422. When Words are actionable in themſelves, there Damages ſhall be recovered according as they were firſt ſpoken, if the Action be brought within two Years, as required by the Statute of *Limitations*, and otherwiſe the Party will be barred by the Statute: But where the Words are actionable only in reſpect of the ſpecial Damages which happen after the Speaking, in ſuch Caſe, if the Damage is ſeven Years afterwards, it is no Bar. *Sid.* 95. An Action barrable by the Statute, a freſh Promiſe will revive it. By the Opinion of all the Judges of *England*, a Promiſe after the ſix Years limited brings the Matter out of the Statute of *Limitations*; and that owning of the Debt does not go ſo far, but is Evidence of a Promiſe: But if the Declaration be laid of a Promiſe to the Teſtator, Evidence of a Promiſe to the Executor will not maintain it. *Mich.* 3 *Ann. Mod. Ca.* 309, 310. A Conditional Promiſe amounts to a Waiver of the Statute, and revives the Debt; and a bare Acknowledgment of the Debt within ſix Years of the Action, will prevent the Statute of *Limitations*, tho' no new Promiſe was made. *Carthew's Rep.* 471. 3 *Salk.* 228. If a Perſon who is indebted by Note, or owes a Book Debt, and no Demand has been made of it in ſix Years, doth publiſh an Advertiſement in the News Papers, that all Debts due from him ſhall be paid, on the Creditors applying to ſuch a Place. By this, although it be general, (and may be intended of legal ſubſiſting Debts only) a Debt barred by the Statute muſt be paid: But no Intereſt ſhall be allowed on any ſuch Note. *Preced. Canc.* 385. A *Latitat*, taken out and filed, and continued, is an Avoidance of the Statute; for it is a Demand, and a good Bringing of an Action within the Time mentioned by the Statute of *Limitations.* 3 *Salk.* 229. 1 *Lill. Abr.* 19. If after Proceedings in an inferior Court the ſix Years expire, and then the Cauſe is removed into *B. R.* the Plaintiff may ſet forth the Suit below, and aver that to be within ſix Years, &c. and thereby prevent the Bar of the Statute. *Sid.* 228. 2 *Salk.* 424. If a Plaintiff is beyond Sea when the Cauſe of Action doth accrue, he ſhall have Liberty at his Return to bring it; but if the Defendant is beyond Sea, and the Plaintiff here, he ought to file an Original againſt the Defendant, and continue it till he returns; and if he do not file an Original, or outlaw the Defendant, the Statute of *Limitations* will bar him. 2 *Salk.* 420. This Law is altered by a late Statute; for now when the Defendant is beyond Sea, the Plaintiff may bring his Action againſt him after his Return, ſo as he do it within the Time limited by the Statutes. 4 & 5 *Ann. c.* 16. Where one ſues an original Writ, a *Latitat* in B. *R.* or *Clauſum fregit* in the *Common Pleas*, and does not return the Writ, it will not avoid the Statute of *Limitations*; for it muſt be ſhewn that the Writ was returned. 2 *Ld. Raym.* 883. Though it appears by the Plaintiff's Declaration, the Cauſe of Action accrued more than ſix Years before, &c. Yet the Statute in that Caſe, and all others muſt be pleaded; becauſe it may be the Original was ſued within the Time *limited*, after the Cauſe of Action, and the Plaintiff ſhould have an Opportunity to reply ſuch Matter. *Ibid.* 838. A Defendant in an Action of the Caſe for Goods ſold, &c. pleaded *Non Aſſumpſit infra ſex Annos:* The Plaintiff replied, that from the Time of the Promiſe to ſuch a Day, the Defendant was a *Member of Parliament*, and then the Civil Wars began, and continued till ſuch a Day, and that he brought his Action within ſix Years after the War ended, &c. On a Demurrer, the Replication was adjudged ill; and it was held that the Plaintiff ought to have filed an Original, which is no Breach of Privilege. *Carthew* 137. But ſee Stat. 2 *Ann.* under *Parliament.* The King is not within the general Acts of *Limitation*; nor Eccleſiaſtical Perſons, for Lands belonging to their Churches. 11 *Rep.* 74.

Limitation of Eſtate, In a legal Senſe, imports how long the Eſtate ſhall continue, or is rather a Qualification of a precedent Eſtate. A *Limitation* is generally by ſuch Words as *Durante Vita*, *Quamdiu*, *dum*, &c. And if there be not a Performance according to the *Limitation*, it ſhall determine an Eſtate without Entry or Claim; which a Condition doth not. 10 *Rep.* 41. 1 *Inſt* 204. It is taken for the Compaſs and Time of an Eſtate: As where one doth give Lands to a Man, to hold to him and his Heirs Males, and to him and the Heirs Females, &c. here the Daughters ſhall not have any Thing in it, ſo long as there is a Male, for the Eſtate to the Heirs Males is firſt *limited. Co. Lit.* 3, 13. If a *Limitation* of an Eſtate be uncertain, the *Limitation* is void; and the Eſtate ſhall remain as if there had been no ſuch *Limitation. Cro. Eliz.* 216. But a Thing that is *limited* in a Will by plain Words, ſhall not be afterwards made uncertain by general Words which follow it. *Hill.* 23 *Car. B. R.* Where a Deviſe is to the eldeſt Son, upon Condition that he pays ſuch Legacies; and if he refuſes, the Land ſhall remain to the Legatees: On his Refuſal the Legatees may enter by way of *Limitation. Noy* 51. And in all Caſes, where after a Condition, an Intereſt is granted to a Stranger, it is a *Limitaton.* 1 *Leon.* 269. *Cro. Eliz.* 204. It was held by *Holt*, C. J. that the Statute *de Donis* 13 Ed. 1. ought not to be taken ſtrictly; but all *Limitations* within the Meaning of it are to be ſupported: And therefore Words of an expreſs Condition be not ordinarily conſtrued as a *Limitation*; yet when an Eſtate is to remain over for Breach of any Condition, which is by the expreſs Words thereof, it ſhould be intended a *Limitation.* Trin. 4 Ann. Lands may be given and *limited* to one in Tail, Remainder to another, Remainder in Fee, &c. Though a *Limitation* of an Eſtate cannot begin after the Determination of an abſolute Eſtate in Fee-ſimple; for that would be to ſuffer Perpetuities to be made, which the Law abhors. 2 *Lill. Abr.* 173. *Limitations* of Eſtates againſt Law, creating a new Form of Inheritance, will not be ſuffered to take Effect. *Jenk. Cent.* 82.

Limitation of the Crown. The Statutes 1 *W.* & *M. c.* 8. 12 *W.* 3. *c.* 2. and 1 & 2 *Ann. c.* 17. 4 *Ann. c.* 8. &c. are Acts for the *Limitation of the Crown*, and ſettling it on Proteſtant Heirs in the Houſe of *Hanover.* See *Crown.*

Linarium, A Flax-plat, where Flax is ſown. ——*Et Meſſuagium, &c. cum* Linario, *quod jacet juxta prædict. Meſſuagium.* Pat. 22 Hen. 4. Par. 1. m. 33.

Lincoln's Inn Fields, to be incloſed by Truſtees, who may employ Artificers, &c. And Yearly Rates ſhall be made on all Houſes there, not exceeding 2 *s.* 6 *d.* in the Pound: This Square and back Streets are to be a diſtinct Ward, as to the Scavengers Rates and Watch; and Perſons annoying the Fields by Filth, to forfeit 20 *s.* and aſſembling to uſe Sports, or breaking Fences, &c. incurs a Forfeiture of 40*s.* levied by Juſtice of Peace's Warrant. Stat. 8 *Geo.* 2. *c.* 26.

Lindesfern, A Place often mentioned in our ancient Hiſtories; being formerly a Biſhop's See, now *Holy Iſland.*

Linen. No Perſon ſhall put to Sale any Piece of Doulas *Linen*, &c. unleſs the juſt Length be expreſſed thereon, on Pain to forfeit the ſame. 28 *H.* 8. *c.* 4. Uſing Means whereby *Linen* Cloth ſhall be made deceitfully, incurs a Forfeiture of the *Linen*, and a Month's Impriſonment. *Stat.* 1 *Eliz. c.* 12. Any Perſons may ſet up Trades of dreſſing Hemp or Flax, and making Thread for *Linen* Cloth, &c. 15 *Car.* 2. *c.* 15. And *Linen* of all Sorts made of Flax or Hemp, of the Manufacture of this Kingdom may be exported Duty-free. 3 *Geo.* 1. *c.* 7. *Linen* made in *Great Britain* and *Ireland* being much improved, to extend it farther, a Bounty of one Penny for every Yard of ſuch *Linens* from 6*d.* to 12*d. per* Yard, and a Half-peny for each Yard, under 6*d.* Price is granted on Exporting them; payable out of a Duty laid on foreign *Cambricks*, by 15 *Geo.* 2. *cap.* 29. Stealing of *Linen*, &c. from Whitening Grounds or Drying Houſes, to the Value of 10*s.* is Felony. Stat. 4 *Geo.* 2. *c.* 16.

Linſeed, All Perſons may import *Linſeed* into this Kingdom, without paying any Cuſtom for it. Stat. 3 *Geo.* 1.

Litera, (From the Fr. *Litiere*, or *Lictiere*, Lat. *Lectum*) Was anciently uſed for Straw for a Bed, even the King's Bed.——Petrus A. *tenuit*, &c. *per Serjeantiam inveniendi unum Servientem cum Hambergello per* 40 *Dies*, & *inveniend.* Literam *ad* Lectum Regis, *Fœnum ad Palfridum Regis, quando jacuerit apud*, &c. Term. Hill. 1 Ed. 2. *Litter* is now only in Uſe in Stables among Horſes; And *Tres Carectatas Literæ* is three Cart loads of Straw or *Litter*. Mon. Angl. Tom. 2. pag 33.

Literatura. *Ad Literaturam ponere*, ſignifies to put Children out to School; which Liberty was anciently denied to thoſe Parents who were ſervile Tenants, without the Conſent of the Lord: And this Prohibition of educating Sons to Learning, was owing to this Reaſon; for Fear the Son being bred to Letters might enter into Orders, and ſo ſtop or divert the Services which he might otherwiſe do as Heir to his Father.——*Quilibet cuſtumarius Tenen. non debet Filium ſuum ad* Literaturam ponere, *neq; Filiam ſuam maritare, ſine Licentia a voluntat. Dom.* Paroch. Antiq. 401.

Literæ *Ad faciendum Attornatum pro ſecta faciend.* Reg. Orig. 192.

Literæ *Canonici ad Exercendam Juriſdictionem loco ſuo.* Ibid. 305.

Literæ *Per quas Dominus remittit Curiam ſuam Regi.* Ibid. 4.

Literæ *De Requeſtu.* Ibid. 129. *See* theſe in their proper Places.

Literæ ſolutoriæ, Were magical Characters ſuppoſed to be of ſuch Power, that it was impoſſible for any one to bind thoſe Perſons who carried theſe about them. *Bede, lib.* 4. *c.* 22.

Lith of Pickering, In the County of *York, viz.* The Liberty, or a Member of *Pikering*, from the Sax. *Lid*, i. e. *Membrum.*

Litigator, (Lat.) A Party Pleading, that contends or *Litigates* a Suit at Law. *Lit. Dict.*

Litigious. The *Litigiouſneſs* of a Church, is where ſeveral Perſons have or pretend to ſeveral Titles to the Patronage, and preſent ſeveral Clerks to the Ordinary; it excuſes him for refuſing to admit any of them, till a Trial of the Right by *Jure Patronatus*, or otherwiſe. *Jenk. Cent.* 11.

Livery, (Fr. *Livre*, i. e. *Inſigne Geſtamen*, or *Liverer*, i. e. *Tradere*) Hath three Significations. In one Senſe, it is uſed for a Suit of Clothes, Cloak, Gown, Hat, &c. which a Nobleman or Gentleman gives to his Servants or Followers, with Cogniſance or without; mentioned in the 1 *R.* 2. *c.* 7. and divers other Statutes: And formerly great Men gave *Liveries* to ſeveral who were not of their Family, to engage them in their Quarrels for that Year; but afterwards it was ordained, that no Man of any Condition whatſoever, ſhould give any *Livery* but to his Domeſticks, his Officers, or Counſel learned in the Law. By 1 *R.* 2. it was prohibited on Pain of Impriſonment; and the 1 *Hen.* 4. *c.* 7. made the Offenders liable to Ranſom at the King's Will, &c. which Statute was farther confirmed and explained, *Anno* 2 & 7 *Hen.* 4. and 8 *Hen.* 6. *c.* 4. and yet this Offence was ſo deeply rooted, that *Edw.* 4. was obliged to confirm the former Statutes, and further to extend the Meaning of them, adding a Penalty of 5*l.* on every one that gives ſuch *Livery*, and the like on every one retained for Maintenance either by Writing, Oath, or Promiſe, for every Month. 8 *Ed.* 4. *c.* 2. But moſt of the above Statutes are repealed by 3 *Car.* 1. *c.* 4. *Livery* in the ſecond Signification, was a Delivery of Poſſeſſion to thoſe Tenants which held of the King *in Capite*, or Knights Service; as the King by his Prerogative hath *Primer Seiſin* of all Lands and Tenements ſo holden of him. *Staundf. Prærog.* 12. In the third Uſe, *Livery* was the Writ which lay for the Heir of Age, to obtain the Poſſeſſion or Seiſin of his Lands at the King's Hands. *F. N. B.* 155. By the Statute 12 *Car.* 2. *c.* 24. *All Wardſhips, Liveries*, &c. are taken away.

Livery of Seiſin, (*Liberatio Seiſinæ*) Is a Delivery of Poſſeſſion of Lands, Tenements and Hereditaments, unto one that hath Right to the ſame; being a Ceremony in the Common Law uſed in the Conveyance of Lands, &c. where an Eſtate of Fee-ſimple, Fee tail, or other Freehold paſſeth. *Bract. lib.* 2. *cap.* 18. *Weſt. Symb. par.* 1. *lib.* 2. And it is a Teſtimonial of the willing Departing of him who makes the *Livery*, from the Thing whereof the *Livery* is made; and of the willing Acceptance of the other Party receiving the *Livery*; firſt invented that the common People might have Knowledge of the paſſing or Alteration of Eſtates from Man to Man, and thereby be better able to try in whom the Right of Poſſeſſion of Lands and Tenements were, if the ſame ſhould be conteſted, and they ſhould be impanelled on Juries, or otherwiſe have to do concerning the ſame. *Weſt. Ibid.* This *Livery* may be made of a Houſe, Lands, or any Thing corporeal; but not of incorporeal Things. Where a Houſe and Lands are conveyed, the Houſe is the principal, and the Lands acceſſory; and there the *Livery* muſt be made, and not upon the Land. 2 *Rep.* 31. 4. *Leon.* 374. And of *Livery and Seiſin* there are two Kinds; a *Livery* in *Deed*, and *Livery* in *Law: Livery in Deed* is when the Feoffor taketh the Ring of the Door, &c. and delivereth the ſame to the Feoffee, in the Name of Seiſin. 1 *Inſt.* 48. 6 *Rep* 26. And *Livery* in Deed may be either by Words, and ſome ſolemn Act; or by Words without any ſolemn Act, if the Feoffor and Feoffee are on the Land. *Wood's Inſt.* 237. *Livery in Law* is when the Feoffor himſelf being in View of the Houſe or Land, ſaith to the Feoffee, after Delivery of the Deed, *I give to you yonder Land*, &c. *to you and your Heirs, go into the ſame and take Poſſeſſion accordingly*; now if the Feoffee enters on the Land, during the Life-time of the Feoffor, it is a good Feoffment and *Livery*. 1 *Inſt.* 48, 52. If a Deed of Feoffment be delivered upon the Land, in the Name of Seiſin of all the Lands, it will be a good *Livery and Seiſin*; but the bare Delivery of a Deed upon the Land, though it may make the Deed, it ſhall not amount to *Livery and Seiſin*, without thoſe Words. 1 *Inſt.* 52, 181. If one makes a Feoffment to four Perſons, and *Seiſin* is delivered to Three of them, in the Name of All; the Eſtate is veſted in all of Them. 3 *Rep.* 26. And if Lands lie in divers Places in one County, *Livery and Seiſin* in one Parcel in one Place, in the Name of the Reſt is ſufficient; though if the Lands lie in ſeveral Counties, it is otherwiſe; for then *Livery and Seiſin* muſt be in every County. *Lit.* 61. No Perſon ought to be in the Houſe, or upon the Land, when *Livery* is made, but the Feoffor and Feoffee; all others are to be removed from it: If the Leſſor Feoffor makes *Livery and Seiſin*, the Leſſee being upon the Land contradicting it, the *Livery* is void. *Cro. Eliz.* 321. A Leſſor enfeoffed a Stranger, and came to make *Livery and Seiſin*, the Leſſee's Wife being in the Houſe, the Leſſor enters, and by Force turns the Wife into the Backſide, which was Part of the Land let, and then he makes *Livery* in the Houſe, in the Name of all the Lands let; as the Woman was remaining all the while upon the Land, and contradicting the *Livery*, the *Livery* was held void: But if ſhe had voluntarily gone out of the Houſe, upon Part of the Land; or the Leſſor had turned her into the Street, ſo that ſhe had not been upon any Part of the Land; it had been good. *Daliſ. Rep.* 94. If a Man agrees with me to make a Feoffment upon Condition, and after makes a Charter of Feoffment without any Condition, and then makes *Livery and Seiſin ſecundum formam Chartæ*, this is abſolute without any Condition; for the *Livery* is not made according to the Agreement, but according to the Charter. 34 *Aſſ.* 1. But if a Perſon enfeoffs another, as a Security for the Payment of Money, and afterwards makes *Livery of Seiſin* to him and his Heirs generally; the Eſtate hath been holden to be upon Condition, ſince the Intent of the Parties was not changed, but continued at the Time of the *Livery.* 1 *Inſt.* 222. And where a Charter of Feoffment is made, and in the Deed there is no Condition; but when the Feoffor would make *Livery of Seiſin* to the Feoffee by Force of the Deed, he expreſſing the Eſtate, makes *Livery of Seiſin* upon Condition, the Feoffment is of Force as if it had not been made. *Lit. Sect.* 359. 2 *Danv. Abr.* 13. A Man makes a Leaſe for Years, Remainder to another for Life, in Tail or in Fee: Here *Livery and Seiſin* in Deed muſt be made to the Leſſee for Years; without which nothing paſſeth to him in Remainder, it being for the Benefit of him in Remainder, and not the Leſſee who hath only a Term: And if the Leſſee entreth, before *Livery and Seiſin*, made to him, the *Livery* will be void. *Lit.* 60. 1 *Inſt.* 49. *Wood's Inſt.* 238. A Leaſe for Years is granted to *A. B.* with Remainder to his right Heirs, whereon *Livery* is made; the Remainder is void, becauſe there is not any Perſon *in eſſe*, who can preſently take by the *Livery*; and every *Livery* ought to have its Operation preſently. 4 *Leon.* 67. There was a Leaſe made to a Man and his Wife, and their Daughter, to hold from *Michaelmas* next, and the Leſſor made *Livery* after *Michaelmas*; this was adjudg'd good, being made by the Leſſor himſelf; but it had been otherwiſe, if it had been to be done by Attorney, or if the Leſſor had made *Livery* before *Michaelmas.* 2 *Rol. Rep.* 109. Leaſe for twentyty Years to a Man to commence from a Time paſt; and after the Expiration of the ſaid Term, then to him and his Wife, and their Son, for their Lives, and the longeſt Liver of them, with a Letter of Attorney to make *Livery and Seiſin*, *&c.* It is a good Leaſe for Years, with Remainder for Life, if *Livery and Seiſin* be made by the Attorney at the Time of executing the Leaſe; but if the *Livery and Seiſin* be made by the Attorney ſome Time afterwards, in ſuch Caſe it is ſaid the *Livery* is void. *Moor* 14. A Man may take a Letter of Attorney to deliver *Seiſin* by Force of the Deed, which may be contained in the ſame Deed; and a Letter of Attorney may be likewiſe made to receive *Livery and Seiſin.* 5 *Rep.* 91. 1 *Inſt.* 49, 52. The *Manner* of making *Livery of Seiſin* is thus: The Parties to the Deed, Grantor and Grantee, or the Attornies by them authoriſed, come to the Door of the Houſe, or ſome Part of the Land; and there having declared the Cauſe of their Meeting, in the Preſence of Witneſſes, they read the Deed or the Contents thereof; and if by Attorney, the Power of Attorney; and then, if it be a Houſe they take the Ring, Latch or Key of the Door, (all the People being out of the Houſe,) or if it be Land, a Clod of Earth, and a Twig or Bough of one of the Trees thereon; and the ſame Ring or Key, Clod, *&c.* with the Deed they deliver to the Grantee or his Attorney, ſaying the uſual Words, *viz. I* A. B. *do hereby deliver unto you* C. D. *Poſſeſſion and Seiſin of this Meſſuage or Tenement,* &c. *To hold to you, your Heirs and Aſſigns, according to the true Intent and Meaning of this Indenture,* &c. And afterwards, if it be a Houſe, the Grantee, *&c.* enters firſt alone, and ſhuts to the Door; and then he opens it, and lets in others. *Accomp. Convey.* 2d *Edit. Vol.* 1.

Livery and Seiſin *endorſed on the Deed.*

MEmorandum, *That on the Day,* &c. *full Poſſeſſeſſion and Seiſin was had and taken of the Meſſuage or Tenement, and Premiſſes within granted, by* A. B. *one of the Attornies within named, and by him delivered over unto the within named* C. D. To hold to him, his Heirs, &c. *according to the Contents and true Meaning of the within written Indenture, in the Preſence of,* &c.

If a *Houſe* or *Lands* belong to an *Office*, by Grant of the Office by Deed, the Houſe or Land paſſeth without *Livery*: And by a Fine, which is a Feoffment of Record; by a Leaſe and Releaſe; Bargain and Sale by Deed inrolled; Exchange, *&c.* a Freehold paſſeth, without *Livery*; and ſo in a Deed of Feoffment to *Uſes*, by Virtue of the Statute of Uſes. 1 *Inſt.* 49. So that *Livery and Seiſin* is not ſo commonly uſed as formerly; neither can Eſtates be created now by *Livery and Seiſin* only, without Writing. *Stat.* 29 *Car. c.* 3.

Livery and Ouſter le Maine, is where by Inqueſt before the *Eſcheator*, it was found that nothing was held of the King; then he was immediately commanded by Writ, to put from his Hands the Lands taken into the King's Hand. *Stat.* 29 *Ed.* 1. 28 *E.* 3. *c.* 4. vide *Ouſter le Maine.*

Livery-Men of London. In the Companies of *London*, *Livery-Men* are choſen out of the Freemen as Aſſiſtants to the Maſters and Wardens in Matters of Council, and for better Government; and if any *Livery-Man* refuſe to take upon him the Office, the Lord Mayor and Aldermen may fine him, and bring an Action of Debt for the Sum. 1 *Mod. Rep.* 10. See *London.*

Livre, Is a Piece of Foreign Coin, in *France* going for 1 *s* 6 *d.* and in other Countries of leſs Value; but in *Spain* their *Livres* paſs at 5 *s.* Accounts are kept by this Money in *France*, *Spain*, *&c.* Merch. Dict.

Lobb, and **Loich-fiſh.** The *Lob* is a *North* Sea-Fiſh; and *Loich* comprehends *Lob*, Ling and Cod. *Stat.* 3 *Ed.* 3. *c.* 2.

Lobſters. No Perſons ſhall, with Trunks, Hoop-Nets, *&c.* take any *Lobſters* on the Sea Coaſt of *Scotland*, from the 1ſt of *June* to the 1ſt of *September* yearly, on Pain of 5 *l.* to be recovered before two Juſtices. *Stat.* 9 *Geo.* 2 *c.* 33.

Local, (*Localis*) Tied or annexed to a certain Place: Real *Actions* are *local*, and to be brought in the County where the Lands lie; but a Perſonal Action, as of Treſpaſs for Battery, *&c.* is tranſitory, not *local*; and it is not material that the Action ſhould be tried or laid in the ſame County where the Fact was done; and if the Place be ſet down, it is not needful that the Defendant ſhould traverſe the Place, by ſaying he did not commit the Battery in the Place mentioned, &c. *Kitch.* 230. A Thing is *local* that is fixed to the Freehold. *Ibid.* 180. See *Action*

Lockman. In the *Iſle of Man*, the *Lockman* is an Officer to execute the Orders of the Governor, much like our Under-Sheriff. *King's Deſcript. Iſle of Man* 26.

Loculus, Signifies a Coffin.—*Cujus Corpus in* Loculo *plumbeo tranſlatum eſt.* Sim. Dunelm. c. 6.

Locus in quo, The Place *where* any Thing is alledged to be done in Pleadings, &c. 1 *Salk.* 94.

Locus partitus, Is a Diviſion made between two Towns or Counties, to make Trial where the Land or Place in Queſtion lieth. *Flet. lib.* 4. *cap.* 15.

Locutorium. The Monks and other Religious in *Monaſteries*, after they had dined in their common Hall, had a withdrawing Room, where they met and talked together among themſelves, which Room for that ſociable Uſe and Converſation, they called *Locutorium à Loquendo*; as we call ſuch a Place in our Houſes *Parlour*, from the Fr. *Parler:* And they had another Room which was called *Locutorium Forinſecum*, where they might talk with *Laymen*. *Walſing.* 257.

Lodemerge, Mentioned in the Laws of *Oleron*, is expounded to be the Skill or Art of Navigation. *Chaucer.*

Lodmanage, Is the Hire of a Pilot for bringing a Ship from one Place to another. The Pilot receives *Lodmanage* of the Maſter for conducting the Ship up the River or into Port; but the *Loadſman* is he that undertakes to bring a Ship through the Haven, after brought thither by the Pilot, to the Key or Place of Diſcharge: And if thro' his Ignorance, Negligence, or other Fault, the Ship or Merchandize receive any Damage, Action lies againſt him at the Common Law. *Roughton, fol.* 27.

Logia, A little Houſe, Lodge or Cottage. *Mon. Angl. Tom.* 1. *pag.* 400.

Logwood, (*Lignum Tinctorium*) Is Wood uſed by Dyers brought from foreign Parts; prohibited by Stat. 23 *Eliz. cap.* 9. But allowed to be imported by the 14 *Car. c.* 2. 11. See *Dyers.*

Lollards, Had their Name from one *Walter Lollard*, a *German*, at the Head of them, who lived about the Year 1315. And they were certain *Hereticks*, (in the Opinion of thoſe Times) that abounded here in *England*, in the Reigns of King *Edw.* 3. and *Hen.* 5. whereof *Wickliff* was the Chief in this Nation. *Stow's Annals* 425. *Spotſwood* in his Hiſtory of *Scotland*, ſays, The Intent of theſe *Lollards* was to ſubvert the Chriſtian Faith, the Law of God, the Church and the Realm; and ſo ſaid the Stat. 2 *Hen.* 5. *cap.* 7. But that Statute was repealed 1 *Ed.* 6. *c.* 12. Several Decrees were made by our Archbiſhops againſt thoſe *Sectariſts*, as well as Statutes: And the High Sheriff of every County was anciently bound by his Oath to ſuppreſs them. 3 *Inſt.* 41.

Lollardy, The Doctrine and Opinion of the *Lollards*. 1 & 2 P. & M. c. 6.—Rogerus Acton *Miles pro Proditione* & Lollardia *diſtrahatur* & *ſuſpendatur*, & *ſic ſuſpenſus pendeat ad voluntatem Regis.* Middleſ. Plac. Hill. 1 Hen. 5 Rot. 7.

London, The Metropolis of this Kingdom, formerly called *Auguſta*, has been built above three thouſand Years, and flouriſhed for fifteen hundred Years. It's *Exchange*, where Merchants of all Nations meet, is not to be equalled; and for Statelineſs of Buildings, Extent of Bounds, Learning of Arts and Sciences, Traffick and Trade, this City gives Place to none in the World. *Stow.* It is divided into Twenty-ſix *Wards*, over each of which there is an Alderman; and is governed by a *Lord Mayor*, who is choſen Yearly, and preſented to the King, or in his Abſence to his Juſtices, or the Barons of the Exchequer at *Weſtminſter*. Chart. K. *Hen.* 3. The Lord Mayor of *London*, for the Time being, is *Chief Juſtice* of Gaol-Delivery; *Eſcheator* within the Liberties and *Bailiff* of the River *Thames*, &c. He is a High Officer in the City, having all Courts for Diſtribution of Juſtice under his Juriſdiction, *viz.* The Court of *Huſtings*, *Sheriff*'s Court, *Mayor*'s Court, Court of *Common Council*, &c. 2 *Inſt.* 330. King *Hen.* 4. Granted to the Mayor and Commonalty of *London*, the Aſſiſe of Bread, Beer, Ale, &c. and Victuals, and Things Saleable in the City. In *London* every Day, except *Sunday*, is a Market overt, for the Buying and Selling of Goods and Merchandize. 5 *Rep.* 85. But no Perſon not being a Freeman of *London*, ſhall keep any Shop or other Place to put to Sale by Retail any Goods or Wares, or uſe any Handicraft Trade for Hire, Gain or Sale within the City, upon Pain of forfeiting 5 *l.* 8 *Rep.* 124. And Perſons making ill and unſerviceable Goods in *London*, the Chief Officers of the Company may ſeiſe and carry them to the *Guildhall*, and have the Goods tried by a Jury; and if found defective, they may break them, &c. *Trin.* 34 *Car.* 2. *B. R.* A Perſon muſt be a Freeman of *London* to be entitled to carry on Merchandize there, or within ten Miles of the City. *Chart. Car.* 1. Where a Woman exerciſeth a Trade in *London*, wherein her Huſband doth not intermeddle, by the Cuſtom ſhe ſhall have all Advantages, and be Sued as a *Feme Sole Merchant:* But if the Husband meddle with the Trade of the Wife, or carry on the ſame Trade, it is otherwiſe. 1 *Cro.* 69. 3 *Keb.* 302. There are three Ways to be a Freeman of *London*; by *Servitude* of an Apprenticeſhip; by *Birthright*, as being the Son of a Freeman, and by *Redemption*, i. e. by Order of the Court of Aldermen. *Ibid.* 126. 4 *Mod.* 145. The Cuſtoms of *London* are againſt the Common Law, and made good by Parliament. 4 *Inſt.* 249. But to ſet forth a Cuſtom or Uſage in the City of *London*, it muſt be ſaid *Antiqua Civitas*, or it will not be good. 2 *Leon.* 99. By *Magna Charta*, the City of *London* ſhall have all their ancient Uſages, Liberties and Cuſtoms which they have uſed to enjoy; and they are confirmed to them by that Statute 9 *Hen.* 3. *c.* 9. And there is a Cuſtom in *London* to puniſh by Information in the Mayor's Court, in the Name of the Common Serjeant of the City, Aſſaults on Aldermen, and affronting Language, &c. *Farreſl. Rep.* 28, 29. Upon the Cuſtom of *London* concerning the Payment of Wharfage, &c. by every Freeman to the Corporation, the Trial ſhall not be by the Mouth of the Recorder, as Cuſtoms generally are, but by the Country, and a Jury from *Surrey* adjoining. *Moor cap.* 129. An Arreſt may be made in *London* on the Plaintiff's entering his Plaint in either of the Counters, and a Serjeant of *London* need not ſhew his Mace when he Arreſts One: And the Liberties of the City extend to the Suburbs and *Temple-Bar*. *Jenk. Cent.* 291. The Mayor of *London* is to cauſe Errors, Defaults, and Miſpriſions there to be redreſſed, under the Penalty of 1000 Marks; and the Conſtable of the *Tower* ſhall execute Proceſs againſt the Mayor for Default, &c. 28 *Ed.* 3. *cap.* 10. Citizens and Freemen of *London* may recover Debts under 40 *s.* in the Court of Requeſts at *Guildhall*, commonly called the Court of Conſcience. 3 *Jac.* 1. *c.* 15. After the Fire of *London*, a Judicature was erected for determining Differences relating to Houſes burnt; and ſeveral Rules were laid down for rebuilding the City, the ſeveral Streets, Lanes, &c. The Lord Mayor and Aldermen were to ſet out Markets; the Number of Pariſhes and Churches was aſcertained, and a Duty granted on Coals for Rebuilding of the Churches, &c. 19 *Car.* 2. *cap.* 23. and 22 *Car.* 2. *c.* 11. And the Tithes of the Pariſhes in *London*, the Churches whereof were burnt, were appointed; none leſs than 100 *l. per Annum*, nor above 200 *l. per Annum* to be aſſeſſed, and levied quarterly. 22 & 23 *Car.* 2. *c.* 15. The Lord Mayor, &c. is em powered to appoint Perſons to ſet out the Manner of Paving and Pitching the Streets of *London*; and alſo of Drains and Sewers, and to impoſe a Tax upon Houſes for Maintenance thereof. 22 & 23 *Car.* 2. *c.* 17. Scavengers are to be elected in *London*, and within the *Bills of Mortality*, in each Pariſh, by the Conſtable, Church-wardens, *&c.* to ſee that the Streets be kept clean; and Houſekeepers are to ſweep and cleanſe the Streets every *Wedneſday* and *Saturday*, under Penalties, *&c.* 2 *W.* & *M. Seſſ.* 2. *cap.* 2. Perſons authorized by the Lord Mayor, Aldermen and Common Council of *London* ſhall have the ſame Power in *London* and Liberties thereof, as Commiſſioners of Sewers have in any other County or Place. 7 *Ann. cap.* 9. Commiſſioners are appointed for ſupplying the City of *London* with Water, from the River *Thames*, &c. And caſting Filth into Water-courſes, incurs 40 *s.* Penalty. 8 *Geo.* 1. *c.* 26. By a late Statute, for regulating Elections within the City, it is ordained, That Elections of Aldermen and Common Council-men, are to be by Freemen Houſholders, paying Scot and Lot, and having Houſes of the Value of 10 *l.* a Year; and none ſhall vote at Elections of Members of Parliament, but Livery-men that have been Twelve Months on the Livery, and who are not diſcharged from Payment of Taxes, or thoſe who have received any Alms, *&c.* Alſo no Act or Ordinance of the Common Council, ſhall be made without the Aſſent of the Mayor and Aldermen, or the major Part of them preſent. And Freemen of *London* may diſpoſe of their perſonal Eſtates as they think fit, notwithſtanding the Cuſtom of the City; but the Act mentions ſuch as ſhould be made Free after ſuch a Time, and others before unmarried, *&c.* 11 *Geo.* 1. *c.* 18.

In *Trinity* Term 35 *Car.* 2. a *Quo Warranto* iſſued againſt the Lord Mayor and Citizens of *London*; on which Judgment was given in *B. R.* that the Charter and Franchiſe of the ſaid City ſhould be ſeiſed into the King's Hands as forfeited: But by 2 *W.* & *M. Seſſ.* 1. *cap.* 8. the ſaid Judgment was reverſed and made void, and all Officers and Companies were reſtored, *&c.* See *Cuſtoms of London, and Courts*, *Lamps*, *Buildings*, &c.

Longitude. For the Diſcovery of the *Longitude* at *Sea*, the Lord Admiral and ſeveral others are appointed Commiſſioners, to receive Propoſals, *&c.* and if they are ſatisfied of the Probability of ſuch Diſcovery, the Commiſſioners of the Navy have Power to make Bills for any Sum not exceeding 2000 *l.* to make the Experiment; and the firſt Diſcoverer of a Method for finding the *Longitude*, is intitled to a Reward of 10,000 *l.* if he determines the ſame to one Degree of a Circle, 15,000 *l.* if to two Thirds of that Diſtance, and 20,000 *l.* if to one Half of a Degree, to be paid by the Treaſurer of the Navy. 12 *Ann. Seſſ.* 2. *cap.* 15. The Commiſſioners for diſcovering of the *Longitude*, may apply Part of the 2000 *l.* ordered for Experiments, to be laid out in making a Survey and fixing the *Longitude* and *Latitude* of the chief Ports and Headlands of our Coaſts, for rendering the Diſcovery at *Sea* uſeful. *Stat.* 14 *Geo.* 2. *c.* 39.

Loquela, An Imparlance. —— *Petrus de S. debet* 20 *s. pro habenda* Loquela *in Curia Domini Regis contra* Will. *de F. Rot. Pipæ* 2 *Johann. Linc.* And *Loquela ſine Die*, was a Reſpite in Law to an indefinite Time. *Paroch. Antiq.* 210.

Lord, (*Dominus*) Is a Word or Title of Honour, diverſly uſed, being attributed not only to thoſe who are noble by Birth or Creation, otherwiſe called *Lords of Parliament*, and Peers of the Realm; but to ſuch ſo called by the *Curteſy* of *England*, as all the Sons of a Duke, and the eldeſt Son of an Earl; and to Perſons honourable by Office, as the *Lord Chief Juſtice*, &c. and ſometimes to a private Perſon that hath the *Fee* of a *Manor*, and conſequently the Homage of the Tenants within his Manor; for by his Tenants he is called *Lord.* In this laſt Signification, it is moſt uſed in our Law Books; where it is divided into *Lord Paramount*, and *Lord Mean*; and *Very Lord*, &c. *Old Nat. Br.* 79. See *Nobility.*

Lord in Groſs, Is he who is *Lord*, not by Reaſon of any Manor; as the King in Reſpect of his Crown, *&c. F. N. B.* 3, 8.

Lorimers, (Fr. *Lormiers*, from the Lat. *Lorum*) Is one of the Companies of *London*, that make Bits for *Bridles*, Spurs, and ſuch like ſmall Iron Ware, mentioned in the Stat. 1 *R.* 2. *c.* 12.

Loſinga, Signifies a Flatterer, or Sycophant: And *Godwin*, writing of the Biſhop of *Norwich* ſays of Biſhop *Herbert*; *Surgit in Eccleſiâ Monſtrum genitore* Loſinga. *Brompt. Chron. pag.* 991.

Lot, A Contribution, or Duty. See *Scot.*

Lot or **Loth**, Is the Thirteenth Diſh of Lead in the Mines of *Derbyſhire*, which belongs to the King. *Eſcheat. Ann.* 16 *Ed.* 1.

Lotteries. In late Reigns ſeveral Statutes have been made for raiſing Money for the Uſe of the Government, by way of *Lottery*, and the ſubjecting Duties on Beer and Ale, Malt, Paper, *&c.* for the Repayment thereof: As the 5 & 6 *W.* 3. *cap.* 7. to raiſe one Million, by 10 *l.* Tickets, and the fortunate Adventurers to have Annuities, *&c.* The 10 *Ann. c.* 19. for raiſing two Millions at 6 *per Cent.* Intereſt. The 1 *Geo.* 1. *c.* 1. to raiſe and compleat 1,400,000 *l.* The 5 *Geo.* 1. *c.* 4. for raiſing the Sum of 500,000 *l.* by 3 *l.* Tickets; and Annuities of 4 *l. per Cent.* to the Fortunate. The 7 *Geo.* 1. *c.* 20. for raiſing 700,000 *l.* by *Lottery*, at Tickets 10 *l.* each. And the 8 & 9 *Geo.* 1. to raiſe the like Sum, *&c.* The 12 *Geo.* 1. *c.* 2. to raiſe one Million, the higheſt Benefit of fortunate Adventurers to be 20,000 *l.* and Blanks of 10*l.* Tickets to have 7 *l.* 10 *s.* attended with Annuities at 3 *l. per Cent.* And the 4 *Geo.* 2. *c.* 9 for raiſing 1,200,000 *l.* by Way of *Lottery*, on the ſame Conditions, *&c.* Theſe *Lotteries* are publickly drawn by Commiſſioners appointed; and the Annuities, and Intereſt for Prizes and Blanks, are paid till Redemption by Parliament. By the 8 *Geo.* 1. *c.* 2. for Suppreſſion of *private Lotteries*, no Perſon ſhall ſet up or keep any Office, of Sales of Houſes, Lands, Plate, Goods, *&c.* for Improvement of ſmall Sums of Money, or expoſe to Sale any Houſes or Goods by Way of *Lottery*, Lots, Tickets or Numbers, or publiſh Propoſals relating to the ſame, *&c.* on Pain of forfeiting 500 *l.* And Adventurers in ſuch Sales to forfeit double the Sum contributed. 9 *Geo.* 1. Perſons keeping Offices or Places for ſuch Sales of Houſes, or Goods, *&c.* by the Way of *Lottery*, Cards or Dice, and any Game to be determined by the *Lot* or Drawing, or by any Machine or Device of Chance; and publiſhing Propoſals, or delivering out Tickets to that End, ſhall forfeit 200 *l.* being convicted before a Juſtice of Peace, leviable by Diſtreſs, *&c.* And Juſtices refuſing to do what is required, are liable to 10 *l.* Penalty, by 12 *Geo.* 2. *c.* 28. No Perſons ſhall ſell the Chance of any Ticket in a publick *Lottery*, for leſs than the whole Time of Drawing; nor any Shares therein, or receive Money on Conſideration of Repayment, if Tickets prove unfortunate, *&c.* on Forfeiture of Treble the Sum received; to be recovered in the Courts at *Weſtminſter*, &c. *Stat.* 6 *Geo.* 2. See 9 *Geo.* 2. *c.* 29. and 16 *Geo.* 2. *c.* 13. See alſo *Gaming.*

Love. Provoking *unlawful Love*, was one *Species* of the Crime of Witchcraft puniſhable by Stat. 1 *Jac.* 1. *cap.* 12.

Lourgulary, Is the caſting any corrupt and poiſonous Thing in the Water, which was *Lowrgulary*, and Felony; and ſome think it a Corruption of *Burglary.* Stat. pro Stratis London. Anno 1573.

Lowbellers, Are ſuch Perſons, as go out in the Night-time with a *Light* and a *Bell*, by the Sight and

Noiſe whereof Birds ſitting upon the Ground become ſtupified, and ſo are covered and taken with a Net: The Word is derived from the Sax. *Low*, which ſignified a *Flame of Fire.* Antiq. Warwick. p. 4.

Luminare, A Lamp or Candle, ſet burning on the Altar of any Church or Chapel; for the Maintenance whereof Lands and Rent-charges were frequently given to Pariſh-Churches, *&c. Kennet's Gloſſ.*

Lunatick, Is defined to be a Perſon who is ſometimes of good and ſound Memory and Underſtanding, and ſometimes not; *aliquando gaudet lucidis intervallis:* And ſo long as he hath not Underſtanding, he is *Non compos mentis.* As a *Lunatick*, without Memory, underſtands not what he does; in criminal Caſes, his Acts ſhall not be imputed to him; unleſs he kill or offer to kill the King, when by our old Books he might be guilty of Treaſon and puniſhed as a Traitor; tho' this is contradicted by the late Opinions. 1 *Inſt.* 247. 3 *Inſt.* 46. *H. P. C.* 10, 43 And it is ſaid, if one who has committed a capital Offence, become *Lunatick* and *Non compos* before Conviction, he ſhall not be tried; and if after Conviction, that he ſhall not be executed. 1 *Hawk. P. C.* 2. Whilſt a Man is *lunatick*, and he doth a criminal Act, 'tis his Madneſs and not his Intention, which is the Cauſe of the Action, and *Actus non facit reum, niſi mens ſit rea*; and for that Reaſon, his Puniſhment could not be an Example to others. *Plowd.* 19. 1 *Inſt.* 247. But he who incites a Madman or *Lunatick* to do a Murder or other Crime, is a principal Offender, and as much puniſhable as if he had done it himſelf. *H. P. C.* 43. *Keyl.* 53. By the antient Common Law, a dangerous Madman may be kept in Priſon, till he recovers his Senſes. *Bro. Coron.* 101. And by a late Statute, *Lunaticks*, or Madmen wandering may be apprehended by a Juſtice's Warrant, and locked up and chained if neceſſary; or be ſent to their laſt legal Settlement; and two Juſtices by Order may charge their Eſtates for their Maintenance, *&c. Stat.* 12 *Ann. Seſſ.* 2. *cap.* 23. A *Lunatick* cannot lawfully promiſe or contract for any Thing; and the Grants of *Lunaticks* and Infants are parallel. 1 *Inſt.* 247. 3 *Mod.* 301. Every Deed made by a *Lunatick*, who is *Non compos*, is voidable; though a *Lunatick* himſelf making a Purchaſe, if he then recovers his Memory, he may agree to it, and afterwards his Heir cannot diſagree to it: But otherwiſe his Deeds may be avoided by his Heir; except he levy a Fine, or do any other Act of Record, *&c. Lit.* 405, 406. 4 *Rep.* 126. The Deed of a *Lunatick* ſhall not be avoidable by himſelf; for he ſhall not at Law be allowed to work his own Diſability, by making himſelf a Madman. 4 *Rep.* 124. In Equity a *Lunatick* may be relieved againſt his own Acts; and where a Purchaſe has been obtained of him, at an Under-value, or he hath made a Settlement, *&c.* the Deeds, Fines, *&c.* in ſuch a Caſe, have been ſet aſide, on a Bill brought by the *Lunatick* and his Committee. 2 *Vern.* 678. *Abr. Ca. Eq.* 278, 279. If a *Lunatick* ſue an Action, it muſt be ſued in his own Name; and if an Action be brought againſt a *Lunatick*, he is to appear by Attorney, if of full Age, and by a Guardian, if under Age. 1 *Inſt.* 135. There are *Commiſſions of Lunacy*, iſſued out of the *Chancery*, to examine whether the Perſon be *lunatick* or not; and to make Inqueſts of his Lands, *&c.* Though if Lands are ſeiſed by the King, by Virtue of a Commiſſion of Lunacy, and he grants the Cuſtody of the *Lunatick ſine computo reddendo*; if he afterwards is of ſound Memory, he ſhall have an Action of Account for the Profits. *Dyer* 25. The King hath the Guardianſhip of the Lands of *Lunaticks*; but not the ſole Intereſt in granting, and the Cuſtody of their Lands or Bodies; as he hath of *Ideots:* And the King or other Guardian of a *Lunatick*, is accountable to him, his Executors, *&c.* 4 *Rep.* 124. As a *Lunatick* may recover his Underſtanding, and have Diſcretion enough to diſpoſe and govern his Lands, the King ſhall not have the Cuſtody of him and his Lands; for after he has recovered his Memory and Underſtanding, he is to have his Eſtate at his own Diſpoſal. *Dyer* 302. 3 *Salk.* 301. The Stat. 17 *Ed.* 2. *cap.* 10. ordains, that the King is to provide that the Lands of *Lunaticks* be ſafely kept, and they and their Families maintained by the Profits; and the Reſidue ſhall be kept for their Uſe, and be delivered to them when they come to their right Mind; the King taking nothing to his own Uſe, *&c.* A *Lunatick* found by Inquiſition, upon a Commiſſion of *Lunacy*, whoſe Perſon and Eſtate are committed to particular Truſtees, may not marry before he or ſhe be declared of ſound Mind, by the Lord Chancellor, *&c.* If any ſuch do, the Marriage is void, by 15 *Geo.* 2. *c.* 30. See 4 *Geo.* 2. *c.* 10. and *Ideot.*

Lunda, A Weight formerly uſed here. —— Lunda *anguillarum conſtat de* 10 *Sticis.* Fleta, lib. 2. cap. 12.

Lundreſs, A Sterling Silver-penny, which had its Name from being coined only at *London*, and not at the Country Mints. *Lownds's Eſſay upon Coin, p.* 17.

Lupanatrix, A Bawd or Strumpet: And by the Cuſtom of *London*, a Conſtable may enter a Houſe, and arreſt a common Strumpet, and carry her to Priſon. 3 *Inſt.* 206. —— *Rex Majori & Vic.* London *&c. Intelleximus quod plures Roberiæ, Murdera perpetrantur, per receptatores publicas* Lupanatrices *in diverſis Locis in Civitate noſtra prædict', &c.* Clauſ. 4 Ed. 1. p. 1. m. 16.

Lupinum caput gerere, Signified to be outlawed, and have one's Head expoſed like a Wolf's, with a Reward to him that ſhall bring it in. *Plac. Coron.* 4 *Johan. Rot.* 2.

Luplicetum, (*Lat.*) A Hop-garden, or Place where Hops grow. 1 *Inſt.* 4.

Luſhburgs or **Luxenburgs**, Were a baſe Sort of Foreign Coin, made of the Likeneſs of *Engliſh* Money, and brought into *England* in the Reign of King *Ed.* 3. to deceive the King and his People: On Account of which, it was made Treaſon for any one wittingly to bring any ſuch Money into the Realm, as knowing it to be falſe. *Stat.* 25 *Ed.* 3. 3 *Inſt.* 1.

Luſtrings. A Company was incorporated for making, dreſſing and luſtrating Alamodes and *Luſtrings* in *England*, who were to have the ſole Benefit thereof, by Statute 4 & 5 *W. & M.* And no foreign Silks known by the Name of *Luſtrings* or Alamodes are to be imported, but at the Port of *London*, &c. *Stat.* 9 & 10 *W.* 3. *c.* 43.

Lyef-Silver, A ſmall Fine or Compoſition, paid by cuſtomary Tenants to their Lord, for Leave to plough and ſow their Land. *Somn. Gavelk.* 27.

Lynn, An Act for regulating Worſted-Weavers and their Apprentices, in the Town of *Lynn*, &c. See 14 & 15 *H.* 8. *c.* 3.

M.

M, Is the Letter, with which Perſons convicted of Manſlaughter, are mark'd on the Brawn of the left Thumb. 4 *H.* 7. *c.* 13.

Mac, In the *Iriſh* Language ſignifies a Son, *Filius.* Litt. Dict.

Macegreſs, (*Macegrarii*) Are ſuch as buy and ſell Fleſh ſtolen, knowing the ſame. *Brit. c.* 39. *Leg. Inæ, cap.* 30. —— Macegrariis *Carnes Furtivas Scientibus, vendentibus & ementibus.* Stat. Walliæ.

Machecollare, (From the Fr. *Maſchecoulis*) Signifies to make a War-like Device, eſpecially over the Gate of a Caſtle in the Form of a Grate, through which ſcalding Water, or any other offenſive Thing, may be thrown upon the Heads of Aſſailants. 1 *Inſt.* 5.

Madder, The Importation of it is allow'd, and alſo Planting thereof in *England*; and a Puniſhment inflicted on Perſons who mix it with Sand, or corrupt it. *Stat.* 14 *Car.* 2. *c.* 30.

Madning Money. Old Roman Coins found about *Dunſtable*, are ſo called by the Country People, and have their Name from *Magintum*, uſed by the Emperor *Antoninus* in his *Dunſtable Itinerary.* Camd.

Madrigals, Is an old *Britiſh* Word ſignifying Country Songs. *Blount.*

Maeremium, (Derived from the Fr. *Mereſme*) Properly ſignifies any Sort of Timber, fit for Building; *ſeu quodvis* Materiamen. *Clauſ.* 16 *Ed.* 2. *m.* 3.

Magbote or **Mægbote,** (From the Sax. *Mæg*, i. e. *Cognatus*, & Bote, *compenſatio*) A Compenſation for the Slaying or Murder of one's Kinſman, in ancient Times, when corporal Puniſhments for Murder, &c. were ſometimes commuted into pecuniary Fines, if the Friends and Relations of the Party killed were ſo ſatisfied. *Leg. Canuti, cap.* 2.

Magick, (*Magia, Necromantia*) Witchcraft and Sorcery. See *Conjuration.*

Magiſter. This Title often found in old Writings, ſignified that the Perſon to whom attributed had attained ſome Degree of Eminency *in Scientia aliqua, præſertim literaria*; and formerly thoſe who are now called *Doctors*, were termed *Magiſtri.*

Magiſtrate, (*Magiſtratus*) A Ruler, and he is ſaid to be *Cuſtos utriuſque Tabulæ*; the Keeper or Preſerver of both Tables of the Law. If any *Magiſtrate*, or Miniſter of Juſtice, is ſlain in the Execution of his Office, or keeping of the Peace; it is Murder, for the Contempt and Diſobedience to the King and the Laws. 9 *Co. Rep.*

Magna Aſſiſa eligenda, Is a Writ directed to the Sheriff, to ſummon four lawful Knights before the Juſtices of *Aſſize*, there upon their Oaths to chuſe twelve Knights of the Vicinage, &c. to paſs upon the *Great Aſſiſe*, between *A. B.* Plaintiff, and *C. D.* Defendant, &c. *Reg. Orig.* 8.

Magna Charta, The great Charter of Liberties granted in the ninth Year of King *Hen.* 3. It is ſo called, either for the Excellency of the Laws therein contained, or becauſe there was another Charter called the *Charter of the Foreſt* eſtabliſhed with it, which was the leſs of the two; or in Regard of the great Wars and Troubles in the Obtaining it, and the remarkable Solemnity in denouncing Excommunication and *Anathema's* againſt the Breakers thereof: And *Spelman* calls it, *Auguſtiſſimum Anglicarum Libertatum Diploma & Sacra Anchora.* King *Edward the Confeſſor* granted to the Church and State ſeveral Privileges and Liberties by *Charter*; and ſome were granted by the Charter of King *Hen.* 1. Afterwards King *Stephen*, and King *Hen.* 2. confirmed the Charter of *Hen.* 1. and King *Rich.* 1. took an Oath at his Coronation to obſerve all juſt Laws, which was an implicite Confirmation of that Charter; and King *John* took the like Oath: This King likewiſe, after a Difference between him and the Pope, and being imbroiled in Wars at Home and Abroad, particularly confirmed the aforementioned Charter, with further Privileges, but ſoon after broke it, and thereupon the Barons took up Arms againſt him, and his Reign ended in Wars; to whom ſucceeded King *Hen.* 3. who in the 37th Year of his Reign, after it had been ſeveral Times by him confirmed, and as often broken, came to *Weſtminſter-Hall*, and in the Preſence of the Nobility and Biſhops, with lighted Candles in their Hands, *Magna Charta* was read; the King all that while laying his Hand on his Breaſt, and at laſt ſolemnly ſwearing *faithfully and inviolably to obſerve all the Things therein contained, as he was a Man, a Chriſtian, a Soldier, and a King:* Then the Biſhops extinguiſhed the Candles, and threw them on the Ground; and every one ſaid, *Thus let him be extinguiſhed, and ſtink in Hell, who violates this Charter:* Upon which the Bells were ſet on Ringing, and all Perſons by their Rejoicing approved of what was done. But notwithſtanding this very ſolemn Confirmation of this Charter, the very next Year King *Henry* invaded the Rights of his People, till the Barons levied War againſt him; and after various Succeſs, he confirmed this Charter, and the *Charter of the Foreſt*, in the Parliament of *Marlbridge*, and in the 52d Year of his Reign. And his Son King *Edward* 1. confirming theſe Charters, in the 25th Year of his Reign made an Explanation of the Liberties therein granted to the People; adding ſome which are new, called *Articuli ſuper Chartas*; And *Magna Charta* was not only then confirmed, but more than thirty Times ſince. *Co. Litt.* 81. This excellent Statute, or rather Body of Statute-Law at that Time, ſo beneficial to the Subject, and of ſuch great Equity, is the moſt antient written Law of the Land: And it is divided into 38 Chapters; the 1ſt of which after the ſolemn Preamble of its being made *for the Honour of God, the Exaltation of Holy Church, and Amendment of the Kingdom,* &c. ordains, That the Church of *England* ſhall be free, and all Eccleſiaſtical Perſons enjoy their Rights and Privileges. The 2d is of the Nobility, Knights-ſervice, Reliefs, &c. The third concerns Heirs, and their being in Ward The 4th directs Guardians for Heirs within Age, who are not to commit Waſte. The 5th relates to the Cuſtody of Lands, &c. of Heirs, and Delivery of them up when the Heirs are of Age. The 6th is concerning the Marriage of Heirs. The 7th appoints Dower to Women, after the Death of their Husbands, a third Part of the Lands, &c. The 8th relates to Sheriffs and their Bailiffs, and requires that they ſhall not ſeiſe Lands for Debts where there are Goods, &c. the Surety not to be diſtrained, where the Principal is ſufficient. The 9th grants to *London*, and all Cities and Towns, their ancient Liberties. The 10th Orders, that no Diſtreſs ſhall be taken for more Rent than is due, &c. By the 11th the Court of Common Pleas is to be held in a certain Place. The 12th gives Aſſiſes for Remedy, on Diſſeiſin of Lands, &c. The 13th relates to Aſſiſes of Darrein Preſentment, brought by Eccleſiaſticks. The 14th enacts, that no Freeman ſhall be amerced for a ſmall Fault, but in Proportion to the Offence; and by the Oaths of lawful Men. The 15th, no Town ſhall be diſtrained to make Bridges, &c. but ſuch as of ancient Times have been accuſtomed. The 16th is for repairing of Sea-Banks and Sewers. The 17th pohibits Sheriffs, Coroners, &c. from holding Pleas of the Crown. The 18th enacts, that the King's Debtor dying, the King ſhall be firſt paid his Debt, &c. The 19th directs the Manner of levying Purveyance for the King's Houſe. The 20th concerns Caſtleward, where a Knight was to be diſtrained for Money for keeping his Caſtle, on his Neglect. The 21ſt forbids Sheriffs, Bailiffs, &c. to take the Horſes or Carts of any Perſon to make Carriage without paying for it. By the 22d the King is to have Lands of Felons a Year and a Day, and afterwards the Lord of the Fee. The 23d requires Wears to be put down on Rivers. The 24th directs the Writ *Præcipe in Capite*, for Lords againſt Tenants offering Wrong, &c. The 25th declares that there ſhall be but one Meaſure throughout the Land. The 26th, Inquiſition of Life and Member, to be granted freely. The 27th relates to Knight's Service, Petit Serjeanty, and other ancient Tenures, (taken away together with Wardſhip, &c. by 12 *Car.* 2.) The 28th directs, that no Man ſhall be put to his Law, on the bare Suggeſtion of another, but by lawful Witneſſes. The 29th, no Freeman ſhall be diſſeiſed of his Freehold, impriſoned and condemned, but by Judgment of his Peers, or by Law. The 30th requires that Merchant Strangers be civilly treated, &c. The 31ſt relates to Tenures coming to the King by Eſcheat. By the 32d no Freeman ſhall ſell Land, but ſo that the Reſidue may anſwer the Services. The 33d, Patrons of Abbeys, &c. ſhall have the Cuſtody of them in the Time of Vacation. The 34th, a Woman to have an Appeal for the Death of her Huſband. The 35th directs the Keeping of the County-Court Monthly, and alſo the Times of holding the Sheriff's Turn, and View of Frankpledge. The 36th makes it unlawful to give Lands to Religious Houſes in *Mortmain*. The 37th relates to *Eſcuage*, and Subſidy, to be taken as uſual. And the 38th ratifies and confirms every Article of this great Charter of Liberties. By the Stat. 25 *Ed.* 1. it is ordain'd, that the great Charter ſhall be taken as the *Common Law*. And all Statutes made againſt *Magna Charta*, are declared to be void, by 43 *Ed.* 3.

Magna precaria, A great or general Reap-day, And in 21 *R.* 2. the Lord of the Manor of *Harrow on the Hill*, *in Com. Middleſex*, had a Cuſtom, that by Summons of his Bailiff upon a general Reap-day, then called *Magna precaria*, the Tenants ſhould do a certain Number of Days Work for him; every Tenant that had a Chimney, being obliged to ſend a Man. *Phil. Purvey*, *p.* 145.

Magnum Centum, The great Hundred, or Six Score. *Chart.* 20 *H.* 2.

Magnus Portus, The Town and Port of *Portſmouth*.

Mahomeria, The Temple of *Mahomet*; and becauſe the Geſtures, Noiſe, and Songs there, were ridiculous to the *Chriſtians*, therefore they called Antick Dancing, and any Thing of Ridicule, a *Momerie*. Matt. Pariſ.

Maids. Taking them away unmarried, without Conſent of Father or Mother or their Guardians; is puniſhable by Stat. 4 & 5 *P.* & *M.* *c.* 8.

Maiden Aſſiſes, Is when at any *Aſſiſes* no Perſon is condemned to die.

Maiden Rents, A Noble paid by every Tenant in the Manor of *Builth*, *in Com. Radnor*, at their Marriage; anciently given to the Lord for his omitting the Cuſtom of *Marcheta*, whereby he was to have the firſt Night's Lodging with his Tenant's Wife; but it was more probably a Fine for a Licence to marry a Daughter.

Maignagium, (Fr. *Maignen*, i. e. *Faber ærarius*) A Braſier's Shop; though ſome ſay it ſignifies a Houſe. ——*Idem Hugo tenebat unum* Maignagium *in foro ejuſdem villæ*, &c. Lib. Rameſ. Sect. 265.

Maihem or **Mayhem**, (*Mahemium* from the Fr. *Mehaigne*, i. e. *Membri Mutilationem*) Signifies a Maim, Wound, or corporeal Hurt, by which a Man loſeth the Uſe of any Member, that is or might be of any Defence to him: As if a Man's Skull be broke, or any Bone broken in any other Part of the Body; a Foot, Hand, Finger, or Joint of a Foot, or any Member be cut off; if by any Wound, the Sinews be made to ſhrink; or where any one is caſtrated; or if an Eye be put out, any Fore-tooth broke, &c. But the cutting off an Ear, or Noſe, the breaking of the hinder Teeth, and ſuch like, was held no *Maihem*; as they were not a Weakening of a Perſon's Strength, but a Disfiguring and Deformity of the Body. *Glanv. lib.* 4. *c.* 7. *Bract. lib.* 3. *tract.* 2. *Britton*, *cap.* 25. *S. P. C. lib.* 1. *cap.* 41. By Statute, if any one on Purpoſe, by Malice Fore-thought, and lying in Wait, ſhall cut off the Noſe, put out the Eye, diſable the Tongue, or cut off or diſable any Limb or Member of any of the King's Subjects, with an Intent to maim or disfigure him, the Perſon Offending, his Aiders, Abettors, &c. are guilty of Felony, without Benefit of Clergy; though no Attainder of ſuch Felony ſhall corrupt the Blood, or forfeit the Dower of the Wife, Lands or Goods of the Offender. *Stat.* 22 & 23 *Car.* 2. *cap.* 1. In theſe Caſes of Maiming, a voluntary Act the Law judgeth of Malice: And if a Man attack another, of Malice fore-thought in order to murder him with a Bill, or any ſuch like Inſtrument, which cannot but endanger the Maiming him, and in ſuch Attack, happen not to kill but only to maim him, he may be indicted of Felony on this Statute; and it ſhall be left to the Jury on the Evidence, whether there were a Deſign to Murder by Maiming, and conſequently a malicious Intent to maim as well as kill, in which Caſe the Offence is within the Statute. 1 *Hawk. P. C.* 112. All *Maihem* by the Common Law was Felony: And it is ſaid that antiently a *Maihem* by Caſtration was puniſhed with Death; and other *Maihems* with the Loſs of Member for Member; but afterwards no *Maihem* was puniſhed in any Caſe with the Loſs of Life or Member, but only by Fine and Impriſonment, and Damages to the Party. 3 *Inſt.* 62, 118. *S. P. C.* 32. *H. P. C.* 133. For *Maihem*, Indictment or an Appeal may be had; or in common Caſes Action of Treſpaſs, at the Plaintiff's Election: And *Maihem* ſhall be under the Inſpection of the Court, to increaſe Damages given by the Jury, &c. if the Court thinks fit. *Sid.* 108. *Maihem* was commonly tried by the Judges inſpecting the Party; and if they doubted whether it were a *Maihem* or not, they uſed to take the Opinion of ſome able Chirurgion in the Point. *Homo Mahemiatus*, a Man maimed or wounded. See *Appeal of Maihem*.

Maii Inductio, An antient Cuſtom for the Prieſt and People of Country *Villages* to go in *Proceſſion* to ſome adjoining Wood on a *May-day* Morning; and return in a Kind of Triumph, with a May-pole, Boughs, Flowers, Garlands, and other Tokens of the Spring. This *May-game*, or Rejoicing at the Coming of the *Spring*, was for a long Time obſerved, and ſtill is in ſome Parts of *England*; but there was thought to be ſo much Heathen Vanity in it, that it was condemned and prohibited within the Dioceſe of *Lincoln*, by the good old Biſhop *Groſthead*.——— *Faciunt etiam, ut audivimus, Clerici Ludos quos vocant* Inductionem Maii, & *Feſtum Autumni*, &c. *quod nullo modo vos latere poſſit: Si veſtra prudentia ſuper hiis diligenter Inquireret*, &c.

Mail, (*Macula*,) A Coat of *Mail*, ſo called from the Fr. *Maille*, which ſignifies a ſquare Figure, or the Hole of a Net: So *Maille de Houbergeons* was a Coat of *Mail*, becauſe the Links or Joints in it reſembles the Squares of a Net. *Mail* is likewiſe uſed for the Leather Bag wherein Letters are carried by the Poſt, from *Bulga*, a Budget.

Maile, Anciently a Kind of Money; and Silver Half-pence were termed *Mailes*. 9 *Hen.* 5. By Indenture in the Mint, a Pound-weight of old Sterling Silver was to be coined into three hundred and ſixty *Sterlings* or Pennies, or ſeven hundred and twenty *Mailes* or Half-pennies, or one thouſand four hundred and forty Farthings. *Lownds's Eſſ. on Coin* 38.

Mainad. A falſe Oath, or Perjury.——*Si nolit abjurare, emendet ipſum* Mainad, i. e. *Perjurium dupliciter.* Leg. Inæ, cap. 34.

Mainovre, (from the Fr. *Main*, i. e. *Manus*, and *ouvrer*, *operari*) Is Handy-work; or ſome Treſpaſs committed by a Man's *Hand*. 7 *R.* 2. *c.* 4. *Brit.* 62.

Mainpernable, That may be let to Bail; and what Perſons are *mainpernable* appears by the Stat. *Weſtm.* 1. 3 *Ed.* 1. *c.* 15. See *Bail*.

Mainpernors, (*Manucaptores*) Are thoſe Perſons to whom a Man is delivered out of Cuſtody or Priſon, on their becoming bound for his Appearing, &c. which if he do not do, they ſhall forfeit their Recognizances; and they are called *Manucaptores*, becauſe they do it as it were *Manu capere & ducere captivum è Cuſtodia vel Priſona*.

Mainpriſe, (*Manucaptio*) from the Fr. *Main*, i. e. *Manus* & Pris, *captus*) Signifies in our Law the Taking

king or Receiving of a Perſon into Friendly Cuſtody, who otherwiſe might be committed to Priſon, upon Security given that he ſhall be forth coming at a Time and Place aſſigned; as to let one to *Mainpriſe* is to commit him to thoſe that undertake he ſhall appear at the Day appointed. *Old. Nat. Br.* 42. *F. N.* B. 249. *Manwood* makes this Difference between *Mainpriſe* and *Bail:* He that is *mainpriſed* is ſaid to be at large, after the Day he is ſet to *Mainpriſe*, until the Day of his Appearance; but where a Man is let to Bail, by any Judge, &c. until a certain Day, there he is always accounted by the Law to be in their Ward for the Time; and they may, if they will, keep him in Priſon, ſo that he that is ſo bailed ſhall not be ſaid to be at large, or at his own Liberty. *Manw. p.* 167. A Man under *Mainpriſe* is ſuppoſed to go at large, under no Poſſibility of being confined by his Sureties or Mainpernors, as in Caſe of Bail. 4 *Inſt.* 179. *Mainpriſe* is an Undertaking in a Sum certain; Bail anſwers the Condemnation in civil Caſes, and in Criminal, Body for Body: *Mainpriſe* may be where one is never arreſted, or in Priſon; but no Man is bailed, but he that is under Arreſt, or in Priſon; ſo that *Mainpriſe* is more large than Bail. *H. P. C. 96. Wood's Inſt.* 582, 618. Upon a *Capias* or Exigent awarded againſt a Man, he ſhall find *Mainpriſe* for his Appearance; and if the Defendant make Default, his Manucaptors are to be amerced, &c. And a Bill of *Mainpriſe*, acknowledged and put into Court, is good though it be not inrolled. *Jenk. Cent.* 129. There is an antient *Writ of Mainpriſe*, whereby thoſe who are bailable, and have been refuſed the Benefit of it, may be deliver'd out of Priſon; as where Perſons are impriſoned on Suſpicion of Larceny, or indicted of Treſpaſs, before Juſtices of Peace, &c. *Reg. Orig.* 269. *F. N. B.* 250. 2 *Hawk. P. C.* 93. See *Manucaptio.*

Mainport, (*In Manu portatum*) Is a ſmall Duty, which in ſome Places Pariſhioners pay to the Rector of the Pariſh, in Recompence for certain Tithes: It is commonly of Loaves of Bread; and this *Mainport* Bread was paid to the Vicar of *Blyth*, as you may read in the *Antiq. of Nottinghamſhire, p.* 473.

Mainſworn, In the *North of England* is taken for as much as forſworn. *Brownl. Rep.* 4.

Maintainors, Are thoſe that maintain or ſecond a Cauſe depending between others, by disburſing Money, or making Friends, for either Party, &c. not being intereſted in the Suit, or Attornies employed therein. *Stat.* 19 *Hen.* 7. *cap.* 14.

Maintenance, (*Manutenentia*) Signifies the unlawful Upholding of a Cauſe or Perſon, metaphorically drawn from the Succouring a young Child that learns to go by one's *Hand*; and in Law is taken in the worſt Senſe. 32 *H.* 8. *c.* 9. Alſo it is uſed for the Buying or Obtaining of pretended Rights to Lands. *Stat. Ibid.* And *Maintenance* is either *ruralis*, in the Country; as where one aſſiſts another in his Pretenſions to Lands, by taking or holding the Poſſeſſion of them for him; or where one ſtirs up Quarrels or Suits in the Country: Or it is *Curialis*, in a Court of Juſtice; where one officiouſly intermeddles in a Suit depending in any ſaid Court, which no Way belongs to him, and he hath nothing to do with, by aſſiſting the Plaintiff or Defendant with Money or otherwiſe, in the Proſecution or Defence of any ſuch Suit. *Co. Litt.* 368. 2 *Inſt.* 213. 2 *Roll. Abr.* 115. And he, who fears that another will maintain his Adverſary, may by Way of Prevention have an original Writ grounded on the Statutes, prohibiting him ſo to do. 1 *Hawk. P. C.* 225. *Reg. Orig.* 182. Not only he who lays out his Money to aſſiſt another in his Cauſe, but he that by his Friendſhip or Intereſt ſaves him that Expence which he might otherwiſe be put to, is guilty of *Maintenance. Bro. Mainten.* 7, 14, 17, &c. And if any Perſon officiouſly give Evidence, or open the Evidence without being called upon to do it; ſpeak in the Cauſe, as if of Counſel with the Party; retain an Attorney for him, &c. or ſhall give any publick Countenance to another in Relation to the Suit; as where one of great Power and Intereſt, ſays that he will ſpend 20 Pounds on one Side, &c. or ſuch a Perſon comes to the Bar with one of the Parties, and ſtands by him while his Cauſe is tried, to intimidate the Jury; if a Juror ſollicits a Judge to give Judgment according to the Verdict, after which he hath nothing more to do, &c. theſe Acts are *Maintenance.* 1 *Hawk.* 249, 250. But a Man cannot be guilty of *Maintenance*, in reſpect of any Money given by him to another, before any Suit is actually commenced: Nor is it ſuch, to give another Advice, as to what Action is proper to be brought, what Method to be taken, or what Counſellor or Attorney to be employed; or for one Neighbour to go with another to his Counſel, ſo as he do not give him any Money: And Money may be lawfully given to a poor Man, out of Charity, to carry on his Suit, and be no Maintenance: Attornies may lay out their Money for their Clients, to be repaid again; but not at their own Expence, on Condition of no Purchaſe no Pay, if they carry the Cauſe or loſe it. *Fitzh. Mainten.* 18. 3 *Roll. Abr.* 118. 2 *Inſt.* 564. It is ſaid that if a Man of great Power, not learned in the Law, tells another who asks his Advice, that he hath a good Title, it is *Maintenance.* 1 *Hawk.* 250. In Caſe any Perſon who is no Lawyer, and that hath no Intereſt in the Cauſe, ſhall take upon him to do the Part of a Lawyer; this will be unlawful *Maintenance.* And after a Suit is begun, no Man may encourage either of the Parties, or yield them any Aid or Help, by Money, or the like, but he that hath Intereſt therein: But to lend another Money to maintain his Law-Suit, is no *Maintenance.* 22 *H.* 6. 6. 19 *E.* 4. 3. 2 *Shep. Abr.* 406. If a Perſon hath any Intereſt in the Thing in Diſpute, though on Contingency only, he may lawfully maintain an Action relating to it; as if Tenant in Tail, or for Life, be impleaded, he in Reverſion or Remainder, &c. may maintain the Defence of the Suit, with his own Money; and a Leſſor may lawfully maintain his Leſſee. 2 *Roll. Abr.* 115. A Lord may juſtify maintaining a Tenant, in Defence of his Title; and the Tenant may maintain his Lord: One bound to warrant Lands, may lawfully maintain the Tenant impleaded; and a Man may maintain thoſe who are enfeoff'd of Lands in Truſt for him, concerning thoſe Lands, &c. An Heir apparent, or the Husband of ſuch an Heir, may maintain the Anceſtor in an Action concerning the Inheritance of the Land whereof he is ſeiſed in Fee; a Maſter maintain his Servant, and aſſiſt him with Money, but not in a real Action, unleſs he hath ſome of his Wages in his Hands; and a Servant by Reaſon of Relation may maintain his Maſter in all Things, except laying out his own Money in the Maſter's Suit. 1 *Hawk.* 252, 253. 1 *Inſt.* 368. By the Statutes, none of the King's Officers ſhall maintain Pleas, or Suits, in the King's Courts, for Lands, &c. under Covenant to have Part thereof, or any Profit therein. And Clerks of Juſtices, are not to take Part in Quarrels, or delay Right, on Pain of treble Damages. 3 *Ed.* 1. *cap.* 25. No Perſons ſhall take upon them to maintain Quarrels, to the Let and Diſturbance of the Common Law, by themſelves or by any other. 1 *Ed.* 3. *cap.* 14. and 20 *Ed.* 3. 4. The King's Counſellors, Officers or Servants, or any other Perſon whatſoever, ſhall not ſuſtain Quarrels by *Maintenance*, upon grievous Pain, Impriſonment, and Ranſom. 1 *R.* 2. *c.* 4. No Man may obtain or buy any pretended Right or Title to any Land unleſs the Seller hath taken the Profits a Year, or been in Poſſeſſion, on Pain of forfeiting the Value, &c. And none ſhall unlawfully maintain any Suit concerning Lands, or retain any Perſon for *Maintenance*, by Letters, Rewards or Promiſes, under the Penalty of 10 *l.* for every Offence, to be divided between the King and the Proſecutor. 32 *H.* 8. *cap.* 9. But maintaining Suits in the Spiritual Court, is not within the Statutes relating to *Maintenance. Cro. Eliz.* 594. Though *Maintenance* in a Court-Baron, is as much within the Purview of the Stat. 1 *R.* 2. as *Maintenance* in a Court of Record. 1 *Hawk.* 255. A pretended Right to Copyhold Lands ſold, is within the Stat. of *H.* 8. 4 *Rep.* 26. If *A.* be Owner of Land in Poſſeſſion, and another who hath no Right granteth the Land; altho' the Grant upon it be void, yet the Grantor and Grantee are liable to this Statute. 1 *Inſt.* 369. So where he that hath a pretended Right, and none in Truth, ſhall get the Poſſeſſion wrongfully, and then ſell the Land, &c. But a Remainder-man in Fee, may obtain the pretended Title of a Stranger. 1 *Inſt.* 369. 3 *Inſt.* 76, 77. And a Perſon who hath good Right and Title, at the Time of the Bargain or Leaſe, will not be within the above Statute, altho' neither he nor his Anceſtors have been in Poſſeſſion, thereof, &c. for a Year before. *Plow.* 47. *Dyer* 74. The Buying of a Leaſe for Years, is within the Act: Tho' if a Perſon make ſuch Leaſe to try a Title in Ejectment, unleſs it be to a great Man; it is out of the Statute. 1 *Inſt.* 369. *Dyer* 374. A Leſſor having good Right to Land, but not in Poſſeſſion, made a Leaſe of it, and did not ſeal it on the Land; it was adjudged within the Stat. 32 *Hen.* 8. 1 *Leon.* 166. The Law will not ſuffer any Thing in Action, Entry, &c. to be granted over; this is to prevent Titles being granted to Men of Subſtance, to oppreſs the meaner Sort of People. 1 *Inſt.* 214. And where a Bond was given for Performance of Covenants in a Leaſe, and after the Covenants being broken, the Leſſee aſſigned both the Leaſe and Bond to another, and then the Aſſignee put the Bond in Suit, this was held *Maintenance*; ſo it would have been if the Leſſee had aſſigned the Bond and not the Leaſe, and afterwards the Covenants were broken, and the Bond put in Suit. *Godb.* 81. 2 *Nelſ. Abr.* 1142. By the Common Law, Perſons guilty of *Maintenance* may be proſecuted by Indictment, and be fined and impriſoned; or by Action, &c. And a Court of Record may commit a Man for an Act of *Maintenance* done in the Face of the Court. *Hetl. Rep.* 79. 1 *Inſt.* 368.

Majority. The only Method of determining the Acts of Many, is by a *Majority:* The major Part of Members of Parliament enact Laws, and the *Majority* of Electors chuſe Members of Parliament; the Act of the major Part of any Corporation, is accounted the Act of the Corporation; and where the *Majority* is, there by the Law is the Whole. *Stat.* 19 *Hen.* 7. *Stud. Compan.* 25.

Maiſnada, Signifies a Family, *quaſi Manſionata.*

Maiſon de Dieu, A Monaſtery, Hoſpital, or Alms-houſe. *Stat.* 2 & 3 *P.* & *M. cap.* 23. 29 *Eliz. cap.* 5, &c. All Hoſpitals, *Maiſons de Dieu*, and abiding Places for Poor, lame and impotent Perſons, erected by the Statute 39 *Eliz. cap.* 5. or at any Time ſince founded, according to the Intent of that Statute, ſhall be incorporated and have perpetual Succeſſion, &c. 21 *Jac.* 1. *cap.* 1.

Maiſura, A Houſe or Manſion; a Farm; from the Fr. *Maiſon.*——*Baldwinus Comes Exon. omnibus Baronibus ſuis & hominibus, &c. dedi* Maiſuram *quam ipſe tenet,* &c. MS. Carter. pen. Eliam Aſhmole Armig.

Majus jus, Is a Writ or Law proceeding in ſome cuſtomary Manors, in order to a Trial of Right of Land: And the Entry in the old Books is thus: *Ad hanc Curiam venit* A. B. *in propria Perſona ſua & dat Domino, &c. ad vidend. Rotul. Curiæ, Et petit inquirend. utrum ipſe habet* Majus jus *in uno Meſſuagio, &c. Et ſuper hoc Homag. dicunt, &c.* Ex Libro MS. Epiſcop. Heref. temp. Ed. 3.

Make Law, (*Facere Legem*) Is to perform that Law which a Man had formerly bound himſelf unto; that is to clear himſelf of an Action commenced againſt him, by his Oath and the Oaths of Neighbours: And this Cuſtom ſeems to be borrowed of the *Feudiſts.* Old Nat. B. R. 267. Kitch. 192. See *Wager of Law.*

Make Services and Cuſtoms, Signifies nothing but to perform them. *Old Nat. Br.* 14.

Malandrinus, A Thief or Pirate; mentioned in *Walſingham, p.* 388.

Malberge, *Mons Placiti*, A Hill where the People aſſembled at a Court, like our Aſſiſes; which by the *Scots* and *Iriſh* are called *Parley hills,* Du Cange.

Malecreditus, Is one of bad Credit, who is ſuſpected and not to be truſted. *Fleta, lib.* 1. *cap.* 38.

Malediction, (*Maledictio*) A Curſe which was anciently annexed to Donations of Lands, made to Churches and religious Houſes.——*Si quis autem* (*quod non optamus*) *hanc noſtram Donationem infringere temptaverit, perpeſſus ſit gelidis glacierum flatibus & malignorum Spirituum; terribiles tormentorum cruciatus evaſiſſe non quieſcat, niſi prius in riguis pœnitentiæ gemitibus, & pura emendatione emendaverit. Chart. Reg. Athelſtani Monaſt. de Wiltune, Anno* 933.——And we read in a *Charter* of *William de Warren,* Earl of *Surry: Venientibus contra hæc & deſtruentibus ea, occurrat Deus in Gladio iræ & furoris & vindictæ &* Maledictionis *æternæ: Servantibus autem hæc & Defendentibus ea, occurrat Deus in pace, gratia & miſericordia & ſalute æterna.* Amen, Amen, Amen.

Malefeaſance, (From the Fr. *Malfaire, i. e.* to offend) Is a doing of Evil, or Tranſgreſſing. 2 *Cro. Rep.* 266.

Maletent, Is interpreted to be a Toll for every Sack of Wool, by Statute: Nothing from henceforth ſhall be taken for Sacks of Wool, by Colour of *Maletent*, &c. Stat. 35 *Ed.* 1.

Malice, Is a form'd Deſign of doing Miſchief to another; it differs from Hatred. 2 *Inſt.* 42. In Murder, 'tis *Malice* makes the Crime; and if a Man having a malicious Intent to kill another, in the Execution of his *Malice* kill a Perſon not intended, the *Malice* ſhall be connected to his Perſon, and he ſhall be adjudged a Murderer. *Plowd.* 474. The Words *Ex malitia præcogitata* are neceſſary to an Indictment of Murder, &c. See *Murder.*

Malignus, i. e. *Diabolus: Proh Dolor, hunc pepulit propria de ſede* Malignus.

Malo grato, The doing a Thing unwillingly. *Libertatem Eccleſiæ, &c.* Malo grato *Stabilierunt, i. e.* He being unwilling. *Mat. Pariſ.* 1245.

Malt. Bad *Malt* ſhall not be mingled with good, under Penalties: *Malt* is to be three Weeks in Making and Drying; except in *June*, *July* and *Auguſt*, and in thoſe Months not leſs than ſeventeen Days; and Half a Peck of Duſt muſt be taken out of every Quarter by Skreening, &c. before it ſhall be offered to Sale, on Pain of forfeiting 20*d. per* Quarter. *Stat.* 2 & 3 *Ed.* 6. *cap.* 10. Where bad *Malt* is made, or bad *Malt* ſhall be mix'd with good, a Conſtable by the Direction of a Juſtice of Peace, may ſearch for the ſame; and order it to be ſold at reaſonable Price, &c. 11 *Jac.* 1. *cap.* 28. A Duty of 6*d. per* Buſhel was granted on *Malt*, by Stat. 8 & 9 *W.* 3. *c.* 21. which by ſubſequent Statutes hath been continued yearly ever ſince; Malſters are once a Month, to make an Entry at the Exciſe-Office of all *Malt* made, under the Penalty of 10*l.* and to pay the Duty in three Months, or forfeit double Value: And if any Malſters alter their ſteeping Veſſels, without giving Notice, or ſhall uſe any private Ciſtern, they ſhall forfeit 50*l.* And refuſing Exciſe-Officers Entrance into their Houſes, &

&c. forfeit 5*l.* Alſo concealing *Malt* from the Sight of the Gager, is liable to a Penalty of 10*s.* *per* Buſhel: And wetting Barley any where but in the Ciſtern, incurs a Forfeiture of 2*s.* 6*d.* a Buſhel, *&c.* But Juſtices of Peace have Power to mitigate the Penalties and Forfeitures. 2 *Ann.* *c.* 2. 6 *Geo.* 1. *c.* 20. *Malt* made for *Exportation* is diſcharged from Duty; yet muſt be entered, and kept ſecret from other *Malt*, on Pain of 50*l.* and when made ſhall be put into Store-houſes with two Locks, and not delivered out without Preſence of an Officer, *&c.* Stat. 12 *Geo.* 1. *c.* 4. If any *Malt* be brought from *Scotland* into *England*, it ſhall pay 3*d.* a Buſhel more, to make up the *Engliſh* Duty, and be entered and the Duty paid before Landing, *&c.* or ſhall be forfeited. 13 *Geo.* 1. *c.* 7. An Allowance is made for exporting *Malt*, on Certificates of Officers, and Security given not to re-land it; but if landed in any Part of *Great Britain*, the ſame to be forfeited, and treble Value, *&c.* by 3 *Geo.* 2. *c.* 7. 6 *Geo.* 2. *c.* 1. 9 *Geo.* 2. & 10 *Geo.* 2. *c.* 1. See *Braſium.*

Malt-mulna, A Quern or *Malt-mill*; it is mentioned by *Mat. Pariſ.* in the Lives of the Abbots of *St. Alban's.*

Maltſcot, A Payment for the Liberty of making Malt. *Somn. Gavelk. p.* 27.

Malveilles, (From the Fr. *Malvoillance*) Is uſed in our antient Records, for Crimes and Miſdemeanors, or malicious Practices.——*Ces ſont les Treaſons, Felonies, &* Malveilles *faits au noſtre Seigneur le Roy, & a ſon People per* Roger. de Mortimer, *&c.* *Record.* 4 *Ed.* 3.

Malveiſſa, A warlike Engine to batter and beat down Walls. *Matt. Pariſ.*

Malveiſin, (Fr. *Mavais voiſin, malus vicinus*) An ill Neighbour.

Malveis Procurors, Are underſtood to be ſuch as uſe to pack Juries, by the Nomination of either Party in a Cauſe, or other Practice. *Artic. ſuper Chart. cap.* 10.

Malum in ſe, Our Law-Books make a Diſtinction between *Malum in ſe* and *Malum prohibitum. Vaugh. Rep.* 332. All Offences at Common Law generally are *Mala in ſe*; but playing at unlawful Games, and frequenting of Taverns, *&c.* are only *Mala prohibita* to ſome Perſons, and at certain Times, and not *Mala in ſe.* 2 Roll. Abr. 355.

Man Iſland, And Laws concerning it. See *Iſle.*

Mana, Signified formerly an old Woman. *Gerv. of Tilb. cap.* 95.

Managium, (From the Fr. *Menage*, a Dwelling or Inhabiting.) Is a Manſion-houſe or Dwelling-place.——*Conceſſi capitale* Managium *meum cum pertinentiis*, *&c.* Mon. Angl. Tom. 2. pag. 82.

Manbote, (*Sax.*) A Compenſation or Recompence for *Homicide*; particularly due to the Lord for Killing his Man or Vaſſal. *Spelm. de Conc. Vol.* 1. *pag.* 622.

Manca, Was a ſquare Piece of Gold Coin, commonly valued at thirty Pence; and *Mancuſa* was as much as a Mark of Silver, having his Name from *Manu-cuſa*, being coined with the Hand. *Leg. Canut.* But the *Manca* and *Mancuſa* were not always of that Value; for ſometimes the former was valued at ſix Shillings, and the latter as uſed by the Engliſh *Saxons* was equal in Value to our Half-Crown. Manca *ſex ſolidis æſtimetur.* Leg. H. 1. c. 69. *Thorn.* in his Chronicle, tells us, that Mancuſa *eſt pondus duorum ſolidorum & ſex denariorum*; and with him agrees *Du Cange*, who ſays that twenty *Mancæ* make fifty Shillings. *Manca* and *Mancuſa* are promiſcuouſly uſed in the old Books for the ſame Money. *Spelm.*

Manch, Is ſixty Shekels of Silver, or ſeven Pounds and ten Shillings; and one hundred Shekels of Gold, of ſeventy-five Pounds. *Merch. Dict.*

Manciple, (*Manceps*) A Clerk of the Kitchen, or Caterer; and an Officer in the *Inner Temple* was anciently ſo called, who is now the Steward there, of whom *Chaucer*, our ancient Poet, ſometime a Student of that Houſe, thus writes:

A Manciple *there was within the Temple,*
Of which all Catours might taken Enſemple.

This Officer ſtill remains in Colleges in the Univerſities. *Cowel.*

Mandamus, Is a Writ iſſuing out of the Court of *King's Bench*, ſent by the King to the Head of ſome Corporation, commanding them to admit or reſtore a Perſon into his Place or Office, *&c.* 2 *Inſt.* 40. It lies to reſtore a Mayor, Alderman or Capital Burgeſs of a Corporation; a Recorder, Town-Clerk, Attorney turned out of an inferior Court, Steward of a Court, Conſtable, *&c.* 11 *Rep.* 99. *Raym.* 153. 1 *Keb.* 549. 2 *Nelſ. Abr.* 1148, 1149. By ſome Opinions it doth not lie to reſtore a Common Council-Man. 2 *Cro.* 540. But ſee 1 *Ventr.* 302. A *Mandamus* may be had to reſtore a Freeman; and alſo to admit one to the Freedom of the City, having ſerved an Apprenticeſhip. *Sid.* 107. To reſtore a Fellow of the College of Phyſicians, it lies; though not for a Fellow of a College in the Univerſities, if there is a Viſitor. 1 *Lev.* 19, 23. It hath been reſolved, that a *Mandamus* ſhall not be granted to reſtore a Fellow or Member of any College of Scholars or Phyſick, becauſe theſe are private Foundations. *Carthew's Rep.* 92. And this Writ lieth not for the Deputy of an Office, *&c.* yet he who hath Power to make ſuch Deputy, may have it. *Mod. Ca.* 18. 1 *Lev.* 306. It lies not generally to elect a Man into any Office; nor for a Clerk of a Company, which is a private Office; or to reſtore a Barriſter expelled a Society; a Proctor, *&c.* 2 *Lev.* 14, 18. 2 *Nelſ.* 1150, 1151. But a *Mandamus* may lie to remove Perſons as well as reſtore them; by Virtue of any particular Statute, on Breach thereof. 4 *Mod.* 233. If *Juſtices of Peace* refuſe to admit one to take the Oaths, to qualify himſelf for any Place, *&c.* *Mandamus* lies: So to a Biſhop or Archdeacon, to ſwear a Church warden; to grant a Probate of a Will; and to admit an Executor to prove a Will, or an Adminiſtrator; to a Rector, Vicar or Church-warden, to reſtore a Sexton. *Wood's Inſt.* 568. *Mandamus* lieth to admit a Man to take the Oath of Allegiance, *&c.* and ſubſcribe according to the Act of Toleration, in order to be qualified to be a Diſſenting Miniſter. *Mod. Caſ.* Alſo a *Mandamus* will lie to the Biſhop, to grant a Licence for a Parſon to Preach, where 'tis denied, and he is in Orders for it: And this Writ lies to reſtore a Perſon to Univerſity Degrees. 2 *Ld. Raym.* 1206, 1334. But after a Man is reſtored on a peremptory *Mandamus*, he may be diſplaced again, for the ſame Matters for which he was before removed and others. *Ib.* 1283. In the Writ of *Mandamus*, the Words are to admit or reſtore, *vel Cauſam ſignificare quare*, *&c.* And if a Corporation have Power to disfranchiſe a *Freeman*, and they do it accordingly, if a Writ is granted to reſtore him, *vel Cauſam ſignificare quare*, and they certify a ſufficient but falſe Cauſe, the Court of *B. R.* cannot reſtore him, but there lies an Action for a falſe Return: And if then it be found for him, he ſhall have a *peremptory Mandamus*, which is uſually granted after the firſt Writ; or if he be impriſoned, he may bring Action of Treſpaſs and falſe Impriſonment, *&c.* 11 *Rep.* 99. 5 *Mod.* 254. There is to be Judgment upon the Return of the Writ, before any Action of the Caſe may be brought for a falſe Return of a *Mandamus.* 2 *Lev.* 238. And Returns upon Writs of *Mandamus* muſt be certain for the Court to judge upon. 11 *Rep.* 99. By Statute, where any

Writ of *Mandamus* ſhall iſſue out of *B. R*, *&c.* the Perſons required by Law are to make their Return to the firſt *Mandamus*; and on the Return made thereto, the Perſon ſuing out the Writ may plead to and traverſe all or any of the material Facts contained in ſuch Return to which the Perſon making the Return ſhall reply, take Iſſue, *&c.* And the Parties proceed as if Action had been brought for a falſe Return; and if Judgment be given for the Plaintiff, he ſhall have Damages and Coſts, as in Action on the Caſe, *&c.* 9 *Ann.* 20. And all the Statutes of *Jeofails*, ſhall extend to Writs of *Mandamus*, and Proceedings thereon. A Perſon having a *Mandamus* to be admitted to any Office or Privilege, ought to ſuggeſt whatever is neceſſary to intitle him to be admitted; and if that be not done, or if it is falſe, it will be good Matter to return on the *Mandamus*: And on the Return of theſe Writs, as well as others of this Nature, there are uſually great Arguments in Favour of Liberty, *&c.* *Mod. C.* 310. It has been held, that ſeveral Perſons cannot have one *Mandamus*; nor can ſeveral join in an Action on the Caſe for a falſe Return. 2 *Salk.* 433. A Writ of *Mandamus* may not be directed to one Perſon, or to a Mayor and Aldermen, *&c.* to command another to do any Act; it muſt be directed to thoſe only who are to do the Thing required, and obey the Writ. 2 *Salk.* 446, 701. This Writ is not to be *Teſted* before granted by the Court; and if the Corporation to which the *Mandamus* is ſent, be above forty Miles from *London*, there ſhall be fifteen Days between the *Teſte* and the Return of the firſt Writ of *Mandamus*; but if but forty Miles, or under, eight Days only; and the *Alias* and *Pluries* may be made returnable *immediate*: Alſo at the Return of the *Pluries*, if no Return be made, and there is Affidavit of the Service, *Attachment* ſhall go forth for the Contempt, without hearing Counſel to excuſe it. *Ibid.* 434. A Motion was made for an Attachment, for not returning an *Alias Mandamus*; and by *Holt* Ch. Juſt. In Caſe of a *Mandamus* out of *Chancery*, no *Attachment* lies till the *Pluries*, for that is in Nature of an Action to recover Damages for the Delay; but upon a *Mandamus* out of *B. R.* the firſt Writ ought to be returned, though an Attachment is not granted without a peremptory Rule to return the Writ, and then it goes for the Contempt, *&c.* *Ibid.* 429.

Mandamus, Was alſo a Writ that lay after the Year and Day, where in the mean Time the Writ, called *Diem clauſit Extremum*, had not been ſent out to the *Eſcheator*, on the Death of the King's Tenant *in Capite*, *&c.* And was likewiſe a Writ or Charge to the Sheriff, to take into the Hands of the King all the Lands and Tenements of the King's Widow Tenant, who againſt her Oath married without his Conſent. *F. N. B.* 253. *Reg. Orig.* 195.

Mandatary, (*Mandatarius*) Is he to whom a Command or Charge is given.

Mandate, (*Mandatum*) Is a Commandment judicial of the King, or his Juſtices, to have any Thing done for the Diſpatch of Juſtice; of which there is great Diverſity. *Reg. Judic.* And we read of the Biſhop's *Mandate*, to the Sheriff, *&c.* Stat. 31 *Eliz.* *c.* 9. A *Mandate* may be iſſued by the *King's Bench* to ſwear a Church-warden, or Pariſh-Clerk, *&c.* when refuſed to be ſworn by the Biſhop's Miniſter. *March. Rep.* 22, 101.

Mandati dies, *Mandie* or *Maundey Thurſday*, the Day before *Good Friday*, when is commemorated and practiſed the *Command* of our Saviour, in waſhing the Feet of the Poor, *&c.* And our Kings of *England* to ſhew their Humility, long executed the ancient Cuſtom on that Day, of waſhing the Feet of poor Men, in Number equal to the Years of their Reign, and giving them Shoes, Stockings and Money.

Mandato panes, Loaves of Bread given to the Poor upon *Maundy Thurſday*. Chartular. Glaſton. MS. fol. 29.

Manentes, Was anciently uſed for *Tenentes* or Tenants; *Qui in ſolo alieno manent*: And it was not lawful for them or their Children to depart without Leave of the Lord. *Concil. Synodal. apud Cloverſho.* *Anno* 822.

Mangonare, Signifies to buy in the Market. *Leg. Æthelred. c.* 24.

Mangonus, An Engine of War made to caſt Stones; and it differs from a *Petrard*, as follows, *viz.*

Interea groſſos Petraria *mittit ad intus*
Aſſidue Lapides, Mangonelluſque *Minores.*

Manipulus, Was an Handkerchief which Prieſts always had in their Left-hands. *Blount.*

Manner, (From the Fr. *Manier*, or *Mainer*, i. e. *Manu tractare*,) To be *Taken with the Manner*, is where a Thief having ſtolen any Thing, is taken with the ſame about him, as it were in his *Hands*; which is called *Flagrante delicto*. *S. P. C.* 179. Such a Criminal is not bailable by Law: And anciently if one guilty of Felony or Larceny had been freſhly purſued, and taken *with the Manner*, and the Goods ſo found upon him had been brought into Court with him, he might be tried immediately, without any Appeal or Indictment; and this is ſaid to have been the proper Method of Proceeding in ſuch *Manors* which had the Franchiſe of *Infangthefe*. *H. P. C.* 201. *S. P. C.* 28. 2 *Hawk. P. C.* 211.

Manning, (*Manopera*) A Day's Work of a Man; and in ancient Deeds there was ſometimes reſerved ſo much Rent, and ſo many *Mannings*.

Mannire, Is where one is cited to appear in Court, and ſtand to Judgment there: It is different from *Bannire*; for though both of them ſignify a Citation, one is by the adverſe Party, and the other by the Judge. *Leg. H.* 1. *c.* 10.

Manor, (*Manerium*, derived from the Fr. *Mainour*, i. e. *Habitatio*, or from *Manendo*, of abiding, becauſe the Lord of it did uſually reſide there) Is an ancient Royalty or Lordſhip, formerly called *Barony*, conſiſting of Demeſnes and Services, and of a Court-Baron as incident to it: It is a noble Kind of Fee, granted out partly to Tenants for certain Services to be performed, and partly reſerved to the Uſe of the Lord's Family, with Juriſdiction over his Tenants for their Farms or Eſtates. And as to the Original of *Manors*, it is ſaid, that after the Conqueſt there were certain Circuits of Ground granted by the King or Conqueror to ſome *Barons* or Men of like worth, for them and their Heirs to dwell upon, and exerciſe Juriſdiction, more or leſs within their Territories, as the King thought fit to grant, performing ſuch Services, and paying ſuch yearly Rent for the ſame, as he by his Grant required; and that afterwards theſe great Men allotted Part of their Lands to other meaner Men, reſerving again to themſelves Rents and Services; and by that Means, as they became Tenants to the King, ſo the inferior Tenants became Tenants to them. *Horn's Mirr. Juſt. lib.* 1. But at this Time a *Manor* rather ſignifies the Juriſdiction and Royalty Incorporeal, than the Land; for a Man may have a *Manor in Groſs*, that is the Right and Intereſt of a Court-Baron, *&c.* and another enjoy all the Land belonging to it. *Kitch.* 4. *Bract. lib.* 5. *tract.* 5. *c.* 28. A *Manor* may be compounded of divers Things; as of an Houſe, Arable Land, Meadow, Paſture, Wood, Rents, Advowſon, Court-Baron, *&c.* And it comprehends Meſſuages, Lands, Woods, *&c.* *Mich.* 4 *Eliz.* And it is ſaid a Parſonage may be a *Manor*, if granted by the Parſon, Patron and Ordinary, *&c.* to be held of the Parſon by certain Services. *Paſch.* 22 *Eliz.* By a Grant of the Demeſnes and Services, the *Manor* paſſeth; and by Grant and Render of the Demeſnes only, the *Manor* is deſtroyed, becauſe the Services and Demeſnes are thereby ſevered by the Act of the Party; tho' it is otherwiſe, if by Act of Law, as by Partition. 6 *Rep.* 63. There are two Coparceners of a *Manor*; the Demeſnes are aſſigned to one, and the Services to the other, the *Manor* is gone; but if one die without Iſſue, and the *Manor* deſcends to her who had the Services, the *Manor* is revived again, for the Severance was by Act in Law. 1 *Inſt.* 122. 8 *Rep.* 79. 3 *Salk.* 25, 40. A new *Manor* may ariſe and revive by Operation of Law. 1 *Leon.* 204. A *Manor* cannot be without a Court-Baron: And it muſt be Time out of Mind; at this Day a *Manor* cannot be made, becauſe a Court-Baron cannot now be made. 1 *Inſt.* 58, 108. It may contain one or more Villages or Hamlets; or only great Part of a Village, &c. And there are capital *Manors*, or Honours, which have other *Manors* under them, the Lords whereof perform Cuſtoms and Services to the ſuperior Lords. 2 *Inſt.* 67. 2 *Roll. Abr.* 72. There may be alſo cuſtomary *Manors* granted by Copy of Court-Roll, and held of other *Manors*. 4 *Rep.* 26. 11 *Rep.* 17. But it cannot be a *Manor* in Law, if it wanteth Freehold Tenants; nor be a Cuſtomary *Manor*, without Copyhold Tenants: If all the Freeholds eſcheat or come to the Lord by Purchaſe, the *Manor* is loſt; ſo if there are no Suitors in a Court-Baron but one, or there be only one Copyholder in a Cuſtomary *Manor:* For there ſhould be two Freeholders, or Suitors at leaſt. 1 *Inſt.* 58. *Lit.* 73. 2 *Roll. Abr.* 121. But it is ſaid, if there be but one Freehold Tenant, the Seigniory continues between the Lord and that one Tenant. 1 *And.* 257. 1 *Nelſ. Abr.* 524. The Cuſtom remains, where Tenements are divided from the reſt of the *Manor*, the Tenants paying their Services; and he who hath the Freehold of them, may keep a Court of Survey, &c. *Cro. Eliz.* 103.

Manſe, (*Manſa*) An Habitation, or Farm and Land. *Spelm.* See *Manſum.*

Manſion, (*Manſio à Manendo*) Among the antient *Romans* was a Place appointed for the Lodging of the Prince, or Soldiers in their Journey; and in this Senſe we read *Primam Manſionem*, &c. It is with us moſt commonly uſed for the Lord's chief Dwelling-houſe within his Fee; otherwiſe called the *Capital Meſſuage*, or Manor Place. *Skene.* Some ſay it is a Dwelling of one or more Houſes without a Neighbour: And *Manſion-houſe* is taken in Law for any Houſe of Dwelling of another; in Caſes of committing *Burglary*, &c. 3 *Co. Inſt.* 64. The *Latin* Word *Manſia*, according to Sir *Edward Coke*, ſeems to be a certain Quantity of Land: *Hida vel Manſia*, and *Manſa*, are mentioned in ſome old Writers and Charters. *Fleta, lib.* 6. And that which in ancient *Latin* Authors was termed *Hida*, was afterwards called *Manſus.*—— Manſio *eſſe poterit conſtructa ex pluribus Domibus vel una, quæ erit habitatio una & ſola ſine vicino; etiam & ſi alia* Manſio *ſit vicinata non erit villa quia villa eſt ex pluribus* Manſionibus *vicinata & collata ex pluribus vicinis.* Bract. lib. 5. tract. 5. p. 1.

Manſlaughter, (*Homicidium*) Is the unlawful Killing a Man without any prepenſed Malice; as when two Perſons meet, and upon ſome falling out, the one kills the other. It is done in a preſent Heat, on a ſudden Quarrel, and upon a juſt Provocation; and without any deliberate Intention of doing Miſchief: And it differs from *Murder* only, in that it is not done with foregoing Malice; and from *Chancemedley*, having a preſent Intent to kill. *Staundf. P. C. lib.* 1. *cap.* 9. This Crime is Felony; but for the firſt Time admits of Clergy: And there can be no Acceſſaries to this Offence before the Fact, becauſe it muſt be done without Premeditation. H. P. C. 217. In the Laws of *Canutus*, the ſame Diſtinction was made between Murder and *Manſlaughter*, as now; for we find, if a Man were killed wilfully and premeditately, then the Offender was to be delivered to the Kindred of the Slain, &c. But if on his Trial, the Fact was proved not to be wilful, then he was reſigned to the Biſhop, &c. *Leg.* 53. *Manſlaughter* muſt be upon a ſudden Quarrel, where the Party guilty doth not appear to be Maſter of his Temper, by talking calmly on the Quarrel, or afterwards in other Diſcourſe, whereby the Heat of Blood may be preſumed to be cooled. *Crompt.* 23. *Kel.* 56. Therefore if two Perſons meet together, and in ſtriving for the Wall, one of them kills the other, this is *Manſlaughter:* And ſo it is if, upon a ſudden Occaſion, they had gone into the Fields and fought; and one had killed the other; for all is one continued Act of Paſſion, on the firſt ſudden Occaſion. 3 *Inſt.* 51, 55. *H. P. C.* 48. And if two Perſons who have formerly fought on Malice, are afterwards to all Appearance reconciled, and fight again on a freſh Quarrel, and one of them is killed, it ſhall not be conſtrued that they were moved on the old Grudge, unleſs it appear by the whole Circumſtances of the Fact. 1 *Hawk. P. C.* 82. If two Men fall out on a Sudden and fight, and one breaks his Sword, and a Stranger ſtanding by lends him another, with which he kills his Adverſary, it is *Manſlaughter* in both. *H. P. C.* 56. And where a Stranger to a Perſon, a Man's Servant, &c. coming ſuddenly, ſees him fighting with another, and ſides with him and kills the other; this is only *Manſlaughter:* Alſo if a Man's Friend is aſſaulted, and he in Vindication of his Friend, on a Sudden takes up a miſchievous Inſtrument, and kills the Enemy of his Friend, this is *Manſlaughter:* So where a Perſon in reſcuing another injuriouſly reſtrained of his Liberty, by pretended Preſs-Maſters, &c. kills any of them. *H. P. C.* 57. *Plowd.* 101. *Kel.* 46, 136. But if the Perſon killed were a Bailiff, or other Officer of Juſtice, reſiſted by any one in the due Execution of his Duty; it would be Murder. *Kelw.* 67, 86. If a Maſter go with Malice to kill a Perſon, and his Servants being with him know nothing thereof, and then they join in the Aſſault and Murder; it is but *Manſlaughter* in the Servants: Though if the Maſter have Malice, and he tells his Servants of it, and that his Intention is to kill the Party, and they go with their Maſter; if they kill him, it is Murder in both Maſter and Servants. *Dyer* 26. 9 *Rep.* 66. *Plowd.* 100. There were two Men in an inner Chamber, quarrelling, and together by the Ears; a Brother of one of them ſtanding at the Door, that could not get in cried to his Brother to make him ſure, and preſently after he gave the other a mortal Wound; this was held *Manſlaughter* in him that ſtood at the Door. *Trin.* 1 *Jac.* 1. *Shep. Abr.* 493. Several Perſons having forcible Poſſeſſion of a Houſe, afterwards killed the Perſon whom they had ejected, as he was endeavouring in the Night forcibly to regain the Poſſeſſion, and to fire the Houſe; and they were adjudged only guilty of *Manſlaugter*, notwithſtanding they did the Fact in Maintenance of a deliberate Injury, becauſe the Party ſlain was ſo much in Fault himſelf: Yet if in ſuch, or any other Quarrel, whether it were ſudden or premeditated, a Juſtice of Peace, Conſtable, or even a private Perſon be killed in endeavouring to keep the Peace, he who kills him is guilty of Murder. 1 *Hawk.* 85. It hath been adjudged, that upon a Killing on a ſudden Quarrel, if a Man be ſo far provoked by another by Words or Geſtures, as to make a Puſh at him with a Sword, or ſtrike at him with any other ſuch Weapon as manifeſtly endangers his Life, before the other's Sword is drawn, and thereupon a Fight enſues, and he who made ſuch Aſſault kill the other, it is Murder; for by aſſaulting the other in ſuch a Manner, without giving him an Opportunity to defend himſelf, ſhewed that he intended to kill him: But in Caſe he who draws upon another in a ſudden Qurrrel, make no Paſs at him till his Sword is drawn, and then fighting with him kill him, he is guilty of *Manſlaughter* only; becauſe by giving the other Time to be on his Guard, he ſhews his Intent is not ſo much as to kill as to combat with the other, according to the common Notions of Honour. *Kel.* 61, 131. 1 *Hawk. P. C.* 81, 82. And as to Provocations, no Treſpaſs, Breach of a Man's Word, or Affront by Words, *&c.* will be thought a juſt Provocation to excuſe the Killing of another. *Ibid.* 130. Though if upon ill Words, as giving the Lie, or calling another Son of a Whore, both Parties ſuddenly fight, and one kills the other, this is *Manſlaughter*: And if one upon angry Words aſſaults another, by pulling him by the Noſe, and he that is aſſaulted draws his Sword and immediately kills the other, this is but *Manſlaughter*; for an Indignity was offered to the Slayer, from whence he might rerſonably apprehend that there might be ſome further Deſign upon him. *Ibid.* 55, 60, 135. There is a *Manſlaughter* puniſhable as Murder, by Statute: By the 1 *Jac.* 1. *c.* 8. If any Perſon ſhall *ſtab* another, not having then a Weapon drawn, or not ſtricken firſt, ſo that he dies within ſix Months, although it were not of Malice or Fore-thought, it is Felony without Benefit of Clergy: But this doth not extend to Perſons ſtabbing others *Se Defendendo*, or by Misfortune, *&c.* with no Intent to commit *Manſlaughter*; and the Statute relates to the Party only that actually gave the Stroke, or ſtabbed the other, and not to thoſe that were aiding or abetting. *H. P. C.* 58. A Blow given, or Weapon drawn at any Time during the Quarrel, before the Thruſt or Stab given, is within the Statute; and drawing out a Piſtol, and levying it at the Party killing, or throwing a Pot, Bottle, *&c.* at him, are within the Equity of the Words, having a Weapon drawn. 3 *Lev.* 255, 256. So if the Party killed have a Cudgel in his Hand; Clergy ſhall be allowed. *Godb.* 154. And he that is ouſted of Clergy by this Statute muſt be ſpecially indicted upon it; though even then the Jury may find *Manſlaughter* generally: For the Statute makes no new Offence, but only takes away the Benefit of the Clergy, which was allowed at Common Law. *H. P. C.* 58, 266. The Statute is but a Declaration of the Common Law; and made to prevent the Compaſſion of Juries, who oftentimes were perſuaded to believe that to be a Provocation to extenuate the Crime of Murder, which in Law was not. *Kel.* 55. And on the Statute 1 *Jac.* 1. of *Stabbing*, it has been uſual to prefer two Indictments, one of Murder, another upon this Statute, and put the Priſoner to plead to both; then to charge the Jury firſt with the Indictment for Murder, and if they find it not to be that Crime, to enquire on the other Bill, becauſe if convicted of either, the Offender is excluded his Clergy. 1 *Hale's Hiſt. P. C.* 468. If a Man is taken in Adultery with another Perſon's Wife, and the Husband draws his Sword and preſently kills the Adulterer; this is a juſt Provocation, and makes it *Manſlaughter.* 1 *Vent.* 158. *Raym.* 212. Two Maſters of Defence play at Hand-Sword, and one wounds the other, of which he dies, it is only *Manſlaughter*; and it is ſaid not to be Felony where they play by the King's Command, for that they play by Conſent to try their Manhood, and may be the better able to do the King Service upon Occaſion. 3 *Inſt.* 56, 160. *Dalt.* 352. *Hob.* 134. When two Perſons play at Foils, and one kills the other, it is *Manſlaughter. H. P. C.* 32, 57. Though if one kill another at Wreſtling, or ſhooting in Bow and Arrow at Buts, *&c.* this will not be *Manſlaughter* in the Offender. *Kelw.* 168. Theſe laſt Caſes are without an ill Intent: And if one ſhoots off a Gun in a Highway, or throws a Stone over a Wall, in a Place where People often meet, and a Perſon is killed; or at another in Play, and kill him; if done without any evil Intention, it is *Manſlaughter.* 3 *Inſt.* 57. But if an unlawful Act be done with an ill Intent, and the Act is deliberate, if Death happens, it is Murder. *H. P. C.* 32, 44. 3 *Inſt.* 56. *Kel.* 112. A Perſon ſhoots at the Tame Fowl of another, which is an unlawful Act, and kills a Stander-by, it is Murder: If he be ſhooting at Hare, Wild-Fowl, and not qualified to keep a Gun, or to kill Game, it is *Manſlaughter*: And where he is qualified to keep a Gun, it is only Chancemedley. 3 *In.* 59. Though in Caſes of this Nature, it ought to be conſidered how far the unlawful Act doth tend immediately, or by neceſſary Conſequence to the Injury of another. *H. P. C.* 31. *Kel.* 117. A Man drives his Cart careleſly, and it goes over a Child in the Street, if he ſee the Child and yet drive upon him, it is Murder; but if he ſaw not the Child, it is *Manſlaughter.* And if a Child run croſs the Way, and the Cart runs over him, before it is poſſible to make a Stop, it is *per Infortunium.* 1 *Hale's Hiſt. P. C.* 476. See *Chancemedley* and *Murder.*

Manſum Capitale, The Manor-houſe or *Manſe*, or Court of the Lord. *Kennet's Antiq.* 150.

Manſus Presbyteri, the *Manſe* or Houſe of Reſidence of the Pariſh-Prieſt; being the Parſonage or Vicarage-houſe. *Paroch. Antiq.* 431.

Mantheof, (From the Lat. *Mannus*, a Nag, and Sax. *Theoff*, i. e. Thief) Signified anciently an Horſeſtealer. *Leg. Alfred.*

Mantile, Is a long Robe; from the *French* Word *Manteau*, mentioned in the Stat. 24 *H.* 8. *c.* 13.

Manualia Beneficia, Were the daily Diſtributions of Meat and Drink to the Canons and other Members of *Cathedral Churches*, for their preſent Subſiſtence. ——— *Conſuetudinem, &c. qua Canonici & alii Beneficiati ſeu Clerici Cathedralium, & aliarum collegiatarum Eccleſiarum, diſtributiones quæ* Manualia Beneficia *nuncupantur, &c.* Lib. Statutor. Eccleſ. Sancti Pauli London. MS.

Manualis Obedientia, Is uſed for ſworn Obedience, or Submiſſion upon Oath. Henricus de Teiſdale *Rector Eccleſiæ de G. fecit pro illa Domino* Johanni *Archiepiſcopo* Ebor. Manualem Obedientiam *apud* Ebor. 11 *Kal. Maii* 1295. Ex Regiſtr. Ebor.

Manucaptio, A Writ that lies for a Man taken on Suſpicion of Felony, *&c.* who cannot be admitted to Bail by the Sheriff, or others having Power to let to *mainpriſe.* F. N. B. 249.

Manuel, (*Manualis*) Signifies what is employed or uſed by the *Hand*, and whereof a preſent Profit may be made: As ſuch a Thing in the *manual* Occupation of one, is where it is actually uſed or employed by him. *Staund. Prerog.* 54.

Manufacture, A Commodity produced by the Work of the *Hand*; as Cloth, *&c. Merch. Dict.*

Manumiſſion, (*Manumiſſio*) Is the Freeing a Villein or Slave out of Bondage; which was formerly done ſeveral Ways: Some were *manumitted* by Delivery to the Sheriff, and Proclamation in the County, *&c.* and others by Charter; one Way of *Manumiſſion* was for the Lord to take the Bondman by the Head, and ſay, *I will that this Man be free*, and then ſhoving him forward out of his *Hands.* And there was a *Manumiſſion* implied; when the Lord made an Obligation for Payment of Money to the Bondman, or ſued him where he might enter without Suit, *&c.* The Form of *manumitting* a Perſon in the Time of *Will.* 1. called *The Conqueror*, is thus ſet down. —— *Si quis velit ſervum ſuum Liberum facere, tradat eum Vicecomiti per* Manum *dextram, in pleno Comitatu, & quietum illum clamare debet a jugo Servitutis ſuæ per* Manumiſſionem, *& oſtendat ei liberas portas & vias, & tradat illi libera Arma, ſcilicet Lanceam & Gladium, & deinde Liber homo efficitur.* Lamb. Archai. 126.

Manuopera, Cattle, or any Implements uſed to work in Husbandry. *Mon. Angl. Tom.* 1. *pag.* 977. *Fleta, lib. cap.* 52.

Manupaſtus, Signifies a Domeſtick; *Sæpe obvenit in forenſi dialecto, pro Famulo & ſerviente Domeſtico.*

Spelm. He ſhall be culpable as of a Thing done by one of his Family, or by his own *Hand.* ——— *Erat culpabilis tanquam de* Manupaſto. *Leg. Hen.* 1. *cap.* 66.

Manure, (*Colo*, *Melioro*) To till, plough, or *manure* Land. *Litt. Dict.*

Manus, Was antiently uſed for an *Oath*, and for him that took it as a Compurgator. And it often occurs in old Records; *Tertia, quarta, &c.* Manu *Jurare*; that is, the Party was to bring ſo many to ſwear with him that they believed what he vouched was true: And we read of a Woman accuſed of Adultery; *Mulieri hoc neganti Purgatio* Sexta Manu *extitit Indicta, i. e.* She was to vindicate her Reputation upon the Teſtimony of ſix Compurgators. *Reg. Eccl. Chriſt. Cant.* If a Perſon ſwore alone, it was *propria* Manu *& Unica.* The Uſe of this Word came probably from its being required at a Perſon's *Hands*, to juſtify himſelf; or from laying the *Hand* upon the New Teſtament, on Taking the *Oath.*

Manutenentia, A Writ ſo called, uſed in Caſes of *Maintenance.* Reg. Orig. 182, 189.

Manworth, (Sax. *Manwyrd*) The Price or Value of a Man s Life or Head, mentioned by *Blount.*

Mara, A *Mere*, Lake, or great Pond, that cannot be drawn dry. *Mon. Ang. Tom.* 1: *p.* 666. ——— *Caſtrum & Manierum de* Bolyngbroke, *cum Soke* Mara *& Mariſco.* Paruch. Antiq. 418.

Marca, A certain Quantity of Money. See *Mark.*

Marcatu, The Rent of a *Mark* by the Year, anciently reſerved in Leaſes, *&c. Et unum* Marcatum *Redditus de, &c.* Mon. Angl. Tom. 1. p. 341.

Marchers or Lords Marchers, Were thoſe Noblemen that lived on the *Marches* of *Wales* or *Scotland*; who in Times paſt (according to *Camden*) had their Laws, and *Poteſtatem vitæ, &c.* like petty Kings; which are aboliſhed by the Stat. 27 *H.* 8. *c.* 26. and 1 *Ed.* 6. *c.* 10. In old Records the Lords *Marchers of Wales* were ſtyled *Marchiones de Marchia Walliæ.* See 1 & 2 *P.* & *M. c.* 15.

Marches, (*Marchia*, from the Germ. *March*, i. e. *Limes*, or from the Fr. *Marque*, viz. *Signum*, being the notorious Diſtinction between two Countries or Territories) Are the Limits between *England* and *Wales*, or between us and *Scotland*; which laſt are divided into *Weſt* and *Middle Marches.* 4 *Hen.* 5. *c.* 7. 22 *Ed.* 4. *c.* 8. 24 *H* 8. *c* 9. And there was formerly a Court called the *Court of the Marches of Wales*, where Pleas of Debt or Damages, not above the Value of fifty Pounds, were tried and determined; and if the Council of the *Marches* held Plea for Debts above that Sum, *&c.* a *Prohibition* might be awarded. *Hill.* 14 *Car.* 1. *Cro. Car.* 384.

Marchet, (*Marcketum*) *Conſuetudo pecuniaria, in Mancipiorum filiabus Maritandis. Bract. lib.* 2. *cap* 8. This Cuſtom, with ſome Variation, is obſerved in ſome Parts of *England* and *Wales*, as alſo in *Scotland* and the Iſle of *Guernſey*: And in the Manor of *Divenor* in the County of *Carmarthen*, every Tenant at the Marriage of his Daughter pays 10 *s.* to the Lord, which in the *Britiſh* Language is called *Gwabr Merched, i. e.* a Maid's Fee. The Cuſtom for the Lord to lie the firſt Night with the Bride of his Tenant was very common in *Scotland*, and the *North of England*: But it was abrogated by *Malcolme* the Third, at the Inſtance of his Queen; and inſtead thereof a Mark was paid to the Lord by the Bridegroom, from whence it is denominated *Marcheta Mulieris.* See *Maiden Rents.*

Marchiare, To adjoin to, or border upon. *Cowel.*

Marettum, (Fr. *Maret*, a Fen or Marſh) Signifies marſhy Ground overflowed by the Sea or great Rivers. *Co. Litt.* 5.

Marinarius, A *Mariner* or Seaman: And *Marinariorum Capitaneus* was the *Admiral* or Warden of the Ports; which Offices were commonly united in the ſame Perſon; the Word *Admiral* not coming into Uſe till the latter End of the Reign of King *Edw.* 1. before which Time the King's Letters ran thus: ——— *Rex Capitaneo* Marinariorum *& eiſdem* Marinariis Salutem. *Paroch. Antiq.* 322. The *Mariners* of a Ship are accountable to the Maſter; the Maſter to the Owners; and the Owners to the Merchant, for all Damages by Negligence, or otherwiſe. *Lex Mercat.* or *Merch. Compan.* 66. It has been held, that if Goods are ſtolen from a Maſter of a Ship, whilſt his Ship is in the River of *Thames*, he is chargeable; though not when he is gone out of the Realm, for a Robbery committed at Sea: But it was otherwiſe adjudged, where it was proved there was no Negligence in the Maſter. *Mich.* 22 *Car.* 2. 1 *Mod. Rep.* 85. If a *Mariner* be hired, and he deſerts the Service before the Voyage is ended, by the Law *Marine*, and by the Common Law, he ſhall loſe his Wages: And if a Ship is loſt by Tempeſt, *&c.* the *Mariners* loſe their Wages as well as the Owners their Freight; and this is to oblige them to uſe their utmoſt Endeavours to preſerve the Ship. *Leg. Oleron.* 1 *Sid.* 179. Where a *Mariner* is wounded in the Service of a Ship, he is to be provided for at the Charge of the Ship; and if his Illneſs is very violent, he ſhall be left aſhore with neceſſary Accommodations, and the Ship is not to ſtay for him; if he recovers, he is intitled to his full Wages, deducting what the Maſter expended for him. *Leg. Ol. c.* 7. The Common Law hath Juriſdiction for *Mariners* Wages; and in the Admiralty they may all join. 1 *Vent.* 146. Perſonating *Mariners* and Receiving their Wages; and Forging Letters of Attorney, *&c.* or falſly taking out Letters of Adminiſtration, for the Receipt of Seamens Wages, incurs a Forfeiture of 200 *l. &c. Stat.* 9 & 10 *W.* 3. A late Act hath ordained, That no Maſter of a Ship ſhall retain any Seaman or *Mariner*, without a Contract in Writing for his Wages, on Pain of forfeiting 5 *l.* And if a Mariner refuſe to proceed afterwards on the Voyage, he ſhall forfeit his Wages; and on Complaint to a Juſtice of Peace, he may commit the Offender to the Houſe of Correction, to be kept to hard Laabour, not exceeding thirty Days, *&c.* Alſo *Mariners* abſenting from Ships incur a Forfeiture of two Days Pay, for every Day's Abſence, to the Uſe of *Greenwich* Hoſpital; and leaving the ſame before diſcharged in Writing, forfeit one Month's Wages: But this ſhall not debar any *Mariner* belonging to a *Merchant Ship*, from entring into the King's Service, *&c.* And on the Arrival of any Ship, the Maſter is to pay his Men their Wages in thirty Days, or at the Time of their Diſcharge (deducting the Penalties impoſed) on Pain of 20 *s. Stat.* 2 *Geo.* 2. *c.* 36. No Perſons ſhall pay to any *Mariner* or common Seaman, for a certain Time, by any Ways or Means whatſoever, nor may any ſuch *Mariner* take more Wages, than after the Rate of 35 *s.* a Month, on Pain of forfeiting treble the Value of the Sum agreed; but this extends not to Seamen hired in Voyages, from any Parts beyond the Seas, to other Parts there, or to *Great Britain*, by 14 *Geo.* 2. *c.* 38. Maſters of *Britiſh* and *Iriſh* Ships, trading to the chief Ports of *Spain*, are to pay a certain Tonnage Duty to Perſons there, on the Freight of Goods and Merchandize; as a Contribution for Relief of Seamen ſhipwrecked, and other diſtreſſed Subjects, *&c.* 9 *Geo.* 2. *c.* 25. A like Duty to be paid by all Maſters of Veſſels, *&c.* going from any Part of his Majeſty's Dominions to *Leghorn*, for relieving *Mariners* that are ſhipwrecked, and taken in War, by Stat. 10 *Geo.* 2. *c.* 14. *Mariners* ſerving in Merchant-Ships, exempted from being preſſed into the King's Service, for two Years from their firſt going to Sea, and Apprentices three Years, *&c.* See 13 *Geo.* 2. *c.* 17. And See *Navy.*

Mariners, Wandering up and down, and who ſhall not ſettle themſelves to work, or have not a

Teſtimonial under the Hand of a Juſtice, ſhewing where they landed, and whither to go, *&c.* Or having ſuch Teſtimonial, if they exceed the Time limited more than fourteen Days, not being Sick in their Paſſage home, *&c.* it is Felony by the Statute 39 *Eliz. c.* 17. But if they cannot work for want thereof, the two next Juſtices upon their Complaint ſhall take Order that they may be provided of Work; or otherwiſe may tax the whole Hundred, 'till Relief ſhall be had. *Stat. Ibid.* And every Pariſh may be charged for relieving *Mariners*, as for maimed Soldiers; and they ſhall be relieved by the Treaſurer of the County, *&c.* 43 *Eliz. c.* 3.

Maritime, (*Maritimus*) Signifies *Sea* Affairs; any Thing belonging to the Sea.

Maritima Angliæ, The Profit and Emolument ariſing to the King from the Sea, which anciently was collected by Sheriffs; but it was afterwards granted to the Lord Admiral ———— Richardus de Lucy *dicitur habere* Maritimam Angliæ. *Pat.* 8 *H.* 3. *m.* 4.

Mark, (*Marca*, Sax. *Mearc*) Of Silver is now thirteen Shillings and four Pence: Though in the Reign of King *Hen.* 1. it was only ſix Shillings and a Penny in Weight; and ſome were coined, and ſome only cut in ſmall Pieces; but thoſe that were coined were worth ſomething more than the others. In former Times, Money was paid, and Things valued oftentimes by the *Mark*; *Aſſignavimus Regin. pro dote ſua mille* Marcas *Argenti annuatim*, 13 s. 4 d. *computatis pro* Marca. *Paten.* 3 *Joh. m.* 17. We read of a Mark of Gold of eight Ounces, and of 6 *l.* in Silver; or as others write 6 *l.* 13 *s.* 4 *d.* *Stow's Annal.* 32. *Rot. Mag. Pipæ*, *Ann.* 1 *Hen.* 2.

Mark to Goods, Is what aſcertains the Property or Goodneſs thereof, *&c.* And if one Man ſhall uſe the *Mark* of another, to the Intent to do him Damage, Action upon the Caſe lieth. 2 *Cro.* 471. A Penalty is inflicted in this Caſe, by Stat. 23 *Eliz. cap.* 8.

Market, (*Mercatus*, from *Mercando*) Buying and Selling) Is the Liberty by Grant or Preſcription whereby a Town is enabled to ſet up and open Shops, *&c.* at a certain Place therein, for Buying, Selling, and better Proviſion of ſuch Victuals as the Subject wanteth; It is leſs than a *Fair*; and uſually kept once or twice a Week. *Bract. lib.* 2. *cap.* 24. 1 *Inſt.* 220. And according to *Bracton*, one *Market* ought to be diſtant from another *Sex leucas* (*vel Milliar.*) *& dimidiam*, *& tertiam partem dimidiæ:* If one hath a *Market* by Charter or Preſcription, and another obtains a *Market* near it, to the Nuſance of the former; the Owner of the former may avoid it. 1 *Inſt.* 406. Alſo where a Man has a Fair or *Market*, and one erects another to his Prejudice, an Action will lie; and ſo it is ſaid of a Ferry. 2 *Roll.* 140. 1 *Mod.* 69. The Fair or *Market* is taken for the Place where kept: And formerly it was cuſtomary for Fairs and *Markets* to be kept on *Sundays*; but by Statute 27 *H.* 6. *c.* 5. no Fair or *Market* ſhall be kept upon any *Sunday*, or upon the Feaſts of the *Aſcenſion*, *Corpus Chriſti*, *Good Friday*, *All Saints*, *&c.* except for neceſſary Victuals, and in Time of Harveſt: And they ought not to be held in Churchyards, by 13 *Ed.* 1. *cap.* 6. All Fairs are *Markets:* And there may be a *Market* without an Owner; though where there is an Owner, a Butcher cannot preſcribe to ſell Meat in his own Houſe upon a *Market*-Day; for the *Market* muſt be in an open Place, where the Owner may have the Benefit of it. 4 *Inſt.* 272. No *Market* ſhall be held out of the Cito of *London* within ſeven Miles: Tho' all Butchers, Victuallers, *&c.* may hire Stalls and Standings in the *Markets* there, and ſell Meat and Proviſions, on four Days in a Week, *&c.* *Cit. lib.* 101. In the Country, Things ſold in the *Markets* are to be in the uſual Place appointed for the Sale: But in *London* every Shop is a *Market* Overt, for ſuch Goods as are put there to be ſold by the Trade of the Owner; though if the Sale be in a Warehouſe, and not publickly in the Shop, the Property is not altered. 5 *Rep.* 83. *Moor* 300. Sale upon a *Sunday*, though in a Fair or *Market*, will not alter the Property of the Thing ſold. 5 *Rep.* Perſons that dwell in the Country, may not ſell Wares by Retail in a *Market*-Town, but in open Fairs: But Countrymen may ſell Goods in Groſs there. *Stat.* 1 *&* 2 *P. & M.* All Contracts for any Thing vendible in *Markets*, *&c.* ſhall be binding, and Sales alter the Property, if made according to the following Rules, *viz.* 1. The Sale is to be in a Place that is open, ſo that any one that paſſeth by may ſee it, and be in a proper Place for ſuch Goods. 2. It muſt be an actual Sale for a valuable Conſideration. 3. The Buyer is not to know that the Seller hath a wrongful Poſſeſſion of the Goods ſold. 4. The Sale muſt not be fraudulent betwixt Two, to bar a third Perſon of his Right. 5. There is to be a Sale and a Contract, by Perſons able to contract. 6. The Contract muſt be originally and wholly in the *Market* Overt. 7. Toll ought to be paid, where required by Statute, *&c.* 8. The Sale is not to be in the Night but between Sun and Sun; (though if the Sale be made in the Night it may bind the Parties.) A Sale thus made ſhall bind the Parties, and thoſe that are Strangers, as have a Right. 5 *Rep.* 83. But it ſhall not bind the King, for any of his Goods ſold in *Markert* Overt; though regularly it bindeth Infants, Feme Coverts, Men beyond Sea, and in Priſon, Perſons *Non compos*, *&c.* 2 *Inſt.* 713. And yet if a Sale be made by an Infant, or Feme Covert, where they appear or are known to be ſuch, (except by a Woman Covert for ſuch Things as ſhe uſually trades for, by her Huſband's Conſent) it bindeth not. 5 *Rep.* 83. Sale of Goods ſtolen in *London* to Brokers, *&c.* alters not the Property. 1 *Jac.* 1. *c.* 21. And the Statutes which ordain, that Toll-takers ſhall be appointed in *Markets* and Fairs to enter in their Books the Names of the Buyers, Sellers, Vouchers and Prices of Horſes ſold, and deliver a Note thereof to the Buyer, *&c.* ſecure the Property of ſtolen Horſes to the Owner, although ſold in Fair or *Market.* 2 *&* 3 *P. & M. c.* 7. and 31 *Eliz. c.* 12. Every one that hath a *Market* ſhall have Toll for Things ſold, which is to be paid by the Buyer, and by antient Cuſtom may be paid for ſtanding of Things in the *Market*, though nothing be ſold; but not otherwiſe: A Piepowder Court is incident as well to a *Market* as a Fair; and Proprietors of *Markets* ought to have a Pillory and Tumbrel, *&c.* to puniſh Offenders. 2 *Inſt.* 221. 4 *Inſt.* 272. 1 *Inſt.* 281. Keeping a Fair or *Market*, otherwiſe than it is granted; as by keeping them upon two Days, when one only is granted; or on any other Day than appointed; extorting Toll or Fees, where none are due, *&c.* are Cauſes of Forfeiture. *Finch* 164. And if a Perſon erects Stalls in a *Market*, and does not leave Room for the People to ſtand and ſell their Wares, ſo that they are thereby forced to hire ſuch Stalls, the taking Money for the Uſe of them, in that Caſe, is Extortion. 1 *Ld. Raym.* 149.

Marketzeld, or **Marketgeld**, Signifies Toll of the *Market*; the Word *Zeld* denoting a Payment ——*Et valent per Ann. le* Streteward *& le* Marketzeld, *xviii's. in omni Terra pertinen. ad Honorem de* Haulton. *Ex Cod. M. S. in Bibl. Cotton.*

Mark-penny, Was a Penny anciently paid at the Town of *Maldon*, by thoſe who had Gutters laid or made out of their Houſes into the Streets. *Hill.* 15 *Ed* 1.

Marle, (*Marla*, from the Sax. *Margel*, i. e. *Medulla*) Otherwiſe called *Malin*, is a Kind of Earth or Mineral; which in divers Counties of this Kingdom is uſed to fertilize Land. 17 *Ed.* 4. *cap.* 4.

Marlerium, or **Marletum**, a Marle-pit. —— *Sciant quod habeant Libertatem in* Marleriis, *&c. Et quod capiant* Marlam *ad Terram ſuam* Marlend. *Chart. Roger. de la Zouch.*

Marque, (Fr. *i. e. Bonorum detentio*) In our ancient Statutes ſignifies as much as *Repriſals*; *Marque* and *Repriſal* are uſed as *Synonyma*, and *Letters of Marque* in the ſame Signification. 4 *H.* 5. *cap.* 7. And the Word *Marque* is ſo called, becauſe the Wrongs whereupon theſe Letters are granted, are commonly about the *Bounds* and *Limits* of every Country. 2 *Shep. Abr.* 399.

Marquis, or **Marqueſs**, (*Marchio*) Is now a Title of Honour before an *Earl*, and next to a *Duke*: And by the Opinion of *Hotoman*, the Name is derived from the German *March*, ſignifying originally *Cuſtos Limitis*, or *Comes & præfectus limitis*. In the Reign of King *Rich.* 2. came up firſt the Title of *Marqueſs*, which was a Governor of the Marſhes; for before that Time thoſe that governed the Marches were called commonly *Lords Marchers*, and not *Marqueſſes*, as Judge *Doderidge* has obſerved in his Law of *Nobility* and *Peerage*. *Selden*'s *Mare clauſ. lib.* 2. *cap.* 19. A *Marquis* is created by Patent; and antiently by Cincture of Sword, Mantle of State, *&c.*

Mariſcus, Is uſed for Fenny Ground in the Book of *Domeſday*.

Marriage, (*Maritagium*) Is a civil and Religious Contract, whereby a Man is joined and united to a Woman, for the Ends of Procreation; and ſignifies not only the lawful Joining of Man and Wife; but alſo the Intereſt of beſtowing a *Ward* or Widow in *Marriage*, in our ancient Law. *Magn. Chart. c.* 6. And *Maritagium* is likewiſe applied to Land given in *Marriage*; and that Portion which the Husband receives with his Wife. *Bract. lib.* 2. *cap.* 34. *Glanv. lib.* 7. *c.* 1. In this Senſe there are divers Writs *De Maritagio*, *&c. Reg.* 171. There's further a Term called *Duty of Marriage*, ſignifying an Obligation on Women to *Marry*; who formerly held Lands charged with perſonal Services, in order to render them by their Husbands. *Cowel.* *Marriage* is generally the Conjunction of Man and Woman in a conſtant Society and Agreement of Living together; till the Contract is diſſolved by Death or Breach of Faith, or ſome notorious Miſbehaviour, deſtructive of the End for which it was intended. It is one of the Rights of human Nature; and was inſtituted in a State of Innocence, for Preſervation thereof: And nothing more is requiſite to a compleat *Marriage* by the Laws of *England*, than a full, free, and mutual Conſent between Parties, not diſabled to enter into that State, by their near Relation to each other, Infancy, Precontract or Impotency; and as to the Solemnization of *Marriage*, this is regulated by the Laws and Cuſtoms of the Nation where we reſide; and every State allows ſuch Privileges to the Parties as it deems expedient, and denies legal Advantages to thoſe who refuſe to ſolemnize their *Marriage* in the Manner the State requires; but they cannot diſſolve a *Marriage* celebrated in another Manner, *Marriage* being of Divine Inſtitution, to which only a full and free Conſent of the Parties is neceſſary. Before the Time of *Pope Innocent* III. there was no Solemnization of *Marriage* in the Church; but the Man came to the Houſe where the Woman inhabited, and led her home to his own Houſe, which was all the Ceremony then uſed: And it has been ſince held, that if a Man and a Woman are *married* by a Prieſt in a Place which is not a Church or Chapel, and without any Solemnity of the Celebration of Maſs, yet it is a good *Marriage*. *Moor*'s *Rep.* 170. 1 *Rol. Abr.* 359. 1 *Sid.* 64. *Marriages* by *Romiſh Prieſts*, whoſe Orders are acknowledged by the Church of *England*, are deemed to have the Effects of a legal *Marriage* in ſome Inſtances; but *Marriages* ought to be ſolemnized according to the Rites of the Church of *England*, to intitle the Privileges attending legal *Marriages*, as Dower, Thirds, *&c.* And by Statute, Popiſh Recuſants convict, *married* otherwiſe than according to the Orders of the Church of *England*, by a Miniſter lawfully authoriſed, and in ſome open Church, *&c.* ſhall be diſabled, the Man to be Tenant by the Curteſy, and the Woman to claim her Dower, Jointure, or Widow's Eſtate, *&c.* 3 *Jac.* 1. *c.* 5. *Marriage* at Common Law is either in Right or in Poſſeſſion; and a Marriage *de Facto*, or in Reputation, as among *Quakers*, *&c.* is allowed to be ſufficient to give Title to a perſonal Eſtate. 1 *Leon.* 53. *Wood*'s *Inſt.* 59. But in the Caſe of a *Diſſenter*, *married* to a Woman by a Miniſter of the Congregation, who was not in Orders; it was held that when a Husband demands a Right to him as Husband, by the Eccleſiaſtical Law, he ought to prove himſelf a Husband by that Law, to intitle him to it: And notwithſtanding the Wife, who is the weaker Sex, and the Children of this *Marriage*, may intitle themſelves to a temporal Right by ſuch *Marriage*; yet the Husband ſhall not, by the Reputation of the *Marriage*, unleſs he hath a ſubſtantial Right: And this *Marriage* is not a meer Nullity, becauſe by the Law of Nature the Contract is binding; for though the poſitive Law of Man ordains *Marriage* to be made by a Prieſt, that Law only makes this *Marriage* irregular, and not expreſly void. 1 *Salk.* 119. *Marriages* contracted between lawful Perſons, being ſolemnized in the Face of the Church, and conſummated, were declared valid, notwithſtanding any Precontract, not conſummated, by Stat. 32 *H.* 8. *c.* 38. But this was repealed by 2 & 3 *Ed.* 6. *c.* 23. And all *Marriages* ſolemnized by Juſtices of Peace, during *Oliver*'s Uſurpation, were ordained to be good and valid, as if ſolemnized according to the Rites and Ceremonies of the Church. *Stat.* 12 *Car.* 2. *c.* 33. The *Marriages* that are made in an ordinary Courſe, are to be by asking in the Church, and other Ceremonies appointed by the Book of Common Prayer. 23 *E.* 6. *c.* 21. By the Ordinances of the Church, when Perſons are to be *married*, the *Bans* of Matrimony ſhall be publiſhed in the Church where they dwell three ſeveral *Sundays* or Holidays, in the Time of Divine Service; and if at the Day appointed for their *Marriage*, any Man do alledge any Impediment; as Precontract, Conſanguinity, or Affinity, Parents not conſenting, where under Age, *&c.* why they ſhould not be *married*, and become bound with Sufficient Sureties to prove his Allegation, then the Solemnization muſt be deferr'd until ſuch Times as the Truth is tried. *Rubrick.* And no Miniſter ſhall celebrate Matrimony between any Perſons without a Faculty or *Licence*, except the Bans of *Marriage* have been firſt publiſhed as directed, according to the Book of *Common Prayer*, on Pain of Suſpenſion *per triennium*; nor ſhall any Miniſter, under the like Penalty, join any Perſons in *Marriage*, who are ſo licenſed, at any unſeaſonable Times, or in any private Place, *&c.* *Canon* 62. Alſo on the granting of Licences, Bond is to be taken, that there is no Impediment of Precontract Conſanguinity, *&c.* Nor any Suit or Controverſy depending in any Eccleſiaſtical Court, touching any Contract of *Marriage* of either of the Parties, with any other; that neither of them are of better Eſtate, than is ſuggeſted; and that the *Marriage* be openly ſolemnized in the Pariſh Church where one of the Parties dwelleth, or the Church mentioned in the Licence, between the Hours of Eight and Twelve in the Morning: Oath is to be likewiſe made before one of the Doctors of the Commons, that the Man and Woman live at ſuch a Place, are willing to *marry*, and as to there being no Impediment, *&c.* Licenſes to the contrary ſhall be void; and the Parties *marrying* are ſubject to Puniſhment as for clandeſtine *Marriages*. *Can.* 102. But notwithſtanding the Canons aforementioned, *Marriages*, eſpecially of Perſons of Quality, are frequently in their own Houſes, out of Canonical Hours, in the Evening, and oftentimes ſolemnized by others in other Churches, than where one of the Parties lives, and out of Time of Divine Service, &c. There are beſides ſome Things diſus'd on granting Licences for *Marriage*; as the Teſtification of Witneſſes of the Conſent of Parents, when the Woman is under Age, &c. Though I don't know by what Authority all theſe Things are diſpenſed with, except it be in Regard to the Subſtance of the *Marriage*, to make the ſame good without all the Ceremonies. Parſons, Vicars or Curates, *marrying* any Perſons, or employing other Miniſters to do it, without publiſhing the Bans of Mattrimony according to Law, or without a Licence for the *Marriage* firſt had and obtain'd, ſhall for 100 *l.* The Perſon ſo *married*, 10 *l.* and Pariſh-Clerks, &c. aſſiſting, knowing it to be ſo 5 *l.* *Stat.* 7 & 8 *W.* 3. *c.* 35. And by a ſubſequent Act, the preceding Statute is confirm'd; and extends to privileged Places, ſo that if a Parſon offending be a Priſoner in any Place, on Conviction he ſhall be removed to the County Gaol, there to remain in Execution charged with the ſaid Penalty of 100 *l.* &c. 10 *Ann. c.* 19. Before theſe Statutes, an Information was exhibited againſt certain Perſons for Combination, in procuring a clandeſtine *Marriage* in the Night, without Bans or Licence, between a Maid-ſervant and a young Gentleman who was Heir to an Eſtate, the Perſon being in Liquor; and they were fined 100 Marks, and ordered to be committed till paid: But it doth not appear that the *Marriage* could be made void. *Cro. Car.* 557. *Marriages* are Prohibited in *Lent*, and on Faſting-Days, becauſe the Mirth attending them is not ſuitable to the Humiliation and Devotion of thoſe Times; yet Perſons may *marry* with Licences in *Lent*, although the Bans of *Marriage* may not then be publiſhed. And formerly, in *Popiſh* Times, Prieſts were reſtrained from *Marriage*, and their Iſſue accounted Baſtards, &c. But on the Reformation, Laws were made, declaring that the *Marriage* of Prieſts ſhould be lawful, and their Children legitimate; tho' the Preambles to thoſe Statutes ſet forth, that it would be better for Prieſts to live chaſte, and ſeparate from the Company of Women, that they might with the more Fervency attend the Miniſtry of the Goſpel. 2 & 3, and 5 & 6 *Ed.* 6. All Perſons of the Age of Conſent to *marry*, (*viz.* A Man at Fourteen, and a Woman at Twelve) who are not prohibited by the *Levitical Degrees*, or otherwiſe by God's Law, may lawfully *marry*: But *Marriages* made within the Degrees, are inceſtuous and unlawful. 1 *Inſt.* 24. 2 *Inſt.* 684. *Marriage* is forbidden to thoſe who are of Kindred lineally; alſo between ſuch as are Kin in the tranſverſe or collateral Line, until the fourth Degree be paſt. So in Reſpect of Affinity, which ariſes betwixt them that are *married* and the Kindred of one of them, as between the Husband and the Relations of the Wife; but this prohibits *Marriage* only to the Perſons contracted, &c. for the Couſins or Conſanguinity to my Wife, are of Affinity to me only, and not to my Brothers, or Children by a former Wife. 2 *Shep. Abr.* 414. The Son of a Father by another Wife, and Daughter of a Mother by another Husband, Couſin Germans, &c. may *marry* with each other: A Man may not *marry* his Brother's Wife, or Wife's Siſter; an Uncle his Niece, an Aunt her Nephew, &c. But if a Man take his Siſter to Wife, they are Baron and Feme, and the Iſſue are not Baſtards, 'till a Divorce. *Levit. c.* 18, 20. 2 *Inſt.* 683. 1 *Rol. Abr.* 340, 357. 5 *Mod.* 448. A Libel was exhibited againſt a Perſon for *marrying* his Wife's Siſter; the Defendant ſuggeſted for a Prohibition, that his Wife was dead, and he had a Son by her, to whom an Eſtate was deſcended as Heir to his Mother; yet the Eccleſiaſtical Court proceeded to annul the *Marriage*, and to baſtardiſe the Iſſue: But a Prohibition was granted *quoad* the Annulling the *Marriage*, and Baſtardiſing the Iſſue, and giving Leave to proceed to puniſh the Inceſt. 2 *Salk.* 548. 4 *Mod.* 182. A Perſon may not *marry* his Siſter's Daughter: And a Siſter's Baſtard Daughter is ſaid to be within the *Levitical* Law of Affinity; it being morally as unlawful to *marry* a Baſtard as one born in Wedlock, and 'tis ſo in Nature; and if a Baſtard doth not fall under the Prohibition *Ad proximum Sanguinis non accedas*, a Mother may *marry* her Baſtard Son. 5 *Mod.* 168. 2 *Nelſ. Abr.* 1161. There are Perſons within the Reaſon of the Prohibition of *Marriage*, though not mentioned, and muſt be prohibited; as the Father from *marrying* his Daughter, the Grandſon from *marrying* the Grandmother, &c. 2 *Nelſ. ibid. Vaugh.* 321. The Temporal Courts by the *Stat* 28 *H.* 8. *c.* 7. are to determine what *Marriages* are within or without the *Levitical* Degrees; and prohibit the ſpiritual Courts if they impeach any Perſons, for *marrying* without theſe Degrees. *Vaugh.* 206. 2 *Ventr.* 9. And it is ſaid, were it not for that Statute, we ſhould be under no Obligation to obſerve the *Levitical* Degrees. *Ibid.* When there is a perpetual Impotency; Fear or Impriſonment, ſo that there can be no Conſent; or where Perſons are precontracted; a Man or a Woman have a Wife or Husband living, &c. in ſuch Caſes the *Marriages* are to be adjudged void, as prohibited by God's Law. 1 *Inſt.* 235. 2 *Inſt.* 687. The *Marriage* of a Lunatick, or one not of ſound Mind, is alſo now void. 15 *Geo.* 2. *cap.* 30. And although matrimonial Cauſes have been for a long Time determinable in the Eccleſiaſtical Courts, they were not ſo from the Beginning; for as well Cauſes of Matrimony as Teſtamentary, were Civil Cauſes and appertained to the Juriſdiction of the Civil Magiſtrate, until Kings allow'd the Clergy Cognizance of them. *Davis's Rep.* 51. If Perſons *married* are *infra annos Nubiles*, the Eccleſiaſtical Judges are to judge as well of the Aſſent, whether ſufficient, &c. as of the firſt Contract; and where they have Cogniſance, the Common Law Judges ought to give Credit to their Sentences, as they do to our Judgments. 7 *Rep.* 23. Loyalty or Lawfulneſs of *Marriage* is always to be tried by the Biſhop's Certificate; or Inquiſition taken before him, and Examination of Witneſſes, &c. *Dyer* 303. If the Right of the *Marriage* come naturally in Queſtion, as in Dower, &c. the Lawfulneſs of *Marriage* is to be tried by the Biſhop's Certificate; but in a Perſonal Action, where the Right of *Marriage* is not in Queſtion, it is triable by Jury at Common Law. 1 *Lev.* 41. Whether a Woman is *married*, or ſhe is the Wife of ſuch a Perſon, is triable by a Jury: And in perſonal Actions it is right to lay the Matter upon the Fact of the *Marriage*, to make it iſſuable and triable by a Jury, and not upon the Right of the *Marriage*, as in real Actions and Appeals. 1 *Inſt.* 112. 3 *Salk.* 64. If the *Marriage* of the Husband is in Queſtion, *Marriage* in Right ought to be, and that ſhall be tried by Certificate. 1 *Leon.* 53. But if on Covenant to do ſuch a Thing to another upon the *Marriage* of a Man's Daughter, the Party alledges that he did *marry* her, &c. This ſhall be tried *per Pais*; for the *Marriage* is only in Iſſue, and not whether he was lawfully eſpouſed. *Cro. Car.* 102. Conditions againſt *marrying* generally, are void in Law: And if a Condition is annexed to a Legacy; as where Money is given to a Woman, on Condition that ſhe *marries* with Conſent of ſuch a Perſon, &c. ſuch a Condition is void by the Eccleſiaſtical Law, becauſe the *Marriage* ought to be free without Coercion; yet it is ſaid it is not ſo at the Common Law. 2 *Nelſ. Abr.* 1162. *Poph.* 58, 59. 2 *Lill.* 192. A Man contracts to *marry* with *A.* and after *marries* B. whereupon *A.* ſues him in the Spiritual Court, and Sentence is given that he ſhall eſpouſe *A.* and cohabit with her, which he doth, and they have Iſſue, ſuch Iſſue ſhall inherit, though there was no Divorce from the *Marriage* of B. *Moor* 169. 1 *Danv. Abr.* 700. If Perſons are *married* before the Age of Conſent, they may at that Age diſagree and *marry* again, without any Divorce: Though if they once give Conſent when at Age, they cannot afterwards diſagree; and where they are *married* before, there needeth not a new *Marriage*, if they agree at that Age. 1 *Inſt.* 33. 2 *Inſt.* 182. A Man is at the Age of Conſent, and the Woman not; or the Woman of Age, and the Man not; he or ſhe may diſagree to the *Marriage* at the other's coming of Age to conſent, as well as the other, for there is a mutual Power of Diſagreement. 3 *Inſt* 88. 6 *Rep.* 22. 1 *Danv. Abr.* 699. A Woman cannot diſagree within her Age of twelve Years, till which the *Marriage* continues; and before her Diſagreement is void 1 *Danv.* 699. Tho' if a Man *marries* a Woman under that Age, and afterwards ſhe within her Age of Conſent diſagrees to the *Marriage*, and at her Age of twelve Years *marries* another; now the firſt *Marriage* is abſolutely diſſolved, ſo that he may take another Wife; for although the Diſagreement within the Age of Conſent was not ſufficient, yet her Taking another Husband at the Age of Conſent, and cohabiting with him affirms the Diſagreement, and ſo the firſt *Marriage* is avoided. *Moor* 575, 764. If after Diſagreement of the Parties, at the Age of Conſent they agree to the *Marriage*, and live together as Man and Wife, the *Marriage* hath Continuance, notwithſtanding the former Diſagreement: But if the Diſagreement had been before the Ordinary, they could not afterwards agree again to make it a good *Marriage*. 1 *Danv. Abr.* 699. If either Party be under ſeven Years of Age, Contracts of *Marriage* are abſolutely void: But *Marriages* of Princes made by the State in their Behalf, at any Age, are held good; though many of thoſe Contracts have been broke through. *Swinb. Matrimon. Contr.* By the Laws of *England*, where a mutual *Contract of Marriage* in Words of preſent Time can be proved, the Eccleſiaſtical Courts will compel the Parties to ſolemiſe their *Marriage*, although either or both of them are *married* elſewhere, and Children have been the Fruits of it; and the Children of ſuch *Marriages* are deemed Baſtards. *Read. Stat.* 4 *Vol.* 192. If the Contract is made in Words of future Time, and this is not carried into Execution by Conſummation, *&c.* and the Parties *marry* elſewhere, the *Marriage* is good. A Contract of *Marriage* in the preſent Time is when it is ſaid, *I marry you*; *You and I are Man and Wiſe*, &c. And ſuch Contract is a *Marriage*, and not releaſable; but a Contract of *Marriage* in future Time, which is, where it is ſaid, *I will marry You*, or *I Promiſe to marry You*, *&c.* is releaſeable. *Eaſt. Term.* 2 *Ann. B. R. Holt* Ch. Juſt. held, that if a Contract was in Words of future Time, as *I will take thee*, &c. and the Man does take her accordingly, and cohabit with her, 'tis a *Marriage*; and the Spiritual Court cannot puniſh for Fornication. *Mich.* 5 *Ann.* 2 *Salk.* 477, 478. And it has been adjudged on a Promiſe of future *Marriage*, if the Parties afterwards lie together, the Contract paſſes thereby into a real *Marriage* in Conſtruction of Law. *Swinb. I will take*, and *I do take*, are Words of Contract in the future and preſent Time; and the Words, *I will take Thee from henceforth*, &c. are as much as I do take Thee, and an abſolute *Marriage*: If it is demanded of a Man, whether he will take the Woman to his Wife, and he anſwers, I will; and it is demanded of the Woman, if ſhe will take the Man to her Husband, and ſhe anſwers, I will; by this *Marriage*, and not Spouſals is ſaid to be contracted. *Ibid.* It is not neceſſary in Contracts of *Marriage*, that both Parties uſe the ſame Words or Expreſſions; for if one Party ſays I will *marry* Thee, and the other anſwers, I am content, *&c.* hereby Spouſals *de futuro* are contracted: And if a Man ſay to a Woman, I Promiſe to *marry* Thee, and if thou art content to *marry* me, Kiſs me, or give me thy Hand, if the Woman do Kiſs or give her Hand, Spouſals are contracted. *Swinb. p.* 210. Alſo if a Ring be ſolemnly delivered by a Man, and put on the Woman's Fourth Finger; if ſhe accepts and wears it, without any Words, the Parties are preſumed to have mutually conſented to *Marriage. Ibid.* And where the Promiſe of the Man is proved, but no actual Promiſe on the Woman's Side; if ſhe carry herſelf as one conſenting and approving the Promiſe of the Man, it is Evidence that the Woman likewiſe promiſed. *Paſch.* 3 *Ann.* 3 *Salk.* 16. In Contracts it is not neceſſarily required, that the Parties contract Matrimony at the ſame Inſtant, by Anſwering one another; but if there be ſome Diſtance of Time betwixt the Promiſe of the one and the other, the Contract may be good, if the Party firſt promiſing continues in the ſame Mind, until the other Party hath promiſed: But where Perſons are under Age to conſent, this is not Matrimony, but Spouſals, if it be either, becauſe at their Ages they may diſſent; and when Words of the Contract are only conditional on one Side, and on the other abſolute; or if the Words are ſpoken in Jeſt, they are not obligatory. *Swinb.* If a Father or Mother promiſe *Marriage* for their Child, the Silence of the Child being preſent and hearing the ſame, hath been adjudged a Conſent to the Contract. *Ibid.* 69. And Contracts of *Marriage* may be by abſent Parties, by Mediation of their Proctors, or by Meſſengers or Letters; when by *Proxy* it is by ſpecial Power of Attorney to contract Matrimony or Spouſals for the Party in his Name, with ſuch a Woman, *&c.* And the Proctor ſays, *I do contract Matrimony with Thee, in the Name of ſuch a One, whoſe Proctor I am*, &c. or that *ſuch a Man doth contract Matrimony with Thee by me his Proctor*; to which the Woman anſwers, *I do take him to my Husband, by Thee being his Proctor*; and both Parties are to continue in the ſame Mind until the Contract is finiſhed, for before that the Proctor may be revoked, and then the Contract will be void. *Swinb.* A Promiſe or Contract of *Marriage*, by Meſſenger or Letter is good; unleſs it appear the Party diſſents before the other conſents thereto, and the mutual Conſent of the other Party ought to be ſent immediately, or ſhortly after, or it will not be good. *Ibid.*

By *Marriage* with a Woman, the Husband is intitled to all her Eſtate real and perſonal; and the Effects of *Marriage* are, that the Husband and Wife are accounted one Perſon, and he hath Power over her Perſon as well as Eſtate, *&c.* 1 *Inſt.* 357. The *Marriage* of two Perſons doth knit them ſo faſt together, that the Husband cannot give any Thing to his Wife by Deed, during the Coverture; but by Will and Deviſe he may. 2 *Ann.* 11. But notwithſtanding *Marriage*, in ſome Caſes the Husband and Wife are conſidered as divers Perſons; and ſo one of them may perform an Act to another: As when they do it *in auter droit*, where a Feoffment is made to one of them, and Letter of Attorney to the other to give Livery to the Feoffee, *&c. Perk. Sect.* 169. And it is the ſame, if the Wife have Power to ſell Land by Will; ſhe may ſell the ſame to her Husband; and being an Executrix, may pay a Legacy to him. 1 *Inſt.* 187. All the Goods and Chattels perſonal of the Wife, are by the *Marriage* given to the Husband by Law; ſo that he may diſpoſe of, ſell or keep them whilſt he lives, and give them away when he dies: And that whether he ſurvive her, or not. 1 *Inſt.* 299. And all the Chattels real, ſhe hath in Poſſeſſion in her own Right, by the *Intermarriage* the Man ſhall have, and theſe by Act executed in his Life-time he may give, grant, *&c.* and in Caſe he ſurvives her, he will have them abſolutely. 2 *Shep. Abr.* 419. It is obſerved, that altho' all the Husband hath before the Coverture is his own, be it Goods or Lands, and the Wife has immediately nothing therein; yet all that is the Wife's by their *Marriage* together is made the Husband's. *Ibid.* The Husband ſhall be Tenant by the Curteſy of the Wife's Land, after her Death, where he hath Iſſue by her that might inherit; and the Wife ſhall have Dower in her Huſband's Lands, after the Death of the Husband, *&c. Litt.* 35, 36. Alſo as the Wife doth partake of the Name, ſo of the Nature and Condition of the Huſband by the *Marriage*; for if ſhe be an Earl's Wife, ſhe is a Counteſs, if a Knight's Wife a Lady; and if he be an Alien and made Denizen, the Wife is ſo likewiſe. 39 *H.* 6. 45. 4 *H.* 7. 31. *Bro.* 499. There being divers Advantages by *Marriage*, to the Man and the Woman; therefore on Promiſe of *Marriage*, Damages may be recovered, if either Party refuſe to *marry*; but the Promiſe muſt be mutual on both Sides to ground the Action. 1 *Salk.* 24. And if there be reciprocal Promiſes of *Marriage*, as the Woman's Promiſe to the Man is a good Conſideration to make his Obligatory; ſo his Promiſe to her is a ſufficient Conſideration to make hers binding: And though no Time for *Marriage* be agreed on, if the Plaintiff aver that he offered to marry the Woman, and ſhe refuſed, Action lies againſt her, and Damages are recoverable. *Carthew* 467. If a Man and a Woman make mutual Promiſes of Intermarriage, and the Man gives the Woman 100*l.* in Satisfaction of his Promiſe of *Marriage*, it is a good Diſcharge of the Contract. *Med. Caſ.* 156. By Statute 29 *Car.* 2. *c.* 3. no Action ſhall be brought upon any Agreement on Conſideration of *Marriage*, except it be put in Writing, and ſign'd by the Party to be charged, *&c.* And where an Agreement relating to *Marriage* muſt be in Writing after a Year; and when it need not, *vide Skinn.* 353. A Promiſe of a Father by Letter to give Money in *Marriage* with his Daughter is a ſufficient Promiſe in Writing within the Statute. 2 *Vent.* 361. Where a Perſon promiſes to give his Daughter Wedding-Clothes on the *Marriage*, ſhe ſhall have two Suits, one for the Wedding-Day, and the other for the Time of Feaſting afterwards, according to the Dignity of the Perſon. *Cro. Car.* 53. Contracts and Bonds for Money to procure *Marriage* between others, have been held void in Equity: And where-ever a Parent or Guardian inſiſts upon private Gain, on the *Marriage* of Children; Covenant or Obligation for it ſhall be ſet aſide in Chancery, as extorted from the Huſband. 3 *Lev.* 41. 1 *Salk.* 156. If a Man before *Marriage* gives Bond and Judgment to the Wife, to leave her worth 1000*l.* at his Death, in Conſideration of a *Marriage* Portion, this ſhall be made good out of the Husband's Eſtate, and be ſatisfied before any Debts; provided a Judgment be not obtained againſt him, with her Conſent. An intended Huſband in Conſideration of a *Marriage*, covenanted with the intended Wife, that if ſhe would *marry* him, and ſhe ſhould happen to ſurvive him, he would leave her worth 500*l.* The *Marriage* took Effect, and the Wife ſurvived, and he did not leave her worth that Money; ſhe *married* a ſecond Husband, and he brought an Action of Debt againſt the Adminiſtrator of the firſt Husband for the 500*l.* To which it was objected, that this being a perſonal Action, it was ſuſpended by the *Marriage*, which was a Releaſe in Law, and ſo extinct; but the Plaintiff had Judgment, for the Action is not ſuſpended, becauſe during the Coverture there was no Cauſe of Action: Nothing in this Caſe is due whilſt the Coverture takes Place, and the Debt ariſes by the Death of the Husband. *Palm.* 99. 2 *Sid.* 58. A Bond was given by a Man, reciting, he was to *marry A. S.* and that if the *Marriage* took Effect, and he did ſurvive her, then within three Months after her Deceaſe, he would pay to the Obligee 300*l.* for ſuch Uſes as the ſaid *A. S.* by any Writing under Hand and Seal, ſubſcribed and publiſhed in the Preſence of two Witneſſes, ſhould direct and appoint; this *Marriage* Bond was adjudged good. 3 *Cro.* 376. *Yelv.* 226, 227. A Man and a Woman intending to *intermarry*, he enters into Articles with her before their *Marriage*, by which he agreed to ſettle ſuch Lands upon her, *&c.* And in Purſuance of thoſe Articles ſhe *marries* him; if he dies before any Settlement made, the Widow in Equity ſhall have the Articles executed, and hold the Lands for her Life, *&c.* 2 *Ventr.* 243. In Caſe Articles are enter'd into before *Marriage*, and afterwards a Settlement is made different therefrom, the Court of *Chancery* will ſet up the Articles againſt it; but where both are finiſhed before the *Marriage* had, at a Time when all Parties are at Liberty, ſuch Settlement will be taken as a new Agreement between them: This is the general Rule, unleſs the Deed of Settlement is expreſly mentioned to be made *in Purſuance of the Marriage Articles*, &c. whereby the Intent may ſtill appear to be the ſame. *Talbot's Caſ.* 20. Articles of *Marriage* were made for ſettling Lands on the Husband and Wife, and the Heirs Male and Female of the Body of the Husband by the Wife, *&c.* and a Settlement was drawn contrary to theſe Articles, long after which the Husband ſuffered a Recovery, and deviſed the Land to others; it was here held to be no Bar to the Heirs Female, who were Decreed to have the Land. 2 *Peere Williams* 349, 355. Yet it is ſaid, where Relief is to be given in *Equity* on a Settlement, it muſt be only to the Perſons that claim as Purchaſers, as the firſt and other Sons; and all Remainders after to the Husband's Heirs of his Body, or his Right Heirs, are voluntary and not to be aided. *Abr. Caſ. Eq.* 385. Tho' a Term to raiſe Daughters Portions, payable at the Age of Eighteen or Day of *Marriage*, in a *Marriage* Settlement is limited in Remainder, to commence after the Death of the Father generally; or if it be in Caſe he die without Iſſue Male of his Wife, and ſhe dies firſt without ſuch Iſſue, leaving a Daughter, *&c.* In Equity the Term is ſaleable during the Life-time of the Father, when the Daughter is eighteen Years old, or *married*; becauſe every Thing is happened and paſt which is contingent, for 'tis impoſſible there ſhould be Iſſue Male of the Wife when ſhe is dead; and as to the Father's Death, that is not contingent, but certain, by Reaſon all Men muſt die: But if there is a Contingency not yet happened, as if the Daughters are to be *unmarried*, or not provided for at the Time of the Father's Death, *&c.* it is otherwiſe. 1 *Salk.* 159. Upon *Marriages*, the Settlements generally made of the Eſtate of the Husband, *&c.* are to the Husband for Life, after his Death to the Wife for Life for her *Jointure*, and to their Iſſue in Remainder, with Limitations to Truſtees to ſupport contingent Uſes, and Leaſes to Truſtees for Terms of Years, to raiſe Daughters Portions, *&c.* And they are made ſeveral Ways, by *Leaſe* and *Releaſe*, *Fine* and *Recovery*, *Covenant* to *ſtand ſeiſed to Uſes*, &c. *Accomp. Conv.* 143. Theſe Settlements the Law is ever careful to preſerve, eſpecially that Part of them which relates to the Wife; of which ſhe may not be deveſted, but by her own Fine: And if a Woman about to *marry*, to prevent her Husband's Diſpoſal of her Land, conveys it to Friends in Truſt, and they with the Husband after *Marriage* make Sale of the Same; the Court of Chancery will decree the Purchaſer to reconvey to her. *Tothil* 43. Where a Woman on *Marriage*, by the Man's Conſent makes over her Eſtate, to be at her own Diſpoſal, the Product or Increaſe thereof, ſhe can alſo diſpoſe of: And if the Wife has a ſeparate Maintenance ſettled on her by the Husband, ſhe may by Writing in the Nature of a Will, give away what ſhe ſaves, if ſhe dies before the Husband; and ſhall have the ſame herſelf, in Caſe ſhe outlives him, and it ſhall not be liable to his Debts. *Preced. Canc.* 255. 44. But where a Settlement is made on the Wife, in Conſideration of her whole Fortune and equivalent to it; here the Wife's Portion, tho' it be out on Bonds, *&c.* which upon the Death of the Husband by Law ſurvive to the Wife, ſhall in Equity be ſubject to the Huſband's Bond-Debts, after his Deceaſe, to eaſe the Real Eſtate of the Heir. *Ibid.* 63. And it has been likewiſe held, that if after the Wife's Death, Debts of her's appear; the Husband ſhall be anſwerable for the Debts of the Wife, ſo far as he had any Money or Eſtate of hers. *Ibid.* 256. If a Man in mean Circumſtances, *marry* a Woman of Fortune, upon Suggeſtion of Lunacy in the Wife by her Friends, the Court will order her Eſtate to be ſo ſettled, that ſhe may not be wrought on by her Husband to give it to him from her Children, by him or any other Husband, *&c.* *Skinn.* 110. *Marriage* is diſſolved by the natural Death of the Huſband or Wife, or by Divorce; and where a *Marriage* is diſſolved by the Death of the Husband, Dower, *&c.* ſurvives to the Wife, where no Settlement is made of the Husband's Lands, *&c.* See *Baron and Feme* and *Chancery.*

Form of a Marriage-Deed of Settlement *of Lands.*

THIS Indenture tripartite, *made the Day and Year,* &c. Between A. B. *of the firſt Part,* C. D. E. F. *and* G. H. *of the ſecond Part, and* E. D. *Daughter of the ſaid,* &c. *of the third Part* Witneſſeth, *That the ſaid* A. B. *for and in Conſideration of a* Marriage *intended (by God's Permiſſion) ſhortly to be had and ſolemnized between the ſaid* A. B. *and the ſaid* E. D. *and of the Sum of* 5000 l. *to be had and received by the ſaid* A. B. *as a* Marriage *Portion with the ſaid* E. *and that a competent Jointure may be had, made, and provided for the ſaid* E. D. *(in Caſe the ſaid* Marriage *ſhall take Effect) and for the Settling, and Aſſuring of the Meſſuages, Lands, Tenements and Hereditaments herein after mentioned, to and upon the ſeveral Uſes, Intents and Purpoſes herein after limited and declared, purſuant to the Agreement made upon the Contract of the ſaid intended* Marriage; *he the ſaid* A. B. *hath granted, aliened, releaſed and confirmed, and by theſe Preſents doth grant, alien, releaſe and confirm unto the ſaid* C. D. E. F. *and* G. H. *(in their actual Poſſeſſion now being by Virtue of a Bargain and Sale,* &c.) *and their Heirs,* All *that Capital Meſſuage commonly called,* &c. *and all thoſe Meſſuages or Tenements,* &c. *And all other the Meſſuages, Lands, Tenements and Hereditaments of the ſaid* A. B. *ſituate, lying and being in,* &c. *in the County of,* &c. *And all Houſes, Buildings, Gardens, Orchards, Lands, Tenements, Meadows, Paſtures, Feedings, Ways, Waters, Watercourſes,* &c. *to the ſaid Meſſuages and Lands belonging or appertaining,* &c. *And alſo the Reverſion and Reverſions, Remainder and Remainders,* &c. *And all the Eſtate,* &c. *of him the ſaid* A. B *of, in, and to the ſame Premiſſes, and of, in, and to every Part and Parcel thereof, with the Appurtenances;* To have and to hold *all and ſingular the ſaid Meſſuages, Lands, Tenements and Hereditaments abovementioned, and every Part and Parcel thereof, with the Appurtenances, unto the ſaid* C. D. E. F. *and* G. H. *their Heirs and Aſſigns, to and for the ſeveral Uſes, Intents, Truſts, and Purpoſes herein after mentioned, limited, expreſſed and declared, (that is to ſay) To the Uſe and Behoof of the ſaid* A. B. *and his Heirs, until the* Marriage *between him and the ſaid* E. D. *his intended Wife, ſhall be had and ſolemnized; and from and after the Solemnization thereof, to the Uſe and Behoof of the ſaid* A. B. *and his Aſſigns, for and during the Term of his natural Life, without Impeachment of Waſte; and from and after the Determination of that Eſtate, by Forfeiture, or otherwiſe, to the Uſe and Behoof of the ſaid* C. D. E. F. *and* G. H. *and their Heirs, for and during the natural Life of the ſaid* A. B. *In Truſt, to preſerve and ſupport the contingent Remainders herein after limited from being defeated and deſtroyed, and for that Purpoſe to make Entries, and bring Actions, as the Caſe ſhall require; yet nevertheleſs in Truſt to permit and ſuffer the ſaid* A. B. *and his Aſſigns, to receive and take the Rents, Iſſues, and Profits thereof, to his and their own proper Uſe and Benefit during his natural Life; and from and after the Deceaſe of the ſaid* A. B. *to the Uſe and Behoof of the ſaid* E. F. *(intended Wife of the ſaid* A. B.) *and her Aſſigns, for and during the Term of her natural Life, for her Jointure, and in full Satisfaction and Bar of her Dower or Thirds, which ſhe may claim to have in any Lands, Tenements or Hereditaments, whereof or wherein he the ſaid* A. B. *ſhall at any Time during his Life, be ſeiſed of any Eſtate of Inheritance; and from and after the Deceaſe of the Survivor of them the ſaid* A. B. *and* E. *his intended Wife, to the Uſe and Behoof of the Heirs Males of the Body of the ſaid* A. B. *on the Body of the ſaid* E. D. *lawfully to be begotten; (or to the Uſe and Behoof of the firſt Son of the Body of the ſaid* A. B. &c. *and the Heirs Males of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, then to the Uſe and Behoof of the ſecond Son,* &c. *and ſo to the Third and Fourth; and then to the Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Son and Sons, and all and every other Son and Sons, ſeverally and ſucceſſively and in Remainder one after another, as they ſhall be in Seniority of Age and Priority of Birth, and of the Heirs Male of the Body of all and every ſuch Sons,* &c. *the elder and the Heirs Male of his Body, always to be preferred, and take before the Younger,* &c. *And for Default of ſuch Iſſue, to the Uſe and Behoof of the ſaid* C. D. E. F. *and* G. H. *their Executors, Adminiſtrators and Aſſigns, for and during the Term of* 500 *Years thence next following, and fully to be compleat and ended, upon the* Truſts, *and to and for the Ends, Intents and Purpoſes herein after declared, of and concerning the ſame Term; and from and after the Expiration, or other ſooner Determination of that Term, to the Uſe and Behoof of the ſaid* A B. *his Heirs and Aſſigns for ever.* Provided *always, and it is hereby declared and agreed, by and between the ſaid Parties to theſe Preſents, that the ſaid Term of* 500 *Years ſo limited to them the ſaid* C. D. E. F. *and* G. H. *their Executors, Adminiſtrators and Aſſigns, as aforeſaid, is upon this Condition; That if the ſaid* A. B. *ſhall happen to die without Iſſue Male, by him Begotten on the Body of the ſaid* E. *or ſhall leave Iſſue Male, and ſuch Iſſue Male ſhall die without Iſſue Male of his or their Body or Bodies begotten; and that in either of the ſaid Caſes, there ſhall happen to be one or more Daughter or Daughters of the ſaid* A. B. *on the Body of the ſaid* E. *begotten, that then and in ſuch Caſe, if the ſaid* A. B. *his Heirs or Aſſigns do, and ſhall well and truly pay or cauſe to be paid to ſuch Daughter or Daughters reſpectively, at her and their reſpective Ages of twenty-one Years or Days of* Marriage, *the ſeveral Portions following, (that is to ſay) if it ſhall happen there ſhall be but one ſuch Daughter, then the Sum of* 5000 l. *for the Portion of ſuch Daughter, to be paid to her at her Age of twenty one Years, or Day of* Marriage, *which ſhall firſt happen, with Intereſt in the mean Time after the Rate of* 5 l. per Cent. per Annum; *and if it ſhall happen that there ſhall be two or more ſuch Daughters, then the Sum of* 6000 l. &c. *for the Portions of ſuch two or more Daughters, to be equally divided among them, Share and Share alike, and to be paid to them reſpectively at their reſpective Ages of twenty one Years or Days of* Marriage, *which ſhall firſt happen, with Intereſt therefore in the mean Time,* &c. *And if any ſuch Daughter or Daughters ſhall happen to die unmarried, before her or their Portion or Portions ſhall become payable as aforeſaid, then the Portion or Portions of her or them ſo dying, ſhall go and be paid to the Survivors or Survivor of them, equally to be divided among them, Share and Share alike, (to be paid at the ſame Time as the original Portions ſhould or ought to become payable, as aforeſaid, in Caſe they had been living) ſo as no one ſuch Daughter ſhall have for her Portion by Survivorſhip, or otherwiſe, by Virtue of the ſaid Term of* 500 *Years, above the Sum of* 5000 l. *And in Caſe there ſhall be no ſuch Daughter who ſhall live to be* married, *or attain the Age of twenty one Years, that then, and in either of the ſaid Caſes ſo happening, the ſaid Term ſhall ceaſe, determine, and be void; any Thing herein contained to the contrary notwithſtanding.* Provided alſo, *and upon this further Condition, that in Caſe the ſaid* A. B. *ſhall happen to die without ſuch Iſſue Male as aforeſaid, and ſhall happen to leave one or more Daughter or Daughters, as aforeſaid, and ſuch Daughter or Daughters, or either of them, ſhall happen to* marry *in the Life time of the ſaid* A. B. *and* E. *his intended Wife, or either of them, or in the Life time of the ſaid Truſtees, or any or either of them, without the Conſent of ſuch of them the ſaid* A. B. *and* E. *and of the ſaid Truſtees, or the greater Number of them then living, ſigned and declared under their Hands; that then the Portion and Portions hereby intended for ſuch Daughter and Daughters ſo* marrying *reſpectively, ſhall go and be paid to ſuch other Daughter or Daughters who ſhall* marry *with ſuch Conſent as aforeſaid; and in Caſe all ſuch Daughters ſhall happen to* marry *without ſuch Conſent as aforeſaid, that then the ſaid Term of* 500 *Years ſhall ceaſe and be void.* Provided alſo, *and it is hereby further declared and agreed, that it ſhall and may be lawful to and for him the ſaid* A. B. *during his Life, and after his Death for the ſaid* E. *his intended Wife, during her Life, in Caſe the ſaid intended* Marriage *ſhall take Effect, by any Writing or Writings under his or her Hand and Seal reſpectively, atteſted by two or more credible Witneſſes, to make any Leaſe or Leaſes, Demiſe or Grant of all or any Part or Parts of the ſaid Meſſuages and Lands abovementioned to any Perſon or Perſons whatſoever, for the Term of twenty-one Years, or for any Term or Number of Years not exceeding twenty-one Years, ſo as ſuch Leaſes, Demiſes, or Grants for Years, be made to commence and take Effect in Poſſeſſion within one Year after the Date thereof; and ſo as upon all and every ſuch Leaſe or Leaſes, Demiſes, or Grants for Years to be made by the ſaid* A. B. *and* E. *his intended Wife reſpectively, there be reſerved payable yearly, during the Continuance thereof, the beſt and moſt improved yearly Rents, which at the Time of Making thereof, can or may be gotten for the ſame; and ſo that in every ſuch Leaſe there be contained a Clauſe of Re-entry for Non-payment of the Rent or Rents thereby reſerv'd; and ſo as the Leſſee and Leſſees to whom ſuch Leaſe and Leaſes ſhall be made, do ſeal and deliver Counterparts of ſuch Leaſe and Leaſes.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant, to and with the ſaid* C. D. E. F. *and* G. H. *their Heirs and Aſſigns, that the ſaid Meſſuages, Lands and Premiſſes abovementioned, ſhall and may from henceforth, for ever hereafter, be, remain, and continue, to, for, and upon the ſeveral Uſes, Intents, Truſts and Purpoſes, and under and ſubject to the ſeveral Limitations and Agreements beforementioned and expreſſed concerning the ſame, according to the true Intent and Meaning of theſe Preſents.* And alſo, *that he the ſaid* A. B. *and his Heirs, and all and every other Perſons and Perſons, and his and their Heirs, any Thing having or claiming in the ſaid Meſſuages, Lands and Premiſſes abovementioned, or any Part thereof, by, from, or under him, them, or, any of them, ſhall and will at all Times hereafter, upon the reaſonable Requeſt of the ſaid* C. D. E. F. *and* G. H. *their Heirs and Aſſigns, make, do and execute, or cauſe or procure to be made,* &c. *all and every ſuch further and other lawful and reaſonable* Grants, *Acts and Aſſurances in the Law whatſoever, for the further, better, and more perfect Granting and Aſſuring of all and ſingular the ſaid Meſſuages, Lands and Premiſſes abovementioned, with the Appurtenances, to and for the ſeveral Uſes, Intents and Purpoſes above declared, limited and appointed, and according to the true Intent and Meaning of theſe Preſents, as by the ſaid* C. D. E. F. &c. *and their Heirs, or their, or any of their Counſel learned in the Law ſhall be reaſonably deviſed, or adviſed and required.* And further, *it is covenanted, granted, concluded and agreed upon, by and between the ſaid Parties to theſe Preſents, and the true Meaning hereof alſo is, and it is hereby ſo declared, that all and every Fine and Fines, and alſo all and every Recovery and Recoveries, Aſſurance and Aſſurances, Conveyance and Conveyances in the Law whatſoever already had, made, levied, ſuffered, executed or acknowledged, or at any Time hereafter to be had, made,* &c. *of the ſaid Meſſuages, Lands and Premiſſes abovementioned, or any Part thereof, either alone or jointly with any other Lands, Tenements or Hereditaments, by or between the ſaid Parties to theſe Preſents, or by or between them or any of them, and any other Perſon or Perſons, as for and concerning all and ſingular the ſaid Meſſuages, Lands and Premiſſes abovementioned, and every Part thereof with the Appurtenances,* ſhall be *and enure, and ſhall be adjudg'd, eſteem'd and taken to be and enure, to and for the ſeveral Uſes, Intents and Purpoſes abovementioned, limited, expreſſed and declared, according to the true Intent and Meaning of theſe Preſents, and to and for none other Uſe, Intent or Purpoſe whatſoever.* In Witneſs, *&c.*

By *Statute*, to ſteal or take away any Woman, having an Eſtate in Lands or Goods, or that is Heir apparent, againſt her Will, and *marry* or defile her, is Felony. 3 *H.* 7. *cap.* 2. And if any Perſons *married*, do *marry* any other Perſon, the former Husband or Wife being alive, it is Felony: But where a Husband or Wife are abroad beyond Sea; *&c.* ſeven Years, the one not knowing the other to be living; or there is a Divorce of the Husband and Wife, *&c.* they are excepted out of the Act 1 *Jac.* 1. *c.* 11. A Husband being abſent ſeven Years in *New England* or *Ireland*, this is beyond the Seas, and within the Words of the Exception of the Act, yet in the King's Dominions: And if the Husband or Wife, be abroad ſeven Years, tho' the Party *marrying* here hath Notice, that he or ſhe is alive, 'tis no Felony; but if the Abſent Perſon be living in *England*, *Wales* or *Scotland*, and the other Party have Notice, 'tis Felony by the Statute. 1 *Hale's Hiſt. P. C.* 693. And in theſe Caſes, the firſt and true Wife, is not allowed as a Witneſs againſt the Husband, but the ſecond Wife may be admitted to prove the ſecond *Marriage*; for ſhe is not in Law his Wife. *Ibid.* If the firſt *Marriage* were beyond Sea, and the later in *England*, the Party may be indicted for it here; the later *Marriage* making the Crime: Though if the firſt *Marriage* be in *England*, and the later beyond Sea, the Offender can't be indicted there. 1 *Sid* 171. *Kel.* 80. If a *married* Man pretend himſelf to be a ſingle Perſon, and make Love to a ſingle Woman and *marry* her; for this Injury in the Loſs of her Credit, *&c* as to the *Marriage* of any other Man, Action lies. *Skinner's Rep.* 119. See *Forcible Marriage*, &c.

Marſhal, (*Mareſcallus*) Is a *French* Word, ſignifying as much as *Tribunus militum*, with the ancient *Romans*; and *Mareſcallus* may alſo come from the German *Marſchalk*, i. e. *Equitum Magiſter*, which *Hotoman* in his Feuds under verb. *Marchalcus* derives from the old Word *Marh*, which ſignifies a Horſe; and others make it of the Sax. *Mar.* i. e. *Equus, &* Scalch, *Præfectus.* In *France* there are *Marſhals of the Camp*, called *Marſhals of France:* And of the *Nobility* and *Diets*, in *Poland, &c.* With us there are ſeveral Officers of this Name; the Chief whereof is the *Earl Marſhal of England*, mentioned in the Stat. 1 *Hen.* 4. *c.* 7. and 13 *R.* 2. *cap.* 2. *&c.* whoſe Office conſiſts eſpecially in Matters of War and Arms, as well in this Kingdom as in other Countries; and this Office is very ancient, having formerly greater Power annex'd to it than now; it has been long hereditary in the Family of the Duke of *Norfolk.* The next is the *Marſhal of the King's Houſe*, otherwiſe called *Knight Marſhal*; and his Authority is exerciſed in the King's Palace, in hearing and determining all Pleas of the Crown, and Suits between thoſe of the King's Houſe and other Perſons within the Verge, and puniſhing Faults committed there, *&c.* 18 *Ed.* 3. *c.* 7. 27 *Ed.* 3 *Stat.* 2. *c.* 6. and 2 *H.* 4. *cap.* 13. *Cromp. Juriſd.* 192. *Fleta* mentions a *Marſhall of the King's Hall*, to whom it belongs, when the Tables are prepared, to call out thoſe of the Houſhold and Strangers, according to their Rank and Quality, and properly place them. *Fleta*, *lib.* 2. *cap.* 15. There are other inferior Officers called *Marſhal*, as *Marſhal of the Juſtice in Eyre*. Anno 13 Ed. 1. cap. 19. *Marſhal of the King's Bench*, *Stat.* 5 Ed. 3. c. 8. who hath the Cuſtody of the Priſon called the *King's Bench Priſon* in *Southwark*. This Officer gives Attendance upon the Court, and takes into his Cuſtody all Priſoners committed by the Court; he is finable for his Abſence, and Non-attendance is a Forfeiture of his Office. *Hill.* 21 & 22 *Car.* 2. There is alſo a *Marſhal of the Exchequer*, to whom that Court commits the Cuſtody of the King's Debtors, for ſecuring the Debts; he likewiſe aſſigns Sheriffs, Cuſtomers and Collectors, their Auditors, before whom they ſhall account. *Stat.* 51 *Hen.* 3. 5.

Marſhalſey, (*Mareſcaltia*) Is the Court or Seat of the *Marſhal* of the King's Houſe: And it is uſed for the Priſon in *Southwark*, which is ſo called; the Reaſon whereof may be, becauſe the *Marſhal* was wont to ſit there in Judgment. *Stat.* 28 *Ed.* 1. *c.* 3. 13 *R.* 2. and 2 *H.* 4. *c.* 23. Alſo in the Court of *King's Bench*, the Forms of Bills and Declarations run: That *A.* B. Complains of *C. D.* in Cuſtody of the *Marſhal* of the *Marſhalſey* of our Lord the King. 2 *Shep. Abr.* 395. King *Char.* 1. by Letters Patent under the Great Seal, erected a Court by the Name of *Curia Hoſpitii Domini Regis*, &c. which takes Cogniſance more at large of all Cauſes than the *Marſhalſey* could; of which the Knight Marſhal or his Deputy is Judge. See *Court of Marſhalſea*.

Marſhes and Fens, Laws concerning them. *Vide* Fens.

Mart, A great Fair for Buying and Selling of Goods, holden every Year. 2 *Co. Inſt.* 221.

Martial Law, Is the Law of War, that depends upon the juſt but arbitrary Power and Pleaſure of the King, or his Lieutenant; for tho' the King doth not make any Laws but by common Conſent in Parliament, yet in Time of War, by Reaſon of the Neceſſity of it to guard againſt Dangers that often ariſe, he uſeth abſolute Power, ſo that his Word is a Law. *Smith de Repub. Angl. lib.* 2. *cap.* 4. The *Martial Law*, according to Chief Juſtice *Hale*, is in Reality, not a Law, but ſomething indulged rather than allowed as a Law; and it relates only to Members of the Army, being never intended to be executed upon others, who ought to be ordered and governed by the Laws to which they are ſubject, tho' it be a Time of War. *Hale's Hiſt. L.* 39. And the Exerciſe of *Martial Law*, whereby any Perſon might loſe his Life or Member, or Liberty, may not be permitted, in Time of Peace; when the King's Courts are open for all Perſons to receive Juſtice. *Ibid.* 40. Alien Enemies invading the Kingdom, &c. ſhall be dealt with and executed by *Martial Law*. *H. P. C.* 10, 15. Alſo Soldiers are puniſhed for Deſertion, &c. in a Court *Martial* by Statutes 4 & 5 *W.* & *M.* 7 *Ann.* 1 *Geo.* 1, &c. See *Law of Arms*.

Martyrology, (*Martyrologium*) A Book of *Martyrs*, containing the Lives, &c. of thoſe Men who die for their Religion. Alſo a Calendar or Regiſter kept in Religious Houſes, wherein are ſet down the Names and Donations of their Benefactors, and the Days of their Death, that upon every Anniverſary they may commemorate and pray for them; And ſeveral Benefactors have made it a Condition of their Beneficence, to be inſerted in the *Martyrology*. Paroch. Antiq. 189.

Maſagium, Antiently uſed for *Meſſuagium*, a Meſſuage. ——— *Et unum* Maſagium *in Villa de* M. &c. Pat. 16 *R.* 2.

Maſons. To plot Confederacies amongſt *Maſons*, is declared Felony by an old Statute; and ſuch as aſſemble thereon ſhall ſuffer Impriſonment, and make Fine and Ranſom. Stat. 3 *H.* 6. *c.* 1.

Maſſer, A Prieſt that ſays Maſs. *Blount.*

Maſs-Prieſt. In former Times ſecular *Prieſts*, to diſtinguiſh them from the Regulars, were called *Maſs-Prieſts*, and they were to officiate at the *Maſs*, or in the ordinary Service of the Church: Hence *Meſſe-Preoſt* in many of our *Saxon* Canons, for the Parochial Miniſter; who was likewiſe ſometimes called *Meſſe-Thegne*, becauſe the Dignity of a Prieſt in many Caſes was thought equal to that of a *Thein* or lay Lord. But afterwards the Word *Maſs-Prieſt* was reſtrained to Stipendiaries retained in Chantries, or at particular Altars, to ſay ſo many *Maſſes* for the Souls of the Dead.

Maſt, (*Glans*, *Peſſona*) The Acorn and Nuts of the *Oak*, or other large Tree. —— *Glandis Nomine continentur glans, caſtanea, fagina, ficus & nuces, & alia quæque quæ edi & paſci poterunt præter Herbam.* Bract. lib. 4. *Tempus Peſſonæ* often occurs for *Maſt time*, or the Seaſon when *Maſt* is ripe; which in *Norfolk* they call *Shacking-time*. ——— *Quod habeat decem Porcos in* Tempore de Peſſon *in Boſco meo*, &c. Mon. Angl. Tom. 2. pag. 113, 231. There is a Tree called *Maſt-Tree*; and a *Maſt* or Sail of a Ship.

Maſter, (*Magiſter*) Signifies in general a Governor, Teacher, &c. And alſo in many Caſes an Officer. See *Servant*.

Maſter of the Armory, (*Magiſter Armorum & Armaturæ Regis*) Is an Officer that hath the Care and Overſight of his Majeſty's Arms and *Armory*, mentioned in the Stat. 39 *Eliz.* *c.* 7.

Maſter of the Ceremonies, (*Magiſter Admiſſionum*) Is one that receives and conducts Ambaſſadors and other great Perſons to Audience of the King, &c. This Office was inſtituted by King *James* 1. for the more magnificent Reception of Ambaſſadors and Strangers of the greateſt Quality.

Maſter of Chancery, (*Magiſter Cancellariæ*) In the Chancery there are *Maſters*, who are Aſſiſtants to the Lord Chancellor, or Lord Keeper, and Maſter of the Rolls: Of theſe there are ſome *Ordinary* and ſome *Extraordinary*; the *Maſters* in Ordinary are twelve in Number; and ſome ſit in Court every Day during the Term, and have referred to them interlocutory Orders for ſtating Accounts, computing Damages, and the like; and they alſo adminiſter Oaths, take Affidavits, and Acknowledgments of Deeds and Recognizances: The extraordinary *Maſters* are appointed to act in the Country, in the ſeveral Counties of *England*, beyond ten Miles Diſtance from *London*; by taking Affidavits, Recognizances, Acknowledgments of Deeds, &c. for the Eaſe of the Suitors of the Court. By the Stat. 13 *Car.* 2. a publick *Office* was ordained to be kept near the Rolls, for the *Maſters in Chancery*; in which they or ſome of them are conſtantly to attend, for the Adminiſtring of Oaths, Caption of Deeds, and Diſpatch of other Buſineſs: And their Fees for taking Affidavits, Acknowledgment of Deeds, Exemplifications, Reports, Certificates, &c. are aſcertained by that Act; and to take more, incurs Diſability for ſuch *Maſter* to execute his Office, and a Forfeiture of 100 *l.* &c.

Maſter of the Court of Wards and Liveries, Was the chief Officer of that Court, aſſigned by the King; to whoſe Cuſtody the Seal of the Court was delivered, &c. as appears by the Stat. 33 *H.* 8. *c.* 33. But as this Court was aboliſhed by Stat. 12 *Car.* 2. *c.* 24. this Office of Courſe dropp'd with it.

Maſter of the Faculties, (*Magiſter Facultatum*) Is an Officer under the *Archbiſhop of Canterbury*, who grants Licences and Diſpenſations, &c. 22 & 23 *Car.* 2.

Maſter of the Horſe, Is he that hath the Ordering and Government of the King's Stables; and of all Horſes, Racers, and Breeds of Horſes belonging to his Majeſty: He has the Charge of all Revenues appropriated for defraying the Expence of the King's Breed of Horſes; of the Stable, Litters, Sumpter-Horſes, Coaches, *&c.* and has Power over the Equeries and Pages, Grooms, Coachmen. Farriers, Smiths, Sadlers, and all other Artificers working to the King's Stables, to whom he adminiſters an Oath to be true and faithful: But the Accounts of the Stables, of Liveries, Wages, *&c.* are kept by the *Avener*; and by him brought to be paſſed and allowed by the Court of *Green Cloth.* The Office of *Maſter of the Horſe* is of high Account, and always beſtowed upon ſome great Nobleman; and this Officer only has the Privilege of making Uſe of any Horſes, Footmen, or Pages belonging to the King's Stables: At any ſolemn Cavalcade he rides next to the King, with a led Horſe of State. He is the third great Officer of the King's Houſhold; being next to the Lord *Steward*, and Lord *Chamberlain*; and is mentioned in the Statute 39 *Eliz. c.* 7. and 1 *Ed.* 6. *c.* 5.

Maſter of the Jewel Office, An Officer of the King's Houſhold, having the Charge of all Plate uſed for the King or Queen's Table, or by any great Officer at Court; and alſo of all the Royal Plate remaining in the *Tower of London*, and of Chains and *Jewels* not fixed to any Garment. 39 *Eliz. c.* 7.

Maſter of the Houſhold, (*Magiſter Hoſpitii Regis*) Otherwiſe called *Grand Maſter of the King's Houſhold*, is now ſtiled *Lord Steward of the Houſhold*, which Title this Officer hath bore ever ſince *Anno* 32 H. 8. But under him there is a principal Officer ſtill called *Maſter of the Houſhold*, who ſurveys the Accounts, and has great Authority.

Maſter of the King's Muſters, Is a martial Officer in the King's Armies, whoſe Office it is to ſee that the Forces are compleat, well armed and trained; and to prevent Frauds, which would otherwiſe waſte the Prince's Treaſure, and weaken the Forces, *&c.*

Maſter of the Mint, Is an Officer that receives the Silver of the Goldſmiths, and pays them for it, and overſees every Thing belonging to the *Mint*; he is at this Day called *Warden of the Mint.*

Maſter of the Ordnance, A great Officer, to whoſe Care all the King's Ordnance and Artillery is committed. 39 *Eliz. c.* 7.

Maſter of the Poſts, Was an Officer of the King's Court, that had the Appointing, Placing, and Diſplacing of all ſuch through *England*, as provided *Poſt-Horſes*, for the ſpeedy Paſſing of the King's Meſſages, Letters, Pacquets, and other Buſineſs; and was to ſee that they kept a certain Number of good Horſes of their own, and upon Occaſion that they provided others for the Furniſhing of thoſe Perſons which had a Warrant from him to take and uſe Poſt-Horſes, either from or to the Seas, or other Places within the Realm. He likewiſe paid them their Wages, and ſettled their Allowances, *&c.* 2 *Ed.* 6. *c.* 3. The Stat. 12 *Car.* 2. *c.* 34. for erecting one *General Poſt-Office* in *London*, ordains that there ſhall be a *Maſter of the Poſt-Office*, appointed by the King by Letters Patent, (and of late this Office is executed by two jointly) who and his Agents, and the Perſons employed by them, have the Sending and Carriage of all Letters, at certain Rates; and the Poſt-Maſter is to continue conſtant Poſts, and provide Perſons riding Poſt with Poſt-Horſes, under Penalties, taking 3 *d. per* Mile for the Horſe, and 4 *d.* for the Guide, every Stage, *&c.* Vide Stat. 9 *Ann. c.* 10. See *Poſt.*

Maſter of the Revels, An Officer to regulate and overſee the Diverſions of Dancing and Masking, uſed in the Palaces of the King, Inns of Court, *&c.* and in the King's Court is under the *Lord Chamberlain.*

Maſter of the Rolls, (*Magiſter Rotulorum*) Is an Aſſiſtant to the Lord Chancellor in the High Court of Chancery, and in his Abſence heareth Cauſes there, and alſo at the Chapel of the *Rolls*, and makes Orders and Decrees. *Crompt. Juriſd.* 41. Hi Title in his Patent is, *Clericus parvæ Bagæ*, *Cuſtos Rotulorum*, *&c.* And he has the Keeping of the *Rolls* of all Patents and Grants which paſs the Great Seal, and the Records of the Chancery. He is called *Clerk of the Rolls*, *Stat.* 12 *R.* 2. *c.* 2. and in *Forteſcue*, *c.* 24. and no where *Maſter of the Rolls*, until the 11 *Hen.* 7. *c.* 20. In which Reſpect Sir *Tho. Smith* ſays, he may not unfitly be ſtiled *Cuſtos Archivorum.* In his Diſpoſition are the Offices of the Six Clerks, and the Clerks of the Petty Bag, Examiners of the Court, and Clerks of the Chapel. 14 & 15 *H.* 8. *c.* 1.

Maſter of the Temple. The Founder of the Order of the *Knights Templers*, and his Succeſſors, were called *Magni Templi Magiſtri*; and probably from hence he was the Spiritual Guide and Director of the *Temple.* The *Maſter of the Temple* here was ſummoned to Parliament *Anno* 49 *H.* 3. And the Chief Miniſter of the *Temple Church* in *London* is now called *Maſter of the Temple.* Dugd. Warw. 706.

Maſter of the Wardrobe, (*Magiſter Garderobæ*) Is a conſiderable Officer at Court, who has the Charge and Cuſtody of all former Kings and Queens antient Robes remaining in the *Tower of London*; and all Hangings, Bedding, *&c.* for the King's Houſes: He hath alſo the Charge and Delivery out of all Velvet or Scarlet Cloth allowed for Liveries, *&c.* And of this Officer Mention is made in the Stat. 39 *Eliz. c.* 7. The *Lord Chamberlain* has the Overſight of the Officers of the *Wardrobe.*

Maſtinus, A great Dog, called a Maſtiff. —— *Canes &* Maſtini *per omnes Foreſtas Angliæ occiduntur.* Knight. lib. 2. cap. 15.

Maſura, Is an old decayed Houſe, according to *Domeſd.* And *Maſura Terræ*, Fr. *Maſure de Terre*, ſignifies a Quantity of Ground; but with us it is taken for *Domicilium cum fundo*, vel pro *fundo cum Domicilio competenti.*

Materia, A great Beam, or Timber proper for Building. *Dedi illis* Materiam *& Ligna ad omnia neceſſaria ſua, & ad Domos ſuas Ædificand.* Mon. Angl. Tom. 1. pag. 821.

Matricula, A Regiſter; as in the antient Church there was *Matricula Clericorum*, which was a Liſt or Catalogue of the officiating Clergy; and *Matricula Pauperum*, a Liſt of the Poor to be relieved: Hence to be entered in the Regiſter of the Univerſities, is to be *matriculated*, *&c.*

Matrimonium, Is ſometimes taken for the Inheritance deſcending to a Man *ex parte Matris* —— *Cum omni hæreditate Patrimonii & Matrimonii ſui, &c.* Blount.

Matrix Eccleſia, The Mother Church; and is either a Cathedral, in reſpect to the Parochial Churches within the ſame Dioceſe; or a Parochial Church, with reſpect to the Chapels depending on it, and to which the People reſort for Sacraments and Burials. *Leg. H.* 1. *c.* 19.

Mats and Coverlets, &c. In the County of *Norfolk*, by what Perſons made. See Stat. 5 & 6 *Ed.* 6. *c.* 24.

Matter in Deed, and Matter of Record, Are often mentioned in Law-Proceedings, and differ thus: The firſt ſeems to be nothing elſe but ſome Truth or *Matter* of Fact to be proved by ſome Specialty, and not by any Record; and the latter is that which may be proved by ſome Record: For Example; If a Man be ſued to an Exigent, during the Time he was abroad in the Service of the King, *&c.* this is *Matter in Deed*, and he that will alledge it for himſelf, muſt come before the *Scire facias* for Execution be awarded againſt him; but after that, nothing will ſerve but *Matter of Record*, that is, ſome Error in the Proceſs appearing upon the Record. There is alſo a Difference between *Matter of Record* and *Matter in Deed*, and *Nude Matter*; the laſt being a naked Allegation of a Thing done, to be proved only by Witneſſes, and not either by *Record or Specialty*. Old Nat. Br. 19. Kitch. 216.

Maugre, (From the Fr. *Mal*, and *gre*, i. e. *Animo iniquo*) Signifies as much as to ſay with an unwilling Mind or in Deſpight of another; as where it is ſaid, that the Wife ſhall be remitted, *Maugre* the Husband, that is, whether the Husband will or no. *Lit. Sect.* 672.

Maum, A ſoft brittle Stone in ſome Parts of *Oxfordſhire*; and in *Northumberland* they uſe the Word *Maum* for ſoft and mellow. *Plot's Nat. Hiſt. Oxfordſh. p.* 69.

Maund, A kind of great Basket or Hamper, containing eight Bales, or two Fats: It is commonly a Quantity of eight Bales of unbound Books, each Bale having one thouſand Pounds Weight. *Book Rates, pag.* 3.

Maundy Thursday, The *Thurſday* before *Eaſter*. See *Mandati Dies.*

Maxims in Law, Are the Foundation of it; or certain Rules or Poſitions, which are the Concluſions of Reaſon, and ought not at any Time to be impeached. They are Principles and Authorities, and Part of the general Cuſtoms or Common Law of the Land; and are of the ſame Strength as Acts of Parliament, when the Judges are determined what is a *Maxim*; which belongs to the Judges, and not a Jury. *Terms de Ley* 438. *Doct. & Stud. Dial.* 1. *c.* 8. A *Maxim* in Law is ſaid to be a Propoſition of all Men confeſſed and granted, without Argument or Diſcourſe: *Maxims of the Law* are holden for Law; and all other Caſes that may be applied to them, ſhall be taken for granted. 1 *Inſt.* 11. 67. 4 *Rep.* The *Maxims* in our Books, which are many and various, are ſuch as the following, *viz.* It is a Maxim, *That Land ſhall deſcend from the Father to the Son*, &c. *That if a Man have two Sons by divers Venters, and the one purchaſe Lands and dies without Iſſue, the other ſhall never be his Heir*, &c. *That as no Eſtate can be veſted in the King without Matter of Record, ſo none can be deveſted out of him but by Matter of Record. That an Obligation, or other Matter in Writing, cannot be diſſolved by an Agreement by Word, without Writing.* Co. Litt. 11, 141.

Mayor, (*Præfectus urbis*, anciently *Meyr*, comes from the Brit. *Miret*, i. e. *Cuſtodire*, or from the old *Engliſh* Word *Maier*, *viz. Poteſtas*, and not from the Lat. *Major*) Is the chief Governor or Magiſtrate of a City or Town; as the *Lord Mayor* of *London*, the *Mayor* of *Southampton*, &c. King *Rich.* 1. *Anno* 1189. changed the Bailiffs of *London* into a *Mayor*; and from that Example King *John* made the Bailiff of *King's Lynn* a *Mayor*, *Anno* 1204. Though the famous City of *Norwich* obtained not this Title for its chief Magiſtrate, till the ſeventh Year of King *H* 5. *Anno* 1419, ſince which there are few Towns of Note, but have had a *Mayor* appointed for Government. *Spelm. Gloſſ.* *Mayors* of Corporations are Juſtices of Peace *pro Tempore*, and they are mentioned in ſeveral Statutes; but no Perſon ſhall bear any Office of Magiſtracy concerning the Government of any Town, Corporation, &c. that hath not received the Sacrament, according to the Church of *England*, within one Year before his Election; and who ſhall not take the Oaths of Supremacy, &c. *Stat.* 13 *Car.* 2. *cap.* 1. And by this Statute, *Mayors*, &c. were likewiſe to ſubſcribe a Declaration, that there lay no Obligation upon them from the Oath commonly called the ſolemn League and Covenant; which is repealed by a late Statute. The 10 *Ann. cap.* 2. prohibited *Mayors* and Officers of Corporations from going to Conventicles, under the Penalty of 40 *l.* &c. But this is altered by 5 *Geo.* 1. *cap.* 6. though the Gown, Mace, or other Enſigns of Magiſtracy, may not be worn or carried to a Conventicle, on Pain of Diſability to enjoy any Office, &c. If any one intrudes into, and thereupon executes the Office of *Mayor*, a *Quo Warranto* Information may be brought againſt him; and he ſhall be ouſted and fined, &c. And no Perſon who hath been or ſhall be in an Annual Office in any Corporation for one Year, ſhall be choſen into the ſame Office the next Year, and obſtructing the Choice of a Succeſſor incurs a Penalty of 100. Stat. 9 *Ann. c.* 20. Alſo if no *Mayor* be elected in a Corporation, on the Day appointed by Charter, by the proper Officers, the next in Place is to hold a Court, and elect one the next Day following, &c. or in Default thereof, the Court of King's Bench may compel the Electors to chuſe one, &c. by Writ of *Mandamus*, requiring the Members who have a Right to vote, to aſſemble themſelves on a Day prefixed, and proceed to Election, or ſhew cauſe to the contrary; and *Mayors*, &c. voluntarily abſenting on the Day of Election, ſhall be impriſoned ſix Months, and be diſabled to hold any Office in the Corporation. 11 *Geo.* 1. *cap.* 4. The Authority of *Mayors* is contained in the following Particulars: The Statute 2 *Ed.* 3. gives Power to *Mayors* to arreſt Perſons carrying offenſive Weapons in Fairs, Markets, &c. to make *Affrays*, and the Diſturbance of the Peace. By Stat. 23 *Hen.* 8. *Mayors*, &c. have Power to ſet the Price of *Ale* and *Beer*: And they are authorized to convict Perſons ſelling Ale without Licence; and alſo to levy the Penalties on the Offender by Diſtreſs, &c. 3 *Car.* 1. And they are to cauſe Quart and Pint Pots for the Selling of Ale, to be examined whether they hold their full Meaſure; and to mark them, under the Penalty of 5 *l.* 11 & 12 *W.* 3. *Mayors*, Bailiffs, and Lords of Leets, are to regulate the Aſſiſe of *Bread*, and examine into the Goodneſs thereof; and if Bakers make unlawful Bread, they may give it to the Poor, and Pillory the Offenders, &c. 52 *Hen.* 3. And the 8 *Ann.* and 1 *Geo.* 1. direct, that *Mayors* and Chief Magiſtrates of Towns, &c. may in the Day-time enter into any Houſe, Shop, Bakehouſe or Warehouſe, of any Baker or Seller of Bread, to ſearch for, view, and try all or any of the Bread there found; and if the Bread be wanting in Goodneſs, deficient in Baking, under Weight, or not truly marked; or ſhall conſiſt of any other Sort than what is allowed, the ſame Bread ſhall be ſeiſed and diſtributed to the Poor: And the former Statute impoſes a Penalty of 40 *s.* for want of Weight, or not being marked as appointed, &c. but this is made 5 *s.* for every Ounce wanting in Weight, and 2 *s.* 6 *d.* if under an Ounce, (Complaint being made, and the Bread weighed before a Magiſtrate within twenty-four Hours) by the 1 *Geo.* 1. And Bakers ſelling their large Bread at a higher Price than ſet by *Mayors*, &c. ſhall forfeit 10 *s.* to the Informer, to be levied by Diſtreſs, &c. By Stat. 3 *Geo.* 2. *Mayors*, &c. are empowered to make Enquiry into Offences committed againſt the Stat. 1 *Eliz.* which requires that the Common Prayer be read in *Churches*; and that Churchwardens do their Duty in preſenting the Names of ſuch Perſons as abſent themſelves from Church on *Sundays*, &c. Head Officers of Corporations are to appoint and ſwear Overſeers or Searchers to examine into Defects of Northern *Cloth*, &c. and the Overſeers ſhall fix a Seal of Lead to Cloths, expreſſing the Length and Breadth; and if they find any faulty, or ſealed with a falſe Seal, &c. they are to preſent the ſame at the next Quarter-Seſſions: *Mayors*, &c. neglecting their Duty, are liable to a Penalty of 5 *l.* 39 *Eliz. cap.* 20. *Mayors* may determine whether *Coin* offered in Payment be counterfeited or not; and tender an Oath to determine any Queſtion relating to it. 9 & 10 *W.* 3. Chief Magiſtrates of Ports, where Goods are conveyed away, which are liable to *Cuſtoms*, before Entry made, and the Duties agreed, are to grant their Warrants for the Apprehenſion of the Offender, &c. 12 *Car.* 2. By 23 *Eliz. Mayors*, &c. may call before them and examine *Dyers*, ſuſpected to uſe Logwood in Dying; and if they find Cauſe, may bind them over to the Quarter Seſſions, where on Conviction, they are liable to a Forfeiture of 20*l.* But ſee Stat. 14 *Car.* 2. *c.* 11. and the late Act 13 *Geo.* 1. *Mayors* and Head Officers of Corporations, are to puniſh *Drunkenneſs*, by impoſing a Fine of 5*s.* on View, Confeſſion, or Proof by one Witneſs, or cauſe the Offender to be put in the Stocks for ſix Hours. 1, 4 & 21 *Jac.* 1. And Perſons ſitting tipling in an Alehouſe, Inn, &c. are liable to Puniſhment by *Mayors*, who may levy 3*s.* 4*d.* on ſuch Offenders, for every Offence, for the Uſe of the Poor, or cauſe them to be ſet in the Stocks four Hours: And the Alehouſe-keepers, &c. ſuffering Tipling in their Houſes, are ſubject to a Penalty of 10*s.* *Ibid.* Head Officers and Juſtices of Peace in Corporations, may inquire of *Forcible Entries*, commit the Offenders, and cauſe the Tenements to be ſeiſed, &c. within their Franchiſes, in like Manner as Juſtices of Peace in the County. 8 *H* 6. *Mayors*, &c. ſhall enquire into unlawful *Gaming*, againſt the Stat. 33 *Hen.* 8. They are to ſearch Places ſuſpected to be Gaming-houſes, and levy Penalties, &c. and they have Power to commit Perſons playing at unlawful Games. *Mayors* and Juſtices of Peace of Corporations, are empowered to execute all the Laws relating to the *Highways*, by 1 *Geo.* 1. *Horſes* ſtolen, found in a Corporation, may be redeemed by the Owner, making Proof before the Head Officer of the Corporation, of the Property, &c. 31 *Eliz.* *Mayors* and Head Officers in Corporate and Market-Towns, and Lords of Liberties and their Stewards, are to appoint and ſwear two ſkilful Perſons yearly, to be Searchers and Sealers of *Leather*; and they are to appoint Triers of inſufficient Leather, and of Leather Wares: Searchers not doing their Duty to forfeit 40*s.* and Triers 5*l.* 1 *Jac.* 1. *cap.* 22. Perſons robbing *Orchards*, Hedge-breakers, &c. are puniſhable by *Mayors*; and a Perſon on Conviction by the Oath of one Witneſs, ſhall pay to the Perſon injured ſuch Damage as the *Mayor*, &c. ſhall think fit, or be whipped. 43 *Eliz.* *Mayors*, &c. on Receipt of Precepts from Sheriffs, (when Writs are iſſued for Elections) requiring them to chuſe Burgeſſes or Members of *Parliament*, by the Citizens, &c. are to proceed to Election, and make Returns by Indenture between them and the Electors; and making a falſe Return, ſhall forfeit 40 *l.* to the King, and the like Sum to the Party choſen not returned, &c. 23 *H.* 6. See the Stat. 2 *Geo.* 2. In Time of Sickneſs, a Tax may be laid on Inhabitants of Corporations, for relieving ſuch Perſons as have the *Plague*, by *Mayors*, &c. who are to appoint Searchers and Buriers of the Dead: And if any infected Perſons ſhall go abroad with Sores upon them, after an Head Officer hath commanded them to keep at Home, it is Felony; and if they have no Sores about them, they are puniſhable as Vagrants. 1 *Jac.* 1. The Stat. 43 *Eliz.* which directs that the Father, Grandfather, Mother, Grandmother, and Children, of every poor Perſon, ſhall be aſſeſſed towards their Relief by Juſtices, and which impowers Juſtices of Peace to order a Poor's Rate or Tax, and Overſeers of the *Poor*, &c. to place forth poor Apprentices, and ſets forth the Office of Overſeers; gives the like Authority to Head Officers in Corporate Towns, as Juſtices of Peace have in their Counties; which ſaid Juſtices are not to intermeddle in Corporations for the Execution of this Law. *Mayors*, Bailiffs and other Head Officers of Corporate Towns, &c. are to make Proclamation for *Rioters* to diſperſe, as follows: Our Sovereign Lord the King charges and commands all Perſons aſſembled, immediately to diſperſe themſelves, and peaceably depart to their Habitations, upon Pain of Impriſonment, &c. And if the Rioters being twelve in Number, do not diſperſe within an Hour after, it is Felony without Benefit of Clergy, &c. 1 *Geo.* 1. Matters relating to *Servants*, and Apprentices, may be determined by *Mayors*; who have Power to compel Perſons to go to Service, &c. 5 *Eliz.* *Mayors* may arreſt *Soldiers* departing without Licence: And they are to be preſent at Muſters; quarter and billet Soldiers, &c. 18 *Hen.* 6. 13 & 14 *W.* 3. 1 *Geo.* 1. Perſons uſing Games on a *Sunday* forfeit 3*s.* 4*d.* to the Uſe of the Poor; Carriers, &c. travelling on that Day 20*s.* and Perſons doing any worldly Labour thereon 5*s.* all leviable by Warrant from *Mayors* and Head Officers of Corporations, as well as other Juſtices. 1 & 3 *Car.* 1. 29 *Car.* 2. And by 3 *Car.* 1. *c.* 4. If any Perſon ſhall profanely *Swear* or Curſe in the Preſence of a *Mayor*, &c. or be convicted thereof before him, by the Oaths of two Witneſſes, he ſhall forfeit for every Offence 1*s.* to the Uſe of the Poor, or be ſet in the Stocks three Hours: But the Statute 6 & 7 *W.* 3. confines the Forfeiture of 1*s.* to Servants, Labourers, &c. other Perſons being ordered to pay 2*s.* and double, treble, &c. on repeating the Offence. *Vagrants*, or other idle and diſorderly Perſons, Blind, Lame, &c. or pretending to be ſo, begging in Streets, a *Mayor* or Conſtable may cauſe them to be whipped. 12 *Ann.* By former Statutes, *Mayors* are empowered to make Paſſes of Vagrants; and Juſtices in Liberties and Corporations are to iſſue Warrants to Conſtables, &c. to make a Search for and apprehend Vagrants before the Quarter-Seſſions. *Mayors* are to ſet the Rates and Prices of Coopers *Veſſels*; and appoint Searchers and Gaugers of Veſſels for Fiſh, &c. 11 *H.* 7. 8 *Eliz.* In every City, Town, &c. there is to be a common Balance, and ſealed *Weights*, under divers Penalties: There is alſo to be a common Buſhel ſealed. 8 & 11 *Hen.* 6. And *Mayors*, &c. are to provide a Mark for the Sealing of Weights and Meaſures, being allowed 1*d.* for ſealing every Buſhel and hundred Weight; and a Halfpenny for every other Meaſure and Half-hundred Weight, &c. *Mayors* and Head Officers of Corporations, &c. ſhall view all Weights and Meaſures once a Year, and puniſh Offenders uſing falſe Weights; and they may break or burn ſuch Weights and Meaſures, and inflict Penalties, &c. If they permit Perſons to ſell by Meaſures not ſealed, they ſhall forfeit 5*l.* Sealing Weights not agreeable to the Standard, is liable to the ſame Penalty; and refuſing to ſeal Weights and Meaſures, ſubjects them to a Forfeiture of 40*s.* 7 *H.* 7. *Mayors*, &c. are to inſpect and order the Size of Faggot, Billet, Tale *Wood*, &c. 43 *Eliz.* See *Corporation.*

Meal-Rents, Certain Rents heretofore paid in *Meal* by the Tenants of the Honour of *Clun*, to make Meat for the Lord's Hounds; they are now payable in Money.

Meals. The Shelves of Land, or Banks on the Sea-Coaſts of *Norfolk*, are called the *Meals* and the *Males.* Cowel.

Mean, (*Medius*) Signifies the Middle between two Extreams; and that either in Time or Dignity: In Time it is the *Interim* betwixt one Act and another; and applied to *mean Profits* of Lands between a Diſſeiſin and Recovery, &c. As to Dignity, there is a *Lord Mean* or *Meine*, that holds of another *Lord*; and *mean* Tenant, &c. *Stat.* 13 *Ed.* 1. *Meſne* likewiſe ſignifieth a Writ, which lies where there is Lord *Mean* and Tenant; and the Tenant is diſtrained by the ſuperior Lord, for the Rent or Service of the *Mean*, who ought to acquit him to the other Lord, then the Tenant ſhall have his *Writ of Meſne*; and if the *Mean* Lord appear not, he ſhall loſe the Service of the Tenant, and be forejudged of his Seigniory, and the Tenant ſhall immediately become Tenant to the chief Lord. *Terms de Ley.* Alſo in ſuch Caſe, the Tenant by Writ may recover Damages if he be diſtrained; and the *Mean* Lord be compelled to pay the Rent, and do the Services. *F. N. B.* 135. If a Man bring a Writ of *Meſne* where he is not diſtrained, yet it is maintainable, but then he ſhall not have Damages; for it is brought only to be acquitted, *&c.* And Tenant for Term of Life, where the Remainder is over in Fee, ſhall have this Writ againſt the *Meſne.* 7 *H.* 4. 12. 15 *H.* 6. *New Nat. Br.* 330. One brought a Writ of *Meſne* againſt a Man becauſe he did not acquit the Plaintiff of a Rent-charge demanded, *&c.* when he by his Deed bound himſelf and his Heirs to warrant and acquit him; and it was held good: And if a Man have Judgment to recover in this Writ, if he be not afterwards acquitted, he may have a *Diſtringas ad acquietandum* againſt the *Meſne*; and *Scire facias* againſt the Lord. Stat. *Weſtm.* 2. *c.* 9. 14 *Ed.* 3.

Form of a Writ of *Meſne.*

GEORGE *the Second,* &c. *to the Sheriff of* S. *Command* A. B. *that juſtly,* &c. *be acquit* C. D. *of the Service which* E. F. *exacts from him, of his Freehold that he holds of the ſaid* A. B. *in* W. *whereof the ſaid* A. *who is* Meſne *betwixt the ſaid* E. *and* C. *him ought to acquit; and whereupon he complains, that for his Default he is diſtrained; and unleſs,* &c.

Meaſe, A Meſſuage or Dwelling-houſe. *Stat.* 14 *H.* 3. Alſo a Meaſure of Herrings, containing five Hundred; the Half of a Thouſand is called *Meaſe* or *Meſe.* Merch. Dict.

Meaſure, (*Menſura*) Is a certain Quantity or Proportion of any Thing ſold; and in many Parts of *England,* is one Buſhel. The Statute of *Magna Charta, c.* 25. ordains, that there ſhall be but one *Meaſure* throughout *England,* according to the *Standard* in the *Exchequer:* Which Standard, was formerly kept in the King's Palace, and in all Cities, Market-Towns and Villages, it was kept in the Churches. 4 *Inſt.* 273. By 17 *Car.* 1. *c.* 19. there is to be one Weight and *Meaſure,* and one Yard according to the King's Standard; and whoſoever ſhall keep any other Weight or *Meaſure,* whereby any Thing is bought or ſold, ſhall forfeit for every Offence 5 *s.* And by 22 *Car.* 2. *c.* 8. *Water Meaſure,* as to Corn and Grain, or Salt, is declared to be within the Stat. 17 *Car.* 1. And if any ſell Grain, or Salt, *&c.* by any other Buſhel, or *Meaſure* than what is agreeable to the Standard in the Exchequer, commonly called *Winchester-Meaſure*; he ſhall forfeit 40 *s.* *&c.* Notwithſtanding theſe Statutes in many Places and Counties there are different *Meaſures* of Corn and Grain; and the Buſhel in one Place is larger than in another; but the Lawfulneſs of it is not well to be accounted for, ſince Cuſtom or Preſcription is not allowed to be good againſt a Statute. *Dalt.* 250. And we have three different *Meaſures, viz.* one for *Wine,* one for *Ale and Beer,* and one for *Corn:* In the *Meaſure* of *Wine,* eight Pints make a Gallon, eight Gallons a Firkin, ſixteen Gallons a Kilderkin, Half Barrel or Rundlet, four Firkins a Barrel, two Barrels a Hogſhead, two Hogſheads a Pipe, and two Pipes make a Tun. 15 *R.* 2. *cap.* 4. 11 *H.* 7. *c.* 4. 12 *H.* 7. *c.* 5. In *Meaſure* of *Corn* eight Pounds or Pints of Wheat make the Gallon, two Gallons a Peck, four Pecks a Buſhel, four Buſhels a Sack, and eight Buſhels a Quarter, *&c.* *Stat.* 51. *E.* 1. 31 *Ed.* 3. And in other *Meaſure*; three Barley Coins in length make an Inch, twelve Inches a Foot, three Foot a Yard, three Foot and nine Inches an Ell, and five Yards and a half, which is ſixteen Foot and half, make the Perch, Pole or Rod. 27 *Ed.* 3. *c.* 10. Selling by falſe *Meaſures,* being an Offence by the Common Law, may be puniſhed by Fine, *&c.* upon an Indictment at Common Law, as well as by Statute. See the Stat. 11 *Hen.* 7. *cap.* 4. which inflicts particular Fines for Offences, Pillory, *&c.*

Meaſurer, or Meter of Woollen *Cloth,* and of *Coals, &c.* is an Officer in the City of *London*; the latter of great Account. *Chart. Jac.* 1. See *Alnager.*

Meaſuring Money. The Letters Patent, whereby ſome Perſons exacted for every Cloth made, certain Money, beſides *Alnage,* called *Meaſuring Money,* ſhall be revoked. *Rot. Parl.* 11 *Hen.* 4.

Mederia, Is a *Mead* Houſe, or Place where Mead or Metheglin is made. *Cartular. Abb. Glaſt. MS. fol.* 29.

Medfee, A Bribe or Reward; and uſed for a Compenſation where Things exchanged are not of equal Value: It is ſaid to come from the Word *Meed,* which ſignifies *Merit.*

Mediæ & infimæ manus Homines, Men of a mean and baſe Condition, of the lower Sort. *Blount.*

Medianus, Is a Word uſed for middle Size; *Medianus Homo,* A Man of middle Fortune.

Mediators of Queſtions, Were ſix Perſons authorized by Statute, who upon any Queſtion ariſing among *Merchants* relating to unmercatable Wool, or undue Packing, *&c.* might before the *Mayor* and Officers of the *Staple* upon their Oath certify and ſettle the ſame; to whoſe Order and Determination therein, the Parties concerned were to give entire Credence and ſubmit. 27 *Ed.* 3. *Stat.* 2. *c.* 24

Medietas Linguæ, Signifies a *Jury* or Inqueſt impanelled, whereof the one Half conſiſts of Natives, and the other *Strangers*; and is uſed in Pleas wherein the one Party is a Stranger, the other a Denizen: And this Manner of Trial was firſt given by the Stat. 27 *Ed.* 3. *cap.* 8. Before which, this was wont to be obtained by the King's Grant. *Staundf. P. C. lib.* 3. *cap.* 7. He that will have the Advantage of Trial *per Medietatem Linguæ,* muſt pray it; for it is ſaid he cannot have the Benefit of it by Way of Challenge. *S. P. C.* 158. 3 *Inſt.* 127. In Petit Treaſon, Murder and Felony, *Medietas Linguæ* is allowed; but for High Treaſon, an Alien ſhall be tried by the Common Law, and not *per Medietatem Linguæ. H. P. C.* 261. And a Grand Jury ought not to be *de Medietate Linguæ,* in any Caſe. *Wood's Inſt.* 623. *Ægyptians* are excluded from this Trial, by 1 *&* 2 *P. & M. c.* 4. But we read, That *Solomon de Standford* a *Jew,* had a Cauſe tried before the Sheriff of *Norwich,* by a Jury of *Sex probos & legales Homines, & ſex legales Judæos de Civitate* Norwici, *&c.* *Paſch.* 9 *Ed.* 1.

Medio acquietando, Is a Judicial Writ to diſtrain a Lord for the *Acquitting* of a *Mean* Lord from a Rent, which he formerly acknowledged in Court not to belong to him. *Reg. Judic.* 129.

Mediterranean, Is that which paſſed through the *Midſt* of the Earth; and hence the *Sea* which ſtretcheth itſelf from *Weſt* to *Eaſt,* dividing *Europe Aſia* and *Africa,* is called the *Mediterranean Sea*; mentioned in the Statute 12 *Car.* 2. *cap.* 24. The Counterfeiting of *Mediterranean* Paſſes for Ships to the Coaſt of *Barbary, &c.* or the Seal of the Admiralty Office to ſuch Paſſes, is Felony without Benefit of Clergy. *Stat.* 4 *Geo.* 2. *c.* 18.

Medleſe, (from the Fr. *Meſler*) Is that which *Bracton* calls *Medletum,* and ſignifies Quarrelling or Brawling. *Bract. lib.* 3. *tract.* 2. *cap.* 35.

Medſypp, A Harveſt Supper or Entertainment, given to the Labourers at Home Harveſt. *Placit.* 9. *Ed.* 1.

Meer, (*Meta*) A Mark or Boundary of Land. *Litt. Dict.*

Meere, (*Merus*) Signifies very, and though an Adjective is uſed ſubſtantively for *meer Right*; as to join the *Miſe* upon the *Meer,* in the great Aſſiſe, *&c.* *Old Nat. Brev.* 2. See *Miſe.*

Meigne, Is the ſame with *Maiſnada.* Mon. Angl. Tom. 2. pag. 219.

Meiny, (Fr. *Meſnie*) As the King's *Meiny,* the King's Family, or Houſhold Servants. 1 *R.* 2. *c.* 4.

Meldfeoth, (*Sax.*) Was the Recompence due and given to him that made the Diſcovery of any Breach of *Penal Laws*, committed by another Perſon; called the Promoter or Informer's *Fee*. *Leg. Inæ, cap.* 20.

Melius Inquirendum, Is a Writ that lieth for a ſecond Inquiry, where partial Dealing is ſuſpected; and particularly of what Lands or Tenements a Man died ſeiſed, on finding an Office for the King. *F. N. B.* 255. It had been held, that where an Office is found againſt the King, and a *Melius Inquirendum* is awarded, and upon that *Melius, &c.* it is found for the King, if the Writ be void for Repugnancy, or otherwiſe, a new *Melius Inquirendum* ſhall be had: But if upon the firſt *Melius*, it had been found againſt the King, in ſuch Caſe he could not have a new *Melius, &c.* for then there would be no End of theſe Writs: And if an Office be found for the King, the Party grieved may traverſe it; and if the Traverſe be found againſt him, there is an End of that Cauſe; and if for him, it is concluſive. 8 *Rep.* 169. 2 *Nelſ.* 1008. If there is any Defect in the Points which are found in an Inquiſition, there may not be a *Melius Inquirendum*; but if the Inquiſition finds ſome Parts well, and nothing is found as to others, that may be ſupplied by a *Melius Inquirend.* 2 *Salk.* 469. A *Melius Inquirendum* ſhall be awarded out of *B. R.* where a Coroner is guilty of corrupt Practices; directed to ſpecial Commiſſioners. 1 *Vent.* 181.

Memories, Uſed for certain Obſequies or Remembrances of the Dead, in Injunctions to the Clergy. 1 *Ed.* 6.

Menagium, A Family. *Trivet's Chron. pag.* 677 See *Managium*.

Menials, (From *Mœnia*, the Walls of a Caſtle, Houſe or other Place) Are Houſhold Servants that live under their Lord or Maſter's Roof; mentioned in the Stat. 2 *H.* 4. *c.* 21.

Menſa, Comprehends all Patrimony, or Goods and Neceſſaries for Livelihood.——*Dominicum eſt proprie Terra ad* Menſam *aſſignata*.

Menſalia, Such Parſonages or ſpiritual Livings, as were united to the Tables of Religious Houſes, and called *Menſal Benefices* among the *Canoniſts:* And in this Senſe it is taken, where Mention is made of Appropriations, *ad* Menſam ſuam. *Blount*.

Menſura, Is taken for a Buſhel of Corn, *&c.* And *Merſura Regalis*, the King's Standard *Meaſure*. Stat. 17 Car. 1.

Mer or **Mere**, Where Places begin or end with theſe Syllables, they ſignify a Fenny Country.

Mercennarius, A Hireling or Servant. *Cartular. Abbat. Glaſton. p.* 115.

Merchant, (*Mercator*) Is one that buys and trades in any Thing: And as *Merchandiſe* includes all Goods and Wares expoſed to Sale in Fairs or Markets; ſo the Word *Merchant* formerly extended to all Sorts of Traders, Buyers and Sellers. But every one that buys and ſells is not at this Day under the Denomination of a *Merchant*; only thoſe who traffick in the Way of Commerce, by Importation or Exportation, or carry on Buſineſs by Way of Emption, Vendition, Barter, Permutation or Exchange, and which make it their Living to buy and ſell, by a continued Aſſiduity, or frequent Negotiation, in the Myſtery of Merchandizing, are eſteemed *Merchants*. Thoſe that buy Goods, to reduce them by their own Art or Induſtry, into other Forms than they are of, and then to ſell them, are Artificers and not *Merchants:* Bankers, and ſuch as deal by Exchange, are properly called *Merchants*. Lex Mercat. *or* Merch. Comp. 23. *Merchants* were always particularly regarded by the Common Law; though the municipal Laws of *England*, or indeed of any one Realm are not ſufficient for the ordering and determining the Affairs of Traffick, and Matters relating to Commerce, Merchandize being ſo univerſal and extenſive that it is impoſſible; therefore the *Law Merchant*, (ſo called from its univerſal Concern) all Nations take ſpecial Knowledge of; and the Common and Statute Laws of this Kingdom leave the Cauſes of *Merchants* in many Caſes to their own peculiar Law. *Ibid.* In the Reign of King *Ed.* 4. a *Merchant* Stranger made Suit before the King's Privy Council, for ſeveral Bales of Silk feloniouſly taken from him, wherein it was moved, that this Matter ſhould be determined at Common Law; but it was anſwered by the Lord Chancellor, that as this Suit was brought by a *Merchant*, he was not bound to ſue according to the Law of the Land. 13 *Ed.* 4. In former Times it was conceived, that thoſe Laws that were prohibitory againſt Foreign Goods, did not bind a *Merchant* Stranger: But it has been a long Time ſince ruled otherwiſe; for in the Leagues that are now eſtabliſhed between Nation and Nation, the Laws of either Kingdom are excepted; ſo that as the *Engliſh* in *France* or any other Foreign Country in Amity are ſubject to the Laws of that Country where they reſide; ſo muſt the People of *France*, or any other Kingdom, be ſubject to the Laws of *England* when reſident here. 19 *Hen.* 7. *Engliſh Merchants* are not reſtrained to depart the Kingdom without Licence, as all other Subjects are; they may depart, and live out of the Realm, and the King's Obedience, and the ſame is no Contempt, they being excepted out of the Statute 5 *R.* 2. *c.* 2. And by the Common Law, they might paſs the Seas without Licence; though not to merchandiſe. *Mich.* 12 *&* 13 *Eliz. Dyer* 206. By *Magna Charta* it is enacted, that all *Merchant* Strangers in Amity, not publickly prohibited, ſhall have ſafe Conduct to come into, depart out of, and remain in *England*, and to travel by Water or Land in and through the ſame, to buy and ſell, *&c.* 9 *Hen.* 3. *c.* 30. And if any Diſturbance or Abuſe be offered them, or any other *Merchant* in a Corporation, and the Head Officer there do not provide a Remedy, the Franchiſe ſhall be ſeiſed; and the Diſturber ſhall anſwer double Damages, and ſuffer one Year's Impriſonment, *&c.* by Stat. 9 *Ed.* 3. *c.* 1. All *Merchants* (except Enemies) may ſafely come into *England* with their Goods and Merchandize. 14 *Ed.* 3. *Merchant* Strangers may come into this Realm, and depart at their Pleaſure; and they are to be friendly entertained. 5 *R.* 2. *c.* 1. And *Merchants* alien ſhall be uſed in this Kingdom, as Denizens are in others, by the Statute 5 *Hen.* 4. *cap.* 7. No *Merchant* ſhall be impleaded for another's Debt, whereof he is not Debtor, *&c.* And if a Difference ariſe between the King and any Foreign State, Alien *Merchants* are to have forty Days Notice, or longer Time, to ſell their Effects and leave the Kingdom. 27 *Ed.* 3. *cap.* 17. All *Merchants* may buy Merchandizes of the Staple: And any *Merchant* may deal in more Merchandizes than one; he may buy, ſell and tranſport all Kinds of Merchandize. 27 *Ed.* 3. *c.* 3. and 38 *Ed.* 3. *c.* 2. *Merchant* Strangers are to find Sureties that they ſhall not carry out the Merchandize which they bring into *England*. 18 *Ed.* 2. *cap.* 21. And when they bring in any Merchandize into the Realm, and ſell the ſame for Money, they are to beſtow it upon other Merchandizes of *England*, without exporting any Gold or Silver in Coin, Plate, *&c.* on Pain of Forfeiture. 4 *Hen.* 4. *cap.* 15. 5 *Hen.* 4. *cap.* 9. The ſame extends as well to Denizens as Strangers; and in Strictneſs of Law, they ought not to receive any Gold in Payment. 8 *H.* 6. *c.* 24. 3 *H.* 7. *c.* 8. And the Reaſons of theſe Laws were, to preſerve and keep the Gold and Silver within the Realm; and at the ſame Time increaſe our Manufactures, by encouraging their Exportation abroad. Foreign *Merchants* are to ſell their Merchandize at the Port where they land, in Groſs and not by Retail. 1 *R.* 3. *c.* 9. And Merchandize is to be laden and unladen at certain Ports, and in the Day-time under Penalties. 1 *Eliz. cap.* 11. All the King's Subjects are to have a free Trade to and from *France*, *Spain* and *Portugal.* 3 *Jac.* 1. *c.* 6. It ſhall be lawful for *Merchants* to tranſport Iron, Armour, Piſtols, Muſkets, Saddles, Swords, Bridles, *&c.* Stat. 12 *Car.* 2. *c.* 4. *Merchants*, *&c.* corrupting or adulterating Wine, or ſelling the ſame adulterated, are liable to Penalties, by 1 *W.* & *M. Seſſ.* 1. *c.* 34. On Importation of Tobacco, *Merchants* have an Allowance of 8 *per Cent.* *&c.* 12 *Ann. cap.* 8. Vide *Cuſtom of Merchants.*

There are *Companies of Merchants* in *London* for carrying on conſiderable Joint Trades to foreign Parts, *viz* The *Merchants Adventurers*, the Company eſtabliſhed in *England* for the Improvement of Commerce; which was erected by Patent by King *Ed.* 1. merely for the Exportation of Wool, *&c.* before we knew the Value of that Commodity, and at a Time we were in a great Meaſure Strangers to Trade. The next Company was that of the *Barbary Merchants*, incorporated in the Reign of King *Hen.* 7. A Company of *Merchants* trading to the North, called the *Muſcovy* or *Ruſſia Company*, was eſtabliſhed by King *E.* 6. and encouraged with additional Privileges, by Queen *Mary*, Queen *Elizabeth*, *&c.* The *Barbary Merchants* decaying towards the latter End of Queen *Elizabeth*'s Reign, out of their Ruins aroſe the *Levant* or *Turkey Company*; who firſt trading with *Venice*, and then with *Turkey*, furniſhed *England* that Way with the *Eaſt India* Commodities: This Company hath very conſiderable Factories, at *Conſtantinople*, *Smyrna*, *Aleppo*, *&c.* From the flouriſhing State of the *Levant* or *Turkey* Company, in the Reign likewiſe of Queen *Eliz.* ſprung the *Old Eaſt-India Company*, who having fitted out Ships of Force, brought from thence at the beſt Hand, the *Indian* Commodities, formerly ſold to *England* by diſtant *Europeans*; and they having obtained divers Charters and Grants from the Crown, in their Favour, were ſole Maſters of that advantageous Traffick; until at laſt a *New Company* was incorporated by King *Will.* *Anno* 9 *W.* 3. on their lending the Government Two Millions of Money; and both theſe Companies after the Expiration of a certain Term, were by Articles united. In the 21ſt Year of Queen *Elizabeth*, the *Eaſtland Company of Merchants* was erected; and in King *Charles* the Second's Time, that Company was confirmed, with full Power to trade in *Norway*, *Sweden*, *Poland*, and other *Eaſtland* Countries. The *Royal African Company* had their Charter granted them in the 14th Year of King *Car.* 2. And by 9 & 10 *W.* 3. they are to maintain all Forts, *&c.* King *Charles* 2. alſo by Commiſſion under the Great Seal of *England*, conſtituted his Royal Highneſs *James* Duke of *York*, (afterwards King *Jam.* 2.) *Edward* Earl of *Clarendon*, and others, to be a Council for the *Royal Fiſhery of England*, and declared himſelf to be the Protector of it; and in the 29th Year of his Reign, he incorporated them into a Company. King *Will.* 3. in the fourth Year of his Reign, eſtabliſhed a *Greenland Company.* By Stat. 9 *Ann.* to pay the Debts of the Army and Navy, *&c.* amounting to near Ten Millions, the *South-Sea Company* of *Merchants* was erected; who having advanced that Money, the Duties upon Wines, Vinegar, Tobacco, *&c.* were appropriated as a Fund for Payment of the Intereſt, after the Rate of 6 *l. per Cent.* *&c.* The Company is to have the ſole Trade to the *South-Seas*; and others trading thither ſhall forfeit their Ships and Goods, and double Value: And the Corporation is to continue for ever; but the Funds are ſubject to Redemption by Parliament. This Company had their Capital Stock very much enlarged in the Reign of King *Geo.* 1. And to raiſe Money lent, were empowered to make Calls or take in Subſcriptions, *&c.* as they thought fit; and on this Foundation, the late *South-Sea* Scheme was executed: But to retrieve Credit, afterwards Part of the Stock of the *South-Sea* Company was ingrafted into the Capital Stock of the *Eaſt-India* Company and the *Bank of England*; and after that, Half the Stock was converted into Annuities at 4 *l. per Cent.* Since which a farther Reduction thereof hath been made.

This ſhort *Hiſtory* of our *Companies of Merchants*, which have ever had many and great Privileges, and are at length become of double Uſe, *i. e.* to enlarge Commerce, and ſupply the Neceſſities of the State, ſufficiently ſhews the Progreſs and Increaſe of our Trade, and the Wealth of the Nation: Tho' I muſt nevertheleſs obſerve that they are a Kind of Monopolies erected by Law; and if the Power granted them is abuſed, are of fatal Conſequence; for which I need only inſtance the ever memorable Year 1720, when the Sub-Governor and Directors of the *South-Sea* Company incurred a Forfeiture of their Eſtates by Statute, and were diſabled to hold any Offices, *&c.* for their vile Conduct, which tended to the Ruin of the Publick. Over and above theſe Companies, there are the *Dutch Merchants*; thoſe that trade to the *Weſt Indies*; the *Canary Merchants*; *Italian Merchants*, which trade to *Leghorn*, *Venice*, *Sicily*, *&c.* The *French* and *Spaniſh Merchants*, *&c.*

Mercheulage, (*Merciorum Lex*) Was the Law of the People here called the *Mercians.* *Camden* in his *Britannia* ſays, That in the Year 1016, this Kingdom was divided into three Parts; whereof the *Weſt Saxons* had one, governing it by the Laws called *Weſt Saxonlage* which contained theſe nine Shires, *viz.* *Kent*, *Suſſex*, *Surrey*, *Berks*, *Hampſhire*, *Wilts*, *Somerſet*, *Dorſet* and *Devon*: The *Danes* had the ſecond, containing fifteen Shires, *i. e.* *York*, *Derby*, *Nottingham*, *Lieceſter*, *Lincoln*, *Northampton*, *Bedford*, *Bucks*, *Hertford*, *Eſſex*, *Middleſex*, *Norfolk*, *Suffolk*, *Cambridge* and *Huntindon*; which was governed by the Laws called *Danelage*: And the Third Part was in the Poſſeſſion of the *Mercians*, whoſe Law was called *Merchenlage*; and contained eight Shires, *Glouceſter*, *Worceſter*, *Hereford*, *Warwick*, *Oxford*, *Cheſter*, *Salop* and *Stafford*: From which three, King *Will.* 1. choſe the beſt, and with other Laws ordained them to be the Laws of the Kingdom. *Camd. Brit. pag.* 94. See *Molmutian Laws.*

Mercimoniatus Angliæ, Was of old Time uſed for the Impoſt of *England* upon Merchandize.

Mercuries, Or Venders of printed Books or Papers. Vide *Hawkers.*

Mercy, The Arbitrament of the King or Judge, in puniſhing Offences, not directly cenſured by the Law. 11 *H.* 6. *c.* 2. See *Miſericordia.*

Merger, Is where a leſſer Eſtate in Lands, *&c.* is drowned in the greater: As if the Fee comes to Tenant for Years, or Life, the particular Eſtates are *merged* in the Fee: But an Eſtate-tail cannot be *merged* in an Eſtate in Fee; for no Eſtate in Tail can be extinct, by the Acceſſion of a greater Eſtate to it. 2 *Co. Rep.* 60, 61. If a Leſſor, who hath the Fee, marries with the Leſſee for Years; this is no *Merger*, becauſe he hath the Inheritance in his own, and the Leaſe in Right of his Wife. 2 *Plowd.* 418. And where a Man hath a Term in his own Right, and the Inheritance deſcends to his Wife, ſo as he hath a Freehold in her Right, the Term is not *merged* or drowned. *Cro. Car.* 275.

Merſcum. *Maneria*, *Molendina*, Merſca & *Mariſca.* Ingulph. p. 861.

Mertlage, A Corruption of the Word *Martyrologe*; being a Church Kalendar. 9 *H.* 7.

Meſne or **Meaſne**, Fr. *Maiſne.* See *Mean.*

Meſnalty, Signifies the Right or Condition of the *Meſne.* Old Nat. Br. 44.

Meſſarius, (From *Meſſis*) The chief Servant in Husbandry, or Harveſt-time, now called a Bailiff in ſome Places. *Mon. Angl. Tom.* 2. *pag.* 832. Alſo this Word is uſed for a Mower or Reaper; one that works Harveſt-work. *Fleta*, *lib.* 2. *c.* 75.

Meſſenger, Is a Carrier of Meſſages, particularly imployed by the *Secretaries of State*, &c. and to theſe Commitments may be made of State Priſoners; for though regularly no one can juſtify the Detaining a Perſon in Cuſtody out of the Common Gaol, unleſs there be ſome particular Reaſon for it; as if the Party be ſo dangerouſly ſick, that it would hazard his Life to ſend him thither, &c. yet it is the conſtant Practice to make Commitments to Meſſengers; but it is ſaid, it ſhall be intended only in Order to the carrying the Offenders to Gaol. 1 *Salk.* 347. 2 *Hawk. P. C.* 118. An Offender may be committed to a *Meſſenger*, in order to be examined before committed to Priſon; and though ſuch Commitment to a *Meſſenger* is irregular, it is not void; and a Perſon charged with Treaſon, eſcaping from the *Meſſenger*, is guilty of Treaſon, &c. *Skin Rep.* 599.

Meſſengers of the Exchequer, Are Officers attending that Court; they are four in Number, and in Nature of *Purſuivants* to the *Lord Treaſurer*.

Meſſuage, (*Meſſuagium*) Is a Dwelling-houſe with ſome Land adjoining aſſigned to the Uſe thereof. *Weſt. Symb. par.* 2. And by the Name of a *Meſſuage*, may paſs a Curtilage, Garden, Orchard, a Dove-houſe, Mill, Cottage, Toft, Shop, Chamber, &c. *Bract. lib.* 5. *c.* 28. *Plowd.* 169. One *Meſſuage* cannot be appurtenant to another *Meſſuage*; becauſe a *Meſſuage* is an entire Thing of itſelf, and therefore may not be appurtenant to another Thing. *Mich.* 24 *Car.* 1. *B. R.* But by the Grant of a *Meſſuage cum pertinentiis*, the Stables, Barns, Out-houſes, Gardens, and Curtilages do paſs. 2 *Lill. Abr.* 197. A *Præcipe* lies not *de Domo*; but it doth *de Meſſuagio* Co. Litt.

Meſſuagium in *Scotland*, ſignifies the principal Place or Dwelling-houſe within a Barony; which we call a *Manor houſe*, or the *Site of a Manor*. Skene.

Meſtilo, *Meſline*, or rather *Meſcellane*, Wheat and Rye mixed together: ——— *Et nonam garbam Frumenti*, Meſtilonis, *& omnis generis Bladi*, &c. Pat. 1 Ed. 3.

Metegavel, (Sax. *Cibi gablum, ſeu vectigal*) A Tribute or Rent paid in Victuals; which was a Thing uſual in this Kingdom, as well with the King's Tenants as others, till the Reign of King *Hen.* 1.

Meter of Coals in *London*, &c. (from *Metior*) to *mete* or meaſure a Thing. Vide *Meaſurer*.

Metheglin, (*Brit. Meddiglin*) An old *Britiſh* Drink made of Honey, &c. and ſtill continues in Repute in *England*; it is mentioned in the Statute 15 *Car.* 2. *cap* 9.

Metteſhep, Mettenſchep, Was an Acknowledgment paid in a certain Meaſure of Corn; or a Fine or Penalty impoſed on Tenants, for their Defaults in not doing their cuſtomary Services of cutting the Lord's Corn. *Paroch. Antiq.* 495.

Meum & Tuum, Are *Latin* Words uſed for the proper Guides of *Right*; and which being miſunderſtood, have been the Ground of many Controverſies.

Meya, A *Mey* or Mow of Corn, as anciently uſed; and in ſome Parts of *England*, they ſtill ſay *mey* the Corn, *i. e.* put it on an Heap in the Barn. ——— *Cariabunt Bladum per unum Diem cum una Carecta & invenient unum Hominem ad faciendum* Meyas *in grangio.* Blount Ten. 130.

Micel Gemotes. The great Councils and general Aſſemblies, in the Times of the *Saxons*, of the King and Noblemen, &c. were firſt called *Wittena Gemotes*, and afterwards *Micel Gemotes*.

Mildernix, A kind of Canvas, of which Sail-Cloths of Ships are made. 1 *Jac. cap.* 14.

Mile, (*Milliare*) In the Meaſure of a Country, is the Diſtance or Length of a Thouſand Paces; otherwiſe deſcribed to contain eight Furlongs, every Furlong being forty Poles, and every Pole ſixteen Foot and a Half. Stat. 35 *Eliz. c.* 6.

Miles, A Knight; and *Militare*, to be *knighted* Mat. Weſtm. p. 118.

Militia, (*Lat.*) The being a Soldier; and applied to the *Trained Bands*, under the Direction of the Lieutenancy. The Stat. 13 *Car.* 2. *cap.* 6. is declarative of the King's Right to the ſupreme Government of the *Militia*, and of all Forces by Sea and Land, &c. And by the 13 and 14 *Car.* 2 *c.* 3. the King may iſſue Commiſſions of Lieutenancy for the ſeveral Counties and Cities, &c. And ſuch Lieutenants have Power to give Commiſſions to Colonels, Captains, and other inferior Officers; and to call Perſons together, and arm and form them into Companies, and command them to Places to ſupprefs Rebellions, or reſiſt Invaſions; and upon Invaſions or Rebellions, the Perſons charged ſhall provide a Month's Pay, &c. which is to be paid out of the Publick Revenue; and the Officers ſhall likewiſe be paid out of the publick Revenue at ſuch Times. And by this Act, Perſons having an Eſtate of 50*l.* a Year in Lands, or a perſonal Eſtate in Goods, &c. to the Value of 600*l* ſhall be charged by the Lieutenants of Counties, or Deputy-Lieutenants, to provide a Man in the Foot-Service, and allow him 1 *s. per Diem*; and he which hath 100*l. per Annum*, or under 200*l. per Annum*, or who is worth 1200*l.* in perſonal Eſtate, and under 2400*l.* may be charged with either Foot or Horſe: But a Perſon ought to have in Poſſeſſion 500*l. per Annum*, or a perſonal Eſtate to the Value of 6000*l.* to furniſh a Horſe; and none is to contribute towards a Horſe who hath not 100*l.* a Year, or a perſonal Eſtate of 1200*l.* A Horſeman ſhall be allowed 2 *s.* 6 *d. per Diem*, and muſt carry with him Powder and Bullet, of each a Quarter of a Pound. The Arms and Furniture of Horſemen by this Statute, were to be a Sword, and Caſe of Piſtols 14 Inches in the Barrel, a great Saddle with Burs and Straps, a Bit-Bridle, &c. And the Foot or Muſqueteers were to have a Musket three Foot in Barrel, the Bore whereof to bear a Bullet of 12 or 14 to the Pound, a Collar of Bandaleers, and a Sword; and to carry with them Powder and Ball, of each half a Pound. If any Perſon liable to furniſh Horſe, &c. ſhall not ſend out ſuch Horſe, or ſhall neglect to pay the Money towards the Proviſion of Man and Horſe; the Lord Lieutenant of the County, or three Deputies, may fine him not exceeding 20*l.* to be levied by Warrant under their Hands and Seals; but commiſſioned Officers of Foot in the *Militia*, are excuſed from finding Soldiers or Arms for their Eſtates, if charged but with one Horſe or leſs, &c. in reſpect of the Expence of their Imployments. And the Lieutenants or Deputies may inflict a Penalty of 5*l.* on Perſons refuſing to provide a Foot-Soldier; and if they live out of the County, their Tenants are to do it on Notice: On whoſe Neglect, the Lieutenant, &c. may appoint Conſtables to provide for them: And by the 8 *W.* 3. the Lieutenancy are to find Perſons for Papiſts, charging them with 8*l.* a Year for a Horſeman, and 30*s.* a Foot Soldier, to be levied by Diſtreſs, &c. If a Soldier neglects to appear, two Deputy Lieutenants may commit him for five Days, or fine him; if a Horſeman 20*s.* if a Footman 10*s.* &c. None are obliged to ſerve in Perſon; but the Perſons provided by others are to be approved by the Captain, and their Names and Places of Abode muſt be given in to two Deputy Lieutenants at the next Muſter, when they are liſted; and if they deſert after Liſting, they ſhall forfeit 20*l.* and ſhall not be diſcharged without Leave of two Deputy Lieutenants, or the Captain, under the like Penalty, to be levied by Diſtreſs; and if no Diſtreſs, to be committed, not exceeding three Months. And the Lieutenancy may impriſon Mutineers; charge Carriages at 6*d. per* Mile, &c. There ſhall be a general Muſter of the

Militia but once a Year; and then not to continue above four Days without ſpecial Direction: For training ſingle Companies, Muſters may be four Times a Year. And once a Year every Horſeman is to pay to the Muſter-Maſter 1 *s.* and every Footman 6 *d.* by Order of three Deputy Lieutenants; and if the ſame be not paid, it may be levied on the Goods of the Perſons charged. 13 & 14 *Car.* 2. *cap.* 3. and 15 *Car.* 2. *cap.* 4. In the Year 1660, the Lords and Commons paſſed an *Ordinance* for aſſeſſing 70,000 *l. per* Month, for three Months, on the ſeveral Counties in *England* and *Wales*, towards Payment of the Army and *Militia*, &c. In Purſuance of which Ordinance, the Counties were aſſeſſed as follows, *viz.*

	l.	*s.*	*d*
The County of *Bedford*, *per* Month	0933	6	8
———— *Berks*	1088	17	10
———— *Buckingham*	1283	6	8
———— *Cambridge*	1102	10	0
Iſle of *Ely*	0367	10	0
County of *Cheſter* and City	0855	11	2
———— *Cornwall*	1633	6	8
———— *Cumberland*	0108	0	0
———— *Derby*	0933	6	8
———— *Devon*	3003	15	6
City of *Exeter*	0107	6	8
County of *Dorſet*	1311	10	6
———— *Durham*	0153	14	4
———— *Eſſex*	3500	0	0
———— *Glouceſter*	1626	6	8
City of *Glouceſter*	0162	11	2
County of *Hereford*	1166	13	4
———— *Hertford*	1400	0	0
———— *Huntingdon*	0622	4	6
———— *Kent*	3655	11	2
———— *Lancaſter*	0933	6	8
———— *Leiceſter*	1088	17	8
———— *Lincoln*	2722	4	10
City of *London*	4666	13	4
County of *Middleſex*	1788	17	10
———— *Monmouth*	0466	13	4
———— *Northampton*	1400	0	0
———— *Nottingham*	0903	4	4
———— *Norfolk*	3624	8	10
———— *Norwich*	0186	13	4
———— *Northumberland*	0179	19	10
Town of *Newcaſtle*	0035	11	8
County of *Oxford*	1127	11	0
———— *Rutland*	0272	4	6
———— *Salop*	1322	4	4
———— *Stafford*	0919	6	8
———— *Somerſet*	2722	4	6
City of *Briſtol*	0171	2	2
County of *Southampton*	2022	4	4
———— *Suffolk*	3655	11	2
———— *Surrey*	1565	5	6
———— *Suſſex*	1905	11	2
———— *Warwick*	1244	8	10
———— *Worceſter*	1244	8	10
———— *Wilts*	1944	8	10
———— *Weſtmorland*	0073	19	4
County of *York* and City	3044	8	10
Town of *Kingſton upon Hull*	0067	13	4
Iſle of *Angleſey*	0135	14	4
County of *Brecknock*	0361	13	4
———— *Cardigan*	0213	10	0
———— *Carmarthen*	0352	6	8
———— *Carnarvon*	0202	4	4
———— *Denbigh*	0272	4	6
———— *Flint*	0135	14	6
———— *Glamorgan*	0458	17	8
———— *Merioneth*	0124	8	10
———— *Montgomery*	0295	11	0
———— *Pembroke*	0406	0	0
———— *Radnor*	0254	6	8
Town of *Haverford Weſt*	0014	11	8
Town of *Berwick upon Tweed*	0005	16	8

The fourth Part of every of theſe Sums may be raiſed yearly for *Trophy Money*, and no more; except in the City of *London*, where the whole Month's Aſſeſſment may be annually collected. And Money levied for Trophy Money is to be accounted for by Collectors before Juſtices of the Peace at the Quarter-Seſſions, within one Year after received; and the Balance to be paid to the Treaſurers appointed to receive the ſame, or the Collectors ſhall forfeit treble the Sum unaccounted for, by Stat. 1 *Geo.* 1. The 10 *Ann.* requires Perſons in *Dorſetſhire* to account for Money received for raiſing the *Militia* on King *William*'s Landing in the *Weſt*, undiſpoſed of. During the Reigns of K. *Will.* 3. Queen *Anne*, and King *Geo.* 1. Acts were annually made for raiſing the *Militia*, although the Month's Pay formerly advanced by the Country be not repaid; and by the 1 *Geo.* 1. *c.* 14. Lords Lieutenants, &c. of Counties, when neceſſary and ſignified by the King, are to draw out the *Militia* into actual Service; and Perſons charged muſt provide each Soldier with Pay in Hand, not exceeding one Month; and alſo furniſh every Horſeman with a Broad Sword, a Caſe of Piſtols twelve Inches in the Barrel, and a Carabine with Belt and Bucket, a great Saddle or Pad, with Burs and Straps, a Bit and Bridle with Pectoral and Crupper; and for every Footman, a Musket five Foot long in the Barrel, the Gage of the Bore for Bullets of twelve to the Pound, with a Bayonet to fix on the Muzzle, a Cartouch Box and a Sword; under the ſame Penalties as by any former Acts: But this Statute ſhall not extend to make any Perſon chargeable to the *Militia*, not chargeable by Law; or to enlarge the Power of the Lieutenancy beyond the Authority given them by the Acts of the 13, 14 & 15 *Car.* 2. but only in Caſes expreſly provided for by this Act: And theſe Statutes ſhall not be conſtrued to give any Power for the tranſporting any of the Subjects of this Realm, or the Compelling them to march out of this Kingdom, otherwiſe than according to the Laws of *England*. By Stat. 7 *Geo.* 2. *c.* 23. When his Majeſty ſhall think it neceſſary for the Safety of the Kingdom, and it ſhall be declared to the Lieutenants of Counties, &c. the Perſons empowered are to raiſe, draw out and march ſuch Part of the *Militia* of any City, Town or County, as they ſhall judge moſt proper and convenient; and the Pay advanced by the Perſons chargeable, is to be repaid and made good to them in ſix Months, by Aſſeſſment throughout the whole County, City, &c. The *Militia* of Horſe and Foot are computed to be about the Number of two hundred Thouſand, in *England* and *Wales*.

Mill, (*Molendinum*) Is a Houſe or Engine to grind Corn; and either a Water-mill, Wind-mill, Horſe-mill, Hand-mill, &c. And beſides Corn and Griſt-mills, there are Paper-mills, Fulling or Tucking-mills, Iron mills, Oil-mills, &c. 2 *Inſt.* 621.

Mill-leat, A Trench of Water by a *Mill*. See *Leat*.

Millet, (*Milium*) A ſmall Grain ſo termed from its Multitude. *Litt. Dict.*

Mina, A Corn-meaſure of different Quantity, according to the Things meaſured by it: And *Minage* was a Toll or Duty paid for ſelling Corn by this Meaſure. *Cowel.* According to *Littleton*, it is a Meaſure of Ground, containing one hundred and twenty Foot in Length, and as many in Breadth; alſo it is taken both for a Coin and a Weight. *Litt. Dict.*

Minate, To mine or dig *Mines*.——*Minator* a Miner. *Record* 16 *Ed.* 1.

Mineral, Is any Thing that grows in *Mines*, and contains Metals. *Shep. Epit.*

Mineral Courts, (*Curiæ Minerales*) Are Courts peculiar for regulating the Concerns of *Lead-Mines*; as *Stannary Courts* are for Tin. See *Berghmote*.

Mine-Adventurers, A Company eſtabliſhed by Statute, governed by the Duke of *Leeds*, &c. *Vide* 9 *Ann. c.* 24.

Mines, (*Mineriæ*) Quarries or Places whereout any Thing is digged; and are likewiſe the hidden Treaſure dug out of the Earth. The King by his Prerogative hath all *Mines* of Gold and Silver to make Money; and where Gold and Silver in *Mines* is of the greater Value, which are called *Royal Mines. Plowd. Com.* But by Statute, no *Mine* of Copper or Tin ſhall be adjudged a *Royal Mine*, though Silver be extracted. 1 *W. & M. c.* 30. And Perſons having *Mines* of Copper, Tin, Lead, *&c.* ſhall enjoy the ſame, although claimed to be Royal *Mines*; but the King may have the Oar, (except in *Devon* and *Cornwall*) paying to the Owners of the *Mines*, within thirty Days after it ſhall be raiſed, and before removed, 16 *l. per* Tun for Copper Oar, waſh'd and made merchantable; for Lead Oar, 9 *l. per* Tun; Tin or Iron 40 *s. &c.* Stat. 5 *W & M. c.* 6. If a Man hath Lands where there are ſome *Mines* open and others not, and he lets the Land with the *Mines* therein, for Life or Years, the Leſſee may dig in the open *Mines* only, which is ſufficient to ſatisfy the Words in the Leaſe; and hath no Power to dig the *Mines* unopened: But if there be no open *Mine*, and the Leaſe is made of the Lands, together with all *Mines* therein, there the Leſſee may dig for *Mines* and enjoy the Benefit thereof; otherwiſe thoſe Words would be void. 1 *Inſt.* 54. 5 *Co. Rep.* 12. 2 *Lev.* 184. To dig *Mines* is Waſte, where Leſſees are not authoriſed by their Leaſes: Though a *Mine* is not properly ſo called till it is opened; being but a Vein of Iron or Coals, *&c.* before. 1 *Co. Inſt.* 54. If any Perſon maliciouſly ſet on Fire any *Mine*, or Pit of Coal, he ſhall ſuffer Death as a Felon, by Stat. 10 *Geo.* 2. *c.* 32. And damaging ſuch *Mines*, or any Coal-works, by conveying Water thereinto, or obſtructing Sewers for Draining them, *&c.* ſhall forfeit treble Damages. 13 *Geo.* 2. *cap.* 21.

Mines, In another Signification are Caves or Trenches dug under Ground, whereby to *undermine* the Walls of a City or Fortification.

Miniments, or **Muniments**, (*Munimenta*, from *Munio*, to defend) Are the Evidences and Writings concerning a Man's Poſſeſſion or Inheritance, whereby he is enabled to defend the Title of his Eſtate: And this Word includes all Manner of Evidences, Deeds, Charters, *&c. Terms de Ley* 451. Stat. 5 *R.* 2. *c.* 8. and 35 *H.* 6. *c.* 37.

Miniſters. If a *Miniſter* is diſturbed in the Execution of his Office in the Church; the Puniſhment upon Conviction is a Fine of 10 *l.* And upon Non-payment three Months Impriſonment, *&c.* 2 & 3 *Ed.* 6. *c.* 1. And diſturbing a licenſed *Miniſter*, incurs a Forfeiture of 20 *l.* by 1 *W. & M. c.* 11.

Miniſtri Regis, Extend to the Judges of the Realm; as well as to thoſe that have *Miniſterial* Offices in the Government. 2 *Inſt.* 208.

Minor, One under Age; and more properly an Heir Male or Female, before they come to the Age of twenty-one Years; during which *Minority* they are generally incapable to act for themſelves.

Minores, *Friars Minorites*, of the Order of St. *Francis*, that had no Prior; they waſh'd each other's Feet, and increaſed very much in the Year 1207. *Matt. Weſtm.*

Minſtrel, (*Minſtrellus*, from the Fr. *Meneſtrier*) A Muſician, Fidler, or Piper; mentioned in the Stat. 4 *H.* 4. *c.* 27. There was formerly a *King of Minſtrels*; and it was uſual for theſe *Minſtrels*, not only to divert Princes and the Nobility, with muſical Inſtruments and flattering Songs in Praiſe of them and their Anceſtors, but alſo with various Sports, *&c.* In the County of *Cheſter*, the antient Family of the *Duttons* have the Licenſing of *Minſtrels*; and thoſe are excepted out of the Vagrant Act, 39 *Eliz. c.* 4. *&c.*

Mint, (*Officinâ Monetariâ, Monetarium*) Is the Place where the King's Money is coined; which is at preſent and long hath been in the *Tower of London*, though it appears by divers Statutes, that in antient Times the *Mint* has alſo been at *Calis*, and other Places. 2 *R.* 2. *c.* 16. and 9 *H.* 5. *c.* 5. The *Mint maſter* is to keep his Allay, and receive Silver at the true Value, *&c.* 2 *H* 6. *c.* 12. And Gold and Silver delivered into the *Mint* is to be aſſay'd, coin'd, and given out, according to the Order and Time of bringing in; and Perſons ſhall receive the ſame Weight of Coin, or ſo much as ſhall be finer or coarſer than the Standard, *&c.* Stat. 18 *Car.* 2. *c.* 5. All Silver and Gold extracted by melting and refining of Metals, ſhall be employed for the Increaſe of Monies, and be ſent to the *Mint*, where the Value is to be paid. 1 *W. & M. c.* 30. By the Stat. 18 *Car.* 2. 3000 *l.* a Year was granted out of certain Duties on Wine, Beer, *&c.* imported, to defray the Expence of the *Mint*: But this was increaſed by the Stat. 4 & 5 *Ann. c.* 22. and much augmented by 1 *Geo.* 1. *c.* 43. by which Statute it may be a Sum not exceeding 15000 *l. per Ann.* for *England* and *Scotland*, *&c.* The Officers belonging to the *Mint* have not always been alike: They are now the following, *viz. The Warden*, who is the Chief of the Reſt, and is by his Office to receive the Silver and Bullion of the Goldſmiths to be coined, and take Care thereof, and he hath the Overſeeing of all the other Officers. *The Maſter Worker* receives the Silver from the Warden, and cauſes it to be melted, when he delivers it to the *Moniers*, and taketh it from them again after made into Money. *The Comptroller*, who is to ſee that the Money be made to the juſt Aſſize, and controul the Officers if the Money be not made as it ought. *The Maſter of the Aſſay*, that weigheth the Silver, and examineth whether it be according to the Standard. *The Auditor* takes Accounts of the Silver, *&c. The Surveyor of the Melting*, who is to ſee the Silver caſt out, and that it be not altered after the Aſſay-Maſter hath made Trial of it, and it is delivered to the Melters. *The Clerk of the Irons*, that ſeeth that the Irons be clean and fit for Working. *The Graver*, whoſe Office is to ingrave the Stamps for the Money. *The Melters*, that melt down the Bullion, *&c. The Blanchers* do anneal and cleanſe the Money. *The Moniers*, who are ſome to ſhear the Money, others to forge and beat it broad, ſome to round, and ſome to Stamp or coin it. *The Provoſt* to provide for all the Moniers, and to overſee them, *&c.* Vide *Coin.*

Mint, A pretended *Place of Privilege* in *Southwark*, near the *King's Bench*, put down by Statute. If any Perſons within the *Limits* of the *Mint* ſhall obſtruct any Officer in the ſerving of any Writ or Proceſs, *&c.* or aſſault any Perſon therein, ſo as he receive any bodily Hurt, the Offenders ſhall be guilty of Felony, and tranſported to the Plantations, *&c.* Stat. 9 *Geo.* 1. See *Privileged Places.*

Minute Tithes, (*Minores Decimæ*) Small *Tithes* of Wool, Lambs, Pigs, Butter, Cheeſe, Herbs, Seeds, Eggs, *&c.* ſuch as uſually belong to the Vicar. Vide *Tithes.*

Minutio, Blood-letting; which was a common old Practiſe, among the Regulars and Secular Prieſts or Canons of Churches, who were the moſt confined and ſedentary Men. *Stat. Cathed. Eccl. Sti. Paul. London.*

Miracula, A ſuperſtitious Play, practiſed by the Popiſh Clergy.

Mis. This Syllable added to another Word, ſignifies ſome Fault or Defect: As *Miſpriſion* of a Crime; *Miſdicere*, i. e. to ſcandalize any one; *Miſdocere*, to teach amiſs. ——*Si Presbyter populum ſuum miſdoceat.*

Miſadventure, (Fr. *Meſadventure*, i. e. *Infortunium*) Has an eſpecial Signification for the Killing a Man, partly by Negligence and partly by Chance. *S. P. C. lib.* 1. *c.* 8. And *Britton* diſtinguiſhes between *Adventure* and *Miſadventure*; the firſt he makes to be meer Chance; as if a Man, being upon or near the Water, be taken with ſome ſudden Sickneſs, and ſo fall in and is drowned; or into the Fire, and is burnt; *Miſadventure* he ſays is, where a Perſon comes to his Death by ſome outward Violence, as the Fall of a Tree, the Running of a Cart-wheel, Stroke of a Horſe, or ſuch like. *Brit. c.* 7. *Staundford* conſtrues *Miſadventure* more largely than *Britton* underſtands it; and ſays, it is where one thinking no Harm careleſly throws a Stone, wherewith he kills another, *&c. Weſt* defines *Miſadventure* to be, when a Man is ſlain by meer Fortune, againſt the Mind of the Killer; and he calls it *Homicide by Chance mix'd*, when the Killer's Ignorance or Negligence is join'd with the Chance. *Weſt. Symb. Sect.* 48, 49. See *Chancemedley*.

Miſcogniſant, Ignorant, or not knowing. In the Stat. 32 *Hen.* 8. *cap.* 9. againſt Champerty and Maintenance, it is ordained that Proclamation ſhall be made twice in the Year of that Act, to the Intent no Perſon ſhould be ignorant or *miſcogniſant* of the Penalties therein contained, *&c.*

Miſcomputing, In Covenant for Payment of Rent, the Miſcaſting of the Sum due doth not make it ill; and if more be laid, it ſhall be abated as Surplus: But it is otherwiſe in Debt for Rent. *Dyer* 55.

Miſcontinuance, Signifies the ſame with *Diſcontinuance. Kitch.* 231. Though 'tis generally ſaid to be, where a Continuance is made by undue Proceſs. *Jenk. Cent.* 57.

Miſe, (A *French* Word, written in Latin *Miſſum*, and ſometimes *Miſa*) Is a Law Term ſignifying Expences, and it is ſo commonly uſed in the Entries of Judgments in perſonal Actions; as when the Plaintiff recovers, that *Recuperet Damna ſua* to ſuch a Value, and *pro Miſis & Cuſtagiis*, for Coſts and Charges, ſo much, *&c.* This Word hath alſo another Signification in the Uſe made of it by Law; which is where it is taken for a Word of Art, appropriated to a *Writ of Right*, ſo called becauſe both Parties have put themſelves upon the meer Right, to be tried upon the Grand Aſſiſe; ſo as that which in all other Actions is called an Iſſue, in a Writ of Right is termed a *Miſe:* But if in the Writ of Right a collateral Point be tried, there it is called an Iſſue. To *join the Miſe upon the Meer* is as much as to ſay, to join the *Miſe* upon the *clear Right, i. e.* to join upon this Point, whether has the more Right, the Tenant or Demandant. 1 *Inſt.* 294. 37 *Ed.* 3. *c.* 16.

Miſes, Are taken for Taxes or Tallages, *&c.* An honorary Gift or cuſtomary Preſent, from the People of *Wales* to every new King and Prince of *Wales*, antiently given in Cattle, Wine and Corn, but now in Money, being 5000*l.* or more, is denominated a *Miſe:* So was the uſual Tribute or Fine of 3000 Marks, paid by the Inhabitants of the *County Palatine of Cheſter*, at the Change of every Owner of the ſaid Earldom, for the enjoying of their Liberties. And at *Cheſter* they have a *Miſe-book*, wherein every Town and Village in the County is rated what to pay towards the *Miſe*. The 27 *Hen.* 8. *c.* 26. ordains, that Lords ſhall have all ſuch *Miſes* and Profits of their Lands as they had in Times paſt, *&c.* And *Miſe* is ſometimes corruptly uſed for *Meaſe*, in Law French *Mees*, a Meſſuage; as a *Miſe Place* in ſome Manors is ſuch a Meſſuage or Tenement as anſwers the Lord a Heriot at the Death of its Owner. 2 *Inſt.* 528.

Miſe-Money, Was Money given by Way of Contract or Compoſition to purchaſe any Liberty, *&c. Blount, Ten.* 162.

Miſerere, The Name and firſt Word of one of the *Penitential Pſalms*, and is moſt commonly that which the Ordinary gives to ſuch guilty Malefactors as are admitted to the Benefit of the Clergy; being therefore called the *Pſalm of Mercy*.

Miſericordia, Is in Law uſed for an arbitrary or diſcretionary Amerciament impoſed on any Perſon for an Offence; and where the Plaintiff or Defendant in any Action is amerced, the Entry is *Ideo in Miſericordia, &c. Bract. lib.* 4. *tract.* 5. *cap.* 6. *Kitch.* 78. It is called *Miſericordia*, becauſe it ought to be but ſmall, and rather leſs than the Offence, according to *Magna Charta, c.* 14. Sometimes *Miſericordia* is to be quit of all Manner of Amerciaments. *Crompt. Juriſd.* 196. See *Amerciament*.

Miſericordia communis, Signifies where a Fine is ſet on the whole County or Hundred.——*Ac de* communi Miſericordia *quando contigerit, videlicet Comitatus & Hundredi coram nobis vel aliquibus Juſticiariis noſtris, &c.*

Miſericordia in Cibis & potu, Is uſed for any Portion of Meat and Drink, given to the Religious in Convents beyond their ordinary Allowance. *Matt. Pariſ.* And in ſome Convents they had a ſtated Allowance of theſe Over-commons upon extraordinary Days; which were called *Miſericordiæ Regulares.* Mon. Angl. Tom. 1. pag. 149.

Miſevenire, Is where a Man accuſed of a Crime, fails in his Defence or Purgation; when he is ſaid to ſucceed ill. *Leg. Canut.* 78.

Misfeaſance, A Miſdeed or Treſpaſs. —— The Jury ſhall inquire of all Purpreſtures and *Misfeaſances.* Cro. Car. 498.

Misfeaſor, Is a Treſpaſſer. 2 *Inſt.* 200.

Miskenning, (*Miskenninga*) Is derived from *Mis*, and Sax. *Cennan.* i. e. *citare.* Leg. H. 1. c. 12. *Iniqua vel injuſta in jus vocatio*; *inconſtanter Loqui in Curia, vel invariare.* It is mentioned among the Privileges granted and confirmed to the Monaſtery of *Ramſey* by *S. Edward the Confeſſor.* Mon. Angl. Tom. 1. pag. 237. *Et in Civitate London. in nullo Placito* Miskennagium. *Chart. H.* 2.

Miskering. *Hoc eſt quietus pro querelis coram quibuſcunque in tranſumptione probata.* MS. LL. in Bibl. Cotton. fol. 262.

Miſnomer, (Compounded of the Fr. *Mes*, ſignifying *amiſs*, and *Nomer*, i. e. *Nominare*) Is the Uſing one Name for another, a Miſnaming. *Nomen eſt quaſi rei notamen*, and was invented to make a Diſtinction between Perſon and Perſon; and where a Perſon is deſcribed, ſo that he may be certainly diſtinguiſhed and known from other Perſons, the Omiſſion or in ſome Caſes the Miſtake of the Name ſhall not avoid the Grant. 11 *Rep.* 20, 21. And if the Name of a Party is miſtaken; the Judges ought to mould a ſmall Miſtake therein, to make good a Contract, *&c.* and ſo as to ſupport the Act of the Party by the Law. *Hob.* 125. But the Chriſtian Name ought always to be perfect; and the Law is not ſo preciſe as to Surnames, as it is of Chriſtian Names. *Poph.* 57. 2 *Lill. Abr.* 199. Miſpriſions of Clerks in Names are amendable: And *Peter* and *Piers*, have been adjudged one and the ſame Name. 2 *Cro.* 67, 425. 1 *Leon.* 146. And ſo *Saunder* and *Alexander*; and *Garret* and *Gerald*, are but one Name: But *Ranulph* and *Randolph*; *Iſabel* and *Sybil, &c.* are ſeveral Names, and muſt be named Right. 1 *Rol. Abr.* 135. 1 *And.* 211. Where a Chriſtian Name is quite miſtaken, as *John* for *Thomas, &c.* it may be pleaded, that there was no ſuch Man *in rerum Natura. Dyer* 349. If a Perſon pleads, that he was never called by ſuch a Name, it is ill; for this may be true, and yet he might be of that Name of Baptiſm. 1 *Salk.* 6. One whoſe Name is *Edmund* is bound in a Bond by the Name of *Edward*; though he ſubſcribes his true Name, that is no Part of the Bond. 2 *Cro.* 640. *Dyer* 279. A Man cannot have two Names of Baptiſm: But if a Perſon be bound by the Name of *W. R.* he may be ſued by the Name of *W. R.* alias dictus *W. B.* his true Name; not *W. B.* alias dictus *W. R.* 3 *Salk.* 238.

If a Perſon be indicted by two Chriſtian and Surnames, it will be quaſhed; for he cannot have two ſuch Names. 1 *Ld. Raym.* 562. A Lady, Wife to a private Perſon, ought to be named according to the Name of her Husband, or the Writ ſhall abate; ſo if the Son of an Earl, &c. be ſued as a Lord, and not as a private Perſon by the Name of his Family. *Dyer* 76. 2 *Salk.* 451. Where a Man's Title is miſtaken in a Writ, &c. it ſhall abate, and he muſt be arreſted again. 1 *Vent.* 154. And the Plaintiff is to confeſs the *Miſnomer*, and pray an Abatement of his Writ before he proceeds to a new one. *Trin.* 2 *Ann.* 1 *Salk.* 129. But if a Perſon's Title of Lord, &c. be miſtaken in a Leaſe or Demiſe, on Not guilty pleaded, the Iſſue is not, whether the Perſon making the Leaſe is a Lord, or not; ſo that it is ſufficient if 'tis the ſame Perſon who demiſed, though miſnamed. *Allen* 58. 2 *Nelſ. Abr.* 1172. *Miſnomer* of Corporations may be pleaded in Abatement. 1 *Leon.* 159. 5 *Mod.* 327. 2 *Salk.* 451. And if there be any Miſtake in the Name of a Corporation, that is material in their Leaſes and Grants; they will be void. 2 *Bendl.* 1. *Anderſ.* 196. A Defendant may avoid an Outlawry, by Pleading a *Miſnomer* of Name of Baptiſm or Surname; or *Miſnomer* as to Additions of Eſtate, of the Town, &c. 2 *Hawk. P. C.* 460. Though *Miſnomer* of a Surname may not be pleaded on an Indictment; in an Appeal it may: And any other *Miſnomers*, and defective Additions, are as fatal in an Indictment as an Appeal. *Ibid.* 130. A *Miſnomer* muſt be pleaded by the Party himſelf who is miſnamed. 1 *Lutw.* 35. If a Man is taken upon a *Cap. Excom.* who is not of the Name in the Writ, he has no Day in the Court to plead this Matter to be diſcharged; but muſt bring an Action of falſe Impriſonment. 1 *Mod.* 70. See *Abatement* and *Addition.*

Miſpriſion, (*Miſpriſio*, from the Fr. *Meſpris*, Contemptus) Signifies a Neglect or Overſight: As for Example; *Miſpriſion* of *Treaſon*, is a Negligence in not revealing Treaſon where a Perſon knows it to be committed. *Staundf. P. C. lib.* 1. *cap.* 19. If a Man knoweth of any *Treaſon* or *Felony* and conceals the ſame, it is *Miſpriſion*: In a larger Senſe, *Miſpriſion* is taken for many great Offences, which are neither Treaſon nor Felony, or Capital, but very near them; and every great Miſdemeanor, which hath no certain Name appointed by the Law, is ſometimes called *Miſpriſion.* 3 *Inſt.* 36. *H. P. C.* 127. *Wood* 406, 408 When one knows that another hath committed *Treaſon*, and doth not reveal it to the King or his Privy Council, or ſome Magiſtrate, that the Offender may be ſecured and brought to Juſtice, it is High Treaſon by the antient Common Law; for the Delay in Diſcovering the Treaſon was deemed an Aſſent to it, and conſequently High Treaſon: But there muſt now be an actual Aſſent to ſome outward Act to make it Treaſon. *Bracton* 118. *S. P. C.* 37. 3 *Inſt.* 138, 140. And by Stat. 1 & 2 *P.* & *M. c.* 10. a bare Concealment of any High Treaſon, ſhall be only *Miſpriſion* of Treaſon. A Perſon having Notice of a Meeting of Conſpirators againſt the Government, goes into their Company and hears their treaſonable Conſultation, and conceals it, this is Treaſon; and ſo where one has been accidentally in ſuch Company, and heard ſuch Diſcourſe, if he meets ſuch Company a ſecond Time; for in theſe Caſes the Concealment is attended with Circumſtances which ſhew an Approbation thereof. *H. P. C.* 127. *Kel.* 17, 21. And a Man that hath Knowledge of a Treaſon cannot ſecure himſelf by diſcovering generally that there will be a Riſing, without diſcloſing the Perſons intending to riſe; nor can he do it by diſcovering theſe to a private Perſon, who is no Magiſtrate. *S. P. C. H. P. C.* 127. But where one is told in general, that there will be a Riſing or Rebellion, and doth not know the Perſons concerned in it, or the Place where, &c. this uncertain Knowledge may be concealed, and it ſhall not be Treaſon or *Miſpriſion.* *Kel.* 22. 1 *H. P. C.* 36. If High Treaſon is diſcovered to a Clergyman in Confeſſion, he ought to reveal it; but not in Caſe of Felony. 2 *Inſt.* 629. Concealers of *Bulls* of Abſolution from *Rome* are guilty of *Miſpriſion* of Treaſon. 13 *Eliz. c.* 2. There is a *Miſpriſion* of Treaſon in counterfeiting the Great Seal; forging and uttering counterfeit Money brought from another Kingdom, &c. 14 *Eliz. c.* 3. And *Miſpriſion* being included in every Treaſon or Felony; where a Man hath committed Treaſon or Felony, the King may cauſe him to be indicted and arraigned of *Miſpriſion* only, if he pleaſe. *S. P. C.* 32. But if a Perſon is indicted of *Miſpriſion* as for Treaſon; tho' he be found Guilty, the Judges ſhall not give Judgment thereon, he not being indicted of the *Miſpriſion. Jenk. Cent.* 217. Information will not lie for *Miſpriſion* of Treaſon, &c. but Indictment, as for capital Crimes: And there muſt be two Witneſſes upon Indictments, as well as Trials of *Miſpriſion* of Treaſon, by the Statute 7 *W.* 3. 2 *Hawk. P. C.* 258, 260. In all Caſes of *Miſpriſion* of Treaſon, the Offender ſhall be impriſoned for Life; and forfeit all his Goods and Chattels, and the Profits of his Lands during Life. *H. P. C.* 128. 3 *Inſt.* 36, 218.

Miſpriſion of Felony, Is not only where a Man knows of any Felony committed, and concealeth or procures the Concealment thereof; but under this Title of *Miſpriſion*, that of *Theftbote* may be reduced; which is where one knowing of a Felony, takes his own Goods again, or rather Amends for the ſame. 3 *Inſt.* 134, 139. *H. P. C.* 130. Though the bare Taking one's own Goods again which have been ſtolen is no Offence, unleſs ſome Favour be ſhewn the Thief. 1 *Hawk. P. C.* 125. The Stat. 3 *H.* 7. *c.* 1. provides againſt Concealments of Felonies by Sheriffs, Coroners and Bailiffs, &c. And for *Miſpriſion of Felony*, the Offenders ſhall be puniſhed by Fine and Impriſonment, and remain in Priſon till the Fines are paid. *S. P. C.*

Miſpriſions at large, Are when Perſons contemn the King's Prerogative, by refuſing to aſſiſt the King according to Law; or by Speaking or Writing againſt his Perſon or Government; receiving a Penſion from a Foreign Prince, without his Leave; refuſing to take the Oaths of Allegiance and Supremany; and Contempts againſt the King's Palace; or the Courts of Juſtice, &c. *H. P. C.* 3 *Inſt.* 139, 149.

Miſpriſions of Clerks, Relate to their Neglects in Writing, or keeping of Records: And here *Miſpriſion* ſignifies a Miſtaking. 14 *Ed.* 3. *c.* 6.

Miſrecital of Deeds or Conveyances, will ſometimes hurt a Deed, and ſometimes not. *Hob.* 18, 19, 129. See *Leaſe.*

Miſſa, The *Maſs*, at firſt uſed for the Diſmiſſion or ſending away of the People: And hence it came to ſignify the whole Church Service, or Common Prayer; but more particularly the Communion Service, and the Office of the Sacrament, after thoſe who did not receive it were diſmiſſed. *Litt. Dict.*

Miſſal, *Miſſale*, The Maſs-Book, containing all Things to be daily ſaid in the *Maſs.* Lindw. Provincial. lib. 3. cap. 2.

Miſſæ Presbyter, Signifies a Prieſt in Orders. *Blount.*

Miſſura, Singing the *Nunc Dimittis*, and performing the many other Ceremonies to recommend and diſmiſs a dying Perſon. And in the Statutes of the Church of St. *Paul* in *London*, collected by *Ralph Baldock*, Dean about the Year 1295. in the Chapter *de Frateria*, of the Fraternity or Brotherhood, who were obliged to a mutual Communication of all Religious Offices, it is ordained —— *Ut fiat commendatio* & Miſſura & *ſepultura omnibus ſociis coadunantibus* & *aſtantibus.* Liber Stat. Eccleſ. Paulinæ, M.S. fol. 25

Miſſurium, Is a Diſh for ſerving up Meat to a Table; whence a *Meſſe*, or Portion of any Diet; ——— But *Voſſius* tells us 'tis called *Meſs*, *quia dono Mitti ſoleat a principibus*. Thorn's Chron. pag. 1762.

Miſtrial, A falſe or erroneous Trial; where it is in a wrong County, *&c.* 3 *Cro.* 284. And Conſent of Parties cannot help ſuch a Trial, when it is paſt. *Hob.* 5. See *Trial.*

Miſuſer, Is an Abuſe of any Liberty or Benefit; as he ſhall make Fine for his *Miſuſer*. *Old Nat. Br.* 149. By *Miſuſer*, a Charter of a Corporation may be forfeited: So alſo an Office, *&c.*

Mitred Abbots, Were thoſe Governors of Religious Houſes, who had obtained from the *Pope* the Privilege of wearing the *Mitre*, Ring, Gloves, and Croſier of a Biſhop. The *Mitred Abbots*, ſays *Cowel*, were not the ſame with the *conventual Prelates*, who were ſummoned to Parliament as Spiritual Lords, tho' it hath been commonly ſo held; for the Summons to Parliament did not any Way depend on their *Mitres*, but upon their receiving their Temporals from the Hands of the King. See *Abbot.*

Mitta, (From the Sax. *Mitten*, *Menſura*) An antient *Saxon* Meaſure; its Quantity doth not certainly appear, but it is ſaid to be a Meaſure of ten Buſhels. *Domeſday. Tit. Wirecſcire.* Mon. Angl. Tom. 2. p. 262. And *Mitta*, or *Mitcha*, beſides being a Sort of Meaſure for Salt and Corn, is uſed for the Place where the Caldrons were put to boil Salt——— *Calderias quoque ad Sal conficiendum cum propriis ſedibus quæ vulgo* Mitchæ *vocantur.* Gales's Hiſt. Brit. 767.

Mittendo manuſcriptum pedis Finis, Was a Writ judicial directed to the Treaſurer and Chamberlains of the *Exchequer*, to ſearch for and tranſmit the *Foot of a Fine*, acknowledged before Juſtices in *Eyre*, into the *Common Pleas*, &c. Reg. Orig. 14.

Mittimus, Is a Writ for removing and transferring of Records from one Court to another; as out of the *King's Bench* into the *Exchequer*, and ſometimes by *Certiorari* into the *Chancery*, and from thence into another Court: But the Lord Chancellor may deliver ſuch Record with his own Hand. Stat. 5 *R.* 2. *c.* 15. 28 & 29 H. 8. *Dyer* 29, 32. *Mittimus* is alſo a Precept in Writing, under the Hand and Seal of a Juſtice of Peace directed to the Gaoler, for the Receiving and ſafe Keeping of an Offender, until he is delivered by Law. 2 *Inſt.* 590. One muſt be committed by lawful *Mittimus*; or Breach of Priſon will not be Felony, *&c.*

Mittre a large, is generally to ſet or put at Liberty. *Law Fr. Dict.* And there is a *Mittre le Eſtate*, and *de Droit*, mentioned by *Littleton*; in Caſe of Releaſes of Lands by Jointenants, *&c.* which may ſometimes paſs a Fee, without Words of Inheritance. 1 *Inſt.* 273, 274.

Mixed Tithes, Are thoſe of Cheeſe, Milk, and of young Beaſts, *&c.* 2 *Co. Inſt.* 649. See *Tithes.*

Mockadoes, Stuffs made in *England*, and other Countries; mentioned in the Stat. 23 *Eliz. cap.* 9.

Moderata Miſericordia, A Writ that lies for him who is amerced in a Court-Baron, or other Court not of Record, for any Tranſgreſſion, beyond the Quality or Quantity of the Offence: It is directed to the Lord of the Court or his Bailiff, commanding them to take a *moderate Amerciament* of the Party, and is founded upon *Magna Charta.* If a Man be *amerced* in a *Court-Baron*, on Preſentment by the Jury, where he did not any Treſpaſs, he ſhall not have this Writ, unleſs the Amerciament be exceſſive and outragious: And if the Steward of the Court of his own Head, will amerce any Tenant or other Perſon without Cauſe, the Party ought not to ſue for his Writ of *Moderata Miſericordia*, if he be diſtrained for that Amerciament; but he ſhall have Action of Treſpaſs. *New Nat. Br.* 167. When the Amerciament which is ſet on a Perſon is affeered by his Peers, this Writ of *Moderata Miſericordia* doth not lie; for then it is according to the Statute 10 *Ed.* 2.

Modiatio, Was a certain Duty paid for every Tierce of Wine. *Mon. Angl. Tom.* 2. *p.* 994.

Modius, A Meaſure, uſually a Buſhel; but various according to the Cuſtoms of ſeveral Countries.

Modius Terræ vel Agri. This Phraſe was much uſed in the antient Charters of the *Britiſh* Kings, and probably ſignified the ſame Quantity of Ground as with the *Romans*, *viz.* One hundred Foot long, and as many broad.——— *Sciendum eſt quod dedit Ilias pedum quatuor* Modiorum *Agri cum omni cenſu ſuo*, *&c.* Mon. Angl. Tom. 3. p. 200.

Modo & forma, Are Words of Art in Law Pleadings, *&c.* and particularly uſed in the Anſwer of a Defendant, whereby he denies to have done the Thing laid to his Charge, *Modo & forma declarata.* Kitch. 232. And *Modo & forma* are of the Subſtance of the Iſſue and material, when a collateral Point in Pleading is traverſed; but not where the Iſſue taken goes directly to the Point of the Writ or Action, for they then are only Words of Form or of Courſe. *Co. Lit.* 281.

Modus Decimandi, Is when Lands, Tenements, or ſome annual certain Sum, or other Profit, hath been given Time out of Mind to a Parſon and his Succeſſors, in full Satisfaction and Diſcharge of all Tithes in Kind, in ſuch a Place. 2 *Co. Rep.* 47. And it may be paid in Cities and Towns, as in *London*, for Houſes, in lieu of the Tithe of the Lands on which the Houſes were built: And there may be a *Modus Decimandi* for perſonal Tithes. 2 *Inſt.* 657, 659. A *Modus* ought to be for the Benefit and Advantage of the Parſon; and is ſuppoſed to be of the full Value of the Tithes, at the Time of the original Compoſition; and if it doth not now come up to that Value, it ſhall be intended that the Tithes are improved, or that Money is become of leſs Value than it was at the Time of the *Modus* agreed on. 13 *Rep.* 152. *Hob.* 40. But one Tithe muſt not be paid in Conſideration of another; it is to be ſomething different from the Thing that is due, where the Tithes are due of common Right, and not by Cuſtom only; and it muſt be ſomething as certain and durable as the Tithe: All which are neceſſary to make a good Preſcription. 1 *Roll. Abr.* 650. 1 *Cro.* 276, 446, 475. *Hob.* 40. A *Modus* ariſes either by Compoſition, Cuſtom or Preſcription; a Compoſition is an Agreement entered into by Deed, executed under Hand and Seal, that ſuch and ſuch Lands ſhall be diſcharged of Tithes, paying ſome annual Payment, or doing ſomething for the Benefit and Advantage of the Parſon, *&c.* which is a legal Exemption from Payment of Tithes for ever, if made before the Stat. 13 *Eliz. c.* 10 Cuſtom is what gives a Right to a whole County, City, Town or Pariſh, and muſt be common to all within the Limits where it is averred to be; and Preſcription is that which gives a Right to ſome particular Perſon, with reſpect to ſome particular Houſe, Farm, *&c.* And the Eccleſiaſtical Laws allow forty Years to make a good Cuſtom and Preſcription; but by the Common Law, it muſt be beyond the Memory of Man. 1 *Roll. Abr.* 653. *Count. Parſ. Compan.* 159. A Layman, Lord of a Manor, may preſcribe *De modo Decimandi*, for himſelf and Tenants; alſo a private Perſon, for his own Lands, or Part thereof, *&c.* Though in Caſes of Preſcription, 'tis only to be diſcharged of a particular Sort of Tithes; for a Preſcription *De non Decimando* generally, would undo the Clergy, and therefore it is not good where there is not ſufficient left for their Maintenance; as it may be where there is a competent Livelihood for the Parſon. 2 *Rep.* 47. 1 *Cro.* 784. 1 *Roll. Abr.* 653. A Layman cannot preſcribe by the Common Law *De non Decimando*; but he may be diſcharged of Tithes for Lands in his own Hands, by Grant from Parſon, Patron and Ordinary. 2 *Rep.* 44. A Pariſh, *&c.*

may not preſcribe *de non Decimando*, though it may preſcribe *De modo Decimandi.* 1 *Roll. Abr.* 653. But Tithes due by Cuſtom only, are not within the Rule againſt Preſcription *in non Decimando* by Laymen; for by the like Cuſtom Perſons may be diſcharged from the Payment of ſuch Tithes. *Wood's Inſt.* 179. And ſpiritual Perſons and Corporations may preſcribe *De non Decimando*, to be diſcharged abſolutely of Tithes, and pay nothing in lieu thereof; ſo alſo may their Tenants. 2 *Rep.* 44. 1 *Rol. Abr.* 653, 654. 1 *Cro.* 512. A Parſon may ſue in the Spiritual Court for a *Modus Decimandi*, or Rate Tithe; but if the *Modus* is denied, or a Cuſtom is to be tried, it muſt be tried in the Common Law Courts: And where a *Modus* is pleaded in the Spiritual Court to a Demand of Tithes in Kind, a Prohibition lies upon Suppoſition that the Spiritual Court will not admit of any Plea againſt Tithes. 2 & 3 *Ed. 6. c.* 13. *Wood* 178. Where Land is converted to other Uſes, as Hay Ground to Tillage, *&c.* or the Thing is altered or deſtroyed; as when a Fulling Mill is made a Corn-Mill, or a Corn-Mill is come to Ruin, *&c.* a *Modus* made on good Conſideration may be diſcharged, and then Tithes ſhall be paid in Kind. 1 *Danv. Abr.* 607, 608. So by Nonpayment of the Conſideration; or by Payment of Tithes in Kind, for ſo long Time, that the Preſcription for a *Modus Decimandi* cannot be proved: Tho' a ſhort Interruption 'tis ſaid ſhall not deſtroy it. 1 *Roll.* 932. *Hob.* 43. A Payment of different Sums, is Evidence that there is no *Modus.*

Moiety, (*Medietas*, Fr. *Moitie*, i. e. *coequa vel Media pars*) Is the Half of any Thing; and to hold by *Moieties*, is mentioned in our Books, in Caſe of Jointenants, *&c.* Litt. 125.

Molendinum, A Mill of divers Kinds. See *Mill.*

Molendum, Signifies Corn ſent to a Mill, a Griſt. *Chart. Abbat. de Rading, MS. fol.* 116.

Molitura, Was commonly taken for the Toll or Moulture paid for grinding Corn at a Mill, and ſometimes called *Molta*, Fr. *Moulta. Molitura libera*, free Grinding or Liberty of a Mill, without paying Toll; a Privilege which the Lord generally reſerved to his own Family. —— *Salva mihi & hæredibus meis* Molitura libera *familiæ noſtræ quieta in dicto Molendino.* Paroch. Antiq. 236.

Molman, A Man ſubject to do Service; applied to the Servants of a Monaſtery. *Prior. Lewes, p.* 21. *Spelm. Gloſſ.*

Molmutian, or **Molmutin Laws.** Theſe were the Laws of *Dunwallo Molmutius*, ſixteenth King of the *Britains*, who begun his Reign above four hundred Years before the Birth of our Saviour, and they were famous in this Land till the Time of *William* the 1ſt, called the *Conqueror.* This King was the firſt who publiſhed Laws in *Britain*; and his Laws, with thoſe of Queen *Mercia*, were trrnſlated by *Gildas* out of the *Britiſh* into the *Latin* Tongue. *Uſher's Primord.* 126.

Monaſteries and *Abbeys*, &c. diſſolved by K. *H.* 8. See 27 *H.* 8. *c.* 28. and *Abbot.*

Monetagium, Signified a certain Tribute paid by Tenants to their Lord every third Year, that he ſhould not change the Money which he had coined, formerly when it was lawful for great Men to coin Money current in their Territories; but not of Silver and Gold: It was abrogated by the Stat. 1 *Hen.* 1: *c.* 2. The Word *Monetagium* is likewiſe uſed for a *Mintage*, and the Right of coining or minting Money: *Jus & Artificium cudendi Monetas.*

Money, (*Moneta*) Is that Metal, be it Gold or Silver, that receives Authority by the Prince's Impreſs to be current; for as Wax is not a Seal without a Print, ſo Metal is not *Money* without Impreſſion. *Co. Lit.* 207. *Money* is ſaid to be the common Meaſure of all Commerce, through the World, and conſiſts principally of three Parts; the Material whereof it is made, being Silver or Gold; the Denomination or extrinſick Value, given by the King, by Virtue of his Prerogative; and the King's Stamp thereon. 1 *Hale's Hiſt. P. C.* 188. It belongs to the King only to put a Value, as well as the Impreſſion on *Money*; which being done, the *Money* is current for ſo much as the King hath limited. 2 *Inſt.* 575. Any Piece of Money coined is of Value as it bears a Proportion to other current *Money*, and that without Proclamation: And though there is no Act of Parliament, or Order of State for *Guineas*, as they are taken; yet being coined at the Mint, and having the King's *Inſignia* on them, they are lawful *Money*, and current at the Value they were coined and uttered at the Mint. 2 *Salk.* 446. But it has been obſerved, that *Guineas* were originally coined for 20 *s.* according to the twenty Shillings Pieces of *Money*, and that legally, no more ought to be demanded for them: Alſo that in legal Proceedings, they ſhould be mentioned as *pecias Auri, vocat. Guineas, valoris, &c.* 5 Mod. Rep. 7. If an Action is brought for Damages, the Value of *Guineas* may be given in Evidence to the Jury: But if the Action be for ſo many Guineas, the Value ought to be ſet forth in the Declaration, to aſcertain the Debt. *Carthew* 255. Gold and Silver Coin, *&c.* is not to be exported without Licence, on Pain of Forfeiture. Stat. 9 *Ed.* 3. *cap.* 1. And *Money* of Silver melted down, is to be forfeited, and double Value. 13 & 14 *Car.* 2. *c.* 31. But by old Statutes, foreign *Money* may be melted down; and no *Money* ſhall be current but the King's own, *&c.* 27 *Ed.* 3. *cap.* 14. 17 *R.* 2. *c.* 1. See *Coin* and *Exchange.*

Money, lending it abroad. The King by Proclamation may at any Time prohibit all his Subjects, not exceeding one Year, to lend or advance Money to any foreign Prince or State, without Licence under the Great or Privy Seal; and if any Perſon knowingly offend in the Premiſſes, he ſhall forfeit treble the Value of the Money lent, *&c.* two Thirds to the King, and the other to the Informer: But Perſons may deal in foreign Stocks, or be intereſted in any Bank abroad, eſtabliſhed before iſſuing his Majeſty's Proclamation. Stat. 3 *Geo.* 2. *c.* 5.

Money in Court, In Law Proceedings, *Money* demanded is oftentimes brought into the Court, either by a Rule of Court, or by pleading a *Profert in Curiam* of the *Money*; and then if the *Money* is not paid into Court, the Plea will not be received. The *Money* muſt be brought into Court, upon the Plea of a Tender: And the Defendant may at any Time, pending an Action on Bond with a Penalty, bring the *Money* and Coſts into Court, and it ſhall be a good Satisfaction and Diſcharge, by Stat. 4 & 5 *Ann. c.* 16. If a Defendant pay *Money*, or Part, into Court, and it is ſtruck out of the Declaration, though the Plaintiff is Nonſuit, he ſhall take the *Money out of Court*, for by paying into Court, the Defendant admitted that ſo much was due; but if the Defendant brings *Money into Court* upon a Tender and *uncore priſt*, and the Plaintiff takes Iſſue upon the Tender, and it is found againſt him, then the Defendant ſhall have the *Money out of Court.* 2 *Salk.* 597. *Money* may be brought into Court upon an Action of Debt for Rent: In Replevin, when the Defendant avows for ſo much Rent arrear, the Plaintiff hath been admitted to bring it into Court: And in Covenant, *&c.* where a Breach is aſſigned for Non-payment of Rent, the Defendant may bring the *Money* due into Court. *Ibid.* In a *Quantum Meruit* it hath been denied; though it was granted in ſuch Caſe. *Paſch.* 5 *Ann.* And it is ſaid, where an Action is brought by an Executor or Adminiſtrator, the Defendant cannot bring the *Money into Court.* 2 *Salk.* 596.

Moneyers, (*Monetarii*) Are taken for *Bankers* or thoſe that make it their Trade and Buſineſs to turn and return Money; alſo Officers of the *Mint*, mentioned in the Stat. 1 *Ed. 6. c.* 15.

Monger, A little Sea Veſſel which Fiſhermen uſe. Stat 13 *Eliz. c.* 11. And when a Word ends with *Monger*, as *Ironmonger*, &c. it ſignifies Merchant, from the Sax. *Manger*, i. e. *Mercator.*

Monk, (*Monachus*) From the Gr. Μόνος, *ſolus, qu. ſoli*, i. e. *Separati ab aliorum conſortio vivant*, becauſe the firſt *Monks* lived alone in the Wilderneſs. They were after divided into three Ranks; *Cœnobitarum*, i. e. a Society living in common in a Monaſtery, &c. under the Government of a ſingle Perſon; and theſe were under certain Rules, and afterwards called *Regulars*, *Anachoretæ* or *Eremitæ*, thoſe *Monks* who lived in the Wilderneſs on Bread and Water. And *Sarabaitæ*, *Monks* living under no Rule, that wandered in the World. St. *Jerom* tells us, that of the *Anachoretæ Paulus fuit Auctor, Antonius illuſtrator, Johannes Baptiſta princeps.*

Monkery, The Profeſſion of a *Monk*, mentioned in *Whitlock*'s Readings upon the Stat. 21 *H.* 8. *c.* 13.

Monks Clothes, Made of a certain Kind of coarſe Cloth. Vide 20 *H.* 6.

Monopoly, (From Μόνος, *unus* & *πωλέω vendo*) Is an Allowance of the King by his Grant, Commiſſion or otherwiſe, to any Perſon or Perſons, for the ſole Buying, Selling, Making, Working or Uſing of any Thing, by which other Perſons are reſtrained of any Freedom or Liberty that they had before, or hindered in their lawful Trade. 3 *Inſt.* 181. It is defined to be where the Power of Selling any Thing is in one Man alone; or when one ſhall ingroſs and get into his Hands ſuch a Merchandize, &c. as none may ſell or gain by them but himſelf. 11 *Rep.* 86. And a *Monopoly* hath three Incidents miſchievous to the Publick: 1. The Raiſing of the Price. 2. The Commodity will not be ſo good. 3. The Impoveriſhing of poor Artificers. *Ibid.* All *Monopolies* are againſt the antient and fundamental Laws of the Realm: A By-Law, which makes a *Monopoly*, is void; and ſo is a Preſcription for a Sole Trade to any one Perſon or Perſons, excluſive of all others. *Moor* 591. *Monopolies* by the Common Law are void, as being againſt the Freedom of Trade, and diſcouraging Labour and Induſtry; and putting it in the Power of particular Perſons to ſet what Prices they pleaſe on a Commodity. 1 *Hawk. P. C.* 231. Upon this Ground it hath been held, that the King's Grant to any Corporation of the ſole Importation of any Merchandize, is void. 2 *Roll. Abr.* 214. 3 *Inſt.* 182. The Grant of the ſole Making, Importing and Selling of Playing Cards, was adjudged void. 11 *Rep.* 84. *Moor* 671. And the King's Grant of the ſole Making and Writing of Bills, Pleas, and Writs in a Court of Law, to any particular Perſon, hath been reſolved to be void. 1 *Jones* 231. 3 *Mod.* 75. The King may grant to particular Perſons the ſole Printing of the Holy Scriptures, and Law Books. 1 *Hawk.* 231. All Matters of this Nature ought to be tried by the Common Law, and not at the Council-Table, or any other Court of that Kind; and the Making uſe of or procuring any unlawful *Monopoly*, is puniſhable by Fine and Impriſonment at Common Law. 3 *Inſt.* 181, 182. By Statute, all *Monopolies*, Grants, Letters Patent and Licences, for the ſole buying, Selling and Making of Goods and Manufactures, are declared void, except in ſome particular Caſes; and Perſons grieved by putting them in uſe, ſhall recover treble Damages and double Coſts, by Action on the Statute; and delaying ſuch Action, before Judgment, by Colour of any Order, Warrant, &c. or delaying Execution after, incurs a *Præmunire:* But this does not extend to any Grant or Privilege granted by Act of Parliament; nor to any Grant or Charter to Corporations or Cities, &c. Grants to Companies or Societies of Merchants, for Enlargment of Trade; or to Inventors of New Manufactures, who have Patents for the Term of fourteen Years; Grants or Privileges for Printing; or making Gunpowder, caſting Ordnance, &c. 21 *Jac.* 1. *c.* 3. As to Invenotrs of New Manufactures, &c. it has been adjudged on this Statute, that a Manufacture muſt be ſubſtantially New, and not barely an additional Improvement of any old one, to be within the Statute; it muſt be ſuch as none other uſed at the Granting the Letters Patent; and no old Manufacture in Uſe before, can be prohibited in any Grant of the ſole Uſe of any ſuch new Invention. 3 *Inſt.* 184. Yet a Grant of a *Monopoly* may be to the firſt Inventor, by the Stat. 21 *Jac.* notwithſtanding the ſame Thing was practiſed before beyond Sea; becauſe the Statute mentions new Manufactures within the Realm, and intended to encourage new Devices uſeful here, and it is the ſame Thing whether acquired by Experience or Travel abroad, or by Study at Home. 2 *Salk.* 447. It is ſaid, a new Invention to do as much Work in a Day by an Engine as formerly uſed to employ many Hands, is contrary to the Statute; by Reaſon it is inconvenient, in turning ſo many Men to Idleneſs. 3 *Inſt.* 184.

Monſter, One that hath not human Shape, and yet is born in lawful Wedlock: And ſuch may not purchaſe or retain Lands; but a Perſon may be an Heir to his Anceſtor's Land, though he have ſome Deformity in any Part of his Body. *Co. Lit.* 7.

Monſtrans de Droit, Is a Shewing of Right, and ſignifies a Writ out of the Chancery to be reſtored to Lands and Tenements that are a Man's in *Right*, though by ſome Office found to be in the Poſſeſſion of one lately dead; by which Office the King would be entitled to the ſaid Lands, &c. It is given by the Stat. 34 *Ed.* 3. *c.* 14. and 36 *Ed.* 3. 13. *Staundf. Prærog. c.* 21. 4 *Co. Rep.* 54.

Monſtrans de faits, Shewing or Producing of the Deeds in open Court, when an Action is brought upon any Deed; and the Difference between *Monſtrans de fait* and *Oyer de faits*, is this: He that pleads any Deed or Record, or declares upon it, ought to *ſhew* the ſame; and the other, againſt whom ſuch Deed or Record is pleaded, may demand *Oyer* thereof. Where a Man pleads a Deed, which is the Subſtance of his Plea or Declaration, if he doth not plead it with a *Profert in Curia*, his Plea or Declaration is naught upon a ſpecial Demurrer, ſhewing it for Cauſe: And if he doth plead it with a *Profert in Curia*, if the other Party demands a Sight of it, he cannot proceed till he hath ſhewn it; and when the Defendant hath had a Sight of it, if he demands a Copy of the ſame, the Plaintiff may not proceed until a Copy is delivered unto him. Stat. 4 & 4 *Ann. c.* 16. 2 *Lill. Abr.* 201, 202. Vide *Profert in Curia.*

Monſtraverunt, Is a Writ that lies for Tenants in *Antient Demeſne*, who hold Land by free Charter, when they are diſtrained to do unto their Lords other Services and Cuſtoms than they or their Anceſtors uſed to do: Alſo it lieth where ſuch Tenants are diſtrained for the Payment of Toll, &c contrary to their Liberty, which they do or ſhould enjoy. *F. N. B.* 14. 4 *Inſt.* 269. This Writ is directed to the Sheriff to charge the Lord that he do not diſtrain them for ſuch unuſual Services, &c. And if the Lord nevertheleſs diſtrains his Tenants for other Services than of Right they ought to do, the Sheriff may command the Neighbours who dwell next the Manor, or take the Power of the County, to reſiſt the Lord, &c. And the Tenants in ſuch Caſe may likewiſe ſue an *Attachment* againſt their Lord, returnable in *C. B.* or *B. R.* to anſwer the Contempt and recover Damages. *New Nat. Br.* 32. But the Lord ſhall not be put to anſwer the Writ of Attachment ſued againſt him upon the *Monſtraverunt*, before the Court is certified by the Treaſurer and Chamberlains of the *Exchequer*, from the Book of *Domeſday*, whether the Manor be Ancient Demeſne; ſo that it is requiſite that the Plaintiff in the *Monſtraverunt* do ſue forth a ſpecial Writ for the certifying of the ſame. *Ibid.* 35. The Writ of *Monſtraverunt* may be ſued for many of the Tenants, without naming any of them by their proper Names, but generally *Monſtraverunt nobis homines de, &c.* But in the *Attachment* againſt the Lord, the Tenants ought to be named; tho' one Tenant may ſue it in his own Name, and the Name of the other Tenants by general Words, *Et Homines, &c.* 2 H. 6. 26. See *Ne injuſte Vexes.*

Monſtrum, Is ſometimes taken for the Box in which Relicts are kept: *Item unum* Monſtrum *cum Oſſibus S. Petri, &c.* Mon. Ang. Tom. 3. pag. 173.

Month, or **Moneth**, Sax. **Monath**, (*Menſis à Menſione, Lunæ curſus*) Signifies the Time the Sun goes through one Sign of the Zodiac, and the Moon through all twelve; properly the Time from the New Moon to its Change, or the Courſe or Period of the Moon, whence 'tis called *Month* from the Moon. *Litt. Dict.* A *Month* is a Space of Time containing by the Week twenty-eight Days; by the Kalendar ſometimes thirty, and ſometimes thirty-one Days: And *Julius Cæſar* divided the Year into twelve *Months*, each *Month* into four Weeks, and each Week into ſeven Days. The *Month* by the Common Law is but twenty-eight Days; and in Caſe of a Condition for Rent, the *Month* ſhall be computed at twenty-eight Days; ſo in the Caſe of Inrollments of Deeds, and generally in all Caſes where a Statute ſpeaks of *Months:* But when the Statute accounteth by the Year, Half-Year, or Quarter of a Year, then it is to be reckoned according to the Kalendar. 1 *Inſt.* 135. 6 *Rep.* 62. *Cro. Jac.* 167. A *Twelvemonth*, in the ſingular Number, includes the whole Year, according to the Kalendar: But twelve *Months*, ſix *Months, &c.* in the plural Mumber, ſhall be accounted after twenty-eight Days to every *Month*; except in Caſe of Preſentations to Benefices to avoid Lapſe, &c. which ſhall be in ſix Kalendar *Months.* 6 *Rep.* 61. *Cro. Jac.* 141. And if an Agreement is to pay 50 *s.* for the Intereſt of 100 *l.* at the End of ſix *Months*, it is ſaid the Computation muſt be by Kalendar *Months*; becauſe if it was by *Lunar Months* the Intereſt would exceed the Rate allowed by the Statute. *Wood's Inſt.* 433. Though in common Caſes of Loans and Forbearance of Money, the *Months* according to ſome ſhall be reckoned, at twenty-eight Days, and according to others by the Kalendar. 1 *Leon.* 96.

Monument. An Heir may bring an Action againſt one that injures the *Monument*, &c. of his Anceſtor: And the Coffin and Shroud of a deceaſed Perſon belong to the Executors or Adminiſtrators; but the dead Body belongeth to none. 3 *Inſt.* 202, 203.

Moors, In the *Iſle of Man*, who ſummon the Courts for the ſeveral *Sheadings*, are the Lord's Bailiffs, called by that Name; and every *Moor* has the like Office with our Bailiff of the Hundred. *King's Deſcrip. Iſle of Man.*

Moot, (From the *Sax.* Motian, *placitare*, to treat or handle) Is a Term well underſtood in the *Inns of Court*, and ſignifies that Exerciſe or Arguing of Caſes which young Barriſters and Students perform at certain Times, the better to enable them for Practice and Defence of Clients Cauſes. The Place where *Moot-Caſes* were argued, was antiently called the *Moot-Hall:* And in the *Inns of Court* there is a *Bailiff of the Moot* yearly choſen by the Benchers, to appoint the *Mootmen* for the *Inns of Chancery*; and keep Accounts of the Performances of Exerciſes, both there and in the Houſe. *Orig. Juridical.* 212.

Mootmen, Are thoſe that argue the Readers Caſes, called *Moot-Caſes*, in the *Inns of Chancery*, in Term-Time, and in Vacations. 3 *Rep.*

Mora, A *Moor*, or barren and unprofitable Ground, derived from the Sax. *Mor*, ſignifying alſo Marſhland. *Mon. Ang. Tom.* 2. *pag.* 50. 1 *Inſt.* 5. By *Fieta*, it is uſed for Heath. *Fleta, lib.* 2. *cap.* 71.

Mora muſſa, A watery or boggy Moor; and ſuch in *Lancaſhire* they call *Moſſes*; *Moraſſa* is uſed in the ſame Senſe. *Mon. Ang. Tom.* 2. *pag.* 306.

Moratur in Lege, Is the ſame with *Demoratur*, and ſignifies as much as *he demurs*; becauſe the Party goes not forward in pleading, but reſts or abides upon the Judgment of the Court in a certain Point, as to the Sufficiency in Law of the Declaration or Plea of the adverſe Party, who deliberate and take Time to argue and adviſe thereupon, and then determine it. *Co. Lit.* 71. See *Demurrer.*

Moretum, A Sort of brown Cloth, with which Caps were formerly made. *Mat. Pariſ. Anno* 1258.

Morgangina, (From the Sax. *Morgen*, i. e. *Aurora*, and *Gifan* or *Givan*, dare) Is that Gift which the Husband preſents to his Wife on the Wedding-day, which we now call *Dowry Money*, and was uſually among the *Lombards* the fourth Part of his perſonal Eſtate. It ſignifies literally *Donum Matutinale*; and in ſome Books it is writ *Morganegiba*; in others *Morgangiva*, *Morgagifa.* Leg. Hen. 1. c. 70. Leg. Canut. c. 99.

Moriam, (*Fr.* Morion, *Ital.* Morione, i. e. *Caſſis*) A Head-piece, now called a Pot. Stat. 4 & 5 *P.* & *M. c.* 2.

Morina, The Wool of Sheep dead with the Murrain——*Lana per ſe vendatur cum pellibus*, Morina *mortuarum.* Fleta, lib. 2. c. 79.

Morling, or **Mortling**, Signifies that *Wool* which is taken from the Skin of dead Sheep, whether being killed or dying of the Rot. 4 *Ed.* 4. *c.* 2 & 3. 27 *H.* 6. *c.* 2. 3 *Jac.* 1. *c.* 18. 14 *Car.* 2. *c.* 88. Vide *Shorling.*

Moroſus, and **Moroſſa**, See *Mora* and *Mora muſſa.*

Morſellum terræ, A ſmall Parcel of Land. *Et unum* Morſellum terræ, *juxta horreum ſuum.* Chart. 11 Hen. 3.

Mortarium, A Light or Taper ſet in Churches to burn over the Graves or Shrines of the Dead. ——*Tenet duas acras terræ, &c. ad inveniendum unum* Mortarium *ardentem in Eccleſia de* Chepin. Farindon. Conſuetud. Dom. de Farendon, MS. fol. 48.

Mort danceſtor, A Writ now ſeldom uſed, mentioned in the Statutes 53 *H.* 3. & 6 *Ed.* 1. See *Aſſiſe of Mort-danceſtor.*

Mortgage, (*Mortgagium, vel Mortuum vadium*, from the Fr. *Mort*, i. e. *Mors*, and *Gage*, *Pignus*) Is a Pawn of Lands or Tenements, &c. for Money borrowed, to be the Creditor's for ever, if the Money be not repaid on the Day agreed: And is is called a *Mortgage*, becauſe it is a *dead Pledge*, until the Money is paid; or for that if the Money ir not paid at the Day, the Land *Moritur* to the Debtor, and is forfeited to the Creditor. *Lit.* 332. It is uſually made by Leaſe for a long Term of Years, Leaſe and Releaſe, Aſſigmnent, &c. And the Creditor holding the Land upon this Agreement, is in the mean Time called *Tenant in Mortgage*, and holdeth the Eſtate upon the Condition in the Deed: But generally till Failure is made of Payment, the *Mortgagor* holds the Land; and if Failure be made, and the *Mortgagee* doth enter into the Lands, the *Mortgagor* hath an *Equity of Redemption* in the Court of *Chancery*, and may call the *Mortgagee* to an Account for the Profits, &c. *Litt.* 332. 1 *Inſt.* 205. In a *Mortgage* is contained a *Proviſo*, that if the Money be paid at the Day, the Deed ſhall be void: And on the *Mortgagor's* paying the Intereſt of the Money, *Mortgages* are continued a long Time without diſturbing the Poſſeſſion or Parties. *Law Securit.* 103. A Feoffment in Fee, or a Leaſe for Life or Years, &c. may be made with a Proviſo or Condition, that if the Feoffor or Grantor, or their Heirs or Executors, pay the Feoffee or Grantee, &c. ſuch Sum of

Money at a certain Day, then the Feoffor, *&c.* may re-enter; and this hath been a common Condition in a *Mortgage*, or of Eſtates upon Condition in a Deed: In the former Caſe of *Mortgages*, the *Mortgagor* keeps Poſſeſſion till Failure; but here the *Mortgagee* has the Poſſeſſion preſently, and till Payment. *Lit.* 332, 333. But as by theſe ancient Kind of *Mortgages*, if the Money were not paid on the Day, the Eſtate became abſolute, and was ſubject to the Dower of the Wife of the Feoffee, as alſo all other his real Charges and Incumbrances, *&c.* on this Account the Courts of Equity have maintained the Right of Redemption, againſt all Perſons that come in under the Feoffee; becauſe the Payment of the Money does put the Feoffor in his former State, and ſince the Lands were only a Pledge for the Money. 1 *Inſt.* 221. *Cro. Car.* 190. A *Mortgagee* is anſwerable in Chancery, when he comes into Poſſeſſion of the Land, for all the Profits he made thereof, and not for what he might have made; unleſs there were Fraud: No Allowance ſhall be given to the *Mortgagee* for his Pains and Trouble, who manages the Eſtate himſelf; but if he employs a skilful Perſon, and gives him ſo much a Year, that muſt be allowed, for no Perſon is bound to be his own Bailiff. *Toth.* 133. 1 *Vern.* 316, 476. Where a Man makes a *Mortgage* for Years to another, he may without entering on the Premiſſes, or the *Mortgagor*'s joining, aſſign the *Mortgage*; and the *Mortgagor* by the Covenant to enjoy till Default of Payment, is but Tenant at Will to the *Mortgagee.* 1 *Salk.* 246. Though if one who is *Mortgagee* in Poſſeſſion, aſſigns over his *Mortgage*, without the Aſſent of the *Mortgagor*, he ſhall Anſwer the Profit of the Land, before and after Aſſignment, though it be aſſigned only for his own Debt; he being under a Truſt for that Purpoſe. 3 *Chan. Caſ.* 3. An old *Mortgage* aſſigned to another, ought to be taken as a new *Mortgage* from the Time of the Aſſignment; And as a *Mortgagee*, where the *Mortgage* is forfeited, ſhall have Intereſt for his Intereſt; ſo ſhall an Aſſignee for all Intereſt due from the Time the *Mortgage* was aſſigned. 1 *Chanc. Rep.* 218, 258. For where a *Mortgagor* aſſigns the *Mortgage*, all Money paid by the Aſſignee, if due at that Time, ſhall be accounted Principal as to the *Mortgagor*, whenever he comes to redeem. *Ibid.* 68. But an Agreement made at the Time of a *Mortgage*, will not make future Intereſt Principal, before any Intereſt is grown due; the Intereſt muſt be firſt due before an Agreement concerning it may make the ſame Principal. 2 *Salk.* 449. If a Man *mortgage* his Land, upon Condition that if the *Mortgagor* and *J. S.* pay twenty Pounds ſuch a Day to the *Mortgagee*, that then he ſhall re-enter, *&c.* and the *Mortgagor* die before the Day; in this Caſe *J. S.* alone may pay the Money: But it is otherwiſe ſo long as the *Mortgagor* lives, for during that Time *J. S.* may not tender the Money without him; if he do, it will be no Peformance of the Condition. *Co. Litt.* 219. Not only the *Mortgagor*, but his Heir, being intereſted in the Condition, may pay the *Mortgage* Money to prevent the Forfeiture; and ſo may the Executors or Adminiſtrators of the *Mortgagor:* Though if no Time be limited for Payment of the Money, and the *Mortgagor* having Time during Life to pay it do not pay the ſame; his Heirs or Executors, *&c.* ſhall not in ſuch Caſe be received to pay the Money after his Death. 1 *Inſt.* 206. Executors of the *Mortgagee* ſhall have Money due on *Mortgages*, where a *Mortgagee* in Fee dies before the Day of Payment, unleſs the Heir be particularly named: And where the Heir is named, if the Day of Payment be paſt, it is as much as if no Perſon had been appointed, and then the Law appoints it to the Executor; as the Money firſt came out of the Perſonal Eſtate, and the Executor more repreſents the Teſtator than the Heir. 1 *Inſt* 210. 2 *Ventr.* 348. *Chanc. Rep.* 284. If Heirs and Executors are named, it may be paid to either. A Man *mortgaged* Lands for Payment of ſuch a Sum to the *Mortgagee*, his Heirs, Executors or Aſſigns; the *Mortgagee* died, and made the Heir within Age his Executor, and the *Mortgagor* paid the Money at the Day to the Heir; it was held, that the Heir had not the Money as Heir, but that it ſhould be Aſſets in his Hands as Executor. 3 *Leon.* 59. But it hath been adjudged, that upon a *Mortgage* of Land in Fee, with Condition to pay to the Heirs or Aſſigns of the *Mortgagee*, the Heirs and not the Executors ſhall have the Money. *Chanc. Rep.* 88. When the Heir of the *Mortgagee* is to reconvey the Eſtate *mortgaged*, and there is no Defect of *Aſſets* in the Hands of the Executors, the *Mortgage* Money ſhall be paid to the Heir, if the Condition was to pay it to him; or if it was to pay it to the *Mortgagee*, his Heirs or Aſſigns, or to his Heirs or Executors: But it is otherwiſe if it was to be paid to the Executors only. *Chanc. Rep.* 83. 3 *Salk.* 241. *Mortgages* have been looked upon as Part of the Perſonal Eſtate, except a *Mortgagee* in Fee otherwiſe declare the ſame. *Chanc. Rep.* 286. The Perſonal Eſtate of the *Mortgagor* ſhall alſo in Favour of the Heir, be applied to diſcharge the *Mortgage*; if there be perſonal Aſſets to pay all Legacies. 2 *Salk.* 450. And though ſuch perſonal Eſtate be Deviſed away by Will among Relations, 'tis held to be the ſame, becauſe the *Mortgage* Money is a Debt payable out of it. *Preced. Canc.* 61. An Heir of a *Mortgagor*, received Money for a Releaſe of the Equity of Redemption; it was held to be no Aſſets in Law, to ſatisfy a Judgment acknowledged by the *Mortgagor*, after the *Mortgage* and before the Releaſe, for it is but a bare Right: And the Releaſe not being by Fraud, therefore it was not Aſſets in Equity. 3 *Keb.* 307. It has been decreed, that where a *Mortgagee* lends more Money upon Bond to the *Mortgagor*, he ſhall not redeem, unleſs he pay the Money due on the Bond as well as on the *Mortgage:* Though if he *mortgage* the Equity of Redemption to another, the ſecond *Mortgagee* ſhall not be affected by this Bond, becauſe 'tis but a perſonal Charge upon the *Mortgagor.* 3 *Salk.* 240. See *Preced Chanc.* 407. In Equity it is allowed, that if Lands are thrice *mortgaged*, the third *Mortgagee* may buy in the firſt Incumbrance to protect his own *Mortgage*; and he ſhall hold againſt the ſecond *Mortgagee*, if ſuch ſecond *Mortgagee* do not ſatisfy him the Money he paid on the firſt, and alſo his own Money which he lent on the laſt *Mortgage.* 2 *Ventr.* 338. And a Purchaſer upon valuable Conſideration, purchaſing a precedent Incumbrance, ſhall protect his Eſtate againſt any Perſon that hath a *Mortgage* ſubſequent, *&c.* A *Mortgagee* without Notice of a former Incumbrance, buys in an Incumbrance precedent to that Incumbrance, which precedes his *Mortgage*; he ſhall not be impeached in Equity, but upon Payment of all that is due to him on both Eſtates. *Chanc. Rep.* 149. 2 *Lill. Abr.* 206. If a *Mortgagor* retaining the Poſſeſſion levies a Fine to another *Mortgagee*, this ſhall not bar the firſt *Mortgagee.* 1 *Lev.* 272. But in a late Caſe, a ſecond *Mortgage*, with the Title Deeds may be paid in Equity before a firſt *Mortgage* without the Deeds. In Caſe a firſt *Mortgagee* be a Witneſs to a ſecond *Mortgage* of the Land, *&c.* though there is no Proof of his knowing the Contents thereof, yet as the Preſumption is that he might be acquainted with it, this ſhall give a Preference to the ſecond *Mortgage.* 1 *P. Williams* 394. And if a Perſon being about to lend Money on *Mortgage*, inquires of a prior *Mortgagee*, whether he has any Incumbrance on the Eſtate, and he does not own the ſame, it ſhall poſtpone him. 2 *Vern.* 554. By Stat. 4 *&* 5 *W. & M. c.* 16. where *Mortgagors* make ſecond *Mortgages*, and do not diſcover the firſt, the ſecond *Mortgagee* may redeem, *&c.* A Jointreſs of *mortgaged* Lands was decreed to pay the *Mortgage* Money for Redemption, and hold over, till ſhe and her Executors ſhould be paid with Intereſt. *Chanc. Rep.* 27. And where a Deviſe of Land *mortgaged*, was to one for Life, and Remainder to another in Fee; it was adjudged, That Tenant for Life ſhould pay one third, and he in Remainder two thirds, to Redeem. *Ibid.* But 'tis otherwiſe *Preced. Canc.* 44. The Intereſt in Lands *mortgaged* is in Law in the *Mortgagee* before Forfeiture; he hath purchaſed the Land as it were upon valuable Conſideration, as the Law will intend: And though the *Mortgager* may redeem, yet it is not certainly known whether he will or no; and if he do not, the Eſtate is abſolute in the *Mortgagee.* A *Mortgagee* is eſteemed in Poſſeſſion on executing the *Mortgage*; and if the *Mortgage* Money be not paid, whereby the Land is forfeited, he may bring Ejectment without actual Entry; but where a Condition is to be defeated, it muſt be by actual Entry. 2 *Lill. Abr.* 203. After twenty Years, (the Time of Entry limited by Stat. 21 *Jac.* 1.) when no Demand has been made of the Money, or Intereſt paid, *&c.* *Mortgages* are not relievable in *Chancery*, unleſs there be extraordinary Circumſtances to induce it, as in Caſe of Feme Coverts, Infants, *&c.* 2 *Vent.* 340. It has been however held, that *Mortgages* of Lands are not within the Statute of Limitations; tho' that Act may be a proper Direction to go by: Indeed ſometimes Equity has allowed Length of Time to be pleaded in Bar; where the *mortgaged* Eſtate has deſcended as a Fee, without Claim by the *Mortgager*; and the *Mortgagee* would be intangled with a long Account. 1 *Chan. Caſ.* 102. *Abr. Caſ. Eq.* 313. Infants ſeiſed of Eſtates in Fee, in *Mortgage*, *&c.* may make Conveyances of ſuch Eſtates, by Order of the Court of *Chancery.* Stat. 7 *Ann. c.* 19. Vide *Chancery.* By a late Act, where an Action of Ejectment ſhall be brought by a *Mortgagee*, for Recovery of Poſſeſſion of *mortgaged* Lands, and no Suit is depending in any Court of Equity for foreclosing or redeeming ſuch Lands; if the Perſon who hath Right to redeem, ſhall pending the Action pay to the *Mortgagee*, or bring into Court, all the principal Money and Intereſt due, and the Coſts, it ſhall be a full Satisfaction and Diſcharge of the *Mortgage*: And the *Mortgagee* ſhall reconvey the Land, and deliver up all Deeds, *&c.* 7 *Geo.* 2. *c.* 20. And on a Bill in Equity to compel the *Mortgagor* to pay the *Mortgage* Money, or on Default to be foreclosed, *&c.* the Court on the Defendant's Application, may make any Order therein, before the Cauſe is brought to Hearing, *&c.* ſo as the Right of Redemption be not controverted. *Ibid.* Where a *Mortgagor* Covenants after Default to make further Aſſurance, for the abſolute ſure making, *&c.* this Aſſurance to be made muſt be abſolute, becauſe the Eſtate is to be ſo: But it ſhall not, without ſpecial Words, oblige him to releaſe his Equity of Redemption; nor is a Warranty to be inſerted in ſuch further Aſſurance on the bare Covenant. *Comber.* 318. See *Equity of Redemption*, and vide *Fine.*

Form *of a common* Mortgage of Lands.

THIS Indenture *made*, &c. Between A. B. *of*, &c. *of the one Part, and* C. D. *of*, &c. *of the other Part*, Witneſſeth, *That the ſaid* A. B. *for and in Conſideration of the Sum of*, &c. *to him in Hand paid by the ſaid* C. D. *the Receipt whereof he doth hereby confeſs and acknowledge, he the ſaid* A. B. hath *granted, bargained and ſold, and by theſe Preſents doth grant, bargain and ſell unto the ſaid* C. D. All *that Meſſuage or Tenement, and all thoſe Lands*, &c. *ſituate, lying and being in*, &c. *And alſo the Reverſion and Reverſions, Remainder and Remainders, Rents and Services of the ſaid Premiſſes, and of every Part and Parcel thereof with the Appurtenances*; To have and to hold *the ſaid Meſſuage or Tenement, Lands and Premiſſes above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, for and during the Term of five hundred Years next and immediately enſuing and following, and fully to be compleat and ended*; Yielding and paying *therefore yearly during the ſaid Term, one Pepper-Corn in and upon the Feaſt of St* Michael *the Archangel, if demanded*, Provided *always and upon Condition, that if the ſaid* A. B. *his Heirs or Aſſigns, do or ſhall well and truly pay or cauſe to be paid unto the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, the full Sum of*, &c. *in and upon the Day* &c. *next coming, (or which will be in the Year*, &c.) *without any Deduction or Abatement for Taxes, Aſſeſſments, or any other Impoſitions whatſoever, either ordinary or extraordinary, that then and from thenceforth theſe Preſents and every Thing herein contained, ſhall ceaſe, determine and be void; any Thing herein contained to the contrary notwithſtanding.* And *the ſaid* A. B. *for himſelf, his Heirs and Aſſigns, doth covenant and grant to and with the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, that he the ſaid* A. B. *his Heirs or Aſſigns, ſhall and will well and truly pay or cauſe to be paid unto the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, the ſaid full Sum of*, &c. *in and upon the ſaid*, &c. *without any Deduction as aforeſaid, according to the true Intent and Meaning of theſe Preſents.* And alſo *that he the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, ſhall and may at all Times, after Default ſhall be made in Performance of the Proviſo or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, poſſeſs and enjoy all and ſingular the ſaid Meſſuage or Tenement, Lands and Premiſſes abovementioned, and every Part and Parcel thereof, with the Appurtenances, for and during the Reſidue and Remainder of the ſaid Term of five hundred Years hereby granted, which ſhall be then to come and unexpired, without the Let, Trouble, Hinderance, Moleſtation, Interruption and Denial of him the ſaid* A. B. *his Heirs and Aſſigns, and of all and every other Perſon and Perſons whatſoever.* And further, *that he the ſaid* A. B. *and his Heirs, and all and every other Perſon and Perſons, and his and their Heirs, any Thing having or claiming in the ſaid Meſſuage or Tenement and Premiſſes abovementioned, or any Part thereof, ſhall and will at any Time or Times, after Default ſhall be made in Performance of the Proviſo or Condition herein contained, make, do and execute, or cauſe or procure to be done, made and executed, all and every ſuch further and other lawful and reaſonable Grants, Acts and Aſſurances in the Law whatſoever, for the further, better and more perfect Granting and Aſſuring of all and ſingular the ſaid Premiſſes above-mentioned, with the Appurtenances unto the ſaid* C. D. To hold *to him his Executors, Adminiſtrators and Aſſigns, for and during all the Reſt and Reſidue of the ſaid Term of five hundred Years above granted, which ſhall be then to come and unexpired, as by the ſaid* C. D. *his Executors, Adminiſtrators or Aſſigns, or his or their Counſel learned in the Law ſhall be reaſonably deviſed or adviſed and required.* And laſtly, *it is covenanted, granted, concluded and agreed upon, by and between the ſaid Parties to theſe Preſents, and the true Meaning hereof alſo is, and it is hereby ſo declared, that until Default ſhall be made in Performance of the Proviſo or Condition herein contained, he the ſaid* A. B. *his Heirs and Aſſigns, ſhall and may hold and enjoy all and ſingular the ſaid Premiſſes above-mentioned, and receive and take the Rents, Iſſues and Profits thereof, to his and their own proper Uſe and Benefit; any Thing herein contained to the contrary thereof notwithſtanding.* In Witneſs, *&c.*

Mortgagor, Is he that *mortgages* or pawns the Lands; and he to whom the *Mortgage* is made is called the *Mortgagee.*

Morth, (Sax.) Signifies Murder, *Morthlaga*, a Murderer or Manſlayer.

Mortmain, (*Manus Mortua*, i. e. Dead Hand, from the Fr. *Mort*, viz. *Mors*, and *Main*, *Manus*) is where Lands and Tenements are given or aliened to any Houſe of Religion or Corporation, ſole or aggregate,

gregate, Eccleſiaſtical and Temporal, and their Succeſſors, &c. which may not be done without Licence from the King: And the Reaſon of the Name proceeds from this, that the Services and other Profits due for ſuch Lands, ſhould not without ſuch Licence come into Hands as it were dead, and be ſo dedicated to pious Uſes as to be abſtractedly different from other Lands, and never to revert to the Donor, or any temporal or common Uſe. And becauſe the Lords had nothing from the Alienees; for by Alienation in *Mortmain* they loſt their Eſcheats, and many Services which were heretofore due to them, as Bodies Politick never die, nor can perform perſonal Service, commit Treaſon or Felony, &c. This occaſioned the Statutes of *Mortmain*, by Virtue whereof, the King or other Lord of whom the Land is holden, may enter into Lands ſo aliened. 1 *Inſt*. 2. 2 *Inſt*. 75. The Foundation of all the Statutes of *Mortmain* was *Magna Charta*. By the 9 *H*. 3. *c*. 36. it is declared, that it ſhall not be lawful for any to give his Lands to any Religious Houſe, and to take the ſame Land again to hold of the ſame Houſe, &c. upon Pain that the Gift ſhall be void, and the Land ſhall accrue to the Lord of the Fee. This Statute is interpreted to extend to Lands, which a Religious Houſe kept in their own Hands, though they gave them not back again to hold of the ſame Houſe. 2 *Inſt*. 75. But Eccleſiaſtical Perſons found Means to creep out of the Statute, by purchaſing Lands holden of themſelves, or by making Leaſes for a long Term of Years, &c. wherefore by 7 *Ed*. 1. commonly called the *Statute of Mortmain*, or *de Religioſis*, no Perſons religious, or others whatſoever, ſhall buy or ſell any Lands or Tenements, or under the Colour of any Gift or Leaſe, or by Reaſon of any other Title receive the ſame, or by any other Craft ſhall appropriate Lands in any wiſe to come into *Mortmain*, on Pain of Forfeiture; and within a Year after the Alienation, the Lord of the Fee may enter; and if he do not, then the next immediate Lord, from Time to Time may enter in Half a Year; and for Default of all the Lords entring, the King ſhall have the Lands ſo alienated for ever, and may enfeoff others by certain Services, &c. As this Statute extended only to Gifts, Alienations, &c. made between Eccleſiaſticks and others, they found out an Evaſion alſo of this Statute; for pretending a Title to the Land, which they meant to gain, they brought a feigned Action againſt the Tenant of the Land, and he by Conſent and Colluſion was to make Default, and thereupon they recovered the Land, and entered by Judgment of Law: So that the Stat. *Weſt*. 2. 13 *Ed*. 1. *c*. 32. was thought neceſſary; by which it is to be inquired by the Country whether the Demandant had a juſt Title to the Land; and if ſo, then he ſhall recover Seiſin; but if otherwiſe, the Lord of the Fee ſhall enter, &c. And by 34 *Ed*. 1. Lands ſhall not be alienated in *Mortmain*, where there are mean Lords, without their Conſent declared under Hand and Seal; nor ſhall any Thing paſs where the Donor reſerves nothing to himſelf. Notwithſtanding all theſe Statutes, Eccleſiaſtical Perſons (not being able to get Lands by Purchaſe, Gift, Leaſe, or Recovery) procured Lands to be conveyed by Feoffment, or in other Manner, to divers Perſons and their Heirs, to the Uſe of them and their Succeſſors, whereby they took the Profits. 2 *Inſt*. 75. To bar this, the Stat. 15 *R*. 2. *c*. 5. was made, which Statute enacts, that no Feoffment, &c. of any Lands and Tenements, Advowſons or other Poſſeſſions, to the Uſe of any Spiritual Perſons, or whereof they ſhall take the Profits, ſhall be made without Licence of the King, and of the Lords, &c. upon Pain of Forfeiture. And by 23 *H*. 8. *c*. 10. againſt ſuperſtitious Uſes, Forfeitures, Fines, Recoveries Grants, Deviſes, &c. of Lands, in Truſt to the Uſe of any Pariſh Church, or to have perpetual *Obits*, or continual Service of a Prieſt for ever, or for ſixty Years, &c. to the Prejudice of the King and other Lords, as in Caſe of Lands aliened in *Mortmain*, ſhall be void: Though this laſt Statute extends not to Corporations, where there is a Cuſtom to deviſe Lands in *Mortmain*; as in *London*, a Freeman that pays Scot and Lot may deviſe all his Lands in the City in *Mortmain*, without Licence. 1 *Roll. Abr*. 556. And notwithſtanding this, or any of the aforeſaid Statutes, any Man at this Day may give Lands, Tenements, &c. to any Perſons and their Heirs, for finding a Preacher, Maintenance of a School, Reparation of Churches, Relief of the Poor, &c. or for any like charitable Uſes: Tho' it is good Policy on every ſuch Eſtate to reſerve a ſmall Rent to the Feoffor and his Heirs, when the Feoffees ſhall be ſeiſed to their own Uſe, and not to the Uſe of the Feoffor; or if a Conſideration of a ſmall Sum be expreſſed, the 23 *H*. 8. cannot by any Pretence make void the Uſe. 1 *Rep*. 24. 11 *Rep*. 70. *Wood's Inſt*. 303. By the Statute 39 *Eliz*. *cap*. 5 the Gift of Lands, &c. to Hoſpitals is permitted without obtaining Licences of *Mortmain*. Owners of Impropriations may annex them to the Parſonage or Vicarage where they lie, or ſettle them in Truſt for the Curates, where the Parſonage is impropriate, and no Vicarage endowed, without Licence of *Mortmain*: And if the ſettled Maintenance of any Benefice with Cure ſhall not amount to 100*l*. *per Annum*, the Incumbent may purchaſe to him and his Succeſſors, &c. without Licence in *Mortmain* 17 *Car*. 2. *c*. 7. By ancient Statutes, the King's Licence may be had for authorizing of Lands, and the Writ of *Ad quod Damnum* is to iſſue out of *Chancery* to inquire concerning the ſame. 27 *Ed*. 1. Prelates, Clerks, &c. ſhall not be impeached for purchaſing Lands in *Mortmain*, on producing the King's Charter of Licence. 18 *E*. 3. And it is declared lawful for the King to grant to any Perſon, Body Politick or Corporate, their Heirs and Succeſſors, Licence to alien in *Mortmain*; and purchaſe and hold in *Mortmain* in Perpetuity, &c. without incurring any Forfeiture, by Stat. 7 & 8. *W*. 3. *c*. 37. A Grant of an Advowſon in Fee, or an Appropriation of an Advowſon, hath been adjudged a *Mortmain*; but an Appropriation of Tithes, which are Things meerly Spiritual, or a Grant of an Annuity, that chargeth the Perſon only, cannot be *Mortmain*, to be forfeited. 1 *Inſt*. 2. 304. 2 *Inſt*. 361. 5 *Rep*. 56. 9 *Rep*. 96. A late Statute has ordained, that no Manors, Lands, &c. ſhall be given, granted to, or ſettled on any Perſons, Bodies Politick or Corporate, for any Eſtate whatſoever, or charged in Truſt for charitable Uſes, unleſs done by Deed indented, and ſealed at leaſt twelve Months before the Death of the Donor or Grantor, and inrolled in *Chancery* within ſix Months after executed, &c. and except the ſame be to take Effect in Poſſeſſion immediately; and without any Power of Revocation, &c. And if otherwiſe made, ſhall be void: But not to extend to Purchaſes for a valuable Conſideration; nor to the two Univerſities, or Colleges of *Eaton*, *Wincheſter*, &c. Statute of *Mortmain*, 9 *Geo*. 2. *c*. 36.

Mortuary, (*Mortuarium*) Is defined to be a Gift left by a Man at his Death to his Pariſh Church, in Recompence of perſonal Tithes omitted to be paid in his Life-time: Or it is that Beaſt or other Cattle moveable, which, after the Death of the Owner, by the Cuſtom of ſome Place is due to the Parſon, Vicar, or Prieſt of the Pariſh, in lieu of Tithes or Offerings forgot, or not well and truly paid by him that is dead. *Terms de Ley* 449. Mr. *Selden* tells us, that the Uſage anciently was to bring the *Mortuary* along with the Corpſe when it came to be buried, and to offer it to the Church as a Satisfaction for the ſuppoſed Negligence and Omiſſion the deceaſed had been guilty of in not paying his perſonal Tithes; and from thence it was called a *Corſe preſent*. *Seld*. *Hiſt*.

Hiſt. Tithes 287. A *Mortuary* is not properly due to an Eccleſiaſtical Incumbent from any but thoſe only of his own Pariſh, to whom he miniſters ſpiritual Inſtruction, and hath Right to their Tithes; but by Cuſtom in ſome Places they are paid to the Incumbent of other Pariſhes, when the Corpſe of dead Bodies paſs through them: And the Biſhops of *Bangor*, *Landaff*, *St. David's*, *&c.* formerly had *Mortuaries* of Prieſts, till taken away by a late Statute, 12 *Ann. c.* 6 In the Dioceſe of *Cheſter* there is ſaid to be a Cuſtom for the Biſhop to have a *Mortuary* on the Death of every Prieſt dying within the Archdeaconry of *Cheſter*, of his beſt Beaſt, Saddle and Bridle, and beſt Gown or Cloak, Hat, and upper Garment under the Gown, *&c. Cro. Car.* 172. Before the Stat. 21 *H* 8. *Mortuaries* were payable in Beaſts; the beſt to the Lord for a Heriot, the ſecond beſt for a *Mortuary*; nor was it only *De meliori Averio, ſed de meliori re:* And *Mortuarium* (ſays *Linwood*) *ſic dictum eſt quia relinquitur Eccleſiæ pro Anima Defuncti.* It hath been held, that ſuch a Right was veſted in the Parſon to have the ſecond beſt Beaſt for a *Mortuary*, (where by Cuſtom it was due) that he might ſeiſe it wherever he could find it; but they are now ſettled to be paid in Money. 2 *Inſt.* 491. *Clergym. Law* 474. No *Mortuary* is originally due by Law, but by Cuſtom only: And Cuſtom did ſo prevail, that *Mortuaries* were held as due Debts, and the Payment of them was enjoined as well by the Statute *De Circumſpecte agatis*, 13 *Ed.* 1. as by ſeveral Conſtitutions, *&c.* And by the 21 *H.* 8. *cap.* 6. *Mortuaries* are to be paid as follows, *viz.* He that dies poſſeſſed of moveable Goods to the Value of 40 *l.* or above, (his Debts firſt paid) is to pay 10 *s.* He that dieth poſſeſſed of Goods of 30 *l.* Value and under 40 *l.* is to pay 6 *s.* 8 *d.* And dying poſſeſſed of Goods to the Value of 6 *l.* 13 *s.* 4 *d.* and under 30 *l.* to pay 3 *s.* 4 *d.* But if the Goods are under 6 *l.* 13 *s.* 4 *d.* Value, no *Mortuary* is to be paid; and no *Mortuary* is to be paid by any Feme Covert or Child, Perſons not keeping Houſe, *&c.* If one happens to die in a Place where he does not reſide, by this Statute the *Mortuary* ſhall be paid in the Place where he had his moſt Abode; no Perſon ſhall pay *Mortuaries* in more Places than one, or more than one *Mortuary*; and no *Mortuary* ſhall be demanded of any but in ſuch Places where *Mortuaries* are due by Cuſtom, and have uſed to have been paid: Alſo there is a Proviſo in the Statute, that in Places where *Mortuaries* have been of leſs Value than as aforeſaid, no Perſon ſhall pay any more than has been accuſtomed. If a Parſon, Vicar, *&c.* take or demand more than is allowed by the Statute for a *Mortuary*, he ſhall forfeit all he takes beyond it, and 40 *s.* more to the Party grieved, to be recovered by Action of Debt, *&c.* Stat. *Ibid.* Since this Statute, whereby *Mortuaries* are reduced to a Certainty, an Action of Debt will lie upon the ſaid Statute in the Courts of Common Law, for Recovery of the Sum due for a *Mortuary*, being by Cuſtom as aforeſaid, although before that Statute they were recoverable only in the Spiritual Court: But as ſuch Actions have never been brought, it is ſaid, they are ſtill recoverable in that Court only. *Watſ. Clergym. Law* 475. *Count. Parſ. Compan.* 140. Where by Cuſtom a *Mortuary* hath not been uſually paid, if a Perſon be libelled in the Spiritual Court, he ſhall have a *Prohibition* by Virtue of the Statute 21 *H.* 8. And upon a Prohibition the Cuſtom may be tried, *&c.* 2 *Lutw.* 1066. 3 *Mod.* 268.

Mortuarium, Hath been ſometimes uſed in a Civil as well as Eccleſiaſtical Senſe, being payable to the Lord of the Fee.——*Debentur Domino Maner. de* Wrechwyke *nominibus Heriotti &* Mortuarii *duæ Vaccæ pret. xii ſol.* Paroch. Antiq. 470.

Moſaical Law. This Law inflicts not a Capital Puniſhment for bare Thefts, agreeable to which is the *Civil Law*; but *our Law* doth, as in ſtrict Juſtice for the Welfare of Society it may. *Exod.* 22. *S. P. C.* 25. 1 *Hawk. P. C.* 89.

Moſs-Troopers, A rebellious Sort of People in the *North* of *England*, that lived by Robbery and Rapine, not unlike the *Tories* in *England*, the *Buckaneers* in *Jamaica*, or *Banditti* of *Italy:* The Counties of *Northumberland* and *Cumberland*, were charged with an yearly Sum, and a Command of Men to be appointed by Juſtices of Peace, to apprehend and ſuppreſs them. Stat. 4 *Jac.* 1. *c.* 1. 13 & 14 *Car.* 2. *c.* 22. 30 *Car.* 2. *c.* 2. See 6 *Geo.* 2. *c.* 37.

Mote, (*Mota*, Sax. *Gemote, Curia*) A Court or Convention: As *Mota de Hereford*, i. e. *Curia vel Placita Comitatus de Hereford.* Hence *Burgemote*, *Curia vel Conventus Burgi*; Swaingemote, *Curia Miniſtror. Foreſtæ*, *&c.* Alſo *Mota* was ſometimes taken for a Fortreſs; as Turris *de London*, & Mota *de Windſor*, the Tower of *London* and Fortreſs of *Windſor*. *Chart.* K. *Stephen.* It likewiſe ſignifies a ſtanding Water to keep Fiſh; or a great Ditch encompaſſing a Caſtle or Dwelling Houſe.—— *Hæc Indentura*, *&c. teſtatur quod prædict' Rogerus tradidit præfato Thomæ tria Stagna & unam* Motam Piſcariam *exiſten. intra Manerium*, *&c. Habend. &c. cum tota Piſcatione in eiſdem & cum incremento Piſcium in eiſdem cum libero ingreſſu & egreſſu*, *&c.* Chart. dat. 18 Feb. 11 Ed. 4.

Mote-bell, or *Mot bell*, the Bell ſo called, which was uſed by the *Engliſh Saxons* to call People together to the Court. *Leg. Edw. Confeſſ. cap.* 35. See *Folcmote.*

Moteer, A cuſtomary Service or Payment at the *Mote* or Court of the Lord: From which ſome Perſons were exempted by Charter of Privilege. *Rot. Chart.* 5 *Joh. m.* 9.

Mothering, Is a Cuſtom of viſiting Parents on *Midlent Sunday.* See *Lætare Jeruſalem.*

Motibilis, One that may be removed or diſplaced, or rather a Vagrant. ——— *In Carcere detenti, Canonici vel alii Religioſi*, Motibiles, *Furioſi*, *&c. convenire non poterunt*, i. e. *in Jure convenire non poſſunt.* Fleta, lib. 6. cap. 6.

Motion in Court. In the Courts of *Chancery*, *King's Bench*, *&c. Motions* are made by Barriſters and Counſellors at Law, for what concerns their Clients Cauſes: And where any *Motion* is made in *Chancery*, that is not of Courſe, generally an Affidavit of the Facts alledged muſt be read in Court: And if *Motions* are founded on the general Rules or Uſage of the Court, and are not of Courſe, but granted or denied as the Court thinks fit, on hearing Counſel on both Sides, Notice is to be given in Writing to the Solicitor of the other Party, or his Clerk in Court, expreſſing every Thing moved for, which muſt be ſerved two Days at leaſt before the Day on which the *Motion* is to be made, whereof Affidavit muſt alſo be made. *Practic. Solic.* 17. In *B. R.* one ought not to move the Court for a Rule for a Thing to be done, which by the common Rules of Practice may be done without moving the Court for it: Nor ſhall the Court be moved for the doing what is againſt the Practiſe of the Court: One ought not to move for ſeveral Things in one *Motion*; and where a *Motion* hath been denied, the ſame Matter may not be moved again by another Counſel, without acquainting the Court thereof, and having their Leave for the ſame: But every Perſon who makes a ſolemn Argument at the Bar, is allowed by the Court a *Motion* for his Argument. 2 *Lill. Abr.* 209, 210. If there be divers Rules of Court made in a Cauſe, and the Party intends to move thereon, he muſt produce the Rule that was laſt made in the Cauſe, and move upon that: But it is neceſſary to have all the Rules and Copies of the Affidavits, to ſatisfy the Court how the Cauſe hath been proceeded in, and how it ſtands in Court; though the laſt Rule is the moſt material: And where a *Motion* is made to ſet aſide a Rule grounded on an Affidavit, a Copy of the Affidavit muſt be produced, that the Court may be informed upon what Grounds the Rule was made, and judge whether there be Cauſe ſhewn upon the *Motion* ſufficient to ſet aſide the Rule. *Paſch.* 13 *Car.* B. R. *Hill.* 1649. If any Thing be moved to the Court upon a Record, the Record is to be in Court, or the Court will make no Rule upon ſuch *Motion. Hill.* 22 *Car. B. R.* One Party ought not to ſurprize another by a *Motion in Court*, but to move in convenient Time, that the other Party may have Time to be heard. *Paſch.* 23 *Car.* It is againſt the Practice of the Court to move for an Attachment, or any Matters in Law, upon the laſt Day of the Term, except the Caſe is peremptory. *Monday* is a ſpecial Day for *Motions* in *B. R.* by the antient Courſe; but they are made upon any Day, as the Buſineſs of the Court will permit: The three or two laſt Days of the Term are Days appointed to hear *Motions*, and Crown-Office Cauſes; and the laſt Day chiefly for *Motions* to prepare Buſineſs againſt the next Term or Aſſiſes. 2 *Lill.* 208, 210. In the *Chancery*, during the Term, every *Thurſday* is a Day for Sealing, and *Motions*; and *Tueſdays* and *Saturdays* are Days for *Motions*, as are the firſt and laſt Days of the Term: In Vacation, only Seal-Days appointed by the Lord Chancellor, are Days of *Motion. Practiſ. Solic.* 17.

Moult, Is an old *Engliſh* Word for a *Mow* of Corn, or Hay; *Mullo fœni*, &c. Paroch. Antiq. 401.

Mowntee, An Alarm or Outcry, to mount and make ſome ſpeedy Expedition, mentioned in the Statutes *Hen.* 5.

Muffulæ, Winter Gloves made of Ram-Skins. *Leg. Hen.* 1. *cap.* 70.

Mulct, (*Mulcta*) A Fine of Money ſet upon one, for ſome Fault or Miſdemeanor; and Fines laid on Ships or Goods by a Company of Trade, to raiſe Money for the Maintenance of Conſuls, &c. are called *Mulcts. Merch. Dict.*

Mulier, As uſed in our Law, ſeems to be a Word corrupted from *Melior*, or the Fr. *Meliour*; and ſignifies the lawful Iſſue, born in Wedlock, (though begotten before) preferred before an elder Brother born out of Matrimony. 9 *Hen.* 6. *cap.* 11. *Smith's Republ. Angl. lib.* 3. *cap.* 6. But by *Glanvil*, the lawful Iſſue are ſaid to be *Mulier*, not from *Melior*, but becauſe begotten *è Muliere*, and not *ex Concubina*; for he calls ſuch Iſſue *Filios Mulieratos*, oppoſing them to *Baſtards. Glanv lib.* 7. *cap.* 1. It appears to be thus uſed in *Scotland* alſo; *Skene* ſaying, *Mulieratus filius* is a lawful Son, begotten of a lawful Wife. If a Man hath a Son by a Woman, before Marriage, which is a *Baſtard* and unlawful, and after he marries the Mother of the Baſtard, and they have another Son, this ſecond Son is *Mulier* and lawful, and ſhall be Heir to his Father, but the other cannot be Heir to any Man; and they are diſtinguiſhed in our old Books with this Addition, *Baſtard eigne*, and *Mulier puiſne. Co. Lit.* 170, 243. Where a Man has Iſſue by a Woman, if he afterwards marries her, the Iſſue is *Mulier* by the *Civil Law*; though not by the Laws of *England*. 2 *Inſt.* 99. 5 *Rep.* 416. Of ancient Time, *Mulier* was taken for a Wife, as it is commonly uſed for a Woman, particularly one that is not a Maid; and ſometimes for a Widow; but it has been held, that a Virgin is included under the Name of *Mulier*. 1 *Inſt.* 243.

Mulierty, (Fr. *Muillerie*) The Being or Condition of a *Mulier*, or lawful Iſſue. *Co. Lit.* 352.

Multa Epiſcopi, (From *Mulcta*) A Fine or Satisfaction given to the King by the Biſhops, that they might have Power to make their Laſt Wills and Teſtaments, and alſo to have the *Probate* of other Men's, and the Granting of Adminiſtration. 2 *Inſt.* 491.

Multiplication of Gold and Silver, Was prohibited and declared to be Felony by Statute 5 *Hen.* 4. *cap.* 4. Which Statute was made on a Preſumption that Perſons skilful in Chymiſtry, could *multiply* or augment theſe Metals, by changing other Metals into Gold or Silver; and the Endeavours of ſome Perſons in making Uſe of extraordinary Methods for the producing of Gold and Silver, and finding out the Philoſopher's Stone, were found to be ſo prejudicial to the Publick, from the laviſh Waſte of many valuable Materials, and the Ruin of many Families by ſuch uſeleſs Expences, that they occaſioned the Statute 5 *Hen.* 4. But the Reſtraint thereby having no other Effect, from the unaccountable Vanity of thoſe who fancied thoſe Attempts practicable, than to ſend them beyond Sea to try their Experiments with Impunity in other Countries, the 5 *Hen.* 5. was at laſt repealed by 1 *W.* & *M. cap.* 30. *Dyer* 88. 1 *Hawk. P. C.* 47.

Multitude, (*Multitudo*) According to ſome Authors, muſt be ten Perſons or more: But Sir *Edw. Coke* ſays, he could never find it reſtrained by the Common Law to any certain Number. *Co Lit.* 257.

A multo fortiori, Or *a Minore ad Majus.* See *Fortiori.*

Multo, Molto, or Mutto, A Mutton or Sheep; a Wether. *Brit. Cartular. Glaſton* 39.

Multones Auri, An old obſolete Coin of Gold, having an *Agnus Dei*, Sheep or Lamb on the one Side, and from that Impreſſion called *Multones*: This Coin was moſt common in *France*, and ſometimes current in *England*. Patent 33 *Edw.* 1. cited by the learned *Spelman*.

Multure, *Multura*, The ſame with *Molitura*.

Mumming, (From the *Teuton. Mummen*, to mimick) Antick Diverſions in the *Chriſtmas* Holidays, to get *Money or good Chear*.

Mundbreech, (Is derived from the Sax. *Mund*, i. e. Munitio, Defenſio, & *Brice*, fractio) And is mentioned among divers Crimes, as *Pacis fractio*, *Læſio Majeſtatis*, &c. *Spelm. Gloſſ.* Some would have *Mundbrech* to ſignify an Infringement of Privileges; though of later Times it is expounded *Clauſarum fractionem*, a Breach of *Mounds*, by which Name Ditches and Fences are called in many Parts of *England*: And we ſay, when Lands are fenced in and hedged, that they are *mounded*.

Munde, Is Peace, and *Mundebrece* a Breach of it. *Leg. H.* 1. *cap.* 37.

Muniments, (*Munimenta*) *Epiſcopus itaque cum* Munimentorum *inſpectionem habere non potuit.* Matt. Pariſ. fol. 311. See *Miniments.*

Muniment House, In Cathedral and Collegiate Churches, Colleges, or ſuch like, is a Houſe or little Room of Strength, purpoſely made for keeping the Seal, Evidences, Charters, &c. of the Church or College, called by the Name of *Muniment Houſe*; ſuch Evidences being termed *Muniments*, corruptly *Miniments.* 3 Inſt. 170.

Munimina, Are the Grants or Charters of Kings to Churches; ſo called, becauſe *cum eis muniuntur* againſt all Perſons who would deprive them of thoſe Privileges. *Blount.*

Munus Eccleſiaſticum, Signifies the conſecrated Bread, out of which a little Piece is taken for a Communicant.——— *Inſuper & omne ſacrificium quod nos dicimus* Munus Eccleſiaſticum, &c. Mon Angl. Tom. 2. p. 838.

Murage, (*Muragium*) Is a reaſonable Toll, to be taken of every Cart and Horſe coming laden thro' a City or Town, for the Building or Repairing the publick Walls thereof, due either by Grant or Preſcription: And it ſeems to be a Liberty granted to a Town by the King, for the Collecting of Money towards the Walling of the ſame. 3 *Edw.* 1. *c.* 30. 2 *Inſt.* 222. The Service of Work and Labour done by Inhabitants and adjoining Tenants in Building or Repairing the *Walls* of a City or Caſtle, was called *Murorum operatio*; and when this perſonal Duty was commuted into Money, the Tax ſo gathered was called *Murage. Paroch. Antiq.* 114. And in the City of *Cheſter*, there are two ancient Officers called *Murengers*,

rengers, being two of the principal Aldermen yearly choſen to ſee the *Walls* kept in good Repair; for the Maintenance of which they receive certain Tolls and Cuſtoms.

Murale, The City Wall.—— *Reſonabant Colles, reſonabant urbis* Muralia. *Huntingd. lib.* 8. *pag.* 392.

Muratio, A Town or Borough, ſurrounded with Walls. *Brompt. Vit. K. Steph.*

Murder, (*Murdrum*, from the Sax. *Morth*, whence comes the barbarous *Latin Mordrum* & *Murdrum*; in *French Meurdre*) Is a Word in Uſe long before the Reign of King *Canutus*, which ſome would have to ſignify a violent Death; and ſometimes the *Saxons* expreſſed it by *Morthdæd* & *Morthweorc*, a deadly Work: But I cannot find that the Sax. *Morth* relates to a violent Death, but generally *Mors*. Antiently *Murder* ſignified only the private Killing of a Man, as appears by the Laws of King *Hen.* 1. And it was not *Murder*, except the Party ſlain was an *Engliſhman*, and no Foreigner; though by the Stat. 14 *Edw.* 3. *c.* 4. the Killing of any *Engliſhman* or Foreigner, living under the King's Protection, through Malice prepenſe, and whether committed openly or ſecretly, is declared to be *Murder. S. P. C. lib.* 1. *cap.* 1. And doubtleſs the Makers of the Statute of 23 *H.* 8. *c.* 1. which excludes all wilful *Murder* from the Benefit of the Clergy, intended to include open, as well as private Homicide within the Word *Murder.* 1 *Hawk. P. C.* 78. By *Murder* at this Day, we underſtand the wilful and felonious Killing of any Man whatſoever, upon Malice forethought; ſo as the Party wounded or hurt die within a Year and a Day after the Fact: And if one dies in that Time, through diſorderly Living, it ſhall be no Excuſe, the Wound will be judged the principal Cauſe of his Death; but if one wounded die after that Time, the Law will preſume he died a natural Death. 3 *Inſt.* 53. *H. P. C.* 55. *Kel.* 26. If a Man receives a Wound, that is not mortal; but either for want of Help, or by the Neglect thereof, it turns to a Fever, &c. which cauſes the Party's Death, it is *Murder:* And ſo it is, where a Man has ſome Diſeaſe, which poſſibly would terminate his Life in half a Year, and another wounds him, that it haſtens his End, &c. But if by ill Applications of the Party, or thoſe about him, of unwholeſome Medicines, the wounded Perſon dies; if this plainly appears, it is not *Murder*, by *Hale* Ch. Juſt. *Hiſt P. C.* 428. *Murder* may be committed in divers Manners; as by Weapon, Poiſon, Cruſhing, Bruiſing, Smothering, Strangling, Starving, &c. And where a Perſon having Malice to another, ſtrikes or ſhoots at him, but miſſeth him and kills one not intended; or if one lays Poiſon to kill a Perſon, and another takes it, and dies, theſe are *Murder:* Alſo if a ſick Man be laid in the Cold, whereof he dieth, or an Infant is laid under Leaves or Trees, &c. and ſuffered to be deſtroyed by Vermin, they are Killing. 3 *Inſt.* 51. 9 *Rep.* 81. If a Perſon ſtir up a Dog accuſtomed to bite, knowing it to be ſuch, and it kill a Perſon; and if a Man have an Ox, or Horſe, which he knows to be miſchievous, by being uſed to gore or ſtrike at thoſe who come near them, and do not tie them up, if they kill a Man, according to ſome Opinions, the Owner may be indicted, as having himſelf feloniouſly killed him. *Pult.* 122. *H. P. C.* 53. 1 *Hawk P. C.* 79. Anciently it was holden that the cauſing an Abortion, by giving a Potion to, or ſtriking a Woman big with Child was *Murder:* But now it is ſaid to be a great Miſpriſion only, and not *Murder*, unleſs the Child be born alive, and die thereof. 1 *Hawk.* 80. If the Death of a Baſtard Child newly born be concealed, it ſhall be ſuppoſed to be *murdered*; if the Mother doth not prove it was born dead. Stat. 21 *Jac.* 1. *c.* 27. And if one by Dureſs of Impriſonment compel a Man to accuſe an innocent Perſon, who on his Evidence is condemned and executed; in Judgment of Law it is the Killing of the Compellor, &c. *S. P. C.* 36. 3 *Inſt.* 91. All the above Caſes ſhew Malice; ſo where a Priſoner, by the Dureſs of the Gaoler, comes to an untimely End; if one is executed contrary to the Direction of the Law; or if a Perſon kill a Man that is adjudged to Death; or one who hath no Authority ſhall execute the Judgment; if a Perſon ſentenced to be whipped, is whipped with that Rigour that he dieth of it, &c. But one under the Age of Diſcretion, or *Non Compos Mentis*, cannot be guilty of *Murder*; though if it appears by Circumſtances that the Infant did hide the Body, &c. it is Felony. *H. P. C.* 43. 3 *Inſt.* 4, 6, 54. If an Infant under twelve Years old, hath an extraordinary Wit, that it may be preſumed he knows what he does, and he kill another, it may be Felony and *Murder*; otherwiſe it ſhall not. 3 *H.* 7. 13. *Plowd.* 191. It is Malice makes the Crime of *Murder*, which is either expreſs or implied; it is expreſs, when it may be evidently proved there was formerly ſome ill Will, and the Killing is with a ſedate Mind, and formed Deſign of doing it: And implied, where one kills another ſuddenly, having nothing to defend himſelf; as going over a Stile, or the like. 3 *Inſt.* 51. *H. P. C.* 47. Such *Murder* as is occaſioned through an expreſs Purpoſe to do ſome perſonal Injury to him who is ſlain, is properly ſaid to be of expreſs Malice: And ſuch as happens in the Execution of an unlawful Action, principally intended for ſome other Purpoſe, and not expreſſed in its Nature to do a perſonal Injury to him in particular that is killed, is moſt properly Malice implied. *Kel.* 129, 130. He that doth a cruel and voluntary Act, whereby Death enſues. doth it of Malice prepenſed in the Eſteem of the Law: And if a Perſon in cool Blood, maliciouſly and deliberately beats another in ſuch a Manner, beyond any apparent Intent of Chaſtiſement, that he dieth, it is *Murder* by expreſs Malice, although he did not deſign to kill him. *H. P. C.* 49, 50. *Kel.* 64, 127, 135. But if a Perſon on any Provocation beat another ſo, that it might plainly appear he meant not to kill, but only to chaſtiſe him; or if he reſtrains himſelf till the other hath put himſelf on his Guard, and then in fighting with him killeth him, he will not be guilty of *Murder* but Manſlaughter. 1 *Hawk. P. C.* 82. When one executes his Revenge, upon a ſudden Provocation, in ſuch a cruel Manner, with a dangerous Weapon, as ſhews a malicious Intention to do Miſchief; and Death enſues, it is expreſs Malice and *Murder* from the Nature of the Fact. *Kel.* 55, 61, 65, 130. A Man chided his Servant, and upon ſome croſs Anſwer given, he having a hot Iron in his Hand, ran it into the Servant's Belly, of which he died, this was adjudged *Murder. Kel.* 64. If a Perſon is treſpaſſing upon another, by breaking his Hedges, &c. and the Owner upon Sight thereof take up a Hedge-Stake, and give him a Stroke on the Head, whereof he dies, this is *Murder*, becauſe it is a violent Act beyond the Proportion of the Provocation. *H. P. C.* And where a Boy was upon a Tree in a Park cutting of Wood, and the Keeper bid him come down, which he did; and then the Keeper ſtruck him ſeveral Blows with a Cudgel, and afterwards with a Rope tied him to his Horſe's Tail, and the Horſe ran away with him and killed him; this was held to be *Murder* out of Malice, the Boy having come down at the Keeper's Command. *Cro. Car.* 139. *H. P. C.* A Man's Son was beaten, and complaining of it to his Father, the Father in Anger beat the other Boy with a Cudgel whereof he died; the Law ſhall adjudge it to be upon that ſudden Occaſion, and ſtirring of Blood, that he made the Aſſault, and not upon Malice, unleſs it be found; and if the Diſtance of the Place where his Son complained was a Mile, it is not material, being all upon one Paſſion. *Cro. Jac.* 296. And it is the ſame in Caſe of a Brother, Couſin, Servant, *&c.* it is only Manſlaughter, not *Murder.* 2 *Lill.* 211. If two having Malice fight, and the Servant of one of them, not knowing of the Malice, killeth the other, this is *Murder* in the Maſter, and but Manſlaughter in the Servant: Though if there be a Conſpiracy to kill a Man, but no Malice againſt his Servant; if the Servant be ſlain, the Malice againſt the Maſter ſhall be conſtrued to extend to his Servant; and the Killing the Servant is *Murder.* *Dyer* 128. 1 *Mar.* If two Perſons meet and fight in cool Blood, on a precedent Quarrel, and one is killed: Or if a Perſon in a ſudden Quarrel appears to be Maſter of his Temper, and kills another, it is *Murder.* 1 *Hawk. P. C.* 81. For where two Perſons fight after a former Quarrel, it may be preſumed to be out of Malice; and when two Men fall out in the Morning, and meet and fight in the Afternoon, if one of them is killed, this is *Murder*; their After-Meeting is of Malice. *Plowd.* 474. If a Man upon a Quarrel with another, tells ſuch other that he will not ſtrike him, but will give him a Pot of Ale to ſtrike firſt, and thereupon the other ſtrikes him, and he kills the other, he is guilty of *Murder*; this being only a Cover to his malicious Intention. *H. P. C.* 48. And where a Perſon kills another, it ſhall be intended of Malice; if he prove not the contrary. *Kel.* 27. A Man aſſaults another Perſon with Malice, although he be afterwards driven by the other to the Wall, and kill him there in his own Defence, he is guilty of *Murder*, in reſpect of his firſt Intent. *H. P. C.* 47. *Kel.* 58, 129. But if the Party aſſaulted flie to the Wall, and being ſtill purſued, kills the other, it is only Manſlaughter in his own Defence. *Bract.* 3 *Ed.* 3. If one reſolves to kill the next Man he meets, and doth kill him, it is *Murder*; here Malice is implied againſt all Mankind. *Kel.* 27. By poiſoning, and where one killeth another without Provocation, Malice is implied; as where any Magiſtrate or Miniſter of Juſtice is killed in the Execution of his Office; a Sheriff, Conſtable or Watchman, doing their Duty; or any other that comes in Aid of the King's Officer; and if a Watchman be killed in ſtaying of Night-walkers, it is ſaid to be *Murder.* 3 *Inſt.* 51. *Cro. Jac.* 280. *Kel.* 60, 128. In theſe Caſes, it is a very high Contempt of the Laws, for a Perſon to execute his Revenge againſt thoſe who have no Way offended him but by doing their Duty; and he cannot come off by alledging that what he did was in a ſudden Affray, *&c.* 1 *Hawk. P. C.* 84. And if a Bailiff is killed in executing a lawful Warrant, *&c.* it is *Murder:* Nor is it any Excuſe to the Perſon, that the Proceſs was erroneous; or that the Arreſt was in the Night; that the Officer did not tell him for what Cauſe he arreſted him; or that he did not ſhew his Warrant, *&c.* being a Bailiff commonly known. 9 *Rep.* 68, 69. *Cro. Jac.* 280, 486. But if a Bailiff who is not executing his Office is killed, it is not *Murder*; for he ought to be duly executing his Office, by ſerving the Proceſs of the Law, wherein he is aſſiſted *cum Poteſtate Regis & Legis.* Cro. Car. 537. 2 Lill. Abr. 212. Therefore where the Warrant by which he acts gives him no Authority to arreſt the Party; as where a Bailiff arreſts a wrong Perſon, or *J. S.* a Baronet, by Force of a Warrant to arreſt *J. S.* Knight; or if a good Warrant is executed in an unlawful Manner; as if a Bailiff be killed in breaking open a Door, or Window to arreſt a Man; or perhaps if he arreſt one on a *Sunday*; ſince the Stat. 29 *Car.* 2. *c.* 7. by which all ſuch Arreſts are made unlawful, and he is ſlain; Malice ſhall not be implied to make it *Murder*, but the ſame ſhall be Manſlaughter only. *H. P. C.* 46. *Cro. Car.* 372. 12 *Rep.* 49. 1 *Hawk.* 86. If Bailiffs come to a Houſe to arreſt a Perſon, and the Houſe being locked they attempt to break in, whereupon the Son of the Perſon intended to be arreſted, ſhoots and kills one of them, it is not *Murder.* *Jones* 429. A Perſon was arreſted, and another not knowing the Cauſe of the Struggle, but ſeeing Swords drawn, and to prevent Miſchief, came and defended the Party arreſted, and in the Scuffle the Bailiff was killed; it was reſolved to be no *Murder* in the Perſon doing it, but that all that were preſent and aſſiſting, knowing of the Arreſt, were principal *Murderers.* *Kel.* 86. Tho' it has been held in ſuch a Caſe, that the Perſon offending is Guilty of *Murder*, whether he knew that the Perſon ſlain were an Officer or not; for all Fighting is unlawful, and he who ſeeing Perſons engaged in it, takes Part with one Side, and fights in the Quarrel, without knowing the Cauſe of it, eſpecially where the Fight is begun in Oppoſition to the Juſtice of the Nation, ſhews a Readineſs to break through the Laws on a ſmall Occaſion, and muſt at his Peril take heed what he doth. 1 *Sid.* 160. *Noy* 50. 1 *Hawk.* 85. If one attack another to rob him, and by the Reſiſtance of the Party kills him, this is *Murder.* 3 *Inſt.* 52. *Dalt.* 344. A Perſon ſtands by, and encourages or commands another to *murder* a Man; or if he come with others on purpoſe to kill him, and ſtand by while the other Perſons commit the Fact: It will be *Murder* in them all. *Plowd.* 98. 11 *Rep.* 5. And if two or more Perſons come together to do an unlawful Act, as to beat a Man, rob a Park, *&c.* and one of them kills a Perſon, this is *Murder* in all that are preſent, aiding or aſſiſting, or that were ready to aid and aſſiſt: All will be ſaid to intend the *Murder.* 3 *Inſt.* 56. *Dalt.* 347. *H. P. C.* 31. And ſuch Perſons will be judged to be preſent that are in the ſame Houſe, though in another Room, or in the ſame Park, although half a Mile off, *&c.* *H. P. C.* 47. *Kel.* 87, 116, 127. Several Perſons having conſpired to enter the King's Park, and to hunt and carry away Deer, with Deſign of killing any one that ſhould oppoſe them; though the Keeper's Servant began the Aſſault, and required them firſt to ſtand, whereupon they fled, and one of the Keeper's Men diſcharged a Piece at them, and they continued their Flight until he laid violent Hands upon one of the Offenders, and then, and not before, they killed one of the Keeper's Servants, this was held to be *Murder*; as they were doing an unlawful Act, the Law implies Malice, and they ought not to have fled, but to have ſurrendred themſelves. *Roll. Rep.* 20. By Statute, *Murder* ſhall not be adjudged where it is found by Miſadventure, but when it is done with a felonious Intent. 52 *H.* 3. *c.* 25. Offenders for *Murder* and Acceſſaries being indicted, may be arraigned at any Time within the Year, at the King's Suit; and if the Principal or Acceſſary be acquit, yet the Juſtices ſhall not ſuffer them to go at large, but either remand them to Priſon, or let them be bailed, until the Year and Day be out, allowed for an Appeal. 3 *H.* 7. *c.* 1. All Trials for *Murder* muſt be in the County where the Fact was committed, by the Common Law. *Cro. Car.* 247. But if a Perſon be wounded by a Stroke given in one County, and he dieth in another County, the Indictment may be found in the County where the Party dies, which ſhall be as well as if the Stroke had been given in the ſame County. Statute 2 & 3 *Ed.* 6. *c.* 24. The Killing muſt be in ſome County; for if the *Murder* be done out of the Realm, it cannot be determined by the Common Law, but muſt be determined by the Conſtable and Marſhal, *&c.* 3 *Inſt.* 48. *H. P. C.* 54. But ſee the Statute 2 *Geo.* 2. *cap.* 21. And *Murder* is to be expreſly found, not by Intendment, *&c.* And where the Matters on the finding of the Jury, are no more than weak Evidence thereof, the Court ought not to give Judgment on that, but upon the Facts ariſing from it. *Fitzgib.* 187. *Mich.* 4 *Geo.* 2. When one is *murdered* in the Day-Time, and the *Murderer* eſcapes untaken, the Townſhip that ſuffers it, ſhall be amerced. 3 *H.* 7. If one who ſees a *Murder* done, does not his beſt Endeavours to apprehend the *Murderer:* Or if where two are fighting, and others looking on do not endeavour to part them, if one is killed, the Lookers on may be indicted and fined. 3 *Inſt.* 53. *Noy* 50. And killing any Perſon endeavouring to part others fighting, though without any evil Intention againſt him, is *Murder.* See *Duelling*, *Manſlaughter*, *&c.* See alſo *Trial.*

Form *of an* Indictment *for* Murder.

Wilts, ſſ. THE *Jurors for our Sovereign Lord the King, upon their Oath preſent, that* A. B. *late of* M. *in the ſaid County, Yeoman, not having God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the Day of,* &c. *in the Year of the Reign of,* &c. *about the Hour,* &c. *in the Evening of the ſame Day, at* M. *aforeſaid in the ſaid County, with Force and Arms made an Aſſault in and upon one* C. D. *then and there being in the Peace of God, and of our ſaid Lord the King; and that the ſaid* A. B. *at* M. *aforeſaid in the ſaid County, did feloniouſly, wilfully and of his Malice forethought ſtrike and wound the ſaid* C. D. *with a Sword, of the Value of three Shillings, which the ſaid* A. B. *had and held then and there drawn in his Right Hand, and did feloniouſly and of his Malice forethought, at* M. *aforeſaid in the ſaid County, give to the ſaid* C. D. *one mortal Wound with the Sword aforeſaid, in and upon the right Part of his Thigh, of the Length of three Inches, and of the Depth of two Inches, of which ſaid mortal Wound the ſaid* C. D. *at* M. *aforeſaid in the ſaid County, inſtantly died; and ſo the ſaid Jurors upon their Oath aforeſaid ſay, that the ſaid* A. B. *on the ſaid Day of,* &c. *in the Year abovementioned, at* M. *aforeſaid in the ſaid County, did feloniouſly, wilfully, and of his Malice forethought, kill and* murder *the ſaid* C. D. *in Manner and Form aforeſaid, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.*

Murder, *or Homicide juſtifiable.* There is a Killing that is juſtifiable; as if a Perſon attempts to commit *Murder*, Robbery, or other Felony, a Man or any of his Servants, may lawfully kill him. 2 *Inſt.* 316. See Statute 24 *H.* 8. *c.* 5. If a Perſon in Defence of the Poſſeſſion of a Room in a publick Houſe kill another who attempts to turn him out of it, the Killing the Aſſailant hath been holden to be juſtifiable. *Kel.* 51. 1 *Hawk.* 83. In the Defence of the Poſſeſſion of a Man's Goods, againſt him that would wrongfully take them away, Killing cannot be juſtified; except he be a Thief. *Wood's Inſt.* 561. If a Woman kills a Man attempting to raviſh her, it is juſtifiable. *H. P. C.* 39. Thoſe who are engaged in a Riot, or forcible Entry, *&c.* ſtanding in Oppoſition to a Juſtice's Command, or lawful Warrant: Or if Treſpaſſers in a Foreſt or Park, will not ſurrender but defend themſelves: If a Felon will not ſuffer himſelf to be arreſted, and refuſing to obey any Arreſt on lawful Warrant, defends himſelf; or if one either with or without a Warrant, purſues a Felon upon Hue and Cry, and he flies for it: If a Priſoner aſſaults thoſe that conduct him to Gaol, or his Gaoler in endeavouring to eſcape; or a Perſon arreſted, reſiſt the Sheriff, *&c.* the Killing theſe is juſtifiable; but a Sheriff cannot kill one that flies from the Execution of a Civil Proceſs: And as no private Perſon hath this Authority, upon an Arreſt in a Civil Matter, as he hath upon an Arreſt for Felony; ſo neither hath the Sheriff this Power in Criminal Caſes, but upon a Neceſſity; as when an Offender cannot be taken without killing, *&c.* for if he might be taken without killing him, it will be eſteemed *Murder.* 3 *Inſt.* 56. 221. *H. P. C.* 37. *Dalt.* 150, 355. *Kel.* 28. When one in Danger of drowning, thruſts another from a Plank, whereby he is drowned; this is juſtifiable. *Bac. Max.* 25. And there is a *Homicide* or *Killing excuſable*, where a Man kills another merely in his own Defence, called *ſe Defendendo.*

A Perſon *indicted* for *intending to Murder* the Maſter of the Rolls, *Term. Mich.* 16 *Car.* 2. and for offering a Sum of Money to another Perſon to do it, ſaying at the ſame Time, that if he would not perpetrate the Crime, he would do it himſelf; upon his Conviction, the Court declared that this was a heinous Offence, and not only indictable but fineable, and the Offender was fined one thouſand Marks, committed to Priſon for three Months, and ordered to find Sureties for his good Behaviour during Life. 1 *Lev.* 146

Muſcovy Company, Of Merchants, eſtabliſhed by King *Ed.* 6. This Company trades to *Ruſſia* and the North; and any Subject of *England*, on Requeſt may be admitted into it, and enjoy all Privileges, paying only the Sum of 5 *l.* by Stat. 10 *&* 11 *W.* 3. *c.* 6. In order to open a Trade to *Perſia* through *Muſcovy* a late Statute has ordained, that all Perſons free of this Company may import from any Place in *Ruſſia*, Raw Silk or other Commodities of *Perſia*, purchaſed by Barter with woollen Manufactures exported from *England*, *&c.* 14 *Geo* 2. *cap.* 36.

Muſicians, The *Muſicians of England*, were incorporated by King *Charles* 2. *Anno* 1670. And of late Years all foreign *Muſick*, Opera's, *&c.* have very much increaſed upon us, through the Management of this Corporation, and the Softneſs and Politeneſs of our modern Gentry. See *Minſtrels.*

Muſter, (From the Fr. *Mouſtre*) is to ſhew Men, and their Arms, that are Soldiers, and inrol them in a Book. *Terms de Ley.* *Faire* Mouſtre *general de tout ſon Armie*, is as much as *Luſtrare exercitum*; the Signification being well known to *Muſter an Army:* And *muſtered of Record* is to be inrolled in the Number of the King's Soldiers. Stat. 18 *H.* 6. *c.* 19. If any Men commanded to *Muſter*, by thoſe who have Authority, abſent themſelves, or do not bring their beſt Arms, they ſhall be impriſoned ten Days, or pay a Fine of 40 *s.* by 4 *&* 5 *P. & M.* 3. See *Sildiers.*

Muſter-Maſter general, Mentioned in the 35 *Eliz. c.* 4. See *Maſter of the King's Muſters.*

Muta Canum, (Fr. *Meute de Chiens*) Signifies a Kennel of Hounds, in antient Records: And the King at a Biſhop's and Abbot's Deceaſe, had ſix Things. 1. *Optimum Equum ſive Palefridum ipſius Epiſcopi, &c.* 2. *Unum Chlamydem ſive Clocam cum Capella.* 3. *Unum Ciphum cum coopertorio.* 4. *Unum pelvem cum lavatorio.* 5. *Unum Annulum aureum.* 6 *Necnon* Mutam Canum; *quæ ad Dom. Regem, ratione Prærogativæ ſuæ ſpectant & pertinent.* Hill. 2 Edw. 2. in Stat. poſt mortem Epiſc. Bath. & Willenſ. & Clauſ. 30 Ed. 1. M. 16. Vide *Mortuary.*

Mutare, To mew up Hawks, in the Time of their Molting or Caſting their Plumes. In the Reign of King *Ed.* 2. the Manor of *Broughton in Com. Oxon.* was held. ——— *Per Serjeantiam* Mutandi *unum Hoſtricum Domini Regis, &c.* Paroch Antiq. 560. *Mutatus accipiter* is a mewed Hawk: And hence the *Mews*, (*Muta Regia*) near *Charing Croſs*, *London*, now the King's Stables, was formerly the Falconry or Place for the King's Hawks.

Mute, (*Mutus*) One Dumb, that cannot ſpeak, or who refuſes to ſpeak. And by our Law a Priſoner may ſtand *Mute* two Manner of Ways: 1. When he ſpeaks not at all, and it ſhall be inquired whether he ſtand *Mute* out of Malice, or by the Act of God; and if by the latter, then the Judge ought to inquire whether he be the ſame Perſon, and of all Pleas which he might have pleaded in his Defence, if he had not been *Mute.* 2. When the Priſoner pleads not directly, or will not put himſelf upon the Inqueſt to be tried; and a Perſon feigning himſelf Mad, and refuſing to anſwer, ſhall be taken as one who ſtands *Mute.* 2 *Inſt. H. P. C.* 226

226. Alſo if a Priſoner on his Trial peremptorily challenge above the Number of Jurors allowed by Law, this being an implied Refuſal of a legal Trial, he ſhall be dealt with as one that ſtands *Mute*, and according to ſome Opinions be hang'd. *H. P. C.* 259. *Kel.* 36. 2 *Hawk.* 327. A Felon obſtinately ſtanding *Mute* is to be put to the Penance of *Paine forte & Dure:* In Caſe of High Treaſon where the Offender ſtands *Mute*, he ſhall have Judgment and forfeit Lands and Goods, as if he had been attainted; likewiſe in the Caſe of Felony and Petit Treaſon, if a Perſon by ſtanding *Mute* do not avoid being attainted for ſuch Crimes, he ſhall forfeit his Lands and Goods in the ſame Manner as on other Attainders: Though whenever a Perſon ſtanding *Mute* is adjudged to his Penance for Felony, and thereby prevents that Attainder which otherwiſe he might have incurred, he forfeits his Chattels only, and not his Lands. 2 *Hawk. P. C.* 330, 331. It is ſaid by Sir *Matth. Hale*, that an Appellee of Felony ſtanding *Mute* ſhall be executed, and not have Judgment of Penance; but the contrary hath been held by others. *H. P. C.* 226. *S. P. C.* 150. 2 *Inſt.* 178. *Kel.* 37. One who ſtands *Mute* ſhall have the Benefit of his Clergy, unleſs it be otherwiſe ſpecially provided by ſome Statute. And although it be enacted by the Stat. 3 & 4 *W. & M. c.* 9. That if any Perſon ſhall be indicted of any Offence, for which by Virtue of any former Statute, he is excluded from the Benefit of his Clergy, if he had been thereof convicted by Verdict or Confeſſion, if he ſtand *Mute* he ſhall not be admitted to the ſame; yet Appeals, and Offences excluded from the Benefit of the Clergy, by ſubſequent Statutes, ſeem not within that Act: And a Statute taking away the Benefit of Clergy generally from thoſe who are convicted of a Crime, doth not take it away from thoſe who ſtand *Mute* on an Indictment or Appeal. 2 *Hawk.* 332. See *Felony*.

Mutual Promiſe, Is where one Man *promiſes* to pay Money to another, and he in Conſideration thereof *promiſes* to do a certain Act, &c. Such *Promiſes* muſt be binding, as well of one Side as the other; and both made at the ſame Time. *Hob.* 88. 1 *Salk.* 21. Where there are *mutual Promiſes*, and one of the Parties dies, whereby the other Party could not charge the Executor on the *Promiſe* of the Teſtator; yet 'tis here ſaid the *Promiſe* by the Survivor ſhall continue. *Yelv.* 133. But it is held, that on *Mutual Promiſes* and *Covenants*, equal Remedies are on both Sides; tho' the Performance need not be preciſely alledged, &c. 3 *Salk.* 15, 108. 1 *Lev.* 88. 2 *Mod.* 34.

Mutuatus. If a Man oweth another Perſon 10*l.* and hath a Note for the ſame, without Seal, Action of Debt lies upon a *Mutuatus*; but in this there may be Wager of Law, which there may not be in Action upon the Caſe, on an implied Promiſe of Payment, &c. *Compt. Attorn.* 6, 111.

Mutuo, In a legal Underſtanding, ſignifies to Borrow or to lend. 2 *Saund.* 291.

Mutus & Surdus, A Perſon dumb and deaf, and being Tenant of a Manor, the Lord ſhall have the Wardſhip and Cuſtody of him. 2 *Cro.* 105. If a Man be dumb and deaf, and have Underſtanding, he may be a Grantor or Grantee of Lands, &c. 1 *Co. Inſt.*

Myſtery, (*Myſterium*, From the Fr. *Meiſtier*, i. e. *Ars, Artificium*) An Art, Trade, or Occupation.

N.

NAB, To *Nab* a Perſon. —— *In ipſo Articulo aliquem opprimere.* Litt. Dict.

Nacella, A Skiff or Boat. *Tranſitum per* Nacellas *& alia vaſa præparavit.* Mat. Pariſ.

Nacta, Nafta, A ſmall Ship, Yacht, or Tranſport Veſſel. *Chartular. Abbat. Rading. MS. fol* 51.

Nam, or **Naam**, (*Namium*, from the Sax. *Niman*, i. e. *capere*) Signifies the Taking or Diſtraining another Man's moveable Goods. And *lawful Naam*, which is a reaſonable Diſtreſs, proportionable to the Value of the Thing diſtrained for, was anciently called either *Vif* or *Mort*, quick or dead, as it conſiſted of dead or quick Chattels; and it is when one takes another Man's Beaſts *Damage-feaſant*, in his Ground, or by a Perſon's particular Fact, by Reaſon of ſome Contract made; as for Default of Payment of an Annuity, it ſhall be lawful to diſtrain in ſuch or ſuch Lands, &c. And there is a *Naam unlawful*, mentioned in our Books. *Horn's Mirror, lib.* 2. —— *Nemo* Namium *capiat in Comitatu vel extra Comitatum, priuſquam ter in Hundredo ſuo rectum ſibi perquiſierit.* Leg. Canut. c. 18. *Non licebit* Namium *ſumere vel vadimonium, nec Averia ſua imparchiare.* Spelm. Gloſſ.

Namation, (*Namatio*) A Taking or Diſtraining; and in *Scotland* it is uſed for Impounding: *Namatus*, diſtrained. *Charta Hen.* 2. See *Vetitum Namium*, and *Withernam*.

Name, (*Nomen*, Fr. *Noſme*) By which any Perſon is known or called. There is a Name of Perſons, Bodies Politick, and Places; and of Baptiſm, and Surname; alſo *Names* of Dignity, &c. In ſome Caſes, a *Name* by Reputation is ſufficient; but it is not ſo of a Thing, if the Matter and Subſtance be not right. 11 *Rep.* 21. 6 *Rep.* 65. 4 *Rep.* 170. Vide *Miſnomer*.

Napery, (from the *Ital. Naperia*, i. e. *Linteamina Domeſtica*, Linen Cloth, or Houſhold Linen. Stat. 2 *R.* 2. *c.* 1.

Narr, An Abbreviation of *Narratio*, uſed to ſignify a *Declaration* in a Cauſe.

Narrator, (*Lat.*) A Pleader or Reporter; and formerly *Serviens Narrator* was a Serjeant at Law. —— *Et ulterius in Curia Regis pro aliquo* Narrare *non audietur, niſi pro ſemetipſo ſi* Narrator *fuerit.* Fleta, lib. 2. cap. 37.

Naſſe or **Neſſe**, (From the Sax. *Naſe*, i. e. *Promontorium*) The Name of the Port or Haven of *Orford* in *Suffolk*, mentioned in the Stat. 4 *H.* 7. *cap.* 21.

Natale, The State, Condition and Quality of a Man. *Leg. H.* 1. *c.* 64.

Nathwyte, Seems to be derived from the Sax. *Nath*, i. e. Lewdneſs; and ſo to ſignify the ſame with *Lairwite*.

Nativi de Stipite. In the Survey of the *Dutchy* of *Cornwall*, there is Mention of *Nativi de Stipite*, and *Nativi Conventionarii*; the Firſt were Villeins or Bondmen, by Birth or Stock; the other by Contract or Agreement. *LL. Hen.* 1. *cap.* 76. And in *Cornwal* it was a Cuſtom, that a Freeman marrying *Nativam*, if he had two Daughters, one of them was Free, and the other Villein. *Bract. lib.* 4. *c.* 21.

Nativity, (*Nativitas*) Birth, or the being born in a Place. *The Caſting the Nativity*, or by Calculation ſeeking to know how long the *Queen* ſhould live, &c. was made Felony, by 23 *Eliz. cap.* 2. *Nativitas* was anciently taken for Servitude, *Bondage* or *Villeinage*. Leg. Will. 1.

Nativo habendo, Was a Writ that lay to the Sheriff, for a Lord who claimed Inheritance in any *Villein*, when his Villein was run away from him, for the Apprehending and Reſtoring him to the Lord: And the Sheriff might ſeiſe the Villein, and deliver him unto his Lord, if he confeſſed his Villenage; but if he alledged that he was a Freeman, then the Sheriff ought not to ſeiſe him, but the Lord was to ſue forth a *Pone* to remove the Plea before the Juſtices of *C. B.* &c. And if the Villein purchaſed a Writ *De Libertate probanda* before the Lord had taken out the *Pone*, it was a *Superſedeas* to the Lord, that he proceeded not on the Writ of *Nativo habendo*. *Reg. Orig.* 8, 7. *F. N. B.* 77. *New Nat. Brev.* 171, 172. This Writ *Nativo habendo* was in Nature of a Writ of Right, to recover the Inheritance in the Villein; upon which the Lord was to purſue his Plaint, and declare thereupon, and the Villein to make his Defence, ſo as the Freedom was to be tried. *New Nat. Br.* 171, 173.

Nativus, Is uſed in our ancient Law for a Servant: Of Servants there were three Kinds, *Bondmen*, *Natives*, and *Villeins*; and *Natives* were ſuch as were born Servants. *Spelm. Gloſſ.* See *Servi Nativa.* Vide *Nief.*

Natural Affection, (*Naturalis Affectio*) Is a good Conſideration in a Deed; and if one without expreſſing any Conſideration, Covenant to ſtand ſeiſed to the Uſe of his Wife, Child, or Brother, *&c.* Here the naming them to be of Kin, implies the Conſideration of *Natural Affection*, whereupon ſuch Uſe will ariſe. *Cart.* 138. See *Conſideration.*

Naturalization, (*Naturalizatio*) Is where a Perſon who is an *Alien*, is made the King's *natural* Subject by Act of Parliament, whereby one is a Subject to all Intents and Purpoſes as if he were born ſo: For by *Naturalization*, a Perſon's Iſſue, before the *Naturalization*, ſhall inherit. 1 *Inſt.* 8, 129. A Stranger *naturalized* by Act of Parliament, may have Lands by Diſcent, as Heir at Law, as well as have them by Purchaſe: But until *naturalized* or made Denizen, a Stranger is not generally under the King's Protection, to have the Benefit of the Laws; alſo no Perſon is to be *naturalized* until he has received the Sacrament of the Church, and taken the Oaths of Allegiance and Supremacy, *&c.* And Strangers when *naturalized* are diſabled to be of the Privy Council, to hold Offices, *&c.* 7 *Jac.* 1. *cap.* 2. 12 *W.* 3. *cap.* 2. but ſee 1 *Geo.* 1. *cap.* 4. By the Stat. 7 *Ann. cap.* 5. it was declared that all Perſons born out of the King's Allegiance, taking the Oaths, *&c.* ſhould be deemed natural-born; though this was repealed, but not to prejudice Perſons *naturalized*, or Children of natural-born Subjects, born out of Allegiance, by 10 *Ann. c.* 5. And all Children born out of the Ligeance of the Crown, whoſe Fathers were, or ſhall be natural Subjects of *Great Britain*, at the Time of their Birth, are adjudg'd to be natural-born Subjects of this Kingdom, except Children of Parents Attainted of Treaſon, or in the actual Service of foreign Princes in Enmity with *England*, *&c.* by the 4 *Geo.* 2. *c.* 21. All Foreigners who ſhall live ſeven Years or more, in any of our *American* Plantations, and not be abſent therefrom above two Months at one Time, ſhall on taking the Oaths be deem'd natural Subjects, as if they had been born here; but not be capable of enjoying any Place of Truſt, *&c.* 13 *Geo.* 2. *c.* 7. Great Numbers of Foreigners are every Year *naturalized* by private Acts of Parliament. See *Prince of Orange.*

Naturæ *Pudenda*, Privities. ——— *Penſandum autem eſt, per viſum accuſantibus viſum concubitus propenſius advertendum, ut ſcilicet ipſas coeuntium* Naturas *viderint Commiſceri.* Leg. Hen. 1. c. 83.

Navagium, A Duty which was incumbent on Tenants, to carry their Lord's Goods in a Ship: *Liberi ſint ab omni Cariagio*, Navagio, *&c.* Mon. Angl. Tom. 1. pag: 922.

Naval, Signifies any Thing belonging to the Sea, or Maritime Affairs. *Merch. Dict.*

Naval Stores, Perſons ſtealing or imbezilling any of the King's *naval Stores*, to the Value of 20*s.* are Guilty of Felony, without Benefit of Clergy, 22 *Car.* 2. *cap.* 5. And the Treaſurer and Commiſſioners of the Navy are impowered to inquire of *naval Stores* imbezilled, and appoint Perſons to ſearch for them, *&c.* who may go on board Ships, and ſeiſe ſuch Stores; and the Commiſſioners, *&c.* may impriſon the Offenders, and fine them double Value, the Stores being under the Value of 20*s.* 1 *Geo.* 1. *cap.* 25. None but the Contractors with the Commiſſioners of the Navy, ſhall make any Stores of War, *naval Stores*, *&c.* with the Marks commonly uſed to his Majeſty's Stores, upon Pain of Forfeiting 200 *l.* And Perſons in whoſe Cuſtody ſuch Stores ſhall be found concealed, are liable to the ſame Penalty. 9 *&* 10 *W.* 3. *c.* 41. The Stat. 3 *Ann. c.* 10. was made for the Encouragement of the Importation of *naval Stores* from the Plantations in *America*, and for Preſervation thereof in thoſe Countries; inflicting Penalties for cutting down Pine or Pitch-Trees, under ſuch and ſuch Sizes, *&c.* To the like Purpoſe, and for making the ſame more effectual, is the Stat. 8 *Geo.* 1. *cap.* 12. Alſo *naval Stores* are imported here from *Scotland*, under an Encouragement by Statute; and a *Premium* is given for the Importing of *naval Stores* from *America* and *North Britain*, of 1 *l. per* Ton, for Maſts and Pitch, *&c.* 2 *Geo.* 2. *cap.* 35.

Naufrage, A Sea-Term for Ship-wreck. *Merch. Dict.*

Navigation, Is the Art of Sailing at *Sea*, alſo the Manner of Trading: And a *Navigator* is one that underſtands *Navigation*, or imports Goods in foreign Bottoms. *Ibid.*

Navigable Rivers, Divers Statutes relating to them. See *Rivers.*

Navis Eccleſiæ, The *Nave* or Body of the Church, as diſtinguiſhed from the Choir and Wings or Iſles: It is that Part of the Church where the common People ſit. *Du Cange.*

Navis, Navicula, A ſmall Diſh to hold Frankincenſe, before put into the *Thuribulum*, Cenſer or ſmoaking Pot; and it ſeems to have its Name from the Shape, reſembling a Boat or little Ship: We have ſeveral of theſe Boat-cups in Silver, *&c.* for various Uſes. *Paroch. Antiq.* 598.

Navithalamus, A Ship or Barge that Noble-men uſe for Pleaſure, with fine Chambers and other ſtately Ornaments. *Law Lat. Dict.*

Navy, Signifies the Fleet or Shipping of a Prince or State; or an Armament at Sea. The *Navy of England* it has been obſerved, excells all others for three Things; *viz.* Beauty, Strength and Safety; for Beauty our Ships of War are ſo many floating Palaces; for their Strength ſo many moving Caſtles; and for Safety, they are the moſt defenſive Walls of the Land: And as our *naval* Power gains us Authority in the moſt diſtant Climates, ſo the Superiority of our Fleet above other Nations, renders the *Britiſh* Monarch the Arbiter of *Europe.* The Kings of *England* in antient Times commanded their Fleets in Perſon; and the renowned King *Arthur*, famous for his warlike Atchievements, vindicated the Dominion of the Seas, making Ships of all Nations ſalute our Ships of War, by lowering the Top-ſail, and ſtriking the Flag, as in like Manner they ſhall do the Forts upon Land, by which Submiſſions they are put in Mind that they are come into a Territory, wherein they are to own a Sovereign Power and Juriſdiction, and receive Protection from it: And this Duty of the Flag, which hath been conſtantly paid to our Anceſtors, ſerves to imprint Reverence in Foreigners, and adds new Courage to our Seamen; and Reputation abroad, is the principal Support of any Government at home. King *Edgar* Succeſſor to *Arthur*, ſtiled himſelf Sovereign of the narrow Seas; and having fitted out a Fleet of four hundred Sail of Ships, in the Year 937, ſailing about *Britain* with his mighty *Navy*, and arriving at *Cheſter*, was there met by eight Kings and Princes of foreign Nations, come to do him Homage; who as an Acknowledgment of his Sovereignty, rowed this Monarch in a Boat down the River *Dee*, himſelf ſteering the Boat; a marine Triumph which is not to be paralled in the Hiſtories of *Europe.* *Canutus*, *Edgar*'s Succeſſor, laid the antient Tribute called *Danegeld*, for the Guarding of the Seas, and Sovereignty of them; with the following Emblem expreſſed, *viz.* Himſelf ſitting on the Shore in his Royal Chair, while the Sea was flowing, ſpeaking, *Tu meæ ditioni* *es, & Terra in qua ſedeo eſt, &c.* And *Egbert, Althred* and *Elthred*, kept up the Dominion and Sovereignty of their Predeceſſors; nor did the ſucceeding Princes of the *Norman* Race, wave this great Advantage, but maintained their Right to the four adjacent Seas ſurrounding the *Britiſh* Shore: The Honour of the Flag King *John* challenged, not barely as a Civility, but a Right to be paid *cum debita reverentia*, and the Perſons refuſing, he commanded to be aſſaulted, and taken as Enemies: And the ſame was ordained not only to be paid to whole Fleets, bearing the Royal Standard, but to thoſe Ships of Privilege that wear the Prince's Enſigns or Colours of Service; this Decree was confirmed and bravely aſſerted by a Fleet of five hundred Sail, in a Royal Voyage to *Ireland*, wherein he made all the Veſſels which he met with in his Way, in the eight circumfluent Seas, to pay that Duty and Acknowledgment, which has been maintained by our Kings to this Day, and was never conteſted by any Nation, unleſs by thoſe who attempted the Conqueſt of the intire Empire. It was Trade that gave Occaſion to the bringing of mighty Fleets of Ships to Sea; and upon the Increaſe of Trade, Ships of War were neceſſary in all Countries for the Preſervation of it in the Hands of the juſt Proprietors: And in ancient Times the ſeveral Counties of *England* were liable to a particular Taxation for building Ships of War, and fitting out Fleets, every one in Proportion to their Extent and Riches; ſo that the largeſt Counties were each of them to furniſh a Firſt-Rate Man of War, and the others every one to build one in Proportion; but this Method has been long diſuſed, and the Fitting out our *Navy* for many Ages has been always thrown into the publick Charge. King *Edw.* 3. in his Wars with *France*, had a Fleet of Ships before *Calais*, ſo numerous, that they amounted to ſeven hundred Sail: But King *Hen.* 8. it is ſaid, was the Firſt that began to build a *Navy Royal* in *England*; he built a Ship called the *Great Henry* of one thouſand Tuns, the largeſt Ship that had been then ſeen in this Kingdom, (though now our Firſt-Rate Ships of War, contain at leaſt two thouſand Tuns, are mounted with above one hundred Cannon, and carry above one Thouſand Men.) He fitted out a Royal Fleet, conſtituted a *Navy Office*, &c. And in this King's Reign and the Reign of Queen *Elizabeth*, our *Royal Navy* was in a moſt flouriſhing Condition, being moſtly commanded by our valiant Nobility; and it is remarkable, that there are Liſts of the Fleets of Queen *Elizabeth*, which make it appear there was but one private Gentleman a Captain, all the reſt being Lords and Knights: So high was the Eſteem for Service at Sea in thoſe Days, when our Princes ruled with the moſt conſummate Glory: But the Opinion of ſerving at Sea in late Times having been very much leſſened, it has ſince been declined by the Nobility and Gentry. The *Navy Royal* of *England* is at this Time in a very flouriſhing State; for Number of Shipping, and Strength and Force of the Ships, it was never, perhaps, more formidable than now; and when compleat, it is divided into three *Squadrons*, diſtinguiſhed by the different Colours of the ſeveral Flags, *viz. Red, White*, and *Blue*; the principal Commanders whereof bear the Title of *Admiral*, and each has under him a Vice-admiral, and a Rear-admiral, who are likewiſe Flag-officers. There are belonging to his Majeſty's *Navy*, ſix great Yards, *viz. Chatham, Deptford, Woolwich, Portſmouth, Sheerneſs*, and *Plymouth*; fitted with ſeveral Docks, and furniſhed with Stores of Timber, Maſts, Anchors, Cables, &c. And for the Management of the *Navy Royal*, there are ſeveral Officers of Truſt and Authority, beſides the Commiſſioners of the Admiralty; as the Treaſurer, Controller, Surveyor, Commiſſioners of the *Navy*, Commiſſioners of Victualling Office, &c. the Principal whereof hold their Offices by Patent under the Great Seal. By Stat. 9 & 10 *W.* 3. *c.* 37. the Sum of 570,000 *l.* was appropriated for the Building of twenty-ſeven Ships of War, with their Guns, Rigging, &c. And the 6 *Ann. c.* 13. enacts, That over and above the Ships for the Line of Battle, forty-three Ships of War ſhall be employed as Cruiſers and Convoys, for the better preſerving ſuch Ships as ſhall be made Uſe of in the Trade of *Great Britain*; four of theſe Ships are to be Third Rates, and ſixteen fourth Rates, and the reſt of ſufficient Force to guard our Commerce; They are to attend in certain Stations; and the Lords Commiſſioners of the Admiralty may direct the Commiſſioners of the *Navy*, or ſome one or more Perſons reſident at ſuch Places as his Majeſty ſhall appoint, to ſuperintend and overſee every Thing relating to thoſe Cruiſers; alſo the Commiſſioners of the Admiralty have Power to order any of the ſaid Ships to be imployed in the Line of Battle, in Caſe of Neceſſity. This Statute likewiſe impowers the Commiſſioners of the Admiralty, during War, to grant Commiſſions to Privateers and Commanders of Ships, for the Taking and Seiſing Ships and Goods of Enemies. For the Furniſhing of *Mariners* for the *Fleet*; by 7 & 8 *W.* 3. *c.* 21. it is enacted, That all Seamen, Watermen, &c. above the Age of eighteen Years, and under fifty, capable of Sea Service, who ſhall regiſter themſelves voluntarily for the King's Service in the *Navy Royal*, to the Number of thirty Thouſand, ſhall have paid to them the yearly Sum or Bounty of 40*s.* beſides their Pay for actual Service, and that whether they be in Service or not; and none but ſuch Mariners, &c. as are regiſtred, ſhall be capable of Preferment to any Commiſſion, or be Warrant Officers in the *Navy*: And ſuch regiſtred Perſons are exempted from ſerving on Juries, Pariſh Offices, &c. alſo from Service aboard after the Age of fifty-five Years, unleſs they go voluntarily; and when by Age, Wounds, or other Accidents, they are diſabled for future Service at Sea, they ſhall be admitted into *Greenwich Hoſpital*, and there be provided for during Life: And the Widows of ſuch Seamen as ſhall be ſlain or drowned, not of Ability to provide for themſelves, ſhall be likewiſe admitted into the ſaid Hoſpital; and their Children educated, &c. But if any regiſtred Seamen ſhall withdraw himſelf from the King's Service, in his Ships or *Navy*; or if any ſuch Mariner relinquiſh the Service, without the Conſent of the Commiſſioners of the Admiralty, he ſhall for ever loſe the Benefit of the Act, and be compelled to ſerve in his Majeſty's Fleet for ſix Months without any Pay. By a ſubſequent Statute 4 & 5 *Annæ*, Watermen plying on the *Thames* between *Graveſend* and *Windſor*, on Notice given by the Commiſſioners of the Admiralty to the Company of Watermen, are to appear before the ſaid Company, to be ſent to his Majeſty's Fleet; or on Refuſal, they ſhall ſuffer one Month's Impriſonment, and be diſabled working on the *Thames* for two Years. The Regiſtring of Seamen is the grand Nurſery for the Fleet; but there are other Ways and Means of ſupplying Mariners for the *Navy Royal*, and Training up of Perſons in the Sea Service: For the Stat. 2 *Ann. c.* 6. provides, that poor Boys, whoſe Parents are chargeable to the Pariſh may by Churchwardens and Overſeers of the Poor, with the Conſent of two Juſtices of the Peace, be placed out Apprentices to the Sea-Service, until the Age of twenty-one Years, they being thirteen Years old, at the Time of their Placing forth; Thoſe at eighteen Years of Age, may be impreſſed for Service in the *Fleet*, when the Owners or Maſters of ſuch of them as ſhall prove qualified, ſhall have able Seamen's Wages; and all Maſters and Owners of Ships, from thirty to fifty Tuns Burden, are required to take one ſuch Apprentice, one more for the next fifty Tun, and one more for every hundred Tun above the firſt Hundred, under the Penalty of 10*l.* Maſters of Apprentices placed out by the Pariſh, may with the Conſent of two Juſtices, turn over ſuch Apprentices to Maſters of Ships for the Remainder of their Terms: Lewd and diſorderly Servants, Vagrants, &c. are to be taken up and ſent to his Majeſty's Fleet; and poor Priſoners for Debt, which were to have the Benefit of 4 & 5 *Annæ*, appearing on their Releaſement to be able-bodied Seamen, were to enter themſelves in the Service. Thus is the *Navy* recruited with Mariners; not to mention particularly the Manner of Preſſing in Cities and populous Towns, on extraordinary Occaſions. By a late Statute, Encouragement is given to Seamen to enter into his Majeſty's Service voluntarily; Volunteers entring their Names with any Commiſſion Officer of the *Fleet*, and forthwith proceeding towards their Ships, on Certificate thereof ſhall be intitled to Wages from the Date of the Certificate, and be allowed the uſual Conduct Money, and alſo be paid an Advance of two Months Wages, &c. And if any Volunteer is turned over to another Ship, he ſhall receive, over and above his Wages due, the like Advance of two Months pay, and not ſerve in a lower Degree than he did before. Perſons liſted on board *Ships of War*, are not to be taken thereout by any Proceſs at Law, unleſs it be for a criminal Matter; or where the Debt amounts to 20*l.* When Seamen die on board, the Commander of the Ship ſhall as ſoon as may be make out Tickets for their Pay, which ſhall be paid to their Executors, &c. without tarrying for the Ship's Return: And Seamen's Pay ſhall not be bargained and ſold; but Tickets may. Governors and Conſuls in foreign Parts, are to provide for Shipwreck'd Mariners at 6*d. per Diem* each, and put them on board the firſt Ships of War, &c. and on ſending Bills of Diſburſements with Vouchers to the Commiſſioners of the *Navy*, they ſhall be paid. 1 *Geo.* 2. *c.* 19. Alſo the Pay and Wages of one Man in a hundred, of every Ship of War, and Value of his Victuals, ſhall be applied for relieving poor Widows of Officers of the *Navy*, by 6 *Geo.* 2. *c.* 25. A late Statute has ordained, that able Seamen who voluntarily enter on Board Ships of War, ſhall receive 5*l.* beſides their Wages, and ordinary Seamen 3*l.* And if any Seaman, under a Commiſſion or Warrant Officer, that enters into the Service, be killed or drowned, his Widow on Certificate to the Commiſſioners of the *Navy* that ſhe's ſuch, is to have by Way of Bounty, one Year's Wages, according to the Pay for which he ſerved. 14 *Geo.* 2. *c.* 38. The Commiſſioners of the *Navy*, &c. have Power to examine and puniſh all Perſons who make any Diſturbance, fighting or quarrelling in the Yards, and Offices, &c. of the *Navy*: And in the 13th Year of King *Charles* 2. an Act paſſed for the regulating the Government of the *Fleet*, which contains the particular excellent Articles and Orders following.

Articles and Orders for Government of the Navy, eſtabliſhed by 13 *Car.* 2. *cap.* 9. 1. Officers ſhall cauſe the Worſhip of God, according to the Liturgy of the Church of *England*, to be performed in their Ships, and Prayers and Preaching by the Chaplains in Ordinary, and take Care that the Lord's Day be obſerved. 2. They that uſe unlawful Oaths, Curſings, Execrations, Drunkenneſs or Uncleanneſs, &c. ſhall be fined, impriſoned, or otherwiſe puniſhed as a Court Martial ſhall think fit. 3. If any give Intelligence to Enemies, &c. without Leave from the King, Admiral, Vice-admiral or Commander in Chief of any Squadron, they ſhall ſuffer Death. 4. If any Letter or Meſſage come from an Enemy to any inferior Officer, or other Perſon, and he acquaints not his Superior with it in twelve Hours, having Opportunity; or if a Superior Officer acquainted with or receiving a Letter, &c. from ſuch Enemy in Perſon, do not in convenient Time, make it known to the Admiral, or Commander of the Squadron, ſuch Perſons ſhall ſuffer Death, or ſuch Impriſonment as a Court Martial ſhall direct. 5. Relieving an Enemy, or Rebel, ſhall be puniſhed with Death, or as a Court Marſhal ſhall think fit. 6. All Writings found aboard any Prize, are to be ſent up to the Court of Admiralty, or Commiſſioners appointed for that Purpoſe, on Pain of Loſs of the Takers Shares, and ſuch farther Puniſhment as a Court Martial ſhall inflict. 7. None ſhall take any Goods out of any Ship ſeiſed as Prize, until Judgment in the Admiralty, on Pain of ſuch Puniſhment as a Court Martial, or Court of Admiralty ſhall impoſe; except Goods upon and above the Gun Deck, other than Arms, Ammunition, Furniture, &c. 8. None ſhall ſteal and imbezil any of the Ship's Furniture, or Ammunition, on Pain of Death. 9. If Ships taken as Prize, make no Reſiſtence, none of the Captains, Maſters, or Mariners being Foreigners, ſhall be evil treated, on Pain of double Damages. 10. Commanders, who upon a Proſpect of Engagement, do not put Things in a Poſture for Fight, and encourage their Men ſhall be caſhiered; and if they yield, or crave Quarter, they are to ſuffer Death, or ſuch Puniſhment as the Offence deſerves. 11. All Perſons ſhall obſerve the Commands of the Admiral, or other their Superiors, on Pain of Death. 12. Officers and others that in Time of Fight, do not their utmoſt to indamage the Enemy, and to relieve the King's Ships, ſhall ſuffer Death, or ſuch other Puniſhment as a Court Martial ſhall think fit. 13. Captains, &c. appointed for Convoy, that ſhall not defend the Ships in their Convoy, or exacting Money from them belonging to Subjects, ſhall make Reparation as the Court of Admiralty ſhall judge, and ſuffer Death, or ſuch other Puniſhment as the Court Martial ſhall order. 14. Whoever ſhall forbear to purſue an Enemy, Pirate, &c. flying or beaten, or to relieve a known Friend in View, ſhall ſuffer Death, or as a Court Martial, &c. 15. None ſhall put backward, or diſcourage Service and Action commanded, on any Pretence of Wages, upon Pain of Death. 16. All that turn to the Enemy, and either run away with their Ship, Ammunition, &c or yield it up to the Enemy, ſhall ſuffer Death. 17. All Perſons that deſert their Employments, run away, or entice others ſo to do, are to ſuffer Death. 18. All Spies ſhall be puniſhed with Death. 19 None ſhall utter Words of Sedition or Mutiny, nor make or endeavour any mutinous Aſſembly, on Pain of Death. 20. No Perſons ſhall conceal traiterous or mutinous Practices, or Words, to the Prejudice of the King or Government; nor Words or Practices tending to the Hindrance of the Service, but ſhall reveal them to their Superior, on Pain of ſuch Puniſhment as a Court Martial ſhall inflict. 21. None ſhall quarrel with his Superior, on Pain of ſevere Puniſhment, nor ſtrike any ſuch, on Pain of Death, or as a Court Martial ſhall determine. 22 For Unwholſomeneſs of Victuals, or other juſt Cauſe, Complaint ſhall be made by each Man to his Superior; but none ſhall privately attempt to make Diſturbance, on Pain of ſuch Puniſhment as a Court Martial, &c. 23. None ſhall quarrel or fight, or uſe provoking Speeches, on Pain of Impriſonment. 24. There ſhall be no waſteful Expence, nor Imbezilment of any Stores in the Fleet; under ſuch Penalties by Fine, Impriſonment, or otherwiſe, upon the Offenders, Buyers and Receivers, as a Court Martial ſhall think fit. 25. They through whoſe Default any of the King's Ships are ſtranded, ſplit or hazarded, ſhall be fined and impriſoned; or otherwiſe puniſhed at the Diſcretion of a Court Martial. 26. Thoſe that wittingly ſet on Fire any Ship, or other Veſſel, their Stores or Furniture, not appertaining to an Enemy, ſhall ſuffer death. 27. No Man ſhall ſleep on the Watch, or forſake his Station, on Pain of Death, *&c.* 28. Murders and wilful Killing ſhall be puniſhed with Death. 29. Robbery and Theft ſhall be puniſhed with Death, or as a Court Martial, *&c.* 30. Sodomy and Buggery ſhall be puniſhed with Death without Mercy. 31. No Provoſt Martial ſhall refuſe to receive any Priſoner, nor ſuffer him to eſcape, on Pain of ſuch Puniſhment, as ſhould have been inflicted on the Party, or as a Court Martial, *&c.* 32. All Perſons ſhall endeavour to apprehend Offenders, and aſſiſt the Officers thereto appointed, on Pain of ſuch Puniſhment as a Court Martial ſhall inflict. 33. All Miſdemeanors not here mentioned, ſhall be puniſhed according to the Laws and Cuſtoms uſed at Sea. 34. The Admiral may grant Commiſſions to Vice-Admirals, and Commanders of Squadrons, to call Courts Martial of Commanders and Captains, for Trial of Offences: No Court Martial ſhall inflict Death, that conſiſts of leſs than five Captains; and the Admiral's Lieutenant ſhall be as Captain for this Purpoſe: Alſo no Execution of any Sentence of Death by Virtue of theſe Articles, (except in Caſe of Mutiny) ſhall be had without Leave of the Admiral, if the Offence be committed within the narrow Seas; and if elſewhere, not without Order of the Commander of that Squadron where the Sentence is is paſſed. 35. The Judge Advocate, and in his Abſence whom the Court Martial ſhall appoint, may adminiſter an Oath in order to the Examination or Trial of theſe Offences. 36. This Act ſhall give Juriſdiction only for ſuch of the Offences aforeſaid as ſhall be committed on the Sea, or Streams of great Rivers beneath the Bridges near the Sea, within the Juriſdiction of the Admiralty, by Perſons in Service and Pay in the Fleet or Ships of War. And by the 4 *&* 5 *W. & M.* all Offences committed contrary to the Stat. 13 *Car.* 2. may be tried and determined in the *King's Bench* Court at *Weſtminſter*, or before Juſtices of *Oyer* and *Terminer*, according to the Common Law; and theſe Courts may inflict ſuch Penalties as are appointed by the ſaid Act: And where any of the ſaid Offences are committed out of the Realm, the ſame may be alledged and laid in any County within this Realm: But no Perſon who ſhall be tried in a Court Martial, ſhall for the ſame Offence be again tried by Virtue of this Statute; nor ſhall any Perſon tried by Virtue of this Act, be tried again by a Court Martial. 4 *&* 5 *W. & M. cap.* 25. If any Perſons in actual Service in Ships of War, ſhall commit any of the Crimes mentioned in the Articles 13 *Car.* 2. *c.* 9. upon the Shore in any foreign Parts, they ſhall be puniſhed in the ſame Manner as if the Offences had been done upon the Sea. Stat. 6 *Geo.* 1. *c.* 19.

Ne admittas, Is a Writ directed to the *Biſhop*, for the Plaintiff or Defendant, where a *Quare Impedit* or Aſſiſe of *Darrein Preſentment* is depending, when either Party fears that the Biſhop will admit the other's Clerk during the Suit between them: It ought to be brought within ſix Kalendar Months after the Avoidance, before the Biſhop may preſent by Lapſe; for 'tis in vain to ſue out this Writ when the Title to preſent is devolved unto the Biſhop. *Reg. Orig.* 31. *F. N. B.* 37. Writ of *Ne admittas* doth not lie, if the Plea be not depending in the King's Court by *Quare Impedit*, or *Darrein Preſentment*; and therefore there is a Writ in the Regiſter directed to the Chief Juſtice of *C. B.* to certify the King in the *Chancery*, if there be any Plea before him and the other Judges between the Parties, *&c.* So that the Writ ſhould not be granted until that be done: But yet it may be had out of the *Chancery* before the King is certified that ſuch Plea of *Quare Impedit* is depending; and then the Party grieved may require the Chief Juſtice to certify, *&c.* *New Nat. Br.* 83, 84. The Writ runs, *Prohibemus vobis*, Ne admittas, *&c.*

Neat, Is the Weight of a pure Commodity alone, without the Cask, Bag, Droſs, *&c.* *Merch. Dict.*

Neceſſity. If a Fire happen in a Street, a Perſon may juſtify the pulling down a Wall or Houſe of another Perſon, to prevent its ſpreading; it being a Caſe of *Neceſſity. Staundf. P. C.* And where ſeveral Perſons are in Danger of Drowning, one to ſave his Life may thruſt another from the Boat's Side, *&c.* for the *Neceſſity* of it. *Bac.* 25. And we have a Maxim in our Law; Neceſſitas *non habet Legem.* Co Lit.

Ne exeat Regnum, Is a Writ to reſtrain a Perſon from going out of the Kingdom without the King's Licence. *F. N. B.* 85. It may be directed to the Sheriff to make the Party find Surety that he will not depart the Realm; and on his Refuſal, to commit him to Priſon: Or it may be directed to the Party himſelf; and if he then goes, he may be fined. 2 *Inſt.* 178. And this Writ is granted on a Suit's being commenced againſt a Man in the *Chancery*, when the Plaintiff fears the Defendant will fly to ſome other Country, and thereby avoid the Juſtice and Equity of the Court; which hath been ſometimes practiſed: And when thus granted, the Party muſt give Bond to the Maſter of the Rolls in the Penalty of 1000 *l.* or ſome other large Sum, for yielding Obedience to it; or ſatisfy the Court by Anſwer, Affidavit, or otherwiſe, that he hath no Deſign of leaving the Kingdom, and give Security therefore. *Practiſ. Solic.* 129. A *Ne exeat Regnum* has been granted to ſtay a Defendant from going to *Scotland*; for though 'tis not out of the Kingdom, yet it is out of the Proceſs of the Court, and within the ſame Miſchief. 2 *Salk.* 702. 3 *Mod.* 127, 169. 4 *Mod.* 179. If the Writ be ſued for the King, the Party againſt whom ſued may plead Licence by Letters Patent, *&c.* which ſhall diſcharge him: But where any Subject goes beyond Sea with the King's Licence, and continues longer than his appointed Time, it hath been held he loſes the Benefit of a Subject. 4 *Leon* 29. And if a Perſon beyond Sea refuſes to return into *England* on the King's Letters under his Privy Seal, commanding him upon his Allegiance to return; being certified into the Chancery, a Commiſſion may be awarded to ſeiſe his Lands and Goods for the Contempt; and ſo it is if ſuch Perſon's Servants hinder a Meſſenger from delivering his Meſſage, on Affidavit of it, *&c.* *Jenk. Cent.* 246. 3 *Nelſ. Abr.* 211. See *Fugitives.*

Negative. A *Negative* cannot be proved or teſtified by Witneſſes, only an Affirmative. 2 *Inſt.* 662. Though a *Negative* is incapable of being proved directly; yet indirectly 'tis otherwiſe: For in Caſe one accuſes B. to have been at *York*, and there had committed a certain Fact, in Proof of which he produces ſeveral Witneſſes; here *B.* cannot prove that he was not at *York*, againſt poſitive Evidence that he was; but ſhall be allowed to make out the *Negative* by collateral Teſtimony, that at that very Time he was at *Exeter*, &c. in ſuch a Houſe, and in ſuch Company. *Forteſcue* 37.

Negative pregnant, (*Negativa pregnans*) Is a *Negative*, which implies or brings forth an *Affirmative*; and is ſaid to be where a *Negative* carries an Affirmative in his Belly. *Lit. Rep.* 65. Where an Action is brought againſt a Man, and he pleads in Bar of the Action a *Negative* Plea, which is not ſo ſpecial an Anſwer to the Action, but it includes alſo an Affirmative; this is a *Negative pregnant:* As for Inſtance, he in Reverſion brings a Writ of Entry *in caſu Proviſo*, upon an Alienation made by Tenant for Life, ſuppoſing that he has aliened in Fee; which is a Forfeiture of his Eſtate: If the Tenant comes and pleads that he hath not aliened in Fee; this is a *Negative*, wherein is included an Affirmative; for though it be true, that he hath not aliened in Fee, yet it may be he hath aliened in Tail, which is alſo a Forfeiture of his Eſtate. 2 *Lill. Abr.* 212. If a Breach be aſſign'd that a Man was not ſeiſed of an Eſtate in Fee; and the Bar is, that he was ſeiſed, *&c.* notwithſtanding any Act done by him; this is *Pregnant* and uncertain. *Litt. Rep.* 64. And if a Perſon being impleaded to have done a Thing on ſuch a Day, or in ſuch a Place, denieth generally, without ſaying any Thing more, that he did it on the Day, *&c.* it is a *Negative Pregnant*, as it implieth nevertheleſs that in ſome Sort he did it. *Dyer* 17. A *Negative Pregnant* is a Fault in Pleading; and there muſt be a Special Demurrer to a *Negative Pregnant* Plea, *&c.* for the Court will intend every Pleading to be good, 'till the contrary doth appear. *Mich.* 23 *Car.* 1. *B. R* See 2 *Leon.* 248.

Neggildare, Signifies to claim Kindred. *Leg. H.* 1, *c.* 70. *LL. Inæ*, *Sect.* 7, 8.

Negligence, Is where a Perſon *neglects* or omits to do a Thing which he is by Law obliged to. And where one has Goods of another, to keep till ſuch a Time, and hath a certain Recompence or Reward for the Keeping, he ſhall ſtand charged for Injury by *Negligence*, &c. But if he hath nothing for Keeping them, he is not bound to anſwer. *Doct. & Stud.* 269. A Man that finds another's Goods, if they are after hurt by wilful *Negligence*, 'tis held he is chargeable to the Owner; though it is otherwiſe when they are loſt by Caſualty, as in Caſe they are laid in a Houſe that is accidentally burnt, or if he deliver them to another to keep, who runs away with them, *&c. Ibid.* It is held if an Accountant be robbed, and it is without his Default and *Negligence*, he ſhall not be anſwerable for the Money. 1 *Inſt.* 89. A Right may be loſt by *Negligence*; as where an Action is not brought in the Time appointed by the Statute of Limitations, *&c.* 21 *Jac.* 1. *cap.* 16.

Negro. By the Laws of *Virginia*, *Negro* Servants are ſaleable; and where a *Negro* is ſold here, in Action *Indebitat. Aſſumpſit* for the Money, the Declaration ought to be, that the Defendant was indebted to the Plaintiff for the *Negro* ſold here at *London*, but the ſaid *Negro* at the Time of Sale was in *Virginia*, and that by the Laws and Statutes of *Virginia*, *Negroes* are ſaleable as Chattels. *Per Holt.* C. J. 2 *Salk. Rep.* 666. In Action of Trover for a *Negro*, and Verdict and Damages for the Plaintiff; it was moved in Arreſt of Judgment, that Trover lay not for a *Negro*, for the Owner had not an abſolute Property in him: But the Court ſeem'd to think that in Treſpaſs *Quare Captivum ſuum cepit*, the Plaintiff might give in Evidence that the Party was his *Negro*, and he bought him. *Ibid.* See Stat. 13 *Geo.* 1. *cap.* 9.

Neif, (Fr. *Naif*, i.e. *Naturalis*, *Nativa*) Was a Bond-Woman or ſhe *Villein*, born in one's Houſe, mentioned in the Stat. 9 *R.* 2. *c.* 2. If a Bond-Woman married a Free-man, ſhe was thereby made free; and being once free, and diſcharged of Bondage, ſhe could not be *Nief* after, without ſome ſpecial Act done by her as by Divorce, Confeſſion in Court, *&c.* And a free Woman taking a Villein to her Husband, was not thereby Bond; but their Iſſue were Villeins as their Father was, though this is contrary to the Civil Law, which ſays, *Partus ſequitur Ventrem*. *Terms de Ley* 454. Antiently Lords of Manors ſold, gave, or aſſigned their Bondmen and *Niefs*, as appears by the following Deed of Gift.—— *Sciant quod ego* Radulphus de C. *Miles Dominus de* L. *Dedi Domino* Roberto de D. *Beatricem filiam* Will. H. *de* L. *quondam* Nativam *meam, cum tota ſequela ſua & omnibus Catallis ſuis perquiſitis & perquirendis; Habend' & Tenend. prædictam Beatricem cum tota ſequela ſua & omnibus Catallis ſuis & omnibus rebus ſuis perquiſitis & perquirendis prædicto Domino* Roberto *vel ſuis aſſignatis libere, quiete, bene & in pace imperpetuum, &c. In cujus, &c. hiis Teſtibus*——Dat. apud L. in die Sancti Laurentii Martyris, Anno 13 Ed 3. See *Nativi.*

Niefty. There was an antient Writ called *Writ of Niefty*, whereby the Lord claimed ſuch a Woman for his *Nief*; but it is now out of Uſe.

Neighbour, (*Vicinus*) One that dwells near another. See *Vicinage*.

Ne injuſte Vexes, A Writ founded on the Statute of *Magna Charta*, *c.* 10. that lies for a Tenant diſtrained by his Lord, for more Services than he ought to perform; and is a Prohibition to the Lord not to diſtrain or *vex* his Tenant: In a ſpecial Uſe, it is where the Tenant hath prejudiced himſelf, by doing greater Services, or paying more Rent, without Conſtraint, than he needed; for in this Caſe, by Reaſon of the Lord's Seiſin, the Tenant cannot avoid it by *Avowry*, but is driven to his Writ for Remedy. *Reg. Orig* 4. *F. N. B.* 10. And if the Lord diſtrains to do other Services, or to pay other Rent than due, after the Prohibition delivered unto him, then the Tenant ſhall have an Attachment againſt the Lord, *&c.* and when the Lord cometh thereon, the Tenant ſhall count againſt him, and put himſelf upon the Grand Aſſiſe, *&c.* whereupon Judgment ſhall be given. *New Nat. Br.* 22. This Writ is always *Anceſtrel*, where the Tenant and his Anceſtors have holden of the Lord and his Anceſtors; and the Lord hath incroached any Rent, *&c* A Feoffee ſhall not avoid Seiſin of Rent had by Incroachment of his Feoffor, nor have the Writ *Ne injuſte Vexes*; alſo a Man ſhall not have a Writ of *Ne injuſte Vexes* againſt the Grantee of the Seigniory. *Mich.* 18 *E* 2. 10 *Ed.* 3. And Tenant in Tail may not have this Writ; but ſhall plead and ſhew the Matter, and not be eſtopped by the Payment of his Anceſtors, *&c. Trin.* 20 *Ed.* 3.

Form of the Writ *Ne injuſte Vexes.*

GEORGE the Second, *&c. To* A. B. *Greeting: We command You, that you do not* vex *or trouble* C. D. *or ſuffer him to be vexed, for his Freehold Meſſuage,* &c. *which he holds of you, in,* &c. *Nor in any Manner exact, or permit to be exacted from him Services which therefore he ought not to do, (or Rent which he owes not) nor has been accuſtomed,* &c.

Nemine contradicente, Words uſed to ſignify the *unanimous* Conſent of the Members of the *Houſe of Commons*, to a Vote or Reſolution of that Houſe.

Ne recipiatur, Againſt the *receiving* and ſetting down a Cauſe to be tried. 2 *Lill. Abr.* See *Trial*.

Ne Vicecomes, *Colore Mandati Regis, quenquam amoveat a poſſeſſione Eccleſiæ minus juſte.* Reg. Orig. 61.

Newcaſtle. No Perſon ſhall ſhip, load or unload any Goods, to be ſold into or from Ships at any Place on the River *Tine*, but at the Town of *Newcaſtle*, in Pain to forfeit the Goods: And none ſhall raiſe any Wear in the Haven there, between certain Places on the ſaid River, *&c.* Stat. 21 *H.* 8. *c.* 18. At *Newcaſtle upon Tine*, if a Trial be had between two Inhabitants of the Place, and the Damages not exceeding 40 *s.* the Plaintiff is to have no Judgment, but the Defendant ſhall have Coſts: By a private Act of Parliament. 5 *Mod.* 367. See *Coals.*

Newfound-Land. Perſons trading to *Newfoundland*, ſhall have Freedom of Fiſhing, *&c.* And every fiſhing Ship as firſt enters any Harbour or Creek in *Newfound-land*, ſhall be Admiral of the ſaid Harbour for that Seaſon, and determine Differences between the Maſters of fiſhing Veſſels and the Inhabitants there, *&c.* Stat. 10 & 11 *W.* 3. *cap.* 25.

News. Perſons reporting falſe *News* or Tales, are Puniſhable by Statute, 3 *Ed.* 1. *c.* 34. See *Scandalum Magnatum.*

News Papers. For Journals or other *News Papers*, a Duty of 1 *d.* is to be paid for every Sheet; and every half Sheet one Half-penny, levied and ſubject to the ſame Penalties as by 10 *Ann.* under *Printing.* Stat. 11 *Geo.* 1. *cap.* 8. And Perſons ſelling any *News Paper*, not being ſtamp'd or mark'd as directed, a Juſtice of Peace may commit them to the Houſe of Correction for three Months; and a Reward of 20 *s* is to be paid for apprehending any ſuch Offender. 16 *Geo.* 1. *c.* 26.

Niderling, Nidering, or **Nithing.** A vile baſe Perſon, a Sluggard. *Will. of Malmsb. pag.* 121. *Mat. Pariſ. Ann.* 1088.

Nient compriſe, Is an Exception taken to a Petition, becauſe the Thing deſired is not contained in that Deed or Proceeding whereon the Petition is founded: For Example; One deſires of the Court wherein a Recovery is had of Lands, *&c.* to be put in Poſſeſſion of a Houſe, formerly among the Lands adjudged unto him; to which the adverſe Party pleads, that this is not to be granted, by Reaſon this Houſe is not *compriſed* amongſt the Lands and Houſes for which he had Judgment. *New Book Entries.*

Nient dedire, Signifies to ſuffer Judgment to be had againſt one, by not denying or oppoſing it, *i. e.* by Default. 29 *Car.* 2.

Niger Liber, The *Black Book* or Regiſter in the *Exchequer* is called by this Name.

Night, Is when it is ſo dark, that the Countenance of a Man cannot be diſcerned; and by ſome Opinions, *Burglary* in the *Night* may be committed at any Time after Sun-ſet, and before Riſing. *H. P. C.* 79. 3 *Inſt.* 63. 1 *Hawk.* 101. See *Noctanter.*

Nightwalkers, Are ſuch Perſons as ſleep by Day and *walk* by *Night*, being oftentimes Pilferers, or Diſturbers of the Peace. 5 *Ed.* 3. *c.* 14. *Conſtables* are authorized by the Common Law to arreſt *Nightwalkers* and ſuſpicious Perſons, *&c.* *Watchmen* may alſo arreſt *Nightwalkers*, and hold them until the Morning: And it is ſaid, that a private Perſon may arreſt any ſuſpicious *Nightwalker*, and detain him till he give a good Account of himſelf. 2 *Hawk. P. C.* 61, 80. One may be bound to the good Behaviour for being a *Nightwalker*; and common *Nightwalkers* and Haunters of Bawdy-houſes are to be indicted before Juſtices of Peace, *&c.* 1 *Hawk.* 132. 2 *Hawk.* 40. *Latch* 173. *Poph.* 280. But 'tis held not lawful for a Conſtable, *&c.* to take up any Woman, as a *Nightwalker*, on bare Suſpicion only, of being of ill Fame; unleſs ſhe be guilty of a Breach of the Peace, or ſome unlawful Act, and ought to be found miſdoing. *Holt's MS.* See 2 *Hale's Hiſt. P. C.* 89.

Nihil capiat per Breve, or *per Billam*, Is the Judgment given againſt the Paintiff in an Action, either in Bar of his Action, or in Abatement of his Writ or Bill, *&c. Co. Lit.* 363.

Nihil dicit, Is a Failing by the Defendant to put in an Anſwer to the Plaintiff's Plea by the Day aſſigned; which being omitted, Judgment is had againſt him of Courſe, as *ſaying nothing*, why it ſhould not: Theſe Words are generally writ ſhort *Nil dicit, &c.*

Nihils or **Nichils,** Are Iſſues which the Sheriff that is *appoſed* in the *Exchequer* ſays, are *Nothing worth*, and illeviable, for the Inſufficiency of the Parties from whom due. *Practice Excheq. pag.* 101. *Accounts of Nihil* ſhall be put out of the Exchequer. Stat. 5 *R.* 2. *c.* 13.

Nil Debet, Is a common Plea to an Action of *Debt*, when the Money is paid: But 'tis no Plea in Covenant, or Breach aſſigned for Non-payment of Rent, *&c.* 3 *Lev.* 170. If Action of *Debt* be brought againſt a Sheriff or Gaoler, for the Eſcape of one in Execution, the Plaintiff muſt declare upon the Judgment, and yet *Nil debet per Patriam* is a good Plea. 1 *Saund.* 38. It is entered thus: *Et præd.* A. B. *per, &c. Attorn ſuum ven. & defend vim & injur. quando, &c. Et dicit quod ipſe* Non debet *præfat.* A. B. *vigint. libr. nec aliqu. denar. ſum. in forma prout præd.* A. B. *ſuperius verſ. eum narravit, &c.*

Nil habuit in Tenementis, A Plea to be pleaded in an Action of Debt only, brought by a Leſſor againſt Leſſee for Years, or at Will, without Deed. 2 *Lill. Ab.* 214. In Debt for Rent upon an Indenture of Leaſe, *Nil habuit in Tenementis* may not be pleaded; becauſe it is an Eſtoppel, and a general Demurrer will ſerve. 3 *Lev.* 146. But if Debt is brought for Rent upon a Deed Poll, the Defendant my plead this Plea: And where a Defendant pleaded *Nil habuit in Tenementis tempore Dimiſſionis*; the Plaintiff replied, *Quod habuit in Tenementis, &c.* and Verdict and Judgment was had for the Plaintiff; whereupon Writ Error being brought, it was aſſigned for Error, that the Replication was not good, for he ought to have ſhewn what Eſtate he then had; and of that Opinion was the Court; and it had been naught upon a Demurrer, but being after a Verdict, it is good. *Cro. Jac.* 312. If a leſs Eſtate is found than the Plaintiff pleads in his Reply to a *Nil habuit, &c.* So as it be ſufficient to intitle the Plaintiff to make a Leaſe, it is good enough. 10 *W.* 3.

Niſi prius, Is a Commiſſion to Juſtices of *Niſi Prius*; ſo called from a Judicial Writ of *Diſtringas*, whereby the Sheriff is commanded to diſtrain the impanelled Jury to appear at *Weſtminſter* before the Juſtices at a certain Day in the following Term, to try ſome Cauſe, *Niſi prius Juſtic. Domini Regis ad Aſſiſas capiend. venerint, viz.* unleſs the Juſtices come before that Day to ſuch a Place, *&c.* 2 *Inſt* 424. 4 *Inſt.* 159. A Writ of *Niſi prius* is where an Iſſue is joined, then there goes a *Venire* to ſummon the Jury to appear at a Day in Court; and upon the Return of the *Venire*, with the Panel of the Jurors Names, the Record of *Niſi prius* is made up and ſealed, and there goes forth the Writ of *Diſtringas* to have the Jurors in Court, *Niſi prius Juſtic' venerint, &c.* ſuch a Day in ſuch a County, to try the Iſſue joined between the Parties. 2 *Lill.* 215. A Record of *Niſi prius* ought to contain a Tranſcript of the whole Iſſue-Roll; and no *Record of Niſi prius* for the Trying an Iſſue at the Aſſiſes, ſhall be ſealed after a Month next following the End of the Term; which Time is by a late Order of Court altered to three Weeks. *Ibid.* All Civil Cauſes grown to Iſſue in the Courts at *Weſtminſter*, are brought down in the *Vacation* before the Day of Appearance appointed for the Jury above, into the County where the Action was laid, to be tried there; which is uſually done in two or three Days: And then upon the Return of the Verdict given by the Jury to the Court above the Judges there give Judgment for the Party for whom the Verdict is found: And theſe Trials by *Niſi prius* are for the Eaſe of the Country, the Parties, Jurors, and Witneſſes, by ſaving them the Charge and Trouble of coming to *Weſtminſter*; but in Matters of great Weight and Difficulty, the Judges above, upon Motion and Information, will often retain Cauſes to be tried there, though laid in the Country, and then the Juries and Witneſſes in ſuch Cauſes muſt come up to the Courts at *Weſtminſter* for Trial at Bar: And the King hath his Election to try his Suits at the Bar, or in the Country, *&c.* *Wood's Inſt.* 479. The Statute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 30. having ordained, that all Pleas in either Bench, which require only an eaſy Examination, ſhall be determined in the Country before Juſtices of Aſſiſe, by Virtue of the Writ appointed by that Statute, commonly called the Writ of *Niſi prius*; it has been held, that an Iſſue joined in the King's Bench upon an Indiƈtment or Appeal, whether for Treaſon or Felony, or a Crime of an inferior Nature, committed in a different County from that wherein the Court ſits, may be tried in the proper County by Writ of *Niſi prius:* But as the King is not expreſly named in this Statute; and it is a general Rule, that he ſhall not be bound except named, it is ſaid where the King is Party a *Niſi prius* ought not to be granted, without his ſpecial Warrant, or the Aſſent of his Attorney; though the Court may grant it in Appeals in the ſame Manner as any other Actions. 2 *Inſt.* 424. 4 *Inſt.* 160. *Dyer* 46. 2 *Hawk. P. C.* 411. Juſtices of *Niſi prius* have Power to record Nonſuits and Defaults in the Country at the Days aſſigned; and are to report them at the Bench, *&c.* And are to hear and determine Conſpiracy, Confederacy, Champerty, *&c.* by 12 *Ed.* 2. *c.* 4. 4 *Ed.* 3. *c.* 11. *Niſi prius* ſhall be granted in Attaints; but that which cannot be determined before the Juſtices upon the *Niſi prius*, ſhall be adjourned to the Bench where they are Juſtices: And the Juſtices before whom Inquiſitions, Inqueſts, and Juries, ſhall be taken by the King's Writ of *Niſi prius*, are impower'd to give Judgment in Felony and Treaſon, *&c.* and to award Execution by Force of their Judgment. Stat. 5 *Ed.* 3. 14 *Hen.* 6. *cap.* 1. It was held by *Hale*, that the Juſtices of *Niſi prius* have not any original Power of determining Felony, without ſpecial Commiſſion for that Purpoſe; and by Virtue of the Acts 27 *Ed.* 1. *&* 14 *H.* 6. they have Authority to determine ſuch Felonies only, as are ſent down to be tried before them; in which Caſe on Removal of the Indiƈtments, they may proceed to Trial and Judgment as if Juſtices of Gaol-Delivery. 2 *Hale's Hiſt. P. C.* 41. The Chief Juſtice of the *King's Bench*, Chief Juſtice of the *Common Pleas*, and Chief Baron of the *Exchequer*, and in their Abſence two other of the Judges, *&c.* as Juſtices of *Niſi prius* for the County of *Middleſex*, ſhall try Cauſes upon Writs of *Niſi prius* on Iſſues joined in *B. R.* and *C. B.* and the Exchequer, which were formerly only triable at Bar, in the Term-time, or four Days after each Term. 18 *Eliz. c.* 12. And the Time is inlarged to eight Days after the End of any Term; alſo any one Judge or Baron may try Iſſues, *&c.* according to the Statute 18 *Eliz.* in the Abſence of the Chiefs, and all Sheriffs, Officers, Parties and Witneſſes, are required to give Attendance, *&c.* by the 12 *Geo.* 1. *c.* 31. The Authority of Juſtices of *Niſi prius* in the Country, is annexed to the Juſtices of Aſſiſe: And the Court above will take judicial Notice of what is done at *Niſi prius*; being entered on Record. 2 *Hawk.* 409. See *Aſſiſe*.

Nivicolini Britones, Is uſed for *Welſhmen*; becauſe in *Carmarthenſhire* and other *Northern* Counties of *Wales*, they lived near high Mountains covered with Snow.——— *Cum adverſus* Nivicolinos Britones *Regia eſſet Expeditio.* Du Cange.

Nobility, (*Nobilitas*) Signifies a *Nobleneſs* of Birth, Generoſity or Greatneſs of Mind, Excellence of Virtue: According to *Juvenal*,

——— Nobilitas *ſola eſt atque unica Virtus.*

A *Nobleman* among all Men is defined to be a Perſon, that hath a certain Eminency above the Reſt; one who is known by the heroical Virtues of his Life; And the *Nobility* with us compriſeth all Degrees of *Dignity* above a Knight; and is derived from the King, who may grant it in Fee, or for Life, *&c.* See *Peers of the Realm.*

Noble, Was an ancient Kind of *Engliſh* Money, in Uſe in the Reign of K. *Ed.* 3. And *Knighton* tells us, the *Roſe Noble* was a Gold Coin current in *England* about the Year 1344. At this Day there is no peculiar Coin of that Name; but a *Noble* is ſix Shillings and eight Pence Value, being a third Part of twenty Shillings. *Merch. Dict.*

Noctanter, Is the Name of a Writ iſſuing out of the *Chancery*, and returnable in the *King's Bench*, given by the Statute *Weſtm.* 2. 13 *Ed.* 2. *c.* 46. By Virtue of which Statute, where any one having Right to *approve* Waſte Ground, *&c.* makes and erects a Ditch or an Hedge, and it is thrown down in the *Night* time, and it cannot be known by a Verdiƈt of Aſſiſe or a Jury, by whom; if the neighbouring Vills will not indiƈt ſuch as are guilty, they ſhall be diſtrained to make again the Hedge or Ditch at their own Coſts, and to anſwer Damages. 2 *Inſt.* 476. And the *Noctanter* Writ thereupon is directed to the Sheriff of the County, commanding him by the Oath *Proborum & legalium hominum Com. prædict' Inquirer. qui Malefactores & pacis Dom. Regis perturbatores apud, &c. Sepes & Foſſata* A. B. *ibidem per ipſum nuper levat'* Noctanter *aut tali tempore quo facta eorum ſciri non credebant proſtraver. ad dampnum præd.* A. B. *& contra Pacem Dom. Regis, &c.* And on the Return of this Writ by the Sheriff, that the ſame is found by Inquiſition, and the Jury are ignorant who did it; the Return being filed in the Crown-Office, there goes out a Writ of Inquiry of the Damages, and a *Diſtringas* to the Sheriff to diſtrain *Propinquas Villatas ſepes & Fenſuras præd. circumadjacentes ſepes, &c. proſtrat. Levare ad Cuſtos ſuos proprios*, and alſo to reſtore the Damages, *&c.* The circumadjacent Vills intended by the Statute, are the contiguous Vills round the Place; and if they are not contiguous, they are not guilty, and may plead ſo: And when other Vills near of as great Value, by Favour or Negligence of the Sheriff are not ſummoned, *&c.* they may plead as Tere-nants do, where all are not ſummoned. As to the Pleadings to this Writ, where more Damages are found than there ought to be; the Defendants may by Proteſtation deny the Fact, or confeſs and aver that the Damages were but ſmall; and traverſe that the Party *ſuſtinuit damna* to the Sum found, or any other Sum beyond what they admit; or may plead Not guilty, and in their Defence any Matter which will be a Bar to the Proſecutor, but Satisfaction. 2 *Lill. Abr.* 217. Here if the Vills repair, Damages ought not be given to the Value of the Repairs; and if the Vills which are liable there to have repaired, it ought ſo far to help them in the Trial of the *Quantum damnificatus*, that the other Damages ought only to be conſidered. *Ibid.* The Charges of the Defence for the ſeveral Vills muſt be raiſed by Agreement; and if they cannot agree, each Vill is to bear their own Charges, as in Caſe of a Suit againſt a *Hundred*, till Execution; and then the Statute of 27 *Eliz.* hath provided a Remedy. The Writ of *Noctanter*, by the better Opinion, lies for the Proſtration as well of all Incloſures as thoſe improved out of Commons; but if it be not in the *Night*, this Writ will not lie: And there ought to be a convenient Time (which the Court is to judge of) before the Writ is brought, for the Country to inquire of and indiƈt the Offenders; which Sir *Edw. Coke* ſays ſhould be a Year and a Day. 2 *Inſt.* 476. *Cro. Car.* 440. 1 *Keb.* 545. And if any one of the Offenders be indiƈted, the Defendants muſt plead it, *&c.*

The Word *Noctanter* is ſo neceſſary in an Indiƈtment of *Burglary*, that it hath been adjudged inſufficient without it. *Cro. El.* 485.

Noctes & Noctem de Firma. In the Book of *Domeſday* we often meet with *Tot Noctes de firma*, or *firma tot Noctium*; which is underſtood of Entertainment of Meat and Drink for ſo many Nights: For in the Time of the *Engliſh Saxons*, Time was computed not by Days, but *Nights*; and ſo it continued till the Reign of King *Hen.* 1. as appears by his Laws, *cap.* 66, 76. And from hence it is ſtill uſual to ſay a *Sevenight*, i. e. *Septem Noctes*, for a Week;

and a *Fortnight* for two Weeks, i. e. *Quatuordecim Noctes.*

Nodfyrs or **Nedfri**, (*Sax.*) The learned *Spelman* ſays is derived from the old Saxon *Neod*, obſequium & *Fry*, Ignis, and ſignified Fires made in Honour of the Heathen Deities. But by others it is ſaid to come from the Saxon *Neb*, that is neceſſary; and was uſed for the neceſſary Fire.

Nolle proſequi, Is uſed in the Law, where a Plaintiff in any Action will proceed no further, and may be before or after a Verdict; though it is uſually before: And it is then ſtronger againſt the Plaintiff than a Nonſuit, which is only a Default in Appearance; but this is a voluntary Acknowledgment, that he hath no Cauſe of Action. 2 *Lill.* 218. A Plaintiff comes by his Attorney *hic in Curia & fatetur ſe ulterius* Nolle Proſequi; whereupon Judgment was given, That the Defendant *eat ſine Die*, and no Amercement upon the Plaintiff: This was held erroneous; for the Plaintiff ought alſo to be amerced. 8 *Rep.* 58. Where there are two Defendants, and one pleads Not guilty, and the other another Plea; if upon a Demurrer there is a Judgment for the Plaintiff againſt one on the Demurrer, and a *Nolle Proſequi* for the other, there it ought to be *eat ſine Die*, or it is ill; and the Entry of *Quod eat ſine Die* is a Diſcharge to the Defendant. *Cro. Jac.* 439. *Hob.* 180. In an Action brought againſt three Perſons, one of them pleads the General Iſſue, and the other Specially; the Plaintiff demurs on the Special Plea, and tries the General Iſſue, on which he hath a Verdict and Judgment; but before Judgment on the Demurrer he enters a *Nolle Proſequi* as to the Demurrer: And it was adjudged, that if the *Nolle Proſequi* had been entered before the Verdict and Judgment, it had diſcharged the whole Action; being in Nature of a Releaſe in Law to the others: So alſo if Judgment had been againſt all the Defendants, and the Plaintiff had entered the *Nolle Proſequi* for Two; for Nonſuit or Releaſe, or other Diſcharge of one, diſcharges all the reſt. *Hob.* 70. But in Action of Treſpaſs againſt two, one pleaded Not guilty, and the other juſtified; and both Iſſues being found for the Plaintiff, and ſeveral Damages and joint Coſts aſſeſſed; the Plaintiff then entered a *Nolle Proſequi* againſt one, and took Judgment againſt the other for Damages found againſt him, and the Coſts; upon which it was inſiſted on for Error, that the Entry of a *Nolle Proſequi* before Judgment as to one, is a Releaſe to him, and *quaſi* a Releaſe to both: *Per Cur'*, it is not an abſolute Releaſe, but as it were an Agreement that the Plaintiff will not proceed againſt the one; and as to him it is a Bar, but he may proceed againſt the other; and where they ſever by Pleas, there may be Proceedings againſt one, and a *Nolle Proſequi* againſt the other. *Cro. Car.* 239, 243. 2 *Lill.* 220. It has been held, in Treſpaſs againſt three Defendants; if a *Nolle Proſequi* were entered againſt two, before Judgment againſt any of them, it had not amounted to a Releaſe to them all; only to a Waiver of Suit: And the three Defendants cannot join in a Writ of Error; for thoſe againſt whom the *Nolle Proſequi* is entered, are not damnified. *Jenk. Cent.* 309. On two Promiſes, the Plaintiff may demur as to one Promiſe, and enter a *Nolle Proſequi* as to the other; and if Judgment is had on the firſt Promiſe, it will be well enough, though the *Nolle Proſequi* be not entered before ſuch Judgment. 2 *Lev.* 33. And if there are divers Iſſues, or an Iſſue and Demurrer in one Cauſe, againſt one Perſon, joined between the Parties, the Plaintiff may enter on the Roll a *Nolle Proſequi*, that he will not proceed on one or more of the Iſſues, or Demurrer joined; and may notwithſtanding go to Trial upon the Reſt of the Iſſues, or argue the Demurrer. *Hill.* 23 *Car. B. R.* The King may enter a *Nolle Proſequi* on an Information; but it ſhall not ſtop the Proceedings of the Informer. 1 *Leon.* 119. And if an Informer cauſe a *Nolle Proſequi* to be entered, the Defendant ſhall have Coſts, &c. by Stat. 4 & 5 *W. & M. Keble* mentions a *Nolle Proſequi* on *Retraxit* by Attorney 3 *Keb.* 332.

Nomenclator, One that opens the Etymologies of Names, interpreted *Theſaurarius* by the learned *Spelman. Cowel.*

Nomination, (*Nominatio*) Is a Power that a Man hath, by Virtue of ſome Manor or otherwiſe, of appointing a Clerk to a Patron of a Benefice, by him to be preſented to the Ordinary. The Right of *Nomination* a Man may have by Deed; and in ſuch Caſe, if the Patron refuſe to preſent the *Nominee*, or preſents another, he may bring a *Quare Impedit*; for he who is to preſent, is only an Inſtrument to him who *nominates*; and the Perſon who hath the *Nomination* is in Effect the Patron of the Church. *Plowd.* 529. *Moor* 47. A *Nominator* muſt appoint his Clerk within ſix Months after the Avoidance; if he doth not, and the Patron preſents his Clerk before the Biſhop hath taken any Benefit of the Lapſe, he is obliged to admit that Clerk: But where one hath the *Nomination*, and another the Preſentation, if the Right of Preſentation ſhould afterwards come to the King, it is ſaid he that hath the *Nomination* will be intitled to the Preſentation alſo; becauſe the King who ſhould preſent cannot be ſubſervient to the *Nominator*, it being contrary to his Dignity. *Hugh's Parſ. Law* 76, 77. Right of *Nomination* may be forfeited to the Crown as well as Preſentation; where the *Nominator* corruptly agrees to *nominate* within the Statute of *Simony*, &c.

Nomina Villarum. King *Edw.* 2. ſent his Letters to every Sheriff in *England*, requiring an exact Account and Return into the *Exchequer* of the Names of all the *Villages*, and Poſſeſſors thereof in every County; which being done accordingly, the Returns of the Sheriffs all joined together, are called *Nomina Villarum*, ſtill remaining in the *Exchequer*. Anno 9 Ed. 2.

Nomine Pœnæ, Is a Penalty incurred for not paying of a Rent, &c. at the Day appointed by the Leaſe or Agreement for Payment thereof. 2 *Lill.* 221. If Rent is reſerved, and there is a *Nomine Pœnæ* on the Non-payment of it, and the Rent be behind and unpaid, there muſt be an actual Demand thereof made, before the Grantee of the Rent can diſtrain for it; the *Nomine Pœnæ* being of the ſame Nature as the Rent, and iſſuing out of the Land out of which the Rent doth iſſue. *Hob.* 82, 133. And where a Rent Charge was granted for Years, with a *Nomine Pœnæ* and Clauſe of Diſtreſs, if it was not paid on the Day; on the Rent's being behind, and the Term expired, the Court was moved that the Grantee might diſtrain for the *Nomine Pœnæ*; but it was held that he could not, becauſe the *Nomine Pœnæ* depended on the Rent, and the Diſtreſs was gone for that, and by Conſequence for the other. 2 *Nelſ. Abr.* 1182. See Stat. 8 *Ann. c.* 17. When any Sum *Nomine Pœnæ* is to be forfeited for Non-payment of Rent at the Time, &c. the Demand of the Rent ought to be preciſely at the Day, in reſpect of the Penalty: And Debt will not lie on a *Nomine Pœnæ*, without a Demand. 7 *Rep.* 28. *Cro Eliz.* 383. *Style* 4. If there is a *Nomine Pœnæ*, of ſuch a Sum for every Day, after Rent becomes due, it has been a Queſtion whether there muſt be a Demand for every Day's *Nomine Pœnæ*, or one Demand for many Days: And by the better Opinion it hath been holden, that for every Day there ought to be a Demand; and that one will not be ſufficient for the Whole: But where a *Nomine Pœnæ* of 40 *s.* was limited *quolibet die proximo* the Feaſt-Day on which the Rent ought to be paid, it was adjudged that there was but one 40 *s.* forfeited, becauſe the Word *Proximo* muſt relate to the very next Day following the Rent Day; and ſo likewiſe when the Rent became due and unpaid at the next Rent-Day after that, and ſo on. *Palm.* 207. 2 *Nelſ.* 1182. An Aſſignee is chargeable with a *Nomine Pœnæ* incurred after the Aſſignment, but not before. *Moor* 357. 2 *Lill. Abr.* 221. Though a Forfeiture is mentioned to be *Nomine Pœnæ*, on not paying of a collateral Sum; it is no *Nomine Pœnæ*, if it be not of a Rent. *Lutw.* 1156.

Non-ability, Is an Exception taken againſt the Plaintiff in a Cauſe, upon ſome juſt Ground, why he cannot commence any Suit in Law; as *Præmunire*, *Outlawry*, *Excommunication*, &c. F. N. B. 35, 65. Vide *Diſability*.

Nonæ & Decimæ, Payments made to the Church by thoſe who were Tenants of Church Farms; where *Nonæ* was a Rent or Duty for Things belonging to Husbandry, and *Decimæ* were claimed in Right of the Church. Formerly a ninth Part of moveable Goods was paid to the Clergy on the Death of Perſons in their Pariſh, which was called *Nonagium*; and claimed on Pretence of being diſtributed to pious Uſes. *Blount.*

Non-age, In general Underſtanding is all the Time of a Perſon's being under the Age of One and Twenty; and in a ſpecial Senſe, where one is under Fourteen, as to Marriage, &c.

Non Aſſumpſit, A Plea in perſonal Actions, whereby a Man denies any *Promiſe* made, &c. See *Aſſumpſit.*

Non-claim, Is an Omiſſion or Neglect of one that claims not within the Time limited by Law; as within a Year and a Day, where *continual Claim* ought to be made; or in five Years after a *Fine* levied, &c. By which a Man may be barred of his Right of Entry. *Stat.* 4 *H.* 7. *c.* 24. 32 *H.* 8. *c.* 33. See *Claim.*

Non compos Mentis, Is where a Perſon is not of ſound Mind, Memory, and Underſtanding. And there are four Sorts of *Non compos Mentis*. 1*ſt*, An Ideot or natural Fool. 2*dly*, A Madman, or one who was of *Sane* Memory, but hath loſt his Underſtanding by Sickneſs, Accident or Misfortune. 3*dly*, A Lunatick, ſometimes of *Sane* Memory, and at other Times not ſo. 4*thly*, A Drunkard that deprives himſelf of his Memory and Underſtanding for a Time. But though a drunken Perſon is *Non compos Mentis*, it ſhall give no Privilege or Benefit to him, as to Acts done, &c. And his Drunkenneſs ſhall not extenuate, but rather aggravate his Offence, as well touching his Life as his Lands or Goods. 1 *Inſt.* 264. 4 *Rep.* 125. A Deed of Feoffment, Grant, &c. made by a Perſon *Non compos Mentis* is voidable; his Heir as privy in Blood, may ſhew the Diſability of his Anceſtor, and avoid his Grants; and his Executors, &c. as Privies in Repreſentation may do the ſame, by ſetting forth the Infirmity of the Teſtator or Inteſtate. 4 *Rep.* 126. Where a Perſon of *Sane* Memory becomes *Non compos Mentis*, and afterwards aliens his Lands or Goods; if he be found *Non compos*, and that he had aliened, the King may protect him, and take the Profits of his Lands, &c. to maintain him and his Family. *Rep.* 127. And he that hath the Cuſtody of a Man of *Non ſane* Memory is accountable as Bailiff to the *Non compos*, his Executors or Adminiſtrators. *Ibid.* A Man *Non compos Mentis* ſhall not loſe his Life for Felony or Murder; for he cannot be guilty of the Murder of another. 3 *Rep.* 124. 3 *Inſt.* 5, 54. Tho' if one who wants Diſcretion or Underſtanding, does any corporal Hurt to, or Treſpaſs againſt another; he may be compelled by Action to render Damages. 35 *H.* 6. 1 *Inſt.* 247. 1 *Hawk. P. C.* 2. Vide *Lunatick.*

Non-conformiſts. The Statutes 1 *Eliz.* and 13 *Car.* 2. were made for the Uniformity of Common Prayer, and Service in the Church; and Perſons *not conforming* thereto are ſubject to divers Penalties. Statute 10 *Ann. c.* 2. And it has been held, that a Diſſenter may be fined for *not conforming* to bear Offices of Charge, &c. in the Government. 4 *Mod. Rep.* 273, 274.

Non Damnificatus, Is a Plea to an Action of Debt upon a Bond, with Condition to ſave the Plaintiff harmleſs. 2 *Lill. Abr.* 224. If the Condition of a Bond be to ſave harmleſs only, *Non Damnificatus* generally is a good Plea; but if it be to diſcharge the Plaintiff, &c. then the Manner of the Diſcharge is to be ſhewn. 1 *Leon.* 72. When one pleads a Diſcharge, and that he ſaved another harmleſs, he ought to ſhew how he did it, that the Court may judge thereof: Tho' a Defendant may plead *Non Damnificatus*, without ſhewing of it; becauſe he pleads in the Negative, and then the other Party ſhall ſhew Damnification. *Cro. Jac.* 363. 2 *Rep.* 3, 4. *March* 121. It has been adjudged, where a Condition of a Bond is to ſave harmleſs from all Suits in general, *Non Damnificatus* may be pleaded; and if it is in a particular Suit or Thing, there the Defendant muſt ſet forth how he hath ſaved harmleſs and diſcharged; but where a Suit is upon a Counter-Bond, the Plea of *Non Damnificatus* is good. 8 *W.* 3. *B. R.* 5 *Mod.* 243.

Non Decimando. A Cuſtom or Preſcription *De Non Decimando* is to be diſcharged of all Tithes, &c. See *Modus Decimandi.*

Non Diſtringendo, Is a Writ not to diſtrain, uſed in divers Caſes. Table of *Reg. of Writs.*

Nones, (*Nonæ*) Of every Month is, the ſeventh Day of *March*, *May*, *July*, and *October*; and the fifth of all the other Months. By the *Roman* Account, the *Nones* in the afore-mentioned Months are the ſix Days next following the firſt Day, or the *Calends*; and of others the four Days next after the firſt, according to theſe Verſes,

Sex Nonas Majus, October, Julius, & Mars,
Quatuor at reliqui, &c.

Though the laſt of theſe Days is properly called *Nones*; for the others are reckoned backwards as diſtant from them, and accounted the third, fourth, or fifth *Nones*, &c. And *Nones* had their Name from their Beginning the *Ninth* Day before the *Ides.* See *Ides.*

Non eſt Culpabilis, Short *Non Cul.* is the general Plea to an Action of *Treſpaſs*, whereby the Defendant abſolutely denies the Fact charged on him by the Plaintiff; whereas in other ſpecial Pleas, the Defendant grants the Fact to be done, but alledges ſome Reaſons why he lawfully might do it. And as the Plea of *Non Culp.* is the general Anſwer in Actions of Treſpaſs, being Actions criminal civilly proſecuted; ſo it is likewiſe in all Actions criminally followed, either at the Suit of the King or any other, where the Defendant denies the Crime for which he is brought to Trial. *S. P. C. Lib.* 2. *c.* 62.

Non eſt Factum, A Plea where an Action is brought upon a Bond, or any other Deed, and the Defendant denieth that to be his Deed whereon he is impleaded. *Broke.* In every Caſe where a Bond is void, the Defendant may plead *Non eſt factum*: But when a Bond is voidable only, he muſt ſhew the ſpecial Matter, and conclude Judgment *Si Actio*, &c. 2 *Lill.* 226. If a Deed is raſed in a material Part, by which it becomes void, the Perſon bound by it may plead *Non eſt factum*, and give the Matter in Evidence; becauſe it was not his Deed at the Time of the Plea. 11 *Rep.* 27. A Bond was dated *November* the 10th, and ſo ſet forth in the Plaintiff's Declaration; the Defendant pleaded *Non eſt factum*, and though it was found that it was not delivered till the eighteenth, the Iſſue being upon a *Non eſt factum*, it appeared to be his Deed: But it is ſaid the Defendant might have helped himſelf by Pleading. *Cro. Jac.* 126. The Defendant pleads *Quod factum prædict.* was made and delivered with out a Date, and that the Plaintiff put a Date to it, and ſo *Non eſt factum*; this was held naught upon a Demurrer, for the Defendant confeſſes the Deed, by ſaying *Factum prædict.* and afterwards denies it; though he might have ſaid generally, *Non eſt factum*. *Cro. Eliz.* 800. Where two are jointly bound in a Bond, and an Action is brought on it againſt one only, he cannot Plead *Non eſt factum*, or Demur in that Caſe; but may have his Plea in Abatement of the Writ. 5 *Rep.* 119. None but the Party, his Heirs, Executors, &c. can plead *Non eſt factum*. Lutw. 662.

Non eſt Inventus, Is the Sheriff's Return to a Writ, when the Defendant is *Not to be found* in his *Bailiwick*. And there is a Return that the Plaintiff *Non invenit Plegium*, on original Writs. *Shep. Epit.* 1129.

Nonfeaſance, Is an Offence of Omiſſion of what ought to be done; as in not coming to Church, &c. which need not be alledged in any certain Place; for generally ſpeaking it is not committed any where: But *Nonfeaſance* will not make a Man a Treſpaſſer, &c. 1 *Hawk.* 13. *Hob.* 251. 8 *Rep.* 146.

Non implacitando aliquem de Libero Tenemento ſine Brevi, Is a Writ to prohibit Bailiffs, &c. from diſtraining or impleading any Man touching his Freehold, without the King's Writ. *Reg. Orig.* 171.

Non intromittendo, quando Breve Præcipe in Capite ſubdole impetratur, Was a Writ directed to the Juſtices of the *Bench* or in *Eyre*, commanding them not to give one, that had, under Colour of intitling the King to Land, &c. as holding of him *in Capite*, deceitfully obtained the Writ called *Præcipe in Capite*, any Benefit thereof, but to put him to his Writ of Right. *Reg. Orig.* 4. This Writ having Dependance on the Court of *Wards*, ſince taken away, is now diſuſed.

Nonjurors, Are Perſons that refuſe to take the *Oaths* to the Government, who are liable to certain Penalties; and for a third Offence to abjure the Realm, by 13 & 14 *Car.* 2. *c.* 1. Parſons, Vicars, &c. are to take the Oaths, and give their Aſſent to the Declaration 14 *Car.* 2. *c.* 4. or they ſhall not preach, under the Penalty of 40 *l.* &c. Stat. 17 *Car.* 2. *c.* 2. Eccleſiaſtical Perſons not taking the Oaths on the Revolution, were rendered incapable to hold their Livings: But the King was impowered to grant ſuch of the *Nonjuring* Clergy as he thought fit, not above twelve, an Allowance out of their Eccleſiaſtical Benefices for their Subſiſtence, not exceeding a third Part. 1 *W.* & *M. Seſſ.* 1. *c.* 8. Perſons refuſing the Oaths, ſhall incur, forfeit, and ſuffer the Penalties inflicted on Popiſh Recuſants, and the Court of *Exchequer* may iſſue out Proceſs againſt their Lands, &c. 7 & 8 *W.* 3. *c.* 27. See the Stat. 1 *Geo.* 1. *c.* 55. and *Oaths*.

Non Merchandizando victualia, Is a Writ to Juſtices of Aſſiſe, to inquire whether the Magiſtrates of ſuch a Town do ſell Victuals in Groſs, or by Retail, during the Time of their being in Office, which is contrary to an ancient Statute; and to puniſh them if they do. *Reg. Orig.* 184.

Non Moleſtando, A Writ that lies for a Perſon who is moleſted contrary to the King's Protection granted him. *Reg. Writs* 184.

Non obſtante, (Notwithſtanding) Is a Clauſe frequent in Statutes and Letters Patent, and is a Licence from the King to do a Thing which at the Common Law might be lawfully done; but being reſtrained by Act of Parliament, cannot be done without ſuch Licence. *Vaugh.* 347. *Plowd.* 501. It is ordained by the Statutes of 2 *E.* 3. 14 *E.* 3. and 13 *R.* 2. that the King's Pardon of notorious Felonies, &c. ſhould not be granted, although with the Words *Non obſtante* any Statute: Yet Patents of Pardon of ſuch Offences, were allowed with a *Non Obſtante*, and notwithſtanding any Clauſe to defeat the ſame. *Jenk. Cent.* 308. The Stat. 18 *Eliz. c.* 2. confirmed all Grants of the Queen by Letters Patent, of any Honours, Caſtles, Manors, Lands, Tenements, &c. and that they ſhould ſtand and be good in Law againſt the Queen, her Heirs and Succeſſors, *Non obſtante* any Miſ-naming, Miſ-recital, Want of Certainty, finding Offices or Inquiſitions, Livery of Seiſin, &c. By 14 *Car.* 2. *c.* 11. it was declared, that all Grants of Penſions, &c. and every *Non Obſtante* therein contained, ſhould be void. And the 1 *W.* & *M. c.* 2. makes Diſpenſations, *Non Obſtante* to Statutes, void; unleſs allowed therein. See *Diſpenſations* and *Grants of the King*.

Non omittas, Is a Writ directed to the Sheriff, where the Bailiff of a *Liberty* or *Franchiſe* who hath the Return of Writs refuſes or neglects to ſerve a Proceſs, for the Sheriff to enter into the Franchiſe and execute the King's Writ himſelf, or by his Officer: Before this Writ is granted, the Sheriff ought to return, that he hath ſent to the Bailiff, and that he hath not ſerved the Writ; but for Diſpatch, the uſual Practice is to ſend a *Non omittas* with a *Capias* or *Latitat*. *F. N. B.* 68, 74. 2 *Inſt.* 453. If a Sheriff return that he ſent the Proceſs to the Bailiff of a Liberty, who hath given him no Anſwer; a *Non omittas* ſhall be awarded to the Sheriff: And if he returns that he ſent the Proceſs to ſuch Bailiff, who hath returned a *Cepi Corpus*, or ſuch like Matter; and the Bailiff bring not in the Body, or Money, &c. at the Day, the Bailiff ſhall be amerced, and a Writ iſſue to the Sheriff to diſtrain the Bailiff to bring in the Body. 2 *Hawk.* 143. Writs of *Capias Utlagatum*, and of *Quo Minus* out of the Exchequer, and it is ſaid all Writs whatſoever at the King's Suit, are of the ſame Effect as a *Non omittas*; and the Sheriff may by Virtue of them enter into a Liberty and execute them. 2 *Lill. Abr.* 229. The *Reg. of Writs* mentions three Sorts of this Writ, which was given to prevent Liberties being privileged to hinder or delay the general Execution of Juſtice: And the Clauſe of the *Non omittas* is, *Quod* Non omittas *propter aliquam Libertatem*, (*viz.* of the Liberty to which the Sheriff hath made a *Mandavi Ballivo, qui nullum dedit Reſponſum*) *quin in eam ingrediaris* & *Capias* A. B. *Si*, &c.

Non-plevin, (*Non-plevina*) Is defined to be *Defalta poſt Defaltam*; and in *Hengham Magna*, *cap.* 8. it is ſaid, that the Defendant is to replevy his Lands ſeiſed by the King within fifteen Days; and if he neglects, then at the Inſtance of the Plaintiff at the next Court-Day, he ſhall loſe his Seiſin, *Sicut per Defaltam poſt Defaltam*: But by Statute it was enacted, that none ſhould loſe his Land, becauſe of *Non-plevin*, *i. e* where the Land was not replevied in due Time. 9 *Ed.* 3. *c.* 2.

Non ponendis in Aſſiſis & Juratis, Is a Writ granted for freeing and diſcharging Perſons from ſerving on Aſſiſes and Juries; and when one hath a Charter of Exemption, he may ſue the Sheriff for returning him. This Writ is founded on the Stat. of *Weſtm.* 2. *c.* 38. And the Stat. *Articuli ſuper Chartas*, *cap.* 9. F. N. B. 165. 2 Inſt. 127, 447.

Non procedendo ad Aſſiſam Rege inconſulto, A Writ to ſtop the Trial of a Cauſe appertaining to one that is in the King's Service, &c. until the King's Pleaſure be farther known. *Reg. Orig.* 220.

Non Pros. If a Plaintiff in an Action, doth not declare againſt the Defendant within reaſonable Time, a Rule may be entered againſt him by the Defendant's Attorney to declare; and thereupon a *Non Proſ.* &c. *Practiſ. Solic.* 222. And a Plaintiff may enter a *Non Proſ.* againſt one Defendant, where there are two that ſever in their Pleas, before the Record of the Cauſe is ſent down by *Niſi prius* to be tried at the Aſſiſes: But it is ſaid there cannot be a *Non Proſ.* at the Trial at the Aſſiſes. 3 *Salk.* 246. Though in Action againſt ſeveral Defendants,

fendants, it has been ruled otherwiſe. 2 *Salk.* 456. *Non Pros's* have been frequent upon Informations; but never upon Indictments, till the Reign of King *Charles* 2. *Ibid.* See *Nolle Proſequi*, and *Nonſuit*.

Non-Reſidence, Is applied to thoſe *Spiritual Perſons* that are not *Reſident*, but do abſent themſelves wilfully by the Space of one Month together, or two Months at ſeveral Times in one Year, from their Dignities or Benefices, which is liable to Penalties, by the Statute againſt *Non-Reſidence.* 21 *H.* 8. *c.* 13. But Chaplains to the King, or other great Perſons, mentioned in this Statute, and the 25 *H.* 8. *c.* 16. may be *Non-reſident* on their Livings; for they are excuſed from *Reſidence* whilſt they attend thoſe that retain them: And Biſhops are not puniſhable by Statute for *Non-Reſidency*; but if a Biſhop hold a Deanery, Parſonage, *&c. in Commendam* with his Biſhoprick, he is puniſhable by the Stat. 21 *H.* 8. for *Non Reſidence* on the ſame. Alſo where Biſhops are *Non-reſident* on their Biſhopricks, they are liable to Eccleſiaſtical Cenſure; and the King may iſſue a mandatory Writ for their Attendance thereon, and compel them to it by ſeiſing their Temporalties, a notable Precedent whereof we have in the Caſe of the Biſhop of *Hereford*, in the Reign of King *Hen.* 3. 2 *Inſt.* 625. See *Reſidence.*

Non Reſidentia pro Clericis Regis, Is a Writ directed to the Biſhop, charging him not to moleſt a Clerk employed in the King's Service, by Reaſon of his *Non-Reſidence*; in which Caſe he is to be diſcharged. *Reg. Orig.* 58.

Non ſane Memory, (*Non ſanæ Memoriæ*) Is uſed in Law for an Exception to an Act, declared to be done by another, whereon the Plaintiff in any Action grounds his Plaint; and the Effect of it is, that the Party that did that Act, was not well in his Senſes when he did it, or when he made his laſt Will and Teſtament. *New Book Entries.* And *Sane Memory* for the Making of a Will is not always where the Teſtator can anſwer Yes or No, or in ſome Things with Senſe; but he ought to have Judgment to diſcern, and be of perfect Memory, or the Will ſhall be void. *Moor, c.* 1051. See *Non compos Mentis.*

Nonſuit, (*Tergiverſatio, Litis renunciatio*) Is the letting a Suit or Action fall; or a Renunciation of it by the Plaintiff or Demandant, moſt commonly upon the Diſcovery of ſome Error or Defect, when the Matter is ſo far proceeded in, as the Jury is ready at the Bar to deliver their Verdict. 2 *H.* 4. *c.* 7. Where a Man brings a perſonal Action, and doth not proſecute it with Effect, or if upon the Trial, he refuſes to ſtand a Verdict; then he becomes nonſuited: If the Plaintiff be not ready at the Trial when the Jury is called and ſworn, the Court may call him *Nonſuit*; it ſhall be intended he will not proceed in his Cauſe, though ſometimes the Court hath ſtaid a While in Expectation of his Coming, and making good his Action: And on a Trial, when the Jury comes to deliver in their Verdict, and the Plaintiff is called upon to hear their Verdict; if he do not appear after thrice called, by the Crier of the Court, he is *nonſuited*, and the *Nonſuit* is to be recorded by the Secondary, by the Direction of the Court, at the Prayer of the Defendant's Counſel; for the Court will not order it to be recorded, except the Counſel pray it. *Hill.* 21 *Car. B. R.* 2 *Lill. Abr.* 231. But where a Plaintiff doth not appear to hear the Verdict when he is called, and thereupon the Court directs the Secondary to record the *Nonſuit*; if afterwards he do appear before the *Nonſuit* is actually recorded, the Court may proceed to take the Verdict; it not being a *Nonſuit* till recorded by the Secondary, and then it is made Part of the Record, and is in the Nature of a Judgment againſt the Plaintiff. 2 *Lill.* 232. A Plaintiff in Ejectment not appearing at the Aſſiſes, he was *nonſuited*, and this was recorded; but as there was no *Venire* or *Habeas Corpora*, the *Nonſuit* was diſcharged, becauſe the Judge of *Niſi Prius* hath no Power to *nonſuit* without an *Habeas Corpora* or *Diſtringas. Sid.* 164. After a Demurrer joined, if the Court gives a Day over, the Plaintiff may be *nonſuited*; for the Plaintiff is then demandable: And after a Judgment *quod computet*, the Plaintiff may be *nonſuited*, becauſe it is but an interlocutory Judgment; though after any Verdict, whereupon a final Judgment is to be given, he cannot. 1 *Inſt.* 140. 2 *Lill.* 231. At Common Law, upon every Continuance or Day given, the Plaintiff might be *Nonſuit*; ſo that even after a Verdict, if the Court took Time to conſider of it, the Plaintiff was demandable, and might be *nonſuited*; but this is now remedied by the Stat. 2 *Hen.* 4. Yet after a privy Verdict, the Plaintiff may ſtill be *nonſuit*; and ſo he may after a ſpecial Verdict found; and after a Demurrer, though the Matter was argued, if the Court give a Day over. 1 *Inſt.* 139. *Dyer* 53. 3 *Salk.* 249. In real or mixed Actions, the *Nonſuit* of one of the Plaintiffs or Demandants is not the *Nonſuit* of both; in this Caſe, he which makes Default ſhall be ſummoned and ſevered: But regularly in perſonal Actions, the *Nonſuit* of one Plaintiff is the *Nonſuit* of the others, unleſs in ſome Particulars. 1 *Inſt.* 138, 139. If an Action of Debt, *&c.* is brought againſt two or more Defendants, by ſeveral Counts and one *Præcipe*, a *Nonſuit* as to one, is ſo to the Reſt; for the Writ is one, and the Pledges *de Proſequendo* are the ſame: It is otherwiſe in a Diſcontinuance; which being againſt one ſhall not extend to the others; becauſe there are ſeveral Declarations againſt them. *Jenk. Cent.* 309. 3 *Salk.* 244. And where there is but one Defendant, who pleads to Iſſue as to Part, and demurs to the other Part, the Plaintiff may be *nonſuit* as to one, and proceed for the other. *Hob.* 180. The King cannot be *nonſuited*, becauſe in Judgment of Law he is always preſent in Court; though the Attorney General may enter a *Nolle Proſequi:* And the King's Suit may be diſcontinued, upon the Prayer of the Party, after a Year; where it is delayed to be proſecuted. 1 *Inſt.* 139. *Gold.b.* 53. Alſo notwithſtanding the King cannot be *nonſuit* in any Information or Action, wherein he himſelf is the ſole Plaintiff, an Informer *Qui tam*, or Plaintiff in a popular Action, may be *nonſuit*; and thereby wholly determine the Suit as well in Reſpect of the King as of himſelf. 1 *Inſt.* 139. *Bro* 68. *Fitzherb.* 13. A foreign King ſeeking to take the Benefit of the National Laws here, may be *nonſuit* in *England*; which was the Caſe of the King of *Spain. Mich.* 22 *Car. B. R.* A *Nonſuit* after Appearance, in Appeals of Murder, Writs of *Quare Impedit*, Attaints, *&c.* is peremptory. 1 *Inſt.* 139. In other Caſes, when a Plaintiff is *nonſuit*, he may proceed again on a new Declaration; but not on that wherein he became *nonſuit*, that Declaration being void, and he hath no Day in Court. A *Nonſuit* is not generally a Bar to Actions of the like Nature, for the ſame Cauſe or Duty; yet a *Retraxit* is a Bar to all other Actions. 2 *Lill.* 231. On *Nonſuit* of the Plaintiff, *&c.* Coſts are given to the Defendant in all Caſes where the Plaintiff would have had Coſts, if Judgment had been for him. *Stat.* 4 *Jac.* 1. *c.* 3. And on Appearance entered at the Return of the Writ, if the Plaintiff neglects to deliver a Declaration againſt the Defendant, in a perſonal Action, *&c.* before the End of the next Term following, a *Nonſuit* ſhall be entered againſt the Plaintiff; and he is to pay Coſts to the Defendant. 13 *Car.* 2. *c.* 2.

Non ſum Informatus, Is a formal Anſwer made of Courſe by an Attorney, who is not inſtructed or informed to ſay any Thing material in Defence of his Client's Cauſe; by which he is deemed to leave it undefended, and ſo Judgment paſſeth againſt his Client. *New Book Entries.*

Non-tenure, Is a Plea in Bar to a real Action, by ſaying, that he, the Defendant, holdeth not the Land mentioned in the Plaintiff's Count or Declaration, or at leaſt ſome Part thereof. 25 *E.* 3. *c.* 16. 1 *Mod. Rep.* 250. And our Books mention *Non-tenure* general and ſpecial: General, where one denies ever to have been Tenant of the Land in Queſtion; and ſpecial is an Exception, alledging that he was not Tenant the Day whereon the Writ was purchaſed. *Weſt. Symb. par.* 2. When the Tenant or Defendant pleads *Non-tenure* of the Whole, he need not ſay who is Tenant; but if he pleads *Non-tenure* as to Part, he muſt ſet forth who is the Tenant. 1 *Mod.* 181. *Non-tenure* in Part or in the Whole is not pleadable after Imparlance. 3 *Lev.* 55.

Non-term, (*Non terminus*) Is the Vacation between *Term* and *Term*: And it was formerly called the Time or Days of the King's Peace. *Lamb. Archa.* 126.

Non-uſer, Of Offices concerning the Publick, is Cauſe of Forfeiture. 9 *Rep.* 50. And if one have a Franchiſe, and do *not uſe* it, he ſhall forfeit the ſame; which likewiſe may be loſt by Default, as well as *Non-uſer.* Stat. 3 *Ed.* 2. *c.* 9. See *Office.*

Nook of Land, (*Nocata terræ*) In an old Deed of Sir *Walter de Pedwardyn*, twelve Acres and a Half of Land were called a *Nook of Land*; but the Quantity is generally uncertain.——*Illi qui tenuerunt dimidiam Virgatam terræ, vel* Nocatam terræ, *vel Cottagium de Bondagii tenura.* Dugd. Warwick. pag. 665.

Norroy, *Quaſi North Roy*, the *Northern King at Arms*, mentioned in the Statute 14 *Car.* 2. *c.* 33. See *Herald.*

Norwich. In the City of *Norwich* or County of *Norfolk*, no Perſons ſhall buy any worſted Yarn ſpun there, but ſuch as work at it in *Norwich*, *&c.* on Pain to forfeit 40*s.* for every Pound. 33 *H.* 8. *c.* 16. The making of *Norwich* Stuffs is regulated by Statute, and Penalties and Forfeitures for Defaults in making them, are leviable by Juſtices of Peace, *&c.* They are to be ſealed, and Perſons having them in their Poſſeſſion unſealed, other than the firſt Owner ſhall forfeit for every Piece 40*s.* Stat. 13 *&* 14 *Car.* 2. *cap.* 15. All Manufacturers of Stuffs, not Journeymen, *&c.* may be made Freemen of *Norwich*; and Perſons uſing Trades not being free, ſhall forfeit 10*l.* a Month. 9 *Geo.* 1. *c.* 9. The Election of Officers, *&c.* in the City of *Norwich* how to be made by Statute. See 3 *Geo.* 2. *c.* 8.

Notary, (*Notarius*) Is a Perſon, uſually a Scrivener, who takes *Notes*, or makes a ſhort Draught of Contracts, Obligations, or other Writings and Inſtruments. Stat. 27 *Ed.* 3. *c.* 1. At this Time we call him a *Notary Publick*, who publickly atteſts Deeds or Writings, to make them Authentick in another Country; but principally in Buſineſs relating to Merchants: They make Proteſts of Foreign Bills of Exchange, *&c.* And *Noting* a Bill is the *Notary*'s going as a Witneſs, to take *Notice* of a Merchant's Refuſal to accept or pay the ſame. *Merch. Dict.*

Note of a Fine, Is a Brief of the Fine made by the *Chirographer*, before it is ingroſſed. *Weſt. Symb. par.* 2.

Notes promiſſory, For Payment of Money. See *Bill of Exchange.*

Not guilty, Is the General Iſſue or Plea of the Defendant in any criminal Action; and *Not guilty* is a good Iſſue in Actions of Treſpaſs on the Caſe, and upon the Caſe for Deceits or Wrongs; but not on a Promiſe, *&c. Palm.* 393. If one hath Cauſe of Juſtification and Excuſe in Treſpaſs, and he pleads the General Iſſue *Not guilty*; he cannot give the Special Matter in Evidence, but muſt confeſs the Fact, and plead the Special Matter, *&c.* 5 *Rep.* 119. Vide *Non eſt Culpabilis.*

Notice, Is the making of ſomething known, that a Man was or might be ignorant of before. And it produces divers Effects; for by it the Party that gives the ſame, ſhall have ſome Benefit which otherwiſe he ſhould not have had: And by this Means, the Party to whom the *Notice* is given, is made ſubject to ſome Action or Charge, that otherwiſe he had not been liable to; and his Eſtate in Danger of Prejudice. *Co. Litt.* 309. *Notice* is required to be given in many Caſes by Law, to juſtify Proceedings where any Thing is to be done or *demanded*, *&c.* But none is bound by the Law to give *Notice* to another Perſon of that which ſuch other may otherwiſe inform himſelf of. 22 *Car.* B. *R.* If one be bound by an *Aſſumpſit* generally to do a Thing to another, he to whom the Promiſe is made muſt give *Notice* when he will have him to do it; but if he promiſe that another Perſon ſhall do it, there he to whom the Thing is to be done is not obliged to give *Notice* to that third Perſon when he will have it done, but the Party muſt procure it at his Peril: For it may be he may not know that other Perſon, and there is no Privity of Contract between them Two, as there is betwixt the other Two. 2 *Lill. Abr.* 239. And in Caſe of a Promiſe it has been adjudged, that where a Penalty is to be recovered, *Notice* is requiſite; but it is not ſo where Damages are to be recovered; in which Caſe the Party hath ſufficient *Notice* by the Action brought. 1 *Bulſt.* 12. If a Perſon promiſe to pay ſo much to another at his Day of Marriage; the Party at his Peril is to take *Notice* of the Marriage. *Cro. Car.* 34, 35. And it is a neceſſary Intendment, that when after the Marriage the Plaintiff requeſted Payment of the Money, that *Notice* was given of the Marriage. *Cro. Jac.* 228. It is held, that if a collateral Thing is to be done at or after Marriage, there *Notice* is to be given of it; though when Money is to be paid, it is a Debt due to the Party by the Marriage, and may be recovered without any *Notice* given. 2 *Bulſt.* 254. *Notice* muſt be given to an Heir at Law, of a Condition annexed to his Eſtate; or he is not bound to take *Notice* of the Condition. 1 *Lutw.* 809. 4 *Rep.* 82. 3 *Mod.* 28. Yet it is ſaid, that the Heir is bound to take *Notice* of a Proviſo in a Feoffment; and this Difference has been taken, that where *Notice* is required to be given by the original Deed or Agreement, it is hereditary, and deſcends to the Heir; but if it is collateral to the Father, it ſhall not bind his Heir without expreſs *Notice. Winch* 108. 2 *Nelſ. Abr.* 1186. A Man who is a Stranger to a Deed, that hath an Eſtate by Way of Remainder, *&c.* ſhall not forfeit or determine his Eſtate by Virtue of any Proviſo in ſuch Deed, unleſs he hath *Notice* of it. 8 *Rep.* 92. The Feoffee of Land, or Bargainee of a Reverſion, ſhall not take Advantage of a Condition, for Non-payment of Rent reſerved upon a Leaſe, on Demand made by them, without *Notice* thereof given to the Leſſee. 9 *Rep.* 31. If a Manor be conveyed or granted away by Deed of Bargain and Sale, *&c.* to another; the preſent Lord muſt give *Notice* of it to the Copyholder, otherwiſe if he deny to pay his Rent, it will be no Forfeiture. 5 *Rep.* 13. And Copyholders ſhall not forfeit their Eſtates for not appearing at the Lord's Court, if they have no *Notice* of the Court, *&c.* 1 *Leon.* 104. In a Covenant to make Aſſurance generally, *Notice* muſt be given to the Party to know what Eſtate he would have made to him. *Style* 61. Where one is bound to another to make ſuch an Aſſurance as *A. B.* ſhall adviſe, the Obligor is bound to make the Aſſurance, without *Notice* that *A. B.* had adviſed it; but if he had been bound to make ſuch Aſſurance as the Counſel of the Obligee ſhould adviſe, *Notice* ought to be given the Obligor, that the Counſel of the Obligee had adviſed it. 1 *Leon.* 105 If I am bound to enfeoff ſuch Perſons as the Obligee ſhall name, he is to give *Notice* of thoſe which he names, or I am not bound to enfeoff them. 2 *Danv. Abr.* 105. And if the Condition of an Obligation be to account before ſuch Auditors as the Obligee ſhall aſſign, and the Obligee aſſigns Auditors; he is to give *Notice* thereof to the Obligor, or he will not be bound to account. *Ibid.* *Notice* is not to be given ſo ſtrictly upon a Covenant, as upon a Bond; which is Point of Forfeiture. *Cro. Jac.* 391. If the Agreement be that a Perſon ſhall pay ſo much as *A. B.* hath paid, the Defendant is to inquire of him, and the Plaintiff is not bound to give *Notice:* But if the Perſon or Thing is altogether uncertain, the Plaintiff to intitle himſelf to an Action muſt give *Notice. Cro. Jac.* 432, 433. If an Act is to be done by a Stranger, and not by the Plaintiff, the Cogniſance thereof lies as well in the *Notice* of the Defendant as of the Plaintiff; and therefore the Plaintiff need not lay a *Notice. Cro. Jac.* 492. *Cro. Car.* 132. A Thing lies in the Knowledge of the Plaintiff, there ought to be *Notice* given to the Defendant. *March* 156. *Mod.* 230. And when one may take *Notice*, and not the other; *Notice* is neceſſary. *Latch* 15. It has been holden, that a Defendant having undertaken to do a Thing, undertakes to do all Circumſtances incident to the Doing it, and that without *Notice*; but if he had been ignorant of the Thing to be done, then *Notice* muſt be given. 2 *Bulſt.* 143. If one make a Leaſe for Years, with Covenant that if the Leſſee, his Executors and Aſſigns, do not repair within ſix Months after *Notice* given, the Leaſe to be void; and the Leſſee makes a Leaſe for Part of his Term to another, and then the Houſe is decayed: In this Caſe the *Notice* is to be given to the firſt Leſſee in Perſon, and not to the Under-Tenant. 2 *Cro.* 9, 10. A *Notice* may not be pleaded to be given to Executors, without averring the Death of the Teſtator. *Hob.* 93. In all Writs of Enquiry of Damages, as well in real as perſonal Actions, *Notice* muſt be given to the other Party to the Suit. *March Rep.* 82. Want of *Notice* upon various Occaſions, has been often the Cauſe of Arreſt of Judgment in Actions, &c.

Notice Is to be given, of *Trials* and Motions; of a *Robbery* committed, to recover againſt the Hundred; of a prior *Mortgage*, on making a ſecond; of an *Aſſignment* of a *Leaſe*, to charge the Aſſignee only on Acceptance of Rent; in Caſes of *Diſtreſs* for Rent, according to the Statute; and of *Avoidances* of Churches, by Reſignation, Deprivation, &c. to the Patron that he may preſent, &c.

Noval, Signifies Land newly ploughed or converted into Tillage, that without Memory of Man had not been tilled; and ſometimes it is taken for Ground which hath been ploughed for two Years, and afterwards lies Fallow for one Year; or that which lies Fallow every other Year: It is called *Noval*, becauſe the Earth *Novâ culturâ proſcinditur.* Cartular. Abbat. de Furneſſe in Com. Lanc. in Officio Ducat. Lanc. fol. 41.

Nova Oblata, Mentioned *in Clauſ.* 12 *Ed.* 1. *m.* 7. See *Oblata.*

Novel Aſſignment, (*Nova Aſſignatio*) Is an *Aſſignment* of Time, Place, or ſuch like, in Action of *Treſpaſs*, otherwiſe than as it was before *aſſigned*; or where it is more particularly in a Declaration than in the Writ, &c. *Bro. Treſpaſs*, 122. And if the Defendant juſtifies in a Place where no *Treſpaſs* was done, then the Plaintiff is to *aſſign* the Cloſe where, to which the Defendant is to plead, &c. *Terms de Ley* 459. Vide *Treſpaſs.*

Novel Diſſeiſin, (*Nova Diſſeiſina.*) See *Aſſiſe of Novel Diſſeiſin.*

Novellæ. Thoſe Conſtitutions of the *Civil Law*, which were made after the Publication of the *Theodoſian Code*, were called *Novellæ*, by the Emperors, who ordained them: But ſome Writers call the *Julian* Edition only by that Name. *Blount.*

Noyles. No Perſon ſhall put any Flocks, *Noyles*, Thrums, &c. or other deceivable Thing, into any Broad Woollen *Cloth*, by Stat. 21 *Jac.* 1. *cap.* 18.

Nuces colligere. To gather Hazle-Nuts, which was formerly one of the Works or Services impoſed by Lords upon their inferior Tenants. *Paroch. Antiq.* 495.

Nude Contract, (*Nudum Pactum*) Is a bare *naked Contract*, without any Conſideration had therefore If a Man bargains or ſells Goods, &c. and there is no Recompence made or given for the doing thereof; as if one ſay to another, I ſell you all my Lands or Goods, but nothing is agreed upon what the other ſhall give or pay for them, ſo that there is not a *Quid pro Quo* of one Thing for another; this is a *Nude Contract*, and void in Law, and for the Nonperformance thereof no Action will lie; *Ex* nudo pacto *non oritur Actio.* Terms de Ley 459, 460. The Law ſuppoſes Error in making theſe Contracts; they being as it were of one Side only.

Nude Matter, Is naked Matter, or a bare Allegation of a Thing done, &c. Vide *Matter.*

Nul tiel Record, Is the Plea of a Plaintiff *that there is no ſuch Record*, on the Defendant's alledging Matter of *Record* in Bar of the Plaintiff's Action See *Failure of Record.*

Nullum Arbitrium, The uſual Plea of the Defendant proſecuted on an *Award.*

Nullity, is where a Thing is *null* and void, or of no Force. *Litt. Dict.* And there is a *Nullity* of Marriage, where Perſons marry within the prohibited Degrees, &c.

Numerum. *Civitas Cant. Reddit* 24 *l. ad numerum*, i. e. by Number or Tale, as we call it. *Domeſday.*

Nummata, Signifies the Price of any Thing generally by Money; as *Denariata* doth the Price of a Thing by Computation of Pence; and *Librata* by Computation of Pounds.

Nummus, A Piece of Money or Coin among the *Romans*; and it is a Penny according to *Mat. Weſtm. ſub Ann.* 1095.

Nun, (*Nonna*) Is a conſecrated Virgin or Woman that by Vow hath bound herſelf to a ſingle and chaſte Life, in ſome Place or Company of other Women, ſeparated from the World, and devoted to an eſpecial Service of God by Prayer, Faſting, and ſuch like holy Exerciſes: It is an *Egyptian* Word, as we are told by St. *Hierome.*

Nuncius, A *Nuncio*, or Meſſenger, Servant, &c. And the Pope's *Nuncio* is *Legatus Pontificis.*

Nuncupative Will, (*Teſtamentum Nuncupatum*) Is a Will by Word of Mouth; it is a verbal Declaration of the Teſtator's Mind before a ſufficient Number of Witneſſes; which being reduced into Writing either before or after the Death of the Teſtator, is good to diſpoſe of his perſonal Eſtate, but not his Lands. 2 *Nelſ. Abr.* 1191. Before the Stat. 29 *Car.* 2. it was neceſſary not only to put a *Nuncupative Will* in Writing, but to prove it likewiſe by Witneſſes in the Spiritual Court, and to have it under the Seal of the Ordinary; until which it hath been decreed in Equity, that ſuch *Will* was not pleadable againſt an Adminiſtrator. 1 *Chanc. Rep.* 122. And by that Statute, no *Nuncupative Will* ſhall be good, wherein the Eſtate bequeathed exceeds 30 *l.* unleſs proved by three Witneſſes who were preſent at the Making thereof, and bid by the Teſtator to bear Witneſs; nor except it be made in the Time of the laſt Sickneſs of the Deceaſed, and in his Houſe, or where he hath been reſident for ten Days before, unleſs ſurprized with Sickneſs from home: And no Evidence ſhall be received to prove ſuch Will, after ſix Months after the ſpeaking of the Teſtamentary Words; if the ſame or the Subſtance of it be not committed to Writing within ſix Days after the Making. Nor ſhall any Probate of ſuch *Nuncupative Will* paſs the Seals till fourteen Days after the Death of the Teſtator; and until Proceſs hath iſſued to call in the Widow or next of Kin to the Deceaſed, to conteſt it if they think fit. 29 *Car.* 2. *c.* 3. And by the ſame Act, no Will in Writing concerning perſonal Eſtate, ſhall be repealed by any Words or Will by Word of Mouth, except the ſame be put into Writing in the Life-time of the Teſtator, and read to and approved of by him, and proved to be ſo done by three Witneſſes, &c. All Witneſſes as are allowed to be good Witneſſes upon Trials at Law, ſhall be good Witneſſes to prove any *Nuncupative Will.* by Stat. 4 & 5 *Annæ.*

Nuper obiit, Is a Writ that lies for a Siſter and Coheir, deforced by her Coparcener of Lands or Tenements, whereof their Father, Brother or any other common Anceſtor, died ſeiſed of an Eſtate in Fee-ſimple: For if one Siſter do deforce another of Land held in Fee-tail, her Siſter and Coheir ſhall have a *Formedon* againſt her, &c. and not a *Nuper obiit*; and where the Anceſtor being once ſeiſed, died not ſeiſed of the Poſſeſſion, but the Reverſion, in ſuch a Caſe a Writ of *Rationabili parte* lies. *Reg. Orig.* 226. *F. N. B.* 197. *Terms de Ley* 460. If one Coparcener be deforced by another, and a Stranger, ſhe ſhall have a *Nuper obiit* againſt her Coparcener: And if two Coparceners after the Death of their Anceſtor enter and deforce a third Siſter, and afterwards they make Partition betwixt them, and then one of the two alieneth her Part to a Stranger in Fee; yet the third ſhall have the Writ *Nuper obiit* againſt her two Siſters, notwithſtanding that Alienation, and ſhall recover the third Part of what the Coparcener who alienated not was ſeiſed, &c. And may ſue an Aſſiſe of *Mordanceſtor*, or Writ of *Aiel*, as the Caſe is, in the Name of the other Coparcener, to recover her third Part in the Hands of the Stranger. *New Nat. Br.* 437, 438. A *Nuper obiit* ought to be brought by that Coparcener who is deforced, againſt all the other Coparceners; and altho' ſome of them have nothing in the Tenancy. *Ibid.* And this Writ lieth between Siſters of the Half-Blood; and likewiſe between Coheirs in *Gavelkind*, as well as between Women Parceners, &c.

Nuſances, (*Nocumentum*, from the Fr. *Nuire*, i. e. *Nocere*) Particularly ſo called, is where one makes any Encroachment on the King's Lands, or the Highways, common Rivers, &c. 2 *Inſt.* 272. If a Man doth any Thing upon his own Ground, to the particular Damage of his Neighbour, &c. it is accounted a *Nuſance*: And *Nuſance* ſignifies not only a Thing done to the Annoyance of another, in his Lands or Tenements; but the *Aſſiſe* or Writ lying for the ſame. *F. N. B.* 183. And *Nuſances* are Publick and *Common*, or *Private*: A Common *Nuſance* is defined to be an Offence againſt the Publick, either by doing a Thing which tends to the Annoying of all the King's Subjects, and is common againſt all; or by neglecting to do any Thing which the common Good requires. 2 *Rol. Abr.* 83. And Annoyances in Highways, as where a Gate, Hedge, &c. or Ditches are made therein; of Bridges and publick Rivers, diſorderly Alehouſes, Bawdy-Houſes, Gaming-Houſes, Stages for Rope-Dancers, Mountebanks, &c. Brewing-Houſes erected in Places not convenient; Cottages with Inmates; common Scolds, Eves-Droppers, &c. are generally *Common Nuſances.* 2 *Inſt.* 406. If a Man ſtops up the Light of another's Houſe; or builds ſo near to and hanging over mine, that the Rain which falleth from his Houſe falls upon mine; the Turning or diverting Water, running to a Man's Houſe, Mill, Meadow, &c. or ſtopping up a Way, leading from Houſes to Lands; Suffering the next Houſe to decay to the Damage of my Houſe; and ſetting up or making a Houſe of Office, Lime-pit, Dye-houſe, Tan-houſe or Butcher's Shop, &c. and uſing them ſo near my Houſe, that the Smell thereof doth annoy me, or is infectious; or if they hurt my Lands or Trees, or the Corruption of the Water of Lime-pits ſpoils my Water or deſtroys Fiſh in a River, &c. Theſe are in general *Private Nuſances.* 3 *Inſt.* 231. 9 *Rep.* 54. 5 *Rep.* 101. 1 *Roll. Abr.* 88. 2 *Roll.* 140. 1 *Danv. Abr.* 173. For a common *Nuſance*, Indictment lies at the Suit of the King; and the Party ſhall be fined and impriſoned, &c. No Action lieth in this Caſe, becauſe if one Man might have an Action, all Men may have the like: And the Indictment muſt be *ad Commune Nocumentum omnium Ligeorum*, &c. 5 *Rep.* 73. 1 *Inſt.* 56. 1 *Ventr.* 208. But though Action may not be brought for a common *Nuſance*, but Indictment or Preſentment; yet where the Inhabitants of a Town had by Cuſtom a watering Place for their Cattle which was eſtopped by another, it has been held, that any Inhabitant might have an Action againſt him, otherwiſe they would be without Remedy; becauſe ſuch a *Nuſance* is not common to all the King's Subjects, and preſentable in the Leet, or to be redreſſed by Preſentment or Indictment in the Quarter-Seſſions. 5 *Rep.* 73. 9 *Rep.* 103. And if any one Perſon hath more particular Damage by a common *Nuſance* than another; as if by Reaſon of a Pit dug in a Highway, a Man for whoſe Life I held Lands is drowned; or my Servant falling into it receives Injury, whereby I loſe his Service, &c. for this ſpecial Damage, which is not common to other Perſons, Action lies. 5 *Rep.* 73. 4 *Rep.* 18. *Cro. Car.* 446. *Vaugh.* 341. 4 *Bulſt.* 344. For private *Nuſances*, Action on the Caſe lieth, or *Aſſiſe of Nuſance* by the Party grieved; and on Action for a private *Nuſance*, Judgment ſhall be given that the *Nuſance* ſhall be removed, and the Party injured recover Damages for the Injury ſuſtained. 1 *Roll. Abr.* 391. 1 *Vent.* 208. There is a Difference between an *Aſſiſe* for a *Nuſance*, and an *Action on the Caſe*; for the firſt is to abate the *Nuſance*, but the laſt is not to abate it but to recover Damages: Therefore if the *Nuſance* be removed, the Plaintiff is intitled to his Damages which accrued before; and though 'tis laid with a *Continuando* for a longer Time than the Plaintiff can prove, he ſhall have Damages for what he can make Proof of before the *Nuſance* was removed. 2 *Mod.* 253. A Man may have an Action for a *Nuſance*, or he may abate or demoliſh the ſame; but if he deſtroy the *Nuſance* himſelf, before he bring his Action, he may not after have an Action for the Wrong, nor recover any Damages. 9 *Rep.* 55. *F. N. B.* 185. 2 *Roll. Abr.* 745. It is ſaid both of a common and private *Nuſance*, that they may be abated or removed by thoſe Perſons that are prejudiced by them; and they need not ſtay to proſecute for their Removal. 2 *Lill. Abr.* 244. *Wood's Inſt.* 443. And it has been adjudged, that every Perſon may remove a *Nuſance*; and that the Cutting a Gate ſet croſs an Highway is lawful. *Cro. Car.* 184, 185. Alſo if a Houſe be on the Highway, or a Houſe hang over the Ground of another, they may be pulled down; but no Man can juſtify the Doing more Damage than is neceſſary, or Removing the Materials. 1 *Hawk.* 199. A Man builds a Houſe ſo near mine that it is a *Nuſance*; I may enter and pull it down; and a Man indicted for a Riot in ſuch a Caſe had only a ſmall Fine ſet on him. 2 *Salk.* 459. Where two Houſes, one whereof is a *Nuſance* to the other, come both into one and the ſame Hand, the Wrong is purged. See *Hob.* 131. If a Ship be ſunk in a Port or Haven, and it is not removed by the Owner, he may be indicted for it as a common *Nuſance*, becauſe it is prejudicial to the Commonwealth in hindering Navigation and Trade. 2 *Lill.* 244. Indictment lies for laying Logs, &c. in the Stream of a publick navigable River: It is a common *Nuſance* to divert Part of a publick navigable River whereby the Current of it is weakened, and made unable to carry Veſſels of the ſame Burden as it could before: And if a River be ſtopped to the *Nuſance* of the Country, and none appear bound by Preſcription to cleanſe it; thoſe who have the Piſcary, and the neighbouring Towns that have a common Paſſage and Eaſement therein, may be compelled to do the ſame. 1 *Hawk. P. C.* 198, 199, 200. It is a common *Nuſance* indictable, to divide a Houſe in a Town for poor People to inhabit in, by Reaſon whereof it will be more dangerous in the Time of Sickneſs and Infection of the Plague. 2 *Roll. Abr.* 139. A common Playhouſe, if it draws together ſuch Numbers of Coaches and People as incommode and diſturb the Neighbourhood, may be a *Nuſance*; but theſe Places are not naturally *Nuſances*, but become ſo by Accident. 1 *Roll. Rep.* 109. 1 *Hawk.* 191. A prohibitory Writ was iſſued out of B. *R.* againſt *Betterton* and other Actors, for erecting a New Play-houſe in *Little Lincoln's Inn Fields*, reciting that it was a *Nuſance* to the Neighbourhood; and they not obeying the Writ, an Attachment was granted againſt them: But it was objected that an Attachment could not be iſſued, and that the moſt proper Method was to proceed by Indictment, and then the Jury would conſider whether it were a *Nuſance* or not; and this was the better Opinion. 5 *Mod.* 142. 2 *Nelſ. Abr.* 1192. One *Hall* having begun to build a Booth near *Charing Croſs* for Rope dancing, which drew together a great many idle People, was ordered by the Lord Chief Juſtice not to proceed; he proceeded notwithſtanding, affirming that he had the King's Warrant and Promiſe to bear him harmleſs; but being required to give a Recogniſance of 300*l* that he would not go on with the Building, and he refuſing, he was committed, and a Record was made of this *Nuſance*, as upon the Judge's own View, and a Writ iſſued to the Sheriff of *Middleſex* to proſtrate it. 1 *Vent.* 169. 1 *Mod.* 96. Erecting a Dove-cote is not a common *Nuſance*; though Action of the Caſe will lie at the Suit of the Lord of the Manor for erecting it without his Licence. 1 *Hawk.* 199. It was antiently held, that if a Man erected a Dove-cote, he was puniſhable in the Leet; but it has been ſince adjudged not to be puniſhable in the Leet as a common *Nuſance*, but that the Lord for this particular *Nuſance* ſhould have an Action on the Caſe, or an Aſſiſe of *Nuſance*; as he may for building an Houſe to the *Nuſance* of his Mill. 5 *Rep.* 104. 3 *Salk.* 248. Neither the King, nor Lord of a Manor, may Licence any Man to make or commit a *Nuſance*. 1 *Roll. Abr.* 138. A Brewhouſe erected in ſuch an inconvenient Place, wherein the Buſineſs cannot be carried on without greatly incommoding the Neighbourhood, may be indicted as a common *Nuſance*; and ſo in the like Caſe may a Glaſshouſe, &c. 1 *Hawk.* 199. Where there hath been an antient Brewhouſe Time out of Mind, although in *Fleet-ſtreet*, &c. this is not any *Nuſance*, becauſe it ſhall be ſuppoſed to be erected when there were no Buildings near: Tho' if a Brewhouſe ſhould be now built in any of the High Streets of *London*, or trading Places, it will be a *Nuſance*, and Action on the Caſe lies for whomſoever receives any Damage thereby; and accordingly in an Action brought againſt a Brewer in the laſt Caſe, where a Perſon's Goods were injured in his Shop, the Jury gave the Plaintiff for two Years Damages ſixty Pounds. 2 *Lill. Abr.* 246. *Palm.* 536. A Plaintiff was poſſeſſed of an Houſe wherein he dwelled, and the Defendant built a Brewhouſe, &c. in which he burnt Coal ſo near the Houſe, that by the Stink and Smoak he could not dwell there without Danger of his Health; and it was adjudged that the Action lay, though a Brewhouſe is neceſſary, and ſo is burning Coal in it. *Hutton* 135. If a Perſon melt Lead ſo near the Cloſe of another Perſon that it injures his Graſs there, and whereby Cattle are loſt; notwithſtanding this is a lawful Trade, and for the Benefit of the Nation, Action lies againſt him; for he ought to uſe his Trade in waſte Places. ſo as no Damage may happen to the Proprietors of the Land next adjoining. 2 *Rol. Abr.* 140. Building a Smith's Forge near a Man's Houſe, and making a Noiſe with Hammers, ſo that he could not ſleep, was held a *Nuſance*, for which Action lies; although the Smith pleaded that he and his Servants worked at ſeaſonable Times; that he had been a *Blackſmith*, and uſed the Trade above twenty Years in that Place, and ſet up his Forge in an old Room, &c. For though a *Smith* is a neceſſary Trade, and ſo is a Lime-burner, and a Hog-Merchant; yet theſe Trades muſt be uſed not to be injurious to the Neighbours. 1 *Lutw.* 69. But if a Schoolmaſter keeps a School ſo near the Study of a Lawyer by Profeſſion, that it is a Diſturbance to him; this is not a *Nuſance* for which Action may be brought. *Wood's Inſt.* 538. An Innkeeper brought an Action on the Caſe againſt a Perſon for erecting a Tallow Furnace, and melting ſtinking Tallow ſo near his Houſe that it annoyed his Gueſts, and his Family became unhealthful; and adjudged that the Action lay. *Cro. Car.* 367. So where a Perſon kept a Hogſty near a Man's Parlour, whereby he loſt the Benefit of it. 2 *Roll. Abr.* 140. Yet 'tis ſaid to be no *Nuſance* to a Neighbourhood, for a Butcher, or Chandler, to ſet up their Trade and Houſes amongſt them: But it may be by ſuch Tradeſmen, laying ſtinking Heaps at their Doors; in other Caſes the Neceſſity of the Thing, ſhall diſpenſe with the Noiſomneſs of it. *Paſch.* 5 *Jac.* 1. B. *R.* If a Man have a Spout falling down from his Houſe, and another Perſon erect any Thing above it, that the Water cannot fall as it did, but is forced into the Houſe of the Plaintiff, and rots the Timber; it is a *Nuſance* actionable. 18 *E.* 3. 22. *Roll. Abr.* 140. And in Treſpaſs for a *Nuſance*, in cauſing ſtinking Water in the Defendant's Yard to run to the Walls of the Plaintiff's Houſe, and piercing them ſo that it run into his Cellar, &c. Judgment was given for the Plaintiff. *Hardres* 60. An Action lies for hindering of the wholſome Air, and alſo for corrupting of the Air. 9 *Rep.* 58. And none ſhall caſt any Garbage, Dung, or Filth into Ditches, Waters, or other Places, within or near any City or Town, on Pain of Puniſhment by the Lord Chancellor at Diſcretion, as a *Nuſance*. Stat. 12 *R.* 2. *c.* 13. The Continuation of a *Nuſance* is as it were a new *Nuſance*: Where a *Nuſance* is erected in the Time of the Deviſor, and continued afterwards by the Deviſee, it is as the new Erecting of ſuch a *Nuſance*. 2 *Leon.* 129. *Cro. Car.* 231. If one hath a Freehold Land adjoining to the Highway, and he incroach Part of the Way, and lay Lands to it; and then dying it comes to his Heir, if he continues it, tho' he do nothing elſe, he may be indicted for the Continuance of the *Nuſance*. *Roll. Abr.* 137. A Man erects a *Nuſance*, and then lets it; the Continuance by the Leſſee has been held a *Nuſance*, againſt whom the Action lies. *Cr. Jac.* 373. *Moor* 353. But it is ſaid in another Caſe of this Nature, that admitting the Plaintiff might have an Aſſiſe of *Nuſance* againſt the Builder, the Leſſor, he cannot have an Action againſt his Leſſee, becauſe it would be Waſte in him to pull it down; but the Plaintiff may abate the *Nuſance* ſtanding on his own Ground: Yet where the Thing done is a *Nuſance per intervalla*, as a Pipe or Gutter, Action lies againſt the Leſſee, becauſe every freſh Running is a freſh *Nuſance*; and if a Man have a Way over the Ground of another, and ſuch other ſtops that Way, and then demiſes the Ground, an Action lies againſt the Leſſee for continuing this *Nuſance*. 1 *Mod.* 54. 3 *Salk.* 248. If a Perſon aſſigns his Leaſe with a *Nuſance*, Action lies againſt him for continuing it, becauſe the Leaſe was transferred with the original Wrong, and his Aſſignment confirms the Continuance; beſides he hath a Rent as Conſideration for the Continuance, and therefore he ought to anſwer the Damages occaſioned by it. 2 *Salk.* 460. 2 *Cro.* 272, 555. If a *Nuſance* is levied in an Houſe, &c. to the Prejudice of another, and then the Houſe is aliened; Action of the Caſe lies againſt him that levied it, and alſo againſt the Alienee for continuing it, by Stat. 13 *Ed.* 1. *c.* 24. If a Fair or Market be ſet up to the *Nuſance* of another, the Party grieved may have his Writ or Action. *F. N. B.* 187. 2 *Saund.* 173. *Lutw.* 69, 91. And no ſpecial *Nuſance* need be aſſigned, when a Matter appears to the Court to be a *Nuſance.* 9 *Rep.* 54. A *Nuſance* in a Church-yard, is properly of Eccleſiaſtical Cogniſance. *Carthew* 152. If a Man ſtraiten a Way only, and do not ſtop it up, Action of the Caſe lieth, not Aſſiſe of *Nuſance.* 33 *H.* 6. *c.* 26. But for ſtopping ſuch Way belonging to a Freehold Tenement, an Aſſiſe will lie; and where one may have Aſſiſe of *Nuſance* for an Injury to his Way, there he ſhall not have Action of Treſpaſs. 19 *H.* 6. 29. 2 *Shep. Abr.* 468. When a Man hath but a Term of Years in a Houſe or Lands, and not a Freehold, he ſhall not have an *Aſſiſe* of *Nuſance*; but Action upon the Caſe. *New Nat. Br.* 10. Writs of *Nuſance*, called *Vicontiel*, are to be made at the Election of the Plaintiff determinable before the Juſtices of either Bench, or the Juſtices of Aſſiſe of the County, being in Nature of Aſſiſes, *&c.* 6 *R.* 2. *c.* 3. See *Highway.*

Form *of a* Writ *of* Nuſance.

GEORGE *the Second,* &c. *To the Sheriff of* S. *Greeting:* A. B. *hath complained to us, that* C. D. *unjuſtly,* &c. *hath raiſed, and ſet up a Wall, or ſtopped a certain Way, or made a Ditch,* &c. *to the* Nuſance *of his Freehold in* R. *And therefore we Command you, that if the ſaid* A. *ſhall make you ſecure,* &c. *Then do you cauſe twelve free and lawful Men of the ſame Venue or Neighbourhood, to view the Wall, or Way,* &c. *and that Tenement, and their Names to be impanell'd; and Summon them by good Summoners, that they be before our Juſtices at,* &c. *ready to recognize,* &c. *and ſummon the ſaid* C. *that he be then there to hear,* &c.

Nutrimentum, Nouriſhment, particularly applied to Breed of Cattle —— *Quilibet Cuſtumarius Dominæ non debet vendere Equum maſculum neque Bovem de proprio* Nutrimento *ſuo.* Paroch. Antiq. 401.

Nyas, (*Nidarius, accipiter*) a Hawk or Bird of Prey. *Litt. Dict.*

O.

O, Is an *Abverb* of Calling; or Interjection of Sorrow: And the ſeven *Antiphones*, or alternate Hymn of ſeven Verſes, *&c.* ſung by the Quire in the Time of *Advent* was called O, from beginning with ſuch Exclamation. In the Statutes of St. *Paul's* Church in *London*, there is one Chapter *De faciendo* O. Liber Statut. MS. f. 86.

Oath, (Sax. *Eoth*, Lat. *Juramentum*) Is an Affirmation or Denial of any Thing, before one or more Perſons who have Authority to adminiſter the ſame, for the Diſcovery and Advancement of Truth and Right, calling *God* to Witneſs, that the Teſtimony is true; therefore it is termed *Sacramentum*, a Holy Band or Tie: And it is called a *Corporal Oath*, becauſe the Witneſs when he ſwears lays his Right-hand upon and toucheth the Holy *Evangeliſts*, or Book of the *New Teſtament*. 3 *Inſt.* 165. There are ſeveral Sorts of *Oaths* in our Law, *viz. Juramentum promiſſionis*, where *Oath* is made either to do or not to do ſuch a Thing. *Juramentum purgationis*, when a Perſon is charged with any Matter by Bill in Chancery, *&c.* *Juramentum probationis*, where any one is produced as a Witneſs, to prove or diſprove a Thing: And *Juramentum triationis*, when any Perſons are ſworn to try an Iſſue, *&c.* 2 *Nelſ.* 1181. All *Oaths* muſt be lawful, allowed by the Common Law, or ſome Statute; if they are adminiſtred by Perſons in a private Capacity, or not duly authorized, they are *Coram non Judice*, and void; and thoſe adminiſtring them are guilty of a high Contempt, for doing it without Warrant of Law, and puniſhable by Fine and Impriſonment. 3 *Inſt.* 165. 4 *Inſt.* 278. 2 *Roll. Abr.* 257. One that was to teſtify on the Behalf of a Felon or Perſon indicted of Treaſon, or other Capital Offence, upon an Indictment at the King's Suit, could not formerly be examined upon his *Oath* for the Priſoner againſt the King; though he might be examined without giving him his *Oath:* But by a late Statute, Witneſſes on the Behalf of the Priſoner upon Indictments, are to be ſworn to depoſe the Truth in ſuch Manner as Witneſſes for the King; and if convicted of wilful Perjury, ſhall ſuffer the Puniſhment inflicted for ſuch Offences. 1 *Ann. c.* 9. And the Evidence for the Defendant in an Appeal, whether Capital or not, or on Indictment or Information for a Miſdemeanor, was to be upon *Oath* before this Statute. 2 *Hawk. P. C.* 434. A Perſon that is to be a Witneſs in a Cauſe may have two *Oaths* given him, one to ſpeak the Truth to ſuch Things as the Court ſhall aſk him concerning himſelf, or other Things which are not Evidence in the Cauſe; and the other to give Teſtimony in the Cauſe in which he is produced as a Witneſs: The former is called the *Oath* upon a *Voyer dire. Paſch.* 23 *Car. B. R.* If *Oath* be made againſt *Oath* in a Cauſe, it is a *Non liquet* to the Court which *Oath* is true; and in ſuch Caſe the Court will take that *Oath* to be true, which is to affirm a Verdict, Judgment, *&c.* as it tends to the expediting of Juſtice. 2 *Lill. Abr.* 247. And the Court will rather believe the *Oath* of the Plaintiff than the *Oath* of the Defendant, if there be *Oath* againſt *Oath*; becauſe it is ſuppoſed that the Plaintiff hath Wrong done him, and that he is forced to fly to the Law to obtain his Right. *Ibid.* A voluntary *Oath*, by the Conſent and Agreement of the Parties, is lawful as well as a compulſory *Oath*; and in ſuch Caſe, if it is to do a Spiritual Thing, and the Party fail, he is ſuable in the Eccleſiaſtical Court, *pro læſione Fidei*; and if to do a Temporal Thing, and he fail therein; he may be puniſhed in *B. R.* Adjudged on *Aſſumpſit*, where if the Defendant would make *Oath* before ſuch a Perſon, the Plaintiff promiſed, *&c.* *Cro. Car.* 486. 3 *Salk.* 248. By the Common Law, Officers of Juſtice are bound to take an *Oath* for the due Execution of Juſtice. *Trin.* 22 *Car.* 1. *B. R.* Though if *Promiſſory Oaths* of Officers are broken, they are not puniſhed as Perjuries, like unto the Breach of *Aſſertory Oaths*; but their Offences ought to be puniſhed with a ſevere Fine, *&c.* *Wood's Inſt.* 412. Antiently at the End of a legal *Oath*, was added, *So help me God at his holy Dome*, i. e. Judgment; and our Anceſtors did believe, that a Man could not be ſo wicked to call God to witneſs any Thing which was not true; but that if any one ſhould be perjured, he muſt continually expect that God would be the Revenger: And thence probably *Purgations* of Criminals, by their own *Oaths*, and for great Offences by the *Oaths* of others were allowed. *Malmsb. lib.* 2. *c.* 6. *Leg. H.* 1. *c.* 64.

Oaths *to the Government.* By *Magna Charta*, the *Oaths* of the King, the Biſhops, the King's Counſellors, Sheriffs, Mayors, Bailiffs, *&c.* were appointed, 9 *H.* 3. The *Oaths* of the Judges of both Benches; and of the Clerks in Chancery and the Curſitors, were ordained by 18 *Ed.* 3. Eccleſiaſtical Perſons are required to take the Oaths of Supremacy, *&c.* And Clergymen not taking the *Oaths*, on their Refuſal being certified into *B. R.* *&c.* incur a *Præmunire.* 1 *Eliz. cap.* 1. Officers and Eccleſiaſtical Perſons, Members of Parliament, Lawyers, &c. are to take the Oath of Allegiance, or be liable to Penalties and diſabilities. 7 *Jac.* 1. *c.* 6. Perſons ſhall take the Oaths, and receive the Sacrament, to qualify them to bear any Office of Magiſtracy in Corporations. 13 *Car.* 2. *c.* 1. And Officers of the Lieutenancy and Militia are required to take the *Oaths* by 13 *Car.* 2. *c.* 6. All Perſons that bear any Office, Civil or Military, or receive any Salary, &c. from the King, are to take the *Oaths* of Allegiance and Supremacy; and Perſons refuſing are diſabled, &c. 25 *Car.* 4. *c.* 2. By the 1 *W.* & *M. Seſſ.* 1. *c.* 6. the Coronation *Oath* was altered and regulated; and the *Oaths* of Allegiance and Supremacy abrogated, and others appointed to be taken and enforced, on Pain of Diſability, &c. by 1 *W.* & *M. c.* 8. and 7 & 8 *W.* 3. *c.* 27. All that bear Offices in the Govermnent, Peers and Members of the Houſe of Commons, Eccleſiaſtical Perſons, Members of Colleges, School-maſters, Preachers, Serjeants at Law, Counſellors, Attornies, Solicitors, Advocates, Proctors, &c. are enjoined to take the *Oaths* of Allegiance, Supremacy and Abjuration; and Perſons neglecting or refuſing, are declared incapable to execute their Offices and Employments, diſabled to ſue in Law or Equity, to be Guardian, Executor, &c. or to receive any Legacy or Deed of Gift, to be in any Office, &c. and to forfeit 500 *l.* This extends not to Conſtables, and other Pariſh-officers, nor to Bailiffs of Manors, &c. 13 *W.* 3. *c.* 6. The Stat. 1 *Ann. c.* 22. obliges the receiving the Abjuration *Oath*, with Alterations: And by 4 *Ann c.* 8. the *Oath* of Abjuration is ſettled after the Death of Queen *Anne*, without Iſſue. Alſo the *Oath* of Abjuration, with further Alterations relating to the *Proteſtant Succeſſion*, is required to be taken by the 1 *Geo.* 1. *c.* 13. And by a late Statute, all Perſons whatſoever are to take the *Oaths* to the Government, or regiſter their Eſtates, upon Pain of Forfeiture, &c. 9 *Geo.* 1. *c.* 24. See *Papiſts.*

Perſons maintaining an *Oath* to be *unlawful*, are puniſhable by Fine and Impriſonment, &c Stat. 13 & 14 *Car.* 2. Two Juſtices of Peace have Power to tender the *Oaths* to ſuſpected Perſons; and if they refuſe them, it is to be certified to the next Quarter-Seſſions, and from thence into *B. R.* and the Offenders ſhall be adjudged Popiſh Recuſants Convict, and forfeit Lands, Goods, &c. But it hath been held that a Perſon cannot be ſaid to refuſe the *Oaths* unleſs they are read or offered to be read to him. *Oaths* muſt be taken in the very Words expreſſed in the Acts, and cannot be qualified; yet uſing the Words *in* Conſcience, inſtead of *my* Conſcience, or *Sea* of *Rome*, inſtead of *See* of *Rome*, is not material. 1 *Bulſt.* 197.

Form *of the* Oaths *of* Allegiance *and* Supremacy.

I A. B. *do ſincerely promiſe and ſwear, that I will be Faithful, and bear true Allegiance to his Majeſty King* George.

So help me God.

And I do ſwear, that I do from my Heart abhor, deteſt and abjure, as impious and heretical, that damnable Doctrine and Poſition, that Princes excommunicated or deprived by the Pope, *or any Authority of the See of* Rome, *may be depoſed or murdered by their Subjects, or any other whatſoever: And I do declare, that no Foreign Prince, Perſon, Prelate, State or Potentate, hath or ought to have any Juriſdiction, Power, Superiority, Preheminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.*

So help me God.

Form *of the* Oath *of* Abjuration *required by Law.*

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify and declare in my Conſcience, before God and the World, that our Sovereign Lord King* George, *is lawful and rightful King of this Realm, and all other the Dominions and Countries thereunto belonging. And I do ſolemnly and ſincerely declare, that I do believe in my Conſcience, that the Perſon pretended to be Prince of* Wales, *during the Life of the late King* James 2. *and ſince his Deceaſe pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James 3. *or of* Scotland, *by the Name of* James 8. *or the Stile and Title of King of* Great Britain, *hath not any Right or Title whatſoever to the Crown of this Realm, or any other the Dominions thereunto belonging. And I do Renounce, Refuſe and Abjure any Allegiance or Obedience to him; and I do ſwear, that I will bear Faith and true Allegiance to his Majeſty K.* George, *and him will defend to the utmoſt of my Power againſt all traiterous Conſpiracies and Attempts whatſoever, which ſhall be made againſt his Perſon, Crown or Dignity. And I will do my utmoſt Endeavours to diſcloſe or make known to his Majeſty and his Succeſſors, all Treaſons and Traiterous Conſpiracies which I ſhall know to be againſt him or any of them. And I do faithfully promiſe, to the utmoſt of my Power to ſupport, maintain and defend the Succeſſion of the Crown againſt him the ſaid* James, *and all other Perſons whatſoever; which Succeſſion by an Act entitled,* An Act for the further Limitation of the Crown, and better Securing the Rights and Liberties of the Subject, *is and ſtands limited to the late Princeſs* Sophia, *Electreſs and Dutcheſs Dowager of* Hanover, *and the Heirs of her Body, being Proteſtants. And all theſe Things I do plainly an ſincerely acknowledge and ſwear, according to the expreſs Words by me ſpoken, and according to the plain and common Senſe and Underſtanding of the ſaid Words; without any Equivocation, mental Evaſion, or ſecret Reſervation whatſoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation, and Promiſe, heartily, willingly and truly, upon the true Faith of a Chriſtian.*

So help me God.

Oatmeal, The Selling of corrupt *Oatmeal*, is puniſhable by Statute, which ſhall be forfeited for the ſecond Offence, &c. See 51 *E.* 1. *Pult. Kallend.* Stat. 323.

Obedientia, In the *Canon Law* is uſed for an Office, or the Adminiſtration of it: Whereupon the Word *Obedientialis*, in the Provincial Conſtitutions, is taken for Officers under their Superiors. *Can. Law, cap.* 1. And as ſome of theſe Offices conſiſted in the Collection of Rents or Penſions, Rents were called *Obedientiæ*; *Quia colligebantur ab Obedientialibus.* But though *Obedientia* was a Rent, as appears by *Hoveden*, in a general Acceptation of this Word it extended to whatever was enjoined the Monks by the Abbot; and in a more reſtrained Senſe to the Cells or Farms which belonged to the Abbey to which the Monks were ſent, *Vi ejuſdem obedientiæ*, either to look after the Farms, or to collect the Rents, &c. —— *Prohibemus ne Redditus quos* Obedientias *vocant ad firmam teneant.* Matt. Pariſ. Ann. 1213.

Obit, (Lat.) Signifies a Funeral Solemnity or Office for the Dead, moſt commonly performed when the Corpſe lies in the Church uninterred: Alſo the *Anniverſary Office.* 2 *Cro.* 51. *Dyer* 313. The Anniverſary of any Perſon's Death was called the *Obit*; and to obſerve ſuch Day with Prayers and Alms, or other Commemoration, was the Keeping of the *Obit:* And in Religious Houſes they had a Regiſter, wherein they entered the *Obits* or *Obitual* Days of their Founders and Benefactors,

factors, which was thence termed the *Obituary*. The Tenure of *Obit* or *Chantry Lands* is taken away and extinct, by the Stat. 1 *Ed. 6. c.* 14. and 15 *Car. 2. c.* 9.

Objurgatrices, Are Scolds or unquiet Women, puniſhed with the *Cucking-ſtool*. MS. LL. Lib. Burg. Villæ de Montgomery temp. Hen. 2.

Oblata, Gifts or Offerings made to the King by any of his Subjects, which in the Reigns of King *John* and K. *Hen.* 3. were ſo carefully heeded, that they were entered into the *Fine Rolls* under the Title of *Oblata*; and if not paid, eſteemed a Duty, and put in Charge to the Sheriff. *Philips of Purveyance.* In the *Exchequer* it ſignifies old Debts, brought as it were together from precedent Years, and put on the preſent Sheriff's Charge. *Pract. Excheq.* 78.

Oblations, (*Oblationes*) Are thus defined in the *Canon Law: Dicuntur, quæcunque à piis fidelibuſque Chriſtianis offeruntur Deo & Eccleſiæ, ſive res ſolidæ ſive mobiles ſint.* Spelm. de Concil. Tom. 1. p 393. The Word is often mentioned in our Law-Books; and formerly there were ſeveral Sorts of *Oblations*, viz. *Oblationes Altaris*, which the Prieſt had for ſaying Maſs; *Oblationes Defunctorum*, which were given by the Laſt Wills and Teſtaments of Perſons dying to the Church; *Oblationes Mortuorum*, or *Funerales*, given at Burials; *Oblationes Pœnitentium*, which were given by Perſons penitent; and *Oblationes Pentecoſtales, &c.* The Chief or Principal Feaſts for the *Oblations of the Altar, were All Saints, Chriſtmas, Candlemas* and *Eaſter*, which were called *Oblationes quatuor principales*; and of the Cuſtomary Offerings from the Pariſhioners to the Pariſh-prieſt, ſolemnly laid on the *Altar*, the Maſs or Sacrament Offerings were uſually Three-pence at *Chriſtmas*, Two-pence at *Eaſter*, and a Penny at the two other principal Feaſts: Under this Title of *Oblations* were comprehended all the accuſtomed Dues for *Sacramentalia* or Chriſtian Offices; and alſo the little Sums paid for ſaying Maſſes and Prayers for the Deceaſed. *Kennet's Gloſſ. Oblationes funerales* were often the beſt Horſe of the Defunct, delivered at the Church-Gate or Grave to the Prieſt of the Pariſh; to which old Cuſtom we owe the Original of *Mortuaries*, &c. And at the Burial of the Dead, it was uſual for the ſurviving Friends to offer liberally at the Altar for the pious Uſe of the Prieſt, and the good Eſtate of the Soul deceaſed, being called the *Soul-Seat*: In *North Wales* this Uſage ſtill prevails, where at the Rails of the Communion Table in Churches, is a Tablet conveniently fixed, to receive the Money offered at Funerals, according to the Quality of the Deceaſed; which has been obſerved to be a providential Augmentation to ſome of thoſe poor Churches. *Kennet's Gloſſ.* At firſt the Church had no other Revenues beſide theſe *Oblations*, till in the fourth Century it was enriched with Lands and other Poſſeſſions. *Blount. Oblations, &c.* are in the Nature of Tithes, and may be ſued for in the Eccleſiaſtical Courts, and it is ſaid are included in the Act 7 & 8 *W.* 3. for Recovery of ſmall Tithes under 40 *s.* by the Determination of Juſtices of Peace, *&c. Contr. Parſ. Compan.* 137, 138.

Obligation, (*Obligatio*) Is a Bond, containing a Penalty, with a Condition annexed for Payment of Money, Performance of Covenants, or the like; and it differs from a Bill, which is generally without a Penalty or Condition, tho' a Bill may be *Obligatory*. *Co. Lit.* 172. And *Obligations* may be by Matter of Record; as Statutes and Recognizances, to which there are ſometimes added Defeaſances, like to the Condition of an *Obligation*: But when the *Obligation* is Simple or Single, without any Defeaſance or Condition, it is moſt properly called ſo. 2 *Shep. Abr.* 475. Simony or Uſury againſt the Statutes, is pleadable in Avoidance of *Obligations*, &c. See *Bond.* See alſo Stat. 1 *R.* 2. 28 *H.* 8. 5 *Ed.* 6. 13 & 31 *Eliz.* 16 *Car.* 2.

Obligor, Is the Party that enters into or makes an *Obligation*; and the *Obligee* is the Perſon to whom made.

Obolata terræ, Is according to ſome Accounts, Half an Acre of Land; but others hold it to be only Half a Perch. *Spelm. Gloſſ.*

Obventions, (*Obventiones*) Are Offerings or Tithes; and *Oblations, Obventions* and *Offerings* are generally one and the ſame Thing, though *Obvention* has been eſteemed the moſt comprehenſive. The Profits of the Churches in *London* were formerly the *Oblations* and *Obventions*; for which a Remedy is given by Law: But the Tithes and Profits ariſing to the *London* Clergy are now ſettled and appointed by Act of Parliament. *Count. Parſ. Compan.* 138. Rents and Revenues of Spiritual Livings are called *Obventions.* 12 Car. 2. c. 11. —— *Margeria Comitiſſa de Warwick Univerſis Sanctæ Matris Eccleſiæ filiis, &c. dedi omnes* Obventiones *tam in Decimis Majoribus & Minoribus, quam in aliis rebus de Aſſartis de W. & Decimam pannagii, &c.* MS. penes Will. Dugdale, Mil. See *Oblations.*

Occaſio, Is taken for a Tribute which the Lord impoſed on his Vaſſals or Tenants; *propter* occaſiones *Bellorum vel aliarum Neceſſitatum.* And *Occaſionare* ſignified to be charged or loaded with Payments; or *occaſional* Penalties. *Fleta, lib.* 1. *c.* 24.

Occationes, Derived *ab occando, viz.* Harrowing or Breaking Clods, are Aſſarts: *Aſſarta vulgo dicuntur quæ apud Iſidorum* Occationes *nominantur.* Lib. niger Scacc. par. 1. cap. 13. Spelm.

Occupant, (*Occupans*) Is he that firſt ſeiſes or gets Poſſeſſion of a Thing. An Iſland in the Sea, precious Stones on the Sea-ſhore, and Treaſure diſcovered in a Ground that has no particular Owner, by the Laws of Nations belong to him who finds them, and gets the firſt *Occupation* of them. *Treat. Laws* 342. Where a Man findeth a Piece of Land that no other poſſeſſes or hath Title unto, and he that ſo finds it doth enter upon the ſame, this gains a Property, and a Title by *Occupancy*: But this Manner of gaining Property of Lands has long ſince been of no Uſe in *England*; for Lands now poſſeſſed without any Title are in the Crown, and not in him that firſt enters. *Ibid.* 218. Though an Eſtate for another Perſon's Life, by our antient Laws, may be gotten by *Occupancy*: As for Example; *A.* having Lands granted to him for the Life of *B.* dieth without making any Eſtate of it; in this Caſe, whoſoever firſt enters into the Land after the Death of *A.* it is ſaid getteth the Property for the Remainder of the Eſtate granted to *A.* for the Life of *B.* For to the Heir of *A.* it cannot go, not being an Eſtate of Inheritance, but only an Eſtate for another Man's Life; which is not deſcendable to the Heir, unleſs he be ſpecially named in the Grant: And the Executors of *A.* cannot have it, as it is not an Eſtate Teſtamentary, that it ſhould go to the Executors as Goods and Chattels; ſo that in Truth no Man can intitle himſelf unto thoſe Lands: And therefore the Law preferreth him that firſt enters, and he is called *Occupans*, and ſhall hold the Land during the Life of B. paying the Rent, and performing the Covenants, *&c. Bac. Elem.* 1. And not only if Tenant *pur terme d'auter Vie* dies, living *Ceſtuy que Vie*; but if Tenant for his own Life grant over his Eſtate to another, and the Grantee dies before him, there ſhall be an *Occupant. Co. Litt.* 41, 388. A Man cannot be an *Occupant* but of a void Poſſeſſion; and it is not every Poſſeſſion of a Perſon entring that can make an *Occupancy*, for it muſt be ſuch as will maintain Treſpaſs without farther Entry. *Vaugh.* 191, 192. *Carter* 65. 2 *Keb.* 250. There can be no *Occupancy* by any Perſon of what another hath a preſent Right to poſſeſs: *Occupancy* by Law muſt be of Things which have natural Exiſtence, as of

Land, *&c.* and not of Rents, Advowſons, Fairs, Markets, Tithes, *&c.* which lie in Grant, and are incorporeal Rights and Eſtates; and there cannot be an *Occupant* of a Copyhold Eſtate. *Vaugh.* 190. *Mod. cap.* 66. And *Occupancy* of Land in our Law now ſeldom happens; Leaſes and Grants being generally made to the Leſſees or Grantees, and their Heirs, during the Life of *Ceſtui que Vie*, whereby the Lands for the Remainder of the Term deſcend to the Heir, *&c.* *Wood's Inſt.* 216. By Statute, any Eſtate *pur auter Vie* ſhall be deviſable by Will in Writing; and if no Deviſe thereof be made, but the Heir become ſpecial *Occupant*, it ſhall be Aſſets in his Hands by Deſcent to pay Debts; and if there be no ſpecial *Occupant*, it ſhall go to the Executors or Adminiſtrators of the Party that had the Eſtate, and be Aſſets in their Hands. 29 *Car.* 2. *c.* 3. It hath been adjudged, that an Heir, Executor, *&c.* ſhall be charged on this Statute with Payment of Debts only, not Legacies, except deviſed particularly out of the Eſtate; and an Eſtate *pur auter Vie* of an Inteſtate, is not diſtributable. *Mich.* 8 *W.* 3. *B. R.* 2 *Salk.* 464.

Occupation, (*Occupatio*) Signifies in our Law Uſe or Tenure; as we ſay ſuch Land is in the Tenure or *Occupation* of ſuch a Man, that is, in his Poſſeſſion or Management: Alſo it is uſed for a Trade or Myſtery. 12 *Car. c.* 18. 249. And *Occupationes* at large are taken for Purpreſtures, Intruſions and Uſurpations; and particularly for Uſurpation upon the King, by the Stat. *de Bigamis, c.* 4. 2 *Inſt.* 272.

Occupavit, Is a Writ that lies for him who is ejected out of his Freehold in Time of War; as the Writ *Novel Diſſeiſin* lies for one *diſſeiſed* in Time of Peace. *Ingham.*

Octave, The eighth Day after any Feaſt incluſively. See *Utas.*

Odio & Atia, Was a Writ antiently called *Breve de Bono & Malo*, directed to the Sheriff to inquire whether a Man committed to Priſon upon Suſpicion of Murder, were committed on juſt Cauſe of Suſpicion, or only upon *Malice* and *Ill-will:* And if upon the Inquiſition it were found that he was Not guilty, then there iſſued another Writ to the Sheriff to bail him. *Reg. Orig.* 133. *Bract. lib.* 3. *cap.* 20. Stat. 3 *Ed.* 1. *cap.* 11. But now that Courſe is taken away, by the Stat. 28 *Ed.* 3. *c.* 9. *S. P. C.* 77. 2 *Inſt.* 42. 9 *Rep.* 506.

Oeconomus, Is ſometimes taken for an Advocate or Defender; as, *Summus Secularium* Oeconomus & *Protector Eccleſiæ.* Matt. Pariſ. Anno 1245.

Oeconomicus, A Word uſed for the Executor of a Laſt Will and Teſtament, as the Perſon who had the *Oeconomy* or fiduciary Diſpoſal of the Goods of the Party deceaſed. *Hiſt. Dunelm. apud Whartoni Angl. Sacr. par.* 1. *pag.* 784.

Offence, (*Delictum*) Is an Act committed againſt a Law, or omitted where the Law requires it, and puniſhable by it. *Weſtm. Symb.* And all *Offences* are *Capital*, or not ſo; *Capital*, thoſe for which the Offender ſhall loſe his Life: And not *Capital*, where, an Offender may forfeit his Lands and Goods, be fined or ſuffer corporal Puniſhment, or both; but not Loſs of Life. *H. P. C.* 2, 126, 134. Capital *Offences* are comprehended under *High Treaſon*, *Petit Treaſon*, and Felony: *Offences* not Capital include the remaining Part of the *Pleas of the Crown*, and come under the Title of Miſdemeanors. An *Offence* may be greater or leſs, according to the Place wherein it is done. *Finch* 25. But the *Offence* will be in equal Degree in them, who are equally tainted with it; and thoſe that Act and Conſent thereto, are alike Offenders. 5 *Rep.* 80. Some Offences are by the Common Law; but moſt of them are by Statutes.

Offerings, Are reckoned among Perſonal Tithes, payable by Cuſtom to the Parſon or Vicar of the Pariſh, either occaſionally, as at Sacraments, Marriages, Chriſtenings, Churching of Women, Burials, *&c.* or at conſtant Times, as at *Eaſter*, *Chriſtmas*, &c. *Count. Parſ. Compan.* 137. Stat. 2 & 3 *Ed.* 6. *Vide* Oblations.

Offerings of the King. All *Offerings* made at the Holy *Altar* by the King and Queen, are diſtributed amongſt the Poor by the Dean of the Chapel: And there are twelve Days in the Year, called *Offering Days*, as to theſe *Offerings*, viz. *Chriſtmas*, *Eaſter*, *Whitſunday*, *All Saints*, *New Year's Day*, *Twelfth Day*, *Candlemas*, *Annunciation*, *Aſcenſion*, *Trinity Sunday*, *St. John Baptiſt*, and *Michaelmas-Day*: All which are high Feſtivals. *Lex Conſtitution.* 184. The *Offering* commonly made by King *James* 1. was a Piece of Gold, having on one Side the Portrait of the King kneeling before the Altar, with four Crowns before him, and circumſcribed with this *Motto*, *Quid retribuam Domino pro omnibus quæ tribuit mihi?* And on the other Side, a Lamb lying near a Lyon, with this Inſcription, *Cor contritum & humiliatum non deſpiciet Deus.* Ibid.

Offertorium, Is uſed for a Piece of Silk, or fine Linen, to receive and wrap up the *Offerings* or occaſional Oblations in the Church. *Statut. Eccl. S. Paul, London, MS. fol.* 39. —— Offertorium *eſſe Sindonem ſericeam, ſeu Linteamen, in quo fidelium* Oblationes *reponebantur.* —— Sometimes this Word ſignifies the *Offerings* of the Faithful; or the Place where they are made or kept: And ſometimes the Singing at the Time of the Sacrament, *&c.*

Office, (*Officium*) Is a Function, by Virtue whereof a Man hath ſome Employment in the Affairs of another, as of the King, or any common Perſon. And an *Officer*, is he that is in *Office*, who is ſo employed. The King in a general Senſe, is the Chief and Supream *Officer*, for the Government of the Kingdom: And *Officers* under him are diſtinguiſhed into *Eccleſiaſtical*, for Church Affairs; *Civil*, concerning Matters of Juſtice; and *Military*, belonging to the Army, *&c.* Alſo *Officers* are *Judicial*, as thoſe who ſit as Judges in the Courts at *Weſtminſter*, and other Courts; or *Miniſterial*, the greater Part whereof attend upon the others, to make ready Things for them, or execute what they have determined. 2 *Shep. Abr.* 497, 498. And there are *Officers* of Counties; of Cities and Corporate Towns; and of Hundreds, Manors, and Pariſhes; ſome whereof hold their *Offices* for one Year only, others during Pleaſure, and ſome during Life. *Ibid.* 509. There is an *Office* in Fee, which a Man hath to him and his Heirs: And *Offices* may be granted in Fee-ſimple, Fee-tail, for Life, Years, *&c.* But *Offices* which concern the Adminiſtration of Juſtice, cannot be granted for Years, to go to Executors, *&c.* 9 *Rep.* 97. Every Subject is capable of an *Office* generally by Grant; but if an *Office* that concerns the Adminiſtring or Execution of Juſtice, *&c.* be granted to one who is not skilled to execute it, the Grant is void. *Cro. Jac.* 605. And no Man, though never ſo skilful, is capable of a judicial *Office* in Reverſion; for notwithſtanding a Perſon may be of Ability to execute the Place at the Time of the Grant of the Reverſion, yet before the *Office* falls, he may become unable and inſufficient to perform it: But miniſterial *Offices* may be granted in Reverſion, in Fee, or for Life, *&c.* as the *Office* of *Marſhal* of *England*, *Chamberlain* of the Exchequer, *Warden* of the Fleet, *&c.* 1 *Inſt.* 3. 11 *Rep.* 4. 2 *Roll. Abr.* 286. *Officers* of the King's Courts are to be ſworn to appoint ſuch Miniſters under them, for whom they will anſwer ſhall be faithful, and ſuch as are ſufficient, and attending the Performance of their reſpective Buſineſſes. Stat. 2 *H.* 6. *cap.* 10. By 12 *R.* 2. *cap.* 2. it is enacted, That no *Officer* or Miniſter of the King ſhall be ordained or made for any Gift, Favour or Affection; nor ſhall any be put into *Office*, but ſuch as are ſufficient; a Law (ſaid Sir *Edward Coke*) worthy to be writ in Letters of

Gold, but more worthy to be put in Execution: For certainly Juſtice will never be duly adminiſtred, but when the *Officers* and Miniſters of Juſtice are of ſuch Quality, and come to their Places in ſuch Manner as by this Law is required. *Co. Litt.* And by the Stat. 5 & 6 *Ed.* 6. *c.* 16. if any *Officers* touching the Adminiſtration of Juſtice, or concerning the King's Treaſure, &c. ſhall bargain or ſell any of the ſaid *Offices*, or take any Money, Profit, Reward, &c. for the ſame, they ſhall not only forfeit their Eſtates therein, but every Perſon ſo buying, giving or aſſuring, ſhall be adjudged diſabled to hold the ſame *Office*, and all Contracts ſhall be void, &c. But the two Chief Juſtices, or Juſtices of Aſſiſe, may grant *Offices* as before this Act. And if an *Office* deſcribed by the Statute, has a Salary annexed to it, a Deputation thereof reſerving a leſs Sum than the ſtanding Salary, will not be within the Statute; ſo reſerving a Sum out of the Fees, &c. as to making Bonds and Securities void. *Mod. Caſ.* 235. The Statutes 14 *R.* 2. & 1 & 13 *H.* 4 ordain, that *Officers* of the Cuſtoms ſhall not have any ſuch *Office* for Term of Life, only during the King's Pleaſure; and they ſhall be reſident on their *Offices* in their proper Perſons. An *Officer* of the Revenue withdrawing himſelf from the Execution of his *Office*, to the Intent a Grant or Deputation might be made to another, on certain Terms. *Vide Skinn.* 340. Sir *Robert Vernon* Cofferer in the Reign of King *James* 1. for a certain Sum of Money, did bargain and ſell his Place to Sir *A. J.* and agreed to ſurrender the ſame to the King, to the Intent a Grant might be made to Sir *A. J.* and he accordingly ſurrendered, and thereupon Sir *A.* was by the King's Appointment admitted and ſworn Cofferer; and yet it was adjudged by the Lord Chancellor *Egerton*, and other Juſtices, that the ſaid *Office* was void; whereupon Sir *A. J.* was removed, and another ſworn in his Place. *Co. Litt.* 234. Queen *Elizabeth* granted the *Office* of Exigenter of *London* to one, when there was no Lord Chief Juſtice of the *Common Pleas*; and it was held that the Grant was void, becauſe the *Office* was incident to that of Chief Juſtice, &c. *Dyer* 257. 4 *Rep.* 33. Where an *Aſſiſe* has been brought on the King's granting an *Office* in the Gift of another, ſee *Moor* 844. The King may not grant an *Office* to the Prejudice of the Freehold of others in their *Offices*, which is contrary to Law, and the Judges in ſuch a Caſe refuſed to admit an *Officer*, tho' commanded to do it by Sign Manual. 1 *And.* 152. A Perſon who was Remembrancer of the Exchequer, and held that *Office* by Patent for Life, was made a Baron of that Court; adjudged that the *Office* of Remembrancer was *ipſo facto* void and determined, becauſe a Man cannot be Judge and Miniſter in one and the ſame Court. *Dyer* 198. Several *Offices* were never inſtituted to be uſed by one Man: And no new *Office* can be erected with new Fees, or old *Offices* eſtabliſhed with new Fees, without an Act of Parliament; as the Fees amount to a Taxation upon the Subject, who may not be ſo charged but by Parliament. 2 *Inſt.* 533. 12 *Rep.* 117. Ancient *Offices* are to be granted in ſuch Manner as they uſed to be, unleſs an Alteration is made by Act of Parliament: If an *Officer* is conſtituted by Statute, he hath no greater Authority than the Statute gives him; he cannot preſcribe as an *Officer* at Common Law may. 4 *Inſt.* 75, 146, 267. 4 *Rep* 75. If a Man preſcribes to an *Office*, and the Profits thereof, he ought to ſhew it to be *Antiquum Officium. Cro Jac.* 605. And a Fee may belong to an antient *Office*, and Debt will lie for it. *Lutw.* 381. If a Perſon uſurps an *Office*, the Acts of the *Officer* are void; but if he comes in by Colour of Election, &c. his Acts ſhall be binding, though he is only an *Officer de facto*; for all miniſterial and judicial Acts done by an *Officer de facto* are good. 1 *Lutw.* 508. *Offices* of Truſt muſt be perſonally executed, except granted to be executed by Deputy; and *Offices* of perſonal Truſt cannot be aſſigned. *Vaugh.* 181. There ſhall be no Survivorſhip of an *Office* of Truſt, if it be not granted to two *Officers*, &c. and the Survivor. 2 *Mod.* 260. Where an *Office* of Truſt is granted to two for their Lives, by the Death of one the Grant is void: But if it were & *eorum diutius viventis*, the Survivor ſhall hold, to whom another may be added. 11 *Rep.* 3, 4. A Man having an *Office* granted him, to enjoy ſo long as he behaves well, *Quamdiu ſe bene geſſerit*, hath an Eſtate in it for Life. *Show.* 523, 531. 4 *Mod.* 167. An Eſtate in an *Office durante beneplacito*, is at the Will of the King only; and may be ſurrendered, forfeited, &c. 2 *Salk.* 465. Publick *Officers* by Patent, cannot be removed at Pleaſure; nor may any *Officer* be thus removed, where he hath any other Fees and Profits belonging to his *Office*, beſides a collateral certain Fee. But private *Officers* by Grant may be turned out at Pleaſure; and ſo may an *Officer* for Life, &c. where he hath no other Profit but a collateral certain Fee; as a Bailiff, Receiver, Auditor, &c. yet it is ſaid he muſt have his Fee. 1 *Inſt.* 233. *Litt.* 378. 9 *Rep.* 50. 3 *Cro.* 59, 60. Non-uſer of publick *Offices*, which concern the Commonwealth, is a Cauſe of Forfeiture: Though Non-uſer of it ſelf, without ſome ſpecial Damage, is no Forfeiture of a private *Office*; and the ſame may be ſaid of a Refuſal to execute the *Office* upon Requeſt. 9 *Rep.* 50. 1 *Inſt.* 233. For Miſ-uſer an *Office* is liable to be forfeited; as if a Steward of a Court, burns the Court Rolls, takes a Bribe, &c. *Wood's Inſt.* 204. And where a Condition in Law requires Skill and Confidence in Caſes of *Offices*, which deſcend to an Infant or Feme Covert; if they do not obſerve it, they forfeit their Intereſt: But if an Infant or Feme Covert break a Condition in Law, that requires no Skill or Confidence, this is no abſolute Forfeiture. 1 *Inſt.* 233. 8 *Rep.* 44. *Officers* entruſted with a particular Adminiſtration of Juſtice; as Sheriffs, Coroners, Gaolers, Keepers of Houſes of Correction, Conſtables, &c. neglecting any Part of their Duties, may be fined and impriſoned. *Wood* 421. All *Officers* Civil and Military are to take the Oaths, and receive the Sacrament, &c. upon Pain of Diſability, and other Penalties. Stat. 25 *Car.* 2. 13 *W.* 3. And no ſuch *Office* ſhall be void on the Death of the King, but ſhall continue ſix Months; unleſs ſuperſeded, or made void by the next Succeſſor. 1 *Ann. c.* 8. Perſons that have forfeited any *Office* to which another is preferred, ſhall not be reſtored to the ſame. Stat. 1 *Ann. c.* 2. *Officers*, &c. having neglected to take the Oaths, allowed further Time to do it, &c. 6 *Geo.* 2. *c* 4. But all Perſons who ſhall hereafter be admitted into any *Office*, ſhall take the Oaths, &c. within ſix Months, or be actually liable to all Penalties and Diſabilities, by Stat. 9 *Geo.* 2. *c.* 26. and 16 *Geo. cap.* 30.

Offices of the Government. The Parliament in former Times had a Right in nominating, placing, and diſplacing of the *Great Officers of the Kingdom*, when they corrupted or miſcounſelled the King, of which many Inſtances may be given. *Pryn.*

Office found, Is where an Inquiſition is made to the King's Uſe of any Thing by Virtue of his *Office* who inquireth, and it is found by the Inquiſition. In this Signification it is uſed in the Stat. 33 *Hen.* 8. *cap.* 20. and *Staundford's Prærog. pag.* 60. where to *traverſe an Office*, is to traverſe an Inquiſition taken of *Office*: And to return an *Office*, is to return that which is found by Virtue of the *Office*. *Kitch* 177. There are two Kinds of *Offices* iſſuing out of the *Exchequer* by Commiſſion, *viz.* an *Office* to entitle the King, in the Thing enquired of; and an *Office* of Inſtruction. 6 *Rep.* 52. The *Office* of Intitling, doth veſt the Eſtate and Poſſeſſion of the Land, &c. in the King, who had therein before only a Right or

Title; as where an Alien purchaſes Lands, a Perſon is attaint of Felony, or the like: And the other *Office*, is where Land is veſted and ſettled before in the King, but the Particularity thereof doth not appear upon Record. 4 *Rep.* 58. *Plowd* 484. And the Effect of this *Office* is, that the King from the Time of the Finding, ſhall be anſwered the Profits without any Entry, *&c.* 5 *Rep.* 32. 10 *Rep.* 115. If any *Office* be wrongly found; thoſe who are grieved, may be relieved by a Traverſe, or *Monſtrans de Droit*, by Pleading or Petition: For every *Office* is in Nature of a Declaration, to which any Man may plead, and either deny or confeſs, *&c. Plowd.* 448. *Bro* 506. Where *Offices* are found before the Eſcheators, they muſt be delivered by Indenture under the Hands and Seals of the Jurors: *Dyer* 170. The King by the Common Law is not in Poſſeſſion of Lands, forfeited for Treaſon, during the Life of the Offender, without an *Office found:* But the Lands, whereof a Perſon attainted of High Treaſon dies ſeiſed of an Eſtate in Fee, are actually veſted in the King, without any *Office*; becauſe they cannot deſcend, the Blood being corrupted, and the Freehold ſhall not be in Abeyance. 2 *Hawk. P. C.* 448. Vide Stat. 33 *H.* 8. *c.* 20. There may be an *Office*, and *Scire facias*, and Seizure on ſuch *Office*, &c. See *Inquiſition.*

Office of the Court. It is the *Office* of the *Courts* at *Weſtminſter*, to take Notice of Cuſtoms of *London*, *&c.* and to allow of divers Things, grant new Trials, Prohibitions, *&c.* 1 *Keb.*

Official, (*Officialis*) By the antient *Civil Law*, ſignifies him that is the Miniſter of, or Attendant upon a Magiſtrate. In the *Canon Law*, it is he to whom any *Biſhop* doth generally commit the Charge of his Spiritual Juriſdiction; and in this Senſe there is one in every Dioceſe called *Officialis Principalis*, whom the Laws and Statutes of this Kingdom ſtile *Chancellor*; and the Reſt, if there are more, are by the *Canoniſts* term'd *Officiales foranei*, but by us *Commiſſaries.* In our Statutes this Word ſignifieth properly him whom the *Archdeacon* ſubſtitutes for the Executing his Juriſdiction, as appears by the Stat. 32 *Hen.* 8. *cap.* 15. The Archdeacon hath an *Official*, or Church Lawyer to aſſiſt him, and who is Judge of the Archdeacon's Court. *Wood's Inſt.* 30, 505.

Officiariis non faciendis vel amovendis, Is a Writ directed to the Magiſtrates of a Corporation, requiring them not to make ſuch a Man an *Officer*, or to put one out of the *Office* he hath, until Inquiry is made of his Manners, *&c. Reg. Orig.* 126.

Officium curtagii Pannorum, Granted to *William Osborn*, Anno 2 Edw. 2. Extract. Fin. Cancell.

Oil. The Lord Mayor of *London*, and the Maſter and Wardens of the Tallow Chandlers Company, are to ſearch all *Oils* brought to *London*; and if any is deceitfully mix'd, they may throw it away, and puniſh the Offenders: And Head Officers in Corporations have like Power. *Stat.* 3 H. 8. *c.* 14.

Old Jury, (*Vetus Judaiſmus*) The Place or Street where the *Jews* lived in *London.* See *Jews.*

Oleron Laws, (*Uliarenſes Leges*) Are the *Laws* of King *Rich.* 1. relating to *Maritime Affairs*, ſo called, becauſe made by him when he was at *Oleron*; which is an Iſland lying in the Bay of *Acquitain*, at the Mouth of the River *Charent*, and now belongs to the *French* King. *Co Litt.* 260. Theſe *Laws* are recorded in the *Black Book* of the Admiralty, and are accounted the moſt excellent Compoſition of *Sea Laws* in the World. See *Selden's Mare Clauſum*, 222, 254.

Olympiad, (*Olympias*) An Account of Time among the *Greeks*, conſiſting of five compleat Years, (or according to ſome a Space of four Years) having its Name from the *Olympick Games*, which were kept every fifth Year, in Honour of *Jupiter Olympius*, near the City of *Olympia*; when they entered the Names of the Conquerors on publick Records: The firſt *Olympiad* fell in the Year of the World 3174 *Æthelred*, King of the *Engliſh Saxons*, computed his Reign by *Olympiads. Spelm.*

Omer, A Meaſure made Uſe of by the *Jews*, of three Pints and an Half. *Merch. Dict.*

Omiſſions, Are placed among Crimes and Offences; and *Omiſſion* to hold a Court-Leet, or not ſwearing Officers therein, *&c.* are Cauſes of Forfeiture. 2 *Hawk. P.C.* 73. *Omiſſions* in Law Proceedings, render them vicious and defective; as want of Warrants of Attorney entered, *&c.* 1 *Keb.* 222, 204. Vide *Nonfeaſance.*

Oncunne, (Sax. *On cunnen*) Signifies as much as accuſed; *Accuſatus. Leg. Alfred. c.* 29.

Onerando pro Rata portionis, Is a Writ that lies for a Jointenant, or Tenant in Common, who is diſtrained for more Rent than his Proportion of the Land comes to. *Reg. Orig.* 182.

O. Ni. It is the Courſe of the *Exchequer*, that as ſoon as the *Sheriff* enters into and makes up his Account for Iſſues, Amerciaments, and mean Profits, to mark upon each Head, O. *Ni.* which denotes *Oneratur, niſi habeat ſufficientem Exonerationem*, and preſently he becomes the King's Debtor, and a *Debet* is ſet upon his Head; whereupon the Parties *paravaile* become Debtors to the Sheriff, and are diſcharged againſt the King, *&c.* 4 *Inſt.* 116.

Onus Epiſcopale, Were cuſtomary Payments from the Clergy to their Dioceſan *Biſhop*, of Synodals, Pentecoſtals, *&c.* See *Epiſcopalia.*

Onus importandi, The Charge or Burden of *importing* Merchandize, mentioned in the Stat. 12 *Car* 2

Onus Probandi, *i. e.* The Burden of Proving. 14 *Car.* 2. *c.* 11.

Open Law, (*Lex Manifeſta*) Is the Making of *Law*; which Bailiffs may not put Men to, upon their bare Aſſertion, except they have Witneſſes to prove the Truth of it. *Magn. Chart. cap.* 21.

Open Theft, (Sax. *Opentheof*) Is a Theft that is manifeſt. *Leg. Hen. cap.* 13.

Open-Tide, i. e. When Corn is carried out of the Common Fields. *Brit.*

Operarii, Were ſuch Tenants who had ſome little Portions of Land by the Duty of performing many bodily Labours, and ſervile Works for their Lord, being no other than the *Servi* and *Bondmen:* They are mentioned in ſeveral antient *Surveys* of *Manors.*

Operatio, One Day's Work performed by a Tenant to his Lord. *Paroch. Antiq* 320.

Opposer, An Officer belonging to the *Green Wax* in the *Exchequer.* See *Exchequer.*

Oppreſſion, In a private Senſe, is the Trampling upon, or Bearing down one, on Pretence of Law, which is unjuſt: But where the Law is known and clear, tho' it be unequitable, the Judges muſt determine according to that. *Vaugh.* 37. In another Signification, it is ſaid by *Forteſcue*, that all the unjuſt Methods invented by Princes, to extort Money from their Subjects, are ſo many *Fountains* of *Oppreſſion*, which never dry up; for ſucceeding Kings ſeldom fail to follow the Example of their Predeceſſors. *Forteſc. Laud. Leg. Angl.*

Option, When a new Suffragan Biſhop is conſecrated, the *Archbiſhop* of the Province by a cuſtomary Prerogative doth claim the Collation of the firſt vacant Dignity or Benefice in that See, at his own Choice; which is called the Archbiſhop's *Option.* Cowel.

Ora. This was *Saxon* Money or Coin, valued at ſixteen Pence, and ſometimes according to Variation of the Standard at twenty Pence. It is a Word which often occurs in *Domeſday*, and the Laws of King *Canutus.*

Orando pro Rege & Regno, An antient Writ. Before the *Reformation*, while there was no ſtanding Collect for a ſitting Parliament, when the *Houſes of Parlia-*

Parliament were met, they petitioned the King that he would require the Biſhops and Clergy to pray for the Peace and good Government of the Realm, and for a Continuance of the good Underſtanding between his Majeſty and the Eſtates of the Kingdom; and accordingly the Writ *De Orando pro Rege & Regno* was iſſued, which was common in the Time of King *Edw.* 3. Nicholſ. Engl. Hiſt. par. 3. p. 66.

Orchards. Perſons robbing *Orchards* are to make ſuch Recompence for Damage as a Juſtice ſhall award, and forfeit not exceeding 10*s.* or be ſent to the Houſe of Correction, *&c. Stat.* 43 *Eliz. c.* 7.

Orchel, Orchal, A Sort of Cork; or rather Stone like Allum, which Dyers uſe in their Colours. Stat. 1 *R.* 3. *cap.* 8. 24 *H* 8. *c.* 2. 3 & 4 *Ed.* 6. *c.* 2.

Ordeff, or **Oredelf,** (From the Sax. *Ore*, i. e. Metallum, & *Delfan*, effodere) Is uſed in old Charters or Privileges, being taken for a Liberty, whereby a Man claims the *Ore* found in his own Ground; and alſo Coal, as a *Delfe* of Coal is that which lies in Veins under Ground, before it is digged up.

Ordeal, (*Ordalium*) A *Saxon* Word compounded of *Or*, Magnum, & *Dele* Judicium, that is a great Judgment, was a Form of Trial, for diſcovering Innocence or Guilt; and was uſed for a Kind of *Purgation*, practiſed in antient Times, in the *Canon Law* called *Purgatio vulgaris*, whereby the Party purged was judged *expers Criminis*, or Not guilty. *Leg. Edw. Confeſſ. cap.* 9. Anciently, when an Offender being arraigned pleaded Not guilty, he might chuſe whether he would put himſelf for Trial upon God and the Country, by twelve Men, as at this Day, or upon God only; and then it was called the Judgment of God, preſuming that he would deliver the Innocent. *Terms de Ley* 462. 9 *Rep* 32. This Trial was two Ways, one by *Water*, and another by *Fire:* The *Water Ordeal* was performed either in hot or cold; in cold Water the Parties ſuſpected were adjudged Innocent, if their Bodies were not born up by the Water contrary to the Courſe of Nature; in hot Water, they were to put their bare Arms or Legs into ſcalding Water, which if they brought out without Hurt, they were taken to be innocent of the Crime. They that were tried by the *Fire Ordeal*, paſſed bare-footed and blind fold over nine hot glowing Plow-ſhares; or were to carry burning Irons in their Hands, uſually of one Pound Weight, which was called *Simple Ordeal*; or of two Pounds, which was *duplex*; or of three Pounds Weight, which was *triplex Ordalium*; and accordingly as they eſcaped, they were judged innocent or nocent, acquitted or condemned: This Fire *Ordeal*, was for Freemen, and Perſons of better Condition; and the Water *Ordeal* for Bondmen and Ruſticks. *Glanv. lib.* 4. *c.* 1. And the horrible Trial by Fire *Ordeal*, in the firſt Degree, Queen *Emma*, Mother of *Edward* the Confeſſor, underwent on a Suſpicion of her Chaſtity: Alſo an Example of the ſecond Kind is mentioned in our Books of a Company of Perſons ſuſpected to be Stealers of the King's Deer, in the Reign of King *Will.* 2. who having carried burning Irons without Injury, on its being reported to the King, he received it with a remarkable Indignation; and replied,

> *Quid eſt id? Deus eſt juſtus Judex: Pereat qui deinceps hoc crediderit.*

The *Saxons*, beſides the Trial by *Combat*, commonly uſed their *Fire* and *Water Ordeals*; but this *Ordalian Law* was condemned by *Pope Stephen* 2. and afterwards here totally aboliſhed by Parliament, ſo as to be no Trials but by Jury. *Rot. Pat. Anno* 3 *Hen.* 3.

Orders, Are of ſeveral Sorts, and by divers Courts; as of the *Chancery: King's Bench*, &c. *Orders* of the *Court of Chancery*, either of Courſe or otherwiſe, are obtained on the Petition or Motion of one of the Parties in a Cauſe, or of ſome other intereſted in or affected by it; and they are ſometimes made upon Hearings, and ſometimes by Conſent of Parties. *Pract. Solic.* 26. They are to be pronounced in open Court, and drawn up by the *Regiſter* from his Notes; and if there be any Difficulty in adjuſting the Notes, a Summons is given by the Regiſter for the Clerk or Solicitor of the other Side to attend, whereupon they are ſettled, or the Court is applied to, if it cannot be otherwiſe done: And before the *Orders* are entered and paſſed by the Regiſter, the other Side hath four Days allowed to object againſt them, for which Purpoſe Copies are delivered; and when they are perfected, they are to be ſerved on the Parties, or the Clerk or Solicitor employed by them. *Ibid.* If an *Order* is of Courſe, the Solicitor uſually draws up the Notes or Minutes, and gives them to the Regiſter's Clerk, to draw up the *Order* from; and when the *Order* is drawn up, it is to be entred by the Entring Clerk, which muſt be within eight Days from the Pronouncing; and then the Regiſter paſſes and ſigns it, after which is the Service, *&c.* For not obeying an *Order*, perſonally ſerved, a Party may be committed.

Orders of the King's Bench, Are Rules made by the Court in Cauſes there depending; and when they are drawn up and entered by the *Clerk of the Rules*, they become *Orders* of the Court. 2 *Lill.* 261. This Court doth not take Notice of *Orders* made in *Chancery*, nor in any other Court, ſo as to be bound by them; but will proceed according to their own Rules and *Orders. Trin.* 23 *Car. B. R.* And if a Cauſe be put in the Paper of Cauſes, that it may be ſpoke unto in Matter of Law, by the *Order* of the Court; and the Attorney in the Cauſe doth not attend at the Day, the Cauſe is to be put out of the Paper, and not be put in again that Term; except very good Cauſe be ſhewn. *Mich.* 22 *Car. B. R.* 2. *Lill.* 261. The Court of *King's Bench* hath Power to quaſh any *Orders* made at the publick or private Seſſions of the Peace; or by any other Commiſſioners, if they find good Reaſon for it. *Ibid.*

Orders of Juſtices of Peace. *Juſtices of Peace* that make *Orders*, muſt be ſaid in ſuch *Orders* to be Juſtices of the County, for reſiding in the County is not ſufficient; but they need not be of the Diviſion: It muſt alſo appear that one of the Juſtices was of the *Quorum.* 2 *Salk.* 474, 480. An *Order* ſigned ſeparately by two *Juſtices of Peace*, not being preſent together at the doing of it, was ruled naught upon the Statute 14 *Car.* 2. *c.* 12. See 1 *Ld. Raym.* 55. Alſo where 'tis ſaid, that two Juſtices doth *Order* inſtead of *do*, the ſingular Number for the plural, it has been adjudged ill. 2 *Raym.* 1198. And if the Name of the County be not in the Body of *Orders*, but only in the Margin, they will be quaſhed: Tho' ſome *Orders* of Removal with the Name of the County in the Margin, have been held good. *Mich.* 11 *Geo.* 1. *Mod. Ca. in L. and E.* 310. The Seſſions of the Peace, during all their Seſſions, may alter or revoke their *Orders*, and make a new *Order* to vacate the former, though it be drawn up; as Judgments in *B. R.* may be altered during the ſame Term, the Seſſions as well as the Term being in Law accounted as one Day. *Ibid.* 606. And the Quarter-Seſſions is not bound to ſet forth the Reaſon of their *Orders* and Judgments, no more than other Courts. 2 *Salk.* 607. Juſtices of Peace at the Quarter-Seſſions may rectify Defects of Form in *Orders*, *&c.* upon Appeals, and then ſhall determine the Matters according to the Merits of the Caſe; and no *Orders* ſhall be removed into *B. R.* without entering into Recognizance of 50*l.* to proſecute with Effect, *&c.* otherwiſe the Juſtices to confirm their *Order*, by Stat. 5 *Geo.* 2. *c.* 19. See *Poor.*

Ordinale, Is a Book which contains the Manner of performing Divine *Offices: In quo* Ordinatur *modus, &c.*

Ordinance, (*Ordinatio*) Is a Law, Decree, or Statute, variouſly uſed. *Litt Dict.*

Ordinance of the Foreſt, (*Ordinatio Foreſtæ*) Is a Statute made touching Matters and Cauſes of the *Foreſt*, *Ann* 34 *Ed.* 1.

Ordinance of Parliament, Is ſaid to be the ſame with *Act of Parliament*; for in the Parliament Rolls, Acts of Parliament are often called *Ordinances*, and Ordinances *Acts:* But originally there ſeems to be this Difference between them; that an *Ordinance* was but a temporary Act, by Way of Prohibition, which the Commons might alter or amend at their Pleaſure; and an Act of Parliament is a perpetual Law not to be altered but by King, Lords and Commons. *Rot. Parl.* 37 *Ed.* 3. *Pryn's Animadver. on* 4 *Inſt.* 13. And Sir *Edward Coke* ſays, that an *Ordinance of Parliament* is to be diſtinguiſhed from an *Act*; in as much as the later can be only made by the King and three Eſtates, whereas the former is by one or two of them. *Co. Litt.*

Ordinary, (*Ordinarius*) Is a *Civil Law* Term for any Judge that hath Authority to take Cogniſance of Cauſes in his own Right, and not by Deputation; but by the *Common Law*, it is taken for him that hath *ordinary* or exempt and immediate Juriſdiction in Cauſes Eccleſiaſtical. *Co. Litt.* 344. *Stat. Weſtm.* 2. 13 *Ed.* 1. *cap.* 19. This Name is applied to a *Biſhop* who hath original Juriſdiction; and an *Archbiſhop* is the *Ordinary* of the whole Province, to viſit and receive Appeals from inferior Juriſdictions, *&c.* 2 *Inſt.* 398. 9 *Rep.* 41. *Wood's Inſt.* 25. The Word *Ordinary* is alſo uſed for every *Commiſſary* or Official of the Biſhop, or other Judge Eccleſiaſtical, having judicial Power: An *Archdeacon* is an *Ordinary*; and *Ordinaries* may grant Adminiſtration of Inteſtates Eſtates, *&c.* Stat. 31 *Ed.* 3. *c.* 11. 9 *Rep.* 36. But the *Biſhop* of the Dioceſe, is the true and only *Ordinary* to certify Excommunications, Lawfulneſs of Marriage, and ſuch Eccleſiaſtical and Spiritual Acts to the Judges of the Common Law; for he is the Perſon whom the Court is to write to in ſuch Things. 2 *Shep. Abr.* 472. For the *Ordinary*'s Power, it is declared by many Statutes; as relating to viſiting Hoſpitals, by 2 *H.* 5. *c.* 1: The certifying of Baſtardy, *&c.* 9 *H.* 6. *c.* 11. Concerning Queſtions of Tithes, that ſhall come in Debate before him. 27 *H.* 8. *c.* 20. Allowance of Schoolmaſters, *&c.* 23 *Eliz. c.* 1. 1 *Jac.* 1. *c.* 4. And their Authority in general is reſtored, by 13 *Car.* 2. *c.* 12. The *Ordinary*'s Power and Intereſt in a Church, is of admitting, inſtituting and inducting Parſons; of ſeeing and taking Care that it be provided with a Paſtor, by the Patron who has the Right of preſenting; or in his Default, to beſtow the Church on ſome proper Perſon to ſerve the Cure, *&c.* 1 *Roll. Rep.* 453. Before Preſentation to a Church, the *Ordinary* may ſequeſter the Profits; and during the Vacation, 'tis ſaid he may make a Leaſe. 1 *Keb.* 370. When the *Ordinaries* or their Miniſters have committed Extortion or Oppreſſion, they may be indicted, putting the Things in certain, and in what Manner, *&c.* 25 *Ed.* 3. *c.* 9. Formerly Clerks accuſed of Crimes were delivered to the *Ordinary*, and the Bodies of ſuch Clerks kept in the *Ordinary*'s Priſon until they had been tried before him by a Jury of twelve Clerks; and if condemned, they were liable to no greater Puniſhment than Degradation, Loſs of Goods, and the Profits of their Lands; unleſs they had been guilty of Apoſtacy, *&c.* This was when they had the Privilege of being tried only by Eccleſiaſtical Judges; which was ſo far indulged them, that after they had been once delivered to the *Ordinary*, they could not be remanded to any Temporal Court, until the Stat. 8 *Eliz. c.* 4. 2 *Hawk. P. C.* 361.

Ordinary of Newgate, Is one who is Attendant in *ordinary* upon the condemned Malefactors in that Priſon to prepare them for Death; and he records the Behaviour of ſuch Perſons.

Ordinatione contra Servientes, A Writ that lieth againſt a Servant, for leaving his Maſter contrary to the Statute. *Reg. Orig.* 189.

Ordination of Clergy. No Man is capable of taking any Parſonage, Vicarage, Benefice, or other Eccleſiaſtical Promotion, or Dignity whatſoever, but muſt be ordained a Prieſt, to qualify him for the ſame. A Clerk is to be twenty-three Years old, and have *Deacon's* Orders, before he can be admitted into any Share of the Miniſtry: And a Prieſt muſt be twenty-four Years of Age, before he ſhall be admitted into Orders to preach, or to adminiſter the Sacraments; but the Archbiſhop may diſpenſe with one to be made Deacon at what Age he pleaſes, though he cannot with one that is to be made a Prieſt. 13 *Eliz.* Deacons and Prieſts are to be *ordained* only upon the four *Sundays* immediately following the *Ember Weeks*, except upon urgent Occaſions; and it is to be done in the Cathedral or Pariſh-Church where the Biſhop reſides, in Time of Divine Service, and in the Preſence of the Archdeacon, Dean, and two Prebendaries, or of four other grave Divines. And no Biſhop ſhall admit any Perſon into Orders, without a *Title*, or Aſſurance of being provided for; and before any are admitted, the Biſhop ſhall examine them in the Preſence of the Miniſters, that aſſiſt him at the Impoſition of Hands; on Pain, if he admits any not qualified, *&c.* of being ſuſpended by the Archbiſhop from making either Deacons or Prieſts for two Years. *Can.* 31, 34. If any Impediment or Crime be objected againſt one that is to be made either Prieſt or Deacon, at the Time that he is to be *ordained*, the Biſhop is bound to ſurceaſe from *ordaining* him, until he ſhall be found clear of that Impediment or Crime; and it is generally held, that whatever are good Cauſes of Deprivation, are alſo ſufficient Cauſes to deny Admiſſion to Orders; as Incontinency, Drunkenneſs, Illiterature, Perjury, Forgery, Simony, Hereſy, Outlawry, Baſtardy, *&c.* 2 *Inſt.* 631. 5 *Rep.* A Perſon to be *ordained* Prieſt, muſt bring a Teſtimonial of four Perſons, known to the Biſhop of his Life and Doctrine; and be able to give an Account of his Faith in *Latin:* And a Deacon is not to be made a Prieſt, unleſs he produce to the Biſhop ſuch a Teſtimonial of his Life, *&c.* and that he hath been found faithful and diligent in executing the Office of a Deacon. A Biſhop ſhall not make any one a Deacon and Miniſter, both together upon one Day; for there muſt be ſome Time of Trial of the Behaviour of a Deacon in his Office, before he is admitted to the Order of Prieſthood; which Time is generally the Space of a Year, or it may be a ſhorter Time on reaſonable Cauſe allowed by the Biſhop: And Prieſts and Deacons are not only to ſubſcribe the Thirty-nine Articles of Religion, but take the Oath of the King's Supremacy, *&c.* as directed and altered by Stat. 1 *W. & M.* A Prieſt by his Ordination receives Authority to preach the Word, and adminiſter the Holy Sacraments, *&c.* (but he may not preach without Licence from the Biſhop, Archbiſhop, or one of the Univerſities): And *Ordination* of a Prieſt is thus performed; After *Veni Creator* is ſung, and ſome Prayers are read, the Biſhop, with the Divines preſent, laying their Hands ſeverally on the Prieſt's Head, the Biſhop pronounces the Words following.

Form of the Ordination *of a* Prieſt.

Receive the Holy Ghoſt for the Office and Work of a Prieſt in the Church of God, now committed to Thee by the Impoſition of our Hands; whoſe Sins Thou *doſt forgive, are forgiven, and whoſe Sins Thou doſt retain, are retained; and be thou a faithful Diſpenſer of the Word of God, and of his holy Sacraments, in the Name of the Father, and of the Son, and of the Holy Ghoſt* ——Then the Biſhop delivers a Bible to him with theſe Words, *viz. Take Thou Authority to preach the Word of God, and to miniſter the Sacraments in the Congregation, where thou ſhalt be lawfully appointed.*

The Stat. 31 *Eliz. cap.* 6. puniſhes corrupt *Ordination* of Prieſts, *&c.* If any Perſons ſhall take any Reward, or other Profit, to make and *ordain* a Miniſter, or to licence him to Preach, they ſhall forfeit 40 *l.* and the Party ſo *ordained*, &c. 10 *l.* by this Statute.

Ordines Majores & Minores. The Holy Orders of Prieſt, Deacon, and Subdeacon, any of which were antiently a Qualification for Admiſſion to an Eccleſiaſtical Benefice, were called *Ordines Majores*; and the inferior Orders of Reader, Chantor, Pſalmiſt, *&c.* termed *Ordines Minores*; for which the Perſons ſo ordained, had their *Prima Tonſura*, different from the *Tonſura Clericalis.*

Ordinum fugitivi, Signified thoſe of the Religious who deſerted their Houſes, and throwing off the Habits, renounced their particular *Order*, in Contempt of their Oath and other Obligations. *Paro h. Antiq.* 388.

Ordo, Is taken for that Rule which the *Monks* were obliged to obſerve. *In Eadmer. vita S. Anſelmi, cap.* 37.

Ordo Albus, The *White* Friars, or *Auguſtines*; and the *Ciſtertians* alſo wore *White.*

Ordo Niger, Were the *Black* Friars. *Sub normâ Benedicti famulantes*; as *Ingulphus* tells us, *pag.* 851. The *Cluniacs* likewiſe wore *Black.* Matt. Pariſ. 321, 514.

Orfgild, (From the Sax. *Orf*, i. e. Pecus, & *Gild*, Solutio, vel Redditio) Signifies a Payment or Delivery of Cattle: But it ſeems rather a Penalty for taking away Cattle. *Lambard.*

Orfraies, (*Aurifriſium*) A Sort of *Cloth of Gold*, frizled or embroidered, formerly made and uſed in *England*, worn by our Kings and Nobility: And the Cloaths of the King's Guards were called *Orfraies*, becauſe adorned with ſuch Works of Gold. Mention is made of theſe *Orfraies* in the *Records of the Tower.*

Orgallous, (From the Fr. *Orgueil*, i. e. Pride) Haughty and High-minded. 4 *Inſt.* 89.

Orgeis, Is the greateſt Sort of *North* Sea-Fiſh, now called *Organ Ling*, which is a Corruption from *Orkney*; the beſt being taken near that Iſland. 31 *Ed.* 3. *Stat.* 3. *cap.* 2.

Orgild, (*Sine Compenſatione*) Without Recompence; as where no Satisfaction was to be made for the Death of a Man killed, ſo that he was judged lawfully ſlain. *Spelm.*

Original. In the Court of *King's Bench*, the uſual *Original* Writ iſſued in Actions, is for Action of Treſpaſs upon the Caſe; and this Court doth not iſſue *Originals* in Actions of Debt, Covenant, or Account, *&c.* Whereas the Court of *Common Pleas*, proceeds by *Original* in all Kinds of Actions: But to arreſt and ſue a Party to *Outlawry*, it is made Uſe of by both Courts. And for *Originals* in Treſpaſs on the Caſe, there is a Fine payable to the Crown, where the Damages are laid above forty Pounds in Proportion to the Damage. *Practiſ. Solic.* 254, 255. The *Original* is the Foundation of the *Capias*, and all ſubſequent Proceſs; the Return whereof is generally the *Teſte* of the *Capias*: Tho' the *Capias* may be taken out before the *Original*, by leaving the *Præcipe* with the Filazer, who will make out a *Capias* upon it, and afterwards carry it to the Curſitor to make an *Original*; and the Filizer when it is returned, is to file it with the *Cuſtos Brevium*. Proceedings in Actions by *Original* are thus,—— When the Defendant is arreſted and appears, the Plaintiff's Attorney is to deliver a Copy of his Declaration to the Defendant's Attorney; and the Term he declares, after Rules given to plead, he calls upon him for his Plea, and draws his Replication, *&c.* He alſo makes up the Paper-Book, and delivers a Copy of it to the Defendant's Attorney: Then if it be an Iſſue, he gives Notice of Trial, ſigns his *Venire Diſtr. Jur' &c.* and ſeals the Record of *Niſi prius*; when he ſummoneth his Witneſſes, prepares Breviates, and goes to Trial as in Actions by *Bill*: After the Trial is over, the Iſſue muſt be entred in due Time on the Filizer's Roll; and Rules given to ſign Judgment, whereupon Judgment is entred, and Execution made out for the Party recovering. *Pract. Solic.* 256. Attornies being better ſkill'd in the Method by Bill, *&c. Originals* are ſeldom proſecuted in *B. R.* unleſs it be in *Ejectment*, &c. where there is this Advantage, that a Writ of Error upon a Judgment in Ejectment by *Original* cannot be brought, or at leaſt is not returnable, but during the Sitting of the Parliament, which is of great Uſe for the ſpeedy getting into Poſſeſſion. *Pract. Attorn. Edit.* 1. *pag.* 130. There are *new Originals* to warrant Judgment; and in Caſes of Outlawry, Writs of Error, *&c.* And if a new *Original* be returned any Time before Judgment is ſigned, it is ſoon enough. *Ibid.* 319. An *Original* in Caſe, *&c.* ſets forth the whole Declaration of the Plaintiff; and the Writ runs thus: *George the Second, K. of* Great Britain, *&c. To the Sheriff of* S. *Greeting: If* A. B. *ſhall make you ſecure in proſecuting his Claim, then put* C. D. *of*, &c. *in your County to find Pledges and ſufficient Sureties, that he be before our Juſtices at* Weſtminſter, *on the Day*, &c. *to anſwer to the ſaid* A. B. *in an Action; That whereas the ſaid* C. *on the Day and in the Year*, &c. *at the Pariſh*, &c. *aforeſaid in your County, was indebted to the ſaid* A. *in the Sum of*, &c. *for Goods*, &c. *to the ſaid* C. *at the ſpecial Inſtance and Requeſt of him* C. *before that Time ſold and delivered, and being ſo indebted, he faithfully promiſed*, &c. (as in the Declaration to the End) *to the Damage of the ſaid* A. *&c. And have you there the Names of the Pledges and this Writ. Witneſs our ſelf at* Weſtminſter, *the Day*, &c. *in the ſeventh Year of our Reign.* See *Writ.*

Originalia. In the Treaſurer's Remembrancer's Office in the *Exchequer*, the Tranſcripts, *&c.* ſent thither out of the Chancery are called by this Name, and diſtinguiſhed from *Recorda*; which contain the Judgments and Pleadings in Suits tried before the *Barons.*

Orped, Some *orped* Knight, *i. e.* a Knight whoſe Clothes ſhined with Gold. *Blount.*

Orphan, (*Orphanus*) Is a Fatherleſs Child; and in the City of *London* there is a *Court* of Record eſtabliſhed for the Care and Government of *Orphans.* 4 *Inſt.* 248. The *Lord Mayor and Aldermen of London* have the Cuſtody of *Orphans*, under Age and unmarried, of *Freemen* that die; and the Keeping of all their Lands and Goods: And if they commit the Cuſtody of an *Orphan* to any Man, he ſhall have the Writ of *Raviſhment of Ward*, if the *Orphan* be taken away; or the Mayor and Aldermen may impriſon the Offender until he produces the Infant. 2 *Danv. Abr.* 311. If any one without the Conſent of the Court of Aldermen, marries ſuch an *Orphan* under the Age of twenty one Years, though out of the City, they may fine and impriſon him, until paid. 1 *Lev.* 32. 1 *Ventr.* 178. Executors and Adminiſtrators of *Freemen* dying, are to exhibit true Inventories of their Eſtates before the Lord Mayor and Aldermen in the Court of *Orphans*, and muſt give Security to the Chamberlain of *London* and his Succeſſors by Recognizance for the *Orphan*'s Part; which if they refuſe to do, they may be committed to Priſon until they obey. *Wood's Inſt.* 522. If any *Orphan*, who by the Cuſtom of of *London* is under the Government of the Lord Mayor and Aldermen, ſue in the Spiritual Court for any Legacy, *&c.* a Prohibition ſhall be granted; becauſe the Lord Mayor and Aldermen only have Juriſdiction of them. 5 *Rep.* 73. But an *Orphan* may wave the Benefit of ſuing in the *Court of Orphans*, and file a *Bill in Equity* againſt any one for Diſcovery of the Perſonal Eſtate, *&c.* The Lord Mayor and Commonalty of *London* being anſwerable for the *Orphans* Money paid into the *Chamber of the City*, and by ſome Accidents become indebted to the *Orphans* and their Creditors, in a greater Sum than they could pay; by Stat. 5 & 6 *W.* & *M. cap.* 10. it is enacted, that the Lands, Markets, Fairs, *&c* belonging to the City of *London*, ſhall be chargeable for raiſing Eight thouſand Pounds *per Ann.* to be appropriated for a perpetual Fund for *Orphans*; and towards raiſing ſuch a Fund, the Mayor and Commonalty may aſſeſs Two thouſand Pounds yearly upon the Perſonal Eſtates of Inhabitants of the City, and levy the ſame by Diſtreſs, *&c.* Alſo a Duty is granted of four Shillings *per* Tun on Wines imported, and on Coals; and every apprentice ſhall pay 2 *s.* 6 *d.* when he is bound; and 5 *s.* when he is admitted a Freemen; for raiſing of the ſaid Fund: The Fund is to be applied for Payment of the Debts due to *Orphans*, by Intereſt after the Rate of 4 *l. per Cent. &c.* And no Perſon ſhall be compelled by Virtue of any Cuſtom of the City, to pay into the Chamber of *London* any Sum of Money or perſonal Eſtate belonging to an *Orphan* of any Freeman for the Future. 5 & 6 *Will* & *Ma.*

Ortelli, (*Fr.*) Is a Foreſt Word, and ſignifies the Claws of a Dog's Foot. *Kitch.*

Ortolagium, A Garden Plot, or *Hortilage. Mon. Angl. Tom.* 1.

Oryal, (*Oriolum*) Is a Room, or Cloiſter, of a Monaſtery, Priory, *&c.* whence it is preſumed that *Oriel* or *Oryal College* in *Oxford* took Name. *Matt. Pariſ. in vit. Abb. St. Alban.*

Oſculum Pacis. A Cuſtom formerly of the Church, that in the Celebration of the Maſs, after the Prieſt had ſpoke theſe Words, *viz. Pax Domini vobiſcum*, the People kiſſed each other, was called *Oſculum Pacis:* Afterwards when this Cuſtom was abrogated, another was introduced; which was whilſt the Prieſt ſpoke the aforementioned Words, a Deacon offered the People an Image to kiſs, which was commonly called *Pacem. Matt. Pariſ. Anno* 1100.

Oſmonds, A Kind of Ore, of which Iron is made; antiently brought into *England.* Stat. 32 H. 8. *cap.* 14.

Oſtenſio, Was a Tribute paid by Merchants for Leave to expoſe their Goods to Sale in Markets. ——*Qui per terras ibant* Oſtenſionem *dabant & Teloneum.* Leg. Ethelred. cap. 23.

Oſwald's Law, (*Lex Oſwaldi*) The Law by which was underſtood the Ejecting *married Prieſts*, and introducing Monks into Churches, by *Oſwald* Biſhop of *Worceſter*, about the Year 964.

Oſwald's Law Hundred, Is an antient *Hundred* in *Worceſterſhire*, ſo called of the ſaid Biſhop *Oſwald* who obtained it of King *Edgar*, to be given to St. *Mary*'s Church in *Worceſter*; it is exempt from the Juriſdiction of the Sheriff, and comprehends 300 Hides of Land. *Camb. Brit.*

Ouch, A Collar of Gold, or ſuch like Ornament, worn by Women about their Necks. *Stat* 24 *H.* 8. *c.* 13.

Over, (Sax. *Ofer*, Ripa) In the Beginning or Ending of the Names of Places, ſignifies a Situation near the Bank of ſome River; as St. *Maryover* in *Southwark*, *Andover* in *Hampſhire*, &c.

Overcyted, (From the Sax. *Ofer*, i. e. ſuper, & *Cythan*, offendere) Is uſed where a Perſon is convicted of any Crime; that it is found upon the Offender: This Word is mentioned in the Laws of *Edw. apud Brompton, pag.* 836.

Overherniſſa, Contumacy, or Contempt of the Court. In the *Laws* of *Adelſtan*, *cap.* 25. it is uſed for Contumacy: But in a Council held at *Wincheſter*, *Anno* 1027, it ſignifies a Forfeiture: So *Leg Æthelred. cap.* 27.

Overſameſſa, Seems to have been an antient Fine before the Statute for *Hue* and *Cry*, laid upon thoſe, who, hearing of a Murder or Robbery, did not purſue the Malefactor. 3 *Inſt.* 116.——*Si quis furi obviaverit, & ſine vociferatione gratis eum dimiſerit, emendet ſecundum* Weram *ipſius furis, vel plena* lada *ſe adlegiet, quod cum eo falſum neſcivit: Si quis audito clamore ſuperſedit, reddat* Overſameſſa *Regis, aut plene ſe laidiet.* Lib. Rub. cap. 36.

Overſeers of the Poor, Are publick Officers created by the Stat. 43 *Eliz. cap.* 2. to provide for the *Poor* of every Pariſh; and are ſometimes two, three, or four, according to the Largeneſs of Pariſhes. *Churchwardens* by this Statute are called *Overſeers of the Poor*, and they join with the *Overſeers* in making a Poors Rate, *&c.* But the Churchwardens having diſtinct Buſineſs of their own, uſually leave the Care of the Poor to the *Overſeers* only; though antiently they were the ſole *Overſeers of the Poor.* Dalt. ch. 27. Wood's Inſt. 93. See *Poor.*

Overt, (*Fr.*) Is uſed for open; *Overture*, an Opening, alſo a Propoſal. *Law Fr. Dict.*

Overt-Act, (*Apertum factum*) An open Act which by Law muſt be manifeſtly proved. 3 *Inſt.* 12. Some *Overt-Act* is to be alledged in every Indictment for *High Treaſon:* Such as for Treaſon in compaſſing the Death of the King, the providing Arms to effect it, *&c.* 3 *Inſt.* 6, 12. *H. P. C.* 11. And no Evidence ſhall be admitted of any *Overt-act*, that is not expreſly laid in the Indictment, by Stat. 7 *W.* 3. *Vide* Treaſon.

Overt-Word, Is an open plain Word, not to be miſtaken. Stat. 1 *Mar. Seſſ.* 2. *c.* 3.

Ovres, (*Fr.*) Acts, Deeds, or Works: And *Ovrages*, are Days Works. 8 *Co. Rep.* 131.

Ouſted, (From the Fr. *Ouſter*, to put out) As *ouſted* of Poſſeſſion, is where one is removed or put out of Poſſeſſion. 3 *Cro. Rep.* 349.

Ouſter le Main, (*Amovere manum*) Signifies a Livery of Land out of the King's Hands, or a Judgment given for him that ſued a *Monſtrans de droit*; and when it appeared upon the Matter, that the King had no Title to the Land he ſeiſed, Judgment was given in the Chancery that the *King's Hands be moved*, and thereupon an *Amoveas manum* was awarded to the Eſcheator, to reſtore the Land, it being as much as if the Judgment were given that the Party ſhould have his Land again. *Staundf. Prærog. cap* 24. 28 *Ed.* 1. *cap.* 19. It was alſo taken for the Writ granted upon a Petition for this Purpoſe. *F. N. B.* 256. And it is written *Outer le Maine*, in the 25 *Hen.* 8. *cap.* 22. But all Wardſhips, Liveries, and *Ouſter le mains*, *&c.* are taken away by Stat. 12 *Car.* 2. *cap.* 24.

Ouſter le Mer, (Fr. *Oultre*, i. e. Ultra, & *le Mer*, Mare) Is a Cauſe of Eſſoin or Excuſe, if a Man appear not in Court on Summons, for that he was then beyond the Seas.

Outfangthef, (From the Sax. *Ut*, i. e. Extra, *fang*, captus, & *Theof*, fur) *Fur extra Captus, quem Dominus, quanquam in alieno fundo comprehenſum, in Curiam tamen ſuam revocat, ibique judicat.* Litt. It is a Liberty or Privilege, as uſed in the antient Common Law, whereby a Lord was enabled to call any Man dwelling in his Manor, and taken for Felony in another Place *out* of his Fee, to Judgment in his own Court. *Raſtal.* Stat. 1 & 2 *P.* & *M. cap.* 15.

Outheſt, Is the ſame with *Outhorn*; which is a Calling Men *out* to the Army, by the Sound of an *Horn.*

Out-houſes, Are thoſe belonging and adjoining to Dwelling-houſes; and Taking away any Money, Goods, *&c.* from ſuch *Outhouſes*, in the Day-time of 5 *s* Value, is Felony without Benefit of Clergy. *Dalt. c.* 99. Stat. 39 *Eliz. c.* 15. 3 & 4 *W.* & *M. c.* 9. See *Burglary*.

Outland. The *Saxon Thanes* divided their hereditary Lands into *Inland*, ſuch as lay neareſt to their own Dwelling, and which they kept to their own Uſe; and *Outland*, which lay beyond the Demeans, and was granted out to Tenants, but merely at the Will and Pleaſure of the Lord, like to Copyhold Eſtates. This *Outland* they ſubdivided into two Parts, whereof one Part they diſpoſed among ſuch as attended on their Perſons, called *Theodens*, or leſſer *Thanes*; and the other Part they allotted to their Husbandmen, or Churls. *Spelm. de Feud, cap.* 5.

Outlaw, (Sax. *Utlaghe*, Lat. *Utlagatus*) One deprived of the Benefit of the Law, and out of the King's Protection. *Fleta, lib.* 1. *cap.* 47. If where a Perſon is called into the Law, after an original Writ, and three Writs of *Capias*, *Alias* and *Pluries*, returned by the Sheriff *Non eſt inventus*, and Proclamation made for him to appear, *&c.* he contemptuouſly refuſes to appear, he is then *outlawed:* And in former Times no Perſon was *outlawed* but for Felony, the Puniſhment whereof being Death, any Man might kill an *Outlaw* as a Wolf; but this was prohibited by Statute, and none but the Sheriff by lawful Warrant, may put any Man *outlawed* for Felony to Death, on Pain to ſuffer the like Puniſhment, as if he had killed any other Perſon. *Bract. lib.* 5. 2 *Aſſ. pl.* 3. 1 *Inſt.* 128. A Woman cannot be an *Outlaw*, becauſe Women are not ſworn to the King as Men are, to be ever *within* the Law; therefore they are ſaid to be *waived*, as not regarded but forſaken of the Law. *F N.* B. 160. And an Infant under twenty-one Years old, his Age to take the Oath of Allegiance, cannot be *outlawed*. When a Perſon is reſtored to the King's Protection, he is *Inlawed* again.

Outlawry, (*Utlagaria*) Is where a Perſon is *outlawed*, that he loſes the Benefit of a Subject. Proceſs of *Outlawry* lies in all Appeals, whether of Felony or Maihem, and in Indictments of Treaſon, or Felony; and alſo Indictments of Treſpaſs *Vi & Armis*, Conſpiracy, or Deceit; but not on any Indictment for a Crime of an inferior Nature: And it lies not in any Action on a Statute, unleſs it be given by ſuch Statute, either expreſly or impliedly: But by divers Statutes, *Outlawry* lies in many Civil Actions; as in Debt, Caſe, Account, Covenant, *&c.* and may be before Judgment had in the Suits, or after Judgment; and *Outlawries* are become frequent in perſonal Actions. *Finch* 346, 355. 1 *Inſt.* 128. 2 *Hawk. P. C.* 302, 303. As by committing Felony, by the Common Law, a Man forfeited all his Lands, Goods and Chattels; ſo by an *Outlawry* for Felony, at this Time he forfeits the ſame. 1 *Inſt.* 128. *Outlawry* in perſonal Actions is by Statute only, in which Caſe the Goods and Chattels of the Perſon are only liable, as thoſe alone were chargeable in perſonal Actions, and they are forfeited to the King, who ſhall likewiſe have the Pernancy of the Profits of the Chattels Real; though this ſeems by a Conſequence only, for that the Party being *extra Legem*, is therefore incapable to take the Profits himſelf. 3 *Salk.* 263. Upon an *Outlawry* on a Judgment in Debt, *&c.* the Perſon immediately forfeits his Goods and Chattels to the King; but not the Profits of his Land or his Chattels Real, until Inquiſition taken: And Alienation after an *Outlawry*, and before Inquiſition, is a good Bar to the King, as to the Perception of the Profits. *Raym.* 17. *Hardr.* 101. 1 *Salk.* 395. If after *Outlawry* in a Perſonal Action, and before Seiſure, the Party *outlawed* levy a Fine, the Cogniſee ſhall hold againſt the King: But if the Seiſure be before the Fine levied, it is good for the King. 1 *Lev.* 33. By a Feoffment made before a Seiſure, upon an *Outlawry*, the King is ouſted of the Pernancy of the Profits. *Ibid.* An *Outlawed* Perſon was ſued in the *Exchequer* by Bill, to diſcover his real and perſonal Eſtate for the Benefit of the King; and upon a Demurrer to the Bill, becauſe the Defendant is not bound to accuſe himſelf, it was over-ruled, the King having a Title by the *Outlawry*, which is *quaſi* a Judgment for him. *Hardr.* 22. And the King may diſpoſe of the Land itſelf of a Perſon *Outlawed*, by the Courſe of the Exchequer. *Raym.* 17. Where two or more Perſons have jointly any Goods or Chattels, and one of them is *outlawed*; by this all the Goods, *&c.* will be forfeited to the King; it may be otherwiſe of Lands: But the Sheriff ought not to ſell the Goods of one *outlawed*; for he ſhall be reſtored to them again, if the *Outlawry* be reverſed. *Dyer* 11. 8 *Rep.* 143. 2 *Shep. Abr.* 187. In Ejectment, Leſſee for Years was indicted, and *Outlawry* had againſt him; and it being found by Inquiſition that he was poſſeſſed of his Term at the Time of the *Outlawry*, the Treaſurer and Barons of the Exchequer ſold the Leaſe for a valuable Conſideration: Then the *Outlawry* was reverſed; and Judgment given that he ſhould be reſtored to all which he had loſt by Reaſon of the *Outlawry*; and though the Term was lawfully ſold, and the Poſſeſſion in another, yet it was held that the Leſſee ſhould have his Term again; for otherwiſe the Judgment upon the Reverſal would be in vain, as by that he is to be reſtored to all which he loſt, *&c.* which cannot be unleſs he have his Leaſe again. 1 *And.* 277. A Leſſee was *outlawed* for Felony; he aſſigned his Term, and then the *Outlawry* was reverſed, and the Aſſignee brought Treſpaſs for the Profits taken between the *Outlawry* and the Aſſignment; and it was adjudged good, becauſe the *Outlawry* being reverſed, it was as if there was none, and there is no Record of it. *Cro. Eliz.* 270, 278. The King on Reverſal of an *Outlawry*, may grant Reſtitution *de Omnibus quibus nobis non eſt Reſponſum:* And if there be Lands, there muſt be a *Scire facias* to the Lords mediate and immediate, to ſhew Cauſe why the Party ſhould not have Reſtitution. 2 *Lev.* 49. 2 *Salk.* 495. 2 *Nelſ. Abr.* 1217, 1218. *A. B.* was a Bankrupt, and ſometime afterwards being *outlawed*, the King made a Leaſe of the Profits of his Lands, and granted his Goods; afterwards a Commiſſion of Bankruptcy was taken out againſt him, but it was five Years after he had committed the Act of Bankruptcy; reſolved, that by the *Outlawry* he forfeits his Goods and Chattels, his Leaſes for Years, and his Truſt in ſuch Leaſes, and the Profits of his Freehold Lands; but that this *Outlawry* cannot defeat any Intereſt which his Creditors had acquired in the Eſtate, becauſe he voluntarily ſuffered himſelf to be *outlawed*. 1 *Salk* 108. *Sid.* 115. A Man was indebted to one by Judgment, and to another on Bond, and was *outlawed* upon the Bond, and his Lands ſeiſed; and the Queſtion being, Whether the Judgment Creditor could extend thoſe Lands, it was held that the *Outlawry* ſhall be preferred, except the Judgment Creditor could ſhew any Practice between the Obligor and Obligee. 2 *Salk* 495. By *Outlawry*, a Man is diſabled to ſue; of which all Men may take Advantage by Pleading, until the *Outlawry* is reverſed. *Litt.* 197. 1 *Inſt.* 122, 128. One *outlawed* cannot proſecute in any Court, unleſs it be to reverſe his *Outlawry*. *Cro. Jac.* 425. But he may make a Will, and have Executors, or an Adminiſtrator. *Cro. Eliz.* 575, 150. And an Executor may reverſe an *Outlawry* of the Teſtator, where he was not lawfully *outlawed*. 1 *Leon.* 325. An Executor or Adminiſtrator *outlawed* is not diſabled to ſue Actions in Right of the Teſtator or Inteſtate: Alſo a Mayor and Commonalty may ſue for a Corporation,

poration, notwithſtanding the *Outlawry* of the Mayor. 6 *Rep.* 53. On a Writ of Error to reverſe an *Outlawry*, the *Outlawry* is no good Plea in Diſability of the Perſon: But *Outlawry* may be pleaded in Bar to *Audita Querela. Sid.* 43. In *Aſſumpſit* upon a Bill of Exchange, &c. the Defendant pleaded an *Outlawry* in Bar; and on Demurrer to this Plea it was objected, that it ought to be pleaded in Abatement, becauſe in this Action Damages are to be recovered, which are incertain, and therefore not forfeitable by *Outlawry:* But it was adjudged, that it is pleadable in Bar, for the Debt is certain, though it is to be recovered in Damages. 3 *Lev.* 29. And in *Indebitatus Aſſumpſit* and *Quantum meruit*, for Meat, Drink, &c. Plea of *Outlawry* by the Defendant is good, though in this Action Damages are only recovered; and it is the Conſideration which creates the Debt or Duty, notwithſtanding the Recompence is to be had by Way of Damages. 2 *Ventr.* 282. A Defendant pleaded an *Outlawry* in Bar to Action of Trover, and held good, though the Plaintiff in ſuch Action could only recover incertain Damages; for the Action is founded on the Property of the Goods, and theſe being forfeited by the *Outlawry*, the Plea is good. 3 *Leon.* 205. In Action of Aſſault and Battery, the Plaintiff recovered in C. B. and upon Writ of Error in B. *R.* the Judgment was affirmed; and thereupon the Plaintiff brought a *Scire facias* to ſhew Cauſe *Quare Executionem non haberet*, to which the Defendant after an Imparlance pleaded an *Outlawry* before the Judgment had, in Bar to the Execution; and it was ruled a good Plea; in this Caſe, though before the Judgment nothing is forfeited, yet a certain Sum being recovered in the Action, that is forfeited by the *Outlawry* had againſt the Plaintiff. *W. Jones* 238. *Nelſ. Abr.* 1219. A Plaintiff delivered his Declaration in *Trinity Term*, the Defendant imparled to *Michaelmas Term*, and in the long Vacation the Plaintiff was *outlawed*; and then in *Michaelmas-Term* the Defendant pleaded this *Outlawry* in Bar to the Action, but did not ſay, That it was after the *laſt Continuance*, for which Reaſon the Plaintiff demurred; but the Plea was adjudged good, ſince the Record of the *Outlawry* doth appear. 5 *Mod.* 11. Where an *Outlawry* is pleaded, it muſt be *Sub pede Sigilli*, otherwiſe the Plaintiff may refuſe it; but if he accepts the Plea, he ſhall not afterwards demur for that Cauſe. 1 *Salk.* 217. And how to plead an *Outlawry* in the ſame Court, or in another; and before, or after Judgment. *Lutw* 40, 110, 111. An Attorney brought an Action of Debt by Bill of Privilege, and after Judgment the Defendant was *outlawed*, who brought a Writ of Error to reverſe it; and it was adjudged that Proceſs of *Outlawry* did not lie upon ſuch Judgment, becauſe there was no *Capias* in the original Action. 1 *Leon:* 229. A Judgment in Debt was had againſt two Defendants, and a *Capias ad ſatisfaciendum* ſued forth againſt one of them, upon which he was *outlawed*; and afterwards he brought a Writ of Error to reverſe the *Outlawry*, and aſſigned for Error that it ought to have been awarded againſt both; and ſo it was held. *Cro. Eliz.* 648. Two Perſons were *outlawed*, one of them moved, that upon filing common Bail he might have Leave to reverſe the *Outlawry*; and adjudged that the Writ of Error to reverſe it, muſt be brought in the Name of both the Defendants; and where one appears, the other is to be ſummoned and ſevered, and then it may be reverſed as to him who appears, but he muſt give Bail to appear and anſwer the Action. 2 *Salk.* 496. An *Outlawry* grounded upon an Indictment on the Statute againſt Forcible Entry, preferred againſt ſeveral Perſons, may be reverſed as to ſome of the Parties, and ſtand good as to others that are *outlawed*, upon the ſame Indictment: For the *Outlawries* againſt them are ſeveral, and not entire, and the Proceedings to the *Outlawry* may be good as to ſome of them, and as to the others may not be good. *Hill.* 22 *Car. B. R.* 2 *Lill. Abr.* 263. If a Party *outlawed* comes in *gratis* upon the Return of the *Exigent*, *Alias*, or *Pluries*, he may be admitted by Motion to reverſe the *Outlawry*, without putting in Bail: If he comes in by *Cepi Corpus*, he ſhall not be admitted to reverſe the *Outlawry*, without appearing in Perſon, as in ſuch Caſe he was obliged to do at Common Law; or putting in Bail with the Sheriff for his Appearance upon the Return of the *Cepi Corpus*, and for doing what the Court ſhall order: Appearance by Attorney is an Indulgence by the Statute 4 & 5 *W.* & *M. c.* 18. And the Bail is to be ſpecial or common, in this as in other Caſes; but Treaſon and Felony are excepted out of the Act. 2 *Salk.* 496. It is ſaid that on *Outlawry* the Party ought to appear in Perſon, and ſubmit himſelf to his Trial; and it muſt be *ex gratia*, if he is admitted to aſſign Errors before. 3 *Salk.* 263. In Caſe of *Outlawry* for Felony, the Errors to reverſe it are to be certainly alledged in Writing, and be ſufficient, before a Writ of Error ſhall be allowed. *Jenk. Cent.* 165. Perſons *outlawed* for Felony cannot be bailed, being attainted in Law; they may appear in Perſon, and plead Error in Avoidance of the *Outlawry*, &c. 2 *Inſt.* 187. *H. P. C.* 101, 105. Upon *Outlawry* in Treaſon or Felony, it may be reverſed by Writ of Error, or Plea; and it has been obſerved, that few *Outlawries* for Treaſon, Felony or Treſpaſs, are valid, becauſe the Statutes relating to the ſame are not purſued, as the Statutes 1 *H.* 5. *cap.* 5. 6 *H. 6. cap.* 1. 8 *H. 6. cap.* 10. By the Statute 5 *Ed. 6. c.* 11. *Outlawry* againſt one for Treaſon, being out of the Realm, or beyond Sea, ſhall be good in Law: And if the Party within one Year after the *Outlawry*, or Judgment thereon, ſhall yield himſelf to the Chief Juſtice of *England*, and traverſe the Indictment whereupon he was *outlawed*, he ſhall be admitted to ſuch Traverſe, and being acquit ſhall be diſcharged of ſuch *Outlawry*. Since this Statute, and the 26 *Hen.* 8. *c.* 13. In Caſe of Treaſon, one is barred of his Writ of Error, if he does not come in within a Year after the *Outlawry*, while he was out of the Realm, or beyond Sea: And when an *Outlawry* of Treaſon or Felony is reverſed, the Party muſt plead to the Indictment. *Wood's Inſt.* 659. Sir *Thomas Armſtrong* was *outlawed* for High Treaſon; and being taken in *Holland*, was brought into *England*; and he deſired that he might have Leave of the Court of B. *R.* to reverſe the *Outlawry*, and be tried by Virtue of the Statute of *Edw.* 6. alledging that it was not a Year ſince he was *outlawed*, &c. but it was denied, becauſe he had not rendered himſelf according to the Statute, to have the Benefit thereof, but was apprehended and brought before the Chief Juſtice; wherefore a Rule was made for his Execution. 5 *Mod. Rep.* 47. It hath been adjudged, that if a Man commits a Murder, and, after the Exigent awarded againſt him, he flieth out of the Realm, and then is *outlawed*, he ſhall not reverſe it for that Cauſe; becauſe he fled on Purpoſe to avoid the Law, and therefore by his Abſence he ſhall not have the Benefit of the Law, but if the Attorney General, &c. confeſs that he was beyond Sea both before and after he was *outlawed*, the *Outlawry* may be reverſed. 2 *Cro.* 464. 2 *Nelſ. Abr.* 1222, 1223. In a Civil Cauſe, if one appears before he is returned *outlawed*, he may *ſuperſede* the Exigent, &c. And where a Defendant is beyond Sea, in Priſon, &c. the Award of the Exigent may be reverſed. As ſuing to the *Outlawry* is practiſed only where a Defendant is not eaſy to be taken, or hath not ſufficient Eſtate in the County to be ſummoned; if, where the Party is well known, is ſufficient, and may be arreſted, the Plaintiff *outlaw* him, he ſhall be ordered to reverſe it at his own Expence. But where Motion was made upon Affidavit, that the Defendant lived publickly, and therefore to order the Plaintiff to reverſe the *Outlawry* at his own Charge, it was not granted; becauſe the Charge is ſmall in *C. B.* to reverſe an *Outlawry*, *viz.* but 16 *s.* 8 *d.* But in *B. R.* it is very chargeable. 2 *Salk.* 495. 2 *Nelſ.* 1224. A Defendant was actually in Execution in the *Fleet* at the Suit of the Plaintiff in another Action, and yet he *outlawed* him; and upon Affidavit of this Matter, the Plaintiff was ordered to reverſe the *Outlawry* at his own Charge. *Ibid.* When a Perſon would reverſe an *Outlawry*, he muſt have an Attorney of Record to undertake an Appearance to a new Original; and put in ſpecial Bail, if the Debt or Damage amount to 10 *l.* or above: And if it be an *Outlawry* after Judgment, it cannot be reverſed until Satisfaction is acknowledged by the Plaintiff on Record; or the Defendant hath brought the Money into Court. If an *Outlawry* be reverſed, the Plaintiff may declare againſt the Defendant for the ſame Cauſe of Action in two Terms, upon a new Original, and in another County than that where the Action was firſt laid. 3 *Lev.* 245. But if the Plaintiff proceeds not in two Terms after Notice, the Defendant ſhall have Coſts. In the Reverſing of *Outlawries*, Proceedings may be by Motion to inform the Court of ſome Fault; or by Writ of Error, *&c.* And an *Outlawry* may be reverſed, where the County-Court Days are miſtaken in the Proclamations; if ſufficient Time is not allowed between any of them; the Party is miſnamed, or the Sheriff's Name omitted or miſtaken; by any Error found in the Return of the Proclamation, or for Want of filing it; Want of Returns, and Miſtakes in the Writs of *Alias*, *Capias*, *&c.* And ſo if the Exigent and Proclamation do not go forth to the County where the Party dwells; if there be no Warrant of Attorney filed for the Plaintiff the ſame Term ſued forth, *&c.* 1 *Inſt.* 128. 2 *Inſt.* 670. When it is not had in a due Courſe of Proceſs, the *Outlawry* will be erroneous; ſo if a Man is *outlawed* in a Suit, wherein *Outlawry* doth not lie, as in Detinue of Charters, *&c.* Or on an original Writ, without any Addition of Eſtate, Myſtery, or Degree of the Party: And if the Principal Record be reverſed for Error, the *Outlawry* grounded upon it ſhall be reverſed alſo. *Goldſb.* 148. *Dyer* 223. An *Outlawry* in *B. R.* may be reverſed there; becauſe it is the Judgment of the Coroner, and not of the Court: But altho' there be a *Superſedeas* to the Exigent, the *Outlawry* cannot be reverſed in this Court without a Writ of Error: In *C. B.* it is otherwiſe. *Jenk. Cent.* 116, 119. A Defendant is *outlawed* in a Civil Action in *B. R.* if the Proclamation therein is not filed, the Defendant may reverſe the *Outlawry* without any Writ of Error, by pleading no Proclamation filed; and upon the *Cuſtos Brevium*'s attending the Court with the File of Writs, whereby it appears that the Proclamation is not filed, the Court will reverſe the *Outlawry*; but if the Proclamation be filed, then he muſt bring his Writ of Error to reverſe it. 2 *Lill. Abr.* 263. If a Huſband and Wife are returned *Utlagati fuerunt*, as the Wife ought to be waived, this Error may be avoided by Exception, on a Motion to the Court in the ſame Term in which they were *outlawed*; but not afterwards without Writ of Error. 2 *Bulſt.* 213. If the Names of Coroners are not put to the Judgment of *Outlawry*; or it is not ſaid *Coronatoris Comitatus*, *&c.* it is Error, for which the *Outlawry* may be reverſed. 1 *Roll. Rep.* 266. 2 *Cro.* 528. 2 *Roll. Rep.* 82. The Court of *B. R.* will not reverſe an *Outlawry*, though both Parties conſent, except there be Error in the *Outlawry*; the King being concerned as well as the Parties. 2 *Lill.* 262. Judgment in *Outlawry* is given by the Coroners of the County; for after the Defendant is *quinto exactus*, and maketh Default, the Judgment is *Ideo Utlagetur per Judicium Coronatorum*: In *London* it is pronounced by the Recorder; *per Judicium Recordatoris*, *&c.* 1 Inſt. 288.

To *ſue a Perſon to Outlawry*, in Debt, Treſpaſs, *&c.* in *B. R.* the two chief Terms for it are *Eaſter* and *Michaelmas*, and Care is to be taken not to begin in *Hillary Term*, for then the Defendant will not be *outlawed* in leſs than four Terms, by Reaſon of the Shortneſs of *Eaſter* Vacation; but if you commence your Suit in any other Term, the *Outlawry* will be finiſhed in three Terms, the Original being returnable the firſt Return of the Term: And in *London* one may ſue to the *Outlawry* three Times in the Year, becauſe the *Huſtings*, wherein Proclamation is to be made, are oftner held than the County-Court in the Country; for which Reaſon in ſuing to the *Outlawry*, moſt Actions are laid in *London*. In this Action firſt a *Præcipe* is to be made out, if it be for Debt, or a *Pone* in Caſe, Treſpaſs, *&c.* And having carried it to the Curſitor of the County wherein the Action is laid, he makes the Original thereupon; which you are to carry to the Filazer of the County, who will make out a *Capias*, *Alias*, and *Pluries*, or for Diſpatch you may make them out yourſelf; all of which muſt have fifteen Days between the Date and Return, and are return'd *Non eſt Invent'* of Courſe, and filed with the *Cuſtos Brevium*. When the *Capias*, *Alias*, and *Pluries* are returned, the *Pluries* is to be carried to the *Exigenter* of the County, who will make out your Exigent and Proclamation, which is to be ſent down to the Sheriff of the County where the Defendant lives; and the Exigent being carried to the proper Sheriffs, you call for their Returns at the Time when returnable, allowing five County-Court Days between the Teſte and Return of the Exigent, if the Action be laid in the Country, and five *Huſtings* if it be laid in Town; and when your Exigent and Proclamation are returned, the latter is to be filed with the *Cuſtos Brevium*, and the Exigent with the Filizer of the County; whereupon the Filazer will make out a *Capias Utlagatum* into any County you deſire, where the Defendant hath any Eſtate. *Practiſ. Solic.* 257. If Judgment be had againſt a Defendant, who to evade the Law and Execution againſt him, lurks in ſeveral Counties, he may be ſued to *Outlawry* after Judgment, and on iſſuing a *Capias ad ſatisfaciend.* for the Debt and Coſts, and a *Non eſt Inventus* returned, an Exigent is made and returned by the Sheriff; upon which you may have a *Capias Utlagatum* into as many ſeveral Counties as you pleaſe, 'till the Defendant is taken; and then he cannot be diſcharged without making Satisfaction to the Plaintiff, a Pardon of the *Outlawry*, or reverſing the ſame for Error. *Ibid.* 322. And where a Plaintiff recovers Damages, and he againſt whom the Damages are recovered, is *outlawed* at the King's Suit; no Pardon ſhall be granted, unleſs the Chancellor is certified that the Plaintiff is ſatisfied his Damages, by Stat. 5 *Ed.* 3. See *Capias Utlagatum*, and *Exigent*.

Outpartners, In Thieving and Stealing Cattle, *&c. without* the Liberty. Stat. 9 *H.* 5. Vide *Intakers.*

Out-Riders, Are *Bailiffs errant* imployed by *Sheriffs*, to *ride* to the fartheſt Places of their Counties or Hundreds, with the more Speed to ſummon Perſons into County-Courts, *&c.* 14 *E.* 3. *c.* 9.

Owel, Is a *French* Word for Equal. *Law Fr. Dict.*

Owelty, Is when there is *Lord Meſne*, and Tenant, and the Tenant holds of the *Meſne* by the ſame Service that the *Meſne* holds over of the Lord above him; this is called *Owelty* of Services. *F. N. B.* 136. And *Owelty* of Services is *Equality* of Services. *Co. Litt.* 169.

Owlers, Are Perſons that carry Wool, *&c.* to the *Sea-ſide* by *Night*, in order to be ſhipped off contrary to Law: And this is prohibited by Stat. 7 *&* 8 *W* 3. *c.* 23.

Oxfild, Is ſaid to be a Reſtitution made by a Hundred or County, of any Wrong done by one that was within the ſame. *Lamb. Archaion.* 125.

Oxford. No Purveyor or Badger, *&c.* ſhall bargain for, and take away Victuals in the Markets of *Oxford* or *Cambridge*, or within five Miles, without Licence from the *Chancellor*, on Pain of Forfeiting four Times the Value, and three Months Impriſonment. 2 *&* 3 *P. & M. c.* 15. 13 *Eliz c.* 21. See *Univerſity.*

Oxgang, (From *Ox*, i. e. *Bos*, and *Gang* or Gate, *Iter*) Is commonly taken for fifteen Acres of Land, or as much as one *Ox* can plough in a Year; ſix *Oxgangs* of Land are ſuch a Quantity of Ground as ſix Oxen will plough. *Crompt. Juriſd.* 220.

Oyer. This Word was anciently uſed for what we now call *Aſſiſes.* Anno 13 Edw. 1.

Oyer of a Deed, Is where a Man brings an Action of Debt upon a Bond, or other Deed, and the Defendant appears, and prays that he may *hear* the Bond, *&c.* wherewith he is charged, which ſhall be allowed him. 2 *Lill. Abr.* 266. The Demand of *Oyer* is a Kind of Plea, and may be counterpleaded: Where there may be *Oyer*, the Party demanding it is not bound to plead without it; but the Defendant may plead without it if he will, on taking upon him to remember the Bond or Deed; though if he plead without *Oyer*, he cannot after waive his Plea, and demand *Oyer. Mod. Ca.* 28. 3 *Salk.* 119. In the Court of *B. R. Oyer* may be prayed after Imparlance; but not in *C. B.* 5 *Rep.* 74. After Imparlance, *Oyer* cannot be demanded, becauſe Imparlance is always to another Term: Alſo after a Plea in Abatement, *Oyer* may not be had the ſame Term, to plead another dilatory Plea. *Mod. Ca.* 27. 2 *Lill* 267. To demand *Oyer* of an Obligation is not only to deſire the Plaintiff's Attorney to read the ſame; but to have a Copy thereof, that the Defendant may conſider what to plead to the Action. *Hob.* 217. And when upon *Oyer* of a Deed it is entered, the whole Caſe appears to the Court, as if the Deed were in the Plea, and the Deed is become Parcel of the Record: Though *Oyer* of a Deed cannot be demanded only during the Term it is produced in Court; and then it may be entered *in hæc verba*, and there may be a Demurrer or Iſſue upon it, *&c.* 5 *Rep.* 76. *Lutw.* 1644. 3 *Salk.* 119. Where *Oyer* is prayed, it is always intended that the Deed is in Court; which it is not of another Term. *Sid.* 308. 3 *Salk.* A Defendant ought to crave *Oyer* of the Plaintiff's Deed, on which he hath declared; and cannot ſet forth another, to plead Performance thereof. *Mod. Ca.* 154. 2 *Nelſ. Abr.* 1225. If there is *Miſnomer* in a Bond, *&c.* the Defendant is to plead the *Miſnomer*, and that he made no ſuch Deed, without craving *Oyer*; for if he doth, he admits his Name to be right. 1 *Salk.* 7. Executors bringing Action of Debt, the Defendant may demand *Oyer* of the Teſtament, *&c.*

Oyer de Record, (*Audire Recordum*) Is a Petition made in Court, that the Judges, for better Proof-ſake, will *hear* or look upon any *Record.* And it hath been adjudged, that the craving *Oyer* of an original Writ is not like the craving *Oyer* of a Deed; becauſe the Deed is always produced by the Plaintiff, and it is the Act of the Party, wherefore he ſhall not be admitted to ſay that it is not his Deed; But the filing a Writ, and having it read on *Oyer* demanded, is the Act of the Court. 2 *Lutw.* 1641. If a *Record* of the ſame Court is pleaded in Abatement, and the Plaintiff demands *Oyer* of that Record, and it is not given him in convenient Time, Plaintiff may ſign Judgment. *Carthew's Rep.* 454, 517. See 3 *Salk.* 119.

Oyer and Terminer, (Fr. *Ouir & Terminer.* Lat. *Audiendo & Terminando*) Is a Commiſſion directed to the Judges, and other Gentlemen of the County to which iſſued, by Virtue whereof they have Power to *hear* and *determine* Treaſons, and all manner of Felonies and Treſpaſſes. *Crompt. Juriſd.* 121. 4 *Inſt.* 152. 2 *Inſt.* 419. It is the firſt and largeſt of the five Commiſſions by which our Judges of *Aſſiſe* do ſit in their ſeveral Circuits: And is General, for trying all Offenders and Offences; or Special, to try only particular Perſons or Offences: And in our Statutes it is often printed *Oyer and Determiner.* 4 *Inſt.* 162. The uſual Commiſſion of *Oyer* and *Terminer* of Juſtices of Aſſiſe is general; and when any ſudden Inſurrection or Treſpaſs is committed, which requires ſpeedy Reformation, then a ſpecial Commiſſion is immediately granted. *Weſtm.* 2. 13 *E.* 1. *c.* 29. *F. N. B.* 110. And this Commiſſion was formerly iſſued only where ſome Inſurrection was made, or heinous Miſdemeanor was done in any Place; when the Manner and Uſage was to grant a Commiſſion of *Oyer and Terminer*, to hear and determine ſuch Miſbehaviours; and the Stat. 2 *Ed.* 3. *c.* 2. requireth that no Commiſſion of *Oyer and Terminer* be granted, but before the Juſtices of one Bench or other, or the Juſtices *itinerant*, and that for horrible Treſpaſſes. *New Nat. Br.* 243. A Man may have a ſpecial Commiſſion of *Oyer and Terminer*, to inquire of Extortions and Oppreſſions of Under-Sheriffs, Bailiffs, Clerks of the Market, and all other Officers, *&c.* upon the Complaint and Suit of any one that will ſue it out: And the King may make a Writ of *Aſſociation* unto the Juſtices of *Oyer and Terminer*, to admit thoſe into their Company whom he hath aſſociated unto them; alſo another Writ may be ſent to the Judges to proceed, although that all the Juſtices do not come at the Day of the Seſſions, and this Writ is called the Writ of *Si non omnes, &c. Ibid.* 245, 247. As to theſe Commiſſions it is ſaid, that if a Commiſſion of *Oyer and Terminer, &c.* be awarded to certain Perſons to inquire at ſuch a Place, they can neither open their Commiſſion at another, nor adjourn it thither, or give Judgment there; if they do, all their Proceedings ſhall be eſteemed as *coram no Judice:* But it is held, that Juſtices appointed *pro hac vice*, may adjourn their Commiſſion from one Day to another, though there be no Words in their Commiſſion to ſuch Purpoſe; for a general Commiſſion authorizing Perſons to do a Thing, doth implicitly allow them convenient Time for the doing of it. 2 *Hawk. P. C.* 18. Upon the general Commiſſion of *Oyer and Terminer*, there ſhould iſſue a Precept to the Sheriff in the Name of the Commiſſioners, bearing Date fifteen Days before their Seſſions, that he return twenty-four Perſons for a Grand Jury *ad Inquirendum, &c.* on ſuch a Day; and the Sheriff is to return his Panel annexed to the Precept: And by the Statute 5 *Ed.* 3. *c.* 11. Juſtices of *Oyer and Terminer* may iſſue Proceſs of Outlawry in any County of *England*, againſt Perſons indicted before them; but all their Proceſſes are regularly to be in the Names, and under the Seals of the Commiſſioners, *viz.* three of them, one being of the *Quorum.* 2 *Hale's Hiſt. P. C.* 26, 31. The ſame Juſtices at the ſame Time may execute the Commiſſion of *Oyer and Terminer*, and alſo that of Gaol-Delivery; and the ſame Perſons being authorized by both theſe Commiſſions, may proceed by Virtue of the One in thoſe Caſes, where they have no Juriſdiction by the other, and make up their Records accordingly. *Ibid.* 20. But Juſtices of *Oyer and Terminer* cannot proceed but upon Indictments taken before themſelves, unleſs they have a Commiſſion of Gaol-Delivery likewiſe, or a ſpecial Commiſſion; for the Commiſſion of *Oyer and Terminer* is, *Ad Inquirendum, Audiendum & Terminandum*, To inquire, hear and determine. *Wood's Inſt.* 478. And though Juſtices of

Gaol-Delivery have a more general Commiſſion for proceeding againſt and trying Malefactors, than the Commiſſioners of *Oyer and Terminer* have; yet ſuch Juſtices may not proceed but on Indictments found before other Juſtices, as Juſtices of Peace, *&c.* 2 *Hawk.* 24. On Indictments found before the Juſtices of *Oyer and Terminer*, they may proceed the ſame Day againſt the Parties indicted.

Form *of a Commiſſion* of Oyer and Terminer.

GEORGE *the Second*, &c. *to his beloved and faithſul* A. B. C. D. E. F. *&c. Greeting: On the grievous Complaint of* G. H. *&c. we have heard or underſtand that* J. K. L. M. N. O. *and certain other Malefactors and Diſturbers of our Peace, upon the ſaid* G. H. *at* P. *with Force and Arms made an Aſſault, and him beat,* &c. *ſo that his Life was deſpaired of, and other Injuries did to him, to the great Damage of the ſaid* G. *and againſt our Peace; and becauſe the Treſpaſs, if it were otherwiſe done, we would not leave unpuniſhed: We aſſign you, and two of you, our Juſtices to inquire on the Oath of honeſt and lawful Men in the County of,* &c. *by whom the Truth of the Matter may be better known, of the Names of the Malefactors aforeſaid, who together with the ſaid* J. K. L. M. *and* N. O. *committed the ſaid Treſpaſs, and of the ſaid Treſpaſs more fully the Truth, and the ſame Treſpaſs to* hear and determine, *according to the Law and Cuſtom of our Realm; and therefore we command you, that at certain Days and Places, which you or two of you for this ſhall appoint, you make the ſaid Inqueſt, and the Treſpaſs aforeſaid you hear and determine, in Form aforeſaid done, as to Juſtice belongs, according to the Laws and Cuſtoms of our Kingdom: Saving to us the Amercements, and other Things to us thence appertaining. Alſo we command our Sheriff of the County aforeſaid, that at certain Days and Places which you or two of you ſhall cauſe to be known to him, he cauſe to come before you or two of you, ſo many, and ſuch honeſt and lawful Men of his Bailiwick, by whom the Truth in the Premiſſes may be the better known, and inquired into,* &c. *Witneſs,* &c.

This is a *Special Commiſſion of Oyer and Terminer* granted upon urgent Occaſion; and the Party ſuing it might thereupon take out a Writ to the Sheriff commanding him to arreſt Goods wrongfully taken away, and keep them in ſafe Cuſtody, till Order made concerning them by the *Juſtices* aſſigned to determine the Matter. *Reg. Orig.* 126. *F. N. B.* 112.

O Yes, (From the Fr. *Oyez*, i. e. *Audite*, hear ye) Is well known to be uſed by *Cryers* in our Courts, *&c.* to injoin Silence and Attention, when they make *Proclamation* of any Thing.

Oyſter-Fiſhery, In the River *Medway*, is regulated by Statute, and a Court to be kept for that Purpoſe at *Rocheſter* yearly, where by Jury of free Dredger-men of the *Oyſter-Fiſhery*, the ſame is to be inquired into; and they may make Rules and Orders when *Oyſters* ſhall be taken, what Quantities in a Day, and to preſerve the Brood of *Oyſters*, *&c.* And may impoſe Penalties not exceeding 5 *l.* Alſo Water-Bailiffs ſhall be appointed to examine Boats, *&c.* Stat. 2 *Geo.* 2. *c.* 19. A Duty of 7 *d. per* Buſhel ſtrike Meaſure, is laid upon *Oyſters* imported from *France.* 10 *Geo.* 2. *cap.* 30.

Oze, Or *Oozy* Ground, (*Solum uliginoſum*) Moiſt, wet and marſhy Land. *Litt. Dict.*

P.

PAage, *Paagium*, The ſame with *Paſſagium.* Matt. Pariſ. 769.

Pacabilis, Payable or paſſable.——*Recipiet duodecim quarteria bona &* pacabilis *averia, &c.* Ex Regiſt. Grenefeld. Archiep. Ebor. MS.

Pacare, To pay; as *Tolnetum* Pacare, is to pay Toll. *Mon. Angl. Tom.* 1. *pag.* 384. Hence *Pacatio*, Payment. *Matt. Pariſ.*

Pace, (*Paſſus*) A Step in going, containing two Feet and a half, the Diſtance from the Heel of the hinder Foot to the Toe of the fore Foot; and there is a *Pace* of five Foot, which contains two Steps, a Thouſand whereof make a Mile; but this is called *Paſſus major.*

Pacification, (*Pacificatio*) A Peace-making, Quieting, or Appeaſing; relating to the Wars betwixt *England* and *Scotland*, *Anno* 1638, mentioned in the Stat. 17 *Car.* 1. *c.* 17.

Pack of Wool, Is a Horſe-load, which conſiſts of ſeventeen Stone and two Pounds, or 240 Pounds Weight. *Merch. Dict.*

Package, A Duty Set and Rated in a Table taken of Goods and Merchandizes; and all Goods not ſpecified in the Table are to pay for *Package-*Duties, after the Rate of one Penny in the Pound, according as they are valued in the *Book of Rates.*

Packers, Are Perſons appointed to *pack* up Herrings, and ſworn to do it purſuant to the Statute. 15 *Car.* 2. *c.* 14.

Pact, (*Fr.*) A Contract or Agreement. *Law Fr. Dict.*

Pagus, A Word uſed in ancient Records for a County: Ælfred *Rex Anglo-Saxonum natus eſt in Villa Regia quæ dicitur Wantage in illa* Paga *quæ nominatur* Berkſh. *&c.*

Pain Fort & Dure, (Lat. *Fœna Fortis & Dura*, Fr. *Peine Forte & Dure*) Signifies an eſpecial Puniſhment inflicted by Law, on thoſe that being arraigned of Felony, refuſe to put themſelves upon the ordinary Trial, but ſtubbornly ſtand *mute*; and it is vulgarly called *Preſſing to Death. Stat. Weſtm.* 1. *cap.* 12. If a Criminal doth not plead directly to the Fact, or put himſelf on Trial by the Country, he ſhall be put to the Penance of *Pain Fort & Dure*, in Caſes of Petit Treaſon and Felony; And forfeit his Goods; And ſome Criminals have undergone this Puniſhment, to prevent Attainder, Corruption of Blood, and Forfeiture of Lands; but upon ſtanding mute in High Treaſon, the higheſt Offence, and in Petit Larceny, the loweſt of all Felonies, the Offenders ſhall have the like Judgment as if they had been convicted by Confeſſion or Verdict. 3 *Inſt.* 217. *H. P. C.* 226. *Kel.* 27. Women ſtanding mute in Felony are liable to Penance of *Pain Fort & Dure* as well as Men. 2 *Inſt.* 177. The Judgment of *Pain Fort & Dure* by the Common Law, and according to the uſual Practice, as recorded in our Books, is as follows, *viz.* That the Criminal ſhall be remanded to the Priſon from whence he came, and put in ſome low dark Room, and there laid on his Back, without any Manner of Covering, except for the Privy Parts, with his Legs and Arms extended with Cords to the four Quarters of the Room, and that as many Weights ſhall be laid on his Body as he can bear, and more; and that he ſhall have no Suſtenance, but of the worſt Bread and Water, and ſhall not eat the ſame Day in which he drinks, nor drink the ſame Day he eats; and that he ſhall ſo continue till he die. *S. P. C.* 150. 2 *Inſt.* 178. But antiently the Judgment was not that he ſhould ſo continue 'till he were dead, but 'till he ſhould anſwer; and he might ſave himſelf from the Penance, by putting himſelf on his Trial. 2 *Hawk. P. C.* 331. Before Judgment paſſes of *Pain Fort and Dure*, the Court orders a Taſte to be given to the Criminal of the *Pain* to be endured, if he will not comply; and the Court will not proceed to this Judgment, before all Methods are uſed to perſuade him to plead; This is the conſtant Practice of *Newgate-*Seſſions. *Kel.* 27, 28. See *Mute.*

Pains and Penalties. An Act paſſed in the Ninth Year of King *George* 1. for inflicting *Pains and Penalties* on the late Biſhop of *Rocheſter*, Mr. *Kelly*, and others, for being concerned in *Layer's* Conſpiracy; by Virtue of which Statute, the Biſhop was deprived and baniſhed, and diſabled to hold any Office, Dignity, Benefice, *&c.* And the others were impriſoned during Life, and to forfeit all their Lands and Goods; and eſcaping from Priſon, or the Biſhop returning from Baniſhment, to be guilty of Felony without Benefit of Clergy, *&c.* Alſo Perſons correſponding with the Biſhop, (except licenſed under the Sign Manual) were adjudged Felons by the Statute. They were condemned by Parliament for Want of ſuch Evidence as is ſtrictly required in the Common Law Courts. 9 *Geo.* 1. *c.* 16, 17.

Painters. The Price of *Painters* Work is limited by Statute; who ſhall not take above 16 *d.* a Day, for laying any flat Colour mingled with Oil or Size, upon Timber, Stone, *&c.* And *Plaiſterers* are forbid uſing the Trade of a *Painter* in *London*, or to lay any Colour of *Painting*, unleſs they are Servants to *Painters*, *&c.* on Pain of 5 *l:* But they may uſe Whiting, Blacking, Read-Lead, Oker, *&c.* mixt with Size only. Stat. 1 *Jac.* 1. *cap.* 20.

Pais, (*Fr.*) A Country or Region; *Trials per Pais* is Trial by the Country. *Spelm. Gloſſ.*

Palagium, A Duty to Lords of Manors for exporting and importing Veſſels of Wine in any of their Ports.—— *Quieti de omni Teloneo, & Paſſagio cohuagio*, Pallagio, *&c.*

Palatine, Counties of, and their Privileges. See *County.*

Palfrey, *Palfredus*, *Palafredus*, *Palefridus*) Is one of the better Sort of Houſes uſed by Noblemen, or others for State: And ſometimes taken for a Horſe fit for a Woman to ride. *Camden* ſays, that *W. de Fauconberge* held the Manor of *Cuken* in the County of *Nottingham* in Serjeanty, by the Service of Shooing the King's *Palfrey* when he came to *Mansfield.* Co. Litt. 149.

Palingman, Seems to be a Merchant Denizen, one born within the *Engliſh Pale.* Stat. 22 Ed. 4. c. 23. *and* 11 H. 7. c. 22.

Palla, A Canopy; alſo often uſed for an Altar-cloth. *Matt. Pariſ. ſub Ann.* 1236. *Chartular. Glaſton. MS. fol.* 12.

Pallio cooperire. It was antiently a Cuſtom, where Children were born out of Wedlock, and their Parents afterwards intermarried, that thoſe Children, together with the Father and Mother, ſtood under a Cloth extended while the Marriage was ſolemnizing, which was in the Nature of Adoption; and by ſuch Cuſtom, the Children were taken to be legitimate.—— *In ſignum Legitimationis Nati ante Matrimonium conſuerunt poni ſub* Pallio *ſuper Parentes eorum extento in Matrimonii ſolemnizatione.* Epiſt. Rob. Groſthead Epiſc. Lincoln.

Pallium, Is a Word often mentioned in our old Hiſtorians; and *Durandus* tells us, that it is a Garment made of White Wool, after the following Manner, *viz.* The Nuns of St. *Agnus* every Year, on the Feaſt-Day of their Saint, offer two White Lambs on their Altar of their Church, during the Time they ſing *Agnus Dei* in a ſolemn Maſs; which Lambs are afterwards taken by two of the Canons of the *Lateran* Church, and by them given to the Pope's Sub-deacons, who put them to Paſture 'till Shearing-time, and then they are ſhorn, and the *Pall* is made of their Wool, mixed with other White Wool: The *Pall* being thus made is carried to the *Lateran* Church, and there placed on the High Altar by the Deacons of that Church on the Bodies of St. *Peter* and St. *Paul*; and after a uſual Watching, it is carried away in the Night, and delivered to the Subdeacons, who lay it up ſafe. And becauſe it was taken from the Body of St. *Peter*, it ſignifies the Plenitude of Eccleſiaſtical Power; and therefore it was the Prerogative of Popes, who pretend to be the immediate Succeſſors of that Saint, to inveſt other Prelates with it, which at firſt was done no where but at *Rome*, but afterwards at other Places. *Durandus's Rationale.*

Palls, The Pontifical Veſtures made of Lamb's Wool, in Breadth not exceeding three Fingers, cut round that they may cover the Shoulders; they have two Labels or Strings on each Side, before and behind, and likewiſe four purple Croſſes on the Right and Left, faſtned with Pins of Gold, whoſe Heads are *Saphire:* Theſe Veſtments the Pope gives or ſends to Archbiſhops and Metropolitans, and upon extraordinary Occaſions to other Biſhops; who wear them about their Necks at the Altar, above their other Ornaments. The *Pall* was firſt given to the Biſhop of *Oſtia*, by Pope *Marcus* the Second, *Anno* 336. And the Preface to an ancient Synod here in *England*, wherein *Odo*, Archbiſhop of *Canterbury* preſided, begins thus: —— *Ego* Odo *humilis & extremus, divina largiente* Clementia, *Almi Præſulis &* Pallii *honore ditatus, &c.* Selden's Hiſt. Tithes 227. Creſſy's Church Hiſt. 972. Stat. 25 H. 8.

Palmeſtry, A Kind of Divination, practiſed by looking upon the Lines and Marks of the *Hands* and Fingers; being a deceitful Art uſed by *Egyptians*, prohibited by the Statute of 1 & 2 *P. & M. cap.* 4.

Pandects, Are the Books of the *Civil Law*, compiled by *Juſtinian*; mentioned in the Hiſtorians of this Nation. *Bede, cap.* 5.

Pandoxatrix, An Ale-wife that both brews and ſells Ale or Beer; from *Pandoxatorium*, a Brew-houſe. *Statut. & Conſuetud. Burgi Villæ de Montgom.* Temp. Hen. 2.

Panel, (*Panella*, *Panellum*) According to Sir *Edward Coke*, denotes a little Part; but the learned *Spelman* ſays, that it ſignifies *Schedula* vel *Pagina*, a Schedule or Page; as a *Panel* of Parchment, or a *Counterpane* of an Indenture: But it is uſed more particularly for a Schedule or Roll, containing the Names of ſuch *Jurors* as the Sheriff returns to paſs upon any Trial. *Kitch.* 226. *Reg. Orig.* 223. And the *Impanelling a Jury* is the entering their Names by the Sheriff into a *Panel* or little Schedule of Parchment; *in* Panello *Aſſiſæ.* 8 H. 6. c. 12. *Panels* of Juries are to be returned into Court, on Writs of *Niſi Prius*, *&c.* before Inqueſts can be taken upon them, by Stat. 42 *Ed.* 3. *c.* 11. And Perſons indicted of High Treaſon ſhall have a Copy of the *Panel* of the Jurors, who are returned to try them, two Days at leaſt before tried. 7 & 8 *W.* 3. *c.* 3. But it is ſaid, that in Trials before Juſtices of Gaol-Delivery, the Priſoner has no Right to a Copy of the *Pavel* before the Time of his Trial; except only in Caſes within that Statute. 2 *Hawk. P. C* 410.

Panis vocat' Blackwhytlof, Bread of a middle Sort, between White and Brown; ſuch as in *Kent* is called *Ravel-Bread.* In Religious Houſes it was the Bread made for ordinary Gueſts; and diſtinguiſhed from their Houſhold Loaf, or *Panis Conventualis*, which was pure Manchet or White Bread. *Cowel.*

Panis Armigerorum, Signifies Bread diſtributed to Servants. *Mon. Angl. Tom.* 1. *pag.* 420.

Panis Militaris, Hard Bisket, or black coarſe Camp Bread. *Cartular. Eccl. Elyen. MS. fol.* 47.

Pannage or **Pawnage,** (*Pannagium*, Fr. *Paſnage*) Is that Food which the Swine feed upon in the Woods, as Maſt of Beech, Acorns, *&c.* *Alimentum, quod in Silvis colligunt Pecora, ab Arboribus dilapſum:* Alſo it is the Money taken by the *Agiſtors* for the Food of Hogs in the King's Foreſt. *Crompt. Juriſd.* 155. *Stat. Weſtm.* 2. *cap.* 25. *Manwood* ſays *Pannage* ſignifies moſt properly the Maſt of the Woods or Hedge-rows: And *Linwood* thus defines it: Pan nagium *eſt paſtus pecorum in Nemoribus & in Sylvis, utpote de glandibus & aliis fructibus arborum Sylveſtrium, quarum fructus aliter non ſolent colligi.* It is mentioned in the Statute 20 *Car.* 2. *c.* 3. And in ancient Charters this Word is variouſly written; as *Pannagium*, *Paſnagium*, *Pathnagium*, *Paunagium*, & *Peſſona.* See 8 *Rep.* 47.

Pannus, A Garment made with Skins. ——— *Statutum fuit quod nullus habet* Pannos *deciſos & laceratos.* Fleta, lib. 2. cap. 14.

Pape, *Papa*, from the old *Greek* Word Πάϖϖας, ſignifying a Father. See *Pope.*

Paper-Books, Are the Iſſues in Law, &c. upon Special Pleadings, made up by the Clerk of the *Papers*, who is an Officer for that Purpoſe. And the Clerks of the *Papers* of the Court of *King's Bench*, in all Copies of Pleas and *Paper-Books* by them made up, ſhall ſubſcribe to ſuch *Paper-Books*, the Names of the Counſel who have ſigned ſuch Pleas, as well on the Behalf of the Plaintiff as of the Defendant; and in all *Paper-Books* delivered to the Judges of the Court, the Names of the Counſellors, who did ſign thoſe Pleas, are to be ſubſcribed to the *Books*, by the Clerks or Attornies who deliver the ſame. *Paſch.* 18 *Car.* 2. 2 *Lill. Abr.* 268.

Paper-Office, Is an ancient *Office* within the Palace of *Whitehall*, wherein all the Publick *Papers*, Writings, Matters of State and Council, Letters, Intelligences, Negotiations of the King's Miniſters abroad, and generally all the *Papers* and Diſpatches that paſs through the *Offices* of the Two Principal Secretaries of State, are lodged and tranſmitted, and there remain diſpoſed in the Way of Library. Alſo an *Office* belonging to the Court of *King's Bench* ſo called.

Papiſts, Are thoſe who profeſs the *Popiſh* Religion in this Kingdom: And ſince the *Reformation* there have been many Statutes concerning them. By the 35 *Eliz. cap.* 2. *Papiſts* are to repair to their uſual Place of Reſidence, and not remove above five Miles, without Licence, &c. The 3 *Jac.* 1. *cap.* 5. enacts, That no *Papiſts*, or Popiſh Recuſant convict, ſhall come to Court; practice the Common Law, Civil Law, Phyſick, &c. or bear any Publick Office or Charge, but ſhall be utterly diſabled to exerciſe the ſame; and liable to a Penalty of 100 *l.* But Offices of Inheritance may be executed by Deputies taking the Oaths, by 1 *W.* & *M.* *Papiſts*, and Truſtees for *Papiſts*, are incapable to preſent to any Benefice, School, Hoſpital, &c. or to grant any Avoidance of a Benefice, and the two Univerſities ſhall preſent; the Chancellor, &c. of *Oxford*, to preſent to Benefices lying in ſuch and ſuch Counties; and the Univerſity of *Cambridge* to Benefices in others, particularly mentioned in the Statute; and a Bill may be brought in a Court of Equity to diſcover ſecret Truſt, &c. 3 *Jac.* 1. *cap.* 5. It has been adjudged on that Statute, that the Perſon is only diſabled to preſent; and that he continues Patron to all other Purpoſes. *Cawley* 230. That ſuch a Perſon by being diſabled to grant an Avoidance, is not hindered from granting the Advowſon itſelf, in Fee, or for Life, *bova fide* for good Conſideration. 1 *Jon.* 19, 20. And that if an Advowſon or Avoidance belonging to a *Papiſt* come into the King's Hands, by Reaſon of any Outlawry, or Conviction of Recuſancy, &c. the King and not the Univerſities, ſhall preſent. 1 *Jon.* 20. *Hob.* 126. But where a Preſentment is veſted in the Univerſity, at the Time when the Church became void, it ſhall not be deveſted again, by the Patron's conforming, &c. 10 *Rep.* 57. *Papiſts*, and Popiſh Recuſants, married not according to the Orders of the Church of *England*, are diſabled, the Husband to be Tenant by the Curteſy, and the Wife to have Dower, &c. and incur a Forfeiture of 100 *l.* Alſo not Baptizing their Children by a lawful Miniſter, is liable to the like Penalty: And not being buried according to the Eccleſiaſtical Laws, the Executors ſhall forfeit 20 *l.* &c. And *Papiſts* are incapable to be Executors, Adminiſtrators, or Guardians; diſabled to ſue Actions, and as Perſons excommunicate 'till they conform, &c. 3 *Jac.* 1. And it is ſaid that being convicted of Popiſh Recuſancy, they may be taken up by the Writ *de Excom. capiend.* And ſhall not be admitted as competent Witneſſes in a Cauſe: But this ſeems to be carried beyond the Intent of the Statute. 2 *Bulſt.* 155, 156. 1 *Hawk. P. C.* 23. Perſons going beyond Sea to be trained up by *Papiſts*, ſhall forfeit their Goods and Chattels, if they do not conform within ſix Months after their Return: And ſending Children abroad to be thus trained up, is liable to a Penalty of 100 *l.* Stat. 3 *Car.* 1. *c.* 2. The *Lord Mayor* of the City of *London*, and Juſtices of Peace, &c. are to cauſe to be brought before them *Papiſts*, within the ſaid City and ten Miles thereof, and tender them the Declaration 30 *Car.* 2. *cap.* 1. againſt Tranſubſtantiation; and refuſing to ſubſcribe it, they ſhall ſuffer as Popiſh Recuſants convict: But ſuch as uſe any Trade or manual Art; and Foreign Merchants, Servants to Ambaſſadors, &c. are excepted. 1 *W.* & *M. Seſſ.* 1. *c.* 9. *Papiſts* refuſing to appear and ſubſcribe the ſaid Declaration, are not to keep in their Houſes any Arms, Weapons, Gunpowder, &c. And Juſtices of Peace may order any ſuch to be ſeiſed: And they may not keep any Horſe above the Value of 5 *l.* which may be alſo ſeiſed. And Perſons concealing Arms or Horſes, or hindering a Search after them ſhall be committed, and forfeit treble Value. 1 *W.* & *M.* *c.* 15. If any Perſon refuſe to repeat and ſubſcribe the afore-mentioned Declaration, and ſhall thereupon have his Name and Place of Abode certified and recorded at the General Quarter Seſſions of the Peace, as by the Act is appointed, he ſhall be diſabled to make any Preſentation, &c. And preſenting contrary to this Act ſhall forfeit 500 *l.* 1 *W.* & *M. c.* 26. *Papiſts* who keep Schools are to ſuffer perpetual Impriſonment: And Perſons educated in the Popiſh Religion, not taking the Oaths and ſubſcribing the Declaration in the 30 *Car.* 2. within ſix Months after they attain the Age of eighteen Years, ſhall be diſabled to take or inherit Lands, but not their Heirs or Poſterity; and during their Lives or Refuſal, the next Proteſtant Relation ſhall enjoy, &c. And where the Parents of Proteſtant Children are *Papiſts*, the *Lord Chancellor* may take Care of the Education of ſuch Proteſtant Children, and make Order for their Maintenance ſuitable to the Ability of the Parent. 11 & 12 *W.* 3. *c.* 4. Every Truſtee, &c. for Popiſh Children is diſabled to preſent to any Benefice, &c. and Preſentations by them ſhall be void; and the Chancellor and Scholars of the Univerſities ſhall preſent, as by the Act 3 *Jac.* 1. And Biſhops are required to examine Perſons preſented on Oath, before Inſtitution, whether the Perſon preſenting be the real Patron, and made the Preſentation in his own Right, or whether he be not a Truſtee for a *Papiſt*, &c. And if the Parſon preſented refuſe to be examined, his Preſentation ſhall be void. 12 *Ann. Seſſ.* 2. *c.* 14. Grants of Advowſons, or Right of Preſentation to Churches, &c. by any *Papiſts*, or Perſon any ways in Truſt for him, to be void; except made for valuable Conſideration to ſome Proteſtant Purchaſer, for the Benefit of a Proteſtant only; and Perſons claiming under ſuch Grant, ſhall be deemed as Truſtees for a *Papiſt*, and they and their Preſentees be compelled to make Diſcovery thereof and the Intent, as directed by 12 *Ann.* &c. 11 *Geo.* 2. *Papiſts* are to regiſter their Eſtates, as by this Statute is directed, on Pain of Forfeiture; and Lands regiſtred muſt be expreſſed in what Pariſhes they lie, who are the Poſſeſſors thereof, the Eſtate therein, and the yearly Rent, &c. Perſons ſuing in Chancery for Forfeitures for Default of Regiſtry, may demand all Diſcoveries as if Purchaſers; and they may bring Ejectment on their own Demiſe, and give the Act and ſpecial Matter in Evidence. 1 *Geo.* 1. *c.* 55. Sales of Lands by *Papiſts* (incurring the Diſabilities 11 & 12 *W.* 3.) to Proteſtant Purchaſers, are confirmed notwithſtanding the Diſability of Perſons joining in the Sale; unleſs before ſuch Sales any Perſon who is to take Advantage of the Diſability, has recovered, or entered his Claim, and given Notice, &c. No Lands ſhall paſs from *Papiſts*, by Deed or Will, without Inrollment: And *Papiſts* are rendered incapable to purchaſe Lands. 3 *Geo.* 1. *c.* 18. Deeds and Wills of *Papiſts* have further Time to be Inrolled, and not avoidable for Want thereof, &c. by 6 *Geo.* 2. *c.* 5. All Perſons within *England*, of the Age of eighteen Years, not having taken the Oaths, and who refuſe to take the ſame, ſhall regiſter their Eſtates as *Papiſts*; or neglecting ſuch Regiſtry, are to forfeit the Inheritance of their Lands, Two Thirds to the King, and the other Third to the Proſecutor. 9 *Geo.* 1. *c.* 24. But by a ſubſequent Act, this ſhall not extend to oblige any Woman to take the Oaths, or to regiſter her Eſtate; nor any Perſon that hath only an Intereſt in Lands in Reverſion; or to Eſtates under 10*l.* a Year, &c. And only one Year's Rent and Profits of Lands is forfeited for Default of Regiſtring by this Statute, recoverable by Actions in the Courts at *Weſtminſter*, within ſix Months after the Offence: Perſons in Priſon beyond Sea, *Non Compos*, &c. are to have ſix Months to take the Oaths and regiſter their Eſtates, after the Removal of their Diſabilities; and Certificates by the proper Officers, ſhall be allowed as Evidence of Taking the Oaths, &c. 10 *Geo.* 1. *c.* 4. By the late Statute, the reputed Owners of Eſtates being *Papiſts*, on conforming to the Proteſtant Religion, and taking the Oaths, the ſame to be recorded, and they and all Proteſtants claiming under them, ſhall poſſeſs the Eſtates freed of Diſabilities incurred by ſuch Owners, &c. And any Perſon's Right entitled to a Reverſion, is ſaved if his Suit be commenced in Twelve Months after the Determination of the precedent Eſtate. But Perſons conforming as aforeſaid, and afterwards returning to the Popiſh Religion, ſhall be ever after incapable of any Benefit by the Act 11 *Geo.* 2. *c.* 17. See *Oaths.*

Papiſts taxed. *Papiſts* or reputed *Papiſts*, who refuſe to take the *Oaths* 1 *W.* & *M.* are to pay double to the Land-Tax, &c. Stat. 8 *W.* 3. *c.* 6. And a *Tax* of 100,000*l.* for the Year 1723. was laid on the Lands of all *Papiſts*, over and above the double *Taxes*, towards reimburſing the Publick the Charges occaſioned by late Conſpiracies; charged ſo much on every County, &c. and leviable by the Commiſſioners of the Land-*Tax*, by Stat. 9 *Geo.* 1. *c.* 18.

Par, Is a Term in *Exchange*, where a Man to whom a Bill is payable receives of the Acceptor juſt ſo much in Value, &c. as was paid to the Drawer by the Remitter. *Merch. Dict.* And in Exchange of Money, *Par* is defined to be a certain Number of Pieces of the Coin of one Country, containing in them an *equal* Quantity of Silver to that of another Number of Pieces of the Coin of ſome other Country; as where thirty-ſix Shillings of the Money of *Holland*, have juſt as much Silver as twenty Shillings *Engliſh* Money; And *Bills of Exchange* drawn from *England* to *Holland*, at the Rate of thirty-ſix Shillings *Dutch* for each Pound *Sterling*, is according to the *Par.* Lock's Conſid. of Money, pag. 18.

Parage, (*Paragium*) Signifies Equality of Name, Blood, or Dignity; but more eſpecially of Land, in the Partition of an Inheritance between Coheirs: Hence comes to *diſparage*, and *Diſparagement.* Co. Litt. 166.

Paragium, Was commonly taken for the equal Condition betwixt two Parties to be contracted in Marriage: For the old Laws of *England* did ſtrictly provide, that young Heirs ſhould be diſpoſed in Matrimony *cum Paragio*, with Perſons of equal Birth and Fortune, *Sine Diſparagatione.*

Paramount, (Compounded of two *French* Words, *Par*, *i. e. Per* and *Monter*, aſcendere) Signifies in our Law the higheſt Lord of the Fee, of Lands, Tenements, or Hereditaments. *F. N. B.* 135 As there may be a Lord Meſne, where Lands are held of an inferior Lord, who holds them of a Superior under certain Services; ſo this ſuperior Lord is Lord *Paramount:* And all Honours, which have Manors under them, have Lords *Paramount.* Alſo the King is Chief Lord, or Lord-*Paramount* of all the Lands in the Kingdom. *Co. Litt.* 1.

Parapharnalia, or **Paraphernalia**, (From the *Gr.* Παρὰ, *Præter*, and Φερνὴ, *Dos*) Are thoſe Goods which a Wife callengeth over and above her Dower or Jointure, after her Husband's Death; as Furniture for her Chamber, wearing Apparel, and Jewels, which are not to be put into the Inventory of her Husband. 1 *Cro. Rep.* A Wife, after the Death of her Husband, may claim her *Paraphernalia* or neceſſary Apparel for her Body, and Cloth given her to make a Garment, &c. beſides her Dower; ſo that the Husband cannot give them away by Will: But ſhe ſhall not have exceſſive Apparel, beyond her Rank. Pearl Necklaces, Chains of Diamonds, Gold Watches, &c. may be included under *Paraphernalia*, if they were uſually worn by the Wife, and were ſuitable to her Quality and the Faſhion of the Times, and there are Aſſets to pay Debts and Legacies; provided the Husband does not give theſe away by Will. 1 *Roll. Abr.* 911. 3 *Cro.* 343. *Kitch.* 369. *Noy's Max.* 168. It was adjudg'd in the *Viſcounteſs Bindon*'s Caſe, that *Paraphernalia* ought to be allowed to a Widow, having Regard to her Quality and Degree; and that her Husband being a Viſcount, ſhe ſhall be allowed her Jewels to the Value of 500 Marks, &c. 2 *Leon.* 166. A Widow retain'd a Chain of Diamonds and Pearls, againſt the Deviſe of her Husband; and two Judges held, that ſhe might detain them, becauſe they were convenient for a Woman of her Quality; but Two other Judges were of a contrary Opinion, that *Paraphernalia* ſhould be not only convenient, but neceſſary; otherwiſe the Widow ſhall not detain them againſt the expreſs Deviſe of the Husband: Though it is ſaid it was adjudg'd, that the Widow might detain neceſſary Apparel, and likewiſe Ornaments, againſt the Deviſe of her Husband; and that he cannot diſpoſe of them by Will, though he might have ſold them in his Life-time; for immediately upon his Death, the Property is veſted in the Widow. *Cro. Car.* 347. 2 *Nelſ. Abr.* 1225. All the Wife's wearing Apparel, more than that which is neceſſary and convenient, is a Chattel in the Husband; and after the Husband's Death ſhall go to his Executors: But what is neceſſary for her Condition and State, and comes under *Paraphernalia*, ſhe ſhall have as her own Goods, and may diſpoſe of at her Death; or take after the Death of her Husband. *Bro.* 9. *Doct.* & *Stud.* 17. Tho' by our Law the Wife may not make a Will of and Deviſe them, without the Aſſent of the Husband whilſt he lives; becauſe the Property and Poſſeſſion is in him. 2 *Shep. Abr.* 423. *Mich.* 27 *Eliz.*

Paraſitus, A Word uſed for a Domeſtick Servant. *Blount.*

Paravail, (*Per-availe*) Signifies the loweſt Tenant of the Fee, or he that is immediate Tenant to one who holdeth over of another; and he is called Tenant *Paravail*, becauſe 'tis preſumed he hath Profit and *Avail* by the Land. *F. N. B.* 135. 2 *Inſt.* 296.

Parcella Terræ, A Parcel of Land, as uſed in ſome antient Charters. —— *Sciant, quod ego* Stephanus W. *Dedi, &c.* Roberto de D. *Unam* Parcellam Terræ *cum pertinen. jacen', &c.* Sine dat.

Parcel-makers, Are two Officers in the *Exchequer*, that make the *Parcels* of the *Eſcheators* Accounts; wherein they charge them with every Thing they have levied for the King's Uſe, within the Time of their being in Office, and deliver the ſame to the *Auditors*, to make up their Accounts therewith. *Practice Excheq.* 99.

Parceners, (*Quaſi* Parcellers, *i. e. Rem in* Parcellas *dividens*) Are of two Sorts, *viz. Parceners* according to the Courſe of the *Common Law*; and *Parceners* according to *Cuſtom*. *Parceners* by the Common Law, are where a Man or Woman ſeiſed of Lands or Tenements in Fee-ſimple or Fee-tail hath no Iſſue but Daughters, and dieth, and the Tenements deſcend to ſuch Daughters, who enter into the Lands deſcended to them, then they are called *Parceners*, and are but as one Heir to their Anceſtor; and they are termed *Parceners*, becauſe by the Writ *de Partitione facienda* the Law will conſtrain them to make Partition; though they may make Partition by Conſent, *&c.* *Litt.* 243. 1 *Inſt.* 164. And if a Man ſeiſed of Lands in Fee-ſimple, or in Tail, dieth without any Iſſue of his Body begotten, and the Lands deſcend to his Siſters, they are *Parceners*; and in the ſame Manner where he hath no Siſters, but the Lands deſcend to his Aunts, or other Females of Kin in equal Degree, they are alſo *Parceners*: But where a Perſon hath but one Daughter, ſhe ſhall not be called *Parcener*, but Daughter and Heir, *&c.* *Litt. Sect.* 242. If a Man hath Iſſue two Daughters, and the eldeſt hath Iſſue divers Sons and divers Daughters, and the Youngeſt hath Iſſue divers Daughters; the eldeſt Son of the eldeſt Daughter ſhall not only inherit, but all the Daughters of the youngeſt ſhall inherit, and the eldeſt Son is Coparcener with the Daughters of the youngeſt Siſter, and ſhall have one Moiety, *viz.* his Mother's Part; ſo that Men deſcending of Daughters, may be *Parceners* as well as Women, and ſhall jointly plead and be impleaded, *&c.* 1 *Inſt.* 164. None are *Parceners* by the Common Law, but either Females, or the Heirs of Females, which come to Lands or Tenements by Deſcent. *Litt.* 254. *Parceners* by Cuſtom is where a Perſon ſeiſed in Fee-ſimple, or in Fee-tail of Lands or Tenements of the Tenure called *Gavelkind*, within the County of *Kent*, *&c.* hath Iſſue, divers Sons, and dies; ſuch Lands ſhall deſcend to all the Sons as *Parceners* by the Cuſtom, who ſhall equally inherit and make Partition as Females do, and a Writ of Partition lies in this Caſe, as between Females, *&c.* *Litt. Sect.* 265. Women *Parceners* make but one Heir, and have but one Freehold: But between themſelves they have in Judgment of Law ſeveral Freeholds, to many Purpoſes; for one of them may infeoff the other of her Part; and the *Parcenary* is not ſevered by the Death of any of them; but if one dies, her Part ſhall deſcend to her Iſſue, *&c.* 1 *Inſt.* 164, 165. If one *Parcener* make a Feoffment in Fee of her Part, this is a Severance of the Coparcenary, and ſeveral Writs of *Præcipe* ſhall lie againſt the other *Parceners* and the Feoffee. 1 *Inſt.* 167. Though if two Coparceners by Deed alien both their Parts to another in Fee, rendring to them Two and their Heirs a Rent out of the Land, they ſhall have the Rent in Courſe of *Parcenary*; becauſe their Right in the Land out of which the Rent is reſerved was in *Parcenary*. *Ibid.* 160. If there be two *Parceners*, and each of them taketh Husband, and have Iſſue, and the Wives die, the *Parcenary* is divided, and here is a Partition in Law. *Ibid.* Partition of Lands held in Tail, by the Death of one Siſter without Iſſue is made void, and the other Siſter as Heir in Tail will be intitled to the whole Land; and may have Writ of *Formedon* where the other *Parcener* hath aliened. *New Nat. Br.* 476. And a Writ of *Nuper obiit* lies for one *Parcener* deforced by another, *&c.* *F. N. B.* 197. If any *Parceners* or their Iſſues be diſſeiſed, they muſt join in an Aſſiſe againſt the Diſſeiſor; ſo if they have Cauſe to bring any Action of Waſte, *&c.* 1 *Inſt.* 95, 198. Two *Parceners* are of Land, one enters and claims the Whole, and is diſſeiſed, ſhe alone may maintain Aſſiſe; but if the Diſſeiſin be of Rent, the other *Parceners* muſt be named, or the Writ ſhall abate. *Jenk. Cent.* 41, 42. The Poſſeſſion of one *Parcener* *&c.* of Land, without an actual Ouſter, gives Poſſeſſion to the other of them. *Hob.* 120. *Dyer* 128 One *Parcener* may juſtify the Detaining of the Deeds concerning the Land againſt another, as they belong to one as well as the other. 2 *Roll. Abr.* 31. *Parceners* are to make *Partition* of the Lands deſcended; and Eſtates of Coparceners at Common Law are applicable only to Inheritances: Partition may be made between *Parceners* of Inheritances, which are intire and dividable, as of an Advowſon, Rent-charge, or ſuch like; but it is otherwiſe of Inheritances which are intire and indiviſable, as of a Piſcary, Common without Number, or ſuch uncertain Profits out of Lands; for in ſuch Caſe the eldeſt *Parcener* ſhall have them, and the others have *Contribution* from her out of ſome other Inheritance, left by the Anceſtor; but if there is no ſuch Inheritance, then the Eldeſt ſhall have theſe uncertain Profits for one Time, and the Youngeſt for another Time. *Dyer* 153. *Parceners* cannot make Partition ſo as for one to have the Land for one Time, and another for another, *&c.* for each is to have her Part abſolutely: But where there is an Advowſon deſcended to them, they may preſent by Turns; and if there be a Common, *&c.* which may not be divided, one may have it for one Year, and another for another Year, *&c.* 1 *Inſt.* 164. An Advowſon is an intire Thing, and yet in Effect the ſame may be divided betwixt *Parceners*; for they may preſent by Turns: And if there be Coparceners of an Advowſon appendant to a Manor, and they make Partition of the Manor, without mentioning the Advowſon; the ſame is ſtill appendant, and they may preſent by Turns. 8 *Rep.* 79. If two *Parceners* be of an Advowſon, and they agree to preſent by Turns, this is a good Partition as to the Poſſeſſion; but it is not a Severance of the Eſtate of Inheritance. 1 *Rep.* 87. And where there are Coparceners of an Advowſon, the Eldeſt hath Privilege to preſent firſt; not in reſpect of her Perſon, but Eſtate: And if one Parcener hath a Rent granted to her upon a Partition made, to make her Part equal with the other, ſhe may diſtrain for the Arrears of ſuch Rent of common Right; and ſo ſhall the Grantee of the Rent, becauſe it is not annexed to her Perſon only, but to her Eſtate. 3 *Rep.* 32. If there are two *Parceners* of a Manor, and on Partition made, each of them hath Demeſnes and Services allotted; in this Caſe each of them is ſaid to have a Manor. 1 *Leon.* 26. *Davis* 61. A Partition may not be of Franchiſes, as Goods of Felons, Waifs, Eſtrays, *&c.* which are caſual. 5 *Rep.* 3. Partition between *Parceners* may be made four Ways, *viz. Firſt*, when they themſelves divide the Land equally into ſo many Parts as there are *Parceners*; and each chuſes one Share or Part, the Eldeſt firſt, and ſo the one after another, *&c.* *Secondly*, When they make Agreement to chuſe certain Friends to make Diviſion for them: *Thirdly*, Partition by drawing Lots, where having divided the Lands into as many Parts as there are *Parceners*, and written every Part in a diſtinct Scroll, being wrapt up they draw each of them one out of a

Hat, Baſon, *&c.* And *Fourthly*, Partition by Writ *De Partitione facienda*, which is by Compulſion, where ſome agree to Partition and others do not; and when Judgment is given on a Writ of Partition, it is that the Sheriff ſhall go to the Lands, and by the Oaths of twelve Men make Partition between the Parties, to hold to them in Severalty, without any Mention of Preference to the eldeſt Siſter, *&c.* *Litt.* 248. 1 *Inſt.* 164. But if there be a Capital Meſſuage on the Land to be divided, the Sheriff muſt allot that wholly to the eldeſt of the *Parceners.* 1 *Inſt.* 165. The Partition made and delivered by the Sheriff and Jurors, ought to be return'd into the Court under the Seal of the Sheriff, and the Seals of the twelve Jurors; for the Words of the judicial Writ of Partition which doth command the Sheriff to make Partition are, *Aſſumptis tecum duodecim, &c. & Partitionem inde Scire facias Juſticiariis, &c. ſub ſigillo tuo & ſigillis eorum per quorum Sacramentum Partitionem illam feceris, &c.* If Partition be made by Force of the King's Writ, and Judgment thereof given, it ſhall be binding to all Parties, becauſe it is made by the Sheriff, by the Oath of twelve Men, by Authority of Law; and the Judgment is, that the Partition ſhall remain firm and ſtable for ever. 1 *Inſt.* 171. In a Writ of Partition, the Judgment was, *Quod Partitio fiat*; and before it was executed by the Sheriff, a Writ of Error was brought; and it was adjudged that a Writ of Error doth not lie upon this firſt Judgment, becauſe this is not like other Actions, where Error lies before the *Habere facias Seiſinam* is returned, and the Judgment is final; but it is not ſo in this Caſe, as there muſt be another Judgment; *i. e. Quod Partitio ſtabilis maneat*, which cannot be till the Partition is made and returned by the Sheriff. *Hetly* 36. *Dyer* 67. Where two Perſons hold Lands *pro Indiviſo*, and one of them would have his Part in Severalty, and the other refuſeth to make Partition by Deed, there lies the Writ *De Partitione facienda* againſt him who refuſes, directed to the Sheriff; and he muſt be preſent when the Partition is made; and if it is objected before the Return of the Writ, that he was not preſent, it may be examined by the Court; but after the Writ is returned and filed, 'tis too late. *Cro. Eliz.* 9. A Writ of Partition was taken forth, and the Sheriff made Partition, but was not upon the Land; and on Motion that the Return might not be filed, but that a new Writ might be awarded, becauſe the Sheriff was not on the Land, the Court ſtaid the Filing, and on examining the Sheriff, ordered a new Writ. *Cro. Car.* 9, 10. On Writ of Partition to the Sheriff to make Partition of Lands, Part of the Lands were allotted to one, and the Jury would not aſſiſt the Sheriff to make Partition of the other Part; which appearing upon the Return of the Writ, the Court was moved for an Attachment againſt the Jury, and a new Writ to the Sheriff. *Godb.* 265. Partition was brought by Tenant in Fee of one Moiety, againſt Tenant for Life of the other Moiety, on the Stat. 32 *H.* 8. *c.* 32. And though it has been reſolved, if Partition be made between one that hath an Eſtate of Inheritance, and another who hath a particular Eſtate for Life; that the Writ ought to be fram'd upon the Statute, and to be made ſpecial, ſetting forth the particular Eſtate: Yet it was held to be good where the Writ was general. *Goldsb.* 84. 2 *Lutw.* 1015. A Partition may be made by Statute of any Eſtate of Freehold, or for Term of Years, *&c.* of Manors, Lands, Tenements and Hereditaments whereof the Partition is demanded; and if after Proceſs of *Pone* return'd upon a *Writ of Partition*, and Affidavit of Notice given of the Writ to the Tenant to the Action, and a Copy left with the Tenant in Poſſeſſion at leaſt forty Days before the Return of the ſaid *Pone, &c.* there be no Appearance entred in 15 Days; the Demandant having entered his Declaration, the Court may give Judgment by Default, and award a Writ to make Partition, whereby the Demandant's Part or Purpart will be ſet out ſeverally; which Writ being executed, after eight Days Notice, and return'd, and thereupon final Judgment entered, ſhall conclude all Perſons, *&c.* But the Court may ſuſpend or ſet aſide the Judgment, if the Party concerned move the Court in a Year, and ſhew good Matter in Bar. *Stat.* 8 & 9 *W.* 3. *c.* 31. And by this Statute, if the High Sheriff by Reaſon of Diſtance, *&c.* cannot be preſent at the Execution of any Judgment in Partition, then the Under-Sheriff, in the Preſence of two Juſtices of Peace of the County, ſhall proceed to the Execution of the Writ, by Inquiſition, and the High Sheriff is to make the Return, *&c. Ibid.* When the Partition is made and returned, the Perſons who were Tenants of the Lands or any Part thereof, before divided, ſhall continue Tenants of the Lands they held, to the reſpective Owners, under ſuch Conditions and Rents as before: And no Plea in Abatement ſhall be admitted or received in any Suit of Partition; nor ſhall the ſame be abated by the Death of any Tenant, *&c. Ibid.* In a Writ of Partition the Defendant pleaded, that he himſelf formerly brought Writ of Partition againſt the now Plaintiff, and had Judgment to have Partition, and this was held a good Plea; but it was a Queſtion, whether it ſhould be pleaded in Bar or Abatement, or by Way of Eſtoppel. *Dyer* 92. No Damages can be recover'd on a Writ of Partition, though the Writ and Declaration conclude *ad Damnum. Hetl.* 35. *Noy* 143. 2 *Nelſ. Abr.* 1237. Where Judgment for Debt is had againſt one *Parcener*, the Lands, *&c.* of both may be taken in Execution, and the Moiety undivided is to be ſold, and then the Vendee will be Tenant in Common with the other *Coparcener:* If the Sheriff ſeiſe only a Moiety and ſell it, the other *Parcener* will have a Right to a Moiety of that Moiety. 1 *Salk.* 392. All Partitions ought to be according to the Quality and true Value of the Lands, and be equal in Value: But if Partition be made by *Parceners* of full Age, and unmarried, and *Sanæ Memoriæ*, it binds them for ever, although the Value be unequal, if it be made of Lands in Fee; and if it be of Lands intailed, it ſhall bind the Parties themſelves for their Lives, but not their Iſſues, unleſs it be equal: If it be unequal, the Iſſue of her, that hath the leſſer Part, may after her Deceaſe diſagree, and enter and occupy in Common with the Aunt: Alſo if any be covert, it ſhall bind the Husband, but not the Wife or her Heirs; or if any be within Age, it ſhall not bind the Infant, but ſhe may at her full Age diſagree, *&c.* 1 *Inſt.* 166. 170. 2 *Lill. Abr.* 283. Though if a Wife after the Coverture, or the Infant at her Age, accept of the unequal Part, they are concluded for ever. 1 *Inſt.* 170. And where there be two *Coparceners*, and one of them hath ſeven Daughters, and dieth; if the other *Parcener* releaſeth to any one of the Daughters her whole Part, here, altho' ſhe to whom the Releaſe is made, have not an equal Part, the Releaſe is good. *Ibid.* 193. It hath been adjudged, that notwithſtanding a Partition is unequal, if it is by Writ, it cannot be avoided; but if it be by Deed, it may be avoided by Entry. 1 *Inſt.* 171. If the Eſtate of a *Parcener* be in Part evicted, that ſhall defeat the whole Partition; Partition implying a Warranty and Condition in Law to enter upon the whole on Eviction, as in Caſe of Exchange of Lands. 1 *Inſt.* 173. 1 *Rep.* 87. And if after Partition, one of the Parts is recovered from a *Parcener* by lawful Title, ſhe ſhall compel the others to make a new Partition. *Cro. Eliz.* 902. But as to Eviction of *Parceners*, if one of them ſell her Part, and then the Part which the other *Parcener* hath is evicted; in this Caſe ſhe that loſeth her Part, cannot enter on the Alienee, for by the Alienation the Privity is deſtroyed. 1 *Inſt.* 173. Among *Parceners*, a Partition upon the Land may be good without Deed; but not amongſt Jointenants, &c. *Dyer* 29, 194.

Form *of a common Writ of* Partition.

GEORGE the Second, &c. *To the Sheriff of* S. *Greeting: If* A. B. *makes you ſecure*, &c. *then ſummon* E. B. *that ſhe be before*, &c. *to ſhew why, whereas the ſaid* A. B. *and* E. B. *together and undivided hold the Manor of*, &c. *with the Appurtenances, Twenty Meſſuages, one Mill, one Dove-houſe, twenty Gardens, three hundred Acres of Land, two hundred Acres of Meadow, a hundred and fifty Acres of Paſture, one hundred Acres of Wood, two hundred Acres of Furze and Heath, and twenty Shillings Rent, with the Appurtenances of the Inheritance which was of* N. B. *Father of the ſaid* A. B. *and* E. B. *whoſe Heirs they are, in*, &c. *the ſaid* E. B. Partition *thereof to be made between them, according to the Law and Cuſtom of* England, *doth deny, and unjuſtly will not permit that to be done, as it is ſaid: And have you there the Summons, and this Writ. Witneſs*, &c.

Form *of a* Deed of Partition *of Lands among* Parceners.

THIS Indenture *tripartite, made*, &c. Between A. B. *of*, &c. *of the firſt Part*, C. B. *of*, &c. *of the ſecond Part, and* E. B. *of*, &c. *of the third Part:* Whereas T. B. *of*, &c. *Father of the ſaid* A. B. *and* C. B. &c. *being ſeiſed in his Demeſne as of Fee, of and in all thoſe Meſſuages or Tenements*, &c. *ſituate, lying and being in*, &c. *is dead, without any Heir Male of his Body lawfully begotten, or making any Diſpoſition of the ſaid Premiſſes, whereby all and ſingular the ſaid Meſſuages*, &c. *are deſcended and come unto the ſaid* A. B. C. B. *and* E. B. Now this Indenture witneſſeth, *That the ſaid* A. B. C. B. *and* E. B. Have *agreed to make Partition, and by theſe Preſents do make a full, perfect and abſolute* Partition *of the ſaid Meſſuages*, &c. *to and amongſt them the ſaid* A. B. C. B. *and* E. B. *in three Parts, in Manner following, (that is to ſay) That ſhe the ſaid* A. B. *her Heirs and Aſſigns, ſhall have, hold and enjoy, To the only proper Uſe and Behoof of the ſaid* A. B. *her Heirs and Aſſigns for ever*, All *that Meſſuage called*, &c. *for the full Part, Share and Proportion of her the ſaid* A. B. *of and in all and every the Meſſuages, Tenements, Lands and Premiſſes above-mentioned, deſcended to them the ſaid* A. B. C. B. *and* E. B. *as aforeſaid; and that the ſaid* C. B. *her Heirs and Aſſigns, ſhall have, hold, and enjoy, to the only proper Uſe and Behoof of the ſaid* C. B. *her Heirs and Aſſigns for ever*, All *that other Meſſuage*, &c. *for the full Part and Proportion of her the ſaid* C. B. *of and in*, &c. *And that the ſaid* E. B. *her Heirs and Aſſigns, ſhall have, hold and enjoy*, &c. *for the full Part and Share of her the ſaid* E. B. &c. And *the ſaid* C. B. *and* E. B. *do by theſe Preſents grant, releaſe and confirm to the ſaid* A. B. *and her Heirs, the ſaid Meſſuage called*, &c. *above-mentioned, and all the Eſtate, Right, Title and Intereſt, which they the ſaid* C. B. *and* E. B. *or either of them, have or hath, or may or ought to have, of, in, and to the ſaid Meſſuage*, &c. To have and to hold *the ſaid Meſſuage and Premiſſes, with the Appurtenances, to the ſaid* A. B. *her Heirs and Aſſigns, to the only Uſe and Behoof of the ſaid* A. B. *her Heirs and Aſſigns, in Severalty for ever.* And *the ſaid* A. B. *and* E. B. *do by theſe Preſents grant, releaſe, and confirm to the ſaid* C. B. *and her Heirs, the ſaid other Meſſuage*, &c. *And all the Eſtate*, &c. To have and to hold *the ſaid*, &c. *to the ſaid* C. B. *her Heirs and Aſſigns, to the only Uſe*, &c. *of the ſaid* C. B. *her Heirs and Aſſigns, in Severalty for ever.* And *the ſaid* A. B. *and* C. B. *do by theſe Preſents grant, releaſe and confirm to the ſaid* E. B. *and her Heirs, the ſaid*, &c. To have and to hold, &c. *to the ſaid* E. B. *her Heirs and Aſſigns, in Severalty for ever.* And *the ſaid* C. B. *and* E. B. *ſeverally and apart, and not jointly, and for their ſeveral Heirs, Executors, Adminiſtrators and Aſſigns, do ſeverally and apart, and not jointly, Covenant, and Grant to, and with the ſaid* A. B. *her Heirs and Aſſigns, that ſhe the ſaid* A. B. *her Heirs, and Aſſigns, ſhall and may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, poſſeſs and enjoy the ſaid Meſſuage*, &c. *before allotted and granted for the Part of the ſaid* A. B. *free and diſcharged of and from all other Eſtates, Rights, Titles, Intereſts, Charges, and Incumbrances whatſoever, had, made or ſuffered, or hereafter to be had, made or ſuffered, of, or by the ſaid* C. B. *and* E. B. *or either of them, their or either of their Heirs or Aſſigns; and that without any Let, Hindrance, Interruption or Denial of them the ſaid* C. B. *and* E. B. *or either of them, their or either of their Heirs or Aſſigns, or of any Perſon or Perſons lawfully claiming by, from, or under them or any of them.* And *the ſaid* A. B. *and* E. B. *ſeverally and apart*, &c. *Covenant and grant, to and with the ſaid* C. B. &c. (*The like Covenant from* A. B. *and* E. B. *that* C. B. *ſhall enjoy her Part; and from* A. B. *and* C. B. *that* E. B. *ſhall hold her Proportion; and likewiſe a Covenant may be added for further Aſſurance.*) In Witneſs, &c.

Parcenary, Is the holding of Lands jointly by *Parceners*, when the common Inheritance is not divided. *Lit.* 56.

Parchment, A Tax of 20 *l. per Cent.* is laid on *Parchment*, Paper, &c. by Stat. 8 & 9 *W.* 3. *cap.* 7.

Parco fracto, Is a Writ that lies againſt him who violently breaks a Pound and takes out Beaſts from thence, which for ſome Treſpaſs done, &c. were lawfully impounded. *Reg. Orig.* 166. And if a Perſon hath Authority to take Beaſts out of the Pound; if he break the Pound, before he demands the Cattle of the Keeper thereof, and he refuſeth, or interrupts him in the taking of them, &c. the Writ *Parco facto* lies. *Dr. and Stud.* 112. Damages are recoverable in this Writ; and the Party may be puniſhed, as for a *Pound Breach* in the Court Leet. 1 *Inſt.* 47. *F. N. B.* 100. The Word *Parcus* was frequently uſed for a Pound to confine treſpaſſing or ſtraying Cattle; whence *Imparcare* to impound, *Imparcatio* Pounding, and *Imparcamentum*, Right of Pounding, &c.

Pardon, (*Pardonatio*, Fr. *Perdonatio*) Is the forgiving an Offence againſt the King: It is a Work of Mercy, whereby the King, either before Conviction or Attainder, or afterwards, forgiveth any Crime, Offence, Puniſhment, Execution, &c. And the King may extend his Mercy upon what Terms he pleaſes; and annex Conditions to his *Pardon*, on the Performance whereof the Validity of the *Pardon* will depend; as upon Condition of Tranſportation, &c. 3 *Inſt.* 233. 1 *Inſt.* 274. *Pardons* of Crimes and Tranſgreſſions againſt the King and the Laws, are *Ex gratia Regis*, or of *Courſe*; the Firſt is that which the King, in ſome ſpecial Regard of the Perſon or other Circumſtance, gives by his abſolute Prerogative or Power; yet where ſome Things are required for its Allowance by the Common Law and by Statute; and the other is that which he granteth, as Law and Equity perſuade for a light Offence, where a Perſon is convict of Homicide caſual and excuſable. *S. P. C.* 47. *H. P. C.* 38. *Weſt. Symb. par.* 2. *Sect.* 46. And *Pardons of Grace* are either *General*, by Act of Parliament or Charter of the King; or *Particular*, at the Coronation or any other Time, when any Offence is committed, &c. 2 *Inſt.* 200. 3 *Inſt.* 233. *H. P. C.* 250. A general *Pardon* doth diſcharge, not only the Puniſhment which was to have been inflicted upon the Perſon that did commit the Offence *pardon'd*; but alſo the Guilt of the Offence itſelf: It *pardons Culpa* ſo clearly, that in the Eye of the Law the Offender is as innocent as if he never had committed the Crime. 2 *Lill. Abr.* 270. And the *Pardon* of a Treaſon or Felony, even after a Conviction or Attainder, ſo far clears the Party from the Infamy, that he may have an Action for a Scandal in calling him Traitor or Felon, after the Time of the *Pardon*; and he may be a good Witneſs notwithſtanding the Attainder or Conviction, becauſe the *Pardon* makes him a new Man, and gives him a new Capacity and Credit. 2 *Hawk. P. C.* 395. Alſo a Conviction of Felony, and Burning in the Hand, has in ſome Caſes the Effect of a *Pardon*; for by this the Party is cleared of his Offence, and becomes a lawful Witneſs: But it ſeems to be the better Opinion, that the *Pardon* of a Conviction of Perjury doth not ſo reſtore the Party to his Credit, as to make him a good Witneſs. *Ibid.* A Conviction of Barretry renders a Man infamous, and incapable of being a Witneſs; but a general *Pardon* will reſtore him: And according to *Holt*, *Ch. Juſt.* the Difference between the King's Special *Pardon* and a General *Pardon* is this; wherever the Diſability is Part of the Judgment by Act of Parliament, as in a Conviction of Perjury upon the Statute, there the King's Special *Pardon* cannot remove that Diſability, but a General *Pardon* may; but where the Diſability is by the Common Law, and only conſequential to the Conviction, and no Part of the Judgment, in that Caſe the King's *Pardon* will take it away. 2 *Salk.* 513. 3 *Salk.* 264. The King may by *Pardon* reſtore a Perſon attainted of Treaſon or Felony, to his Lands, *&c.* But full Reſtitution of the whole Blood cannot be made by him, which muſt be by Parliament. The King's *Pardon* reſtores the Blood as to all Iſſue begotten afterwards; If a Man be attainted of Treaſon, *&c.* and the King *pardons* him, after which he purchaſes Lands and marries, and hath Iſſue and dies, this Iſſue ſhall inherit; for by his *Pardon* he is well reſtored, and is thereby enabled to purchaſe, *&c. Daliſ.* 14. The Words *Pardonavit*, *Remiſit & Relaxavit*, in a Charter of *Pardon* granted to one for Felony, doth not reſtore unto him what he hath forfeited to the King; there muſt be the Word *Reſtituit* in the *Pardon*, to reſtore him to the Goods, *&c.* 2 *Lill. Abr.* 270. No *Pardon* by the King, without expreſs Words of Reſtitution, ſhall deveſt the King or a Subject of an Intereſt in Lands or Goods, veſted in them by an Attainder or Conviction precedent; but a *Pardon* prior to a Conviction, will prevent any Forfeiture of Lands or Goods. 5 *Rep.* 10. 2 *Hawk. P. C.* 306. The Power of *Pardoning* all Offences is inſeparably incident to the Crown by our Common Law: Though the King's Power of *Pardoning* is reſtrained by Statute in Caſes of Murder; and where an Appeal may be brought at the Suit of the Subject, by the Laws of *England* a Murderer could never be *pardoned*. *Show.* 284. 2 *Inſt.* 316. 5 *Rep.* 50. In Appeals of Death, of Rape, Robbery, *&c.* the King cannot *pardon*. The King may *pardon* Crimes, Puniſhments and Forfeitures, and in Forgery, the corporal Puniſhment; but the Plaintiff cannot releaſe it. 3 *Inſt.* 171. An Offence *Malum in ſe* cannot be *pardoned* before committed. *Finch* 234. A *Pardon* of Murder, *&c.* ſhall not be allowed without Writ of Allowance directed to the Juſtices. *Raym.* 13. The King on granting theſe *Pardons*, ſpeaks with or hath a Certificate from the Judges, where they think the Caſe deſerves Mercy. *Jenk. Cent.* 173. In Caſe of Treaſon, a *Pardon* ſhall be admitted without Writ of Allowance; though not of Felony. *Cro. Eliz.* 814. And by our Statutes, no Charter of *Pardon* is to be granted for Murder, only where one killeth another in his own Defence, or by Miſadventure. 2 *Ed.* 3. *c.* 2. Alſo no *Pardon* of the Death of a Man, or other Felony, is to be granted but where the King may do it conſiſtent with his Coronation-Oath. 14 *Ed.* 3. *c.* 15. *Pardons* which have not in them the Suggeſtion, whereupon they are granted, and alſo the Suggeſtor's Name, *&c.* ſhall be void. 27 *Ed.* 3. *c.* 1. The Offence is to be particularly ſpecified in *Pardons*; no *Pardon* of Treaſon or Felony ſhall paſs, without Warrant of the Privy Seal; and if the Offence is found wilful Murder, the *Pardon* ſhall not be allowed. 13 *R.* 2. *c.* 1. and 16 *R.* 2. *c.* 9. And Perſons *pardon'd* of Felony, are to enter into a Recognizance with two ſufficient Sureties for Good Behaviour for ſeven Years, *&c.* 5 *&* 6 *W. & M. c.* 13. A Man was indicted for Murder and Robbery, which he confeſſed, and produced his *Pardon*, which was of all Murders, Robberies, *&c. Non Obſtante* the Statute 13 *R.* 2. But the Court would not allow it; for after the ſaid Statute a general *Non Obſtante* would not do, without a Recital of the Effect of the Indictment, that it may appear the King was appriſed of the Fact. *Sid.* 366. 2 *Nelſ. Abr.* 1233. One *Parſons* being attainted for the Murder of Mr. *Wade*, pleaded the King's *Pardon*, which was for the Murder by expreſs Words, without any *Non Obſtante*, that being taken away by the Statute 1 *W. & M.* And he produced the Writ of Allowance, certifying that he had found Sureties for the Peace, *&c.* On its being objected againſt the Allowance of the *Pardon*, that the Crime could not be *pardoned* by Law: It was held, that there was as good Reaſon for the King to *pardon* an Indictment for Murder, which is his Suit; as for the Party to diſcharge an Appeal for the ſame Crime, which is the Suit of the Subject; and that the King was by his Coronation-Oath, to ſhew Mercy as well as to do Juſtice: That the Statute 2 *Ed.* 3. did not prohibit the *Pardoning* Murder, it only meant that the King ſhould be fully informed before he *pardoned* any Felony; for before the Statute of *Glouceſter*, *c.* 9. it was uſual for Criminals of this Nature to apply to the Lord Chancellor, and by falſe Suggeſtions procure *Pardons* with general Words in them; and this was the Occaſion of theſe reſtrictive Statutes, that Application ſhould be made to the King in Perſon, to the Intent he himſelf might be appriſed of the Matter: 'Tis true, by the Statute 13 *R.* 2. great Difficulties were put upon Suitors for a *Pardon* of Murder; they were to incur a Penalty, *&c.* but by the Statute 16 *R.* 2. this was repealed, which ſhews that there is a Neceſſity that the King ſhould have Power to *Pardon*; and the *Pardon* was allowed. *Hill.* 3 *W. & M. B R.* 2 *Salk.* 499. 4 *Mod.* 63. It was moved in the Court of *B. R. Hill.* 1 *Ann.* That *Foxworthy*, who was *pardon'd* for the Murder of a Perſon who came in Aid of a Conſtable to arreſt him, might be charged with an Action in the Cuſtody of the Marſhal; but for that, if he could not pay the Debt or find Bail, the *Pardon* might be fruſtrated thereby, it was refuſed: In this Caſe it was agreed, That if after the Allowance of the *Pardon* he had broke the Peace, he might, notwithſtanding his *Pardon*, be detained for that Offence; and be brought up again and ask'd what he had to ſay why Sentence ſhould not paſs; and if he pleaded the *Pardon*, the Attorney General would reply the Condition and Breach, *&c.* *Fareſt. Rep.* 153. To arreſt a Felon after *Pardon* is not penal, if the Party arreſting knew it not, becauſe it is an Act of Juſtice: And the Breach of the Peace may be a Forfeiture of a *Pardon* of Felony, that is Conditional. *Hob.* 67, 82 *Moor*, *ca.* 662. The King *pardons* no Treaſons by Implications; but by Special Words of *Pardon*. *Hutt.* 21. In Sir *Walter Raleigh*'s Caſe it was adjudged, That the King's Grant of a military Command to a Perſon attainted of High Treaſon, and in his Commiſſion called his True and Loyal Subject, and having thereby judicial Power given him over the Lives of others, did not amount to a *Pardon* of Treaſon, becauſe every *Pardon* of Treaſon requires an expreſs Mention of it; and if the Offence had been but Felony, it could not have been *pardoned* after the Attainder, without expreſs Mention made both of the Felony and the Attainder. 2 *Hawk. P. C.* 388. A Man commits

Felony, and is attainted thereof, and abjured for the ſame; the King pardoneth him the Felony, without mentioning the Attainder or Abjuration, the *Pardon* is void. 3 *Inſt.* 238. *Pardon* of all Felonies doth not extend to Piracy; for it cannot be extended beyond the Words of it: And a *Pardon* of all Felonies is no Bar to Execution, where a Felon is attainted; nor will a *Pardon* of all Attainders, or Executions, *pardon* the Felony. 1 *Inſt.* 391. 3 *Inſt.* 15, 233. 2 *Hawk.* 384. But a *Pardon* of all Miſpriſions, Treſpaſſes and Offences, *&c.* will *pardon* any Crime which is not Capital; here the Word *Offences* is very extenſive; And a Perſon convicted of a *Præmunire*, obtained a *Pardon* in theſe Words, *Pardonamus omnes & ſingulas Tranſgreſſiones, Offenſiones & Contemptus*; and it was adjudged, that the *Præmunire* was *pardoned.* 1 *Mod.* 102. 2 *Bulſt.* 299. If a General Act of *Pardon* be of all Felonies, Offences, Injuries, Miſdemeanors, and other Things done before ſuch a Day, and a Perſon has a Wound given before the Day, though he dies not till after the Day mentioned in the *Pardon*; as the Stroke which was the Cauſe of his Death is *pardoned*, all the Effects of it are *pardoned.* *Read. on Stat. Vol.* 4. *pag.* 327. And all Contempts being *pardon'd*, Amerciaments, *&c.* depending upon them, are of Conſequence *pardoned.* 5 *Rep.* 49. A General *Pardon* of all Felonies, *&c.* except Murder, will *pardon a Felo de ſe.* 1 *Lev.* 8. By the *Pardon* of Murder, Manſlaughter is *pardoned.* *Finch* 21. In ſome Caſes, the Felony of one Man may be ſo far dependant upon that of another, that a *Pardon* of it may enure to his Benefit; as where the Principal pleaded his *Pardon*, and was allowed it at Common Law, before Attainder, this extended to the Acceſſary; and where he pleads, and is allow'd it, at this Day, before his Conviction, 'tis ſaid the Acceſſary may take the Benefit of it. 2 *Hawk. P. C.* 387. If a Man be bound to the King, as Surety for another, for the Payment of a Fine, or other Debt due to the Crown; the *Pardon* of the Principal is a Diſcharge of the Surety. *Ibid.* *A.* bound in a Recogniſance of 1000*l.* to the King, is attainted of Treaſon, and the King *pardons* him, and reſtores to him all his Chattels, *&c.* This Debt to the King remains. *Dyer* 124. An outlawed Perſon was falſly returned upon the Exigent, and afterwards the Sheriff obtained the King's Charter of *Pardon* of all Miſpriſions, Offences, *&c.* but yet the Judges fined him for his falſe Return, and upon an Attachment he was taken in Execution: He then ſued a ſpecial Writ on the *Pardon*, in Nature of an *Audita Querela*, and was diſcharged. *Jenk. Cent.* 109. If an Informer begins his Suit, before the Offender obtains a *Pardon*, he ſhall have his Part, tho' that of the King is diſcharged: 'Tis otherwiſe if the *Pardon* comes before the Suit of the Informer. *Ibid.* 111. A *Pardon* may be of all Suits in the Spiritual Court *pro ſalute Animæ*, as well before as after a Suit commenced: Not where the Party hath a Property in the Thing, as for Tithes, Legacies, *&c.* which the King cannot *pardon.* 5 *Rep.* 51. Although the Suit in the Spiritual Court be for the King, which he may *pardon*; when Sentence is given in a Cauſe of Defamation, *&c.* and Coſts are taxed for the Plaintiff, he hath thereby a particular Intereſt in them by the Sentence, which the King cannot *pardon:* Though if the *Pardon* had been before Sentence, it had diſcharged all. *Ibid.* Where a General *Pardon* pleaded in the Spiritual Court would not be allowed there; the Party had a Prohibition. *Moor* 1171. Notwithſtanding the King's *Pardon* to a Simoniſt, coming into a Church contrary to the Stat. 3 *Ed.* 6. or to an Officer coming into his Office by corrupt Contract, contrary to 5 & 6 *Ed.* 6. may ſave ſuch Clerk or Officer, from any criminal Proſecution thereupon; yet it ſhall not inable the Clerk to hold the Church, nor the Officer to retain the Office, becauſe they are abſolutely diſabled by Statute 2 *Hawk:* 395. But where one, who was Judge of the Prerogative Court, was ſentenced for Bribery, *&c.* and fined and impriſoned, and another obtained his Office; he afterwards brought an Aſſiſe for the ſaid Office, and produced the King's *Pardon* after Sentence, wherein all the Special Matter was recited, and all Penalties and Puniſhments by Reaſon thereof, and all Diſabilities were *pardoned:* Adjudged, that the *Pardon* had taken away the Force of the Sentence, and that he might proceed in the Aſſiſe. *Cro. Car.* 40. A General *Pardon* by Parliament ſhall ſet aſide a Judgment for a Crime; and relate to the firſt Day of the Parliament. *Latch* 22. 2 *Nelſ. Abr.* 1227. And a General *Pardon* doth *pardon* publick Offences, done againſt the Commonwealth, but not private Injuries to particular Perſons: It ſhall be taken Beneficially for the Subject, and moſt ſtrongly againſt the King. 5 *Rep.* 49. 2 *Lill. Abr.* 271. A General *Pardon* by Act of Parliament, 'tis ſaid, ought to be taken Notice of by the Court; but if it hath Exceptions of Offences or Perſons, the Court cannot take Notice of it, nor can the Party have Benefit thereof unleſs he pleads it, and ſhews that he is none of the Perſons, *&c.* excepted. 3 *Inſt.* 233. 1 *Lev.* 25. He that will take the Benefit of a general *Pardon*, is to plead the Statute by which it is granted, that the Court may judge whether his Offence is *pardoned* or not, which they cannot do if the *Pardon* be not pleaded, and the Party do not ſhew that he is compriſed in the *Pardon.* 2 *Lill. Abr.* 268. Sometimes Advantage is given to Offenders by the Act it ſelf without pleading: And it hath been held, where a Statute *Pardon* contains Exceptions in the Body of the Act, he who pleads ſuch Statute, to intitle himſelf to the Benefit thereof, muſt aver himſelf not to be a Perſon excepted; but when the Exception follows in a diſtinct Clauſe, by Way of Proviſo, he needs not. 1 *Ventr.* 134. 3 *Salk.* 266. A Charter of *Pardon* of the King under the Great Seal, cannot be allowed unleſs it be pleaded; and he who pleads ſuch a *Pardon*, ought to produce it *ſub pede Sigilli:* And it will be Error to allow a Man the Benefit of it, if it be not pleaded. *H. P. C.* 250. If there be Variance between the Record on which a Man is convicted or attainted, and his Charter of *Pardon*; if there be no Repugnancy that the ſame Perſon or Thing are meant in both, it may be ſupplied by proper Averments; as that he is the Perſon intended in the Indictment, and the *Pardon*, *&c.* And there are ſome Inſtances in the old Books, where upon ſuch Variance the Court took an Enquiry of Office, whether the ſame Perſon was meant in both Records: Alſo if ſuch variant *Pardon* be pleaded without any Averment, the Court may give a farther Day either for the Party to perfect his Plea, or to purchaſe a better *Pardon.* 2 *Hawk.* 398. *Pardon* for Treaſon cannot regularly be pleaded, until the Priſoner is charged with Indictment for the Offence committed. 4 *Rep.* 43. The Acceptance of a *Pardon* is an Argument of Guilt; and he that pleads it, confeſſeth the Fact: But a Perſon may wave it, if it be not a general *Pardon* by Parliament, which cannot be waved. 4 *Inſt.* 235. If a Peer hath a *Pardon*, he muſt plead it before the Judges of the Court where he is indicted. *Wood's Inſt.* 673. And if one have a Charter of *Pardon* of Felony, the Court will allow it upon the Prayer of the Party, and on his producing it at the Bar; for if he pray not the Allowance of it, the Court cannot tell whether he accepts of the Benefit thereof; and he is to do it upon his Knees, to expreſs his Thankfulneſs for the Mercy afforded him by the *Pardon.* 2 *Lill. Abr.* 271. Gloves are due to the Judges on Allowance of a *Pardon.* *Pult.* 88.

General Acts of Pardon. In the 5th and 13th Years of the Reign of Queen *Elizabeth*; and alſo 21 *Jac.* 1. *General Pardons* were granted, which were very extenſive and beneficial to the Subject. By Stat. 12 *Car.* 2. a *General Pardon* was granted to Perſons concerned in the Grand Rebellion againſt King *Charles* 1. except thoſe who ſat in the traiterous Aſſembly which proceeded againſt the King's Life; and the two Perſons that appeared diſguiſed on the Scaffold at the King's Murder, *&c.* The 25 *Car.* 2. *c.* 5. likewiſe granted a *General Pardon.* By 2 *W. & M. Seſſ.* 1. *c.* 10. A *General Pardon* was granted on Account of the Revolution and Abdication of King *James* 2. Treaſons againſt the King and Queen's Perſons, Murders, *&c.* excepted; and there was an Exception of the Marqueſs of *Powys*, the Lord Biſhop of *Durham*, the Lord *Jefferies*, *&c.* The Stat. 6 *&* 7 *W.* 3. *c.* 20. was made for a general and free *Pardon.* And by 7 *Ann. c.* 23 was granted the Queen's moſt Gracious, General and Free Pardon; Treaſon, Murder, *&c.* and Perſons employed in the Service of the Pretender excepted. By the 3 *Geo.* 1. *c.* 19. a General and Free *Pardon* was granted of Crimes and Offences; and out of this Act were excepted Murders, Piracies, Burglaries, Rapes, *&c.* and all ſuch Perſons as were in the Service of the Pretender, and levied War againſt his Majeſty in the late Rebellion; alſo *Robert* Earl of *Oxford*, *Simon* Lord *Harcourt*, *Matthew Prior*, *Thomas Harley*, and *Arthur Moor*, Eſqrs. and ſuch who were impeached by Parliament. And the 7 *Geo.* 1. *c.* 29. granted a moſt gracious, general and free *Pardon*, without the Exception of the Perſons above named, ſo that it extended to thoſe Gentlemen; and the late Directors of the *South Sea* Company for their Conduct in the Year 1720. were excepted out of this Statute. See the Stat. 2 *Geo.* 2. *c.* 20.

Pardons by *Statute* on *Diſcovery of Accomplices* in Crimes, are granted in the following Caſes. For the Diſcovery of *Highwaymen*, *&c.* 4 *&* 5 *W. & M.* 11 *W.* 3. for diſcovering Counterfeiters of the *Coin*, 6 & 7 *W.* 3. for the Diſcovery of Perſons guilty of *Burglary*, *&c.* 5 *Ann.* for diſcovering of Offenders in forcibly hindering or wounding any Officer of the *Cuſtoms* in the Execution of his Office, 6 *Geo.* 1. and for Diſcovery of *Smuglers* of the Cuſtoms, *&c.* 7 *Geo.* 1.

Pardoners, Were Perſons that carried about the *Pope's Indulgences*, and ſold them to any that would buy them. Stat. 22 *H.* 8.

Parent, (*Parens*) A Father or Mother; but generally applied to the Father. *Parents* have Power over their Children by the Law of Nature, and the Divine Law; and by thoſe Laws they muſt educate, maintain and defend their Children. *Wood's Inſt.* 63. The *Parent* or Father hath an Intereſt in the Profits of the Childrens Labour while they are under Age, if they live with and are maintained by him: But the Father hath no Intereſt in the Eſtate Real or Perſonal of a Child, otherwiſe than as his Guardian. *Ibid.* The eldeſt Son is Heir to his Father's Eſtate; and if there are no Sons, but Daughters, the Daughters ſhall be Heirs, *&c.* And there being a reciprocal Intereſt in each other, *Parents* and Children may maintain the Suits of each other, and juſtify the Defence of each other's Perſons. 2 *Inſt.* 564.

Parentale, or *de Parentela ſe tollere*, Signified to renounce his Kindred or Family, which was done in open Court before the Judge, and in the Preſence of twelve Men, who made Oath that they believed it was done for juſt Cauſe: We read of it in the Laws of K. *Hen.* 1. *c.* 88.——*Si quis propter Faidam vel cauſam aliquam de* Parentela *ſe velit tollere & eam foris Juraverit, & de ſocietate & hæreditate & tota illius ratione ſe ſeparet, ſi poſtea aliquis a Parentibus abjuratis moriatur, vel occidatur, nihil ad eum de hæreditate vel compoſitione pertineat, &c.*

Pariſh, (*Parochia*) Did antiently ſignify what we now call the *Dioceſe* of a Biſhop: But at this Day it is the Circuit of Ground in which the People that belong to one Church do inhabit, and the particular Charge of a Secular Prieſt. This Realm was firſt divided into Pariſhes by *Honorius, Archbiſhop of Canterbury*, in the Year of our Lord 636. according to *Camden*, who reckons 9284 *Pariſhes* in *England*, but other Authors differ in the Number. *Camd. Britan. pag.* 160. It is ſaid that *Pariſhes* were ordained by the *Lateran Council*; before which every Man being obliged to pay Tithes to a Prieſt, had his Liberty to pay them to what Prieſt he pleaſed; but then came the Council which made the *Pariſhes*, and decreed, that every Perſon ſhould pay his Tithes to his *Pariſh* Prieſt. *Hob.* 296. 2 *Lill. Abr.* 271. The Lord Chief Juſtice *Holt* held, That *Pariſhes* were inſtituted for the Eaſe and Benefit of the People, and not of the Parſon; and the Reaſon why Pariſhioners muſt come to their *Pariſh* Churches, is, becauſe he having charged himſelf with the Cure of their Souls, that he may be enabled to take Care of that Charge. 3 *Salk.* 88, 89. A *Pariſh* may compriſe many Vills; but generally it ſhall not be accounted to contain more than one, except the contrary be ſhewed, becauſe moſt *Pariſhes* have but one Vill within them. *Hill.* 23 *Car.* 1. *B. R.* And it ſhall not be intended that there is more than one *Pariſh* in a City, if it be not made to appear; for ſome Cities have but one *Pariſh. Ibid.* Where there are ſeveral Vills in a *Pariſh*, they may have Peace-Officers, and Overſeers of the Poor for every particular Vill: And an antient Vill in a *Pariſh*, that Time out of Mind hath had a Church of its own, and Church-wardens and Parochial Rights, being reputed a *Pariſh*, is a *Pariſh* within the Stat. 43 *Eliz. c.* 2. to provide for its own Poor, and ſhall not pay to the Poor of the *Pariſh* wherein it lies. *Cro. Car.* 92, 384, 396. But to make a Vill a reputed *Pariſh* within 43 *Eliz.* it muſt have a parochial Chapel, Chapel-wardens and Sacraments at the Time that Statute was made. 2 *Salk.* 501. *Pariſhes* in Reputation are within that Statute, eſpecially when it has been the conſtant Uſage of ſuch *Pariſhes* to chuſe their own Overſeers; who may diſtrain for a Poor Tax, *&c.* 2 *Roll. Rep.* 160. 2 *Nelſ. Abr.* 1235. Money given by Will to a *Pariſh*, ſhall be to the Poor of the *Pariſh*, as adjudg'd in Equity. *Chanc. Rep.* 134. If a Highway lie in a *Pariſh*, the *Pariſh* is obliged to repair the ſame; and it is the moſt convenient and equal for the Pariſhioners in every *Pariſh*, to repair the Ways within it, if they are able to do it. 2 *Lill.* 272. And if any Vill, Liberty, *&c.* that uſes to repair their own Highways, ſhall, after the uſual Rate levied and employed, find the Ways not ſufficiently repaired; the whole *Pariſh* may be ordered by Juſtices of Peace in their Seſſions to contribute to the Repairing thereof. Stat, 7 *&* 8 *W.* 3. *cap.* 29.

Pariſh Clerk. In every Pariſh the Parſon, Vicar, *&c.* hath a *Pariſh Clerk* under him, who is the loweſt Officer of the Church. Theſe were formerly Clerks in Orders, and their Buſineſs at firſt was to officiate at the Altar, for which they have a competent Maintenance by Offerings; but now they are Laymen, and have certain Fees with the Parſon, on Chriſtnings, Marriages, Burials, *&c.* beſides Wages for their Maintenance. *Count. Parſ. Compan.* 83, 84. They are to be twenty Years of Age at leaſt, and known to be of honeſt Converſation, ſufficient for thir Reading, Singing, *&c.* And their Buſineſs conſiſts chiefly in Reſponſes to the Miniſter, Reading of Leſſons, Singing of Pſalms, *&c.* And in the large *Pariſhes* of *London*, they have ſome of them Deputies under them for the Diſpatch of the Buſineſs of their Places, which are more gainful than common Rectories. *Ibid.* The Law looks upon them as Officers for Life: And they are choſen by the Miniſter of the Pariſh, unleſs there is a Cuſtom for the Pariſhioners or Church-wardens to chuſe them; in which Caſe the Canon cannot abrogate ſuch Cuſtom; and when choſen it is to be ſignified, and they are to be ſworn into their Office by the Archdeacon. *Cro. Car.* 589. *Can.* 91.

Pariſhioner, (*Parochianus*) Is an Inhabitant of or belonging to any *Pariſh*, lawfully ſettled therein. See *Poor.*

Pariſh Offices, Divers Perſons are exempted from ſerving in *Pariſh Offices* on Account of their Profeſſions, *viz.* Phyſicians and Surgeons, Apothecaries, Diſſenting Teachers, Regiſtered Seamen, and Perſons having proſecuted any Felon to Conviction, &c. Stat. 32 *H.* 8. 1 *W.* & *M.* 7 & 8 & 10 & 11 *W.* 3. 1 & 10 *Ann.* &c.

Park, (Lat. *Parcus*, Fr. *Parque*, i. e. *locus incluſus*) Is a large Quantity of Ground incloſed and privileged for wild Beaſts of Chaſe, by the King's Grant or Preſcription. 1 *Inſt.* 233. *Manwood* defines a Park to be a Place of Privilege for Beaſts of Venary, and of other wild Beaſts of the Foreſt and of the Chaſe, *tam Sylveſtres, quam Campeſtres*; and differs from a Chaſe or Warren, in that it muſt be incloſed, and may not lie open; if it do, it is good Cauſe of Seiſure into the King's Hands as a Thing forfeited; as a Free Chaſe is, if it be incloſed; beſides, the Owner cannot have an Action againſt ſuch as hunt in his *Park*, if it lies open. *Manw. Foreſt Laws. Crompt. Juriſd.* 148. No Man can now erect a *Park*, without a Licence under the Broad Seal; for the Common Law does not encourage Matters of Pleaſure, which bring no Profit to the Commonweath, *Wood's Inſt.* 207. But there may be a *Park* in Reputation, erected without lawful Warrant; and the Owner of ſuch a *Park* may bring his Action againſt Perſons killing his Deer. *Ibid.* To a *Park* three Things are required, 1. A Grant thereof. 2. Incloſures by Pale, Wall or Hedge. 3. Beaſts of a *Park*, ſuch as the Buck, Doe, &c. And where all the Deer are deſtroyed, it ſhall no more be accounted a *Park*; for a *Park* conſiſts of Vert, Veniſon and Incloſure, and if it is determined in any of them, it is a total *Diſparking*. *Cro. Car.* 59, 60. And the King may by Letters Patent diſſolve his *Park*. 2 *Lill. Abr.* 273. *Parks* as well as Chaſes are ſubject to the Common Law, and are not to be governed by the Foreſt Laws. 4 *Inſt.* 314. Pulling down *Park* Walls or Pales, the Offenders ſhall be liable to the ſame Penalty as for killing Deer, &c. by Stat. and the Statutes againſt Deer-ſtealing, are the 13 *Car.* 2. *c.* 10. 3 & 4 *W.* & *M.* *c.* 10. 5 G. 1. *c.* 15, &c. See *Deer-ſtealers.*

Park-bote, Signifies to be quit of incloſing a *Park*, or any Part thereof. 4 *Inſt.* 308.

Parle Hill, The learned *Spelman* gives us this Deſcription of it; it is (ſays he) *Collis vallo plerunque munitus, in loco campeſtri, ne inſidiis exponatur, ubi convenire olim ſolebant Centuriæ aut Viciniæ incolæ ad lites inter ſe tractandas & terminandas:* Scotis *reor* Grithhail, *q. Mons pacificationis, cui Aſyli privilegia concedebantur: & in* Hibernia *frequentes vidimus*, the *Parle* and *Parling Hills.* Spelm. Gloſſ.

Parliament, (*Parliamentum*, from the Fr. *Parler*, i. e. *loqui*, & *Ment*, *Mens*, to ſpeak the Mind, ſometimes called *Commune Concilium Regni Angliæ*, *Magnum Concilium*, &c.) Is a grand Aſſembly, or Convention of the three Eſtates of the Kingdom, ſummoned to meet the King, to conſult of Matters relating to the Common Wealth; and particularly to enact and repeal Laws. Some Authors ſay, that the ancient *Britains* had no ſuch Aſſemblies; but that the *Saxons* had; which may be collected from the Laws of King *Ina*, who lived about the Year 712. And *William* the firſt, called the Conqueror, having divided this Land among his Followers, ſo that every one of them ſhould hold their Lands of him *in Capite*, the Chief of theſe were called *Barons*; who it is ſaid thrice every Year aſſembled at the King's Court, *viz.* at *Chriſtmas*, *Eaſter*, and *Whitſuntide*, among whom the King was wont to come in his Royal Robes, to conſult about the Publick Affairs of the Kingdom. This King called ſeveral *Parliaments*, wherein it appears, that the Freemen or Commons of *England* were alſo there, and had a Share in making of Laws: He by ſettling the Court of *Parliament* ſo eſtabliſhed his Throne, that neither *Britain*, *Dane*, nor *Saxon*, could diſturb his Tranquility; the making of his Laws were by Act of *Parliament*, and the Accord between *Stephen* and him was made by *Parliament*; though all the Times ſince have not kept the ſame Form of aſſembling the States. *Dodderidge's Antiq. Parliament.* And according to the ſame Author, there was a *Parliament* before there were any Barons; and if the Commons do not appear, there can be no *Parliament*; for the Knights, Citizens and Burgeſſes, repreſent the whole Commons of *England*, but the Peers only are preſent for themſelves, and none others. *Ibid.* Sir *Edward Coke* affirms, that divers *Parliaments* were held before the Conqueſt; and produces an Inſtance of one held in the Reign of King *Alfred:* He likewiſe gives us a Concluſion of a *Parliament* holden by King *Athelſtan*, where Mention is made, that all Things were enacted in the great Synod or Council at *Grately*, whereat was Archbiſhop *Wolfhelme*, with all the Noblemen and Wiſemen, which the King called together. 1 *Inſt.* 110. It is apparent, (ſays Mr. *Pryn*) from all the Precedents before the Time of the Conqueſt, that our priſtine Synods and Councils were nothing elſe but *Parliaments*; that our Kings, Nobles, Senators, Aldermen, Wiſemen, Knights and Commons, were preſent and voting in them as Members and Judges: And Sir *Henry Spelman*, *Camden*, and other Writers, prove the Commons to be a Part of the *Parliament* in the Time of the *Saxons*, but not by that Name, or elected as conſiſting of Knights, Citizens and Burgeſſes. *Pryn's Sovereign Pow. Parliam.* As to the Original of the preſent Houſe of Commons, our Authors of Antiquity vary very much; many are of Opinion that the Commons began not to be admitted as Part of the *Parliament*, upon the Footing they are now, until the 49 *H.* 3. And the Reaſon for it is, becauſe the firſt Writ of Summons of any Knights, Citizens and Burgeſſes, is of no antienter Date than that Time. But the great Charter in the 17th Year of King *John*, (about which Time the Diſtinction of *Barones Majores* and *Minores* is ſuppoſed to begin) was made *per Regem, Barones & Liberos Homines totius Regni.* Mr. *Selden* ſays, that the Borough of *St. Albans* claimed by Preſcription in the *Parliament*, 8 *Edw.* 2. to ſend two Burgeſſes to all *Parliaments*, as in the Reigns of *Edw.* 1. and his Progenitors, which muſt be the Time of King *John*; and ſo before the Reign of King *Hen.* 3. And in the Reign of *Hen.* 5. it was declared and admitted, that the Commons of the Land were ever a Part of the *Parliament.* *Selden's Tit. Hon.* 709. *Polydore Virgil*, *Hollinſhead*, *Speed* and others mention, that the Commons were *firſt ſummoned* at a *Parliament* held at *Salisbury*, 16 *Hen.* 1. Sir *Walter Raleigh*, in his Treatiſe of the *Prerogative of Parliaments*, thinks it was *Anno* 18 *H.* 1. And Dr. *Heylin* finds another Beginning for them, *viz.* in the Reign of K. *Hen.* 2. Thus much for the Original of our *Parliament:* Which is the higheſt and moſt honourable, and abſolute Court of Juſtice in *England*; conſiſting of the King, the Lords of *Parliament*, and the Commons; and again, the Lords are divided into two Sorts, *viz.* Spiritual and Temporal; and the Commons divided into three Parts, *i. e.* into Knights of Shires or Counties, Citizens out of Cities, and Burgeſſes from

Boroughs; the Words of the old *Latin* Writ to the Sheriff for the Election, being *Duos Milites gladiis cinctos magis idoneos & diſcretos comitatus tui, & de qualibet civitate comitatus tui duos Cives, & de quolibet Burgo duos Burgenſes, de Diſcretioribus & magis ſufficientibus, &c. Inſt.* 109. The Juriſdiction of this Court is ſo tranſcendent, that it makes, enlarges, abrogates, repeals and revives Laws and Statutes, concerning Matters Eccleſiaſtical, Civil, Criminal, Martial, Maritime, *&c.* And for making of Laws and in proceeding by Bill, this ſupreme Court is not confined either for Cauſes or Perſons within any Bounds; nor is it tied down to any certain Rules or Forms of Law, in Proceedings and Determinations: The Court of *Parliament* hath Power to judge in Matters of Law; and redreſs Miſchiefs and Grievances that happen, eſpecially ſuch as have no ordinary Remedy; to examine into the Corruption of Judges and Magiſtrates, and illegal Proceedings of other Courts; to redreſs Errors, and determine on Petitions and Appeals, *&c.* and from this High Court there lies no Appeal. *Ibid.* Affairs of *Parliament* are to be determined by the *Parliament*; though the *Parliament* err, it is not reverſible in any other Court: And not only what is done in the Houſe of Commons, but what relates to the Commons during the *Parliament*, and ſitting the *Parliament*, is no where elſe to be puniſhed but by themſelves, or a ſucceeding *Parliament.* Sir *Robert Atkins.* Every Court of Juſtice having Laws and Cuſtoms for its Direction, the High Court of *Parliament* hath its own proper Laws and Cuſtoms, called the *Laws and Cuſtoms of Parliament*; inſomuch that no Judges ought to give any Opinion of Matters done in *Parliament*, becauſe they are not to be decided by the Common Law: But the *Parliament*, in their Judicial Capacity, are governed by the Common and Statute Laws, as well as the Courts in *Weſtminſter-Hall.* 4 *Inſt.* 14, 15. *State Trials, Vol.* 2, 735. The Lords and Commons in their reſpective Houſes have Power of Judicature, and ſo have both Houſes together: And in former Times both Lords and Commons ſat together in one Houſe of *Parliament.* 4 *Inſt.* 23. The Lords have one that preſides as Speaker in common Affairs, uſually the *Lord Chancellor*; and the Commons have their Speaker, choſen by the Houſe, but to be approved of by the King: The Commons anciently had no continual Speaker, but after Conſultation, their Manner of Proceeding was to agree upon ſome Perſon of great Abilities, to deliver their Reſolutions: In the Reign of *Willam Rufus*, there was a great *Parliament* held at *Rockingham*, and a certain Knight came forth and ſtood before the People, and ſpake in the Name and Behalf of them all, who was undoubtedly the Speaker of the Houſe of Commons at that Time: But the firſt Speaker certainly known was *Peter de Mountford.* 44 *H.* 3. when the Lords and Commons ſat in ſeveral Houſes, or at leaſt gave their Aſſents ſeverally. *Lex Conſtitution.* 162. Sir *Richard Walgrave*, 5 *R.* 2. was the firſt Speaker that made any formal Apology for Inability, as now practiſed: *Richard Rich*, Eſq; 28 *H.* 8. was the firſt of our Speakers that is recorded to have made Requeſt for Acceſs to the King. *Thomas Moyle*, Eſq; 34 *H.* 8. is ſaid to be the firſt Speaker that petitioned for Freedom of Speech; and Sir *Thomas Gargrave*, 1 *Eliz.* was the firſt that made the Requeſt for Privilege from Arreſts, *&c.* Sir *John Buſhey*, 17 *R.* 2. was the firſt Speaker preſented to the King in full *Parliament* by the Commons: And when Sir *Arnold Savage* was Speaker, 2 *Hen.* 4. it was the firſt Time that the Commons were required by the King to chuſe a Speaker. *Ibid.* 163, *&c.* The King cannot take Notice of any Thing ſaid to be done in the Houſe of Commons but by the Report of the Houſe; and every Member of the Houſe of *Parliament* has a judicial Place, and can be no Witneſs. 4 *Inſt.* 15. When King *Charles* 1. being in the Houſe of Commons, and ſitting in the Speaker's Chair, asked the then Speaker, whether certain Members, whom the King named, were preſent? The Speaker, from a Preſence of Mind which aroſe from the Genius of that Houſe, readily anſwered, That he had neither Eyes to ſee nor Tongue to ſpeak, but as the Houſe was pleaſed to direct him. *Atkins's Juriſd. and Antiquity of Houſe of Commons.* King *Henry* 8. having commanded Sir *Thomas Gawdy*, one of the Judges of the King's Bench, to attend the Chief Juſtices and know their Opinion, whether a Man might be attainted of High Treaſon by *Parliament*, and never called to anſwer; the Judges declared it was a dangerous Queſtion, and that the High Court of *Parliament* ought to give Examples to inferior Courts, for proceeding according to Juſtice, and no inferior Court could do the like. *Lex Conſtitution.* 161. The Houſe of Lords is a diſtinct Court from the Commons, to ſeveral Purpoſes, and is the Sovereign Court of Juſtice, and Dernier Reſort: they try Criminal Cauſes on Impeachments of the Commons; and have an original Juriſdiction for the Trial of Peers upon Indictments found by a Grand Jury: They alſo try Cauſes upon Appeals from the Court of Chancery, or upon Writs of Error to reverſe Judgments in *B. R. &c.* And all their Decrees are as Judgments; and Judgment given in *Parliament* may be executed by the Lord Chancellor. 4 *Inſt.* 21. *Finch* 233. 1 *Lev.* 165. It is ſaid, that the Judicial Power of *Parliament* is in the Lords; but that the Houſe of Lords hath no Juriſdiction over original Cauſes, which would deprive the Subject of the Benefit of Appeal. 2 *Salk.* 510. Alſo the Houſe of Commons is a diſtinct Court to many Purpoſes; they examine the Right of Elections, expel their own Members, and commit them to Priſon, and ſometimes other Perſons, *&c.* And the Book of the Clerk of the Houſe of Commons is a Record. 2 *Inſt.* 536. 4 *Inſt.* 23. The Commons coming from all Parts are the General Inquiſitors and Grand Inqueſt of the Realm; to preſent publick Grievances and Delinquents to the King and Lords to be puniſhed by them: And any Member of the Houſe of Commons, has the Privilege of impeaching the higheſt Lord in the Kingdom. *Wood's Inſt.* 455. As the Houſe of Lords ſeems to be politically conſtituted for the Support of the Rights of the Crown; ſo the proper Province of the Houſe of Commons, is to ſtand for the Preſervation of the People's Liberties. The Commons in making and repealing of Laws, have equal Power with the Lords; and for laying of Taxes on the Subject, the Bill is to begin in the Houſe of Commons, becauſe from thence the greateſt Part of the Money ariſes, and it is they that repreſent the whole Commons of *England*; for which Reaſon they will not permit any Alterations to be made by the Lords in a Bill concerning Money: And as formerly the Laying and Levying of new Taxes have cauſed Rebellions and Commotions; this has occaſioned, particularly 9 *E.* 3. when a Motion has been made for a Suſibdy of a new Kind, that the Commons have deſired a Conference with thoſe of their ſeveral Counties and Places, whom they have repreſented before they have treated of any ſuch Matters. 4 *Inſt.* 34. There are no Places of Precedency in the Houſe of Commons as there are in the Houſe of Lords; only the Speaker has a Chair or Seat, fixed towards the upper End, in the Middle of the Houſe; and the Clerk, with his Aſſiſtant, ſits near him at the Table, juſt below the Chair: The Members of the Houſe of Commons never had any Robes, as the Lords ever had, except the Speaker and Clerks, who in the Houſe wear Gowns, as Profeſſors of the Law do during the Term-Time. If a Lord be abſent from the Houſe, he may make another Lord his Proxy; though a

Member of the Houſe of Commons cannot make a Proxy. *Wood's Inſt.* 456. No Knight, Citizen or Burgeſs of the Houſe of Commons, ſhall depart from the *Parliament* without Leave of the Speaker and Commons aſſembled; and the ſame is to be entered in the Book of the Clerk of the *Parliament*. Stat. 6 *Hen.* 8. *c.* 16. And in the 1 & 2 *P.* & *M.* Informations were preferred by the Attorney General againſt thirty-nine of the Houſe of Commons, for departing without Licence, whereof ſix of them ſubmitted to Fines; but it is uncertain whether any of them were ever paid. The Calling of the Houſe is to diſcover what Members are abſent, without Leave of the Houſe, or juſt Cauſe; in which Caſes Fines have been impoſed: On the Calling over, ſuch of the Members as are preſent, are marked; and the Defaulters being called over again the ſame Day, or the Day after, and not appearing, are ſometimes ſummoned, and ſometimes ſent for by the Serjeant at Arms. *Lex Conſtitution.* 159. Forty Members are requiſite to make a Houſe of Commons for Diſpatch of Buſineſs; and the Buſineſs of the Houſe is to be kept entirely a Secret among themſelves: In the 23d Year of Queen *Elizabeth*, *Arthur Hall*, Eſq; Member of Parliament, for publiſhing the Conferences of the Houſe, and writing a Book which contained Matter of Reproach againſt ſome particular Members, derogatory to the general Authority, Power and State of the Houſe, and prejudicial to the Validity of the Proceedings, was adjudged by the Commons to be committed to the *Tower* for ſix Months, fined 500 *l.* and expelled the Houſe. But the Speaker of the Houſe of Commons, according to the Duty of his Office, as Servant to the Houſe, may publiſh ſuch Proceedings as he ſhall be ordered by the Commons aſſembled; and he cannot be liable for what he does that Way by the Command of others, unleſs all thoſe other Perſons are liable. The Caſe of *William Williams*, Eſq; If any Member of either Houſe ſpeak Words of Offence in a Debate, after the Debate is over he is called to the Bar, where commonly on his Knees he receives a Reprimand from the Speaker; and if the Offence be great, he is ſent to the *Tower*. When the Bill of Attainder of the Earl of *Strafford*, was paſſing the Houſe of Commons, Mr. *Taylor*, a Member of that Houſe, oppoſed it with great Violence and Indecency, and being heard to explain himſelf, was commanded to withdraw; whereupon it was reſolved he ſhould be expelled the Houſe, be made incapable of ever ſerving as a Member of *Parliament*, and ſhould be committed Priſoner to the *Tower*, there to remain during the Pleaſure of the Houſe: And he was called to the Bar, where he kneeled down, and Mr. Speaker pronounced the Sentence accordingly. And Sir *John Elliot*, *Denzil Hollis*, and another Perſon having ſpoken theſe Words, (*viz.*) *The King's Privy Council, his Judges, and his Counſel learned in the Law, have conſpired to trample under their Feet the Liberties of the Subject, and of this Houſe*, an Information was brought againſt them by the Attorney General; and farther, for that the King having ſignified his Pleaſure to the Houſe of Commons for the *Adjournment of the Parliament*, and the Speaker endeavouring to get out of the Chair, they *Violenter*, &c. detained him in the Chair; upon which there was a great Tumult in the Houſe, to the Terror of the Commons there aſſembled, and againſt their Allegiance, in Contempt of the King, his Crown and Dignity: The Defendants pleaded to the Juriſdiction of the Court; and refuſed to anſwer but in *Parliament*; but it was adjudged, that they ought to anſwer, the Charge being for a Conſpiracy, and ſeditious Acts to prevent the Adjournment of the *Parliament*, which may be examined out of it; and not anſwering, Judgment was given againſt them, that Sir *John Elliot* ſhould be committed to the *Tower*, and fined 2000 *l.* and the other two were fined and impriſoned. *Cro. Car.* 130. Members of *Parliament* are not only privileged from Arreſts, but likewiſe in an extraordinary Manner from Aſſaults, Menaces, &c. Sir *Robert Brandling* made an Aſſault upon Mr. *Witherington*, a Member of the Houſe of Commons, in the Country before his coming up to *Parliament*, and Sir *Robert* was ſent for up by the Houſe, and committed to the *Tower*. And *Anno* 19 *Jac.* 1. ſome Speeches paſſed privately in the Houſe between two of the Members, and one of them going down the *Parliament* Stairs ſtruck the other, who catching at a Sword in his Man's Hand, endeavoured to return the Stroke; and upon Complaint to the Houſe of Commons they were both ordered to attend, where he who gave the Blow was committed to the *Tower* during the Pleaſure of the Houſe. Aſſaulting a Member coming to or attending in *Parliament*, the Offender ſhall pay double Damages, and make Fine and Ranſom, &c. by Stat. 11 *Hen.* 6. All Members of *Parliament*, that they may attend the publick Service of their Country, have Privilege of *Parliament* for themſelves and their menial Servants, to be free from Arreſts, Subpœnas, Citations, &c. and for their Horſes and Goods to be free from Diſtreſſes: And this Privilege of *Parliament* doth generally hold in all Caſes except in Treaſon, Felony and Breach of the Peace. 4 *Inſt.* 24, 25. There are many remarkable Caſes in our Books treating of the Privileges of *Parliament*, relating to Arreſts of Members of the Houſe of Commons, and their Servants, and the Manner of their Confinement, Releaſement, &c. The firſt Year of King *Jac.* Sir *Thomas Shirley*, a Member of *Parliament*, was arreſted four Days before the Sitting of the *Parliament*, and carried Priſoner to the *Fleet*; on which a Warrant iſſued to the Clerk of the Crown for a *Habeas Corpus* to bring him to the Houſe, and the Serjeant was ſent for in Cuſtody, who being brought to the Bar, and confeſſing his Fault, was excuſed for that Time: But on hearing Council at the Bar for Sir *Thomas Shirley*, and the Warden of the *Fleet*, and upon producing Precedents, *Simpſon* the Proſecutor, who cauſed the Arreſt to be made, was ordered to be committed to the *Tower*; and afterwards the Warden refuſing to execute the Writ of *Habeas Corpus*, and the Delivery of Sir *Thomas* being denied, was likewiſe committed to the *Tower*; though on his agreeing to deliver up Sir *Thomas*, upon a new Warrant for a new Writ of *Habeas Corpus*, and making his Submiſſion to the Houſe, he was diſcharged: This Affair taking up ſome Time, the Houſe entered into ſeveral Debates touching their Privileges, and how the Debt of the Party might be ſatisfied, which produced three Queſtions; Firſt, Whether Sir *Thomas Shirley* ſhould have Privilege? Secondly, Whether preſently, or to be deferred? And, Thirdly, Whether the Houſe ſhould petitition the King for ſome Courſe for ſecuring the Debt of the Party, according to former Precedents, and ſaving harmleſs the Warden of the *Fleet*? All which Queſtions were reſolved; and a Bill was brought in to ſecure *Simpſon*'s Debt, &c. which alſo occaſioned an Act 1 *Jac.* 1. *cap.* 13. for Relief of Plaintiffs in Writs of Execution, where the Defendants in ſuch Writs are arreſted, and ſet at Liberty by Privilege of *Parliament*, by which a freſh Proſecution and new Execution may be had againſt them when that Privilege ceaſes. *Lex Conſtitut.* 141. And 19 *Jac.* 1. one *Johnſon*, a Servant to Sir *James Whitlock* a Member of the Houſe of Commons, was arreſted by two Bailiffs, who being told Sir *James Whitlock* was a *Parliament* Man, anſwered, that they had known greater Men's Servants than his taken from their Maſters in Time of *Parliament*: And this appearing, the two Bailiffs were ſentenced to ask Pardon of the Houſe and Sir *James Whitlock*, on their Knees; that they ſhould both ride on one Horſe bare backed, Back to Back, from *Weſtminſter* to the *Exchange*, with Papers on their Breaſts ſignifying their Offence; all which was to be executed preſently, *Sedente Curia. Ibid.* In Action of Debt upon a Bond, conditioned that *B. B.* ſhould render himſelf at ſuch a Day and Place to an Arreſt; the Defendant pleaded, that by Privilege of *Parliament*, the Members, &c. and their Servants ought not to be arreſted by the Space of forty Days before the Sitting of the *Parliament*, nor during the Seſſion, nor forty Days afterwards; and that B *B.* was at that Time Servant to ſuch a Member of *Parliament*, ſo as he could not render himſelf to be arreſted: Upon Demurrer to this Plea, it was adjudged ill, becauſe he might have rendered himſelf at the Time and Place; but then it would be at their Peril if he was arreſted. 1 *Brownl.* 81. The Commons in *Parliament* claim Privilege for forty Days before and after each Seſſion and Prorogation. 2 *Lev.* 72. Though the Statute 12 *W.* 3. *cap.* 3. ordains, that Actions may be proſecuted in any of the Courts at *Weſtminſter* againſt Perſons intitled to Privilege of *Parliament*, after a Diſſolution or Prorogation, until a new *Parliament* is called, or the ſame is reaſſembled: And after Adjournment for above fourteen Days, and the reſpective Courts may proceed to Judgment, &c. Proceedings are to be by Summons and Diſtreſs *infinite*, &c. until the Parties ſhall enter a common Appearance; and the Real or Perſonal Eſtates of the Defendants may be ſequeſtred for Default of Appearance; but the Plaintiff may not arreſt their Bodies: And where any Plaintiff ſhall be ſtayed or prevented from Proceeding by Privilege of *Parliament*, he ſhall not be barred by any Statute of Limitation, or Nonſuited, Diſmiſſed, or his Suit diſcontinued for Want of Proſecution; but at the Riſing of the *Parliament* ſhall be at Liberty to proceed to Judgment and Execution. And by 2 *Ann. cap.* 8. Actions may be proſecuted againſt Officers of the Revenue, or in any Place of publick Truſt, for any Forfeiture or Breach of Truſt, &c. and ſhall not be ſtayed by Colour of Privilege: But ſuch Officer being a Member of *Parliament*, is not ſubject to Arreſt during the Time of Privilege, but Summons, Attachment, &c: By the 11 *Geo.* 2. *cap.* 24. Any Perſon may proſecute a Suit in any Court of Record, &c. in *Great Britain* or *Ireland*, againſt any Peer, or Member of the Houſe of Commons, or other Perſon intitled to Privilege, in the Intervals of *Parliaments*, or of Seſſions, if above fourteen Days; and the ſaid Courts, after Diſſolutions or Prorogations, are to give Judgment, and award Execution: And no Proceedings in Law againſt the King's immediate Debtor, as ſuch, &c. to be delayed under Colour of ſuch Privilege; only the Perſon of a Member of *Parliament*, &c. ſhall not be arreſted or impriſoned. A Defendant who was a Member of *Parliament*, brought a Letter from the Speaker to the Court of *King's Bench* to ſtay Proceedings; but the Court would not allow it, but told him he might bring his Writ of Privilege. *Latch* 150. Judgment was had againſt the Defendant, and afterwards he was choſen a Member of *Parliament*, and after his Election he was taken in Execution, yet he had his Privilege; though the Book tells us *minus juſte. Moor* 57. And where Judgment being had againſt a Defendant, and he was taken in Execution in the Morning, and about three Hours afterwards was choſen a Member of *Parliament*; the Houſe agreed, that being arreſted before he was choſen, &c. he ſhall not have his Privilege. *Moor* 340. 1 *Nelſ. Abr.* 27. The Courts at *Weſtminſter* may judge of the Privilege of *Parliament*, where it is incident to a Suit the Court is poſſeſſed of: And Courts may proceed to Execution between the Seſſions of *Parliament*, notwithſtanding Appeals lodged, &c. *State Trials*, 2 *Vol. pag.* 66, 209.

Election of Members of Parliament. The *Parliament* is called by Force of the King's Writ of Summons out of *Chancery*, at leaſt forty Days before the *Parliament* begins: And the Commons are elected by the People; and every Member, though choſe for one particular Place or Borough, ſerves for the whole Kingdom. Alſo as Attendance of this Nature is for the Service of the Publick, the whole Nation has ſuch an Intereſt therein, that the King cannot grant an Exemption to any Perſon from being elected as a Knight, Citizen or Burgeſs in *Parliament*; and for that Elections ought to be free. 29 *Hen.* 6. But an Alien cannot be elected of the *Parliament*, for he is not the King's Leige Subject; though if an Alien were Naturalized by Act of *Parliament*, he was eligible till the Stat. 12 *W.* 3. *cap.* 2. A Man attainted of Treaſon or Felony, or one outlawed, &c. is not eligible; nor ſhall ſuch Perſons be ſuffered in the Houſe of *Parliament.* 4 *Inſt.* 48. A Perſon under the Age of twenty-one Years, may not be elected to ſit in *Parliament*; neither can any Lord ſit there, until he be of the full Age of twenty-one Years. *Ibid.* It was formerly held, that Mayors and Bailiffs of Towns-Corporate were not eligible; but now they may be elected. And ſo may a Sheriff of a County, for another Shire. 4 *Inſt.* 38 *H.* None of the Judges of the *King's Bench* or *Common Pleas*, or Barons of the *Exchequer*, who have Judicial Places, can be choſen Knight, Citizen or Burgeſs of *Parliament*, as it is now holden, and becauſe they are Aſſiſtants in the Houſe of Lords: And yet we find in the *Parliament Roll* 31 *Hen.* 8. that *Thorpe*, Baron of the *Exchequer*, was Speaker of the Houſe of Commons: Perſons that have Judicial Places in the other Courts, Eccleſiaſtical or Civil, are eligible. 4 *Inſt.* 47. Clergymen are not eligible to be Knights, Citizens or Burgeſſes of *Parliament*, they being of another Body, *viz.* of the Convocation. *Ibid.* Any of the Profeſſion of the Common Law, and which are in the Practice of the ſame, are eligible; but *Anno* 6 *H.* 4. a *Parliament* was ſummoned by Writ, and by Colour of a certain Ordinance, it was forbidden that any Lawyers ſhould be choſen; by Reaſon whereof my Lord *Coke* obſerves, this *Parliament* was fruitleſs: And the prohibitory Clauſe inſerted in the Writs was againſt Law, for Lawyers are eligible of Common Right, and cannot be diſabled by Ordinance without Act of *Parliament*. By Stat. 12 *W.* 3. *c.* 2. no Perſon who had any Office or Place of Profit under the King, or Penſion from the Crown, was to ſerve as a Member of the Houſe of Commons. And by 4 & 5 *Ann.* no Member of *Parliament* may enjoy any Office in the Government, and ſit in the Houſe at the ſame Time by Virtue of his former Election; for by the Acceptance of any Office, his Election is void: But he may be elected again, on a new Writ iſſued out, and ſit in the Houſe; and Officers in the Army or Navy, receiving any new Commiſſion, need not be re-elected. 6 *Ann.* When Perſons are incapable of being elected, the Election ſhall be void; and Sitting or Voting in the Houſe of Commons they ſhall forfeit 500 *l.* And the Statute 1 *Geo.* 1. *c.* 56. enacts, that no Man having any Penſion from the Crown, either in his own Name or in Truſt for him, ſhall be elected a Member of *Parliament*; and Penſioners preſuming to Sit and Vote, ſhall forfeit 20 *l.* for every Day, &c. The Act mentions only a Penſion for any Term or Number of Years; and not a Penſion during Pleaſure, according to the 4 *Ann. cap.* 8. 'Tis now enacted, that no Perſon who ſhall be a Commiſſioner of the Treaſury, Chancellor of the *Exchequer*, Commiſſioner of the Admiralty, Paymaſter of the Army, Secretary of State, &c. ſhall be capable of being a Member in any *Parliament*, which ſhall be hereafter ſummoned and holden. Stat. 15 *Geo.* 2 *c.* 22. But this Statute does not exclude the Secretaries of the Treaſury, or of thoſe other Officers; or any Perſon having an Office for Life. *Ibid.* By ancient Statutes, Knights of the Shire are to be reſident in the County, for which they are choſen; as likewiſe Citizens and Burgeſſes elected ſhall be reſident in and free of the ſame Cities and Boroughs, the Day of the Date of the Writ of Summons, and they are to be notable Knights of the ſame County, &c. notable Eſquires or Gentlemen: Alſo by a late Act, no Perſon ſhall be qualified to ſerve in *Parliament* as a Knight of the Shire, who hath not an Eſtate of Freehold or Copyhold for Life, or ſome greater Eſtate to his own Uſe, of 600 *l.* a Year, over and above what will ſatisfy all Incumbrances; and a Citizen and Burgeſs 300 *l. per Annum*, of which Oath is to be made at the Requeſt of a Candidate, or two Perſons having Right to Vote; and if any Perſon be elected and returned not ſo qualified, the Return ſhall be void. 9 *Ann. cap.* 5. And none ſhall be qualified by Virtue of any Mortgage, whereof the Equity of Redemption is in another; unleſs the Mortgagee ſhall have been in Poſſeſſion ſeven Years before the Election: Tho' the eldeſt Son of a Peer, or of any Perſon qualified to ſerve as a Knight of the Shire, ſhall not be incapable of being elected. *Stat. Ibid.* Members of *Parliament* muſt take the Oaths to the Government before they Sit and Vote in the Houſe; or ſhall be adjudged Popiſh Recuſants, and be diſabled to ſit in *Parliament*, and liable to certain Forfeitures, &c. Stat. 5 *Eliz. cap.* 1. 30 *Car.* 2. *c.* 1. And this Statute is confirmed and inforced by the 13 & 14 *W.* 3. *c.* 6. The Election of Knights of the Shire, is to be made by the Majority of People dwelling in the Counties, having each of them Lands or Tenements to the yearly Value of 40 *s.* beſides Repriſes; and he that cannot expend 40 *s. per Ann.* ſhall have no Vote in the Election of Knights for the *Parliament.* 8 *H.* 6. *c.* 7. And by the 10 *Hen.* 6. *c.* 2. an Elector of Knights of the Shire muſt be reſident, and have 40 *s. per Annum* Freehold over and above Repriſes in the ſame County. The 7 & 8 *W.* 3. requires, that every Freeholder ſhall take an Oath that he is a Freeholder of the County, and has Freehold Lands or Hereditaments of the yearly Value of 40 *s.* lying at ſuch a Place, within the ſaid County, and that he hath not been before polled at the Election: No Perſon is to be admitted to vote in any Election of a Member to ſerve in *Parliament*, who is under the Age of twenty-one, or be intitled to any Vote by Reaſon of any Truſt or Mortgage; if the Truſtee or Mortgagee be not in actual Poſſeſſion, and receive the Rents and Profits of the Eſtate: But the Mortgagor or *Ceſtui que Truſt* in Poſſeſſion, ſhall and may vote for the ſame Eſtate: And all Conveyances of Lands, Tenements, &c. in order to multiply Votes, or ſplit and divide the Intereſt in any Houſes or Lands, among ſeveral Perſons, to enable them to vote, ſhall be void and of none Effect. By the 10 *Ann. c.* 22. none ſhall have a Voice for electing Knights of the Shire in Right of any Lands, who has not been charged or aſſeſſed to the publick Taxes, Church Rates and Pariſh Duties, in ſuch Proportion as other Lands and Tenements of 40 *s. per Annum*, lying within the ſame Pariſh; and for which he ſhall not have received the Rents and Profits, or be intitled to have received the ſame to the full Value of 40 *s.* or more, to his own Uſe for one Year, before the Election; except ſuch Lands or Tenements come by Deſcent, Deviſe, Preſentation to ſome Church, or Promotion to an Office, to which a Freehold is annexed; and Perſons voting contrary ſhall forfeit 40 *l.* This extends not to reſtrain Perſons from voting for Knights of the Shire, in reſpect of any Tithes, or other incorporeal Inheritances, or Meſſuages, &c. belonging to Offices, by reaſon the ſame have not been uſually aſſeſſed to any publick Taxes; or in regard to Lands not taxed to all Taxes, if they have been generally aſſeſſed to ſome one or more of the ſaid Rates, &c. by 12 *Ann. c.* 5. All Eſtates and Conveyances made to any Perſon in a fraudulent Manner, on purpoſe to qualify him to vote, ſubject to Conditions to defeat or determine ſuch Eſtate or re-convey the ſame, ſhall be taken againſt the Perſons executing them as free and abſolute; and all Bonds, &c. for Redemption ſhall be void; alſo Perſons voting by Colour of ſuch Conveyance, incur a Forfeiture of 40 *l.* The above Statutes, for preventing fraudulent Conveyances to multiply Votes on Electing Knights of Shires, are made to extend to Lands or Tenements, for which any Perſon ſhall vote for the Election of Members to ſerve in *Parliament* for any City or Town, that is a County of itſelf; and if any Perſon votes at ſuch Election as a Freeholder, not having his Eſtate a Year before, and aſſeſſed as deſcribed in the Act 10 *Ann.* he is liable to the Penalties impoſed on unqualified Voters. 13 *Geo.* 2. *c.* 20. Perſons refuſing to take the Oaths of Abjuration, &c. are made incapable to vote for Members of *Parliament.* 1 *Geo.* 1. *c.* 13. As to who are or ought to be the Electors in Boroughs, it hath very much exerciſed the *Britiſh* Houſe of Commons: In the 22 *Jac.* 1. it was reſolved, that where there is no Charter or Cuſtom to the contrary, the Election in Boroughs is to be made by all the Houſholders, and not Freholders only: And in a Queſtion whether the Commons or the Capital Burgeſſes of a certain Borough in *Lincolnſhire*, were the Electors of Members to *Parliament*, *Anno* 4 *Car.* 1. it was agreed, That the Election of Burgeſſes in all Boroughs did of common Right belong to the Commoners, and that nothing could take it from them but a Preſcription and conſtant Uſage beyond the Memory of Man. It has been holden, That the Commonalties of Cities and Burghs are only the ordinary and lower Sort of Citizens, Burgeſſes or Freemen; and that the Right of Election of Burgeſſes to *Parliament* in all Boroughs, belongs to the Commoners, *viz.* the ordinary Burgeſſes or Freemen; and not to the Mayor, Aldermen and Common Council: Though the Meaning of the Words *Communitates Civitatum & Burgorum*, has always ſignified, rightly underſtood, the Mayor, Aldermen and Common Council, where they were to be found; or the Steward or Bailiff, and Capital Burgeſſes, or the governing Parts of Cities and Towns, by what Perſons ſoever they were governed, or Titles called. The moſt extraordinary Caſe which has happened in this Age, with Relation to the Determinations of a Committee of Privileges and Elections, was the Caſe of *Aſhby* and *White*, concerning the Borough of *Ailesbury*; on a Queſtion put, Whether an Action at Law lies for an Elector who is denied his Vote? In this Caſe the Debates ended in the following Reſolutions, *viz.* That the Qualification of Electors and of Perſons elected, is cognizable only before the Commons in *Parliament*; and that the examining and determining the Qualification or Right of any Elector, &c. belongs to them, where the Acts of *Parliament* give no particular Direction; that whoever ſhall proſecute any Action, &c. which ſhall bring the Right of Electors to the Determination of any other Juriſdiction than that of the Houſe of Commons, except in Caſes ſpecially provided for by ſome Statute, ſhall be guilty of a Breach of the Privilege of the Houſe. Several Perſons were committed to *Newgate* by a Warrant ſigned by *Robert Harley*, Speaker of the Houſe of Commons, for proſecuting Actions at Law againſt the Conſtables of the aforeſaid Borough of *Ailesbury*, who refuſed to take their Votes at the Election of Members of *Parliament*, &c. in Contempt of the Juriſdiction and Privileges of the Houſe; and this Matter being returned by *Habeas Corpus* ſeverally, and the ſeveral Perſons Defendants brought into Court, their Counſel moved that they might be diſcharged, for that the Proſecution of a Suit at Law could be no unlawful Act, nor a Breach of the Privileges of the Houſe of Commons: Three Judges were of Opinion, that the Houſe were the proper Judges of their own Privileges; but *Holt Chief Juſtice* held, That the Authority of the Commons was circumſcribed by Law; and if they ſhould exceed that Authority, then to ſay they were Judges of their own Privileges, is to make their Privileges to be what they would have them to be; and that if they ſhould wrongfully impriſon, there could be no Redreſs, ſo that the Courts at *Weſtminſter* could not execute the Laws upon which the Liberties of the Subject ſubſiſt. 2 *Salk.* 503. And in Action on the Caſe, by a Burgeſs of *Aileſbury*, againſt the Conſtables of the ſaid Borough, for refuſing to receive the Plaintiff's Vote in the Election of a Member of *Parliament*; the Plaintiff had a Verdict, but the Judgment was arreſted, by the Opinion of three Judges, *viz.* That the Action is not maintainable, becauſe the Conſtables acted as Judges, and the not Receiving the Plaintiff's Vote is *Damnum ſine injuria*; for when the Matter comes before the Houſe, his Vote will be received; that the Right of electing Members to ſerve in *Parliament*, is to be decided in *Parliament*, and the Plaintiff may petition the Houſe for that Purpoſe, and after 'tis determined there, he may then bring his Action, and not before. *Holt Chief Juſtice contra*, That the Plaintiff had a Right to vote; a Freeholder has a Right to vote by Reaſon of his Freehold; and it is a real Right, and the Value of his Freehold was not material 'till the Stat. 8 *Hen.* 6. which requires it to be 40 *s. per Annum*: That as it is *Ratione liberi tenementi* in Counties; ſo in antient Boroughs, they have a Right to vote *ratione Burgagii*; and in Cities and Corporations, it is *ratione Francheſia*, and a perſonal Inheritance, veſted in the whole Corporation, but to be uſed by the particular Members; that this is a noble Privilege, which entitles the Subject to a Share in the Government and Legiſlature; and that if the Plaintiff hath a Right, he muſt have a Remedy to aſſert that Right, for Want of Right and Want of Remedy is the ſame Thing; that Refuſing to take the Plaintiff's Vote is an Injury, and every Injury imports a Damage; and that where a parliamentary Matter comes in incidentally to an Action of Property, in the King's Court, it muſt be determined there, and not in *Parliament*; the *Parliament* cannot judge of the Injury, nor give Damages to the Plaintiff, and he hath no Remedy by Way of Petition: And according to this Opinion, the Judgment of the other three Judges was reverſed upon a Writ of Error brought in the Houſe of Lords. 1 *Salk.* 19. *Mod. Caſ.* 45. This Caſe occaſioned great Diſputes between the two Houſes of *Parliament*; the Lords inſiſting, That if the Commons only could judge of the Right of their Electors, they would in Effect chuſe their Electors, *&c.* And the Commons alledging, that if the Right of Electors might be determined in the Courts of Law, from whence Cauſes are removed by Writ of Error into the Hauſe of Lords, the Lords would become Judges of the Right of Electors to chuſe, and conſequently who were duly elected Members of the Commons Houſe, whereby the Commons would loſe their Independency, and be ſubject to the Lords, *&c.* But the *Parliament* being ſoon after prorogued, the Diſpute was dropp'd. By the Common Law of *England*, every Commoner hath a Right not to be ſubjected to Laws made without their Conſent; and becauſe ſuch Conſent cannot be given by every individual Man in Perſon, by Reaſon of Number and Confuſion; that Power is lodged in their Repreſentatives, elected and choſen by them, *viz.* Knights, Citizens, *&c.* 3 *Salk.* 18. And in ſeveral Counties, the Citizens and Burgeſſes were formerly choſen in the County-Courts, with the Knights of Shires, and jointly returned, *&c.* For there are commonly four or five Citizens or Burgeſſes ſent from the reſpective Cities or Boroughs to the County-Court; and there they were choſen, with full Power for themſelves and their ſeveral Communities, to do and conſent to ſuch Things, as by the Common Council of the Kingdom aſſembled in *Parliament*, ſhould be ordained and enacted. It is ſaid by ſome Writers, that in antient Times the King hath nominated the very Perſons to be returned, and did not leave it to the Election of the People; for which they give an Inſtance in the 45th Year of *Ed.* 3. And among the *Parliament* Writs 14 *Eliz.* there appears to be an Appointment and Return of Burgeſſes, by the Lord of a Town, *&c.* But theſe are ſingle Inſtances in their Kind; and the Writs for Elections in the 23d Year of King *Edw.* 1. ran in *Engliſh* as follows, *viz.*

Form *of an antient* Writ *for* Election of Members of Parliament.

T*O the Sheriff of,* &c. *Greeting: Becauſe we deſire to have a Conference and Treaty with the Earls, Barons, and other great Men of our Kingdom, to provide Remedies againſt the Dangers our Kingdom is in at this Time; therefore we have commanded them that they be with us at* Weſtminſter, *on the Day,* &c. *next coming, to treat, ordain, and do, ſo as thoſe Dangers may be prevented: And we command, and firmly enjoin thee, that, without Delay, thou doeſt cauſe to be choſen, and to come to us, at the Time and Place aforeſaid, two Knights of the County aforeſaid, and of every City two Citizens, and of every Borough two Burgeſſes, of the beſt, moſt able, and diſcreet Men for Buſineſs; ſo as the ſaid Knights may have ſufficient Power for themſelves, and the Community of the County aforeſaid; and the Citizens and Burgeſſes may have the ſame Power ſeparately from them, for themſelves and the Communities of Cities and Burghs, then to do in the Premiſſes what ſhall be ordained by the Common Council of the Realm, ſo that the Buſineſs aforeſaid may not remain undone; and have there the Names of the Knights, Citizens and Burgeſſes, and this Writ. Witneſs the King,* &c.

The *Return of the Writ*, thereon indorſed, was thus:

I A. B. *Sheriff, by Vertue of this Writ have cauſed to be choſen in the County of,* &c. *two Knights, and of every City of the ſame County two Citizens, and of every Borough two Burgeſſes, of the beſt, moſt able, and diſcreet Knights, Citizens and Burgeſſes of the County, City and Burghs aforeſaid, according to the Tenor of the Writ.*

By the Stat. 7 *H.* 4. *cap.* 15. the Election of Knights of the Shire is to be made in the following Manner: At the next County-Court, after the Delivery of the Writ, Proclamation is to be made by the Sheriff of the County, of the Day and Place the *Parliament* is to aſſemble, and that all as are there preſent ſhall attend at the Election of Knights of the Shire; and then in full County, a free and indifferent Election ſhall be made: And after ſuch Choice, the Names of the Parties choſen, are to be written on an Indenture under the Seals of the Electors; which Indenture ſo ſealed and tacked to the Writ, ſhall be the Sheriff's Return thereof. And by the 23 *H.* 6. *cap.* 7. it is enacted, That the Sheriff after Receipt of the Writ, ſhall deliver a Precept under his Seal to every Mayor and Bailiff of Cities and Boroughs within his County, reciting the Writ, and requiring them to chuſe two Citizens and Burgeſſes to come to the *Parliament*; and ſuch Mayors and Head Officers, are to make Return of the Precept to the Sheriff, by Indenture, *&c.* whereupon the Sheriff is enabled to make a good Return of the Writ: The Sheriff is to make Election between the Hours of eight and eleven in the Forenoon; and if any Knight, Citizen, or Burgeſs, returned by the Sheriff ſhall be put out, and the Name of another put in, diverſe Penalties are incurred; Sheriffs acting contrary to this Statute, and not returning a Member duly elected, are ſubject to a Forfeiture of 100 *l.* recoverable by Action of Debt; and Officers of Corporations, making falſe Returns, liable to a Penalty of 40 *l.* *&c.* It has been adjudged on this Act, that though no Election ſhould be made of any Knight of the Shire, but between eight and eleven of the Clock in the Forenoon; if the Election be begun within that Time, and cannot be determined in thoſe Hours, it may be made after. 4 *Inſt.* 48. And if any Electors give their Voices before the Precept for Election is read and publiſhed, it will be of no Force; for after the Precept is thus read, *&c.* they may alter their Voices and make a new Election. *Ibid.* 49. The Stat. 7 *&* 8 *W.* 3. *cap.* 7. ordains, if any Perſon ſhall return a Member to ſerve in *Parliament* for any Place, contrary to the Determination in the Houſe of Commons of the Right of Election for ſuch Place, the Return ſo made ſhall be judged a falſe Return; and the Party making it may be proſecuted, and double Damages with Coſts recovered againſt him: Officers wilfully and falſly returning more Perſons than are required to be choſen by the Writ or Precept, the like Remedy may be had againſt them; and all Contracts, Promiſes, *&c.* to return any Member of *Parliament*, are not only declared void, but the Makers or Givers of the Contracts, *&c.* or of any Gift or Reward to procure a falſe or double Return, ſhall forfeit 300 *l.* one Third to the King, another to the Informer, and the other Third to the Poor of the Place, to be recovered in any Court of Record at *Weſtminſter*, &c. By 7 *&* 8 *W.* 3. *cap.* 25. When any new *Parliament* ſhall be called, there ſhall be forty Days between the *Teſte* and Returns of the Writs; the Lord Chancellor, *&c.* is to iſſue out Writs for Election of Members of *Parliament*, with as much Expedition as may be; and the ſeveral Writs ſhall be delivered to the proper Officers for Execution, who are to indorſe the Day of the Receipt on the Back of the Writ, and forthwith make out the Precepts to each Borough, *&c.* which are to be delivered to the Officers of every ſuch Borough, within three Days, and they muſt likewiſe indorſe the Day of Receipt, and immediately cauſe publick Notice to be given of the Time and Place of Election, and proceed to Election thereupon in eight Days: For electing of Knights of the Shire, the Sheriff is to hold his County-Court at the moſt publick and uſual Place, and there proceed in the Election at the next Court, unleſs it fall out to be within ſix Days after the Receipt of the Writ, and then the ſame is to be adjourned, giving ten Days Notice of the Election; if the Election be not determined on View, but a *Poll* is demanded, the Sheriff is to take the ſame, and likewiſe a *Scrutiny*, and he or his Under-Sheriff ſhall appoint and ſwear Clerks for that Purpoſe, *&c.* The County-Court is not to be adjourned to any other Place, without the Conſent of the Candidates; nor ſhall any unneceſſary Adjournments be made, but the Poll to proceed; alſo every Sheriff, *&c.* is to deliver a Copy of the Poll to any Perſon deſiring it; and Officers for every wilful Offence againſt this Act, are ſubject to a Forfeiture of 500 *l.* And by 6 *Geo.* 2. *c.* 23. the County-Court for electing Knights of the Shire in *Parliament*, may be adjourned over from Day to Day, until the Election, *&c.* is determined; but not to a *Monday*, or *Friday*, &c. only, which will be void. The 10 *&* 11 *W.* 3. directs, That the Sheriff or other Officer having the Execution and Return of Writs of Summons for *Parliament*, ſhall on or before the Day of Meeting of the *Parliament*, and with all Expedition, not exceeding fourteen Days after Election, make Returns to the Clerk of the Crown in Chancery to be filed, on Pain of forfeiting 500 *l.* And the returning Officer, within twenty Days after the Election, is to deliver over to the Clerk of the Peace, all the Poll-Books on Oath made before two Juſtices, to be preſerved among the Records of the Seſſions of the Peace, *&c.* 10 *Ann. cap.* 23. In double Returns, it has been formerly a general Practice in the Houſe of Commons, that neither one nor the other ſhould ſit in the Houſe, until it be decided; *Anno* 1640. two Returns were made for *Great Marlow*, and in both Indentures one Perſon was returned, and he was admitted to ſit, but the others ordered to withdraw until the Queſtion was determined: And in the ſame Year, it was ordered, That where ſome are returned by the Sheriff or ſuch other Officer as by Law hath Power to return, and others returned by private Hands; in ſuch Caſe, thoſe that are returned by the Sheriff or other Officer, ſhall ſit until the Election is quaſhed by the Houſe. *Ordin.* 1640. If one be duly elected Knight, Citizen, or Burgeſs, and the Sheriff, *&c.* return another, the Return muſt be reformed and amended; and he that is duly elected, is to be inſerted, for the Election is the Foundation, and not the Return. 4 *Inſt.* 49. In Action of the Caſe, *&c.* the Plaintiff declared, that he was duly elected a Member of *Parliament* for ſuch a Borough, and the Defendant returned two other Perſons; and that he petitioned the Houſe of Commons, and was adjudged to be duly elected, and his Name ordered to be inſerted in the Roll, and the Name of the other to be razed out: The Plaintiff had a Verdict; but it was adjudged in Arreſt of Judgment, that this Declaration was not founded on the Act 7 *&* 8 *W.* 3. becauſe that Statute gave an Action where there was none before, and therefore the Fact muſt be laid agreeable to it, which not being done, the Defendant had Judgment. 2 *Salk.* 504. The Court will not meddle in an Action upon a double Return, until it is determined in *Parliament*. *Lutw.* 88. And it hath been holden that for a double Return, no Action lay before the Statute 7 *&* 8 *W.* 3. *cap.* 7. becauſe it is the only Method that the Sheriff had to ſecure himſelf; and when the Right was decided in the *Parliament*, then one Indenture was taken off the File, ſo that it is not then a double Return; neither can the Party have an Action for a falſe Return, for the Matter may be determined in the Houſe whether true or falſe; and if ſo, there will be an Inconvenience in contrary Reſolutions, if they ſhould determine in one Way, and the Courts at Law another Way; but after a Diſſolution the Action may lie for a falſe Return, as then the Right cannot be determined in *Parliament*. 2 *Salk.* 502. A double Return is of the ſame Nature with a falſe Return, as to Action on the Caſe; in both it is grounded on the Falſity; but there is another Reaſon why this Action will not lie for a double Return, (*viz.*) becauſe the Law doth not take any Notice of ſuch a Return, it is only allowed by the Uſage of *Parliament*, and in Caſes wherein the proper Officer cannot determine who is choſen; therefore when he doubts, he makes a double Return, and ſubmits the Choice to the Determination of the Houſe of Commons; and if that Houſe doth admit ſuch Returns, and make Determinations on them, it will be hard for the Law to ſubject a Man to the Action only for ſubmitting a Fact to be determined by a Court, which hath a proper Juriſdiction to determine it: And by Reaſon of the Variety of Opinions, that an Action in this Caſe would lie, and would not; it hath been enacted by Stat. 7 *&* 8 *W.*

3. *cap.* 7. That the laſt Determination of the Houſe of Commons concerning the Right of Election, is to be purſued. 2 *Lev.* 114. 1 *Nelſ. Abr.* 30. A Member elected and returned for ſeveral Places, is to make his Choice for which Place he will ſerve; and if he doth not, by the Time which the Houſe ſhall appoint, the Houſe may determine for what Place he ſhall continue a Member, and Writs ſhall go out for the other Place. Candidates are not to make Preſents of Money to, or treat, *&c.* Electors, after the *Teſte* of the Writ of Summons, or iſſuing out the Writs of Election, or after any Place of a Member becomes vacant; if they do, for this Bribery they ſhall be incapacitated to ſerve as Members. 7 *W.* 3. *c.* 4. And no Officers of the Exciſe, Poſt-Office, *&c.* are to make any Intereſt for Members of *Parliament*, on Pain of forfeiting 100 *l.* and Diſability, *&c.* 5 *&* 6 *W. & M. cap.* 20. By a late Act, an *Oath* is to be taken by Electors of Members of *Parliament*, That they have not received or had any Money, Gift, Reward, Office, Place or Imployment, or any Promiſe for Money, Gift, Place, *&c.* to them or their Uſe, to give their Votes; and if they ask, take, or contract for any Money, or Reward, by Gift or other Device, to give or refuſe their Votes, or if any Perſons by Gift, *&c.* corruptly procure any one to give his Vote, they ſhall forfeit 500 *l.* and be diſabled to vote in any Election of Members of *Parliament*, and to hold any Office, or Franchiſe, *&c.* And Officers admitting Perſons to Vote, without taking the aforeſaid Oath, if demanded, incur a Forfeiture of 100 *l.* Likewiſe an Oath is to be adminiſtred to Returning Officers, That they have not received any Money, Gift, Office, Place, *&c.* or Promiſe for ſuch, for making any Returns, *&c.* Stat. 2 *Geo.* 2. *c.* 24. Perſons are to be proſecuted within two Years, after any Offence againſt this laſt Statute, for preventing Bribery and Corruption in Elections of Perſons to ſerve in *Parliament*, or ſhall not be liable to any Incapacity or Forfeiture, *&c.* by the 9 *Geo.* 2. *c.* 38. And when Election of any Members of *Parliament* ſhall be made, the Secretary at War ſhall iſſue Orders for the Removal of all Soldiers quartered in any City, Town, or Borough, where ſuch Election ſhall be, one Day at leaſt before, to the Diſtance of two or more Miles; and not to make a nearer Approach, until after the Poll taken is ended, *&c.* But this not to extend to the Liberty of *Weſtminſter*, *&c.* in Reſpect of his Majeſty's Guards; nor to fortified Places, *&c.* Stat. 8 *Geo.* 2. *cap.* 30.

Parliaments holden, and Proceedings in. All *Parliaments* are to be held without Force. 7 *Ed.* 1. Before the *Conqueſt*, *Parliaments* were held twice every Year: The 4 *Ed.* 3. enacted, That a *Parliament* ſhould be holden once a Year, and oftner if neceſſary; and the 36 *Ed.* 6. requires a *Parliament* to be held every Year. But by the Means of Cardinal *Wolſey*, the Favourite of King *Hen.* 8. a *Parliament* was held but once in fourteen Years during that Reign; which was upon a remarkable Occaſion, *viz.* to attaint the Duke of *Buckingham*. The Stat. 16 *Car.* 2. *cap.* 1. ordains, That the Sitting and Holding of *Parliaments* ſhall not be diſcontinued above three Years. And the 6 *W. & M. cap.* 2. enacts, That new *Parliaments* ſhall be choſen once in three Years; and no *Parliament* continue longer than three Years. But by 1 *Geo.* 1. *c.* 38. The Time of Continuance of *Parliaments* is inlarged to ſeven Years; to be computed from the Day appointed for their Meeting, by the Writ of Summons. The occaſional Law, 1 *W. & M. Seſſ.* 1. *cap.* 1. declared, That the Lords and Commons convened at *Weſtminſter*, were the two Houſes of *Parliament*, notwithſtanding the Want of any Writ of Summons, or other Defect of Form, *&c.* Tho' the Stat. 12 and 13 *Car.* 2. *c.* 1. made it very Penal, for any Perſons to affirm that the Houſes of *Parliament* have a Legiſlative Power without the King. An old Statute ordains, That every Perſon and Commonalty, having Summons to *Parliament*, ſhall come thither, in Pain to be amerced, or otherwiſe puniſhed: And if the Sheriff doth not ſummon them, he ſhall likewiſe be amerced, *&c.* 5 *R.* 2. *c.* 4. On the holding of a *Parliament*, the King the firſt Day ſits in the upper Houſe, and by himſelf or the Lord Chancellor, ſhews the Reaſons of their Meeting; and then the Commons are commanded to chuſe their Speaker, which they having done, two or three Days afterwards he is preſented to the King, and after ſome Speeches is allowed, and ſent down to the Houſe of Commons; when the Buſineſs of *Parliament* proceeds. 12 *Rep.* 115. A *Parliament* cannot begin on the Return of the Writs, without the Preſence of the King, in Perſon, or by Repreſentation; and by Repreſentation two Ways, either by a Guardian of *England*, by Letters Patent under the Great Seal, when the King is out of the Realm; or by Commiſſion, to certain Noble Lords in Caſe of Indiſpoſition, *&c.* when his Majeſty is at Home. 4 *Inſt.* 6, 7. And if any *Parliament* is to be holden before a Guardian of the Realm, there muſt be a ſpecial Commiſſion to begin the Parliament; but the *Teſte* of the Writs of Summons is to be in the Guardian's Name: And by an antient Law, if the King being beyond the Seas, cauſe a *Parliament* to be ſummoned in this Kingdom, by Writ under the *Teſte* of his Lieutenant; and after the King returns hither, the *Parliament* ſhall proceed without any new Summons. 8 *H.* 5. In the fifth Year of King *Henry* 5. a *Parliament* was held, before *John* Duke of *Bedford*, Brother to the King, and Guardian of the Kingdom. *Anno* 3 *Edw.* 4. a *Parliament* was begun in the Preſence of the King, and prorogued to a further Day; and then *William* Archbiſhop of *York*, the King's Commiſſary by Letters Patent, held the ſame *Parliament*, and made an Adjournment, *&c.* And 28 *Eliz.* the Queen by Commiſſion under the Great Seal, reciting, that for urgent Occaſions ſhe could not be preſent in her Royal Perſon, did authoriſe *John Whitgift* Archbiſhop of *Canterbury*, *William* Lord *Burleigh* Lord Treaſurer of *England*, and *Henry* Earl of *Derby* Lord Steward, to hold a *Parliament*, &c. *Ad faciendum omnia & ſingula, &c. necnon ad* Parliamentum *Adjornand' & Prorogand'*, *&c.* And in the upper Part of the Page, above the Beginning of the Commiſſion is written, *Domina Regina Repræſentatur per Commiſſionarios, viz. &c.* Theſe Commiſſioners ſat on a Form before the Cloth of State, and after the Commiſſion read, the *Parliament* proceeded. A *Parliament* may be holden at any Place the King ſhall aſſign; but it ought not to be diſſolved as long as any Bill remains undiſcuſſed, and Proclamation muſt be made in the *Parliament*, that if any Perſon have any Petition, he ſhall come in and be heard, and if no Anſwer be given, it is intended that the Publick are ſatisfied. *Lex Conſtitution.* 157. In former Times, by the Death of the King during the Sitting of the *Parliament*, the *Parliament* was *ipſo facto* diſſolved: But by the Stat. 4 *Ann. c.* 8. A *Parliament* ſitting or in Being, at the Demiſe of the King, ſhall continue for ſix Months; unleſs Prorogued or Diſſolved, by ſuch Perſon to whom the Crown ſhall come; by 1 and 12 *W.* 3. All Orders of *Parliament* determine by Prorogation; and one taken by Order of the *Parliament*, after their Prorogation, may be diſcharged on an *Habeas Corpus*, as well as after a Diſſolution: But the Diſſolution of a *Parliament* doth not alter the State of Impeachments, brought up by the Commons in a preceding Parliament. *Raym.* 120. 1 *Lev.* 384. And it hath been reſolved by the Lords Spiritual and Temporal, that Caſes of Appeals and Writs of Error, ſhall continue, and are to be proceeded *in Statu quo*, *&c.* as they ſtood at the Diſſolution of the laſt *Parliament*. *Raym.* 381.

A Prorogation of the *Parliament* is always by the King, and in this Caſe the Seſſions muſt begin *de Novo*; and if a *Parliament* is prorogued upon the Return of the Writ of Summons, it begins at the End of the Prorogation: An Adjournment is by each Houſe, and the Seſſions continues notwithſtanding ſuch Adjournment. 1 *Mod.* 242. By a Prorogation of a *Parliament*, there is a Seſſion; and every ſeveral Seſſion of *Parliament* is in Law a ſeveral *Parliament:* Though if it be only an Adjournment, there is no Seſſion; and when a *Parliament* is called and doth ſit, but is diſſolved without any Act paſſed, or Judgment given, it is no Seſſion of *Parliament*, but a Convention. 4 *Inſt.* 27. If a *Parliament* is aſſembled, and ſeveral Orders are made, and Writs of Error brought in the Houſe of Peers, and ſeveral Bills agreed on, but none ſigned; this is but a Convention, and no *Parliament*, or Seſſions of *Parliament:* But every Seſſion, in which the King ſigns a Bill, is a *Parliament*; and ſo every *Parliament* is a Seſſion. 1 *Roll. Rep.* 29. *Hutt.* 61. And a Seſſion doth continue, until it is prorogued or diſſolved. The *Parliament* from the firſt Day of ſitting is called the firſt Seſſion of *Parliament*, &c. *Raym.* 120. And the Courts of Juſtice *ex Officio* are to take Notice of the Beginning, Prorogation, and Ending of every *Parliament*; alſo of all general Statutes: And Acts of Parliament take Effect from the Beginning of the *Parliament*, unleſs it be otherwiſe ordered by the Acts. 1 *Lev.* 296. 4 *Rep. Hob.* 111. On a Prorogation, ſuch Bills as have paſſed either or both Houſes, not having received the Royal Aſſent, muſt fall: For there can be no Act of *Parliament*, without the Conſent of the Lords, and Commons, and the Royal *Fiat* of the King, giving his Conſent Perſonally, or by Commiſſion; and by the Stat. 33 *H.* 8. *cap.* 21. the King may paſs Acts by Commiſſion under the Great Seal, ſigned by his Hand; and ſuch Acts ſhall be of equal Force as if the King were preſent in Perſon. Every Man in Judgment of Law is Party to an Act of *Parliament*; after the Royal Aſſent is given, it is the Prince's, and whole Realm's Deed: The Determination of the High Court of *Parliament*, being preſumed to be the Act of every particular Subject, who is either preſent perſonally, or conſenting by his Repreſentative. Publick Bills or Acts of *Parliament* are commonly drawn by ſuch Members of the Houſe of Commons as are moſt inclined to the Effecting the Good of the Publick, particularly in Relation to the Bill deſigned, taking Advice thereupon; and Acts for the Revival, Repeal, or Continuance of Statutes, are penned by Lawyers, Members of the Houſe, appointed for that Purpoſe: And in the bringing in and paſſing of Statutes, the following Formalities are obſerv'd, *viz.* Any Member of Parliament may move for a Bill to be brought in, except it be for impoſing a Tax, which is to be done by Order of the Houſe; and being granted, the Perſon making the Motion, and thoſe who ſecond it, are ordered to prepare and bring in the ſame: When the Bill is ready, ſome of the Members ordered to prepare it, preſent it; and upon a Queſtion being agreed to, it has the firſt Reading by the Clerk at the Table; after this the Clerk delivers the Bill to the Speaker, who, ſtanding up, declares the Subſtance of it; and if any Debate happens, he puts the Queſtion, whether the ſame ſhall have a ſecond Reading; And ſometimes upon Motion appoints a Day for it; for publick Bills, unleſs upon extraordinary Occaſions, are ſeldom read more than once in a Day, the Members being allowed convenient Time to conſider of them: If nothing be ſaid againſt a Bill, the ordinary Courſe is to proceed without a Queſtion; but if the Bill be generally diſliked, a Queſtion is ſometimes put, whether the Bill ſhall be rejected? And if it be rejected, it cannot be propoſed any more that Seſſions: When a Bill hath been read a ſecond Time, any Member may move to have the ſame amended; but no Member of the Houſe is admitted to ſpeak more than once in a Debate, except the Bill be read more than once that Day, or the whole Houſe is turned into a Committee; and after ſome Time ſpent in Debates, the Speaker collecting the Senſe of the Houſe, reduces the ſame to a Queſtion, which he ſubmits to the Houſe, and is put to the Vote: And a Queſtion is to be put, after the Bill is ſo read a ſecond Time, whether it ſhall be committed? which is either to a Committee of the whole Houſe or a private Committee, as the Importance of the Bill ſhall require; and this Committee is to report their Opinion of the Bill, with the Amendments, to the Houſe, the Chairman having cauſed the Clerk attending to read the Bill, and read it himſelf, putting every Clauſe to the Queſtion, &c. The Chairman makes his Report at the Side-Bar of the Houſe, reading all the Alterations made, and then delivers the ſame to the Clerk of the *Parliament*; who likewiſe reads all the Amendments, and the Speaker puts the Queſtion, whether they ſhall be read a ſecond Time? And if that be agreed unto, he reads the Amendments himſelf, and puts the Queſtion, whether the Bill ſo amended ſhall be ingroſſed, and read a third Time ſome other Day? And then the Speaker takes the Bill in his Hand, holds it up, and puts the laſt Queſtion, whether the Bill ſhall paſs? If a Majority of Voices are for it, then the Bill paſſes; and it is ſent up to the Houſe of Lords, where, when it is twice read, the Queſtion is to be for Commitment; or if it be not committed, then it is to be read a third Time, and the next Queſtion to be for its Paſſing; and upon the third Reading of the Bill, any Member may ſpeak againſt the whole Bill to throw out the ſame, or for Amendment of any Clauſe thereof; and if it be amended, it is to be ſent back again to the Commons for their Concurrence, and being returned, is then paſſed in the Houſe of Lords, and ready for the Royal Aſſent. If a Bill paſſes in one Houſe, but a Demur happens upon it when ſent to the other Houſe, in this Caſe a Conference is demanded; wherein certain deputed Members of each Houſe meet in the *Painted Chamber*, and Debate the Matter; and when they have agreed, the Bill paſſed is brought to the King in the Houſe of Lords, where having his Royal Robes on, he declares the Royal Aſſent, by the Clerk of the *Parliament. Pract. Solic in Parliam.* 397, 398. As for private Bills, Leave is to be obtained by Petition, &c. to bring in the ſame; and the Subſtance thereof is to be ſet forth, until which a Bill is not to be offered; and when the Petition is read, and Leave given to bring in the Bill, whereupon it is accordingly brought into the Houſe, the Perſons concerned and affected by it may be heard by themſelves or Counſel at the Bar, or before a Committee, to whom ſuch Bill is referred; (and in Caſe of a Peer, he ſhall be admitted to come within the Bar of the Houſe of Commons, and ſit covered on a Stool whilſt the ſame is debating). And after Counſel is heard on both Sides, and the Houſe is ſatisfied with the Contents of the Bill, it is committed, and paſſed, &c. All Bills, Motions and Petitions, are by Order of *Parliament* to be entred on the *Parliament* Rolls, although they are denied, and never proceed to the Eſtabliſhment of a Statute, together with the Anſwers *Lex Conſtitution.* 154 The Speaker of the Houſe of Commons is not allowed to perſuade or diſſuade in paſſing of a Bill, only to make a ſhort Narrative of it; opening the Parts of the Bill, ſo that all may underſtand it; if any Queſtion be upon the Bill, he is to explain, but not enter into Argument or Diſpute: and he is not to vote, except the Houſe is equally divided: When Mr. Speaker deſires to ſpeak, he ought to be heard without Interruption; and when the

the Speaker ſtands up, the Member ſtanding up is to ſit down: If two ſtand up to ſpeak to a Bill, he that would ſpeak againſt the Bill, if it be known, is to be firſt heard; otherwiſe he that was firſt up, which is to be determined by the Speaker: No Member is to be taken down, unleſs by Mr. Speaker, in ſuch Caſes as the Houſe do not think fit to admit; and if any Perſon ſpeak impertinently, or beſides the Queſtion, the Speaker is to interrupt him, and know the Pleaſure of the Houſe whether he ſhall be further heard: But if he ſpeaks not to the Matter, it may be moderated: And whoſoever hiſſes or diſturbs any Perſon in his Speech, ſhall anſwer it at the Bar of the Houſe. In the enacting of Laws, and other Proceedings in *Parliament*; the Lords give their Voices in their Houſe, from the puiſne Lord *ſeriatim*, by the Word *Content*, or *Not Content:* The Manner of Voting in the Houſe of Commons, is by *Yea* and *No*; and if it be difficult to determine which are the greater Number, the Houſe divides, and four Tellers are appointed by the Speaker, two of each Side, to Number them, the *Ay's* going out and the *No's* ſtaying in; and thereof Report is made to the Houſe. When the Members of the Houſe go forth, none is to ſtir, until Mr. Speaker riſes from his Seat; and then all the Reſt are to follow after.

Parliament de la Bonde, A *Parliament* in King *Edw.* 2d's Time, ſo called, whereunto the Barons came armed againſt the two *Spencers*, with coloured *Bands* for Diſtinction. *Baronag. Engl.* 1 *part.*

Parliamentum Diabolicum, Was a *Parliament* held at *Coventry* 38 *H. 6.* wherein *Edward* Earl of *March*, (afterwards King) and divers of the Chief Nobility were attainted; but the Acts then made were annulled by the ſucceeding *Parliament. Holinſh. Cron.*

Parliamentum Indoctorum, A *Parliament* 6 *H.* 4. whereunto by ſpecial Precept to the Sheriffs in their ſeveral Counties, no *Lawyer* or Perſon ſkilled in the Law was to come; and therefore it was ſo termed. *Rot. Parl* 6 *H.* 4.

Parliamentum inſanum, Was a *Parliament* aſſembled at *Oxford*, *Anno* 41 *H.* 3. ſo ſtiled, from the *Madneſs* of their Proceedings; and becauſe the Lords came with great Numbers of armed Men to it, and Contentions grew very high between the King, Lords and Commons, whereby many extraordinary Things were done and enacted. 4 *Co. Inſt.*

Parliamentum Religioſorum. In moſt *Convents*, they had a common Room, into which the Brethren withdrew for Diſcourſe and Converſation; and the Conference there had was termed *Parliamentum. Matt. Pariſ.* And beſides the ſupream Court of *Parliament*; the Abbot of *Croyland* was wont to call a Parliament of his Monks, to conſult about the Affairs of his Monaſtery: And at this Day, the Societies of the two Temples, or *Inns of Court*, do call that Aſſembly a *Parliament*, wherein they confer upon the common Affairs of their ſeveral Houſes. *Crompt. Juriſd. fol.* 1.

Parochial, Belonging to a *Pariſh*; and there are ſome Places that are *Extraparochial.*

Parol, Is a *French* Word, uſed for a Plea in Court. *Kitch.* 193. And being joined with Leaſe, as *Leaſe Parol*, is a Leaſe by *Word of Mouth*; to diſtinguiſh it from one in *Writing.*

Parol Arreſt. Any Juſtice of Peace may by Word of Mouth, authoriſe any one to arreſt another who is guilty of a Breach of the Peace in his Preſence, *&c. Dalt.* 117.

Parol Demurrer, Is a Privilege allowed to an *Infant*, who is ſued concerning Lands which came to him by Deſcent; and the Court thereupon will give Judgment, *Quod loquela prædicta remaneat quouſque* the Infant comes to the Age of Twenty-one Years: And where the Age is granted on *Parol Demurrer*, the Writ doth not abate, but the Plea is put *ſine Die*, until the Infant is of full Age; and then there ſhall be a Reſummons. 2 *Lill. Abr.* 280. 2 *Inſt.* 258. *Raſt. Entr.* 363. The Granting of a *Parol Demurrer* is in Favour of an Infant, and for his Benefit, that he may not be prejudiced in his Right for Want of well knowing his Eſtate, *&c.* And if his Anceſtor dies ſeiſed, and the Lands deſcend to him, and he enters and takes the Profits, it would be a Prejudice to the Infant to loſe the Poſſeſſion which he hath; ſo that in that Caſe it ſhall ſtay until his Age. 6 *Rep.* 3. The Tenant in an Action, cannot pray *Parol Demurrer*, until the Infant Demandant comes of Age: This is expreſly provided for by 6 *Ed.* 1. *cap.* 2. And it would damage the Infant, if he ſhould be ſo delayed upon an Action brought by him, where an Eſtate is deſcended to him from his Anceſtor. 6 *Rep.* 3, 5. In *Parol Demurrer* when it may be had, if two are vouched, and there is *Parol Demurrer* for the Nonage of one; it ſhall be for the other alſo. 45 *Ed.* 3. 23. See *Age Prier.*

Patricide, (*Patricida*) Is properly he that kills his Father, and may be applied to him that killeth his Mother. *Law Lat. Dict.*

Parſon, (*Perſona*) Signifies the Rector of a Church, becauſe for his Time he repreſents the Church, and in his *Perſon*, the Church may ſue for and defend her Right, *&c.* Or he is called *Parſon* as he is bound by Virtue of his Office, *in propria Perſona ſervire deum. Fleta, lib.* 9. *cap.* 18. 1 *Inſt.* 300. Alſo the Word *Parſon* in a large Senſe, includes all Clergymen having Spiritual Preferments. And there may be two ſeveral *Parſons* in one Church, one of the one Moiety, and the other of the other; and a Part of the Church and Town allotted to each; and may be two that make but one *Parſon* in a Church, preſented by one Patron. 1 *Inſt.* 17, 18. To a *Parſon* of a Church, theſe Things are requiſite; Holy Orders, Preſentation, Inſtitution, and Induction; and where a Perſon is compleat *Parſon*, he may ceaſe to be *Parſon* of the Church, by Death, or Ceſſion, Reſignation, Deprivation for Simony, Nonconformity to the Canons, for Adultery, *&c.* 1 *Inſt.* 120. 4 *Rep.* 75, 76. A *Parſon* hath the entire Fee of his Church; and where 'tis ſaid he hath not the Right of Fee-ſimple, that is underſtood as to bringing a Writ of Right. *Cro. Car.* 582. And in the Time of the *Parſon*, the Patron hath nothing to do with the Church; but if the *Parſon* waſtes the Inheritance thereof to his own private Uſe, in cutting Trees, *&c.* his Patron may have a Prohibition, ſo that to ſome Purpoſes he hath an Intereſt in the *Parſon's* Time. 11 *H.* 6. 4. 11 *Rep.* 49. Sir *Edward Coke* was of Opinion, That at Common Law a *Parſon* could not be arreſted; and ſaid, he had ſeen a Report grounded on the Statutes 50 *Edward* 3. *c.* 5. and 1 *Henry* 2. *c.* 15. which are in Affirmance of the Common Law, and in Maintenance of the Liberties of the Church; that a *Parſon* ought not to be arreſted in going, ſtaying, or returning to celebrate Divine Service, nor any other Perſon who attended him in ſuch Service; and that if he was, he might have an Action upon thoſe Statutes, againſt the Perſon making the Arreſt. 12 *Rep.* 100. A *Parſon* ought not to appear at the Sheriff's Turn, or the Court Leet, without an abſolute Neceſſity. *F. N. B.* 160. No *Parſon* or Spiritual Perſon, ſhall take a Farm or Leaſe of Lands, *&c.* to himſelf, or any one for his Uſe, on Pain of forfeiting 10*l.* a Month, one Moiety to the King, and the other to the Informer. Stat. 21 *H.* 8. *cap.* 13. Nor ſhall he buy, to ſell again, any Merchandize, Corn, Cattle, *&c.* upon Forfeiture of treble Value: But it is provided, that he may buy Horſes, or any other Cattle, for his neceſſary Uſe in manuring his Glebe and Church Lands. *Ibid.* On Information upon this Statute for renting a Farm, the Defendant pleaded in Bar, that he had not ſufficient Glebe for paſturing his Cattle, nor Corn for his Family; but the Plaintiff traverſed his having ſpent the Product thereof in his Family, *&c.* 1 *Lutw.* 134 See *Church.*

Parſon Imparſonee, (*Perſona imperſonata*) Is he who is in Poſſeſſion of a Church, be it preſentative or impropriate, and with whom the Church is full. *Perſona*, according to the *New Book of Entries*, ſeems to be the Patron that has Right to give the Benefice, by Reaſon he had anciently the Tithes in reſpect of his Liberality in erecting or endowing the Church, *Quaſi ſuſtineret Perſonam Eccleſiæ*; and *Perſona Imperſonata* is the *Parſon* to whom the Benefice is given in the Patron's Right. *Perſona Imperſonata* is uſed for the Rector of a Church preſentative. *Reg. Judic.* 24. And *Dyer* ſays, a Dean and Chapter are *Parſons Imparſonees* of a Benefice appropriated to them; who alſo ſhews that *Perſona Imperſonata* is one that is inducted and in Poſſeſſion of a Benefice. *Dyer* 40, 221. So that *Perſona* may be termed *Imperſonata*, only in Regard of the Poſſeſſion he hath of the Rectory, by the Act of another. 1 *Inſt.* 300. In a *Quare Impedit* the *Parſon* is to plead *Perſona Imperſonata*; but if he doth not ſay at the Time of obtaining the Writ, it will be inferred by the Writ that he is. *Cro. Car.* 105. And this is a Plea that he is admitted and inſtituted in the Church, *&c.* 7 *Rep.* 26.

Parſon mortal. The Rector of a Church inſtituted and inducted, for his own Life, was called *Perſona mortalis:* And any Collegiate or Conventual Body, to whom the Church was for ever appropriaten, were termed *Perſona Immortalis.* Cartular. Rading. MS. fol. 182.

Parſonage, or Rectory, is a Pariſh Church, endowed with a Houſe, Glebe, Tithes, *&c.* Or it is a certain Portion of Lands, Tithes, and Offerings, eſtabliſhed by Law, for the Maintenance of the Miniſter that hath the Cure of Souls within the Pariſh whereof he is Rector: And though properly a *Parſonage* or Rectory doth conſiſt of Glebe Land and Tithes; yet it may be a Rectory, though it have no Glebe, but the Church and Church-yard: Alſo there may be neither Glebe nor Tithes, but annual Payments in Lieu thereof. *Parſ. Counc.* 190. The Rights to the *Parſonage* and Church Lands are of ſeveral Natures: For the Parſon hath a Right to the *Poſſeſſion*; the Patron hath the Right of *Preſentation*; and the Ordinary a Right of *Inveſtiture*, &c. But the Rights of the Patron and Ordinary are only collateral Rights; neither of them being capable of poſſeſſing or retaining the Church themſelves; though no Charge can be laid on the Church or *Parſonage*, but by the Conſent and Agreement of all of them. *Hugh*'s *Parſ. Law* 188.

Partes finis nihil habuerunt, &c. An Exception taken againſt a *Fine* levied. 3 *Rep.*

Participatio, Is Charity ſo called, becauſe the Poor are thereby made *Participes* of other Men's Goods: We read it in ſeveral Places in *Mon. Ang. Tom.* 2. *pag.* 321, *&c.*

Parties, Are the Perſons which are named in a *Deed* or *Fine*, *viz.* that make the *Deed* or levy the *Fine*; and alſo to whom made and levied. The *Parties* to a *Suit*, are the Plaintiff and Defendant who carry on the ſame.

Partitione facienda, Is a Writ that lies for thoſe who hold Lands or Tenements *pro indiviſo*, and would ſever to every one his Part, againſt them that refuſe to join in Partition; as *Coparceners*, &c. *F. N. B.* 61. 31 *H.* 8. *c.* 1.

Partition, (*Partitio*) Is a Dividing of Lands deſcended by the Common Law, or by Cuſtom, among Coheirs or *Parceners*, where there are two at the leaſt: And *Partition* may be made by Jointenants, and Tenants in Common; but after ſuch *Partition*, they ſhall have Aid one of another, and their Heirs, to deraign Warranty, and to recover, *&c.* 31 *H.* 8 *c.* 1. 32 *H.* 8. *c.* 32. Vide *Parceners.*

Partners, Are where two or more agree to come in Share and Share alike to any Trade or Bargain. If there are two *Partners* in Trade, and Judgment is recovered againſt one of them, his Moiety of the Goods in *Partnerſhip* only ſhall be taken in Execution. *Show. Rep.* 174. See *Cuſtom of Merchants.*

Part-Owners, Are thoſe that are concerned in *Ship* Matters, and who have joint Shares therein. And when there are *Part-owners* of a Ship, the Majority may fit her out, without the Conſent of the Reſt; and if they do, ſuch Majority run all the Hazard, and are to pertake of the Profits. *Show.* 13, 30. Action lies as well againſt the *Part-owners* of a Ship, for the Loſs or Spoiling of Goods delivered to the Maſter, as againſt the Maſter; for as the Maſter of a Ship is chargeable in Reſpect of his Wages, ſo are the *Port-owners* in Reſpect of the Freight; but the Action againſt the *Part-owners* muſt be brought againſt all of them, or the Defendants may take Advantage of it by pleading in Abatement, *&c. Show. Rep.* 30, 105. 3 *Lev.* 259.

Party Jury, Is a Jury *de medietate Linguæ*, in Actions brought by Foreigners. Stat. 14 *Car.* 2. *cap.* 11.

Parviſe, (*Parviſa, Parviſus, non à* Parvus *adject. ſed à Gal. le* Parvis) *Sed placitantes, tunc, i. e.* poſt meridiem, *ſe divertunt ad* Parviſum *&* *alibi conſulentes cum ſervientibus ad legem & aliis conſiliariis, &c.* Thus ſaith *Forteſcue* in his *de Laudibus LL. Angl. cap.* 51. *pag.* 124. And *Selden* in his Notes on *Forteſcue* defines it to be, an Afternoon's Exerciſe, or *Moot* for the Inſtruction of young Students; bearing the ſame Name originally with the *Parviſiæ* at *Oxford. Seld. Notes, pag.* 56. Of which *Chaucer* has Mention in one of his Prologues.

A Serjeant at Law, that ware and wiſe,
That often had been at the Parviſe.

Paſcha clauſum. The Octaves of *Eaſter* or *Low Sunday*, which *cloſes* that Solemnity: And *Die* (*tali*) *poſt* Paſcha clauſum, is a Date in ſome of our old Deeds. The firſt Statute of *Weſtminſter*, *Anno* 3 *Ed.* 1. is ſaid to be made the *Monday* after *Eaſter* Week; *poſt de la cluſe de Paſche, &c.*

Paſcha floridum, Is the *Sunday* before *Eaſter* called *Palm-Sunday*; when the proper Hymn or Goſpel ſung was *occurrent turbæ cum* Floribus & Palmis, *&c.* Cartular. Abbat. Glaſton. MS. f. 75.

Paſchal Rents, Are Rents or yearly Tributes paid by the Clergy to the Biſhop or Archdeadon, at their *Eaſter* Viſitations.

Paſcua. A Meadow or Paſture Gound, ſet apart to feed Cattle. See *Paſtura.*

Paſcuage, (*Paſcuagium*, Fr. *Paſcage*) The Graſing or Paſturing of Cattle. —— *Et habere viginti Porcos quietos de* Paſcuagio, *&c. Mon. Ang. Tom.* 2. *pag.* 23.

Paſnage, And *Pathnage* in Woods, *&c.* See *Pannage.*

Paſſage, (*Paſſagium*) Is properly over Water, as Way is over Land; it relates to the Sea, and great Rivers, and is a *French* Word ſignifying *Tranſitum.* In the Stat. 4 *Ed.* 3. *cap.* 7. it is uſed for the Hire that a Man pays for being tranſported over Sea, or over any River: And it is mentioned among *Cuſtoms* and Duties, as *Theolonio*, Paſſagio, & *Laſtagio. Chart. Hen.* 1. All Perſons ſhall have free *Paſſage* on the River *Severn*; and if any be diſturbed, he may have his Remedy by Action at the Common Law. Stat. 9 *H.* 6. *c.* 5. There are other Statutes for regulating the *Paſſage* of this River, and preventing Diſorders therein by the *Welch*, *&c.* 19 *H.* 7. *c.* 18. 26 *H.* 8.

H. 8. *c.* 5. Alſo *Paſſagio* is a *Writ* directed to the Keepers of the Ports to permit a Man to *paſs* over Sea, who has the King's Leave. *Reg. Orig.* 193.

Paſſagium Regis, Was a *Voyage* or Expedition to the *Holy Land*, when made by the *Kings* of *England* in Perſon. *Pryn's Collect. par.* 3 *p.* 767.

Paſſator, Is he that hath the Intereſt or Command of the *Paſſage* of a River; or the Lord to whom a Duty is paid for *Paſſage*. Pat. Edw. 3. par. 3. Mon. Ang. Tom. 1. p. 505.

Paſs-port, Signifies a Licence granted by any Perſon in Authority, for the ſafe Paſſage of a Man, or any Ship, &c. from one Place or Country to another. Stat. 2 *Ed.* 6. *c.* 2. *Paſſes* for Ships to the *Mediterranean* Sea, by Statute 4 *Geo.* 2. *cap.* 18. See *Mediterranean.*

Paſtoral Staff, The Staff or *Croſier* of a Biſhop, wherewith they were inveſted.

Paſture, (*Paſtura*) Is any Place where Cattle may feed; and Feeding for Cattle is called *Paſture*, wherefore we call Feeding Grounds *Common of Paſture:* But Common of *Paſture* is properly a Right of putting Beaſts to *Paſture* in another Man's Soil; and in this, there is an Intereſt of the Lord and of the Tenant. *Wood's Inſt.* 196, 197. *Paſtura* differs from *Paſcua*, as appears from what follows, *viz.* Paſtura *omne genus paſcendi ſignificat, ſive fiat in Pratis, ſive in ſtipula, ſive in Agris, ſive in Campis; ſed* Paſcua *eſt locus principaliter deputatus pecoribus paſcendis, utputa in montibus, moris, mariſcis & planis non cultis nec aratis.* Lindewood. Provin. Angl. lib. 3. c. 1.

Paſtus, A Procuration or Proviſion, which the Tenants of the King, or other Lords, were bound to make for them at certain Times, or as often as they made a Progreſs to their Lands.—— *Hoc modo per ævum liberabo a* Paſtu *Regis & Principum.* Chart. Walgaſi Regis Merciorum in Mon. Angl. Tom. 1. p. 123.

Patentee, Is one to whom the King grants his Letters Patent. 7 *Ed.* 6. *c.* 3

Patents, Are the King's Writings, ſealed with the Great Seal, having their Name from being *open:* And they differ from Writs. *Crompt. Juriſd.* 126. The King is to adviſe with his Council touching Grants and *Patents* made of his Eſtate, &c. And in Petitions for Lands, Annuities or Offices, the Value is to be expreſſed; alſo a former *Patent* is to be mentioned where the Petition is for a Grant in Reverſion, or the *Patents* thereupon ſhall be void. 1 *Hen.* 4. *cap.* 6. 6 *Hen.* 8. *cap.* 15 And *Patents* which bear not the Date and Day of Delivery of the King's Warrants into *Chancery*, are not good. Statute 18 *Hen.* 6. *cap.* 1. Where the King's *Patent* creates a new Eſtate, of which the Law does not take Knowledge; the *Patents* are void. 8 *Rep.* 1. 5 *Rep.* 93. But *Patents* ſhall not be avoided by nice and ſubtile Conſtructions: If a *Patent* may be taken to two Intents, and it is good as to one Intent, and not as to the other; this *Patent* is valid. *Jenk. Cent.* 138. When the King would paſs a Freehold, it is neceſſary that the *Patent* be under the Great Seal; and it ought to be granted *de Adviſamento* of the Chancellor of the Exchequer and Lord Treaſurer, in the uſual Manner. *Fitzgib.* 291. *Trin.* 5 *Geo.* 2. See *Grants of the King.*

Patria, Signifies the Country; but in the Law it is taken for a *Neighbourhood*, and when we ſay *Inquiratur per Patriam*, it is meant a *Jury of the Neighbourhood.*

Patriarch, (*Patriarcha*) Is a *Greek* Word applied to a Chief Father. *Anno* 385 in the general Council held at *Conſtantinople*, it was decreed that the Biſhop of that Place ſhould for ever be called a *Patriarch.*

Patrimony, (*Patrimonium*) An Hereditary Eſtate; or Right deſcending from Anceſtors. The legal Endowment of a Church, or Religious Houſe, was likewiſe called *Eccleſiaſtical Patrimony*; and the Lands and Revenues united to the *See* of *Rome*, are term'd St. *Peter's Patrimony.* Cowel.

Patrinus, Is uſed for Godfather, and *Matrina* a Godmother, in the Laws of King *Hen.* 1.

Patritius, Was an Honour conferred on Men of the firſt Quality, in the Time of the Engliſh *Saxon* Kings.—— *Pro ampliori firmitatis Teſtimento, Principes & Senatores, Judices &* Patritios *ſubſcribere fecimus.* Mon Ang. Tom. 1. p. 13.

Patron, (*Patronus*) Signifieth in the *Civil Law* him that hath manumitted a Servant; and thereby is accounted his great Benefactor, and claims Duty and Reverence of him during his Life. *Digeſt.* Tit. *de Jure Patronatus.* In the *Canon* and *Common Law*, it is he who hath the Gift and Diſpoſition of an Eccleſiaſtical Benefice; and the Reaſon of it is, becauſe the Gift of Churches and Benefices belonged unto ſuch good Men as either built or endowed them with great Part of their Revenues. *Terms de Ley* 473. And there are three Cauſes of *Patronage: Ratione Fundationis*, where one ſolely founds a Church; *Ratione Donationis*, when a Man only endows it; and *Ratione Fundi*, where a Perſon erects a Church on his own Ground. *Litt. Rep.* 137. 2 *Lill. Abr.* 286. The *Patron* is to preſent within ſix Kalendar Months after an Avoidance of the Church; and where the Church becomes void by the Death of the Incumbent, the *Patron* at his Peril muſt take Notice of it, in making Preſentation; but if there be an Avoidance by Deprivation, &c. he ſhall have Notice, and ſix Months after to preſent. 6 *Rep.* 61. 3 *Leon.* 46. If a Church becomes litigious by the Preſentation of two ſeveral *Patrons* of their Clerks, a *Jus Patronatus* may be awarded by the Biſhop to inquire into who is rightful *Patron*, and he is to admit accordingly. 2 *Roll. Abr.* 384, 385. The *Patron*'s Right is the moſt worthy and firſt Act and Part of a Promotion to a Benefice, and is granted and pleaded by the Name of *Libera Diſpoſitio Eccleſiæ.* Hob. 152. But during the Vacancy of a Church, the Freehold of the Glebe is not in the *Patron*; for it is in *Abeyance.* 8 *H.* 6. 24. *Litt.* 144. A *Patron* ſhall not have an Action for Treſpaſs done when the Church is vacant: And if a Man who hath a Right to Glebe Lands, releaſeth the ſame to the *Patron*, that is not good; becauſe the *Patron* has not any Eſtate in the Land. 11 *H.* 6. *c.* 4. If the *Patron* grants a Rent out of a Church, it is void even againſt himſelf. 38 *Ed.* 3. 4. See *Advowſon, Parſon, Preſentation, &c.*

Pavage, (*Pavagium*) Money paid towards the *Paving* of Streets or Highways. *Rot. Parl.* 10 *Edw.* 3.

Paving The Streets of *London*, &c. Stat. 24 & 32 *H.* 8. 23 *Eliz.* Vide *Scavengers.*

Pauper, Signifies a poor Man, according to which we have a Term in Law to ſue *in Forma Pauperis.* See *Forma Pauperis.*

Pawn, (*Pignus*) A Pledge or Gage for Surety of Payment of Money lent: It is ſaid to be derived *à* Pugno, *quia Res quæ* Pignori *dantur*, pugno *vel manu traduntur. Litt. Dict.* The Party that *pawns* Goods, hath a general Property in them; they cannot be forfeited by the Party that hath them in *Pawn* for any Offence of his, nor be taken in Execution for his Debt; neither may they otherwiſe be put in Execution, till the Debt for which they are *pawned* is ſatisfied. *Litt. Rep* 332. If a Man *pawns* Goods for Money, and afterwards a Judgment is had againſt the *Pawner* at the Suit of one of his Creditors; the Goods in the Hands of the *Pawnee* ſhall not be taken in Execution upon this Judgment, until the Money is paid to the *Pawnee*, becauſe he had a qualified Property in them, and the Judgment-Creditor only an Intereſt. 3 *Bulſt.* 17. And when a Perſon hath Jewels in *Pawn* for a certain Sum, and he that putteth them in *Pawn* is attainted; the

King ſhall not have the Jewels unleſs he pay the Money. *Plowd.* 487. The *Pawnee* of Goods hath a ſpecial Property in them, to detain them for his Security, &c. and he may aſſign the *Pawn* over to another, who ſhall hold it ſubject to the ſame Conditions: And if the *Pawnee* die before redeemed, his Executors ſhall have it upon the like Terms as he had it. If Goods *pawned* are periſhable, and no Day being ſet for Payment of the Money, they lie in *Pawn* till ſpoiled, without any Default in him that hath them in Keeping; the Party that *pawned* them ſhall bear the Damage, for it ſhall be adjudged his Fault that he did not redeem them ſooner; and he to whom *pawned* may have Action of Debt for his Money: Alſo if the Goods are taken from him, he may have Action of Treſpaſs, &c. *Co. Litt.* 89, 208. Where Goods are *pawned* for Money borrowed, without a Day ſet for their Redemption, they are redeemable at any Time during the Life of the Borrower. They may be redeemed after the Death of him to whom *pawned*; but not after the Death of him who *pawned* the Goods. 2 *Cro.* 245. But where a Day is appointed, and the *Pawner* dieth before the Day; his Executors may redeem the *Pawn* at the Day, and this ſhall be *Aſſets* in their Hands. 1 *Bulſt.* 30, 31. Goods *pawned* generally, without any Day of Redemption, if the *Pawner* dies, the *Pawn* is abſolute and irredeemable; if the *Pawnee* dies, it is not ſo. *Noy* 137. 1 *Bulſt.* 9. If Goods are redeemable at a Day certain, it muſt be ſtrictly obſerved; and the *Pawnee*, in Caſe of Failure of Payment at the Day, may ſell them. 1 *Roll. Rep.* 181, 215. In other Caſes, Brokers commonly ſtay but a Year for their Money lent on *Pawns*, at the End of which, if not redeemed, they ſell the Goods. *Law. Secur.* 99. He who borrows Money on a *Pawn* is to have again the Pledge when he repays it, or he may have Action for the Detainer; and his Tender of the Money reveſts the Special Property. 2 *Cro.* 244. And it hath been held, that where a Broker or *Pawnee* refuſes upon Tender of the Money to redeliver the Goods in *Pawn*, he may be indicted; becauſe being ſecretly *pawned*, it may be impoſſible to prove a Delivery for Want of Witneſſes, if Action of Trover ſhould be brought for them. *Paſch.* 5 *W.* 3. 3 *Salk.* 268. Adjudged, that if Goods are loſt, after the Tender of the Money, the *Pawnee* is liable to make them good to the Owner; for after Tender he is a wrongful Detainer, and he who keeps Goods wrongfully muſt anſwer for them at all Events, his wrongful Detainer being the Occaſion of the Loſs: But if they are loſt before a Tender, it is otherwiſe; the *Pawnee* is not liable, if his Care of Keeping them was exact; and the Law requires nothing of him, but only that he ſhould uſe an ordinary Care in Keeping of the Goods, that they may be reſtored on Payment of the Money for which they were depoſited; and in ſuch Caſe if the Goods are loſt, the *Pawnee* hath ſtill his Remedy againſt the *Pawner* for the Money lent. 2 *Salk.* 522. 3 *Salk.* 268. If the *Pawn* is laid up, and the *Pawnee* robb'd, he is not anſwerable: Though if the *Pawnee* uſeth the Thing, as a Jewel, Watch, &c. that will not be the worſe for Wearing, which he may do, it is at his Peril; and if he is robbed, he is anſwerable to the Owner, as the Uſing occaſioned the Loſs, &c. *Ibid.* If the *Pawn* is of ſuch a Nature that the Keeping is a Charge to the *Pawnee*, as a Cow or a Horſe, &c. he may milk the one, or ride the other, and this ſhall go in Recompence for his Keeping: Things which will grow the worſe by Uſage, as Apparel, &c. he may not uſe. *Owen* 124. A Perſon borrows 100 *l.* on the *Pawn* of Jewels, and takes a Note from the Lender acknowledging them to be in his Hands, for ſecuring the Money; afterwards he borrows ſeveral other Sums of the ſame Perſon, for which he gave his Notes, without taking any Notice of the Jewels. As in this Caſe it was natural to think the Lender would not have advanced the Sums on Note only, but on the Credit of the Pledge in his Hands before; it was decreed in Equity, that if the Borrower would have his Jewels he muſt pay all the Money due on the Notes. *Preced. Canc.* 419, 421.

Pawnage, In Woods and Foreſts for Swine. Vide *Pannage.*

Payment of Money before the Day appointed, is in Law a *Payment* at the Day; for it cannot, in Preſumption of Law, be any Prejudice to him to whom the Payment is made, to have his Money before the Time; and it appears by the Party's Receipt of it, that it is for his own Advantage to receive it then, otherwiſe he would not do it: Yet it is ſaid, that the Defendant muſt not plead, that the Plaintiff accepted it in full Satisfaction; but that he paid it in full Satisfaction. 5 *Rep.* 117. Payment of a leſſer Sum in Satisfaction of a greater, cannot be a Satisfaction for the Whole, unleſs the Payment be before the Day: Though the Gift of an Horſe, or Robe, &c. in Satisfaction, may be good. *Ibid.* And where Damages are uncertain, a leſs Thing may be done in Satisfaction of a greater. 4 *Mod. Rep.* 89. Upon *Solvit ad Diem* pleaded, it is good Evidence to prove *Payment* at any Time after the Day, and before the Action brought; and *Payment*, although after the Day, may be pleaded to any Action of Debt, upon Bill, Bond or Judgment, or *Scire facias* upon a Judgment. 2 *Lill. Abr.* 287. Statute 4 & 5 *Ann.* But though Payment after the Day, is good by Way of Diſcharge, it will not be ſo by Way of Satisfaction. 4 *Mod.* 250. *Payment* is no Plea to Debt on a Covenant, or an Obligation, without Acquittance; but if the Obligation have a Condition, it is otherwiſe. *Dyer* 25, 160. If a Bond, &c. be for Payment of Money, and no Day is ſet, Damages cannot be recovered till a Demand is made. *Bridgm.* 20. For *Payment* of Rent there are ſaid to be four Times; 1. A voluntary Time, that is not ſatisfactory, and yet good to ſome Purpoſe; as where a Leſſee pays his Rent before the Day, this gives Seiſin of the Rent, and enables him to whom paid to bring his Aſſiſe for it. 2. A Time voluntary and ſatisfactory in ſome Caſes; when it is paid the Morning of the laſt Day, and the Leſſor dies before the End of the Day, this is a good *Payment* to bind the Heir or Executor, but not the King. 3. The legal, abſolute and ſatisfactory Time, which is a convenient Time before the laſt Inſtant of the laſt Day, and then it muſt be paid. 4. Is ſatisfactory, and not voluntary, but coercive, when forced and recovered by Suit at Law. *Co Litt.* 200. 10 *Rep.* 127. *Plowd.* 172. *Payment* of Money ſhall be directed by him who pays it, and not by the Receiver, &c. 5 *Rep.* 117. *Cro. Eliz.* 68. In the *Payment* of a Teſtator's Debts by *Executors*, they are to pay theſe firſt; on Judgments, Mortgages, Rent due by Leaſe, &c. then Bonds and Bills, &c. 1 *Roll. Abr.* 927. Vide *Bond and Rent.*

Peace, (*Pax*) In the general Signification, is oppoſite to War; but particularly with us it ſignifies a quiet and inoffenſive Behaviour towards the King and his People. *Lamb. lib.* 1. *c.* 2. All Authority for keeping of the *Peace* comes originally from the King, who is the ſupreme Officer or Magiſtrate for Preſervation thereof; though it is ſaid the King cannot take a Recognizance of the *Peace*, becauſe it is a Rule in Law that no one can take any Recognizance, who is not either a Juſtice of Record, or by Commiſſion: Alſo it is certain, that no Duke, Earl, or Baron, as ſuch, have any greater Power to keep the *Peace*, than meer private Perſons. *Lamb. lib.* 1. *ch.* 3. *Dalt. ch.* 1. But the Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward, the Lord Marſhal, and every Juſtice of the King's Bench, have as incident to their Offices, &c. a general Authority to keep the *Peace* throughout the Realm, and to award Proceſs for the Surety of the *Peace*, and take Recognizances for it. 2 *Hawk. P. C.* 32. And every Court of Record hath Power to keep the *Peace* within his own Precinct: As have likewiſe Sheriffs of Counties, who are intruſted with the Cuſtody of the Counties, and conſequently have by it an implied Power of Keeping the *Peace* within the ſame; and Coroners may bind Perſons to the *Peace* who make an Affray in their Preſence; but theſe laſt may not grant Proceſs of the *Peace*, &c. *Ibid.* It is ſaid every Man is to be a Conſtable, to keep the *Peace* amongſt others, and the Juſtices of *Peace* are to do the ſame eſpecially; and no Man may break it. 3 *Shep. Abr.* 14. *Peace* ſhall be kept, and Juſtice and Right duly adminiſtred to all Perſons. *Stat.* 1 *R.* 2. *c.* 2, &c. See *Juſtice of Peace* and *Good Behaviour.*

Peace of God and the Church, (*Pax Dei & Eccleſiæ*) Was anciently uſed for the Reſt and Ceſſation, which the King's Subjects had from Trouble and Suits at Law between the Terms. According to *Spelmam*, Pax Dei *Tempus dicitur cultui Divino adhibitum, eaque appellatione omnes Dies Dominici, Feſta & Vigiliæ cenſentur.* Spelm. Gloſſ.

Peace of the King, (*Pax Regis*) Is that *Peace* and Security, for Life and Goods, which the King promiſes to all his People under his Protection: And where an Outlawry is reverſed, a Perſon is reſtored to the *King's Peace*, called *Ad Pacem redire. Bract. lib.* 3. *c.* 11. There is, beſides theſe, the *Peace of the King's Highway*, which is the Immunity that the King's Highway hath to be free from Annoyance or Moleſtation. *The Peace of the Plough*, whereby the Plough and the Plough Cattle are ſecured from Diſtreſſes. *F. N. B.* 90. And *Fairs* have been ſaid to have their *Peace*; becauſe no Man might be troubled in them for any Debt contracted elſewhere.

Pecia, A Piece or ſmall Quantity of Ground. —— *Cum duabus* Peciis, &c. *dictæ terræ pertinentibus.* Paroch. Antiq. 240.

Pectorale, A Word often met with in old Writings; and moſt Authors agree, that it is the ſame with the Garment called *Rationale*, which the High Prieſt in the old Law wore on his Shoulders as a Sign of Perfection, and the High Prieſts of the new Law wear as a Sign of the greateſt Virtue: It is by ſome taken to be that Part of the *Pall* which covers the Breaſt of the Prieſt, and from thence termed *Pectorale*; but it is by all agreed to be the richeſt Part of that Garment, embroidered with Gold, and adorned with precious Stones. *Item Capa cum* Pectorale *optime brendato cum rotundis* Pectoralibus *aurifrigiis, &c. humerali vincato de Fino auro brendato, & lapidibus inſertis, &c.*

Pectorel, Armour for the Breaſt, a Breaſt-plate or *Petrel*, for a Horſe; from the Lat. *Pectus:* It is mentioned in the Stat. 14 *Car.* 2. *c.* 3.

Peculiar, (Fr. *Peculier, i. e.* Private) Is a particular Pariſh or Church, that hath Juriſdiction within itſelf, and Power to grant Adminiſtration or Probate of Wills, &c. exempt from the Ordinary There are *Royal Peculiars*, and *Archbiſhops Peculiars:* The King's Chapel is a Royal *Peculiar*, exempted from all Spiritual Juriſdiction, and reſerved to the immediate Government of the King himſelf; and there are alſo ſome *peculiar* Eccleſiaſtical Juriſdictions belonging to the King, which formerly appertained to Monaſteries and Religious Houſes. *Wood's Inſt.* 504. It is an ancient Privilege of the See of *Canterbury*, that whereſoever any Manors or Advowſons do belong to it, they forthwith become exempt from the Ordinary, and are reputed *Peculiars* of that See; not becauſe they are under no Ordinary, but becauſe they are not under the Ordinary of the Dioceſe, &c. For the Juriſdiction is annexed to the *Court of Arches*, and the Judge thereof may originally cite to theſe *Piculiars* of the Archbiſhop. *Ibid.* The *Court of Peculiars* of the Archbiſhop of *Canterbury*, hath a particular Juriſdiction in the City of *London*, and in other Dioceſes, &c. within his Province, in all fifty-ſeven *Peculiars.* 4 *Inſt.* 338. *Stat.* 22 & 23 *Car.* 2. There are ſome *Peculiars* which belong to *Deans* and *Chapters*, or a *Prebendary*, exempted from the Archdeacon only; they are derived from the Biſhop, of ancient Compoſition, and may be viſited by the Biſhop in his primary or triennial Viſitation: In the mean Time an Official of the Dean and Chapter, or Prebendary, is the Judge; and from hence the Appeal lies to the Biſhop of the Dioceſe. *Wood* 504. Appeal lieth from other *peculiar* Courts to the King in Chancery. Stat. 25 *H.* 8. The Dean and Chapter of *St. Paul's* have a *peculiar* Juriſdiction; and the Dean and Chapter of *Saliſbury* have a large *Peculiar* within that Dioceſe; ſo have the Dean and Chapter of *Litchfield*, &c. 2 *Nelſ. Abr.* 1240, 1241. There is Mention in our Books of *Peculiars* of *Archdeacons*; but they are not properly *Peculiars*, only ſubordinate Juriſdictions; and a *Peculiar* is *prima facie* to be underſtood of him who hath a co-ordinate Juriſdiction with the Biſhop. *Hob.* 185 *Mod. Ca.* 308. If an Archdeacon hath a *peculiar* Authority by Commiſſion, this ſhall not take away the Authority of the Biſhop; but if he hath Authority and Juriſdiction by Preſcription, it is ſaid it ſhall. 2 *Roll Rep.* 357. Where a Man dies inteſtate, leaving Goods in ſeveral *Peculiars*, it has been held that the Archbiſhop is to grant Adminiſtration. *Sid.* 90. 5 *Mod.* 239.

Pecunia, An Eſtate in Money, Goods and Chattels, &c. *Leg. Ed. Confeſſ. c.* 10.

Pecunia Eccleſiæ, Has been uſed for the State of the Church. *Till. Animadv. on Selden's Tithes.*

Pecunia Sepulcralis, Money paid to the Prieſt at the Opening of the *Grave*, for the Benefit of the Deceaſed's Soul. *Leg. Canut.* 102. And this the *Saxons* called *Saulſcead*, *Soulſcot*, and *Animæ Symbolum.* Spelm. de Concil. Tom. 1. fol. 517.

Pecuniary. All Puniſhments of Offences were anciently *Pecuniary*, by Mulct, &c. See *Fine.*

Pedage, (*Pedagium*) Signifies Money given for the Paſſing by Foot or Horſe through any Country. Pedagium *à Pede dictum eſt, quod a tranſeuntibus ſolvitur, &c.* Caſſan. de Conſ. Burgun. pag. 118. Pedagia *dicuntur quæ dantur a tranſeuntibus in locum conſtitutum à Principe, &c. Et capiens* Pedagium, *debet dare ſalvum Conductum, & Territorium ejus tenere ſecurum. Spelm.* This Word is likewiſe mentioned by *Mat. Pariſ. Anno* 1256. And King *Edw.* 3. granted to Sir *Nele Loring* Pedagium *Sancti Macharii, &c* Rot. Paſch. 22 Ed. 3.

Pedale, A Foot-Cloth, or Piece of Tapeſtry laid on the Ground to tread on for greater State and Ceremony. *Ingulph. pag.* 41.

Pedis abſciſſio, Cutting off the Foot, was a Puniſhment of Criminals in former Times inflicted here inſtead of Death; as appears by the Laws of *William*, called *The Conqueror*, viz. *Interdicimus ne quis occidatur vel ſuſpendatur pro aliqua Culpa, ſed eruantur Oculi,* Abſcindantur Pedes, *vel Teſticuli, vel Manus.* Leg. Will. 1. cap. 7. Fleta, lib. 1. c. 38. Bract. lib. 3. c. 32.

Pedones, A Word uſed for Foot-Soldiers. *Simeon de Durh. Anno* 1085.

Peer, or **Pier,** (Fr. *Pierre*) Is a Fortreſs or Defence made againſt the Force of the Sea; for the better Security of Ships that lie at Harbour in any Haven: Such as the *Pier of Dover. Stat.* 14 *Car.* 2. *cap.* 27. and the *Pier of Great Yarmouth*, mentioned 22 *Car.* 2. *c.* 2.

Peerage, A Duty or Impoſition for Maintenance of a *Sea Pier:* Alſo the Dignity of the Lords or *Peers* of the *Realm.*

Peers, (*Pares*) Signifies in our Common Law thoſe that are impanelled in an Inqueſt for the Trial of any Man, and convicting or clearing him of the Offence for which he is called in Queſtion: And by the Laws and Cuſtoms of *England*, every Man is to be tried by his *Peers* or *Equals.* Kitch. 78. *Magna Charta*, 9 *H.* 3. *c.* 29. And as every one of the Nobility being a Lord of Parliament, is a *Peer* or Equal to all the other Lords, though they are of ſeveral Degrees; ſo the Commons are *Peers* to one another, altho' diſtinguiſhed as Knights, Eſquires, Gentlemen, &c. 2 *Inſt.* 29. 3 *Inſt.* 31.

Peers of Fees. The Word *Peer* denoted originally one of the ſame Rank and Condition; afterwards 'tis ſaid it was uſed for the Vaſſals or Tenants of the ſame Lord, who were obliged to ſerve and attend him in his Courts, being equal in Function; theſe were termed *Peers of Fees*, becauſe holding Fees of the Lord, or for that their Buſineſs in Court was to ſit and judge under their Lord of Diſputes ariſing on *Fees*: But where there were too many ſuch in one Lordſhip, the Lord uſully choſe out Twelve, who had the Title of *Peers*, by Way of Diſtinction and Eminence; from whom it is ſaid we derive our common Juries, and other *Peers. Cowel.*

Peers of the Realm, (*Pares Regni, Proceres*) Are the Nobility of the Kingdom, and Lords of Parliament; who are divided into Dukes, Marqueſſes, Earls, Viſcounts and Barons: And the Reaſon why they are called *Peers*, is for that notwithſtanding there be a Diſtinction of Dignities in our Nobility, yet in all publick Actions they are *equal*; as in their Votes of Parliament, and in Paſſing upon the Trial of any Noblemen. *S P. C. lib.* 3. And this Appellation ſeems to be chiefly borrowed from *France*, from thoſe *twelve Peers* that *Charlemaine* inſtituted in that Kingdom, (called *Pares vel Patricii Franciæ*) but we have applied this Name to all our Lords of Parliament, and have no ſet Number of *Peers*, for they are more or leſs at the King's Pleaſure. All Nobility and *Peerage* is granted by the Crown; and created either by Writ, or Letters Patent: The Calling up a Lord by Writ is the moſt ancient Way, and gives a Fee-ſimple in a Barony, without Words of Inheritance, *viz.* To him and his Heirs; but the King may limit the general Eſtate of Inheritance to Heirs Male, or the Heirs of the Body: And as ſoon as the Perſon called ſits in Parliament by Virtue of this Writ, his Blood is ennobled, and he is a *Peer*; but if he dies before he ſits in Parliament, he is not, the bare Direction and Delivery of the Writ having no Effect. 1 *Inſt.* 9, 16. But Creation by Letters Patent is good, and makes the *Peerage* ſure, although he never ſits in Parliament, and his Heirs ſhall inherit the Honour purſuant to the Words of the Patent: Tho' the Perſon's created muſt in this Caſe have the Inheritance limited by apt Words; as to him and his Heirs, or the Heirs Male of his Body, Heirs of his Body, &c. otherwiſe he ſhall have no Inheritance. 1 *Inſt.* 2 *Inſt* 48. The King may create either Man or Woman Noble for Life only: And *Peerage* may be gained for Life, by Act of Law; as if a Duke take a Wife, ſhe is a Dutcheſs in Law by the Intermarriage; ſo of a Marqueſs, Earl, &c. 1 *Inſt.* 16. 9 *Rep.* 97. Alſo the Dignity of an Earl may deſcend to a Daughter, if there be no Son, who ſhall be a Counteſs; and if there are many Daughters, it is ſaid, the King ſhall diſpoſe of the Dignity to which Daughter he pleaſes. 1 *Inſt.* 165. *Wood's Inſt.* 42. It has been reſolved in the Houſe of *Peers*, that if a Perſon is ſummoned as a Baron to Parliament by Writ, and ſitting die, leaving two or more Daughters, who all dying, one of them only leaves Iſſue a Son, ſuch Iſſue has a Right to demand a Seat in the Houſe of *Peers*. *Skinner's Rep.* 441. Before the Time of King *Edw.* 3. there were but two Titles of Nobility, *viz.* Earls and Barons: The Barons were originally by Tenure, afterwards created by Writ, and after that by Patent; but as to Earls, they were always created by Letters Patent. *Seld.* 536. And King *Hen.* 6. created *Edmond* of *Hadham*, Earl of *Richmond*, by Patent, and granted him Precedency before all other Earls. Queen *Mary* 1. likewiſe granted to *Henry Ratcliff*, Earl of *Suſſex*, a Privilege by Patent beyond any other Nobleman, *viz.* that he might at any Time be covered in her Preſence, like unto the *Grandees* of *Spain*; and ſome few others of our Nobility have had conferred on them this Honour. The Stat. 31 *H.* 8. *c.* 10. ſettles the Precedency of the Lords of Parliament, and great Officers, &c. After whom, the Dukes, Marqueſſes, Earls, Viſcounts, and Barons, take Place according to their Antienty; but it is declared, that Precedence is in the King's Diſpoſition. *Thomas de la Warre* was ſummoned to Parliament by Writ, *Anno* 3 *Hen.* 8. and *William* his Son, *Anno* 3 *Ed.* 6. was diſabled by Attainder to claim any Dignity during his Life, but was afterwards called to Parliament by Queen *Elizabeth*, and ſat there as *puiſne* Lord, and died; then *Thomas*, the Son of the ſaid *William*, petitioned the Queen in Parliament to be reſtored to the Place of *Thomas* his Grandfather; and all the Judges to whom it was referred were of Opinion that he ſhould, becauſe his Father's Diſability was not abſolute by Attainder, but only perſonal and temporary during his Life; and the Acceptance of the new Dignity by the Petitioner ſhall not hurt him, ſo that when the old and new Dignity are in one Perſon, the old ſhall be preferred. 11 *Rep.* 1. A Dignity of Earl, &c. is a Title by the Common Law; and if a Patentee be diſturbed of his Dignity, the regular Courſe is to petition the King, who indorſes it and ſends it into Chancery. *Staundf. Prærog.* 72. 22 *Edw.* 3. And where Nobility is gained by Writ, or Patent, without Deſcents, it is triable by Record; but when it is gained by Matter of Fact, as by Marriage, or where Deſcents are pleaded, Nobility is triable *per Pais.* 22 *Aſſiſ.* 24. 3 *Salk.* 243. A Perſon petitioned the Lords in *Parliament* to be tried by his *Peers*; the Lords diſallowed his *Peerage*, and diſmiſſed the Petition: And it was held in this Caſe, that the Defendant's Right ſtood upon his Letters Patents, which could not be cancelled but by *Scire facias*; and that the Parliament could not give Judgment in a Thing which did not come in a judicial Way before that Court. 2 *Salk.* 510, 511. 3 *Salk.* 243. Where *Peerage* is claimed *ratione Baronii*, as by a *Biſhop*, he muſt plead, that he is *unus Parium Regni Angliæ*; but if the Claim is *ratione Nobilitatis*, he need not plead otherwiſe than purſuant to his Creation. 4 *Inſt.* 15. 3 *Salk.* 243. There are no feudal Baronies at this Day: But there are Barons by Succeſſion, and thoſe are the *Biſhops*, who by Virtue of ancient Baronies held of the King, (into which the Poſſeſſions of their Biſhopricks have been converted) are called by Writ to Parliament, and have Place in the Houſe of *Peers* as Lords Spiritual: The Temporal Poſſeſſions of Biſhops are held by their Service, to attend in Parliament when called; and that is in the Nature of a Barony; and all the Biſhops together, it hath been ſaid, make one of the three Eſtates in Parliament; but this is denied, becauſe they have ſeparately from the other Lords no negative Vote, &c. And though the Biſhops are Lords of Parliament, and called by the King's Writ, and have a Vote there; they ſhall not be tried by the *Peers*, as they do not ſit in Parliament by Reaſon of their Nobility, but of their Baronies which they hold in Right of the Church: They are not of the Degree of Nobility; their Blood is not ennobled, nor their *Peerage* hereditary; ſo that they are to be tried by the Country, *i. e.* by a common Jury: And when one of the Nobility is to be tried by his *Peers* in Parliament, the Spiritual Lords muſt withdraw, and make their *Proxies.* 1 *Inſt.* 70, 97, 110. 3 *Inſt.* 30. 4 *Inſt.* 1, 2. Some Biſhops have been tried by *Peers of the Realm*; but it hath been when impeached by the *Houſe of Commons*, as upon ſpecial Occaſions many others have been who have not been *Peers*: And the Biſhops may claim all the Privileges of the Lords Temporal; ſaving they cannot be tried by their *Peers*, becauſe the Biſhops cannot in like Caſes paſs upon the Trial of any other *Peers*, they being prohibited by *Canon* to be Judges of Life and Death, &c. When a Lord is newly created, he is introduced into the Houſe of *Peers*, by two Lords of the ſame Form in their Robes, Garter King at Arms going before, and his Lordſhip is to preſent his Writ of Summons, &c. to the Lord Chancellor; which being read, he is conducted to his Place; And Lords by Deſcent, where Nobility comes down from the Anceſtor, and is enjoyed by Right of Blood, are introduced with the ſame Ceremony, the preſenting of the Writ excepted. *Lex Conſtitution.* 79. A Nobleman, whether a Native or Foreigner, who has his Nobility from a Foreign State, although the Title of Dignity be given him, (as the higheſt and loweſt Degrees of Nobility are univerſally acknowledged) in all our legal Proceedings no Notice is taken of his Nobility, for he is no *Peer*: And the Laws of *England* prohibit all Subjects to receive any hereditary Title of Honour or Dignity, of the Gift of any Foreign Prince, without the Conſent of the Sovereign. *Ibid.* 80, 81. Though Dignities of *Peerage* are granted from the Crown; they cannot be ſurrendered to the Crown, except it be in order to new and greater Honours; nor are they transferrable over, unleſs they relate to an Office: And notwithſtanding there are Inſtances of Earldoms being transferred, and wherein one Branch of a Family ſate in the Houſe of *Peers*, by Virtue of a Grant from the other Branch, particularly in the Reigns of *Hen.* 3. and *Ed.* 2. Theſe Precedents have been diſallowed; and the Duke of *Bedford*, who in the Reign of King *Edw.* 4. was degraded for Poverty, and Want of Poſſeſſions to ſupport his Title, loſt not his *Peerage* by Surrender, but by the Authority of Parliament: And as Dignities may not be ſurrendered or transferred, without Authority of Parliament; ſo it hath been holden, that Honour and *Peerage* cannot be extinguiſhed but by Act of Parliament, the King and Kingdom having an Intereſt in the *Peerage* of every Lord. *Lex Conſtit.* 85, 86, 87. An Earldom conſiſts in Office, for the Defence of the Kingdom; and of Rents and Poſſeſſions, &c. and may be intailed as any other Office may, and as it concerns Land: But the Dignity of *Peerage* cannot be transferred by Fine, becauſe it is a Quality affixed to the Blood, and ſo meerly Perſonal, that a Fine cannot touch it. 2 *Salk.* 509. 3 *Salk.* 244. A perſonal Honour or Dignity may be forfeited, on committing Treaſon, &c. for it is implied by a Condition in Law, that the Perſon dignified ſhall be loyal; and the Office of an Earl, &c. is *ad Conſulendum Regem tempore Pacis, & Defendendum tempore Belli*, therefore he forfeits it when he takes Counſel or Arms againſt the King. 7 *Rep.* 33. 2 *Nelſ. Abr.* 934. All *Peers of the Realm* are looked upon as the King's hereditary Counſellors: And as to the Privileges belonging to the *Peerage*, they are very great. At Common Law, it was lawful for any *Peer* to retain as many Chaplains as he would; but by Statute 21 *Hen.* 8. their Number is limited, *viz.* a Duke to have Six, Marqueſs or Earl Five, Viſcount Four, Baron Three, &c. In many Caſes, the Proteſtation of Honour ſhall be ſufficient for a *Peer*; as in Trial of *Peers*, they proceed upon their Honour, not upon Oath; and if any *Peer* is a Defendant in a Court of Equity, he ſhall put in his Anſwer upon his Honour; (though formerly it was to be on Oath): And in Action of Debt upon Account the Plaintiff being a *Peer*, it ſhall ſuffice to examine his Attorney, and not himſelf on Oath: But where a *Peer* is to anſwer Interrogatories, or make an Affidavit, or to be examined as a Witneſs, he muſt be upon his Oath. *Bract. lib.* 5. *c.* 9. 9 *Rep.* 49. 3 *Inſt.* 29. *W. Jones* 152. 2 *Salk.* 512. A *Subpœna* ſhall not be awarded againſt a *Peer* out of the *Chancery*, in a Cauſe; but a Letter from the Lord Chancellor, or Lord Keeper, in Lieu thereof. In any Trial where a *Peer* of the Realm is Plaintiff or Defendant, there muſt be two or more Knights on the Jury. 2 *Mod.* 182. Tho' it is ſaid, if a Knight is return'd on a Jury where a Nobleman is concerned, it is not material whether he appear and give his Verdict or not. 1 *Mod.* 226. A *Peer* may not be impanelled upon any Inqueſts, though the Cauſe hath Relation to two *Peers*; and if any *Peer* be return'd upon a Jury, a ſpecial Writ ſhall iſſue for his Diſcharge from Service. No *Peer* can be aſſeſſed towards the Militia, but by an Aſſeſſment made by Six or more *Peers*; and the Houſes of *Peers* ſhall not be ſearched for Conventicles, but by Warrant under the Sign Manual, or in the Preſence of the Lord Lieutenant, or one Deputy Lieutenant, and Two Juſtices of the Peace. 13 & 14 *Car.* 2. and 22 *Car.* 2. A *Peer* of the Realm being ſent for by the King, in coming and returning may kill a Deer or Two in a Foreſt through which he paſſes; being done by the View of the Foreſter, or on blowing a Horn. 9 *H.* 3. If any Perſon ſhall divulge falſe Tales of any of the Lords of Parliament, by which Diſſention may happen, or any Slander ariſe, the Offender ſhall be impriſoned, &c. *Stat. Weſtm.* 1. *c.* 34. A Nobleman menacing another Perſon, whereby ſuch other Perſon fears his Life is in Danger, no Writ of *Supplicavit* ſhall iſſue, but a *Subpœna*; and when the Lord appears, inſtead of Surety, he ſhall only promiſe to keep the Peace. 35 *H.* 6. No *Capias* or Outlawry can be ſued out againſt *Peers of the Realm*, in Civil Cauſes; and no Eſſoin lies againſt them. 9 *Rep.* 49. The Perſon of a *Peer*, as well out as in Parliament-time is privileged from all Arreſts; unleſs for Treaſon, Felony, or Breach of the Peace, &c. *Peers* are not to be arreſted upon mean Proceſs, or on Execution for Debt or Treſpaſs, becauſe they are preſumed not only to attend the King and the Publick Affairs, but the Law doth intend that they have ſufficient Lands in which they may be diſtrained: But they may be arreſted or apprehended in Criminal Caſes. 6 *Rep.* 52, 53. And though a *Peer* may not be arreſted in his Body; yet his Eſtate may be ſequeſtred for Debt, &c. upon a Proſecution after a Diſſolution and Prorogation of Parliament, or Adjournment for above the Space of fourteen Days, when he refuſes to appear and anſwer. 12 *W.* 3. See the 11 *Geo.* 2. *c.* 24. And of late Years, on Non-appearance, &c. the Coaches and Horſes of ſeveral *Peers* of this Kingdom, have out of the Time of Privilege been diſtrained, and Cattle ſeiſed upon their Lands, to compel them to appear: But the Privilege of a *Peer* is ſo great in Reſpect of his Perſon, that the King may not reſtrain him of his Liberty, without Order of the Houſe of Lords, except it be in Caſes of Treaſon, &c. A memorable Caſe wherein was that of the *Earl of Arundel* impriſoned by the King in the Reign of *Charles* 1. Every Lord of Parliament is allowed his Clergy in all Caſes, where others are excluded by the Stat. 1 *Ed.* 6. 12. except wilful Murder; and cannot be denied Clergy for any other Felony wherein it was grantable at Common Law, if it be not ouſted by ſome Statute made ſince the firſt of King *Ed.* 6. *S. P. C.* 130. And the Lord *Morley*, who was tried by his *Peers* for Murder, and found guilty of Man-ſlaughter, was diſcharged without Clergy. *Sid.* 277. 2 *Nelſ. Abr.* 1181. *Peers of the Realm* are to be tried by their *Peers* in Parliament. *Magna Charta*, *c.* 29. and 15 *Ed.* 3. *c.* 2. But Noblemen of *France*, *Ireland*, &c. and Sons of Dukes or Earls who are Noble, and have the Title of Lords, but are not Lords of Parliament, ſhall not be permitted to have this Trial. 2 *Inſt.* 50. A *Peer* ſhall be tried by his *Peers*, on on Indictment for Treaſon, Murder or Felony; tho' in Appeal of Felony, he ſhall be tried by Freeholders: And Indictments of *Peers* for Treaſon or Felony, are to be found by Freeholders of the County, and then they plead before the Lord High Steward, &c. 1 *Inſt.* 156. 3 *Inſt.* 28.

On *the Trials of Peers* in Criminal Matters, all the *Peers* who have Right to ſit and vote in Parliament, are to be duly ſummoned twenty Days at leaſt before the Trial, to appear and vote at the ſame; every ſuch *Peer* firſt taking the Oaths required by the Act 1 *W.* & *M.* &c. The *Peer* being indicted for the Treaſon or Felony, before Commiſſioners of *Oyer and Terminer*, or in the *King's Bench*, if the Treaſon, &c. be committed in the County of *Middleſex*; then the King by Commiſſion under the Great Seal, conſtitutes ſome *Peer* (generally the Lord Chancellor) *Lord High Steward*, who is Judge in theſe Caſes; and the Commiſſion commands the *Peers of the Realm* to be attendant on him, alſo the Lieutenant of the *Tower*, with the Priſoner, &c. A *Certiorari* is awarded out of the Chancery, to remove the Indictment before the Lord High Steward: And another Writ iſſues for the Bringing of the Priſoner; and the Lord Steward makes his Precepts for that Purpoſe, aſſigning a Day and Place, as in *Weſtminſter-Hall* incloſed with Scaffolds, &c. and for ſummoning the *Peers*, which are to be Twelve and above at leaſt preſent: At the Day, the Lord High Steward takes Place under a Cloth of State; his Commiſſion is read by the Clerk of the Crown, and he has a White Rod delivered him by the Uſher, which being return'd, Proclamation is made, and Command given for Certifying of Indictments, &c. and the Lieutenant of the *Tower* to return his Writ, and bring the Priſoner to the Bar; after this, the Serjeant at Arms returns his Precept with Names of the *Peers* ſummoned, and they are called over and anſwering to their Names are recorded, when they take their Places: The Ceremony thus adjuſted, the High Steward declares to the Priſoner at the Bar, the Cauſe of their Aſſembly, aſſures him of Juſtice, and encourages him to anſwer without Fear; then the Clerk of the Crown reads the Indictment, and arraigns the Priſoner, and the High Steward gives his Charge to the *Peers*; this being over, the King's Counſel produce their Evidence for the King; and if the Priſoner hath any Matter of Law to plead, he ſhall be aſſigned Counſel; but if he pleads Not guilty, and has nothing farther, he ſhall be allowed no Counſel, for the Court are inſtead of it; after all the Evidence given for the King, and the Priſoner's Anſwer heard, the Priſoner is withdrawn from the Bar, and the Lords that are *Triers* go to ſome Place to conſider of their Evidence: But the Lords can admit no Evidence, but in the Hearing of the Priſoner; they cannot have Conference with the Judges, (who attend on the Lord High Steward, and are not to deliver their Opinions before-hand) but in the Priſoner's Hearing; nor can they ſend for the Opinion of the Judges, or demand it, but in open Court; and the Lord Steward cannot collect the Evidence, or confer with the Lords, but in the Preſence of the Priſoner; who is at firſt to require Juſtice of the Lords, and that no Queſtion or Conference be had but in his Preſence: Nothing is done in the Abſence of the Priſoner, until the Lords come to agree on their Verdict; and then they are to be together as Juries until they are agreed, when they come again into Court and take their Places; and the Lord High Steward, publickly in open Court, demands of the Lords, beginning with the *Puiſne* Lord, whether the Priſoner, calling him by his Name, be guilty of the Treaſon, &c. whereof he is arraigned, who all give in their Verdict, and he being found Guilty by a Majority of Votes more than Twelve, is brought to the Bar again, and the Lord Steward acquainting the Priſoner with the Verdict of his *Peers*, paſſes Sentence and Judgment accordingly: After which, an *O Yes* is made for diſſolving of the Commiſſion, and the White Rod is broken by the Lord High Steward; whereupon breaks up this Grand Aſſembly, which is eſteemed the moſt ſolemn and auguſt Court of Juſtice upon Earth. 2 *Hawk. P. C.* 421, 422, &c. The Lord High Steward gives no Vote himſelf on a Trial by Commiſſion; but only on a Trial by the Houſe of *Peers*, while the Parliament is ſitting: Where a *Peer* is tried by the Houſe of Lords in full Parliament, the Houſe may be adjourned as often as there is Occaſion, and the Evidence taken by Parcels; and it hath been adjudg'd, that where the Trial is by Commiſſion, the Lord Steward, after a Verdict given, may take Time to adviſe upon it, and his Office continues till he has given Judgment. But the Triers may not ſeparate upon a Trial by Commiſſion, after the Evidence is given for the King; and it hath been reſolved by all the Judges, that the *Peers* in ſuch Caſe muſt continue together till they agree to give a Verdict. *State Trials, Vol.* 2. *fol.* 702. *Vol.* 3. *fol.* 657. 2 *Hawk.* 425. A *Peer of the Realm* arraigned in Parliament, muſt be tried before a Lord Steward; and if he appear not, he ſhall be outlawed: And he cannot waive a Trial by his *Peers*; for if a *Peer* on Arraignment before the Lords refuſe to put himſelf upon ſuch Trial, he ſhall be proceeded againſt as one who ſtands mute: But if one who has a Title to *Peerage*, be indicted and arraigned as a Commoner, and plead Not guilty, and put himſelf upon his Country; it hath been held, that he cannot afterwards ſuggeſt that he is a *Peer*, and pray Trial by his *Peers*. 3 *Inſt.* 30. *Kel.* 57. *Daliſ.* 16. It is ſaid a Writ of Error lies in the *King's Bench* of an Attainder of a *Peer* before the Lord High Steward. 2 *Hawk. P. C.* 462. If a *Peer* be attainted of Treaſon or Felony, he may be brought before the Court of *B. R.* and demanded what he has to ſay why Execution ſhould not be awarded againſt him? And if he plead any Matter to ſuch Demand, his Plea ſhall be heard, and Execution ordered by the ſaid Court, upon its being adjudg'd againſt him. 1 *H.* 7. 22. *pl.* 15. *Bro. Coro.* 129. *Fitz. Coro.* 49. Likewiſe the Court of *King's Bench* may allow a Pardon pleaded by a *Peer* to an Indictment in that Court: But that Court cannot receive his Plea of Not-guilty, &c. but only the Lord Steward on an Arraignment before the Lords. 2 *Inſt.* 49. The Sentence againſt a *Peer* for Treaſon, is the ſame as againſt a common Subject; though the King forgives all but Beheading, which is a Part of the Judgment: For other Capital Crimes, Beheading is alſo the general Puniſhment of a *Peer*; but 33 *H.* 8. the Lord *Dacres* was attainted of Murder, and had Judgment to be hanged; and *Anno* 3 & 4 *P.* & *M.* the Lord *Stourton* being attainted of Murder, had Judgment againſt him to be hanged by the Neck until he was dead, which Sentences were executed. If Execution be not done; the Lord Steward may by Precept command it to be done according to the Judgment. 3 *Inſt.* 31. Trial by *Peers* is a Practice very antient: In the Reign of *Will.* 1. called *The Conqueror*, the Earl of *Hereford*, for conſpiring to receive the *Danes* into *England*, and depoſe the Conqueror, was tried by his *Peers*, and found guilty of the Treaſon, *per Judicium parium ſuorum*; but he lived in Priſon his whole Life. 2 *Inſt.* 50. The Duke of *Suffolk*, 28 *H.* 6. being accuſed of High Treaſon by the Commons, put himſelf upon the King's Grace, and not upon his *Peers*, and the King alone adjudg'd him to Baniſhment; but he ſent for the Lord Chancellor, and all the Lords that were in Town to his Palace at *Weſtminſter*, and alſo the Duke, and commanded him to quit the Kingdom in their Preſence: The Lords nevertheleſs entered a Proteſt to ſave the Privilege of their *Peerage*; and this was deemed no legal Baniſhment, for the King's Judging in that Manner was no Judgment at all; he was extrajudicially bid to abſent himſelf out of the Realm, and in doing it he was taken on the Sea and ſlain. The Caſe of the Lord *Cromwell*, in the Reign of K. *H.* 8 was very extraordinary; this Lord was attainted in Parliament, and condemned and executed for High Treaſon, without being allowed to make any Defence: And ſeveral great Perſons during this Reign were brought to Trial before *Lords Commiſſioners. Anno* 32 *Car.* 2. the Lord *Stafford* was tried for Treaſon; and after the Evidence was given for the King, and the Priſoner had ſumm'd up all his Objections to the King's Evidence, he inſiſted upon ſeveral Points of Law, *viz.* That no Overt-Act was alledged in his Impeachment; that they were not competent Witneſſes who ſwore againſt him, but that they ſwore for Money; and whether a Man could be condemned for Treaſon by one Witneſs, there not being two Witneſſes to any one Point, &c. But the Points inſiſted upon being over-ruled, he was found Guilty by a Majority of twenty-four Votes; and was executed on *Tower-Hill.* See more of *Peers* under *Baron, Deſcent of Dignities, Lords,* &c.

Peereſs. As we have Noblemen of ſeveral Ranks; ſo we have Noble Women, and theſe may be by Creation, Diſcent, or Marriage: And firſt, King *Hen.* 8. made *Anne Bullen*, Marchioneſs of *Pembroke:* King *James* 1. created the Lady *Compton*, Wife to Sir *Tho. Compton*, Counteſs of *Buckingham* in the Life-time of her Huſband, without any Addition of Honour to him; and alſo the ſame King made the Lady *Finch* Viſcounteſs of *Maidſtone*, and afterwards Counteſs of *Winchelſea*, to her and the Heirs of her Body: And the late King *Geo.* 1. made the Lady *Schulinburgh*, Dutcheſs of *Kendal.* A Woman Noble by *Creation* or Deſcent marrying one under the Degree of Nobility, ſtill remaineth Noble; but if ſhe be noble by Marriage only, ſhe loſeth her Dignity if ſhe marry afterwards a Commoner; though not if the ſecond Huſband is noble, and inferior in Dignity to the firſt Huſband: And by the Curteſy of *England*, Women noble by Marriage always retain their Nobility. 1 *Inſt.* 16. 1 *Inſt.* 50. 6 *Rep.* 53. If an *Engliſh* Woman born takes to Huſband a *French* Nobleman, ſhe ſhall not bear the Title of Dignity; and if a *German* Woman, &c. marry a Nobleman of *England*, unleſs ſhe be made Denizen, ſhe cannot claim the Title of her Huſband, no more than her Dower, &c. *Lex Conſtitution.* 80. A Counteſs or Baroneſs may not be arreſted for Debt or Treſpaſs; for though in Reſpect of their Sex, they cannot ſit in Parliament, they are nevertheleſs *Peers* of the Realm, and ſhall be tried by their *Peers*, &c. But a *Capias* being awarded againſt the *Counteſs of Rutland*, it was held that ſhe might be taken by the Sheriff; becauſe he ought not to diſpute the Authority of that Court from whence the Writ iſſued, but muſt execute it, for he is bound by Oath ſo to do; and although by the Writ itſelf it appeared, that the Party was a Counteſs, againſt whom a *Capias* would not generally lie, for that in ſome Caſes it may lie, as for a Contempt, &c. therefore the Sheriff ought not to examine the judicial Acts of the Court. 6 *Rep.* 52. By the Statute 20 *Hen.* 6. *cap.* 9. a Dutcheſs, Counteſs, or Baroneſs, married or ſole, ſhall be put to anſwer, and judged upon Indictments of Treaſon and Felony, before ſuch Judges and *Peers* as the *Peers of the Realm* ſhall be: And it has been agreed, that a Queen Conſort, and Queen Dowager, whether ſhe continue Sole after the King's Death, or take a ſecond Huſband, and he be a *Peer* or Commoner; and alſo all *Peereſſes* by Birth, whether they be ſole or married to *Peers* or Commoners; and all Marchioneſſes and Viſcounteſſes are intitled to a Trial by the *Peers*, though not expreſly mentioned in the Act. 2 *Inſt.* 50 *Cromp. Juriſd.* 33. 2 *Hawk. P. C.* 423. A Dutcheſs, Marchioneſs, Counteſs, or Baroneſs, may retain two Chaplains, by 21 *Hen.* 8. *cap.* 13. But it is ſaid that a Baroneſs, &c. may not retain Chaplains during her Coverture. *Wood's Inſt.* 44. 4 *Rep.* 89. Vide *Chaplain.*

Peiſa, A Pound-weight; it was anciently uſed for *Pondus*, whence to *Peiſe* or *Poiſe*, and *Peſage.*

Pela, A Peel, Pile or Fort; and the Citadel or Caſtle in the *Iſle of Man* was granted to Sir *John Stanley* by this Name. *Pat.* 7 *H.* 4.

Peles, Iſſues ariſing from, or out of a Thing. *Fitzh. Juſt.* 205.

Pelfe and Pelfre, (*Pelfra*) In Time of War, the *Earl Marſhal* is to have of Preys and Booties, all the gelded Beaſts, except Hogs, &c. which is called *Pelfre.* Old MS. And we read, that Tho. Venables *Arm. clamat Quod ſi aliquis Tenent. ſive Reſident. infra Dominium ſive Manerium de* Kinderton *feloniam fecerit, & Corpus ejus per ipſum* Thomam *ſuper factum illud captum, & convict. fuerit, habere* Pelfram, *viz. Omnia Bona & Catalla hujuſmodi ſeiſire, &c.* Plac. in Itin. apud. Ceſtr. 14 Hen. 7.

Pellage, The Cuſtom or Duty paid for Skins of Leather. *Rot. Parl.* 11 *H.* 4.

Pellicia, A Pilch: *Tunica vel Indumentum* Pelliceum, *hinc* Super-pellicium, A Sur-pilch or Surplice. *Spelm.*

Pelt-wool, Is the Wool ſtripp'd off the Skin or *Pelt* of a dead Sheep. Stat. 8 *H.* 6. *c.* 22.

Pen, A Word uſed by the *Britains* for a high Mountain, and alſo by the antient *Gauls*; from whence thoſe high Hills, which divide *France* from *Italy*, are called the *Appennines.* Camd. Britan.

Penal Laws, Are of three Kinds, *viz. Pœna Pecuniaria, Pœna Corporalis,* and *Pœna Exilii. Cro. Ja.* 415. And *Penal* Statutes have been made upon many and various Occaſions, to puniſh and deter Offenders; and they ought to be conſtrued ſtrictly, and not be extended by Equity; but the Words of them may be interpreted beneficially, according to the Intent of the Legiſlators. 1 *Inſt.* 54, 268. Where a Thing is prohibited by Statute under a *Penalty*, if the *Penalty*, or Part of it be not given to him who will ſue for the ſame; it goes and belongs to the King. *Raſt. Entr.* 433. 2 *Hawk.* 265. But the King cannot grant to any Perſon, any *Penalty* or Forfeiture, &c. due by any Statute, before Judgment thereupon had; though after Plea pleaded, Juſtices of Aſſiſe, &c. having Power to hear and determine Offences done againſt any *Penal* Statute, may compound the *Penalties* with the Defendant, by Virtue of the King's Warrant or Privy Seal. Stat. 21 *Jac.* 1. *c.* 3. There are *Penalties* ordained by ſeveral *Penal* Acts of Parliament, to be recovered in any Court of Record; but this is to be underſtood only of the Courts at *Weſtminſter*, and not of the Courts of Record of inferior Corporations. *Jenk. Cent.* 228. The Spiritual Court may hold Plea of a Thing forbidden by Statute upon a *Penalty*; but they may not proceed on the *Penalty.* 2 Lev. 222. See *Information.*

Penalty of Bonds, &c. If a Man brings an *Action of Debt* upon a Bond for Performance of Covenants, the Plaintiff ſhall recover the whole *Penalty of his Bond*; becauſe in Debt, the Judgment muſt be according to the Demand, and the Demand is to be for the whole *Penalty:* But upon the Defendant's bringing a Bill in Equity, and praying an Injunction to the Suit at Common Law, the Court of Equity uſually grants it till the Hearing of the Cauſe; and upon the Hearing of the Cauſe, they will continue the Injunction farther, and order a

Trial at Law on a *Quantum damnificatus*, for the Jury to find what Damage the Plaintiff received by Reaſon of the Breach of Covenants, &c. And they farther order, that after ſuch Verdict given at the Common Law, both Parties ſhall reſort back for the Decree of that Court: So that here muſt be ſeveral Actions and Suits at Law and in Equity; whereas a bare *Action of Covenant*, without ſuing for the *Penalty of the Bond*, will make an End of the Buſineſs in leſs Time, and for a much leſs Charge. 2 *Lill. Abr.* 288, 289. A Perſon being intitled to the *Penalty* by Law, a Court of Equity will not relieve againſt it, without paying Principal, Intereſt and Coſts; and where a *Penalty* is recovered at Law and paid, Chancery may decree the Party to refund all, except the Principal and Intereſt, &c. *Chan. Rep.* 437. This Court will not generally carry the Debt, beyond the *Penalty of a Bond:* Yet where a Plaintiff came to be relieved againſt ſuch *Penalty*, tho' it was decreed, it was on the Payment of the principal Money, Intereſt, and Coſts; and notwithſtanding they exceeded the Penalty, this was affirmed. 1 *Vern.* 350. *Abr. Caſ. Eq.* 92.

Penance, (*Pœnitentia*) Is a Puniſhment impoſed for a Crime by the Eccleſiaſtical Laws. It is an Acknowledgment of the Offence, and ſtanding in ſome publick Place, &c. to ſatisfy the Church for the Scandal given by an evil Example; particularly in the Caſes of Adultery, &c. for which the Offender ſtands in the Church, Barefoot and Bareheaded, in a White Sheet, &c. But for ſmaller Faults it may be made in the Court or before the Miniſter and Church-wardens, or ſome of the Pariſhioners; as in Caſe of Defamation, &c. *Wood*'s *Inſt.* 507. *Penance* may be changed into a Sum of Money, to be applied to pious Uſes, called *Commuting*. 3 Inſt. 150. 4 Inſt. 336.

Penance At *Common Law*, where a Perſon ſtands *mute*. See *Pain Fort & Dure*.

Penerarius, An Enſign bearer; as *John Parient* was 'Squire of the Body, and *Penerarius* to King *Rich.* 2.

Penon, (Fr. *Pennon*) A Standard or Banner carried in War. 11 *R.* 2. *c.* 1.

Penſa Salis, A Weigh of Salt, containing 256 Pounds.

Penſam, *Ad Penſam*, The ancient Way of paying Money by Weight; oppoſed to the Payment of the Pound *de numero*, importing twenty Shillings. *Lownd*'s *Eſſ. on Coin.* See *Scalam.*

Penſion, (*Penſio*) Is an yearly Payment of Money in Recompence of Service, &c. And to receive a *Penſion* from a foreign Prince or State, without Leave of our King, has been held to be criminal, becauſe it may incline a Man to prefer the Intereſt of ſuch foreign Prince to that of his own Country. 1 *Hawk. P. B.* 59. Perſons having *Penſions* from the Crown are declared incapable of being elected Members of Parliament, &c. by Statutes 12 *W.* 3. 4 & 5 *Ann.* 1 *Geo.* 1. See *Parliament.*

Penſions of Churches, Are certain Sums of Money paid to Clergymen in Lieu of Tithes. And ſome *Churches* have ſettled on them Annuities, *Penſions*, &c. payable by other *Churches*; which *Penſions* are due by Virtue of ſome Decree made by an Eccleſiaſtical Judge upon a Controverſy for Tithes, by which the Tithes have been decreed to be enjoyed by one, and a *Penſion* inſtead thereof to be paid to another; or they have ariſen by Virtue of a Deed made by the Conſent of the Parſon, Patron, and Ordinary; and if ſuch *Penſion* hath been uſually paid for twenty Years, then it may be claimed by Preſcription, and be recovered in the Spiritual Court; or a Parſon may proſecute his Suit for a *Penſion* by Preſcription, either in that Court or at Common Law, by a Writ of Annuity; but if he takes his Remedy at Law, he ſhall never afterwards ſue in the Spiritual Court: If the Preſcription be denied, that muſt me tried by the Common Law. *F. N. B.* 51. *Hardr.* 230. *Vent.* 120. A Spiritual Perſon may ſue in the Spiritual Court, for a *Penſion* originally granted and confirmed by the Ordinary; but where it is granted by a Temporal Perſon to a Clerk, he cannot; as if one grant an Annuity to a Parſon, he muſt ſue for it in the Temporal Courts. *Cro. Eliz.* 675. If a Parſon or Vicar have a *Penſion* out of another Church, and it is not paid, they may bring a Writ of Annuity; becauſe a *Penſion* iſſuing out of a Rectory is the ſame Thing as a Rent, for it may be demanded in a Writ of Entry, and a Common Recovery may be ſuffered of it. 2 *Nelſ. Abr.* 1243. Upon a Bill in the *Exchequer* for a *Penſion*, iſſuing out of a Vicarage, it hath been held, that though there is no Glebe nor Tithes, but only Offerings, &c. yet the Vicar is chargeable; and a Suit may be brought in this Court as well as at Common Law, &c. for a *Penſion* by Preſcription. *Hardr.* 230. A *Penſion* out of an *Appropriation* by Preſcription is ſuable in the Spiritual Court; and if the Duty is traverſed, it may be tried there. 1 *Salk.* 58. A *Libel* was had in the Spiritual Court for a *Penſion*, to which the Plaintiff made a Title by Preſcription; and a *Prohibition* was prayed, for that the Court had no Cogniſance of Preſcriptions; but adjudged, that they having Cogniſance of the Principal, it ſhall draw the Acceſſary. 1 *Vent.* 3. The Curate of a Chapel of Eaſe libelled againſt the Vicar of the Pariſh for the Arrears of a *Penſion*, which he claimed by Preſcription; though a Prohibition was granted, becauſe the Curate is removeable at the Will of the Parſon, and therefore cannot preſcribe; he muſt bring a *Quantum meruit.* 2 *Salk.* 506. The Statute 13 *Ed.* 1. appoints a Remedy for *Penſions* in the Eccleſiaſtical Court: And the 34 & 35 *H.* 8. *c.* 19. gives Damages to the Value and Coſts, &c.

Penſions of the Inns of Courts, Are annual Payments of each Member to the Houſes. And alſo that which in the Two *Temples* is called a Parliament, and in *Lincoln*'s *Inn* a Council, in *Gray*'s *Inn* is termed a *Penſion*, being uſually an Aſſembly of the Members to conſult of the Affairs of the Society.

Penſion-Writ, Is a Writ or peremptory Order againſt thoſe who are in Arrear for *Penſions* and other Duties; and when once iſſued, none ſued thereby in any of the Inns of Court ſhall be diſcharged or permitted to come in Commons 'till all Duties are paid. *Ord. Gray*'s *Inn.*

Penſioners, (*Penſionarii*) Are a Band of Gentlemen ſo called, that attend as a private guard on the King's Perſon; they were firſt inſtituted *Anno* 1539.

Pentecoſtals, (*Pentecoſtalia*) Certain pious Oblations paid at the Feaſt of *Pentecoſt* or Whitſuntide by Pariſhioners to the Prieſt of the Pariſh, &c. Which Oblations were likewiſe termed *Whitſon Farthings*, and divided into four Parts; one to go to the Pariſh Prieſt, a Second to the Poor, a Third for the Repairs of the Church, and the Fourth to the Biſhop of the Dioceſe. *Steph. of Pentecoſtals*, &c.

Peny, Was our ancient current Money; and the *Saxons* had no other Sort of Silver Coin. 2 *Inſt.* 575. It was equal in Weight to our Three Pence now; five of thoſe *Penies* made one *Saxon* Shilling, and thirty *Pence* a Mark, which weighed as much as Three of our Half Crowns: And this *Peny* was made with a Croſs in the Middle, and ſo broke into Halfpence and Farthings. *Matt. Pariſ.* 1279. The *Engliſh Peny* called *Sterling* is round, and anciently weighed 32 *grana frumenti in medio Spica.* Stat. Edw. 1. *See* Denarius.

Peny-weight. As every Pound contains 12 Ounces, ſo each Ounce was formerly divided into twenty Parts, called *Peny-weights*; and though the *Peny-weight* be altered, the Denomination ſtill remains:

mains: Every *Peny-weight* is ſubdivided into twenty-four Grains.

Perambulation, (*Perambulatio*) Signifies a Travelling through, or over: As *Perambulation of the Foreſt* is the Surveying or Walking about the Foreſt, and the utmoſt Limits of it; by certain Juſtices, or other Officers thereto aſſigned, to ſet down and preſerve the Metes and Bounds thereof. 17 *Car. c.* 16. 20 *Car.* 2. *c.* 3. 4 *Inſt.* 30. *Perambulation of Pariſhes* is to be made by the Miniſter, Church-wardens and Pariſhioners, by going round the ſame once a Year, in or about *Aſcenſion* Week: And the Pariſhioners may well juſtify going over any Man's Land in their *Perambulation*, according to Uſage; and it is ſaid may abate all Nuſances in their Way. *Cro. Eliz.* 444. And there is a *Perambulation of Manors*; and a Writ *Perambulatione facienda*, which lies where any Incroachments have been made by a neighbouring Lord, *&c.* then by the Aſſent of the Lords, the Sheriff ſhall take with him the Parties and Neighbours, and make a *Perambulation*, and ſettle the Bounds: Alſo a Commiſſion may be granted to other Perſons to make *Perambulation*, and to certify the ſame in the *Chancery*, or the *Common Pleas*, *&c.* And this Commiſſion is iſſued to make *Perambulation* of Towns, Counties, *&c.* *New Nat. Br.* 296. If Tenant for Life of a Lordſhip, and one who is Tenant in Fee-ſimple of another Lordſhip adjoining ſue forth this Writ or Commiſſion, and by Virtue thereof a *Perambulation* is made; the ſame ſhall not bind him in Reverſion: Nor ſhall the *Perambulation* made with the Aſſent of Tenant in Tail, bind his Heir. *Ibid.* And 'tis ſaid this Aſſent of the Parties to the *Perambulation* ought to be acknowledged and made Perſonally in the *Chancery*, or by *Dedimus Poteſtatem*; and being certified, the Writ or Commiſſion Iſſues, *&c.* The Writ begins thus: *The King to the Sheriff*, &c. *We Command you, that taking with you Twelve diſcreet lawful Men of your County, in your proper Perſon you go to the Land of* A. B. *of*, &c. *And the Land of* C. D. *of*, &c. *And upon their Oaths, you cauſe to be made* Perambulation *betwixt the Lands of the ſaid* A. *in*, &c. *and of the ſaid* C. *in*, &c. *So that it be made by certain Metes or Bounds and Diviſions*, &c. *And make known to our Juſtices at* Weſtminſter, *&c.*

If *Perambulation* be refuſed to be made by a Lord, the other Lord who is grieved thereby ſhall have a Writ againſt him, called *de Rationabilibus Diviſis*.

Perca, For *Pertica*, a *Perch* of Land.—— *Et unam acram Prati per majorem* Percam. *Mon. Angl. Tom.* 2. *pag.* 87.

Percaptura, Is a Place in a River made up with Banks, *&c.* for the better Preſerving and Taking of Fiſh. *Paroch. Antiq.* 120.

Perch, Is uſed with us for a Rod or *Pole* of ſixteen Foot and a Half in Length, whereof forty in Length, and four in Breadth, make an Acre of Ground. *Cromp. Juriſd.* 222. But by the Cuſtoms of ſeveral Counties, there is a Difference in this Meaſure: In *Staffordſhire* it is twenty-four Foot; and in the Foreſt of *Sherwood* twenty-five Foot, the Foot there being eighteen Inches long: And in *Herefordſhire*, a *Perch* of Ditching is twenty-one Foot; the *Perch* of Walling ſixteen Foot and a Half; and a Pole of denſhiered Ground is twelve Foot, *&c.* *Skene.*

Per cui & poſt, Writs of Entry ſo called. See *Entry*.

Perdings, Signifies the Dregs of the People, *viz.* Men of no Subſtance. *Leg. H.* 1. *c.* 29.

Perdonatio Utlagariæ, Is a Pardon for a Man who for Contempt in not yielding Obedience to the Proceſs of the King's Court is outlawed, and afterwards of his own Accord ſurrenders himſelf. *Reg. Orig.* 28.

Peremptory, (*Peremptorius*) Joined with a Subſtantive, is taken for a final and determinate Act, without Hope of Renewing or Altering the ſame: And there is a *Peremptory Day*, *Action*, *&c.* *Bract. lib.* 4. *cap.* 20. *F. N. B.* 35, 38, 104. If a Defendant in an Action, tender an Iſſue in Abatement of the Plaintiff's Writ, and the Plaintiff demurs upon the Iſſue, if on arguing the Demurrer the Iſſue is overruled as not good; the Court will give the Defendant a Day over to *anſwer peremptorily*, *viz.* To plead a Plea to the Merits of the Cauſe; the former Plea which was over-ruled, being only in Abatement of the Writ: But it is otherwiſe where ſuch an Iſſue and Demurrer is in Bar of the Action; for there the Merits of the Cauſe are put upon it. *Trin.* 24 *Car.* 1. *B. R.* 2 *Lill. Abr.* 190. A *Peremptory Day* is when a Buſineſs is by a Rule of Court to be ſpoken to at a preciſe Day; but if it cannot be ſpoken unto then, by Reaſon of other Buſineſs, the Court at the Prayer of the Party concerned will diſpence with the not ſpeaking to it at that Time, and give a farther Day without Prejudice to him; and this is called the putting off of a *Peremptory*, and is uſed to be moved for by Counſel at the Riſing of the Court, when it is granted of Courſe. 2 *Lill. Ibid.* If a *Peremptory* Day is put off by the Court, the Party that will take Advantage of it, muſt enter the Rule of Court that was made for the Putting it off. *Trin.* 651. *Peremptory Challenge* of Jurors in Capital Caſes. Vide *Challenge*.

Perinde valere, Is a Term in the Eccleſiaſtical Law; and ſignifieth a Diſpenſation granted to a Clerk, who being defective in his Capacity, is nevertheleſs admitted *de facto* to a Benefice, or other Eccleſiaſtical Function: And it is alſo called a *Writ*. Stat. 25 Hen. 8. c. 21.

Periphraſis, (*Lat*) Is a Circumlocution; a Figure of *Rhetorick*, when that which might have been ſaid in one or two Words is expreſs'd by many. *Litt. Dict.* No *Periphraſis* or Circumlocution will ſupply Words of Art, which the Law hath appropriated for the Deſcription of Offences in Indictments: And not any *Periphraſis*, Intendment and Concluſion ſhall make good an Indictment, which doth not bring the Fact within all the material Words of a Statute; unleſs the Statute be recited, *&c.* *Cro. Eliz.* 535, 749. 2 *Hawk. P. C.* 224, 249.

Perjury, (*Perjurium*) Is a Crime committed, when a lawful *Oath* is adminiſtred by one that hath Authority to any Perſons in a judicial Proceeding, who ſwear abſolutely and falſly in a Matter that is material to the Iſſue or Cauſe in Queſtion, by their own Act, or the Subornation of others. 3 *Inſt.* 164. And *Perjury*, before the Conqueſt, was puniſhed ſometimes by Death, other Times by Baniſhment, and ſometimes by corporal Puniſhment, *&c.* Afterwards it came to a Fine and Ranſom, and Diſability to bear Teſtimony. 3 *Inſt.* 163. At Common Law, *Perjury* and Subornation of *Perjury* is puniſhed by Fine, Impriſonment, Pillory, *&c.* and the Offender is ever after incapable to be a Witneſs. 3 *Inſt.* 163. By Statute, Perſons committing wilful and corrupt *Perjury*, in any Cauſe depending concerning Lands or Goods, *&c.* in any of the Courts of Record, ſhall forfeit 20 *l.* and be impriſoned ſix Months, and their Oath ſhall not be received in any Court of Record, until the Judgment is reverſed; and if the Offenders have not Goods or Chattels to the Value of 20 *l.* they ſhall be ſet on the Pillory in ſome Market-place, and have both their Ears nailed thereto: And unlawful and corrupt Procuring and Suborning a Witneſs to give falſe Teſtimony in any Court of Record, *&c.* or corruptly Procuring any Witneſs to teſtify *in perpetuam rei Memoriam*, the Offender ſhall forfeit 40 *l.* And if he be not worth 40 *l.* he ſhall ſuffer ſix Months Impriſonment, and ſtand on the Pillory in ſome open Market near the Place where the Offence was committed; and ſhall not be received as a Witneſs till ſuch Judgment be reverſed; but if the Judgment be reverſed, the Party grieved ſhall recover Damages againſt the Proſecutor, by Action on the Caſe, *&c.* 5 *Eliz. cap.* 9. And not only in a Court of Record, but in any other lawful Court, as a Court-Baron, &c. *Perjury* may be committed. *Wood's Inſt.* 412. It has been adjudged, that if a Man be convicted of *Perjury* at the *Common Law*, a Pardon will reſtore the Party to his Teſtimony; but not in a Conviction on the *Statute*, for there he muſt reverſe the Judgment before he can be reſtored, and Diſability is Part of the Judgment. 2 *Salk.* 513. 2 *Nelſ. Abr.* 978. Yet a Perſon convict of *Perjury* was allowed to make Affidavit, to ſet aſide a Judgment for Irregularity; though the Affidavits of ſuch Perſons have been refuſed to be read. 2 *Salk.* 461. *Perjury*, if it relates to Juſtice, is puniſhable by Statute; and if it be in a Spiritual Matter in the Spiritual Court, it may be puniſhed there. 3 *Salk.* 269. A falſe Oath in a Court of Juſtice is more criminal than elſewhere. And 'tis an Offence for which the Party may be indicted, either by the Common Law, or upon the Statute 5 *Eliz.* by which the Puniſhment is enlarged, but the Nature of the Offence is not altered by that Statute; and in many Caſes an Indictment will lie at Common Law, when it will not lie upon the Statute; as for Inſtance: A Perſon may be indicted at Common Law for a falſe Affidavit taken before a Maſter in Chancery, but not on the Statute; becauſe this is not *Perjury* in a Matter relating to the Proof of what was in Iſſue. *Style* 336. *Sid* 106. *Bulſt.* 322. The Statute extends to no other *Perjury* than that of Witneſſes; but Perſons *perjuring* themſelves in their Anſwers in Chancery, or in the Exchequer, by Affidavit, or Swearing the Peace againſt another, &c. may be puniſhed for the *Perjury* at the Common Law; which is eſteemed the ſafeſt Way to proſecute for *Perjury*, or Subornation of *Perjury*. 3 Inſt. 166. 2 Roll. Abr. 77. Wood's Inſt. 414. In an Indictment of *Perjury*, upon an Anſwer in Chancery, it was ruled, That the Complainant in Chancery is no Witneſs pending the Suit; but if the Bill be diſmiſſed he is a Witneſs. And in this Caſe, there being but the Oath of the Proſecutor, and ſo Oath againſt Oath, the Defendant was acquitted. *Mich.* 4 *W.* & *M. B. R. Skin. Rep.* 327. *Perjury* at Common Law may be in an immaterial Thing in an Anſwer in Chancery; but if one ſwear falſe to an Interrogatory, in a Thing not materially charged therein, this is not *Perjury*, becauſe he who adminiſtred the Oath had not Power to adminiſter it, but in Matters charged in the Interrogatory. *Sid.* 274. And where an Oath is taken before one, that hath not Authority to do it; or when a Court hath no Authority to hold Plea of the Cauſe; there *Perjury* cannot be committed. 3 *Inſt.* 164. 4 *Inſt.* 278. Alſo if an Oath be given by him that has lawful Authority, and any Breach be made therein, if it be not in a judicial Proceeding, it is not puniſhable as *Perjury* by the Common or Statute Law; as where one takes an Oath to the Government, or duly to perform an Office, &c. and breaks it. *Read. on Stat. Vol.* 4. 349. Indictment will not lie at the Seſſions before Juſtices of Peace, for a *Perjury* at Common Law; though it will for a *Perjury* upon the Stat. 5 *Eliz.* that Statute giving the Juſtices Juriſdiction. 1 *Salk.* 406. It is ſaid a Man may be indicted for *Perjury* upon a voluntary and extrajudicial Oath; a Caſe being cited where a Perſon ſtole the Daughter of another, and made Oath before a Juſtice of the Peace, that he had her Father's Conſent, and this in order to get a Licence to marry her; he was indicted and convicted thereupon. 1 *Vent.* 370. On Indictment for *Perjury*, for that the Defendant ſwore at a Trial by *Niſi prius*, that a Perſon was on ſuch a Day in *London*, to be arreſted; this was material, as the Iſſue to be tried was concerning the Arreſting him by the Sheriff, and it was proved that he was in *Southwark* at that Time, and the Defendant being found Guilty was fined 20 *l.* *Sid.* 404. A Perſon was indicted for *Perjury*, and convicted of Swearing that he was Servant to *W. R.* when in Truth he was Servant to his Servant, and fined 10 *l.* *Allen* 79. If any falſe Oath hath Relation to the Iſſue, 'tis *Perjury*; and there may be Things circumſtantial which amount to this Crime, when they tend to prevent Diſcovery of the Truth: To ſwear to the Credit of a Witneſs, if it be falſe, is *Perjury*. *Comberb.* 461. *Perjury* in Witneſſes, if it is not of Conſequence in the Deciſion of the Cauſe, though it is a falſe Oath, it is not to be puniſhed as *Perjury*: But if a falſe Oath be given by a Man, attended with Circumſtances, which makes them Reaſons of his Remembrance of a Thing, to ſtrengthen the ſubſtantial Part of his Evidence, by this Means the Jury may be induced in the Giving of a Verdict, and he may be guilty of *Perjury*. 3 *Inſt.* 167. 1 *Roll. Abr.* 41, 78. 1 *Cro.* 428. 2 *Lill. Abr.* 291. *Palm.* 382, 535. Tho' where a Witneſs being ask'd, Whether ſuch a Sum of Money were paid for two Things in Controverſy between the Parties? Anſwer'd, That it was, where the Truth of it was, that it was paid only for one of them by Agreement; ſuch Witneſs ought not to be puniſhed for *Perjury*; for as the Caſe was, it was no Way material whether it was paid for one or both. 2 *Roll. Rep.* 41. To make an Offence *Perjury*, it muſt be wilful and deliberate, and not committed through Surprize, Inadvertency, or Miſtake of the Queſtion; and the Depoſition is to be direct and abſolute, not as the Perſon ſwearing thinks or believes, &c. 3 *Inſt.* 167, 266. Nothing which the Party offers upon his Belief is aſſignable for *Perjury*. *Sid.* 418. It muſt be falſe, in expreſs Words or Intention, to make it *Perjury*: for Falſhood in Intention may be puniſhed by the Common Law, though the Words be true: And if one knows not what he ſwears, it is a falſe Oath in him, ſo that one may ſwear the Truth, and yet be *perjured*; as where the Plaintiff in an Action cauſed two Men to ſwear the Value of his Goods, who never ſaw or knew them, although that which they ſwore was true, yet becauſe they knew it not, it was a falſe Oath in them, for which the Procuror and the Witneſſes were ſentenced in the Star Chamber. 3 *Inſt.* 166. 2 *Roll. Abr.* 77. But here 'tis held, a Man ought not to be drawn into a conſtructive *Perjury*. 2 Salk. 514. *Perjury* may not be in a private Matter, howſoever wilful or malicious the Oath may be; and upon this Ground it hath been holden, that a falſe Oath taken by one upon the Making of a Bargain, that the Thing ſold is his own, is not *Perjury*. 1 Hawk. 173. An Indictment for *Perjury* may be preferred againſt one for Taking a falſe Oath raſhly, and for want of Conſideration in a Court of Record; and he may be convicted and fined thereupon, but the Fine ſhall be more moderate than where committed out of Malice. 2 *Lill. Abr.* 291. The Words *Wilfully* and *Corruptly* muſt be inſerted in the Proſecution upon the Statute; and an Indictment was held ill, becauſe it did not alledge that the Defendant voluntarily ſwore, &c. 3 *Inſt.* 166. 1 *Cro.* 147. *Perjury* or Subornation of *Perjury*, in Proceedings on an Indictment, is not within the Statute, which mentions only Suits by Writ, Bill, Plaint, or Information: And no falſe Oath is within the Intent of the Act, that is not prejudicial to ſome Perſon in this Cauſe; and gives him juſt Cauſe of Complaint, that he was aggrieved by the Depoſition of the Witneſs. 3 *Inſt.* 164. But it hath been held not to be material upon an Indictment of *Perjury* at Common Law, whether the falſe Oath were at all credited, or whether the Party in whoſe Prejudice it was intended were in the Event any Way grieved by it, or not; as this is not a Proſecution grounded on the Damage of the Party, but on the Abuſe of publick Juſtice. 3 *Leon.* 230. 2 *Leon.* 211. And if a Perſon procure another to take a falſe Oath amounting to *Perjury*, but he doth not take it, though the Perſon who incited him is not guilty of Subornation of *Perjury*, he is puniſhable by Fine. *Read. Stat.* 4 *Vol.* 350. Where a Plaintiff loſes his Action by a falſe and *perjured* Witneſs produced on the Part of the Defendant, it is ſaid he cannot have an Action againſt that Witneſs, till he is indicted and convicted; unleſs it be ſuch a *Perjury*, or in ſuch a Court, that an Indictment would not lie for it. *Sid.* 90. 3 *Salk.* 270. On Motion to amend an Information for *Perjury*, it was granted, giving Notice to the Defendant what they would amend; and he to ſhew Cauſe why they ſhould not. 1 *Lev.* 189. Acquittal upon a bad Indictment of *Perjury* is no Plea to a good one, and the Party may be indicted *de novo*; but an Acquittal upon a good One is peremptory. *Mod. Ca.* 167. A Perſon was found guilty in an Information for *Perjury*, and upon ſeveral Affidavits the Court was moved for a new Trial; tho' it was denied, except the King's Counſel would conſent, notwithſtanding it appeared to the Court that there was Cauſe for a new Trial. *Sid.* 49. Sir *John Jackſon* being acquitted of a great Debt, by the *Perjury* of *Fenwick* and *Holt*, they were indicted for the *Perjury*, and the Trial being appointed, the Witneſſes who could prove it were arreſted and committed, ſo that they could not be preſent at the Trial; and this being done by the Contrivance of Sir *John*, he was found guilty of the Miſdemeanor on an Information, and fined 1000 Marks, and committed for a Month: But the Court would not grant a new Trial in *Perjury*. *Sid.* 149, 153. An Indictment for *Perjury* will not be quaſhed for any Inſufficiency until the Merits are tried, and 'tis Time enough to move to quaſh it after a Verdict; and no *Certiorari* ſhall be had to remove an Indictment for *Perjury* or Forgery; for when they are removed, they are ſeldom proceeded on. *Sid.* 54. 2 *Nelſ. Abr.* 975. Indictment at Common Law is to be brought where a Witneſs for the King ſwears falſly; or he may be puniſhed by Information: And the Offence of *Perjury*, if proſecuted by Indictment, is local; but 'tis otherwiſe on an Information. 3 *Inſt.* 164. 1 *Vent.* 182. Perſons guilty of *Perjury*, by a late Statute, ſhall, over and beſide the Puniſhment already inflicted by Law, be ſent to the Houſe of Correction for a Time not exceeding 7 Years, or may be Tranſported to the Plantations for ſeven Years in like Manner as Felons, *&c.* 2 *Geo.* 2. *c.* 25.

Form of an *Indictment* for *Perjury*.

THE *Jurors*, &c. *That* A. B. *of* M. *in the County aforeſaid Gentleman, on the Day of*, &c. *in the Year of the Reign*, &c. *at* M. *aforeſaid in the ſaid County, came before* C. D. *Eſquire a Commiſſioner*, &c. (*then having Authority to adminiſter the Oath to the ſaid* A. B.) *and being ſworn upon the Holy Goſpel of God, did then and there upon his Oath, maliciouſly, falſly, wilfully, and corruptly depoſe, ſwear and affirm in Writing, of and concerning*, &c. *in a Cauſe between* E. F. *Plaintiff, and* G. H. *Defendant, that*, &c. (*here reciting the Perjury*) *when in Fact*, &c. *And ſo the ſaid* A. B. *on the ſaid Day*, &c. *in the*, &c. *Year aboveſaid, at* M. *aforeſaid in the ſaid County, did falſly, maliciouſly, wilfully and corruptly, commit wilful and corrupt* Perjury, *before the ſaid* C. D. *Eſquire, then and there having ſufficient Authority to adminiſter the Oath aforeſaid to the ſaid* A. B. *contrary to the Statute*, &c. *and againſt the Peace*, &c.

Per my & per tout, Are Words uſed where a Jointenant is ſaid to be ſeiſed of the Land he holds jointly, *by every Parcel, and by the Whole*; which Signification they bear in the Law. *Litt. Tenur. Sect.* 288.

Permit, (from *Permitto*) Is a *Permiſſion* or Licence for Perſons to paſs with and ſell Goods, on their having paid the Cuſtom Duties for the ſame. It is mentioned in the Statute 9 *Geo.* 2. *cap.* 35. See *Cuſtoms.*

Permutatione Archidiaconatus & Eccleſiæ eidem annexæ cum Eccleſia & Prebenda, &c. Is a Writ to the Ordinary, commanding him to admit a Clerk to a Benefice, upon an *Exchange* made with another. *Reg. Orig.* 307.

Pernancy, (From the Fr. *Prendre*) Signifies a Taking or Receiving; as *Tithes in Pernancy*, are Tithes taken or that may be taken in Kind.

Pernor of Profits, Is he that takes or receives the Profits of Lands, Tenements or Hereditaments; and is ſaid to be all one with *Ceſtui que uſe*. Stat. 1 *Hen.* 7. *cap.* 1. 1 *Rep.* 123. The King has the Pernancy of the Profits of the Lands of an Outlaw, in perſonal Actions; and by Seiſure ſhall hold againſt the Alienation of ſuch Outlaw, *&c. Raym.* 17. See *Co. Lit.* 589.

Perpars, A Part of the Inheritance.—— *Tanquam terram quæ ſibi deſcendit in* perpartem *de hæreditate, &c.* Fleta, lib. 2. c. 54.

Perpetuity, (*Perpetuitas*) Is a Continuance everlaſtingly; and in Law, it is when an Eſtate is deſigned to be ſo ſettled in Tail, *&c.* that it cannot be undone or made void: As where if all the Parties that have Intereſt join, they cannot bar or paſs the Eſtate; but if by the Concurrence of all having the Eſtate-tail, it may be barred, it is no *Perpetuity*. 2 *Lill. Abr.* 292. An Eſtate-Tail, by the Device of a Common Recovery, being made barrable; to prevent the ſame, Men did entail their Lands with Condition, that none of them that had the Land, ſhould do any Act to put it from the next Heir; and if any did, that he ſhould forfeit his Eſtate, and ſuch Heir ſhould enter, *&c.* but this being found of ill Conſequence, the Law hath adjudged all theſe Conditions void, and ſo avoided *Perpetuities*. 1 *Anderſ.* 237, 341. It is a Rule that hath deſtroyed *Perpetuities*, that an Eſtate cannot be made to ceaſe for a Time, and then to riſe again; or to ceaſe as to one Perſon, and have Being as to another; or deprive a Tenant in Tail by Condition or Limitation of the Power of Alienation. *Hob.* 257. 1 *Rep.* 84. *Perpetuities* are odious in the Law; and an executory Deviſe of Lands after an Eſtate-tail generally tends to a *Perpetuity*; tho' not where it depends upon one Life, when a Fee-ſimple may be to one, and remain to another, *&c.* 2 *Cro.* 695. A Term for Years may not be deviſed in Tail, with Remainders over to raiſe a *Perpetuity*: But a Limitation of a Term in Reverſion, to ſeveral Perſons *in eſſe*, doth not extend to create a *Perpetuity*; though if it be to Perſons not *in eſſe*, it is otherwiſe. *Moor* 495. *Chanc. Rep.* 8. A Leaſe for Years, to a Man and the Heirs of his Body, *&c.* is not good; but it may be aſſigned to Truſtees for the Iſſue in Tail to receive the Profits, *&c.* yet if ſuch a Leaſe comes then to be limited in Tail, a preſent Remainder may not be limited thereon; but the Law will allow a future Contingent Eſtate, ſo as it wears out in a ſhort Time, as in the Compaſs of two Lives, *&c.* 10 *Rep.* 87. 4 *Inſt.* 27.

Per quæ ſervitia, Is a judicial Writ, iſſuing on the Note of a *Fine*, and lies for the Cogniſee of a Manor, Lands, Rents, or other Services, to compel the Tenants at the Time of the Fine levied to attorn to him thereupon. *Old Nat. Br.* 155.

Perquiſite, (*Perquiſitum*) Signifies in Law Profit, or any Thing gained by one's own Induſtry or Purchaſe; contradiſtinguiſhed from that which deſcends to a Man from a Father or Anceſtor. *Bract. lib.* 2. *cap.* 30.

Perquiſites of Courts, Are commonly thoſe Profits that ariſe to Lords of Manors, from their Courts-Baron, over and above the certain and yearly Revenue of the Lands; as Fines of Copyholds, Heriots, Amerciaments, &c. *Perk.* 20, 21. *Perquiſites of Officers.* See *Fees.*

Per quod conſortium amiſit, And *per quod ſervitium amiſit,* are Words neceſſary in Declarations for Treſpaſs, &c. where a Man's Wife or Servant is beaten, or taken from him, and he loſes their Service, &c. 2 *Lill. Abr.* 595, 596.

Perſon, A Man or Woman; alſo the State or Condition, whereby one Man differs from another.

Perſonable, (*Perſonabilis*) Is as much as to ſay enabled to hold Plea in Court; as the Defendant was judged *perſonable* to maintain the Action. *Old Nat. Br.* 142. And in *Kitchen,* the Tenant pleaded, that the Demandant was an Alien, born in *Portugal,* without the Allegiance of the King; and Judgment was asked whether he ſhould be anſwered: To which the Demandant ſaid, he was made *perſonable* by Parliament, *i. e.* as the Civilians would ſpeak it, *Habere* Perſonam *ſtandi in Judicio.* Kitch. 214. *Perſonable* likewiſe ſignifieth to be of Capacity to take any Thing granted. *Plowd.* 27.

Perſonal, (*Perſonalis*) Goods or Chattels, ſignifies any moveable Thing belonging to a Man, be it quick or dead. *Weſt. Symb. par.* 2. *Sect.* 58. *Perſonal Things,* may be given to a Corporation; as a Horſe, a Cow, Sheep, or other Goods, &c. *Kitch.* 139. See *Chattels.*

Perſonal Action, (*Actio Perſonalis*) Is that which one Man may have by Reaſon of a Contract for Money or Goods againſt another: It is ſuch an Action whereby a Debt, Goods and Chattels are demanded, or Damages for them; or Damages for Wrong done to a Man's *Perſon. Terms de Ley* 19. In the *Civil Law,* it is called *Actio in Perſonam,* and is brought againſt him who is bound by Covenant, to grant or do any Thing, &c. And in our Law, *Actio Perſonalis moritur cum perſona.* 1 *Inſt.* 53. Action of Debt lieth not againſt Executors, upon a Contract for the Eating and Drinking of the Teſtator; for that Action in ſuch Caſe dieth with him. 9 *Rep.* 87. If a Perſon commit a Battery or Treſpaſs, and he or the Perſon beaten, &c. die; the Action dieth, and is gone. *Noy's Max.* 5. An Executor cannot bring an Appeal for a Larceny from the Teſtator; the Appeal for it is ſaid to be a mere *Perſonal Action,* veſted in the Teſtator, and dies with him as all Actions for *Torts* do. *H. P. C.* 184. *S. P. C.* 50. And an Appeal of Death is a *Perſonal Action* given to the Heir, in Reſpect to his immediate Relation to the Perſon killed; and like other *Perſonal Actions,* ſhall die with the Perſon. 2 *Hawk. P. C.* 165.

Perſonal Tithes, Are Tithes paid of ſuch Profits as come by the Labour and Induſtry of a Man's *Perſon*; as by Buying and Selling, Gains of Merchandize, and Handicrafts, &c.

Perſonalty, (*Perſonalitas*) Is an Abſtract of *Perſonal:* The Action is in the *Perſonalty,* i. e. it is brought againſt the right *Perſon,* or the Perſon againſt whom in Law it lies. *Old Nat. Br.* 92. Or it is to diſtinguiſh Actions and Things *Perſonal,* from thoſe that are *Real.*

Perticata terræ, The fourth Part of an Acre. See *Perch.*

Perticulas, Poor Scholars of the *Iſle of Man:* The King granted to *L. Macguin de Inſula de* Man *Scholari, quandam Eleemoſynam vocat.* Perticulas, *ad ſuſtentationem cujuſdam Pauperis Scolaris de Inſula prædicta ad exercend. Scholas, per Progenitores noſtros quondam Reges Angliæ datam & conceſſam.* Pat. Hen. 4.

Perviſe, According to *Somner* ſignifies *Palatii atrium vel area illa à fronte Aulæ Weſtm. hodie* the Palace-Yard *vulgo nuncupata.* Somn. Gloſſ. See *Parviſe.*

Peſa, A certain Weight and Meaſure: And *Peſarius,* a Weigher. *Pat.* 2 *Ed.* 4. See *Peiſa.*

Peſage, (*Peſagium*) A Cuſtom or Duty paid for the Weighing of Merchandize, or other Goods. ——— Galfridus Plantagenet *Regis* Henrici *Filius, Dux* Britanniæ & *Comes* Richmundiæ, *Dedi Tronagium* & Peſagium *de Nundinis ſancti* Botulphi, &c. *Selden's Tit. Hon.*

Peſſona, Maſt of Oaks, &c. or the Money taken for Maſt, or feeding of Hogs. *Mon. Ang. Tom.* 2. *p.* 213. See *Maſt.*

Peſtarable, As Wares *peſtarable,* ſeem to be ſuch as *peſter,* and take up much Room in a Ship. Stat. 32 *H.* 8. *c.* 14.

Peter-corn, Is mentioned in ſome of the antient Regiſters of our Biſhops, particularly in that of St. *Leonard de Ebor,* which contains a Grant thereof by King *Athelſtane,* &c. *Collect. Dodſw. MS.*

Peter-pence, (*Denarii Sancti Petri*) Otherwiſe called in the Sax. *Romefeoh,* i. e. the *Fee* due to *Rome,* was a Tribute or rather Alms given by *Ina* King of the *Weſt Saxons,* in his Pilgrimage at *Rome* in the Year 725. And the like was given by *Offa* King of the *Mercians,* through his Dominions, *Anno* 794. But it is ſaid not to be as a Tribute to the *Pope,* but for the Suſtentation of the *Engliſh* School or College at *Rome*; and it was called *Peter-pence,* becauſe collected on the Day of St. *Peter ad vincula,* and was a *Penny* for every Houſe. King *Edgar's* Laws contain a ſharp Conſtitution touching this Money. *Leg. Edg.* 78. *cap.* 4. It was prohibited by King *Ed.* 3. and by Stat. 25 *H.* 8. But it revived 1 & 2 *Ph.* & *Mar.* and was wholly abrogated by 1 *Eliz. c.* 1.

Peter ad vincula, Mentioned in the Stat. 4 *Ed.* 4. *cap.* 1, &c. See *Gule of Auguſt.*

Petition, (*Petitio*) Hath a general Signification for all Kinds of Supplications made by an Inferior to a Superior, and eſpecially to one having Juriſdiction. *S. P. C. c.* 15. And it is uſed for that Remedy which the Subject hath to help a Wrong done by the King, who hath a Prerogative not to be ſued by Writ: In which Senſe it is either general, That the King do him Right and Reaſon, whereupon follows a general Indorſement upon the ſame, *Let Right be done the Party:* Or it is Special, when the Concluſion and Indorſement are ſpecial, for this or that to be done, &c. *Staundf. Prærog. c.* 22. By Statute, the Soliciting, Labouring or Procuring the Putting the Hands or Conſent of above twenty Perſons to any *Petition,* to the King, or either Houſe of Parliament, for Alterations in Church or State; unleſs by Aſſent of three or more Juſtices of Peace of the County, or a Majority of the Grand Jury, at the Aſſiſes or Seſſions, &c. and repairing to the King or Parliament to deliver ſuch *Petition,* with above the Number of ten Perſons, is ſubject to a Fine of 100 *l.* and three Months Impriſonment, being proved by two Witneſſes, within ſix Months, in the Court of *B. R.* or at the Aſſiſes, &c. 13 *Car.* 2. *cap.* 5. And if what is required by this Statute be obſerved, Care muſt be taken that *Petitions* to the King contain nothing which may be interpreted to reflect on the Adminiſtration; for if they do, it may come under the Denomination of a Libel: And 'tis remarkable, that the *Petition* of the City of *London,* for the Sitting of a Parliament was deem'd libellous; becauſe it ſuggeſted that the King's Diſſolving a late Parliament was an Obſtruction of Juſtice. *Read.* Stat. Vol 4. 353. Alſo the *Petition* of the ſeven *Biſhops,* ſent to the Tower by King *James* 2. was called a Libel, &c. 5 *Mod. Rep* 212. To ſubſcribe a *Petition* to the King, to frighten him into a Change of his Meaſures, intimating that if it be denied, many Thouſands of his Subjects will be diſcontented, &c. is included among the Contempts againſt the King's Perſon and Government, tending to weaken the ſame, and puniſhable by Fine and Impriſonment. 1 *Hawk. P. C.* 60.

Petition of Right. In the Reign of K. *Charles* 1. there was a famous *Petition of Right*; That none ſhould be compelled to make or yield any Gift, Loan, Benevolence, Tax, and ſuch like Charge, without Conſent by Act of Parliament; nor upon Refuſal ſo to do, be called to make Anſwer, take any Oath not warranted by Law, give Attendance, or be confined, or otherwiſe moleſted concerning the ſame, *&c.* And that the Subject ſhould not be burdened by the Quartering of Soldiers or Mariners; and all Commiſſions for proceeding by Martial Law, to be annulled, and none of like Nature iſſued thereafter, leſt the Subject (by Colour thereof) be deſtroyed or put to Death, contrary to the Laws of the Land, *&c.* See Stat. 3 *Car.* 1. *cap.* 1.

Petit Larceny, *Parvum Latrocinium.* See *Larceny.*

Petit Treaſon, (Fr. *Petit Trahiſon*, i. e. *Proditio minor*) Treaſon of a leſſer or lower Kind. 25 *Ed.* 3. *cap.* 2. and 22 *Hen.* 8. *cap.* 14. See *Treaſon.*

Petra, Is a Weight, which we call a Stone, but differing in many Parts of *England*; in ſome Places conſiſting of Sixteen, in others Fourteen or Twelve, and eight Pounds. *Cowel.*

Petus, *Pete,* Combuſtible Earth dug up in ſmall Pieces for Fuel; it is uſually found in low Meadow Ground. *Cartular. Abbat Glaſton. MS.*

Pettyfogger, (From the Fr. *Petite*, ſmall, and Sax, *Fogere,* a Suitor or Solicitor) Signifies a Petty Attorney, or inferior Solicitor in the Law, or rather a Pretender to the Law, having neither Law nor Conſcience.

Pewterers, Are not to teach their Trades to Foreigners, *&c.* Stat. 25 *Hen.* 8. *cap.* 9. Vide *Braſs.*

Pharos, (From *Pharus*, a ſmall Iſland in the Mouth of the *Nile*, wherein ſtood a high Watch-Tower) A Watch-Tower, or Sea-Mark: And no Man can erect a *Pharos*, Light-Houſe, Beacon, *&c.* without lawful Warrant and Authority. 3 *Inſt.* 204.

Pheaſants and Partridges. Theſe Birds of Game are not to be taken or killed under Penalties, by ſeveral Statutes. 11 *H.* 7. 23 *Eliz.* 1 *Jac.* 1. 4 *&* 5 *W. & M. &c.* See *Game.*

Phyſicians. No Perſon within the City of *London*, or ſeven Miles thereof, ſhall practice as a *Phyſician* or Surgeon, without a Licence from the Biſhop of *London*, or Dean of St. *Paul's*; who are to call to their Aſſiſtance four Doctors of Phyſick, on Examination of the Perſons before granted: And in the Country, without Licence from the Biſhop of the Dioceſe, on Pain of forfeiting 5 *l.* a Month. 3 *Hen.* 8. *cap.* 11. By the 14 *&* 15 *H.* 8. *c.* 5. the King's Charter for incorporating the *College of Phyſicians in London*, is confirmed: They have Power to chuſe a *Preſident*, and have perpetual Succeſſion, a Common Seal, Ability to purchaſe Lands, *&c.* Eight of the Chiefs of the College are to be called *Elects*, who from among themſelves ſhall chuſe a Preſident yearly: And if any ſhall practice Phyſick in the ſaid City, or within ſeven Miles of it, without the Licence of the ſaid College under their Seal, he ſhall forfeit 5 *l.* Alſo Perſons practiſing Phyſick in other Parts of *England*, are to have Letters teſtimonial from the Preſident and three Elects, unleſs they be graduate *Phyſicians* of *Oxford*, or *Cambridge*, &c. The Stat. 32 *H.* 8. *c.* 10. ordains, that four *Phyſicians*, (called *Cenſors*) ſhall be yearly choſen by the College of *Phyſicians*, to ſearch Apothecaries Wares, and have an Oath given them for that Purpoſe by the Preſident; Apothecaries denying them Entrance into their Houſes, *&c.* incur a Forfeiture of 5 *l.* And the *Phyſicians* refuſing to make the ſaid Search, are liable to a Penalty of 40 *s.* And every Member of the College of *Phyſicians*, is authorized to practiſe Surgery in *London* or elſewhere. Perſons having a Knowledge and Experience in Herbs and Roots, may practice and miniſter to outward Sores or Swellings, any Herbs or Ointments, according to their Skill; and alſo Drinks for the Stone, Strangury, or Agues, without Licence, or incurring any Penalties by the Statute 32 *H.* 8. *cap.* 11. Stat. 34 *&* 35 *H.* 8. *cap.* 8. Popiſh Recuſants are diſabled to practiſe Phyſick, or to uſe the Trade of an Apothecary, *&c.* under Penalties. 3 *Jac.* 1. *c.* 5. The four Perſons called Cenſors, annually choſen by the Preſident and College of *Phyſicians*, calling to their Aſſiſtance the Wardens of the Apothecaries Company in *London*, or one of them, are empowered to enter into the Houſes, Shops, or Warehouſes of Apothecaries, *&c.* and ſearch and examine Medicines, and to burn or deſtroy thoſe that are defective or decayed, or not fit for Uſe; but ſubject to appeal to the College of *Phyſicians*, *&c.* 10 *Geo.* 1. *c.* 20. In the Caſe of Dr. *Bonham*, 7 *Jac.* 1. is ſhewn the Power of the College of *Phyſicians*, in puniſhing Perſons for practiſing Phyſick without Licenſe: They impriſoned the Doctor for practiſing without a Licence; but it was adjudged that they could not lawfully do it, for in ſuch Caſe they had no Power by the Statute to commit, but they ought to ſue for the Penalty of 5 *l. per* Month, *qui tam*, *&c.* But in Caſe of Male Practice, the *Cenſors* have Power to commit a Perſon; for they may in ſuch Caſe fine and impriſon by their Charter, and they are Judges of Record, and not liable to an Action for what they do by Virtue of their Judicial Power. 8 *Rep.* 107. *Carthew's Rep.* 494. Apothecaries taking upon them to adminiſter Phyſick, without Advice of a Doctor, has been adjudgen Practiſing of Phyſick within the Statutes; the proper Buſineſs of an Apothecary being to prepare the Preſcriptions of the Doctor: In this Caſe the Practice of *Phyſick* was ſaid to conſiſt in judging of the Diſeaſe and Conſtitution of the Patient; and of the fitteſt and propereſt Remedy for the Diſtemper; and in directing or ordering the Application of the Remedy to the Diſeaſed: And ſo it was reſolved, tho' no Fee was given the Apothecary. *Mich.* 2 *Ann. B. R.* 2 *Salk.* 451. But this Judgment was afterwards reverſed in the Houſe of Lords. *Mod Caſ.* 44. It has been holden, that if a Perſon not duly authoriſed to be a *Phyſician* or Surgeon, undertakes a Cure, and the Patient dies under his Hands, he is guilty of Felony; but 'tis ſaid not to be excluded the Benefit of Clergy. 1 *Hawk. P. C.* 87.

Philoſopher's Stone. King *Hen.* 6. granted Letters Patent to certain Perſons, who undertook to find out the *Philoſopher's Stone*, and to change other Metals into Gold, *&c.* to be free from the Penalty of the Stat. 5 *Hen.* 4. made againſt the Attempts of *Chymiſts* of this Nature. *Pat.* 34 *Hen.* 6. 3 *Inſt.* 74. See *Multiplication of Gold and Silver.*

Picard, A Kind of a large Boat, of about fifteen Tons or upwards, uſed on the River *Severn.* Stat. 35 H. 8. c. 9. 13 Eliz. c. 11.

Piccage, (*Piccagium*, From the Fr. *Piquer*, i. e. *Effodere*) A Conſideration of Money, paid for the Breaking up of Ground to ſet up Booths, Stalls or Standings, in Fairs; it is payable to the Lord of the Soil.

Pickards. No Perſon ſhall uſe any Iron *Cards*, or *Pickards*, in rowing any Woollen *Cloth*, upon Pain to forfeit the ſame, and 20 *s.* for every Offence. 3 *&* 4 *Ed.* 6. *c.* 2.

Picle, (*Pictellum*) A ſmall Parcel of Land encloſed with a Hedge; a little Cloſe: This Word ſeems to come from the Italian *Picciola*, i. e. *Parvus*; and in ſome Parts of *England*, it is called *Pightel.*

Pictures. A large Duty is granted on all *Pictures* imported, payable into the *Exchequer*, &c. Stat. 8 *Geo.* 1.

Piece of Eight, *Spaniſh* Coin valued at about 4 *s.* 6 *d.* *Engliſh* Money, brought from *Mexico*, *Peru*, &c. *Merch. Dict.*

Piepowder-Court, A Court incident to *Fairs* and *Markets*: And the Fair of St. *Giles*, held on the Hills of that Name, near the City of *Wincheſter*, by Virtue of Letters Patent of K. *Edw*. 4. hath a Court of *Piepowder* of a tranſcendent Juriſdiction; the Judges whereof are called *Juſtices of the Pavilion*, and have their Power from the Biſhop of *Wincheſter*. Prin. Animad. on 4 Inſt. 191. *See* Court of Piepowper.

Pies, *Freres pies*, Were a Sort of *Monks*; ſo called, becauſe they wore *black* and *white* Garments like *Magpyes*: They are mentioned by *Walſingham*, *p*. 124.

Pictantia, A ſmall Portion of Meat and Drink, diſtributed to the Members of ſome Collegiate Body, or other People, upon a high Feſtival, or ſtated Anniverſary. *Libr. Statut. Eccl. Paul. Lond. A. D.* 1298.

Pictanciarius, The Officer in Collegiate Churches, who was to diſtribute the *Pittances*, at ſuch Times and in ſuch Proportions as were appointed by the Donors. See *Pitance*.

Pigeons. Every Perſon who ſhall ſhoot at and kill a *Pigeon*, may be committed to the common Gaol for three Months, by two or more Juſtices of the Peace, or he ſhall pay 20 *s*. to the Poor of the Pariſh. Stat. 1 *Jac*. 1. *c*. 27. And to ſteal *Pigeons* in a *Pigeon-houſe*, ſhut up ſo that the Owner may take them, is Felony. 1 *Hawk. P. C.* 94.

Pigeon-houſe, Is a Place for the ſafe Keeping of *Pigeons*. A Lord of a Manor may build a *Pigeon-houſe* or *Dovecote* upon his Land, Parcel of the Manor; but a Tenant of a Manor cannot do it, without the Lord's Licence. 3 *Salk*. 248. Formerly none but the Lord of the Manor, or the Parſon, might erect a *Pigeon-houſe*; though it has been ſince held, that any Freeholder may build a *Pigeon houſe*, on his own Ground. 5 *Rep*. 104. *Cro. Eliz*. 548. *Cro. Jac*. 440, 382. A Perſon may have a *Pigeon-houſe*, or Dove-cote, by Preſcription. *Game Law*, 2 *Pa*. 133. See *Nuſance*.

Pila, Is that Side of *Money* which is called *Pile*, becauſe it is the Side on which there was an Impreſſion of a Church built on *Piles*; and he who brings an Appeal of Robbery againſt another, muſt ſhew the certain Quantity, Quality, Price, Weight, *&c. valorem &* Pilum, where *Pilum* ſignifies *Figuram Monetæ*. Fleta, lib. 1. cap. 39.

Pilettus, Was anciently uſed for an Arrow, as had a round Knob a little above the Head, to hinder it from going far into a Mark; from the Lat. *Pila*, which ſignifies generally any round Thing like a Ball. —— *Et quod Foreſtarii non portabunt ſagittas barbatas, ſed* Piletos. *Chart*. 31 H. 3. Perſons might ſhoot without the Bounds of a *Foreſt* with ſharp or pointed Arrows; but within the Foreſt, for the Preſervation of the Deer, they were to ſhoot only with Blunts, Bolts, or *Piles*: And *Sagitta Pileta* was oppoſed to *Sagitta barbata*; as *Blunts* to *Sharps*, in Rapiers. *Matt. Pariſ.*

Pileus Supportationis, A Cap of Maintenance; Pope *Julius* ſent ſuch a Cap with a Sword to King *Henry* 8. *Anno* 1514. Holling. pag. 827.

Pille, At *Fouldrey* in the County of *Lancaſter*, is called *Pille* by the Idiom of the Country, for a *Pile* or Fort, built for the Safeguard and Protection of any Place: This *Pille* was erected by the Abbot of *Forneſſe* in the firſt Year of K. *Edw*. 3. See *Pela*.

Pillory, (*Colliſtrigium*, *Collum ſtringens*; *Pilloria* from the Fr. *Pilleur*, i. e. *Depeculator*, or *Pelori* derived from the Greek Πύλη, *Janua*, a Door, becauſe one ſtanding on the *Pillory*, puts his Head, as it were, through a Door, and Ὁράω, *video*) Is an Engine made of Wood to puniſh Offenders, by expoſing them to publick View, and rendring them infamous. There is a *Statute of the Pillory*, 51 H. 3. And by Statute, it is appointed for Bakers, Foreſtallers, and for thoſe that uſe falſe Weights, Perjury, Forgery, *&c.* 3 *Inſt*. 219. Lords of Leets are to have a *Pillory* and Tumbrel, or it will be Cauſe of Forfeiture of the Leet; and it is ſaid that a Vill may be bound by Preſcription to provide a *Pillory*, &c. 2 *Hawk. P. C.* 73.

Pilot, Is he that hath the Government of a *Ship*, under the Maſter. And *Pilots* of Ships, taking upon them to conduct any Ship or Veſſel from *Dover*, or *Deal*, &c. to any Place up the River of *Thames*, are to be firſt examined and approved by the Maſter and Wardens of the Society of *Trinity-Houſe*, &c. or ſhall forfeit 10 *l*. for the firſt Offence, 20 *l*. for the ſecond, and 40 *l*. for every other Offence; one Moiety to the Informer, and the other to the ſaid Maſter and Wardens; but any Maſter or Mate of a Ship, *&c.* may *pilot* his own Veſſel up the ſaid River: And if any Ship ſhall be loſt, through the Negligence and Careleſſneſs of any *Pilot*, he ſhall be for ever after diſabled to act as a *Pilot*. 3 *Geo*. 1. 13. Alſo the *Lord Warden of the Cinque Ports* may make Rules for Government of *Pilots* at *Dover*, *Deal*, &c. and order a ſufficient Number to ply at Sea to conduct Ships up the *Thames*. 7 *Geo*. 1. *cap*. 21. No Perſon ſhall act as a *Pilot* on the *Thames*, &c. (except in Collier Ships) without Licence from the Maſter and Wardens of *Trinity-Houſe* at *Debtford*, on Pain of forfeiting 20 *l*. And *Pilots* are to be ſubject to the Government of that Corporation; and pay antient Dues not exceeding 1 *s*. in the Pound out of Wages, for the Uſe of the Poor thereof. Stat. 5 *Geo*. 2. *c*. 20. By the Laws of *France*, no Perſon ſhall be received as a *Pilot*, till he has made ſeveral Voyages, and hath paſs'd a ſtrict Examination; and after that, on his Return in long Voyages, he is to lodge a Copy of his Journal in the Admiralty: And if a *Pilot*, by Ignorance or Negligence, ſhall occaſion the Loſs of a Ship, he is to pay 100 Livres Fine, and be for ever deprived of the Exerciſe of *Pilotage*; and if he doth it deſignedly, he ſhall be puniſhed with Death. *Lex Mercat*. 70, 71. The *Laws of Oleron* ordain, That if any *Pilot* ſhall deſignedly miſguide a Ship, that it may be caſt away, he ſhall be put to a rigorous and unmerciful Death, and hung in Chains: And if the Lord of the Place where a Ship ſhall be thus loſt, ſhall abet ſuch Villains in Order to have a Share in the Wreck, he ſhall be apprehended, and all his Goods forfeited for the Satisfaction of the Perſons ſuffering; and his Perſon ſhall be faſtened to a Stake in the Midſt of his own Manſion, which being fired on the four Corners thereof, it ſhall be burnt to the Ground, and he with it. *Leg. Ol. cap*. 25. And by the Laws of *Oleron*, if the Fault of a *Pilot*, be ſo notorious, that the Ship's Crew ſee an apparent Wreck, they may lead him to the Hatches, and ſtrike off his Head; but the Common Law denies this haſty Execution: An ignorant *Pilot* is ſentenced to paſs thrice under the Ship's Keel, by the Laws of *Denmark*. *Lex Mercat*. 70. Maſters of Ships ſhall not oblige *Pilots* to paſs through dangerous Places, or to ſteer Courſes againſt their Wills; but if there be a Difference in Opinions, the Maſter may in ſuch Caſe be governed by the Advice of the moſt expert Mariners. *Ibid.* Before the Ship arrives at her Place or Bed, while ſhe is under the Charge of the *Pilot*, if ſhe or her Goods periſh, or be ſpoiled, the *Pilot* ſhall make good the ſame: But after the Ship is brought to the Harbour, then the Maſter is to take the Charge of her, and anſwer all Damages, except that of the Act of God, *&c.* *Leg. Ol. cap*. 23. In Charter-parties of Affreightment, the Maſter generally covenants to find a *Pilot*, and the Merchant to pay him: And in Caſe the Ship ſhall miſcarry thro' the Inſufficiency of the *Pilot*, the Merchant may charge either the Maſter, or the *Pilot*; and if he charges the Maſter, ſuch Maſter muſt have his Remedy againſt the *Pilot*. Lex Mercat. 70. *See* Lodmanage.

Pimp-Tenure. —— Willielmus Hoppeſhort, *tenet dimidiam virgatam terræ in* Rockhampton *de Domino Rege, per ſervitium cuſtodiendi ſex Damiſellas, ſcil. Meretrices, ad uſum Domini Regis.* 12 Ed. 1. *viz.* by *Pimp-Tenure.* Blount's Ten. 39.

Pinnas bibere, Or *Ad pinnas bibere.* The old Cuſtom of Drinking brought in by the *Danes*, was to fix a *Pin* in the Side of the Waſſal Bowl, and ſo to drink exactly to the Pin; as now is practiſed in a ſealed Glaſs, &c. This Kind of Drunkenneſs was forbid the Clergy, in the Council at *London*, *Anno* 1102.

Pioneers, (Fr. *Pionniers*, i. e. *Foſſores*) Are ſuch Labourers as are employed in the King's Army, to caſt up Trenches, or undermine Forts. Stat. 2 & 3 *Ed.* 6. *c.* 20.

Pipe, (*Pipa*) Is a Roll in the *Exchequer*, otherwiſe called the *Great Roll*; and there are ſeveral Officers of the *Pipe*, &c. 37 *Ed.* 3 *cap.* 4. It is alſo a Meaſure of Wine, containing two Hogſheads, or Half a Ton, that is, one hundred and twenty-ſix Gallons; mentioned in 1 *R.* 3. *c.* 3.

Piquant, A *French* Word for Sharp, made uſe of to expreſs Malice or Rancour againſt any one. *Law Fr. Dict.*

Pirates, (*Piratæ*) Are common Sea-Rovers, without any fix'd Place of Reſidence, who acknowledge no Sovereign and no Law, and ſupport themſelves by Pillage and Depredations at Sea: But there are Inſtances wherein the Word *Pirata* has been formerly taken for a Sea Captain. *Spelm.* *Pirates* are Enemies to all; for which Reaſon neither Faith nor Oath is to be kept with them: They are denied Succour by the Laws of Nations; and by the *Civil Law*, a Ranſom promiſed to a *Pirate*, if not complied with, creates no Wrong; for the Law of Arms is not communicated to ſuch, neither are they capable of enjoying that Privilege, which lawful Enemies are entitled to in the Caption of another. *Lex Mercat.* or *Merch. Comp.* 183. If a *Pirate* enters a Port or Haven, and aſſaults and robs a Merchant Ship at Anchor there; this is not *Piracy*, becauſe it is not done upon the High Sea; but it is a Robbery at the Common Law, the Act being *infra Corpus Comitatus*: And if the Crime be committed either *ſuper Altum mare*, or in great Rivers within the Realm, which are looked upon as common Highways, there it is *Piracy*. Sir *Fra. Moor* 756. And it has been held, that *Piracy* being an Offence by the Civil Law only, ſhall not be included in a Statute ſpeaking generally of Felonies, as to Benefit of Clergy, &c. which ſhall be conſtrued only of thoſe Felonies which are ſuch by our Law; as thoſe *Piracies* are which are committed in a Port or Creek, within the Body of a County. 2 *Hawk. P. C.* 345. If a Ship be riding at Anchor at Sea, and the Mariners Part in their Ship-Boat, and the Reſt on Shore, ſo that none are left in the Ship; and a *Pirate* ſhall attack her, and commit a Robbery, the ſame is *Piracy*. 14 *Ed.* 3. And where a *Pirate* aſſaults a Ship, and only takes away ſome of the Men, in order to the Selling them for Slaves; this is *Piracy*: And if a *Pirate* ſhall make an Attack on a Ship, and the Maſter for the Redemption is compelled to give his Oath to pay a certain Sum of Money, though there be no Taking, the ſame is *Piracy* by the *Marine Law*; but by the Common Law there muſt be an actual Taking, as in Caſe of Robbery on the Highway. *Lex Mercat.* 185. But the Taking by a Ship at Sea, in great Neceſſity, of Victuals, Cables, Ropes, &c. out of another Ship, is no *Piracy*; if that other Ship can ſpare them, and paying or giving Security therefore. *Ibid.* 183. A *Pirate* takes Goods upon the Sea, and ſells them, the Property is not thereby altered, no more than if a Thief upon the Land had ſtolen and ſold them. 27 *Ed.* 3. *cap.* 13. *Godb.* 193. Yet by the Laws of *England*, if a Man commits a *Piracy* upon the Subjects of any other Prince, and brings the Goods into *England* and ſells them in a Market-overt, the ſame ſhall be binding and the Owners be concluded. *Hob.* 79. When Goods are taken by a *Pirate*, and afterwards the *Pirate* making an Attack upon another Ship, is conquered and taken by the other, by the Law Marine the Admiral may make Reſtitution of the Goods to the Owners, if they are Fellow Subjects of the Captor's, or belong to any State in Amity with his Sovereign, on paying the Coſts and Charges, and making the Captor an equitable Conſideration for his Service. *Lex Mercat.* 184. If a *Pirate* at Sea aſſault a Ship, and in the Engagement kills a Perſon in the other Ship, by the Common Law all the Perſons on board the *Pirate* Ship are Principals in the Murder, although none enter the other Ship; but by the Marine Law, they who gave the Wound only ſhall be Principals, and the Reſt Acceſſaries, if the Parties can be known. 28 *Eliz. Yelv.* 134. It has been holden, that there cannot be an Acceſſary of *Piracy*, by the Law of this Realm; but if it happens, that there is an Acceſſary upon the Sea, ſuch Acceſſary may be puniſhed by the Civil Law, before the Lord Admiral: And it was made a Doubt, whether one, who was an Acceſſary at Land to a Felony at Sea, were triable by the Admiral, within the Purview of 28 *Hen.* 8. Though this is ſettled by 11 & 12 *W.* 3. which provides that Acceſſaries to *Piracy*, before or after, ſhall be inquired of, tried and adjudged according to the ſaid Statute. 2 *Hawk.* 222. In Caſe the Subjects of a Prince in Enmity with the Crown of *England*, enter themſelves Sailors on Board an *Engliſh* Pirate, and a Robbery is committed by them, who are afterwards taken; it is Felony in the *Engliſh*, but not in the Strangers: But in antient Times it was Petit Treaſon in the *Engliſh*, and Felony in the Strangers: And if any *Engliſhman* commits *Piracy* upon the Subjects of any Prince or State in Amity with the Crown of *England*, they are within the Stat. 28 *H.* 8. If the Subjects of any Nation or Kingdom in Amity with *England*, ſhall commit a *Piracy* on the Ships or Goods of the *Engliſh*, the ſame is Felony, and puniſhable by this Statute: And *Piracy* committed by the Subjects of *France*, or of any other Country in Friendſhip with us, upon the *Britiſh* Seas, is properly puniſhable by the Crown of *England* only. *Lex Mercat.* 186, 187. A *Piracy* is attempted on the Ocean, if the *Pirates* are overcome, the Takers may immediately inflict a Puniſhment, by hanging them up at the Main-yard-End; though this is underſtood where no legal Judgment may be obtained: And hence it is, that if a Ship ſhall be on a Voyage to any Part of *America*, or the Plantations there, on a Diſcovery of thoſe Parts; and in her Way ſhe is attacked by a *Pirate*, but in the Attempt the *Pirate* is overcome; the *Pirates* may be forthwith executed, without any Solemnity of Condemnation, by the Marine Law. *Ibid.* 184. By Stat. 28 *Hen.* 8. *cap.* 15. all Robberies and Felonies committed by *Pirates* at Sea, &c. ſhall be enquired of, heard and determined in any County of *England*, by the King's Commiſſion, as if the Offences had been committed on Land; and ſuch Commiſſion ſhall be directed to the Lord Admiral, &c. and three or four other Perſons, as ſhall be named by the Lord Chancellor, who ſhall hear and determine ſuch Offences after the common Courſe of the Laws of the Kingdom uſed for Felonies and Robberies, &c. and award Judgment and Execution againſt Perſons indicted on the Statute, as againſt Felons for any Felony done upon the Land; and the Offenders ſhall ſuffer ſuch Pains of Death, Loſs of Lands and Goods, as if they had been Attainted of ſuch Offence committed on Land, &c. This Statute doth not alter the Offence of *Piracy*, but leaves it as it was before, *viz.* Felony only by the Civil Law; but giveth a Trial according to the Common Law, and inflicts Pains of Death, &c. as if the Offenders had been convicted of any Felony done upon the Land. 3 *Inſt.* 112. *H. P. C.* 77. And no Attainder for this Offence corrupts the Blood, the Statute mentioning only that the Offender ſhall ſuffer ſuch Pains of Death, Loſs of Lands, &c. as if he were attainted of a Felony at Common Law; but ſays not, that the Blood ſhall be corrupted. 3 *Inſt.* 112. Likewiſe the Offender is to be tried on the Statute, to forfeit his Lands, &c. which are not forfeited by the Civil Law. 1 *Lill. Abr.* The Stat. 11 & 12 *W.* 3. *cap.* 7. enacts, That all *Piracies*, Felonies and Robberies committed in or upon the Sea, or in any Haven, &c. where the Admiral hath Juriſdiction, may be tried at Sea or upon the Land, in any of his Majeſty's Iſlands, Plantations, &c. abroad, appointed for that Purpoſe, by Commiſſion, under the Great Seal, or Seal of the Admiraly, directed to ſuch Commiſſioners as the King ſhall think fit; who may commit the Offenders, and call a Court of Admiralty, conſiſting of ſeven Perſons at leaſt; or for Want of ſeven, any three of the Commiſſioners may call others; and the Perſons ſo aſſembled may proceed according to the Courſe of the Admiralty, paſs Sentence of Death, and order Execution of the Criminals, &c. And Commiſſions for Trial of the ſaid Offences within the Juriſdiction of the *Cinque Ports*, ſhall be directed to the Warden of the ſaid *Cinque Ports*, and the Trial to be by the Inhabitants of the ſame Ports. And by the ſaid Statute 11 & 12 *W.* 3. if any natural-born Subjects or Denizens of *England*, ſhall commit *Piracy* againſt any of his Majeſty's Subjects at Sea, under Colour of any Commiſſion from any foreign Prince, they ſhall be adjudged *Pirates*: If any Maſter of a Ship or Seaman give up his Ship, &c. to *Pirates*, or combine to yield up or run away with any Ship; or any Seaman ſhall lay violent Hands on his Commander, or endeavour a Revolt in the Ship, he ſhall be adjudged a *Pirate*, and ſuffer accordingly; alſo if any Perſon ſhall diſcover a Combination for running away with a Ship, he ſhall be intitled to a Reward of 10 *l.* for every Veſſel of 100 Tons, and 15 *l.* if above: And all Perſons who ſhall ſet forth any *Pirate*, or be aſſiſting to thoſe committing *Piracy*; or that ſhall conceal ſuch *Pirates*, or receive any Veſſel or Goods piratically taken, ſhall be deemed acceſſary to the *Piracy*, and ſuffer as Principals. The 6 *Geo.* 1. makes the Stat. 11 & 12 *W.* 3. *c.* 7. perpetual: And by 8 *Geo.* 1. *c.* 24. Maſters of Ships trading with *Pirates*, or furniſhing them with Stores, &c. and Perſons correſponding with *Pirates*, are declared guilty of *Piracy*; and ſhall be tried according to the Statutes 28 *Hen.* 8. and 11 & 12 *W.* 3. and ſuffer Death, forfeit Lands, &c. Ships fitted out with Deſign to trade with *Pirates*, and the Goods ſhall be forfeited: And Maſters of Ships, and Seamen of Ships carrying Guns, being attacked by *Pirates*, if they do not defend their Ships, ſhall forfeit their Wages, and be impriſoned ſix Months; but Seamen wounded in the Defence of Ships againſt *Pirates*, ſhall be admitted into *Greenwich* Hoſpital, &c. When an *Engliſh* Ship ſhall have been defended by Fight againſt *Pirates*, and any of the Officers or Seamen ſhall be killed or wounded, the Judge of the Admiralty, or Mayor or chief Officer of any Port, aſſiſted by four Merchants, may by Proceſs levy a Sum not exceeding 2 *per Cent.* of the Value of the Ship and Goods defended, to be diſtributed among the Officers and Seamen, or the Widows and Children of the Perſons killed. *Lex Mercat.* 186. *Pirates* are always excepted in general Pardons: And the Indictment for *Piracy* muſt alledge the Fact to be done upon the Sea; and have both the Words *Felonice* and *Piratice*, &c.

Pirates Goods. In the Patent to the Admiral he has granted to him *Bona Piratar'*: The proper *Goods of Pirates* only paſs by this Grant; and not piratical Goods. So it is of a Grant *de bonis Felonum*, the Grantee ſhall not have Goods ſtolen, but the true and rightful Owner. But the King ſhall have piratical Goods, if the Owner be not known. 10 *Rep.* 109. *Dyer* 269. *Jenk. Cent.* 325.

Piſcary, (*Piſcaria, vel Privilegium Piſcandi*) Is a Right or Liberty of *Fiſhing* in the Waters of another Perſon: And there are three Sorts of *Piſcaries*, *Libera Piſcaria*; *Separalis Piſcaria*; and *Communis Piſcaria*. See *Fiſhing*, and *Common of Piſcary*.

Piſcenarius, Is uſed in old Records for a Fiſhmonger. *Pat.* 1 *Ed.* 3.

Pit, Is a Hole wherein the *Scots* uſed to drown Women Thieves; and to ſay condemned to the *Pit*, is as when we ſay condemned to the Gallows. *Skene.*

Pit and Gallows. See *Foſſa* and *Furca.*

Pitance, (*Pitancia, modicum*) A little Repaſt, or Refection of Fiſh or Fleſh, more than the common Allowance.——————Johannes *Dei Gratia*, &c. *Conceſſimus*, &c. *In uſus Pauperum*, & *ad Refectionem Monachorum, qui illis diebus Officia divina pro Defunctis celebrabant, quæ Refectio* Pitancia *vocat'*, &c. Rot. Char. ad Hoſpital. S. Salvator. Sancti Edmundi, &c. Ann. 1. Reg. Johan. p. 2.

Pitching-pence, Is that Money, commonly a *Peny*, which is paid for *Pitching*, or ſetting down every Bag of Corn, or Pack of Goods, in a Fair or Market.

Placard, (Fr. *Plaquart*, Dutch *Placcaert*) Hath ſeveral Significations: In *France*, it is a Table, wherein Laws, Orders, &c. are written and hung up; and in *Holland*, it is an Edict or Proclamation; alſo it ſignifies a Writing of ſafe Conduct; with us it is little uſed; but it is mentioned as a Licence to uſe certain Games, &c. in the Stat. 2 & 3 *P.* & *M. cap.* 7.

Place, (*Locus*) Where a Fact was committed, is to be alledged in Appeals of Death, Indictments, &c. And *Place* is conſiderable in Pleadings, in ſome Caſes: Where the Law doth require a Thing to be ſet down in a Place certain, the Party muſt in his Pleading ſay, it was done there. *Co. Lit.* 282. When one Thing doth come in the *Place* of another, it ſhall be ſaid to be of the ſame Nature; as in Caſe of an Exchange, &c. *Shep. Epit.* 700. See *Local.*

Placita, Is a Word often mentioned in our Hiſtories, and Law Books: At firſt it ſignified the publick Aſſemblies of all Degrees of Men where the King preſided, and they uſually conſulted upon the great Affairs of the Kingdom; and theſe were called *Generalia Placita*, becauſe *Generalitas univerſorum majorum tam Clericorum quam Laicorum ibidem conveniebat*: And this was the Cuſtom in our neighbouring Nation of *France*, as well as here, as we are told by *Bertinian*, in his *Annals of France*, in the Year 767. Some of our Hiſtorians, as *Simeon of Durham*, and others, who wrote above 300 Years afterwards, tell us, that thoſe Aſſemblies were held in the open Fields; and that the *Placita Generalia*, and *Curia Regis*, were what we now call a Parliament: It is true, the Lords Courts were ſo called, *viz. Placita Generalia*, but oftner *Curiæ generales*, becauſe all their Tenants and Vaſſals were bound to appear there. The Word *Placita* was likewiſe ſometimes applied to Penalties, Fines, Mulcts, or Emendations, according to the *Black Book* in the *Exchequer*, *Lib.* 2. *Tit.* 13. And hence is the old Cuſtom, *Comes habet tertium denarium* Placitorum. *Leg. Hen.* 1. *cap.* 12. It is now taken for Pleadings or Debates, and Trials at Law.

Placitare, i. e. *Litigare* & *Cauſas agere*, to plead: And the Manner of Pleading before the *Conqueſt* was, *Coram Aldermanno* & *Proceribus*, & *coram Hundredrariis*, &c. MS. in Bibl. Cotton.

Placitator, A Pleader: *Ralf Flambard* is recorded to be *Totius Regni Placitator.* Temp. W. 2.

Placitum nominatum, Is the Day appointed for a Criminal to appear and plead, and make his Defence. *Leg. Hen.* 1. *cap.* 29, 46.

Plague. Mayors, Bailiffs, Head Officers of Corporations, and Juſtices of Peace, have Power to tax Inhabitants, Houſes and Lands, *&c.* within their Precincts, for the Relief of Perſons infected with the *Plague*; and Juſtices of the County may tax Perſons within five Miles round, on a Pariſh's Inability; the Tax to be levied by Diſtreſs and Sale of Goods, or in Default thereof by Impriſonment: Infected Perſons going abroad, after commanded to keep Houſe for avoiding further Infection, may be reſiſted by Watchmen, *&c.* and puniſhed as Vagrants, if they have no Sores upon them; and if they have infectious Sores on them, it is Felony; Juſtices of Peace, *&c.* are to appoint Searchers, Examiners, and Buriers of the Dead, in Places infected, and adminiſter Oaths to them for the Performance of their Duties, *&c.* Stat. 1 *Jac.* 1. *c.* 31. Some Places in the *Baltick* being infected with the *Plague*, in the Reign of Queen *Anne*, an Act was made for obliging Ships coming from thence to perform their *Quarentine* during the Infection in Foreign Parts; and Maſters of Ships coming on Shore, during the Quarentine, are to forfeit their Ships, *&c.* And others directed to take Care of the Quarentine, permitting any to come on Shore, ſhall forfeit 100*l.* 9 *Ann. cap.* 2. During the late Reign that *Marſeilles* in *France* was infected, a Statute was made with further Proviſions for the Preventing of Infection: By this Act, Ships coming into Ports, are to perform Quarentine; and Perſons quitting Ships before performed, ſhall incur the Forfeiture of 200*l.* Goods after Quarentine performed are to be aired; and Ships infected, to be burnt: His Majeſty may make Orders concerning Quarentine; and, in Time of Infection here, cauſe Lazarets to be provided for the Sick, and Lines and Trenches to be caſt up about Places, *&c.* And infected Perſons were to be removed from their Houſes to ſuch Lazarets; and eſcaping from thence, or out of the Lines of Places, to be guilty of Felony: Watches to be appointed by Juſtices of Peace, to keep People within the Lines, *&c.* 7 *Geo.* 1. *cap.* 3. And by a ſubſequent Act, the King is enabled to prohibit Commerce with any Countries infected, by Proclamation; Perſons trading contrary to the Proclamation, their Goods and Ships ſhall be forfeited and Officers of Ports may reſiſt the Entrance of Ships, by firing of Guns, *&c.* Perſons going to Places infected, incur a *Præmunire*; and coming from ſuch Places, ſhall be adjudged guilty of Felony. 8 *Geo.* 1. *cap.* 8. The Clauſes in the Act 7 *Geo.* 1. relating to Removal of Perſons infected to Lazarets, and making Lines about Towns, *&c.* are repealed by 8 *Geo.* 1. *cap.* 10. And theſe laſt Acts, are ſince *expired*: But farther Proviſion is made for performing *Quarentine*, by 1 *Geo.* 2. *c.* 17. And againſt exporting Goods to any Places infected, or importing any Merchandize from thence, *&c.* by Stat. 6 *Geo.* 2. *cap.* 34.

Plaint, (Fr. *Plainte*, Lat. *Querela*) Is the Exhibiting any Action, real or perſonal, in Writing; and the Party making his *Plaint* is called the *Plaintiff. Kitch.* 231. A *Plaint* in an inferior Court is the Entry of an Action, after this Manner: A. B. *complains againſt* C. D. *of a Plea of Treſpaſs*, &c. *and there are Pledges of Proſecuting, that is to ſay*, John Doe *and* Richard Roe. The firſt Proceſs in an inferiour Court is a *Plaint*, which is in the Nature of an Original Writ, becauſe therein is briefly ſet forth the Plaintiff's Cauſe of Action; and upon this *Plaint* there may iſſue a *Pone*, till the Return of a *Nihil*, upon which a *Capias* will not lie againſt the Body of the Defendant. 2 *Lill. Abr.* 294. Where a *Plaint* is levied in an inferior Court, the Defendant muſt be firſt diſtrained for Non-appearance, by ſomething of ſmall Value; and then if he doth not appear, a farther Diſtreſs is to be taken to a greater Value, and ſo on; if all his Goods are diſtrained upon the firſt Diſtreſs, Attachment may be iſſued out of *B. R.* againſt the Officers, *&c. Ibid.* A Plaintiff in an *Aſſiſe* may abridge his *Plaint* of any Part whereunto a Bar is pleaded. 21 *Hen.* 8. *cap.* 8. See *County-Court.*

Plaint In a *Superior Court,* is ſaid to be the Cauſe for which the Plaintiff doth complaim againſt the Defendant, and for which he doth obtain the King's *Writ:* For as the King denies his Writ to none, if there be Cauſe to grant it; ſo he grants not his Writ to any, without there be Cauſe alledged for it. 2 *Lill.* 294.

Plantation, (*Plantatio, Colonia*) Is a Place whither People are ſent to dwell; or a Company of People tranſplanted from one Place to another, with an Allowance of Land for their Tillage. *Litt. Dict.* All Waſtes, which the Natives of any Country make no Uſe of, nor can receive any Damage by their being in the Hands of others, may lawfully be poſſeſſed by *Planters:* If a Nation or People ſhould happen to be expelled out of their own Land, they may ſeek void Places in ſome other Country, and there may juſtly plant; and the immediate poſſeſſing ſuch *Plantations* creates a Right againſt all Perſons but he that hath Empire there. *Lex Mercat.* 156. And where Perſons having arrived in any Territories and planted there, if before they can reap the Fruits of their Labour the Neceſſities of human Life are wanting, by the Laws of Natnre they may force a Subſiſtence from a Neighbour *Planter*; and the Reaſon is this, that a Subſiſtence belongs to every Man, unleſs he has merited to loſe the Life which he ſeeks to preſerve. *Ibid.* Our *Plantations* abroad are chiefly Iſlands in *America*, over which there are particular Governors; and the Iſlands of *Jamaica* and *Barbadoes*, with ſome others, are very populous, and much frequented by unfortunate Perſons, who have ſo great Privileges and Advantages in Trade, that by their Induſtry and Application, a preſent Misfortune is oftentimes attended with a future Happineſs, by accumulating great Wealth from the Products of theſe foreign Colonies. *Geograph. Epitom.* 228. The *Engliſh Plantations* contain *Jamaica*, *Barbadoes*, *Virginia*, *Maryland*, *New England*, *New-York*, *Carolina*, *Bermudas*, and the *Leeward Iſlands*, *&c.* And there is lately a Settlement in *America* much encouraged, called *Georgia*, under the Management of divers Truſtees, *&c.* The *Plantation Iſlands* being gotten by Conqueſt, or by ſome of the King's Subjects going in Search of ſome Prize, and planting themſelves there, the King is not reſtrained by the Laws of *England* to govern them by any particular Laws, but may govern them by what Law he will: But it has been adjudged, That the Laws and Cuſtoms by which the People of any Iſland or *Plantation* were governed before the Conqueſt thereof, do bind them until new Laws are given; for there is a Neceſſity that the former Laws ſhould be in Force till new are obtained, and even then ſome of their old Cuſtoms may remain, as they do in *Barbadoes*, *&c.* If an uninhabited Country be newly found out by *Engliſh* Subjects, all the Laws of the Kingdom of *England* are immediately in Force there. 2 *Salk.* 411. 3 *Mod.* 159. 4 *Mod. Rep.* 225, 226. All that are appointed Governors of the *Plantations*, ſhall, before their Entrance into their Government, take an Oath to do their utmoſt to put the Laws in Force in the ſaid *Plantations*; and upon Complaint to the King, or ſuch as he ſhall appoint, that ſuch Governors have been wittingly negligent therein, the Governors ſo offending ſhall be removed, *&c.* 12 *Car.* 2. *c.* 18. 7 *&* 8 *W.* 3. And by the Stat. 11 *&* 12 *W.* 3. *c.* 12. If any Governor, Deputy-Governor, or Commander in Chief of any *Plantation* or Colony within his Majeſty's Dominions beyond the Seas, ſhall oppreſs any of his Majeſty's Subjects within their reſpective Governments, or be guilty of any other Crime or Miſdemeanor, contrary to the Laws of this Realm, or thoſe in Force within their Governments; ſuch Oppreſſions, &c. ſhall be inquired of, heard and determined in the Court of *King's Bench* in *England*, or before ſuch Commiſſioners, and in ſuch County of this Realm, as the King ſhall appoint, and by good and lawful Men of ſuch County; and the like Puniſhments ſhall be inflicted as are uſual for ſuch Offences here in *England*. The Courts of Juſtice abroad, cannot tranſmit a Matter or Cauſe to the King and Council here for Difficulty, but are to determine the Right, and give Judgment one Way or other. But on an Appeal brought in the *Plantations*, the Party appealing muſt procure the Proceedings to be tranſmitted, and proceed within a Year after the Appeal allowed there, or it ſhall be diſmiſſed with Coſts. 2 *Ld. Raym.* 1447. All Laws, Uſages or Cuſtoms in Practice in any of the *Plantations*, which are repugnant to the Laws made in this Kingdom, are declared null and void. 7 & 8 *W.* 3. *c.* 22. By the ſame Statute, all Places of Truſt in the Courts of Law, or relating to the Treaſury, in any Iſland, Colony or *Plantation*, belonging to *England*, ſhall be in the Hands of the Native-born Subjects of *England*, *Ireland*, or of the ſaid Iſland; alſo Tracts of Land on the Continent of *America*, held by Charter or Letters Patent, ſhall not at any Time be aliened or ſold to any other than the Natural-born Subjects of *England*, *Ireland*, &c. without the King's Licence. Stat. *Ibid.* No Alien ſhall be a Merchant or Factor in any of the Territories and *Plantations* belonging to *England*, in *Aſia*, *Africa* or *America*, on Pain to loſe all his Goods, one Third to the King, another Third to the Governor of the *Plantation*, and the other Third to any Perſon ſuing in any of the King's Courts there. 12 *Car.* 2. And no Governor abroad ſhall be a Factor or Agent under the Penalty of 500*l.* &c. 8 & 9 *W.* 3. Governors of the *Plantations* are not to ſuffer any Foreign-built Ship or Veſſel to load or unload Goods, till a Certificate is produced, that the Owner or Owners are not Aliens, and Examination is made: And no Sugars, Tobacco, Ginger, Indico, &c. of the Growth of any *Engliſh Plantations* in *America*, ſhall be tranſported to any Place but to ſome *Engliſh Plantation*, or to *England*, *Ireland*, &c. on Pain of Forfeiture and the Ship, one Moiety to the King, and the other to him that will ſeize and ſue for the ſame. 12 *Car.* 2. *cap.* 18. For every Veſſel which ſets out from *England* or *Ireland* for any of the ſaid *Plantations*, Bond ſhall be given, with one Surety, to the chief Officers of the Cuſtom-houſe of the Place whence ſhe ſails, of 1000*l.* if the Ship be under 100 Tuns, and of 2000*l.* Penalty if of greater Burthen; that if the ſaid Veſſel load any of the ſaid Commodities at ſuch *Plantations*, it ſhall bring them to ſome Port of *England*, &c. And for all Ships coming from any other Ports to thoſe *Plantations*, the Governors, before the Ship be permitted to load, ſhall take ſuch Bond that it ſhall carry the Merchandize to ſome other *Engliſh Plantations*, or to *England* or *Ireland*; and every Ship taking on board any of the aforeſaid Goods before ſuch Bond given, or Certificate thereof, &c. ſhall be forfeited; and the ſaid Governors ſhall twice in every Year return true Copies of ſuch Bonds to the chief Officers of the Cuſtoms in *London*, &c. Ibid. If any Veſſel ſhall take on board any of the Commodities aforeſaid, at any of the ſaid *Engliſh Plantations*, before Bond be given, as directed by 12 *Car.* 2. or Certificate produced from the Officers of ſome Cuſtom-houſe in *England*, &c. that ſuch Bond hath been there given; or ſhall carry the ſaid Goods to any Place, contrary to the Tenor of ſuch Bonds, the ſame ſhall be forfeited, with the Ship and all her Furniture, Guns, Ammunition, &c. one Moiety to the King, and the other Moiety to him that will ſue for the ſame in any of the ſaid *Plantations*, or in the Court of the High Admiral of *England*, or of any Vice-Admiral, or any Court of Record in *England*. 22 & 23 *Car.* 2. *c.* 26. But theſe Penalties ſeem to be taken off by the Stat. 25 *Car.* 2. *c.* 7. which ordains, that if any Ship or Veſſel ſhall come to any of his Majeſty's *Plantations* to ſhip any Sugar, Tobacco, &c. and Bond ſhall not be firſt given to bring the ſame to *England*, there ſhall be anſwered to the King ſeveral Duties before Lading thereof, and under ſuch Penalties as for Non-payment or Defrauding the King of his Cuſtoms in *England*. Goods are to be imported and exported from and to the *Plantations* in Ships built in *England* or *Ireland*, or the ſaid *Plantations*; and navigated with the Maſter and three Fourths of the Mariners of the ſaid Places, on Pain of forfeiting Ship and Goods, &c. And all Ships, lading or unlading any Goods at any of the *Plantations* in *America*, and the Maſters and Commanders thereof ſhall be ſubject to the ſame Rules, Viſitations, Searches, Penalties, and Forfeitures, as Ships and their Ladings are liable to in *England*; and the Officers for collecting the Cuſtoms there, ſhall have the like Powers as the Officers of the Cuſtoms in this Kingdom; and Perſons aſſiſting in Concealments, ſhall be ſubject to the like Penalties, &c. 7 & 8 *W.* 3. *c.* 22. Perſons ſerving on Board, or retained to ſerve on Board any Trading Ships, in any Part of the *Plantations* of *America*, or any Perſons being on Shore there, may not be impreſſed by any Ships of War; unleſs ſuch Perſons ſhall be Deſerters from ſuch Ships, on the Penalty of 20*l.* Stat. 6 *Ann.* In Actions depending in the *Plantations*, Debts may be proved here on Oath before Mayors of Towns, &c. and certified abroad: And Lands, Houſes, Negroes, &c. in *Plantations*, ſhall be liable to ſatisfy all Debts and be Aſſets, as Real Eſtates are here, and Perſonal Eſtates there. 5 *Geo.* 2. *cap.* 7. A Duty is laid on Rum, Molaſſes and Sugar of foreign *Plantations*, imported into any *Britiſh Plantations* in *America*; and no Sugars, Rum, or Spirits of *America*, may be imported in *Ireland*, but what are loaden in *Great Britain*, in Ships lawfully navigated, on Pain of Forfeiture, &c. Stat. 6 *Geo.* 2. *c.* 13. The Duties payable here on importing refined Sugar, &c. from the *Plantations*, to be repaid on Exportation out of the Kingdom. *Ibid.* Any of his Majeſty's Subjects, in Ships built in *Great Britain*, may carry Rice from the Province of *Carolina* in *America*, directly to any Part of *Europe* ſouthward of *Cape Finiſtre*, without going to any other *Plantations*, &c. being licenſed by the Commiſſioners of the Cuſtoms; and thereupon ſhall be allowed Half Subſidy. 8 *Geo.* 2. *c.* 19. And Perſons reſiding here, and in the Sugar Colonies abroad, may in Ships built in this Kingdom load in the ſaid Colonies, any Sugars of the Growth and Manufacture of the *Plantations*, and carry them to any foreign Part of *Europe*; on taking out a Licence therefore, and ſo as they do not take in Tobacco, or other enumerated Goods; or Sugars, not being the Product of his Majeſty's Subjects, upon Pain of Forfeiture, and the Veſſel, &c. And when any Ship hath delivered her Lading in foreign Parts, ſhe is to return to *Great Britain*, and having other Goods on Board, they are there to be entred at the Cuſtom-houſe and Landed, &c. Stat. 12 *Geo.* 2. *c.* 30. Every Maſter of a Ship carrying Merchandizes to or from the *Plantations* in *America*, ſhall upon Oath before the Governor or Collectors of the Cuſtoms there, give a true Account of the Name and Burthen of the Ship, and of the Place from whence ſhe came; and depoſe that it is the ſame Ship, deſcribed in the Certificate, and regiſtred to be built in *Great Britain*, &c. which he believes to belong wholly to *Britiſh* Subjects, and that no Foreigner has any Share therein to his Knowledge, *&c.* And if ſuch Proof be not made, the Veſſel and Goods will be forfeited. 15 *Geo.* 2. *cap.* 31. Rum or Spirits imported from the *Britiſh* Sugar *Plantations*, on Entry may be landed, and put into Warehouſes, provided by the Importers, they firſt giving Bond for paying the Duty within ſix Months, if the ſame be ſold, or at that Time on Delivery of the Goods, *&c.* by 15 *Geo.* 2. *c.* 25. Perſons born in the *Plantations* are accounted Subjects; and by a late Statute, ſuch Foreigners as have inhabited for ſeven Years or more in our *Plantations*, ſhall be taken as natural-born Subjects here. *Stat.* 13 *Geo.* 2. *cap.* 7. See *Naturalization.*

Form *of a* Power to let and demiſe Plantations, *and receive the Profits thereof.*

TO all People, *&c.* A. B. *of, &c. ſendeth Greeting.* Whereas *the ſaid* A. B. *is ſeiſed in his Demeſne, as of Fee, of and in two ſeveral* Plantations *in the Iſland of* Barbadoes, *called or known by the Names of,* &c. *together with the Slaves, Horſes, Mills, Coppers, and other Appurtenances thereunto belonging.* Now know ye, *That the ſaid* A. B. hath *conſtituted, authorized and appointed, and by theſe Preſents doth conſtitute, authorize and appoint* C. D. *of,* &c. *and hereby give to him full Power and Authority, in his Name, and to his Uſe, to enter into and upon the ſaid* Plantations, *whereof he the ſaid* A. B. *is now ſeiſed as aforeſaid, and to have, receive and take the Rents, Iſſues and Profits of the ſame reſpectively, with the Appurtenances; and to leaſe, demiſe, let and ſet, to ſuch Perſon or Perſons as he ſhall think fit, all his* Plantations *and Tracts of Land, Negroes, Horſes, Coppers and Mills whatſoever, in the ſaid Iſland of* Barbadoes, *or any Part thereof, for ſuch Term or Number of Years, not exceeding,* &c. *and for and under ſuch yearly and other Rents, Covenants, Proviſo's and Agreements as he thinks fit or convenient; or otherwiſe to manage, occupy or employ the ſame,* &c. *as to him the ſaid* C. D. *ſhall ſeem beſt, and for the greateſt Benefit and Advantage: And from Time to Time, to receive and take the Revenues and Profits of the ſaid Houſes,* Plantations, *Lands and Premiſſes above mentioned; and to uſe and take all lawful Methods, by Action, Diſtreſs, or otherwiſe, for the obtaining and recovering of the Rents, Iſſues, and Profits of all or any Part of the ſaid Premiſſes, or to compound for the ſame as he ſhall think fit; and to give Acquittances or Diſcharges therefore.* And *the ſaid* A. B. *doth hereby make, ordain, conſtitute and appoint the ſaid* C. D. *his true and lawful Attorney, for him and in his Name, and to his Uſe to aſk, require, demand, ſue for, recover and receive, all and every Sum and Sums of Money, Sugars, Debts, Goods, Wares and Merchandizes, due, owing, or belonging, or to grow due or belonging to him the ſaid* A. B. *from any Perſon or Perſons whatſoever in the ſaid Iſland of* Barbadoes; *and on Non-payment or Non delivery thereof, or of any Part thereof, for him and in his Name, to uſe and take all proper Methods, according to the Laws and Cuſtoms of the ſaid Iſland, for the recovering of the ſame: And on Payment or Delivery thereof to his ſaid Attorney, to releaſe and diſcharge the Perſon and Perſons ſo paying and delivering the ſame: And he the ſaid* A. B. *doth hereby further authorize and empower the ſaid* C. D. *to do, execute and perform all other lawful and reaſonable Act and Acts, Thing and Things whatſoever, for him, and in his Name, or otherwiſe, touching and concerning the Management or Diſpoſal of all or any Part of his Eſtate, Real or Perſonal, within the ſaid Iſland of* Barbadoes, *and for the Recovering and receiving the Profits and Produce thereof, or of any Part or Parcel thereof, or any other Matter or Thing whatſoever, as fully as he himſelf might or could do, if he were perſonally preſent; and one or more Attorney or Attornies under him, to make, ſubſtitute, and appoint, for all or any the Purpoſes aforeſaid; hereby ratifying and confirming whatſoever his ſaid Attorney, or his Subſtitute or Subſtitutes, by and under him appointed, ſhall do, execute and perform, or cauſe to be done, executed and performed, in and about, or touching or concerning the ſaid Premiſſes.* In Witneſs, *&c.*

Felons tranſported to the *Plantations*, for certain Terms of Years, *&c.* by 4 *Geo.* 1. *cap.* 11. 6 *Geo.* 1. *cap.* 22. See *Clergy* and *Felony.*

Plate, Hoy, or ſmall Water Veſſel. 13 *Eliz. cap.* 15.

Playhouſe. *Playhouſes* were originally inſtituted with a Deſign of recommending Virtue to the Imitation of the People, and expoſing Vice and Folly; and therefore are not in their own Nature Nuſances: But it hath been holden, that a common *Playhouſe* may be a Nuſance, if it draw together great Numbers of Coaches, *&c.* as prove generally inconvenient to the Places adjacent. 5 *Mod.* 142. If any Perſons ſhall in *Plays*, *&c.* jeſtingly or profanely uſe the Name of God, they ſhall forfeit 10*l.* Stat. 1 *Jac.* 1. *c.* 21. And *Players* ſpeaking any Thing in Derogation of Religion, *&c.* are liable to Forfeitures and Impriſonment. 1 *Eliz.* Alſo acting *Plays* or Interludes on a *Sunday*, is ſubject to Penalties, by 1 *Car.* 1. *cap.* 1. No Perſon ſhall act any new *Play*, or Addition to an old one, *&c.* unleſs a true Copy thereof, ſigned by the Maſter of the *Playhouſe*, be ſent to the Lord Chamberlain fourteen Days before acted; who may prohibit the repreſenting any Stage-*Play*: And Perſons acting contrary to ſuch Prohibition, ſhall forfeit 50*l.* and their Licences, *&c.* *Stat.* 10 *Geo* 2. *c.* 28. And by this Statute, no Licence is to be given to act *Plays*, but in the City and Liberties of *Weſtminſter*, or Places of his Majeſty's Reſidence. *Ibid.*

Plea, (*Placitum*) Is that which either Party alledges for himſelf in Court, in a Cauſe there depending to be tried: And *Pleading* in a large Senſe, contains all the Matters which come after the Declaration, as well on the Defendant's as the Plaintiff's Side, till Iſſue is joined; but is commonly taken for the Defendant's Anſwer to the Plaintiff's Declaration. *Pleas* are divided into *Pleas of the Crown*, and *Common Pleas*; *Pleas* of the Crown are all Suits in the King's Name, for Offences committed againſt his Crown and Dignity, and alſo againſt the Peace, as Treaſons, Felonies, Maihem, *&c.* And Common *Pleas* are thoſe that are agitated between common Perſons, in Civil Caſes: And *Pleas* may be farther divided into as many Branches as Action; for they ſignify all one. *S. P. C cap.* 1. 4 *Inſt.* 10. A *Plea* to the Action is that which goes to the Merits of the Cauſe or Action; and is *General* to the Declaration, or a *Special Plea*: A *General Plea* in Debt or Contract, is *He owes nothing*: In Debt on Bond, *'Tis not his Deed*, or *He paid it at the Day*; in Action of the Caſe upon a Promiſe, *He hath not promiſed*; in Treſpaſs upon the Caſe, *Not guilty*; in Covenant, *Performance of Covenants*, *&c.* A *Special Plea* contains the Matter at large, concluding to the Declaration or Action; and Special *Pleas* are many, as by *Dureſs* and *Per Minas*, and in *Juſtification*, that in Aſſault and Battery, the Plaintiff ſtruck the firſt Blow, *&c.* In Waſte, on *Nul Waſte* pleaded, the Defendant cannot plead juſtifiable Waſte; but he may give in Evidence, Lightning, Enemies, *&c.* to prove it to be no Waſte: He is to confeſs the Fact, and plead ſpecially in theſe Caſes. *Finch* 362, 378. 1 *Inſt.* 282, 372. Special *Pleas* in Anſwer to the Plaintiff's Declaration, are of two Kinds; *Pleas* in *Bar*, and in *Abatement*; and every *Plea* muſt be pleaded either in Bar to the Action brought, or in Abatement of the Writ upon which the Action is framed, or it is but a Diſcourſe, and not a *Plea*. A General *Plea* is drawn on a little Piece of Two-penny-ſtamp'd Paper, without Counſel's Hand, only the Defendant's Attorney's Name is to it; and he is to pay the Plaintiff's Attorney for entring it: Special *Pleas* are drawn up in Form, ſetting forth the Matter pleaded, *&c.* and muſt be ſigned by Counſel, or they will not be received: A *Foreign Plea* is to be ingroſſed in Parchment, and ſigned by Counſel, and be put in upon the Oath of the Defendant, that the *Plea* is true. *Practiſ. Attorn. Edit.* 1. *pag.* 80. And when a Defendant hath pleaded, the Plaintiff anſwers the Defendant's *Plea*, which is called a *Replication*; and the Defendant anſwer's the Plaintiff's Replication, by *Rejoinder*; which the Plaintiff may anſwer by *Surrejoinder*; and ſometimes, though ſeldom, Pleadings come to *Rebutter*, in anſwer to the Surrejoinder; and *Surrebutter*. 1 *Inſt.* 303. In good Order of Pleading, a Perſon ought to plead, 1ſt, To the Juriſdiction of the Court. 2dly, To the Perſon of the Plaintiff, and next of the Defendant. 3dly, To the Writ. 4thly, To the Action of the Writ. 5thly, To the Count or Declaration. 6thly, To the Action itſelf in Bar thereof: A *Plea* to the *Juriſdiction* is called a foreign *Plea*, becauſe it alledges that the Matter ought to be tried in another Court, *&c.* *Pleas* to the Perſon have been formerly ſix, *viz.* Villenage, Outlawry, Excommunication, the Party an Alien, out of Protection, and profeſſed in Religion; but the laſt is now no *Plea*. The *Plea* to the *Writ*, *&c.* is for Variance between the Writ and Record, Death of Parties, Miſnomer, Jointenancy, *&c.* and may be to the Writ and Bill, or Count together. *Pleas* to the *Count* or *Declaration* are Variance between the Writ and the Count, Specialty or Record, Incertainty, *&c.* and all theſe are properly *Pleas* in Abatement. *Plea* to the *Action of the Writ* is where one pleadeth ſuch Matter which ſheweth the Plaintiff had no Cauſe to have the Writ brought. And a *Plea* in Bar to the *Action* itſelf, is when the Defendant pleadeth a *Plea* which is ſufficient to overthrow the Action of the Plaintiff. *Kitch.* 95. *Litt.* 196. *Pleas* in Bar, ſuch as a Releaſe, the Statute of Limitations, Agreement with Satisfaction, *&c.* deſtroys the Plaintiff's Action for ever: But *Pleas* in Abatement are temporary and dilatory, and do not deſtroy the Action, only ſtop the Cauſe for a while, 'till the Defect is removed; as where there is ſome Fault in the Writ or Declaration, Miſnomer of the Defendant, where the Plaintiff is excommunicate, *&c.* A *Plea* to the Juriſdiction, of Miſnomer, or any other *Plea* in Abatement, cannot be pleaded after an Imparlance; tho' a *Plea* in Bar may, becauſe that goes to deſtroy the Action. 2 *Lutw.* 1174. *Pleas* in Bar may come after a Continuance, or general Imparlance; but if ſuch *Plea* be firſt pleaded, the Defendant ſhall not be admitted afterwards to plead in Abatement of the Writ, which is allowed to be good by Pleading in Bar to the Action: Yet Matter of Record may be ſhewn in Arreſt of Judgment, and thereby the Writ be abated. *Hob.* 280, 281. By Imparlance a Writ or Bill is admitted to be good, ſo that after it *Plea* in Abatement ought not to be received; but if it be accepted, and the Plaintiff doth demur to it, the Demurrer is good: After a Defendant hath pleaded in Abatement, and before he pleads directly in Bar, he may demur to the Declaration of the Plaintiff; as he may where he is adviſed that the Declaration is inſufficient, *&c.* *Pract. Solic.* 235, 236. It has been reſolv'd, That where a Plea is in Abatement, if it be of Neceſſity that the Defendant muſt diſcloſe Matter of Bar, he ſhall have his Election to take it either by Way of Bar or Abatement. 2 *Mod.* 65. If the Defendant can have no Advantage by Pleading in Abatement, or by Demurring in Law, he may afterwards plead in Bar; and before he pleads any ſpecial Matter in Bar, he may plead in general, *viz.* A Releaſe or Defeaſance; Acceptance of other Things; Tender of Amends; Concord or Acord; Arbitrament; *Auterfoits* Bar by former Judgment; the Statute of Limitation of Actions; Diſability of the Plaintiff; Privilege of the Defendant, or other Matter; for ſeveral Matters pleadable in Abatement, may be pleaded in Bar. *Pract. Attorn.* 1 *Edit.* 82. Alſo he may plead another Action depending of the ſame Nature, for the ſame Thing, *&c.* and if a Perſon miſtaking his firſt Action, bring another Action without diſcontinuing the Firſt, this *Plea* may be pleaded. 1 *Salk.* 392. There is likewiſe a *Plea puis Darrein Continuance*, where the Defendant hath pleaded a *Plea*, and before Trial there happens ſome new Matter, which will avoid the Action: It may be pleaded after Iſſue joined, at any Time before the Verdict; but after Verdict, and before Day in Bank, there is no Day to plead it; ſo that the Remedy is by *Audita Querela*. *Cro. Jac.* 646. A Defendant in any Suit, *&c.* with Leave, may plead ſeveral Matters; but if any ſuch Matter be excepted to, and found inſufficient, Coſts ſhall be given: And no dilatory *Plea* ſhall be allowed in any Court of Record, unleſs the Truth of it be proved by Affidavit; or ſome probable Matter be ſhewn. 4 *&* 5 *Ann. cap.* 16. When a Declaration, or Bar, are defective in Circumſtances of Time, Place, *&c.* this may be helped by the Pleading of the adverſe Party to it; but not if it be inſufficient in Matter. 2 *Ventr.* 222. 1 *Danv. Abr.* 156. If the Defendant pleads a dilatory and frivolous *Plea*, to hinder the Plaintiff from going to Trial; the Court, on Motion, will order the Defendant to plead ſuch a *Plea* as he ſhall ſtand to, or to accept of a Demurrer to his dilatory *Plea*, on Arguing whereof, if the *Plea* be not good, the Court will not after permit him to amend it; and when a dilatory *Plea* in Abatement is overruled, there ſhall be a *Reſpondeas Ouſter*, except an Iſſue be joined on it. 6 *Mod.* 102. And if a *Plea* in Bar of the Action is *over-ruled*, Judgment ſhall be given againſt the Defendant. *Lutw.* 42. Where it is doubtful between the Parties, whether a *Plea* be good or not, it cannot be determined by the Court on Motion, but there ought to be a Demurrer upon the Plea; and on Arguing thereof, the Court ſhall judge of the *Plea* whether good or bad: And no Advantage can be had of double Pleading, without ſpecial Demurrer. 2 *Lill. Abr.* 310. *Lutw.* 422. But though the Court is to judge of Pleadings, they will not direct any Perſon how to plead, notwithſtanding the Matter be difficult; for the Parties muſt plead at their Peril, and Counſel are to adviſe, *&c.* If the Plaintiff's Attorney will conſent, the Defendant may waive his *Plea* pleaded, without moving the Court; but if he will not conſent, it cannot be done without moving the Court. *Trin.* 1651. A Defendant may wave his Special *Plea*, and plead the general Iſſue, if there be no Joinder in Demurrer. 2 *Salk.* The Defendant, before Joinder in Demurrer, may amend his *Plea*; and ſo after Joinder in Demurrer, before argued: And where a Defendant has demurred, and the Plaintiff joined; the Court will oftentimes allow him to withdraw his Demurrer, and plead to the Action, if the Plaintiff hath not been put by a Trial. *Practiſ. Solic.* 303. A Defendant had Leave to plead *de novo* in four Days, within which Time he ought to have pleaded in Chief; but inſtead of that he pleaded an Outlawry of the Plaintiff, *&c.* and thereupon the Plaintiff ſigned Judgment for Want of a good Plea: But on Payment of Coſts, *&c.* and pleading to Iſſue immediately, the Judgment was ſet aſide. *Trin.* 10 *Geo.* 1. *B. R.* *Mod. Caſ. in L. and E.* 289. A *Plea* may be amended, if it be but in Paper, and not entered, paying Coſts: If after the Defendant hath pleaded, the Plaintiff alters his Declaration, the Defendant may alter his *Plea*. 2 *Lill.* 322. *Pleas*, *&c.* in *Engliſh*, may be amended in Paper, or on Record, and even after Judgment, on Payment of Coſts, *&c.* by *Stat.* 4 *Geo* 2. Falſhood in a Defendant's *Plea*, if it be not hurtful to the

Plaintiff nor beneficial to the Defendant, it doth no Injury; as it doth where detrimental to the Plaintiff, &c. *Ibid.* 297. Tho' if an Attorney pleads a falſe *Plea* by Deceit, it is againſt his Oath, and he may be fined. 1 *Salk.* 515. Concerning *Pleas* in general; all *Pleas* are to be ſuccinct, without unneceſſary Repetitions, and be direct and pertinent to the Caſe, not by Way of Argument or Rehearſal; and the *Plea* of every Man ſhall be taken moſt ſtrongly againſt himſelf. 2 *Lill.* 304. The *Plea* muſt directly anſwer the Charge in the Plaintiff's Declaration, or it will not be good. 1 *Danv. Abr.* 235. If it doth not anſwer all the Matter contained in the Declaration, the Plaintiff ſhall have Judgment as for Want of a *Plea*. 1 *Lev.* 16. A Defendant pleads that he did not receive 80 *l.* but doth not ſay or any Part thereof; and the Plea was adjudged ill, for he might receive 79 *l.* and yet not the whole, &c. 2 *Mod. Rep.* 146. And in pleading a Tender, at the Putting in of the *Plea*, the Money is to be brought into Court, or the Plea will not be accepted, but the Plaintiff ſhall ſign Judgment. 2 *Lill. Abr.* 308. But when Judgment in Ejectment is ſigned for Want of a *Plea*, if Poſſeſſion be not delivered, a Judge before the Aſſiſes may compel the Plaintiff to accept of a *Plea*. 2 *Salk.* 516. If a Thing is ſhewed in Pleading, and it is not afterwards traverſed or averred ſpecially to the contrary, it will be taken to be confeſſed: Though the Confeſſion of one Defendant in his *Plea*, ſhall not prejudice another. *Plowd.* 48. *Hob.* 64. A Releaſe pleaded to an Action of Treſpaſs, without ſhewing when it was made; ſhall be taken before the Treſpaſs done: And a Plea of Diſcharge or giving Notice, &c. muſt ſhew how given 10 *Rep.* 40. *Plowd.* 128. *Dyer* 41. Every Man muſt plead ſuch *Plea* as is proper for him; but that need not be pleaded on one Side, that will come properly on the other. *Hob.* 3, 78, 162. Pleadings which amount to no more than the general Iſſue, are not to be allowed, but the general Iſſue ſhall be entered; and where the Defendant pleads the general Iſſue, he ought to plead ſo that the whole Matter in Queſtion may be tried. 2 *Lill.* 302. 2 *Nelſ. Abr.* 1246. 1 *Salk.* 394. If the Defendant is not conſtrained to plead a ſpecial *Plea*, he may plead the general Iſſue proper to the Action brought, and give the ſpecial Matter in Evidence: And in many Caſes general Pleadings are permitted, to avoid Tediouſneſs and Multiplicity, and the Particular ſhall come on the other Side; as in Caſe of a Condition to perform all Covenants in an Indenture, &c. but where a Thing reſts in a Man's own Notice, he muſt plead it particularly. 1 *Inſt.* 303. 8 *Rep.* 133. 2 *Danv. Abr.* 249. 2 *Nelſ.* 1249. If a Party pleading derives an Eſtate to another, under which he doth not claim any Thing, there general Pleading is ſufficient, becauſe he hath no Means to know another Man's Title; but 'tis otherwiſe where he himſelf claims under it. *Carthew* 209. General Eſtates in Fee-ſimple may be generally alledged; Eſtates in Tail, and particular Eſtates, muſt be ſhewed. A Plea of Conveyance of Lands, &c. *inter alia*, where the Conveyance contains more than relates to the Matter of the *Plea*, is good. 1 *Roll. Rep.* 72. Bonds and Deeds are to be pleaded with a *Profert hic in Curia*, &c. *Ibid.* 1261. If one comes in by Act of Law, the general Allegation will ſuffice; and Things Spiritual, or where the Plea conſiſts of Matter infinite, may be generally pleaded: All neceſſary Circumſtances implied by the Law, need not be expreſſed in the *Plea*; but when any ſpecial or ſubſtantial Matter is alledged, it ſhould be ſpecially anſwered; and ſo Matters of Record, where they are the Foundation of the Suit, or Subſtance of the *Plea*. 10 *Rep.* 94. 3 *Cro.* 749. *Plowd.* 65. That which is alledged by Way of Inducement to the Subſtance of the Matter, needs not be certainly alledged as the Subſtance itſelf. *Plowd.* 81. He that pleadeth in the Negative, is not bound to plead ſo exactly as he who pleads in the Affirmative: And that which a Man cannot have certain Knowledge of, he is not bound certainly to plead. *Plowd.* 33, 80, 126, 129. Every Affirmative in Pleading, ought to be anſwered with an expreſs Negative; and if a Perſon be named to be Dwelling at *A.* 'tis no *Plea* to ſay, that he is an Inhabitant at ſome other Place; unleſs it conclude in the Negative and not at *A.* 1 *Inſt.* 126. 19 *Hen.* 6. 1. It is a Rule in Pleading, That when a Man pleads ſpecial Matter, and concludes generally, he thereby waves the ſpecial Matter. *Farreſt. Rep.* 53. *Pleas* that are too general are not good. 1 *Lutw.* 239. 2 *Salk.* 521. And every *Plea* ought to be ſingle and certain; and not be double, or contain a Multitude of diſtinct Matter to one and the ſame Thing, whereto ſeveral Anſwers are required, which will not be allowed; nor where the Defendant pleads two Matters, each being a ſufficient Bar to the Action, unleſs one depends upon the other, or the Defendant cannot come at the one without ſhewing the other, when it is good. 11 *Rep.* 52. 1 *Vent.* 48, 272. 2 *Nelſ. Abr.* 1254. A double *Plea* will not be good; for where there is double Matter, no certain Iſſue can be taken: But a *Plea* is not double which contains divers Matters, if it would not have anſwered the whole Declaration without alledging all thoſe Matters in it, and which are neceſſary in the Defendant's juſt Defence. 2 *Lill. Abr.* 300. Where the Matter is indifferent to be well or ill, and the Party pleads over, the Court will intend it well. *Mod. Caſ.* 136. If there be a Repugnancy in pleading, it is Error. 2 *And.* 182. *Jenk. Cent.* 21. And a Man ſhall not take Advantage of his own Wrong, by Pleading, &c. *Cro. Jac.* 588. A Man cannot plead any Thing afterwards which he might have pleaded at firſt *Ibid.* 318. Though Surpluſage ſhall never make the *Plea* vicious, but where it is contrary to the Matter before. *Raym.* 8. The Court never orders a Defendant to plead peremptorily, till all the Rules are out: And where the Plaintiff amends and gives an Imparlance, there ſhall be new Rules given to plead, but not if there is no Imparlance. 2 *Salk.* 517. In the Court of *C. B.* if the Defendant doth not plead on Rule to anſwer, before the Rule is expired, the Plaintiff's Attorney may afterwards enter up Judgment by *Nil dicit*. *Pract. Solic.* 303. If a Copy of the Plaintiff's Declaration be delivered to the Defendant's Attorney before the *Eſſoin*-Day of the Term, he may be compelled to plead that Term, or Judgment ſhall be entered againſt him: By the uſual Courſe, the Defendant is to anſwer the ſame Term in which he appears, if it be an iſſuable Term, and the Writ is returnable at the Beginning thereof; but generally a Defendant hath Time to plead till the next Term. *Pract. Attorn. Edit.* 1. By an Order of Court, reciting that by the former Practice Defendants have uſually been allowed eight Days Time to plead; it was ordered, that four Days only ſhould be allowed ſuch Defendants from the Time of giving any Rules. *Ord. Trin.* 1727. And on Proceſs returnable the firſt or ſecond Returns of Terms; the Defendant is to plead in four Days, if he lives within twenty Miles of *London*, and eight Days if farther off, after Delivery of the Declaration, with Notice to plead, &c. or on Default, the Plaintiff may ſign his Judgment. *Ord. Trin.* 5 *Geo.* 2. On there being ſpecial Pleadings in any Action, the Secondary will give Rules to reply; and if the Defendant come to iſſue, or there be a Demurrer, the *Pleas* are to be given to the Clerk of the Papers, who gives Rule for the Defendant to rejoin, &c. Special *Pleas* are left with one of the Clerks of the Papers, and the Plaintiff's Attorney is to take a Copy thereof from him, for which he pays 6 *d. per* Sheet, and put in his Replication; and then he carries the Declaration to him, who will make up the Paper-Book, and write a Rule on the Side: This Paper-Book is to be delivered to the Defendant's Attorney, and he muſt pay for entring his warrant of Attorney, and 10 *d.* a Folio for his Pleadings, *&c.* And if the Defendant doth not receive the Paper-Book, and return it to the Attorney for the Plaintiff, on his calling for it to be entered in four Days; then a *Non Proſ.* may be entered for Want of a *Plea.* See 6 *Mod.* 22. When a Matter is expreſly pleaded by one Party in the Affirmative, which is expreſly pleaded to and denied by the other Party, the next Thing is to be an Iſſue in order to Trial, that they may not plead *in infinitum. Raym.* 199. If a *Plea* to the Plaintiff's Writ, upon Iſſue joined, be found for the Defendant, the Writ ſhall abate: And if to the Perſon, Action, or Juriſdiction, it be found for the Plaintiff, he ſhall recover the Thing in Demand. *Jenk. Cent.* 306. The Law requires in every *Plea* two Things, *viz.* Matter ſufficient; and that it be expreſs'd according to the Form of the Law. *Hob.* 164. But it is ſaid a Man is not bound to one Form of Pleading, ſo he plead the Subſtance of the Matter. *Plow.* 435. The old Way of Pleading a Record was to begin at the Original, and not omit any Continuance, *&c.* And there is a Diverſity where a Judgment is ſeveral, and when 'tis entire; for if forty Acres of Land are recovered, here a *Plea* of Recovery of twenty Acres is ill; but it ſhould be pleaded of the forty Acres, whereof twenty are Parcel. *Comber* 253. All *Pleas* are to be in *Engliſh*, and not in *Latin*, by the late Statute: Each *Plea* is to have its proper Concluſion; and regularly all *Pleas* that are affirmative conclude, *And this he is ready to verify*, &c. A *Plea* in Abatement begins, *That the Defendant ought not to anſwer to the Bill*, &c. and concludes to the Declaration thus: *Whereupon he prays Judgment of the Bill, or Declaration aforeſaid; and that the Bill be quaſh'd*, &c. In a *Plea* in Bar, the Defendant in the Beginning ſays, *That the Plaintiff ought not to have or maintain his Action againſt him*; and concludes to the Action, *viz. He prays Judgment if the Plaintiff ought to have or maintain his Action againſt him*, &c. A *Plea* of a Record ought to conclude, *And this he is ready to verify by the Record*, &c. *Pract. Solic.* 236. 2 *Nelſ.* 1269. 'Tis ſaid that the Concluſion makes the *Plea*; for if it begins in *Bar*, and concludes in *Abatement*, it is a *Plea* in *Abatement.* 1 Ld. Raym. 337.

Form of a *Plea*, That the Defendant *owes nothing*, in Debt.

AND the ſaid C. D. *comes and defends the Force and Injury and Damages*, &c. *when*, &c. *And ſaith That the ſaid* A. B. *ought not to have or maintain his Action aforeſaid againſt him; becauſe he ſaith, that he doth not owe to the ſaid* A. *the ſaid Sum of Ten Pounds, or any Part thereof, in Manner and Form as the ſaid* A. *above complains againſt him; and of this he puts himſelf upon his Country*, &c.

A *Plea* of *Miſnomer*, in Abatement, and *Replication.*

AND the ſaid C. *by* T. E. *his Attorney, comes and defends the Force and Injury above laid to his Charge; and prays Judgment of the ſaid Bill, or ſaith, that he ought not to be compelled to anſwer to the Bill aforeſaid, becauſe he ſaith, that he the ſaid* C. *is not the ſame Perſon*, &c. *and is called and known, or was baptized by the Name of*, &c. *And by the ſame Name and Surname from the Time of his Nativity hitherto hath always been called and known, and not by the Name of* C. D. *&c. as in the Bill is above ſuppoſed, or he is named: And this he is ready to verify; wherefore he prays Judgment of the ſaid Bill, and that the ſame may be quaſhed*, &c.

(Repl.) *And the ſaid* A. *ſaith, That notwithſtanding any Thing by the ſaid* C. *above in Pleading alledged, his ſaid Bill ought not to be quaſhed; becauſe he ſaith, that the ſaid* C. *is named and called, and on the Day of exhibiting the ſaid Bill, was named and called, as well by the Name of* C. D. *as by the Name of*, &c. *And he prays that this may be inquired of by the Country.*

A *Plea* in Bar *of an Action*, with *Replication* and *Rejoinder.*

AND the ſaid C. by, &c. *his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will take the ſame into Conſideration, and ſaith, that the ſaid* A. *ought not to have or maintain his ſa Action thereon againſt him; becauſe he ſaith, That after the ſaid Promiſe and Aſſumption in Form aforeſaid made, and before the exhibiting the ſaid Bill of the ſaid* A. *that is to ſay, On the Day, and in the Year*, &c. *at* M. *aforeſaid in the County aforeſaid, he the ſaid* C. *well and truly paid to the ſaid* A. *the ſaid Twenty Pounds, according to his Promiſe and Aſſumption aforeſaid: And this he is ready to verify; wherefore he prays Judgment, if the ſaid* A. *ought to have or maintain his ſaid Action againſt him.*

(Repl.) *And the ſaid* A. *ſaith, that notwithſtanding any Thing above pleaded by the ſaid* C. *he the ſaid* D *ought not to be precluded from having his ſaid Action againſt the ſaid* C. *becauſe he ſays that the ſaid* C. *did not pay to him the ſaid* A. *the ſaid Twenty Pounds, in Manner and Form as the ſaid* C. *hath above by his Plea alledged; and he prays that this may be inquired of by the Country.*

(Rejoind.) *And the ſaid* C. *as formerly ſaith, That he paid the ſaid* A. *the ſaid Twenty Pounds, on the Day and in the Year aforeſaid, at the Place aforeſaid*, &c. *as he hath before alledged; and of this he puts himſelf upon his Country; and the ſaid* A. *does likewiſe the ſame*, &c.

Pleas in Criminal Caſes. One indicted of Felony, *&c.* ought not to be allow'd to plead to the Indictment, 'till he holds up his Hand at the Bar; which is in Nature of an Appearance, *&c.* A Priſoner on his Arraignment may plead the general Iſſue, or in Abatement, *&c.* or demur to the Indictment; and he may plead in Bar, *Auterfoits Acquit, Auterfoits Convict* before Judgment, *Auterfoits Attaint, &c. viz.* That he was heretofore acquitted, convicted, or attainted of the ſame Felony. *H. P. C.* 228. 3 *Inſt.* 213, 214. A Criminal may alſo plead a Pardon, or Benefit of Clergy; tho' this laſt is not uſually pleaded until he has otherwiſe pleaded before. Vide *Auterfoits Acquit.*

Pleas of the Sword, Were the *Pleas* of the Dignity of the Earl of *Cheſter*; ſignifying Sovereign Authority. King *Will.* 1. gave the Earldom of *Cheſter* to his Half-Brother *Hugh Lupus*, Anceſtor to *Ranulph*, the third Earl of *Cheſter*; *Tenere ita libere* per Gladium, *ſicut ipſe Rex* Willielmus *tenuit* Angliam *per Coronam:* And Earl *Ranulph*, *Anno* 2 *Hen.* 3. granted to his Barons of *Cheſhire*, a Charter of Liberties, *Exceptis* Placitis ad Gladium, *&c. Rot. Pat.* 3 *E.* 4. According to the Grant of *Will.* 1. in all Indictments for Felony, Murder, *&c.* in that County Palatine, the Form was anciently —— *Contra Pacem Domini Comitis*, Gladium *& Dignitatem, &c.*

Plebania, *Plebanalis Eccleſia*, a Mother Church having one or more ſubordinate Chapels. *Blount.*

Plebanus, A Rural Dean, becauſe the Deaneries were commonly affix'd to the *Plebaniæ*, or chief Mother Church within ſuch a Diſtrict, at firſt commonly of ten Pariſhes: But it is inferred from divers Authorities, that *Plebanus* was not the uſual Title of every Rural Dean; but only of ſuch a Pariſh Prieſt in a large Mother-Church, exempt from the Juriſdiction of the Ordinary, who had the Authority of a Rural Dean commited to him by the Archbiſhop, to whom the Church was immediately ſubject. *Wharton Angl. Sacr. Pa.* 1. *pag.* 569. *Reg. Eccl. Chriſt. Cantuar. MS.*

Plebiſcitum, A Law or Statute made by the joint Conſent of the People or Commons without the Senate. *Litt. Dict.*

Pledge, (Lat. *Plegius*, Fr. *Pleige*, i. e. *Fidejuſſor*) A Surety that undertakes for another Man in Action of Treſpaſs, *&c.* *Pledges* are Bail to Actions; alſo upon ſuing out ſome original Writs it is thus inſerted, *viz.* *Si* A. B. *fecerit te ſecurum de Clamore ſuo Proſequendo tunc pone per vadios & ſalvos Plegios* C. D. & E. F. *de*, *&c. quod ſit*, *&c.* Or the *Pledges* are generally *John Doe* and *Richard Roe*. 2 *Lill. Abr.* 329. Thoſe that bail or redeem any Thing but the Body of a Man, are called *Pledges:* And *Pledges* are uſually found for the Demandants in Real Actions, and Plaintiffs in Perſonal Actions. *Ibid.* The Reaſon of finding theſe *Pledges* was, that the Plaintiff ſhould proſecute his Suit with Effect to Judgment, and not put the Defendant to unneceſſary Trouble and Charge; for if he were nonſuited at the Trial, the Entry of the Judgment upon it was thus: *Ideo Conſiderat. eſt quod præd. Quer. & Pleg. ſui de Proſequend. ſint inde in Miſericordia*, *&c.* The Plaintiff's *Pledges* that he ſhall proſecute his Suit may be entered at any Time pending the Action; and the Putting in of *Pledges* is now but a meer formal Thing; yet if the *Pledges* be not entered at all, it is Error, becauſe the Law directs the Plaintiff to find *Pledges*. *Trin.* 22 *Car. B. R.* In the Return of a *Venire facias*, the Omiſſion of the Returning of the *Pledges* is but Matter of Form, and not like unto where *Pledges* are omitted upon an original Writ; wherefore it has been adjudged to be help'd by the Statutes of *Jeofails*. 2 *Nelſ. Abr.* 944. Want of *Pledges* hath been held to be Subſtance; but it is aided by the Statute of 4 & 5 *Ann.* unleſs ſet forth particularly for Cauſe upon a Demurrer. 2 *Lill.* 39. 2 *Lill. Abr.* 329. The *Pledges*, *John Doe*, &c. are entred by the Defendant; on his being arreſted, and giving common *Bail* for his Appearance, *&c.*

Pledges of Goods For *Money*, *&c.* See *Pawns*. And there is a *Pledge* in Law; where the Law without any ſpecial Agreement between Parties doth enable a Man to keep Goods in Nature of a Diſtreſs, *&c.* 2 *Shep. Abr.* 442.

Pledgery, (Fr. *Pleigerie*, Lat. *Plegiagium*) Signifies Suretyſhip, an Undertaking or Anſwering for: And the *Appellant* ſhall require the Conſtable and Marſhal to deliver his *Pledges*, and diſcharge them of their *Pledgery*, after that he is come into the Liſts, *&c. Orig. Jur. ex Cod. MS. in Bibl. Seldeniana.*

Plegiis Acquietandis, Is a Writ that lies for a Surety, againſt him for whom he is Surety, if he pay not the Money at the Day. *F. N. B.* 137. If the Party who becomes Surety be compelled to pay the Money, *&c.* he ſhall have this Writ againſt the Perſon who ought to have paid the ſame: And if a Man be Surety for another to pay a Sum of Money, ſo long as the Principal Debtor hath any Thing, and is ſufficient, his Sureties ſhall not be deſtrained by the Statute of *Magna Charta*; if they are diſtrained by the Sheriff, *&c.* they ſhall have a ſpecial Writ upon the Statute to diſcharge them. *Magn. Chart.* 9 *H.* 3. *c.* 8. But if the Plaintiff ſue the Sureties in *C. B.* where the Principal is ſufficient to pay the Debt, whether the Sureties may plead that and aver that the principal Debtor is ſufficient to pay it; or whether they ſhall have a Writ to the Sheriff not to diſtrain in ſuch a Caſe, hath been made a Queſtion. *New Nat. Br.* 306. It was adjudged *Paſch.* 43 *Ed.* 3. that the Writ *de Plegiis acquietandis* lieth without any Specialty ſhewed thereof: As it has been held, that a Man ſhall have an Action of Debt againſt him who becometh *Pledge* for another upon his Promiſe to pay the Money, without any Writing made of it. *New Nat. Br.* 270, 304.

Plena foriſfactura, A Forfeiture of all that one hath, *&c.* See *Forfeiture*.

Plenarty, Is a Term uſed in Eccleſiaſtical Affairs, where a Church is *full* of an Incumbent. A Clerk inducted may plead his Patron's Title; and being inſtituted by the Space of Six Months, his Patron may plead *Plenarty* againſt all common Perſons. *Plowd.* 501. Inſtitution by Six Months, before a Writ of *Quare impedit* brought, is a good *Plenarty* againſt a common Perſon; but *Plenarty* is no Plea againſt the King, 'till ſix Months after Induction. 1 *Inſt.* 119, 344. *Plenarty* for ſix Months is not generally pleadable againſt the King, becauſe he may bring *Quare Impedit* at any Time, and *Nullum Tempus occurrit Regi:* Though if a Title devolves to the King by Lapſe, and the Patron preſents his Clerk by Uſurpation, who is inſtituted and inducted, and enjoys the Benefice for Six Months, this is ſuch a *Plenarty* as deprives the King of his Preſentation. 2 *Inſt.* 361. And *Plenarty* by ſix Months after Inſtitution is a good Plea againſt the Queen Conſort; although ſhe claims the Benefice of the King's Endowment. *Wood*'s *Inſt.* 160. Upon Collation of a Biſhop by Lapſe, *Plenarty* is not pleadable; for the Collation doth not make a *Plenarty*, by Reaſon the Biſhop would be Judge in his own Cauſe: The Biſhop muſt certify whether the Church is full, or not; and his Collation is interpreted to be no more than to ſupply the Cure 'till the Patron doth preſent; and 'tis for this Cauſe a *Plenarty* by Collation cannot be pleaded againſt the right Patron: But by Collation, *Plenarty* may be a Bar to any Lapſe of the Archbiſhop, and to the King, though 'tis no Bar to the right Patron. 6 *Rep.* 50. 1 *Inſt.* 344. 2 *Cro.* 207. *Plenarty* or not ſhall be tried by the Biſhop's Certificate, being acquired by Inſtitution, which is a Spiritual Act; but in a *Quare Impedit*, the *Plenarty* muſt be tried by a Jury. 6 *Rep* 49. By the Common Law, where a Perſon is preſented, inſtituted and inducted to a Church, the Church is full, though the Perſon preſented be a Layman; and ſhall not be void, but from the Time of the Deprivation of the Incumbent for his Incapacity. *Count. Parſ. Compan.* 99. *Avoidance* is contrary to *Plenarty*; as where there is a Want of a lawful Incumbent, *&c.*

Plene adminiſtravit, Is a Plea pleaded by an *Executor* or *Adminiſtrator*, where they have adminiſtred the Deceaſed's Eſtate faithfully and juſtly before the Action brought againſt them. On *Plene adminiſtravit* pleaded by an Executor, if it be proved that he hath Goods in his Hands which were the Teſtator's, he may give in Evidence that he hath paid to the Value of his own Money, and need not plead it ſpecially; for when an Executor before the Action, hath paid the Money in equal Degree with that demanded by the Plaintiff, he may plead fully adminiſtred generally, and give the Special Matter in Evidence. 2 *Lill. Abr.* 330. And where a Teſtator or Inteſtate was indebted to the Executor or Adminiſtrator, upon Bond, they may plead *Plene adminiſtravit*, and give their own Bonds in Evidence againſt any other Bond; ſo likewiſe upon an *Indebitatus*, having the Privilege of paying themſelves firſt. *Ibid.* *Plene adminiſtravit* is no Plea where an Executor, *&c.* is ſued in the *Debet* and *Detinet*, becauſe he is charged for his own Occupation. 1 *Mod.* 185. And if *Plene Adminiſtravit* be pleaded, omitting the Words, *And that he hath not any Goods or Chattels of the Teſtator, nor had on the Day of exhibiting the Bill aforeſaid, or at any Time after*, &c. it is naught on a Demurrer, and not helped by Verdict. *Cro. Jac.* 132. 3 *Lev.* 28. Where the Executor, *&c.*

is to ſhew ſpecially, how he hath adminiſtred the Goods, vide *Aleyn* 48. See *Executors*.

Plevin, (*Plevina*, from the Fr. *Pleuvine*) Vide *Replevin*.

Plight, Is an old *Engliſh* Word, uſed ſometimes for the Eſtate, with the Condition and Quality of the Land. 1 *Inſt*. 221.

Plimouth, The Mayor and Commonalty of *Plimouth*, were empowered by Statute to dig a Trench ſix or ſeven Foot broad, through all the Land lying between the Town and the River *New*, to convey the Water thither; paying the Owners of the Ground, ſo much as two Juſtices of Peace ſhall appoint; but not through any Garden, or to prejudice any Mill, &c. 27 Eliz. c. 20.

Plonkets, A Kind of coarſe Woollen Cloth. Stat. 1 *R*. 3. *c*. 8.

Plow-alms, (*Eleemoſyna aratrales*) Was anciently 1 *d*. paid to the *Church* for every *Plowland*. Mon. Angl. Tom. 1. p. 256.

Plow-bote, A Right of Tenants to take Wood to repair *Ploughs*, Carts and Harrows; and for making Rakes, Forks, &c.

Plow-land, Is the ſame with a *Hide* of Land; and a *Hide* or *Plow-land*, it is ſaid, do not contain any certain Quantity of Acres; But a *Plough-land*, in reſpect of Repairing the Highway is ſettled at 50 *l*. a Year, by the Stat. 7 & 8 *W*. 3. *c*. 29.

Plow-Silver, In former Times was Money paid by ſome Tenants, in lieu of Service to *plough* the Lord's Lands. *W. Jones Rep*. 280. See *Socage*.

Plurality, (*Pluralitas*) Signifies the *Plural* Number; moſtly applied to ſuch Clergymen who have more benefices than one: And *Selden* mentions *Trialities* and *Quadrilities*, where one Parſon hath three or four Livings. *Seld. Tit. Hon*. 687. *Plurality of Livings* is where the ſame Perſon obtains two or more Spiritual Preferments, with Cure of Souls; in which Caſe the firſt is void *ipſo facto*, and the Patron may preſent to it, if the Clerk be not qualified by Diſpenſation, &c. for the Law enjoins Reſidence, and it is impoſſible that the ſame Perſon can reſide in two Places at the ſame Time. *Coun. Parſ. Compan*. 94. By the *Canon Law*, no Eccleſiaſtical Perſon can hold two Benefices with Cure *ſimul & ſemel*, but that upon taking the ſecond Benefice, the Firſt is void: But the *Pope* by Uſurpation did diſpenſe with that Law; and at firſt every Biſhop had Power to grant Diſpenſations for *Pluralities*, 'till it was abrogated by a General Council, held *Anno* 1273, and this Conſtitution was received 'till the Statute 21 *H*. 8. *c*. 13. *Moor* 119. 2 *Nelſ. Abr*. 1271. The Stat. 21 *H*. 8. ordains, that if any Parſon having one Benefice with Cure, of the Yearly Value of 8 *l*. or above, in the King's Books, accepts of another Benefice with Cure, and is inſtituted and inducted, then the firſt ſhall be void: So that there may be a *Plurality* within the *Statute*; and a *Plurality* by the *Canon Law*. 2 *Lutw*. 1306. The Power of granting Diſpenſations to hold two Benefices with Cure, &c. is veſted in the King by the aforeſaid Statute: And it has been adjudged, that a Diſpenſation is not neceſſary for a *Plurality*, where the King preſents his Chaplain to a ſecond Benefice; for ſuch a Preſentment imports a Diſpenſation, which the King hath Power to grant as ſupreme Ordinary; but if ſuch a Chaplain be preſented to a ſecond Benefice by a Subject, he muſt have a Diſpenſation before he is inſtituted to it. 1 *Salk*. 161. The Archbiſhop's Diſpenſation and King's Confirmation, regularly are neceſſary to hold *Pluralities*: And the Statute 21 *H*. 8. ought to be conſtrued ſtrictly, becauſe it introduces Non-Reſidence, and *Plurality* of Benefices againſt the Common Law. *Jenk. Cent*. 272. A Man by Diſpenſation may hold as many Benefices, without Cure, of whatſoever Value, as he can get; and likewiſe ſo many with Cure as he can get, all of them, or all but the laſt being under the Value of 8 *l*. *per Annum* in the King's Books; if the Perſon to be diſpenſed withal, be not incapable thereof: Yet if a Diſpenſation is made to hold three Benefices with Cure, whereof the firſt is of the yearly Value of 8 *l*. the Diſpenſation is void, unleſs it be in Caſe of the King's Chaplains, &c. who may hold three Benefices with Cure, above the Value of 8 *l*. a Year, where one of them is in the King's Gift. *Hob*. 148. If there be two Parſons of one Church, and each Parſon hath the entire Cure of the Pariſh, and their Benefices be ſeverally of the Value of 8 *l*. *per ann*. if one dies and the other ſucceeds, this is a *Plurality* within the Statute. *Cro. Car*. 456. And though the Act mentions Inſtituted and Inducted, when one is Inſtituted into the ſecond Church, the Diſpenſation to hold two Benefices comes too late, though he be afterwards Inducted; for by Inſtitution, the Church is full of the Incumbent. 4 *Rep*. 79. By the Statute, if the firſt Benefice be of the Value of 8 *l*. a Year, or more, by the Acceptance of a ſecond, it is actually void, to all Intents: But Benefices under that Value, being not within the Statute, are only avoidable by accepting a ſecond, and not void on ſuch *Plurality*, without a declaratory Sentence, &c. *Mallor. Q. Imped*. 104. In theſe Caſes it hath been held, that the Value of Livings to make *Pluralities* ſhall be determined by the King's Books in the Firſt-Fruits Office: Though the Court hath been divided, whether the Value ſhould be taken as it was in the King's Books, or according to the true Value of the Living. 2 *Lutw*. 1301. 2 *Nelſ*. 1271. No Deanery ſhall be taken by our Law to be a Benefice with Cure, to need Diſpenſation on having another Benefice, &c. 21 *H*. 8. 1 *Leon*. 316. And a Parſonage and Vicarage make not a *Plurality*, but are only one Cure; the Vicarage being endowed out of the Parſonage. 2 *Cro*. 691. Parſons may purchaſe a Licence or Diſpenſation to take and keep two or more Benefices with Cure, according to the Directions and Qualifications in the ſaid Statute 21 *H*. 8. *c*. 13. And in ſome Caſes, Parſons may hold *Pluralities*, without being retained as *Chaplains*, &c. purſuant to that Statute, *viz*. by Birth, as being the Son or Brother of a Lord; by Univerſity Degree, where a Man is Doctor of Divinity, Law, &c. or by Office or Employment, as a Biſhop. Stat. 26 *H*. 8. But when a Parſon is made a Biſhop, his former Qualification to hold *Plurality* of Livings is void. *Hob*. 158. See *Chaplain*.

Pluries, Is a Writ that iſſues in the *third* Place, after two former Writs have been diſobeyed; for firſt goes out the *Original* Writ or *Capias*, which if it has not Effect, then iſſues the *Alias*; and if that alſo fails, then the *Pluries*. *Old. Nat. Br*. 33. It is uſed in Proceedings to Outlawry; and in great Diverſity of Caſes. *Table Reg. Writs*.

Pocket of Wool, Is a Quantity of *Wool* containing Half a Sack. 3 *Inſt*. 96.

Poiſon, The Killing a Perſon by *Poiſoning*, has been held more criminal than any other Murder, becauſe of its Secrecy, which prevents all Defence againſt it; whereas moſt open Murders give the Party killed ſome Opportunity of Reſiſtance: And for this Reaſon Offenders guilty of *Poiſoning* any Perſon, were anciently judged to a ſeverer Puniſhment than other Offenders. In this Kingdom *Poiſoning* Perſons was formerly a Kind of Treaſon, puniſhed by Boiling to Death. 22 *H*. 8. *c*. 9. 3 *Nelſ. Abr*. 363. And at this Day, to *poiſon* any one wilfully, is Murder and Felony, if the Party die in a Year; and the Aiders and Abettors, &c. ſhall ſuffer Death. Stat. 1 *Ed*. 6. *c*. 12. If a Man perſuade another to drink a *poiſonous* Liquor, under the Notion of a Medicine, who afterwards drinks it in his Abſence; or if *A*. intending to *poiſon* B. put *Poiſon* into a Thing, and deliver it to *C*. who knows nothing of the Matter, to be by him delivered to *B*. and *C*. innocently delivers it accordingly in the

Abſence of *A.* In this Caſe the Procurer of the Felony is as much a Principal as if he had been preſent when it was done. 2 *Hawk. P. C.* 313. And ſo likewiſe all thoſe ſeem to be who are preſent when the *Poiſon* was infuſed, and privy and conſenting to the Deſign: But Perſons who only abet their Crime by Command, Counſel, &c. and are abſent when the *Poiſon* was infuſed, are Acceſſaries only. *Ibid.*

Pokes, Were long ſleeved *Gowns*, which Faſhion formerly grew ſo affected and extravagant, that the Wearing them was prohibited by the Biſhop of *London* in his Injunctions *Anno* 1412.

Pole, A Meaſure of Land; the ſame with Perch. See *Perch.*

Poledavies, Canvas wherewith Sail-Ware is made, mentioned in the Stat. 1 *Jac.* 1. *c.* 24.

Polein, Was a Shoe, ſharp or picked, and turned up at the Toe; that firſt came in Uſe in the Reign of *William Rufus*, and by Degrees became of that Length, that in King *Richard* the Second's Time they were tied up to the Knees with Gold or Silver Chains: They were reſtrained *Anno* 4 *Ed.* 4. but not wholly laid aſide till the Reign of *Hen.* 8. Malmſ. in Vit. Will. 2.

Poletria, A Stud of Colts: *Poledrus*, a Colt. *Fleta*, *lib.* 2. *c.* 87.

Policy of Aſſurance, or *Inſurance*, (From the Ital. *Poliza*, i. e. *Schedula & Aſſecuratio*) Is an Inſtrument entered into by *Inſurers* of Ships and Merchandiſe, &c. to Merchants obligatory for the Payment of the Sum *inſured*, in Caſe of Loſs. *Merch. Dict.* It is a Courſe taken by thoſe who adventure Goods or Merchandizes to Sea, that they, unwilling to hazard the Whole, do give unto ſome other, called an *Inſurer*, a certain Rate or proportionate Sum of ſo much *per Cent.* to ſecure the ſafe Arrival of the Ship and Goods, &c. at the Place agreed upon; ſo that if the Ship and Merchandiſe do miſcarry, the *Inſurer* maketh good to the Adventurer ſo much as he promiſed to ſecure; but if the Ship arrive ſafely, he gaineth that clearly which the Merchant compoundeth to pay him: And for the more equal Dealing between the *Inſurer* and the *Inſured* in this Caſe, there was a Clerk or Officer ordained by Statute to ſet down in Writing the Sum of their Agreement, which is ſubſcribed or under-written by the *Inſurer*; and this was called *Policy*, to prevent any Difference that might after happen between them. Stat. 43 *Eliz. cap.* 12. and 14 *Car.* 2. *cap.* 23. See *Inſurance.*

Pollards, Baſe Coin heretofore current in this Kingdom, which with *Crocards* have been long ſince prohibited. *Matt. Weſtm. Anno* 1299. *Pollards, Crocards, Staldings, Eagles, Leonines*, &c. were ancient Coins of Money in *England*, but now forgotten. *Coke* 2 *Inſt* 577.

Pollard-Trees, or *Pollengers*, Are ſuch *Trees* as have been uſually cropped, and therefore diſtinguiſhed from Timber-Trees. *Plowd.* 469.

Poll-Money, (*Capitatio*) Is a Tax upon the Heads of Men; either upon all indifferently, or according to their ſeveral Degrees and Diſtinctions. By the Statute 18 *Car.* 2. *c.* 1. every Subject in this Kingdom was aſſeſſed by the *Head* or *Poll*, according to his Degree; as a Duke 100 *l.* Marqueſs 80 *l.* Baron 50 *l.* Baronet 30 *l.* Knight 30 *l.* Eſquire 10 *l.* and every common Perſon 1 *s.* &c. And *Anno* 1 & 2 *W.* 3. a general *Twelve-penny Poll-Tax* was granted for the Publick Occaſions.

Poll-Silver, There was antiently (ſays *Camden*) a perſonal Tribute called *Poll-Silver*, impos'd upon the *Poll* or Perſon of every one; of Women from the Age of twelve Years, and Men the fourteenth Year of their Ages. *Camd. Notes upon Coins.*

Polls, Where one or more Jurors are excepted againſt, it is called a *Challenge* to the *Polls.* 1 *Inſt.* 156.

Polygamy, (*Polygamia*) Is where a Man marries Two or more Wives together, or a Woman has Two or more Huſbands at the ſame Time; when the Body of the firſt Wife or Huſband may be ſaid to be injured, by the ſecond Marriage while either are Living. 3 *Inſt.* 88. *Wood's Inſt.* 363. And by Statute, marrying a ſecond Wife or Huſband, the former being alive, is made Felony; unleſs in Caſe of Abſence for ſeven Years, &c. 1 *Jac.* 1. *c.* 11. See *Marriage.*

Pomeranium, A Word uſed for an Orchard in antient Charters. *Mong. Ang. Tom.* 2. *pag.* 129.

Ponderare, It was a Cuſtom formerly in Times of Superſtition, to weigh ſick Children at the Tomb of ſome Saint, and to ballance the Scales with Wheat Bread, or any Thing which they were willing to offer to God or his Saints, but always with ſome Money, and by this the Cure of the Sick was ſaid to be performed.—— *Ad Sepulchrum Sancti Nummo ſe* Ponderabat.

Pondus Regis, Is the Standard Weight appointed by our antient Kings. 35 *Ed.* 1. And what we now call *Troy Weight*, was this *Pondus Regis*, or *Le Roy Weight*, with the Scales *in equilibrio*; whereas the *Aver du pois* was the fuller Weight, with a declining Scale. *Cowel.*

Pone, Is a Writ whereby a Cauſe depending in the County-Court, or other inferior Court is removed into the *Common Pleas*; and ſometimes into the *King's Bench*: As when a *Replevin* is ſued by Writ out of *Chancery*, &c. then if the Plaintiff or Defendant will remove that Plea out of the County-Court into *C. B.* it was done by *Pone. F. N. B.* 69. 2 *Inſt.* 339. And the Writ *Pone* lies to remove Actions of Debt, and of Detinue, Writs of Right, of Nuſance, &c. *New Nat. Br.* Alſo *Pone* is a Writ willing the Sheriff to ſummon the Defendant to appear and anſwer the Plaintiff's Suit, on his putting in Sureties to proſecute, &c. *Wood's Inſt.* 570. And the Writ to the Sheriff to take Surety of one for his Appearing is called *Pone per Vadium.* A *Pone* to remove Cauſes, is of this Form: *Put at the Petition of* A. B. *before our Juſtices at* Weſtminſter, *the Day*, &c. *The Plea which is in your Court by our Writ, between the ſaid* A. B. *and* C. D. *of*, &c. *and ſummon the ſaid* C. *that he be then there to anſwer the ſaid* A. &c.

Ponendis in Aſſiſis, A Writ granted by the Statute of *Weſtm.* 2. *c.* 38. which Statute ſhews what Perſons Sheriffs ought to impanel upon *Aſſiſes* and Juries, and what not. *Reg. Orig.* 178. *F. N. B.* 165.

Ponendum in Ballium, Is a Writ commanding that a Priſoner be *bailed* in Caſes bailable. *Reg. Orig.* 133.

Ponendum ſigillum ad Exceptionem, A Writ by which Juſtices are required to put their Seals to *Exceptions*, exhibited by the Defendant againſt the Plaintiff's Evidence, Verdict, or other Proceedings before them, according to the Statute *Weſt* 2.

Pontage, (*Pontagium*) Is a Contribution towards the Maintenance or Re-edifying of *Bridges*: And may alſo ſignify *Toll* taken to that Purpoſe. 1 *H.* 8. *c.* 5. 3 *Eliz. c.* 24. This was accounted one of the Three publick Charges on the Nation, from which no Perſons were exempted, *viz. Expeditio, Pontis & Arcis reparatio*, called *Trinoda Neceſſitas*; always excepted in Grants of Privileges, *propter Publicam Regni utilitatem*, that the People might the better reſiſt the Enemy; and from which *Selden* writes, That *nè quidem Epiſcopi, Abbates & Monachi immunes erant.* Seld. Notes on Eadmer.

Pontibus reparandis, A Writ directed to the Sheriff, &c. commanding him to charge one or more Perſons to repair a Bridge, to whom it belongs. *Reg. Orig.* 153.

Poor, (*Pauper*) A *poor* Perſon is ſuch as is a Burden to and Charge upon a Pariſh. The *Poor* our Law takes Notice of, are of three Kinds, 1*ſt*, *Poor* by *Impotency* and Defect; as the Aged or Decrepit, Fatherleſs and Motherleſs, *Poor* under Sickneſs, and Perſons that are Ideots, Lunaticks, Lame, Blind, &c. theſe the Overſeers of the *Poor* are to provide for. 2*dly*, *Poor* by *Caſualty*; ſuch as Houſekeepers decay'd or ruin'd by Fire, Water, Robbery, &c. or by Loſſes in Trade; *Poor* Perſons overcharged with Children, Labourers that are diſabled, and theſe, having Ability, are to be ſet to work, but if not able to work, they are to be relieved with Money. 3*dly*, *Poor* by *Prodigality* and Debauchery, alſo called *Thriftleſs Poor*; as idle ſlothful Perſons, Pilferers, Vagabonds, Strumpets, &c. which are to be ſent to the *Houſe of Correction*, and be put to hard Labour, to maintain themſelves; or Work is to be provided for them, that they do not periſh for Want; and if they become impotent by Sickneſs, or if their Work will not maintain them, there muſt be an Allowance by the Overſeers of the *Poor* for their Support. *Dalt. ch.* 73. *ſect.* 35. Before the Reign of Queen *Elizabeth* we had no ſuch Thing as ſettled Laws for the Relief of the *Poor*; for as Hiſtory tells us, our Abbies and Monaſteries, aſſiſted with the Benevolence and antient Hoſpitality of Lords of Manors, 'till the Time of the Reformation, were a ſufficient Proviſion for the *Poor* of this Kingdom: But I find, by the Statute 23 *Ed.* 3. *c.* 7. Relief was to be given to thoſe that could not Labour: The 2 *H.* 5. *c.* 1. ordained, that Hoſpitals founded for impotent *Poor*, were to be viſited. And by 27 *H.* 8. *c.* 25. Governors of Counties, Cities, Towns, &c. were obliged to keep aged *Poor* and impotent Perſons; and compel thoſe that were able, to work and go to Service: And then in the Reign of Queen *Elizabeth*, ſeveral particular Laws were enacted for the Relief of the *Poor*, appointing Collectors and Overſeers, &c. For by the 5 *Eliz. c.* 3. Relief of Pariſhes is to be gathered by Collectors, and weekly diſtributed to the *Poor*; and none ſhall be permitted to beg openly, &c. And the 43 *Eliz. c.* 2. enacts, That the Church-wardens of every Pariſh, and two or three Houſe-keepers, ſhall be nominated yearly in *Eaſter-Week*, or within one Month after, by Two or more Juſtices of the Peace of the County, dwelling near the Pariſh under their Hands and Seals, to be *Overſeers* of the *Poor*; and they with the Conſent of Two ſuch Juſtices, ſhall ſet to work the Children of thoſe Perſons who are not able to maintain them, and all Perſons who have no Means to maintain themſelves, or uſe no Trade to get their Living; and ſhall raiſe weekly, or otherwiſe, by a Tax, on every Inhabitant and Occupier of Lands, &c. ſuch a Sum as they ſhall think fit for Purchaſing a Stock of Flax, Hemp and Wool, to ſet the *Poor* on Work; and ſuch Sums as ſhall be neceſſary for the Relief of the Lame, Old, Blind and Impotent, and for putting out *poor* Children Apprentices, &c. And the ſaid Overſeers ſo nominated and appointed, ſhall meet once a Month at leaſt in their Pariſh-Church, having no juſt Excuſe therein to be allow'd of by two Juſtices, upon a Sunday after Evening Service, and there take Order in the Premiſſes; which Overſeers, within four Days after the End of their Year, are to yield a true Account to two Juſtices, of all Money by them received, or what is aſſeſs'd and not received; what *Poor* they have relieved, and Stock they or the *Poor* have in their Hands; and of all other Things concerning their Office, and deliver what ſhall be in their Hands to the new Overſeers, or on Refuſal, ſhall be committed to Gaol till they account and pay over the Money, &c. And now their Accounts ſhall not be allowed until they have accounted for Burials in Woollen, and of Perſons interred contrary to the Statute 30 *Car.* 2. If the Inhabitants of any Pariſh are not able to raiſe Money for the Relief of their *Poor*, then two Juſtices of the Peace may tax any other Pariſhes within the Hundred; and if the Hundred be not thought able, the Juſtices at their Quarter-Seſſions may rate any other Pariſh in the County; the Sums aſſeſſed to be levied by Warrant of two Juſtices, by Diſtreſs and Sale of Goods, and in Default thereof, the Juſtices may commit the Parties till paid; and the ſaid Juſtices may commit Perſons not ſetting themſelves to work, according to Appointment, &c. The Church-wardens and Overſeers, by the Aſſent of two Juſtices, may bind *poor* Boys Apprentices until the Age of twenty-four Years, and every Girl till the Age of twenty-one Years, or till ſhe marry: And Church-wardens and Overſeers, with the Aſſiſtance of the Juſtices, may oblige all Perſons of Ability, as Gentlemen, Clergymen, Yeomen and Tradeſmen, (ſuch as Bakers, Brewers, Carpenters, Maſons, Weavers, Taylors, &c.) to take ſuch *poor* Apprentices, either with Money, or without: Alſo Apprentices may be placed to Farmers, who ſhall receive them for Huſbandry; and ſingle Men, Widows, &c. for Houſewifery. And the Overſeers, &c. by Leave of Lords of Manors, may build Dwelling-houſes on the Waſte for the impotent *Poor*, and place Inmates, or more Families than one in them; the ſaid Houſes to be built at the Charge of the Pariſh, Hundred or County, to be tax'd as aforeſaid: And the Father and Grandfather, Mother and Grandmother, and Children of every *poor* impotent Perſon, being able, ſhall relieve ſuch *Poor*, in ſuch Manner, and according to ſuch Rates as the Juſtices of Peace at their Seſſions ſhall aſſeſs, under the Penalty of 20 *s.* a Month for every Failure: And Mayors, and other Head Officers of Corporations, being Juſtices of Peace within their Precincts, ſhall have the ſame Power as Juſtices of Peace of the County, to execute this Act; and no other Juſtices ſhall intermeddle there; alſo every Alderman of *London* may execute ſo much of the Statute as is appointed to be done by one or two Juſtices of Peace of any County: Where any Pariſh extends into more Counties than one, or lies Part within a Corporation and Part without, the Juſtices and Head Officers ſhall act only in that Part of the ſaid Pariſh as lies within their Limits; but the Church-wardens and Overſeers of ſuch Pariſhes as extend into ſeveral Limits ſhall, without dividing themſelves, jointly execute their Office, and exhibit one Account to the Head Officer of the Corporation, and another to two Juſtices of Peace as aforeſaid. And where in any Place there ſhall be no Overſeers yearly appointed, every Juſtice of the Diviſion where ſuch Default ſhall happen, and every Mayor and Head Officer of a Corporation, &c. ſhall forfeit 5 *l.* to the Uſe of the *Poor*, leviable on their Goods by Warrant from the Quarter-Seſſions. The 3 *Car.* 1. *cap.* 4. ordains, That the Church-wardens and Overſeers of the *Poor*, mentioned in the 43 *Eliz.* may, with the Conſent of two or more Juſtices of Peace, or of one Juſtice where there ſhall be no more, ſet up any Trade or Occupation for Imploying or better Relief of the *Poor* of their Pariſhes. By the 14 *Car.* 2. *c.* 12. Perſons coming to ſettle in a Pariſh, and renting a Tenement under the Value of 10 *l.* a Year, on Complaint by the Church-wardens and Overſeers of the *Poor* to a Juſtice of Peace within forty Days, may be removed to the Pariſh where laſt legally ſettled for forty Days, &c. by Order of two Juſtices; unleſs they give Security to indemnify the Pariſh, to be allowed by the ſaid Juſtices: But Perſons may go into another Pariſh to Harveſt-work, &c. by Certificate from the Miniſter, Church-wardens and Overſeers, that they have a Dwelling in the Pariſh they came from; and ſuch Perſons are to return to their Pariſhes when their Work is finiſhed, and ſhall not be accounted ſettled where they ſojourn, &c. And by this Statute, a Corporation or Work-houſe was to be in the Cities of *London* and *Weſtminſter*, and the

Towns and Places within the Bills of Mortality, governed by Preſidents, &c. as a Stock for which Juſtices in their Seſſions might tax and aſſeſs the Inhabitants in their Diviſions and Pariſhes, not exceeding a Year's Rate uſually made for Relief of the *Poor*. The Act 14 *Car.* 2. (except what relates to the Incorporation of Work-houſes within the Weekly Bills of Mortality) is continued by 1 *Jac.* 2. *c.* 17. And the 40 Days to make a Settlement was to commence from the Delivery of Notice to the Church-wardens. And by 3 & 4 *W.* & *M.* *c.* 11. it is enacted, that the forty Days intended to make a Settlement by the Act 13 & 14 *Car.* 2. ſhall be accounted from the Publication of Notice in Writing in the Church, of any Perſon's coming to inhabit in any Pariſh; and Church-wardens and Overſeers neglecting to publiſh ſuch Notice the next Sunday after received, or to regiſter the ſame, ſhall forfeit 40 *s.* to the Party grieved: But Perſons coming into a Pariſh, and executing for themſelves any Publick annual Office during one Year; or who ſhall be charged and pay publick Taxes to the ſaid Pariſh; they ſhall be deemed a legal Settlement, without Notice: And if any unmarried Perſon, not having a Child or Children, ſhall be hired into any Service for one Year, ſuch Service ſhall be a Settlement; and being bound Apprentice, and inhabiting in any Pariſh, ſuch Binding and Habitation ſhall make a Settlement, without Notice. Perſons removed by Warrant or Order of two Juſtices, are to be received by the Church-wardens and Overſeers whither ſent, on Pain of forfeiting 5 *l.* to the *Poor* of the Pariſh from whence conveyed, to be levied by Diſtreſs and Sale by Warrant from one Juſtice; and for Want of Diſtreſs to be committed to Gaol for forty Days; but Perſons aggrieved may appeal to the next Quarter-Seſſions of the County, &c. And there ſhall be kept in every Pariſh a Book, wherein the Names of all Perſons that receive Relief ſhall be regiſter'd, and the Occaſion; and the Pariſhioners are to meet at a Veſtry yearly in *Eaſter-Week*, or oftner, when the Book ſhall be examined, by calling over the Perſons, and inquiring into the Reaſons of their taking Relief, and then a new Liſt ſhall be made of ſuch Perſons as they think fit to allow and receive Collections; and no other Perſons ſhall receive Collection, unleſs by Authority under the Hand of one Juſtice, or by Order of Juſtices in their Seſſions, &c. The Statute 8 & 9 *W.* 3. *c.* 30. gives Leave to *poor* Perſons to remove to other Pariſhes for Work and the better Maintenance of their Families, by Certificate from the Church-wardens and Overſeers of the *Poor*, under Hand and Seal, atteſted by two Witneſſes, and allowed and ſubſcribed by two Juſtices of Peace, owning and acknowledging them to be Pariſhioners legally ſettled at the Place from whence they came; which Certificate ſhall oblige the ſaid Pariſh or Place to receive and provide for them and their Families, whenever they become chargeable to, or ask Relief of the Pariſh to which they remove and the Certificate is given; and then, and not before, ſuch Perſons and their Children, (though born in that Pariſh, not having acquired a legal Settlement) ſhall be removed back to, and ſettled in the Pariſh from whence ſuch Certificate was brought: *Poor* receiving Relief of any Pariſh, upon the Shoulder of the right Sleeve of their Coats, are to wear a Badge or Mark, with a large Letter *P.* and the firſt Letter of the Name of the Pariſh whereof they are Inhabitants, cut either in Red or Blue Cloth; and ſuch *Poor* neglecting or refuſing to wear ſuch Badge, any Juſtice of Peace may puniſh them, by Ordering their Allowance to be abridged or withdrawn, or committing them to the Houſe of Correction, there to be whipp'd and kept to hard Labour; and if any Church-warden or Overſeer ſhall relieve any *poor* Perſon not wearing a Badge, he ſhall forfeit 20 *s.* one Half to the Informer, and the other to the *Poor*. By 9 & 10 *W.* 3. *c.* 11. No Perſon coming into any Pariſh by Certificate, ſhall gain a legal Settlement there, unleſs he *bona fide* take a Leaſe or Tenement of 10 *l. per Annum*, or execute ſome Annual Office in ſuch Pariſh. And the 12 *Ann.* *c.* 18. which makes the 13 & 14 *Car.* 2. perpetual, (excepting what concerns Corporations) declares, that no Apprentice or hired Servant to Perſons coming into a Pariſh by Means of a Certificate, ſhall acquire a Settlement in ſuch Pariſh, except the Maſter be afterwards legally ſettled. The Stat. 2 *Ann.* *c.* 6. impowers Juſtices of Peace, &c. and Church-wardens and Overſeers, with Conſent of two Juſtices, to place out *poor* Boys, of Parents chargeable to the Pariſh, Apprentice to the Sea-Service, and the Church-wardens and Overſeers are to pay to the Maſter with a Boy 2 *l.* 10 *s.* for Cloathing and Bedding, which ſhall be allowed in their Accounts; and theſe Apprentices are to be conveyed to the reſpective Ports to their Maſters by the Overſeers, and the Charges born as is provided for Vagrants; and the Indentures to be ſent to the Collectors of the Cuſtoms of ſuch Ports, &c. The 5 *Geo.* 1. *cap.* 8. provides, that Church-wardens and Overſeers of the *Poor*, where any Wife or Children are left upon the Pariſh, by Perſons who have Eſtates, &c. which might keep them, by Warrant from two Juſtices of Peace, may ſeiſe ſo much of the Goods and Chattels, and receive ſo much of the Rents of the Huſband or Father, as the Juſtices ſhall order for the Keeping of ſuch Wife or Children, which Order of the Juſtices is to be confirmed at the next Quarter-Seſſions, and then the Goods and Chattels may be diſpoſed of; and the Overſeers, &c. ſhall be accountable to the Seſſions. And the Stat. 9 *Geo.* 1. *c.* 7. enacts, that no Juſtice of Peace ſhall order Relief to any *poor* Perſon till Oath be made of reaſonable Cauſe, and that ſuch Perſon had been refuſed Relief by the Overſeers of the *Poor* of his Pariſh, &c. and until the Juſtice had ſummoned the Overſeers to ſhew Cauſe why Relief ſhould not be given; and Perſons to whom any Juſtice ſhall order Relief, ſhall be regiſter'd in the Pariſh-Books as other *Poor*, and the Church-wardens and Overſeers are not to bring to the Pariſh Account any Money given to *Poor*, (unleſs on ſudden and emergent Occaſions) that are not regiſter'd, on Pain of 5 *l.* Penalty, to be levied by Diſtreſs and Sale, by Warrant from two Juſtices, and applied to the Uſe of the *Poor*: Church-wardens and Overſeers of the *Poor* with Conſent of a Majority of the Pariſhioners, at a Veſtry, or other publick Meeting, may purchaſe or hire Houſes, and contract with Perſons for the Lodging, Maintaining and Imploying of *poor* Perſons deſiring Relief; and take the Benefit of their Work for their better Maintenance; and *poor* Perſons refuſing to be ſo lodged and kept, ſhall be ſtruck out of the Pariſh-Books, and not be intitled to any Collection; and where any Pariſh, &c. ſhall be too ſmall to purchaſe or hire Houſes, two Pariſhes, with Conſent as aforeſaid, and Approbation of a Juſtice of Peace, may unite in doing thereof; and the *Poor* may be alſo lodged and maintained in other Pariſhes by Church-wardens and Overſeers, &c. But no *poor* Perſons, or their Apprentices, or Children, ſhall gain a Settlement in ſuch Pariſhes: No Perſon ſhall be deemed to have acquired a Settlement in any Pariſh, by Virtue of any Purchaſe of an Eſtate under 30 *l.* Value, for any longer Time than ſuch Perſon ſhall inhabit in the Eſtate purchaſed; and Perſons taxed or aſſeſſed on the Scavenger's Rates, or to the Highways, and who ſhall pay ſuch Rates, ſhall not thereby gain any legal Settlement in a Pariſh: And in Caſe of Appeals from Orders for Removal of *Poor*, none ſhall be proceeded upon in the Quarter-Seſſions, unleſs reaſonable Notice be given; and if the Juſtices determine in Favour of the Appellant, he ſhall be awarded the Expences imployed in Relief of the *poor* Perſon, between the Time of the Removal and Determination of the Appeal, to be recovered by Diſtreſs, &c. by Order of the Juſtices, as Coſts and Charges, by 9 *W.* 3. *c.* 30. The Witneſſes to Certificates acknowledging any *poor* Perſons to be legally ſettled in a Pariſh, are to make Proof on Oath of the Execution thereof before the Juſtices of Peace directed to allow of the ſame; and then the Certificates ſhall be allowed and taken as Evidence in all Courts, &c. And when Overſeers of the *Poor* of any Pariſh remove back any Certificate Perſons, becoming chargeable, to the Pariſh to which they belong, they ſhall be reimburſed the Charges in maintaining and removing ſuch Perſons, being aſcertained by a Juſtice of Peace, by the Overſeers of the *Poor* of the Pariſh to which removed, leviable by Diſtreſs and Sale of Goods, &c. Stat. 3 *Geo.* 2. *c.* 29. See 6 *Geo.* 2. *c.* 31. Every Pariſh is to keep their own *Poor*, by the 43 *Eliz.* And if any *Poor* demand Relief, that are not ſettled in a Pariſh; they ought to be removed to their proper Pariſhes, and there be relieved. *Dalt.* 73. The Overſeers may Licence *poor* Perſons to beg for Alms in their own Pariſhes; and if any Inhabitants relieve *Poor* at their Doors, not being of their own Pariſh, and having ſuch a Licenſe, they ſhall forfeit 10 *s.* *Dalt.* 157. And in preſent Emergencies, Overſeers are to provide for *Poor*, and it is Diſcretionary to give them Money, or Victuals, &c. *Style* 246. 1 *Keb.* 366. If Juſtices of Peace in Seſſions, &c. make Orders for Maintenance of Perſons who are not impotent, but able to work, or having any Thing to live upon; thoſe Orders are againſt Law. *Dalt.* 166. A Father has been ordered to make an Allowance to his Son's Wife, while his Son was beyond Sea: And if the Father of Children leaves the Pariſh, and there is a Grandfather to be found; this Grandfather, if he be of Ability, is chargeable with keeping the Children, and not the Pariſh. 2 *Bulſt.* 2. *Lill.* 333. A Father-in-Law, or a Grandfather-in-Law, married to the Mother or Grandmother of Children, of Ability to keep them, is within the Stat. 43 *Eliz.* *Style* 283. A Husband marrying a Grandmother, having an Eſtate with her ſufficient, ſhall be chargeable to the Relief and Maintenance of a *poor* Grandchild, during the Life of the Grandmother; but after her Death he is under no Obligation to do it: And where a Grandmother is unable to relieve her Grandchildren, and marries with a Man of Ability, he is not to be charged to maintain his Wife's Grandchildren; alſo if the Husband, after Marriage, becomes to be of Ability, the Grandmother, at the Time of the Marriage, having nothing, he ſhall not be bound to keep the Children. 2 *Bulſt.* 345. A Perſon was ordered by Juſtices in Seſſions to pay ſo much a Week towards the Support and Maintenance of his Father, till that Court ſhould order the contrary; and it was held good; and if an Eſtate happen to fall to the Father, the Juſtices might be applied to: Otherwiſe if a Time was limited. 2 *Salk.* 534. Rates and Aſſeſſments for providing for and relieving of the *Poor* of Pariſhes, made by the Overſeers of the *Poor*, are uſually approved by the Inhabitants, and to be allowed by the Juſtices: And not only Lands, Houſes, &c. but Tithes, and any Thing from whence an annual Profit ariſes, may be taxed towards the *Poor*'s Rate. 2 *Bulſt.* Alſo all Perſons, the Clergy not exempted, muſt contribute to the Relief of the *Poor.* 2 *Keb.* 251. Perſons are to be taxed according to the viſible Eſtate they have in the Pariſh; and this Tax may be upon Lands or Goods; and when charged on Goods, they are rated according to the uſual Value of Land, *viz.* 100 *l.* Stock of Goods at 5 *l. per Annum.* A Perſon who hath Lands in his Occupation, and a Stock of Goods and Wares beſides, as a Tradeſman, Draper, Grocer, &c. may be taxed for both; but not for ſuch Stock or Goods with which he uſes to manure his Lands, nor for the Profits of Lands for which he hath been already taxed as Occupier, though for other Stock and Perſonal Eſtate he is chargeable. 2 *Salk.* The Farmer or Occupier is to be charged to the *Poor*'s Rate, and not the Landlord, who ſhall not be taxed for his Rent, for then the Land would pay twice; though if he be poſſeſſed of Perſonal Eſtate, he may be taxed for that: And for Perſonal Eſtate, the Party muſt be charged only in that Place where the Goods are at the Time of the Aſſeſſment; if he hath not Goods or Perſonal Eſtate where he is aſſeſſed, to the Value he is charged, and is diſtrained, he may have Action of Treſpaſs. *Read. Stat. Vol.* 5. *pag.* 21. If an Houſe originally entire, become ſeveral and diſtinct, by dividing it into Apartments, ſo as the Inhabitants have no Communication one with another, it is ſeverally ratable: But if an Inhabitant of a ſeparate Part of the Houſe, goes away and leaves the Owner in Poſſeſſion of the other Part, both Parts make now but one Tenement, for which the Owner is ratable to the *Poor*, &c. *Mod. Ca.* 214. The moſt reaſonable and the common Way of taxing Lands for Relief of the *Poor* is by a Pound-Rate; and if the Overſeers make an unequal Rate, they may be indicted and fined for it. 1 *Keb.* 173. Church-wardens and Overſeers of the *Poor* of a Pariſh, made a Rate for the Relief of the *Poor*, which was confirmed by two Juſtices of Peace; but all was rated upon the Real Eſtates, and none on the Perſonal, and therefore upon Appeal to the Seſſions the Rate was quaſhed, and the Overſeers, &c. ordered to make a new Rate, upon the Real and Perſonal Eſtates; which they afterwards did, but with a very great Inequality on the Real Eſtates; whereupon ſeveral Perſons appeal'd again, and this Rate was likewiſe vacated: In *B. R.* it was objected, that the Seſſions had no Power to vacate whole Rates; but adjudged that they may quaſh whole Rates, and refer it to the Church-wardens and Overſeers to make new Rates, or they may make a new Rate themſelves. 2 *Salk.* 483. Church-wardens and Overſeers may not tax particular Perſons, and not the whole Pariſh; but the Juſtices may tax particular Perſons, and need not aſſeſs the whole Pariſh, which is to contribute to the *Poor* of another: Or the Juſtices may aſſeſs the Pariſh in a certain Sum, and leave it to the Pariſh Officers to collect and levy the ſame of particular Perſons. 2 *Bulſt.* 352. 2 *Salk.* 480. It has been held, that Juſtices cannot make a ſtanding Rate; becauſe by Statute the Rate muſt be equal, which a ſtanding Rate cannot be, for Lands may be improved every Year, and the Rate ſhould be altered as Circumſtances alter. 2 *Salk.* 526. A Rate ſhould be made every Month, which the Juſtices are to approve; and if they refuſe, a *Mandamus* may be had: And it hath been reſolved, that a Tenant could not be rated for a whole Quarter, by Reaſon the Statute directs Rates to be aſſeſſed monthly, and otherwiſe a Man cannot remove in the Middle of a Quarter but he will be twice rated; and where there is a Cuſtom to rate Quarterly, a Diſtreſs cannot be taken of any one before the Quarter is ended, nor then without ſpecial Warrant on Purpoſe. *Ibid.* 532. But it is ſaid, that the conſtant Uſage has been, to Diſtrain before the End of the Quarter, and that to avoid Miſchief, if the Party ſhould remove out of the Pariſh and County before the Quarter. *Mod. Caſ.* 214, 215. A *Mandamus* to make a Rate to reimburſe an Overſeer Money laid out is not good; for the Court of *B. R.* cannot order ſuch a Rate, but only to raiſe Money for Relief of the *Poor:* And an Overſeer is not bound to lay out Money till he has it; and if he doth he muſt make a new Rate for Relief of the *Poor*, &c. *Ibid.* 531. It is ſaid by *Holt* C. J. that not only a Rate may be made, but Churchwardens and Overſeers, with the Confirmation of the Juſtices of Peace, may order a Sum of Money to be levied for the Relief of the *Poor*, without the Concurrence of the Pariſhioners. 2 *Ld. Raym.* 1013. And by a Juſtice's Warrant, Conſtables, *&c.* may levy the *Poors* Rate on a Man's Goods in another Pariſh, where he hath no Chattels on the Land in the Pariſh where he is rated. 1 *Raym.* 735. Juſtices of Peace refuſing to ſign a *Poor* Rate, a Rule was made in *B. R.* for them to ſign it, or ſhew Cauſe, *&c.* and no good Cauſe being ſhewn, a peremptory Rule was made for them to ſign it, or that an Attachment ſhould go. *Sid.* 377. 5 *Mod.* 275. A *Mandamus* was iſſued to Juſtices of Peace, and the Overſeers of the *Poor*, to give an Account of Money by them received for the Relief of the *Poor*; who returned, that they had given an Account of the Money, and that they had diſpoſed ſeveral Sums in a particular Manner, ſetting forth, *&c.* And it was held, that the *Mandamus* was ill, for Want of Suggeſting that the ordinary Remedy could not be had. 5 *Mod.* 420. If Overſeers make a falſe Account, they may be indicted. *Dalt.* 154. But where Overſeers of the *Poor* refuſed to Account, *&c.* and they were indicted for the ſame; an Objection was made that the Indictment would not lie, becauſe another Remedy was provided by the Statute. 3 *Salk.* 187. And where an Account of Overſeers was allow'd by two Juſtices, and the Pariſh appeal'd from this Allowance to the Quarter-Seſſions, and they diſallowed the Account, and ordered the Overſeer to pay, *&c.* for not doing which, they committed him; it was reſolved, that the Juſtices of Peace at the Seſſions upon the Appeal, muſt execute their Judgment in the ſame Manner as the two Juſtices might do, who muſt firſt ſend their Proceſs to diſtrain, and on Return that there is no Diſtreſs, then commit the Overſeer. *Mich.* 4 *Ann. B. R.* 2 *Salk* 533. Church-wardens and Overſeers, for every Neglect and Default in executing their Offices relating to the *Poor*, forfeit 20 *s.* to the Uſe of the *Poor* of the Pariſh: And there are *Penalties* and Forfeitures for Offences, given by many Statutes to the *Poor*, for their further Maintenance, which are to be paid to Church-wardens and Overſeers, *&c.* and by them to be accounted for; and theſe are concerning Alehouſes, Drunkenneſs, Cuſtoms, Exciſe, unlawful Gaming, Deſtroying the Game, Hedge-breakers, Sabbath-breaking, Swearing, Scavengers, unlawful Weights and Meaſures, *&c. &c.* *Poor Laws.* Vide *Juſtices of Peace.*

Poor ſettled in Pariſhes. Settlements of *Poor* are gained three Ways: By *Inheritance*; as when a Child claims a Settlement in a Pariſh, becauſe his Father was there ſettled: By being *born* in a *Pariſh*; and by *Commorancy*. As to the Firſt of theſe, if the Father has a legal Settlement, the Child is ſettled where the Father is: And if the Father have no legal Settlement, the Child regularly gains a Settlement in the Pariſh where born. 2 *Bulſt.* 351. But this Settlement by *Birth* may be defeated ſeveral Ways; 1*ſt*, If the Parent is removed by an illegal Order; and from the Order an Appeal is duly made, pending which the Child is born; in this Caſe on quaſhing the Order, the Child ſhall be ſent back with the Mother. 2. By Practice; if a Woman near her Time is clandeſtinely ſent to another Pariſh, and there delivered. 3. If a Woman with Child be ſent to the Houſe of Correction, and is there delivered, the Child ſhall not gain a Settlement by its Birth in the Pariſh where the Houſe of Correction is; but in the Pariſh where the Mother dwelt when ſent to the Houſe of Correction, as the Place where ſhe had otherwiſe probably been delivered. 2 *Bulſt.* 358, 381. 1 *Salk.* 121. If a travelling Woman, having a ſmall Sucking Child, ſhall be apprehended for Felony, and be ſent to the Gaol, and afterwards arraigned and hanged, this Child is to be ſent to the Place of its Birth, there to be ſettled and maintained, if the ſame be known; but otherwiſe it muſt be ſent to the Town where the Mother was apprehended: And Children born in common Gaols, their Parents being Priſoners, are to be maintained at the Charge of the County. *Dalt.* 157. If a Man and his Family be illegally thruſt out of a Pariſh, and during that Time he ſhall have a Child born; he muſt be returned to the Place where he was legally ſettled, and the Child with him: And Perſons, whoſe Intereſt in Houſes or Land is determined, cannot be put out of the Town where they were legally ſettled; nor can they be ſent to the Place of their Birth, or laſt Habitation, but according as they are able or impotent ſhall be ſet to work, or relieved in the Town where ſo ſettled; though if they wander and beg, then they may be taken up and ſent to the Place of their Birth. *Dalt.* 158, 166. Baſtard Children gain a Settlement by their Birth; but it has been uſual for preventing any Charge to the Pariſh, if a ſingle Woman with Child come into a Pariſh, by a Juſtice's Warrant to remove her to the Place of her laſt legal Settlement: Baſtards of Vagrants muſt be with the Mother while Nurſe-Children until ſeven Years of Age; and then be ſent to the Pariſh where born. *Ibid.* Till ſeven Years of Age, Children are accounted Nurſe-Children; yet afterwards they muſt have Maintenance from the Pariſhes where they themſelves were ſettled: If a *poor* Man ſettled at *A* marries a *poor* Woman who is ſettled at B. and has Children by a former Husband, the Wife ſhall be removed with him to *A.* and the Children under ſeven Years old ſhall be removed, but only for Nurture; ſo that they ſhall be kept at the Charge of the Pariſh from whence they are removed: But the Children above ſeven Years of Age are not removeable. 2 *Salk.* 470, 482. Generally a Wife is to be ſent to, and ſettled with the Husband, though he be but an Inmate or Servant; as all Children are generally to be ſent to, and ſettled with the Parents: But if a Man hireth a Houſe in *A.* and being there with his Wife and Children, he ſhall afterwards bind himſelf a Servant to one in *B.* his Wife and Children are not to be ſent to *B.* but are to remain ſtill at *A.* where they were once ſettled. *Dalt.* 166. Though it hath been adjudged, where a Man ſerved and had Board Wages, and lay out of his Maſter's Houſe in another Pariſh, he gained a Settlement in the Pariſh where he lived and ſerved, and not in the Pariſh where he lay. *Paſch.* 11 *Geo.* 1. *Mod. Caſ. in L. & E.* 370. A Man and his Wife ſettled at one Pariſh, came privately into another Pariſh, and there a Child was born; the Father died in the King's Service; the Queſtion was, Who ſhould keep the Child: *Per Holt* Ch. Juſt. The Death of the Father doth not alter the Child's Settlement; which muſt be ſettled where the Father was laſt ſettled as well as the Mother. *Comberb.* 380. Settlement gained by *Commorancy*, is where a Perſon continues in ſome other Place than that in which he was before legally ſettled; and ſuch Continuation makes a Settlement: Formerly, every one who was ſettled as a Native, Houſholder, Apprentice, or Servant, for a Month, without a juſt Complaint made to remove them, were lawfully ſettled. *Dalt.* But ſince, this Month has been enlarged to forty Days, where a Perſon ſhall come into a Pariſh, and Rent a Tenement under 10 *l. per Annum*, by the Statutes 13 & 14 *Car.* 2. 3 *W. & M.* And by Statute, Renting 10 *l.* a Year; Executing a publick Office in the Pariſh on a Man's own Account; Paying a Share to the Pariſh-Taxes, as Church or *Poor* Rates, *&c.* Living as a hired Servant for a Year in the Pariſh, being unmarried, *&c.* and Serving or being bound as an Apprentice in a Pariſh, all make a legal Settlement: So that a Perſon being ſettled by any ſuch Means, and not having acquired a Settlement elſewhere, if he falls into Poverty, ſhall be intitled to Relief from the Pariſh where he laſt gained ſuch Settlement; and where he is ſettled his Family muſt follow him. *Wood's Inſt.* 94. It has been held, in Reſpect to a Settlement within the Statute 13 & 14 *Car.* 2. That coming into a Pariſh publickly, taking a Houſe, and being rated to the *Poor* on the Pariſh-Book is ſufficient Notice; the Statute being made againſt private and clandeſtine Removals, and not publick ones, which the Pariſh can take Notice of it ſelf. *Show.* 12. A Perſon rented a Houſe of 3 *l. per Annum* in a Town, and his Landlord paid the Taxes; and whilſt he lived in the Pariſh, he took his Freedom of the Corporation, and voted as a Freeman at the Election of Bailiffs, &c. And it was adjudged, that ſince the explanatory Act of 3 & 4 *W.* 3. nothing makes a Settlement that is not within the Words of the Statute, which implies a Negative to any Thing elſe not contained in it; and that as to his Voting, it doth not imply a Settlement, for 'tis an Act which relates to the corporate Body, and not to the Pariſh. 2 *Salk.* 534. A Man rents two Tenements of 5 *l. per Annum* each, he thereby gains a Settlement; but if he Rent a Piece of Land of 10 *l.* a Year, and there is no Houſe belonging to it, it is otherwiſe. *Hill.* 1710. If one Rents a Houſe of 10 *l. per Annum*, by continuing therein forty Days, he gains a Settlement, within the Meaning of 13 & 14 *Car.* 2. By *Parker*, C. J. Renting a Water-mill of 10 *l. per Annum*, &c. makes a Settlement; for a Mill is a Tenement. 2 *Salk.* 536. But no Settlement can be legal in any Pariſh, when the Reſidence of the Party is obſcure and uncertain, as coming now and then, and lying in Barns, Outhouſes, &c. or where the Party is under Diſturbance by Officers. 3 & 4 *W.* & *M.* A *poor* Man appointed to be a Pariſh Clerk, and executing the Office a Year, has been adjudg'd to make a good Settlement; and 'tis not material whether he came in by Appointment of the Parſon, or by the Election of the Pariſhioners; for he is in for Life; and this is Executing a Publick annual Office and Charge within the Meaning of the Statute 3 & 4 *W.* 3. 2 *Salk.* 536. A Servant was hired firſt from *Lady-day* to *Michaelmas*, and from thence to *Lady day* following; and this was reſolved to be a good Settlement, for there was a Hiring for a Year: But it muſt be one intire Hiring, and one intire Service (though different Times are mentioned) for one whole Year, that muſt make a Settlement according to the Statute. *Hill.* 10 *W.* 3. A Servant being hired at *A.* for a Year, his Maſter lives there Half a Year, and then at *B.* another Half Year; adjudg'd the Servant is ſettled in the laſt Place, for the Statute doth not tie the Service down to one Place. Though if a *poor* Man be hired for a Year, to ſerve in a Boat which plies between one Place and another; by this Service, he gains no Settlement. *Paſch.* 4 *Geo.* 2. *Fitzgib.* 255. An unmarried Perſon, hired as a Servant for a Year, married before the Year was expired; and it was held, that he could not be removed, and that upon performing his Service he would gain a Settlement. 2 *Salk.* 527. A Man hired a Maid-ſervant for a Year; but ſhe falling ſick, her Maſter turned her out of his Service: The Servant, in her Paſſage to the Place of her Nativity, begged for Relief, and ſhe was ſent as a Vagrant to the Pariſh where ſhe was born; whereupon ſhe was ſent back by that Pariſh, to the Pariſh where ſhe was an hired Servant; but by Order of Seſſions ſhe was ſettled at the Place of her Birth: This was removed by *Certiorari* into *B. R.* and the Court determined the Settlement to be at the Pariſh where ſhe was an hired Servant, and not where ſhe was born. *Style* 168. A Perſon is a Lodger in any Pariſh, his Servant acquires a Settlement: If a Servant continues in the Service of a Viſitor in a Pariſh, he gains a Settlement there; and is not removable, unleſs the Pariſh ſhew that he was brought or came thither on Purpoſe that he might have ſuch Settlement: And though a Maſter or Miſtreſs are only Viſitors and no Lodgers, yet their Servants may be ſaid to be hired in every Pariſh where they ſerve. *Mod. Caſ. in L. & Eq.* 50, 51. If an Apprentice be bound to one who is a Lodger only in a Pariſh, and hath no Settlement; reſolved that the Apprentice is well ſettled there, although the Maſter is not, nor doth his Settlement depend upon his Maſter, as that of a Wife on her Husband. *Ca. Pariſh of St. Brides.* Where an Apprentice continues forty Days in the Service of his Maſter, there it is ſaid, he will have a Settlement: And where-ever any Perſon ſerves the laſt forty Days of his Apprenticeſhip, that is the Place of his laſt legal Settlement. *Hill.* 4 *Ann.* An Apprentice bound to a Maſter living in one Pariſh, and ſerving ſome Part of his Apprenticeſhip there, was by Agreement turned over to another Maſter in another Pariſh; and this was held a good Settlement in that Pariſh where he laſt ſerved, for it ſhall be intended it was but a Continuance of his Apprenticeſhip upon that Agreement. *Mod. C. in L. & E.* 169. A Perſon ſerved an Apprenticeſhip in a Pariſh, where he married and had ſeveral Children; his Wife dying, he married another Woman, who had a Term for Years in another Pariſh, to which Place he removed, and reſided there for a Year; afterwards he returned to the firſt Pariſh, was rated to the *Poor*, lived there two Years, and then he died: In a ſhort Space after his Death, his Widow and Children were removed, by an Order of two Juſtices to the other Pariſh where he had lived a Year; but upon Appeal to this Order at the Seſſions, the Seſſions adjudged them to be Inhabitants ſettled in the firſt Pariſh. *Mich.* 3 *Jac.* 2. Where a Man lives in a Pariſh, and hath Lands of his own there, or in Right of his Wife, this will make a Settlement; but if he hath Land in one Pariſh, and lives in another, the Land will not make a Settlement of him in that Pariſh where it lies and he doth not live. 2 *Salk.* 524. If a Man be ſettled where he will, he cannot, though likely to become chargeable to the Pariſh where he goes to reſide in, be removed from thence, if he have any Eſtate there. 5 *Mod.* 416. But ſee Stat. 9 *Geo.* 1. *ſupra.* Some Years ago, a Man who was not legally ſettled in a Pariſh, but had lived there ſome Time, procured a Certificate, by Virtue of which he went into another Pariſh; afterwards being *poor*, the Pariſh from whence he came took him again; and upon Enquiry found, that he was never lawfully ſettled with them, but had gained a Settlement in another Place, before they gave this Certificate; and thither they removed him by Order: The Pariſh to which he was removed appealed, becauſe thoſe who had given the Certificate, had owned him to be an Inhabitant ſettled with them; but the Certificate was held only to be an Evidence of a Settlement, and thereupon the firſt Order was confirmed. *Trin.* 2 *Ann.* 2 *Salk.* 530. It has been ſince adjudged, That a Certificate concludes the Pariſh giving it, not only againſt the Pariſh to which it is given, but as to all other Pariſhes. *Ibid.* The Law unſettles none who are lawfully ſettled, nor permits it to be done. If one had but hired a Houſe, the Law unſettles not ſuch Perſon; and if any ſhall by indirect Means hinder a *poor* Man from hiring an Houſe, he may be indicted; alſo it is finable to remove any out of the Pariſh who ought not to be put out, and the Perſons removed may be ſent back. *Dalt.* 98. And if a Pariſh will have a Man born in *A.* but ſettled with them, to go and wander and beg in *B.* that he may be ſent to *A.* and he doth ſo, he ſhall be ſent back to the Pariſh, from whence he came. *Ibid.* But when two Juſtices of Peace of one County, ſend a *poor* Perſon to a Pariſh in another County, two Juſtices of the County whither ſuch Perſon is ſent, cannot make an Order to remove him back again, or to ſend him to any other Place; the Town to which ſuch Perſon was ſent, hath no other Remedy than by Appeal to the Seſſions of that County from whence the Party was ſent. 2 *Salk.* 488. A Settlement by Order of Seſſions upon an Appeal is good and binding; but if it doth not appear that the Cauſe came before the Juſtices in Seſſions by Way of Appeal, it may be quaſhed; for without that they have no Juriſdiction: If a *poor* Family, after Order of Seſſions for their Removal on Appeal, return to the Pariſh from whence they were removed, the Seſſions muſt ſee their Order of Settlement obeyed; though if ſuch *poor* Family go into another Pariſh not concerned in the Appeal, two Juſtices of Peace ought by an Original Order to remove them to the Pariſh where they were ſettled by the Seſſions Order. 2 *Salk.* 481, 482, 489. The Seſſions having made an Original Order for Removal of a *poor* Perſon to a third Pariſh, after an Order of two Juſtices, it was quaſhed upon Motion: And adjudged, that the Seſſions could only confirm, or reverſe the Order of Settlement of the two Juſtices; and thereupon a new Order might be made by two Juſtices for Removal to the third Pariſh, *&c.* 2 *Salk.* 475. A general Order to remove a Man and his Family is not good; it muſt be particular, for ſome of the Family may be chargeable, and others not: And where Juſtices make ſuch Orders of Settlement, it muſt appear, that the Parties are likely to become chargeable; and that the Perſon removed is removable; and contain an Adjucation of the laſt legal Settlement of the Party, *&c.* 2 *Salk.* 485, 491. 5 *Mod.* 149, 321. And according to the Opinion of the Lord Chief Juſtice *Holt*, the moſt regular Way to proceed on the Statute 14 *Car.* 2. in removing of a *poor* Perſon, is for the Juſtices of Peace to make a Record of the Adjudication of the laſt Settlement, and the Complaint of the Church-wardens and Overſeers, and upon that to make a Warrant or Order under their Hands and Seals to the Church-wardens, *&c.* to convey the Perſons to the Pariſh to which they ought to be ſent, and to deliver in the Record at the next Seſſions, to be kept among the Records; and this Record may be removed by *Certiorari.* 1 *Salk.* 406. But on a Motion in *B. R.* to ſet aſide an Order for the Settling a *poor* Perſon in a Pariſh, ſent thither by Warrant of two Juſtices, and confirmed in the Seſſions, upon an Appeal: The Court refuſed to enter into the Merits of the Cauſe; the Order of Seſſions being in this Caſe final, unleſs it be made appear that there is Error in the Form of Proceeding. *Paſch.* 29 *Car.* 2. *Ventr.* 310. And it is a ſtanding Rule in the Court of *King's Bench*, That if upon an Appeal, the Order of two Juſtices is either affirmed or quaſhed, upon the Merits of the Caſe, in relation to Settlements, it ſhall be concluſive between the two Pariſhes. *Paſch.* 10 *Ann.* The Order of two Juſtices not appealed from, binds the Pariſh upon which it is made, till a new Settlement is gained: An Order reverſed is final only between the Parties; but an Order confirmed, *&c.* is final to all the World. 2 *Salk.* 472, 492. A *poor* Perſon himſelf, as well as the Pariſh, may appeal from an Order of Removal, though it has been objected that Appeal is only given to the Pariſh aggrieved. *Carthew's Rep.* 223. And where a *poor* Perſon is viſited with Sickneſs, he ought not to be removed from the Pariſh where he is, farther to endanger his Health; and if two Juſtices grant an Order to remove him, it is a Miſdemeanor in the Juſtices. *Mod. Caſ. in L. & E.* 326. On Appeals to Juſtices in Seſſions, they are to cauſe Defects in Form in Orders, to be rectified without Charge, and then to proceed, *&c.* 5 *Geo.* 2. *c.* 19. By Law, the Place that the *Poor* were laſt legally ſettled at, is the Place that is to provide for them. *Trin.* 5 *Ann. B. R.* See *Vagrants.*

Form *of an* Appointment *of* Overſeers of the Poor.

WE A. B. *and* C. D. *Eſqrs; two of his Majeſty's Juſtices of Peace for the County of,* &c. *do hereby nominate and appoint* E. F. *and* G. H. &c. *to be Overſeers of the* Poor *of the Pariſh of,* &c. *in the ſaid County, for the Year enſuing, according to the Direction of the Statute in that Caſe made.* Given, *&c.*

A Juſtice's Warrant *to* relieve a poor Perſon, *on the Statute* 9 Geo. 1.

WHEREAS *Complaint has been made unto me, That* A. B. *of your Pariſh, Labourer, is very* Poor *and Impotent: And the ſaid* A. B. *hath made Oath before me, That by Reaſon of Age and Sickneſs, he is utterly diſabled to provide for himſelf and his Family, ſo that they muſt inevitably periſh, unleſs timely relieved; and that he had applied to,* &c. *Overſeers of the* Poor *of your Pariſh, and been refuſed Relief by them; and the ſaid Overſeers,* &c. *having been alſo ſummoned to ſhew Cauſe why Relief ſhould not be given, and aſſigned none:* Theſe are therefore *to require you to pay to the ſaid* A. B. *the Sum of* 2 s. per *Week, for and towards the Support and Maintenance of the ſaid* A. B. *and his Family, until the ſaid* A. B. *ſhall be better able to provide for the ſame, or until you ſhall be ordered to the contrary.* Given *under my Hand and Seal,* &c.

Form *of an* Order to remove a Perſon *to his Place of* Settlement.

WHEREAS *it appears to us* T. G. *and* J. L. *Eſqrs; two of his Majeſty's Juſtices of the Peace for the County of,* &c. (*one whereof of the* Quorum) *on the Complaint of* N. O. P. R. S. T. *&c. Churchwardens and Overſeers of the* Poor *of the Pariſh of,* &c. *in the County aforeſaid, That* B. A. *being on,* &c. *laſt ſettled in the Pariſh of,* &c. *in the County of* S. *is now come into the Pariſh of,* &c. *aforeſaid, to endeavour to obtain a Settlement in the ſaid Pariſh, not having done any Act as the Law requires to make him a Pariſhioner there, whereby he is likely to become chargeable to the Pariſh of,* &c. *aforeſaid:* And whereas *it appears by the Oath of,* &c. *that the ſaid* B. A. *was laſt legally ſettled at the Pariſh of,* &c. *which we do adjudge accordingly:* Now *we the aforeſaid Juſtices, do hereby order you the Conſtable of,* &c. *to remove and convey the ſaid* B. A. *from the ſaid Pariſh of,* &c. *unto the aforeſaid Pariſh of, &c. the Place of his laſt legal Settlement, and to deliver him to the Church-wardens and Overſeers of the* Poor *there, or ſome or one of them; hereby alſo requiring you the ſaid Church-wardens and Overſeers of the ſaid Pariſh of,* &c. *to receive the ſaid* B. A. *as your lawful Pariſhioner, and provide for him accordingly.* Given, *&c.*

Poor Priſoners In Gaol, how relieved and diſcharged, *&c.* Vide *Priſoners.* And *poor Perſons* infected with the *Plague*, to be relieved by a Tax, *&c. Stat.* 1 *Jac.* 1. *c.* 31. See *Plague.*

Pope, (*Papa*) Was anciently applied to ſome Clergymen in the *Greek* Church; but by Uſage is particularly appropriated in the *Latin* Church to the Biſhop of *Rome*, who is called the *Pope*; and formerly had great Authority here. As to the Incroachments of the *See of Rome*, it is ſaid to be the general Opinion, That Chriſtianity was firſt planted in this Iſland by ſome of the *Eaſtern Church*; which is very probable from the ancient *Britains* obſerving *Eaſter* always on the fourteenth Day of the Month, according to the Cuſtom of the *Eaſt:* But the *Saxons* being converted about the Year 600, by Perſons ſent from *Rome*, and wholly devoted to the Intereſt thereof, it could not be expected that ſuch an Opportunity of enlarging the Juriſdiction of that See, ſhould be wholly neglected; and yet there are few Inſtances of the Papal Power in *England* before the *Norman* Conqueſt, though four or five Perſons were made Biſhops by the *Pope* at the firſt Converſion, and there was an Inſtance or two of Appeals to *Rome*, &c. But the *Pope* having favoured and ſupported *William* the Firſt, in his Invaſion of this Kingdom, made that a Handle for enlarging his Incroachments; and in this King's Reign, began to ſend his Legates hither; and after he prevailed with King *Hen.* 1. to give up the Donation of Biſhopricks; and in the Time of King *Stephen*, gained the Prerogative of Appeals; and in the Reign of King *Hen.* 2. he exempted all Clerks from the ſecular Power: Indeed this King did at firſt ſtrenuouſly withſtand thoſe Innovations; but upon the Death of *Becket*, who for having violently oppoſed the King, was ſlain by ſome of his Servants, the *Pope* got ſuch an Advantage over the King, that he was never able to execute the Laws he had made: And not long after this, by a general Excommunication of the King and People, for ſeveral Years, becauſe they would not ſuffer an Archbiſhop to be impoſed on them, King *John* was reduced to ſuch Straits, that he ſurrendered his Kingdoms to the *Pope*, to receive them again, and hold them of him under the Rent of a thouſand Marks: And in the following Reign of King *Hen.* 3. partly from the Profits of our beſt Church Benefices, which were generally given to *Italians*, and others reſiding at the Court of *Rome*, and partly from the Taxes impoſed by the *Pope*, there went yearly out of the Kingdom Seventy thouſand Pounds Sterling, a very great Sum in thoſe Days: The Nation being thus burdened and under a Neceſſity, was obliged to provide for the Prerogative of the Prince, and the Liberties of the People, by many ſtrict Laws. And hence in the Reign of King *Edw.* 1. it was declared by Parliament, That the *Pope*'s taking upon him to diſpoſe of *Engliſh* Benefices to Aliens, was an Incroachment not to be endured; and this was followed with the Stat. 25 *Ed.* 3. called the Statute of *Proviſors*, againſt Popiſh *Bulls*, and diſturbing any Patron to preſent to a Benefice, &c. The 12, 13 and 16 *R.* 2. the Stat. 2 *H.* 4. and 6, 7 & 9 *ejuſdem*; the 3 *H.* 5. 23 & 28 *Hen.* 8, &c. And Maintaining by Writing, Preaching, &c. the *Pope*'s Power here in *England*, is made a *Præmunire* upon the firſt Conviction; and High Treaſon upon the ſecond. 5 *Eliz.* In the Conſtruction of which Statute, it has been held, That he who knowing the Contents of a Popiſh Book, written beyond Sea, brings it over, and ſecretly ſells it, or ſecretly conveys it to a Friend; or having read the Book, or heard of its Contents, doth after in Diſcourſe allow it to be good, &c. is in Danger of the Statute; but not he who having heard thereof, buys and reads the ſame. *Selden's Janus Anglor. Davis's Rep.* 90, &c. *Dyer* 282. 2 *Inſt.* 580. See *Bull* and *Præmunire*.

Popery. There are ſeveral Statutes made againſt Perſons perverting or withdrawing others to *Popery*, and the being perverted to the *Romiſh* Religion, which was made Treaſon by 23 *Eliz.* and 3 *Jac.* 1. But if any one reconciled to the See of *Rome* beyond the Seas, return into the Realm, and ſubmit himſelf, &c. and take the Oaths within ſix Days, he is to be excuſed. 3 *Jac.* 1. *c.* 4.

Popiſh Recuſants, Are ſubject to divers Penalties and Diſabilities by Statute. See *Recuſants.*

Popular Action, Is an Action given in *general*, to any one who will ſue for a Penalty on the Breach of ſome Penal Law. *Actions Popular*, which may be brought before Juſtices of Aſſiſe, &c. are to be generally proſecuted in the Counties where the Offences were done. And *Popular Actions*, where the King only hath the Penalty or Forfeiture, are to be commenced in two Years; and where an Informer hath a Part, in one Year, &c. 21 *Jac.* 1. *cap.* 4. 31 *Eliz. cap.* 5. Vide *Information.*

Porcary, (*Porcaria*) Signifies a Swines-Sty, according to *Fleta* and *Domeſday.*

Port, (*Portus*) A Harbour or Place of Shelter, where Ships arrive with their Fraight, and Cuſtoms for Goods are taken. The *Ports* we have in *England*, are *London, Ipſwich, Yarmouth, Lyn, Boſton, Hull, Newcaſtle, Berwick, Carliſle, Cheſter, Milford, Cardiff, Glouceſter, Briſtol, Bridgwater, Plymouth, Exeter, Poole, Southampton, Chicheſter* and *Sandwich*; all which are declared lawful *Ports*, & *infra Corpus Comitatus:* And to theſe *Ports*, there are certain Members belonging, and a great Number of *Creeks*, where commonly Officers are placed, by Way of Prevention of Frauds in the Cuſtoms; but they are not lawful Places of Exportation or Importation, without particular Licence from the *Port*, or Member under which they are placed. *Lex Mercat.* 132. See the Stat. 1 *Eliz. c.* 11.

Porter, Is an Officer of the Courts of Juſtice; but a *Porter* in the general Signification, is a Carrier of Things from Place to Place, &c.

Porterage, A Kind of Duty paid at the *Cuſtom-houſe* to thoſe who attend the Water ſide, and belong to the *Package Office*, and theſe Porters have Tables ſet up aſcertaining their Dues for Landing of Strangers Goods, and for Shipping out the ſame. *Merch. D.A.*

Portgreve or **Portreve,** (*Portûs præfectus*) Is a Chief Magiſtrate in certain Maritime Towns; and as *Camden* ſays, the Chief Magiſtrate of *London* was anciently ſo called, as appears by a Charter of King *Will.* 1. called the *Conqueror*, to the ſame City, in theſe Words —— William *King Greets* William *Biſhop, and* Godfrey Portgreve, *and all the Burgeis within* London, French *and* Engliſh: *And I grant you, That I will that you be all your Law worth that ye were in* Edwardis *Days the King: And I will that each Child be his Fader's Eyer, and I will not ſuffer that any Man you any wrongeys Beed. And God you kepe. Ex libro pervetuſto.* Inſtead of this *Portgreve*, the ſucceeding Kings by Charter ordained two *Bailiffs*; and afterwards a *Mayor*, for their yearly Magiſtrate. *Camd. Britan.* 325.

Portiforium, The Eccleſiaſtical Enſign or Banner, provided of old in all Cathedral and moſt Parochial Churches, to be ſolemnly carried in the Front of any Proceſſion, &c.

Portion, Is that Part or Share of a Perſon's Eſtate, which is given or left to a Child. And if a Term of Years ſettled to raiſe a Daughter's *Portion*, is ſo ſhort that the ordinary Profits of the Land are not ſufficient to do it; the Court of Chancery may order Timber to be felled, &c. to make up the Money at the Time appointed. *Preced. Canc.* 27. A Sale of Lands has been alſo decreed, for Payment of *Portions* deviſed at a certain Time, out of the Rents and Profits, where they were not judged ſufficient for raiſing the Money; altho' the Land ſubject to the *Portions*, was given to ſeveral others in Remainder. *Ibid.* 396. Where a *Portion* was deviſed by Will to a Daughter, to be raiſed out of a real and perſonal Eſtate, and paid at her Age of 21 Years, without ſaying or Marriage; the Daughter married, and died under Age: It was here ſaid, that the *Portion* was then due and payable, *Marriage* being the Cauſe of Daughters *Portions. Ibid.* 109. But ſee 267, 268. 'Tis held that a Huſband muſt make a ſuitable Proviſion for his Wife, when he ſues for her *Portion* in Equity. 2 *Vern.* 494. If any Child ſhall marry under the Age of Twenty one, without Conſent of the Father or Mother; or any Man-

Child ſhall be a Thief, common Whore-hunter or Gameſter; or a Woman-Child commit Whoredom, *&c.* they are barred to demand their *Portions*, by the Cuſtom of the City of *London:* This is by an Act of Common Council 5 *Edw.* 6. but it is not obſerved. *Cit. Lib.* 132. See *Children.*

Portioner, (*Portionarius*) Where a Parſonage is ſerved by two, or ſometimes three Miniſters alternately, the Miniſters are called *Portioners*; becauſe they have but their *Portion* or Proportion of the Tithes or Profits of the Living: And *Portion* is that Allowance which a Vicar commonly has out of a Rectory or Impropriation. 27 *H.* 8. *cap.* 28.

Portmen. The twelve Burgeſſes of *Ipſwich*, are ſo denominated: So alſo are the Inhabitants of the *Cinque Ports.* Camd.

Portmote, (From *Portus*, *&* *gemot*, *conventus*) Is a Court kept in Haven Towns or Ports; and is called the *Portmote Court.* 43 Eliz cap. 15.——————Curia Portmotorium *eſt Curia in Civitate* Ceſtriæ *coram Majore in Aula Motorum tenenda. Pl. in Itin. Ibid.* 14 *Hen.* 7. The *Portmote*, or *Portmannimote*, i. e. *Portmen's Court*, is ſaid to be held not only in Port-Towns, as generally rendered; but in Inland Towns, the Word *Port* in *Saxon* ſignifying the ſame with City.

Portſale, Is a publick Sale of Goods to the higheſt Bidder; or of Fiſh preſently, upon its Arrival in the *Port* or Haven. *Stat.* 35 *H.* 8. *c.* 7.

Portſmouth. Lands to be purchaſed by Commiſſioners for enlarging and ſtrengthening the Fortifications at *Portſmouth*, *&c.* by the Statutes 7 *Ann. c.* 26. and 8 *Ann. c.* 21.

Portſokne, (From the Sax. *Port*, i. e. *Civitas*, *&* *ſoca*, *Juriſdictio*) The Suburbs or Liberty of a City. King *Hen.* 3. granted by Charter to the City of *London*——————*Quietantiam Murdri, &c. infra urbem & in* Portſokne, *viz.* within the Walls of the City, and the Liberties without the Walls. *Placit. Temp. Ed.* 1.

Portuos or **Porthoſe**, Was what we now call a *Breviary*, and reckoned among Books prohibited by the Stat. 3 *&* 4 *Ed.* 6. *cap.* 10.

Poſſe Comitatus, The *Power* of the *County*, according to *Lambard*, contains the Aid and Attendance of all Knights, Gentlemen, Yeomen, Labourers, Servants, Apprentices, and of other young Men above the Age of Fifteen, within the *County*; becauſe all of that Age are bound to have Harneſs, by the *Statute of Wincheſter:* But Eccleſiaſtical Perſons, and ſuch as are decrepit, or labour under any Infirmity, are not compellable to attend, Perſons able to travel being required to be aſſiſtant in this Service; which is uſed where a *Riot* is committed, a Poſſeſſion is kept upon a *Forcible Entry*, or any Force or Reſcue made, contrary to the Commandment of the King's Writ, or in Oppoſition to the Execution of Juſtice. Stat. 2 *Hen.* 5. *cap.* 8. Sheriffs of Counties are to be aſſiſting to Juſtices of Peace in the ſuppreſſing of Riots, *&c.* and raiſe the *Poſſe Comitatus*, by charging any Number of Men to attend for that Purpoſe, who may take with them ſuch Weapons as ſhall be neceſſary to enable them to do it; and they may juſtify the Beating, Wounding, and even Killing of ſuch Rioters as ſhall reſiſt, or refuſe to ſurrender themſelves; and Perſons refuſing to aſſiſt the Sheriffs or Juſtices of Peace herein, may be fined and impriſoned. 17 *R.* 2. *cap.* 8. 13 *Hen.* 4. *cap.* 7. 2 *Hen.* 5. *cap.* 8. *Lamb.* 313, 318. *Crompt.* 62. *Dalt. cap.* 46. 2 *Inſt.* 193. Juſtices of Peace, having a juſt Cauſe to fear a violent Reſiſtance, may raiſe the *Poſſe* in order to remove a Force in making an Entry into or detaining of Lands: And a Sheriff, if Need be, may raiſe the Power of the County to aſſiſt him in the Execution of a Precept of Reſtitution; and therefore if he make a Return thereto, that he could not make a Reſtitution by reaſon of Reſiſtance, he ſhall be amerced. 1 *Hawk. P. C.* 152, 156. Alſo it is the Duty of a Sheriff, or other Miniſter of Juſtice, having the Execution of the King's Writs, and being reſiſted in endeavouring to execute the ſame, to raiſe ſuch a Power as may effectually enable them to quell any ſuch Reſiſtance; though it is ſaid not to be lawful for them to raiſe a Force for the Execution of a Civil Proceſs, unleſs they find a Reſiſtance. 2 *Inſt.* 193. 3 *Inſt.* 161. It is lawful for a Sheriff, Conſtable, or other Peace-Officer, or for a private Perſon, to aſſemble a competent Number of People, and ſufficient Power to ſuppreſs Rebels, Enemies, Rioters, *&c.* But herein there muſt be great Caution, leſt under a Pretence of keeping the Peace, they cauſe a greater Breach of it; and Sheriffs, Juſtices of Peace, *&c.* are puniſhable for uſing any needleſs Violence, or alarming the Country in theſe Caſes, without juſt Grounds. 1 *Hawk. P. C.* 156, 161.

Poſſe, Is an infinitive Mood, but uſed ſubſtantively for a *Poſſibility*; as we ſay, ſuch a Thing is *in poſſe*, that is, it may *poſſibly* be. See *in eſſe.*

Poſſeſſio fratris, Signifies in the Law where a Man hath a Son and a Daughter by one Woman or *Venter*, and a Son by another *Venter*, and dies, if the firſt Son enters and dies without Iſſue, the Daughter ſhall have the Land as Heir to her Brother, altho' the ſecond Son by the ſecond *Venter* is Heir to the Father: But if the eldeſt Son dies without Iſſue, not having made an actual Entry and Seiſin, the younger Brother by the ſecond Wife, as Heir to the Father, ſhall enjoy the Eſtate; and not the Siſter. 1 *Inſt.* 11, 15. Lands are ſettled on a Man, and the Heirs of his Body, and he hath Iſſue a Son and a Daughter by one Woman, and a Son by another, and dieth; and then the eldeſt Son dies before any Entry made on the Lands either by his own Act, or by the Poſſeſſion of another, the younger Brother ſhall inherit, he claiming as Heir of the Body of the Father, and not generally, as Heir to his Brother; yet if the elder Brother enter, and by his own Act hath gained the Poſſeſſion; or if the Lands were leaſed for Years, or in the Hands of a Guardian, there the Poſſeſſion of the Leſſee or Guardian doth veſt the Fee in the elder Brother, and then upon his Death the Siſter ſhall inherit as Heir to her Brother, for there is *Poſſeſſio fratris.* 3 *Rep.* 42. There can be no *Poſſeſſio fratris* of a Dignity; in ſuch Caſe the younger Brother is *Hæres Natus:* The Lord *Grey* being created a Baron to him and his Heirs, had Iſſue a Son and a Daughter by one Venter, and a Son by another; and after his Death, the eldeſt being poſſeſſed of the Barony, and dying without Iſſue, it was adjudged, that the younger Brother, and not the Siſter ſhould have it. *Cro. Car.* 437. 2 *Nelſ. Abr.* 923.

Poſſeſſion, (*Poſſeſſio, quaſi Pedis poſitio*) Is either actual, where a Perſon actually enters into Lands or Tenements deſcended or conveyed to him; or in Law, when Lands, *&c.* are deſcended to a Man, and he hath not actually entered into them: Alſo before, or until an Office is found of Lands eſcheated to the King by Attainder, he hath only a *Poſſeſſion* in Law. *Bract. lib.* 2. *cap.* 17. Long *Poſſeſſion* beyond the Memory of Man, eſtabliſhes a Right; but if by the Knowledge of Man, or Proof of Record, *&c.* the contrary is made out, though it exceeds the Memory of Man, this ſhall be conſtrued within Memory. 1 *Inſt.* 115. A long *Poſſeſſion* the Law favours, as an Argument of Right, although no Deed can be ſhewn; rather than an ancient Deed, without *Poſſeſſion.* 1 *Inſt.* 6. Continued quiet *Poſſeſſion* is a violent Preſumption of a good Title: And where two Perſons enter into, and claim the ſame Land, the *Poſſeſſion* will be always adjudged in him who has Right, *&c.* 2 *Inſt.* 256, 323. He that is out of *Poſſeſſion* of Lands, if he brings his Action, muſt make a good Title: And to recover any Thing from another, it is not ſufficient to deſtroy the Title of him in *Poſſeſſion*; but you muſt prove your own better than his. *Vaugh.* 8, 58, 60. But in Action againſt a Perſon for digging of Coney-Boroughs in a Common, *&c.* it was held, that the Action being grounded on the *Poſſeſſion* of the Tenement, to which the Common belonged, the Plaintiff need not ſhew a Title; and in this Caſe the Defendant may be a Stranger; beſides the Title is not traverſable, but ought to be given in Evidence upon the Trial of the Iſſue. *Trin.* 8 *W.* 3. 3 *Salk.* 12. A Defendant in Treſpaſs, *&c.* for taking Cattle Damage-feaſant, has been allowed to juſtify the Taking on his *Poſſeſſion*, without ſhewing his Title; the Matter of Juſtification being collateral to the Title of the Land. 2 *Mod.* 70. 3 *Salk.* 220. Though in ſuch a Caſe, on its being inſiſted, that there was the ſame Reaſon for juſtifying upon a *Poſſeſſion*, as there was for maintaining an Action upon a bare *Poſſeſſion*; it hath been adjudged, that a Juſtification on a *Poſſeſſion* only, is not good; for a *Poſſeſſion* may not be but by Contract, but a Seiſin may be by Right or Wrong. *Hill.* 2 & 3 *Jac.* 2. In Replevin, if the Defendant had the *Poſſeſſion*, it is a good Bar againſt the Plaintiff if he has no Title; but there cannot be a Return, unleſs he ſhew a Property in the Goods. *Paſch.* 2 *Ann.* Action of the Caſe lies for ſhooting at and frightning away Ducks from a Decoy Pond, which is in the Plaintiff's *Poſſeſſion*, without ſhewing that he had any Property in them. 3 *Salk* 9. A Man upon a Leaſe and Releaſe of Lands, *&c.* is in *Poſſeſſion* to all Intents, except bringing Treſpaſs, which cannot be without an Entry, *Pedis poſitio.* 2 *Lill. Abr.* 335. And to make *Poſſeſſion* good on *Entry*, the former Poſſeſſor and his Servants, *&c.* are to be removed from the Land; and if *Poſſeſſion* be loſt by Entry of another, it muſt be regained by Re entry, *&c.* *Paſ.h.* 1650. A Perſon in *Poſſeſſion* may bring an Action, for Loſs of his Shade, Shelter, Fruit, when Trees are injured; and he in Reverſion, for ſpoiling the Trees. 3 *Lev.* 209. One in Defence of his lawful *Poſſeſſion*, may aſſemble his Friends to reſiſt thoſe that threaten to make an unlawful Entry into a Houſe, *&c.* 5 *Rep.* 91. There is an *Unity of Poſſeſſion*, when by Purchaſe the Seigniory and Tenancy, become in one Man's *Poſſeſſion.* Kitch. 134.

Poſſibilitas, Is taken in the *Saxon* Laws for an Act wilfully done; and *Impoſſibilitas*, for a Thing done againſt one's Will. *Leg. Alfred. cap.* 28.

Poſſibility, In our Law is defined to be an uncertain Thing, which may or may not happen. 2 *Lill. Abr.* 336. And it is either near or remote; as for Inſtance: Where an Eſtate is limited to one, after the Death of another, this is a near *Poſſibility*; but that one Man ſhall be married to a Woman, and then that ſhe ſhall die, and he be married to another; this is a remote or extraordinary *Poſſibility*: And the Law doth not regard a remote *Poſſibility*, that is never like to be. 15 *H.* 7. 10. *Hardr.* 417. 2 *Rep.* 50. A *Poſſibility* cannot be granted over; no *Poſſibility*, Right, or Choſe in Action, *&c.* may be granted or aſſigned to a Stranger. 4 *Rep.* 66. 10 *Rep.* 48. A Leaſe was made to Husband and Wife of a Term of Years, for their Lives, Remainder to the Executors of the Survivor; the Husband granted the Term, and it was adjudged, that it ſhould not bind the Wife, the Husband having only a *Poſſibility* to have it, if he ſurvived his Wife, and no Intereſt till then. *Hill.* 17 *Eliz.* 2. 2 *Nelſ. Abr.* 1274. If Husband and Wife are Tenants in Special Tail, and the Husband only levies a Fine of the Lands, *&c.* the Wife's Eſtate is turned into a *Poſſibility*, and only reducible by Entry, if ſhe ſurvive. *Hob.* 257. Where a Leaſe is made for Life, the Remainder to the right Heirs of *J. S.* this is good; for by common *Poſſibility* J. S. may die during the Life of Tenant for Life. 2 *H.* 7. 13. 3 *Shep. Abr.* 56. A Man made a Leaſe to his Brother for Life, and that if he married, and his Wife ſhould ſurvive, then ſhe ſhould have it for her Life; the Leſſee before he married, made a Feoffment of the Lands to another, and afterwards the Leſſor levied a Fine to him; then the Leſſee married, and died, and his Wife ſurvived: And it was held, that the Remainder to the Wife for Life was gone by this Feoffment, and the *Poſſibility* of her having it was included in the Fine, which is likewiſe barred. *Moor* 554. A Teſtator poſſeſſed of a Leaſe for Years, deviſed the Profits thereof to *W. R.* for Life, Remainder to another; and afterwards the Deviſee for Life entered with the Aſſent of the Executor, and then he in Remainder for Life aſſigned all his Intereſt to another, and after the Deviſee for Life died; it was reſolved, that this Aſſignment was void, becauſe whilſt the Deviſee for Life was living, he in Remainder had only a *Poſſibility* to have the Term, for the Deviſee for Life had an Intereſt in it *ſub modo*, and might have ſurvived the whole Term. 4 *Rep.* 64. The Deviſe of the *Poſſibility* of a Term is void; as where a Term is deviſed to *A.* for Life, Remainder to *B.* and *B.* deviſes this Remainder to *C.* and dies; and then *A.* dies; this Deviſe to *C.* is void, and the Executors of *B.* ſhall have it. 3 *Lev.* 427. A *Poſſibility* founded on a Truſt, differs from a mere *Poſſibility*; the firſt may be deviſed, but the other cannot. *Moor.* 808. 2 *Nelſ.* 1275.

Poſt, A ſwift or ſpeedy Meſſenger to carry Letters, *&c.* And the *Poſt-Office* is of the greateſt Conſequence to this Kingdom, being a Country of Trade. The firſt Law that introduced this very great Convenience, was made in the Reign of King *Car.* 2. By the 12 *Car.* 2. *cap.* 35. a General Letter or *Poſt Office* was erected, under the Management of a *Poſtmaſter* General, *&c.* And the Rates for Carriage of Letters was 2*d.* for a ſingle Letter of a Sheet, not exceeding eighty Miles; two Sheets 4*d.* Packets 8*d. per* Ounce; and above eighty Miles 3*d.* not exceeding a Sheet, *&c.* The 1 *W. & M.* was made for erecting a *Poſt-Office* in *Scotland*: And by 9 *Ann. cap.* 10. the *Poſt-Office* of *England* and *Scotland* are united; and the Price of *Poſtage* of Letters is increaſed to 3*d.* for a ſingle Letter from any Places not diſtant above eighty Miles from *London*, and 6*d.* for a double Letter, and ſo proportionably for Packets of Letters; and for Packets of Writs, Deeds, *&c.* 12*d. per* Ounce; ſingle Letters above eighty Miles from *London* 4*d.* and for double Letters 8*d.* and for other Things 1*s.* 4*d. per* Ounce: Single Letters to and from *Edinburgh*, or to and from *Dublin* 6*d.* double Letters 12*d.* and Parcels 2*s. per* Ounce, *&c.* And by this Statute, the Rates of Letters from *London* to *France*, *Spain*, *Flanders*, *Holland*, *&c.* are appointed: And the *Poſtmaſter* is not only to continue conſtant *Poſts* to all Places on the *Poſt*-Roads; but may erect croſs Stages, keep Packet-Boats, *&c.* for the Conveyance of Letters; and no Perſon but the *Poſtmaſter* or his Deputies, ſhall receive, take or carry Letters, or ſet up any Foot-*Poſt*, *&c.* under certain Penalties; nor ſhall Carriers carry Letters, except ſuch as concern Goods ſent by them: Opening, Delaying, or Detaining Letters, by Officers of the *Poſt-Office*; unleſs by Warrant from a Secretary of State, or the Party to whom directed refuſes to pay the *Poſtage*, or where the Letter is returned for Want of true Direction, incurs a Penalty of 20*l.* Money due for *Poſtage* of Letters, not exceeding 5*l.* ſhall be recovered before two Juſtices of Peace, on Complaint, and Summons of the Party, by Diſtreſs, *&c.* as ſmall Tithes; and ſhall be paid before any Debt due to a private Perſon. *Stat.* 9 *Ann.* If ſeveral Letters are writ by the General *Poſt* on one Piece of Paper, or any Bill of Exchange, *&c.* ſhall be writ in the ſame Piece of Paper with a Letter, they

they ſhall be charged as ſo many diſtinct Letters, and pay accordingly: But this is not to extend to Bills, Accounts, *&c.* ſent by Merchants beyond Sea. 6 *Geo.* 1. *cap.* 21. A Perſon having incloſed Exchequer-Bills in a Letter ſent by the *Poſt*, which were loſt, the Owner brought an Action on the Caſe againſt the *Poſtmaſter*; and by three Judges it was held, that the Action did not lie, becauſe the Office is for Intelligence only; and it is impoſſible the *Poſtmaſter* General, who is to execute this Office in ſuch diſtant Places, by ſo many ſeveral Hands, ſhould be able to ſecure every Thing, and for that this is not a Conveyance for Treaſure: But the Lord Chief Juſtice *Holt* was of a contrary Opinion; he conſidered this as a Letter loſt in the Office, not on the Road, and held that the *Poſtmaſter* General is liable, the whole Care being committed to him, and the Law makes the Officer anſwerable for himſelf and his Deputies; he has a Reward, which is the Reaſon why Innkeepers, Carriers, *&c.* are liable for Goods loſt; and where a Man takes upon him a publick Employment, he is bound to ſerve the Publick, or Action lies againſt him, *&c. Paſch.* 12 *W.* 3. *B. R.* 1 *Salk.* 17. The *Poſt-Office* in *London* is managed by the *Poſtmaſter*, and other Officers to the Number of Seventy-ſeven; one of which is called the *Court Poſt*, conſtituted by Patent for Life, with a handſome Salary: And the *Poſtmaſter* General has under him One hundred eighty-two Deputy *Poſtmaſters* in *England* and *Scotland*, moſt of them keeping regular Offices in their Stages, and *Sub-Poſtmaſters* in their Branches. The Conveyance of *Poſt* Letters extends to every conſiderable Market-Town, and is ſo expeditious that every twenty-four Hours the *Poſt* goes Six ſcore Miles; and the *Poſt* Days to ſend Letters from *London* to any Part of *England* and *Scotland*, are *Tueſdays*, *Thurſdays* and *Saturdays*, and the Returns *Mondays*, *Wedneſdays* and *Fridays*; but to *Wales* and *Ireland*, the *Poſt* goes only twice a Week, *Tueſdays* and *Saturdays*, and returns from *Wales* every *Monday* and *Friday*; but from *Ireland* the Return is uncertain, *&c.* See *Maſter of the Poſts*.

Penny-Poſt. Letters or Parcels, not exceeding ſixteen Ounces Weight, or ten Pounds Value, are conveyed daily by the *Penny-Poſt*, to and from all Places within the *Bills of Mortality*, and ten Miles Diſtance from the General *Poſt-Office*, for 1 *d.* each Packet, Letter, *&c.* Stat. 9 *Ann. c.* 10. And ſeveral General Offices are kept at convenient Diſtances from one another, to receive and take in *Penny-Poſt* Letters every Day, *Sundays* excepted: Alſo Letters that come from all Parts by the General *Poſt*, directed to Perſons in any Country Towns to which the *Penny-Poſt* goes, are delivered by the Meſſengers thereof the ſame Day they come to *London*; and the Anſwers are carried every *Poſt* Night to the General *Poſt Office* in *Lombard-ſtreet*, being left at the Receiving Houſes. *Penny Poſt* Men carrying Letters to Towns and Places out of the Cities of *London* and *Weſtminſter*, or Borough of *Southwark*, and the Suburbs thereof, may demand and take 1 *d.* at Delivery for every Letter, over and above the Penny paid on putting the Letters into the *Penny-Poſt* Office; except Letters paſſing by the General *Poſt*, *&c.* Stat. 4 *Geo.* 2. *c.* 33.

Poſt Conqueſtum, Were Words inſerted in the King's Title, by King *Edw.* 1. and conſtantly uſed in the Time of King *Ed.* 3. *Clauſ.* 2 *Ed.* 3.

Poſt Diem, Is where a Writ is returned after the Day aſſigned, for which the *Cuſtos Brevium* hath a Fee of 4 *d.* whereas he hath nothing if it be returned at the Day.

Poſt-Diſſeiſin, Is a Writ that lies for him who having recovered Lands or Tenements by *Præcipe quod reddat*, on Default or Reddition, is again diſſeiſed by the former Diſſeiſor; then he ſhall have this Writ, and recover double Damages, and the Party ſhall be puniſhed by Impriſonment, *&c.* Stat. *Weſtm.* 2. *c.* 26. *Reg. Orig.* 208. *F. N.* 190. The Writ of *Poſt-Diſſeiſin* ought to be brought by the Parties who firſt recovered, or ſome of them, and of the ſame Land which was recovered, or Part thereof, and againſt thoſe or ſome of them, againſt whom the Recovery was: But if a Man recover by a *Præcipe quod reddat*, and after he is diſſeiſed by him againſt whom he recovered, and the Diſſeiſor makes a Feoffment, and takes back an Eſtate to him and another, a *Poſt-Diſſeiſin* may be had againſt him and his Jointenant; and if he that loſeth the Land by Default, *&c.* do after diſſeiſe him who recover'd, and make a Feoffment to another Perſon, he that recover'd ſhall have this Writ againſt the Diſſeiſor, although he be not Tenant of the Land; for in a Writ *Poſt-Diſſeiſin*, the Demandant ſhall not have Judgment to recover the Land; but the Sheriff ſhall reſtore the Plaintiff to his Poſſeſſion, if the Diſſeiſin be found, and take the Defendant and keep him in Priſon. *New Nat. Br.* 423. And the Defendant is not to be delivered out of Priſon, until he hath paid a Fine to the King, and without the King's ſpecial Command, upon a *Certiorari* to remove the Record into *B. R.* whereupon a Writ ſhall go to the Sheriff to deliver him. *Ibid.* Nontenure is no Plea in a *Poſt-Diſſeiſin*, for the Defendant ought to anſwer the Diſſeiſin, *&c.*

Poſtea, Is the Return of the Judge, before whom a Cauſe was tried, after a Verdict, of what was done in the Cauſe; and is indors'd on the Back of the *Niſi prius* Record: It begins, *Poſtea die & loco, &c.* wherefore it is ſo call'd. 2 *Lill.* 337. A *Poſtea* is a Record of the Court, truſted with the Attorney in the Cauſe by the Clerk of the Aſſiſe; and the Attorney, ſo intruſted, is to deliver it into the Office, that the Judgment may be entered by it by the Officer of the Court. *Trin.* 1651. It is brought into Court at the Day in Bank, and recorded there, and delivered back to the Attorney, who gives a Rule for Judgment upon it; and if there be no Rule to the contrary, after the Rule for Judgment is out, the Attorney brings his *Poſtea* to the Secondary, who ſigns his Judgment, and then he enters all this Matter upon the Iſſue Roll. 2 *Lill.* 337. The Court may ſtay the Bringing in of the *Poſtea*, and Entring up the Judgment upon a Verdict, if they find Cauſe to do it, for any undue Practice in the Proceedings to Trial: And if the Party for whom the Verdict paſſed, will not bring in the *Poſtea*, upon Notice given by the other Party, that he intends to move in Arreſt of Judgment; the Court, on Motion will order Judgment to be ſtay'd, until four Days after the *Poſtea* is brought in, allow'd to ſpeak in Arreſt of Judgment. *Mich.* 22 *Car. B. R.* Altho' the Verdict given be prejudicial to the Plaintiff, he ought to bring in the *Poſtea*; for he muſt abide by the Trial. There is no general Rule of Court for the Clerk of the Aſſiſe, *&c.* to bring in the *Poſtea* into the Court of *B. R.* by a Preciſe Time; but if it be not return'd in convenient Time, the Court may be moved at the Side-Bar for a Rule to bring it in ſpeedily. 2 *Lill.* 337. If the Clerk of the Aſſiſe hath miſtaken in drawing up the *Poſtea*, he may amend it by his Notes, before it is filed; and the Return of a *Poſtea* hath been amended by the Memory of a Judge, who tried the Cauſe. *Cro. Car.* 338.

Poſteriority, (*Poſterioritas*) Signifies the Being or Coming after, and is a Word of Compariſon and Relation in Tenures, the Correlative whereof is *Priority*: As a Man holding Lands or Tenements of two Lords, holds of his ancienter Lord by *Priority*, and of his latter Lord by *Poſteriority*. Staundf. Prærog. 10, 11. 2 Inſt. 392.

Poſt-Fine, Is a Duty to the King for a *Fine* formerly acknowledged in his Court, paid by the Cogniſee after the Fine is fully paſſed, and it is ſo much, and Half ſo much as was paid to the King for the *Præ Fine*, collected by the Sheriff of the County where the Land lies of which the Fine was levied, to be anſwered by him into the *Exchequer*. Stat. 22 & 23 Car. 2.

Poſthumous, Is where a Child is born after his Father's Death, &c. And *Poſthumous* Children are enabled to take Eſtates by Remainder in Settlements, as if born in their Father's Life-time, though no Eſtate be limited to Truſtees to preſerve them till they come in *eſſe*. 10 & 11 W. 3. cap. 16. See In *Ventre ſa mere*.

Poſtnatus, Is a Word that ſignifieth the ſecond Son, or one born afterwards; often mentioned in *Bracton*, *Glanvile*, *Fleta*, and other ancient Law-Writers: And as to *Poſtnati* and *Antenati*, it was by all the Judges ſolemnly adjudged, that thoſe who after the Diſcent of the Crown of *England* to King *Jam.* 1. were born in *Scotland*, were not Aliens here in *England*: But the *Antenati*, or thoſe born in *Scotland*, before the ſaid Diſcent, were Aliens here, in reſpect of the Time of their Birth. 6 *Jac.* 7 *Rep. Calvin*'s Caſe. Children of Perſons attainted of Treaſon, born after the King's Pardon, may inherit Lands; though not thoſe born *before*, &c. 1 *Inſt.* 391.

Poſtponed, (From *Poſtpono*) Set or put behind or after another. 22 & 23 *Car.* 2.

Poſt-Terminum, Is the Return of a Writ, not only after the Day for the Return thereof, but after the Term; on which the *Cuſtos Brevium* of the Court of *Common Pleas* takes the Fee of 20 *d.* It is alſo uſed for the Fee ſo taken.

Poſtilliæ, Notes or Annotations on a Book, &c. ——*Langton Archiep. Cantuar. ſuper Bibliam* poſtillas *fecit*. Trivet's Chron.

Poſtulation, (*Poſtulatio*) Signifies a Requeſt, Suit or Petition. Formerly when a Biſhop was tranſlated from one Biſhoprick to another, he was not elected to the new See; for the *Canon* Law is *Electus not poteſt Eligi*; and the Pretence was, that he was married to the firſt Church, which Marriage could not be diſſolved but by the *Pope*; thereupon he was petitioned, and he conſenting to the Petition, the Biſhop was tranſlated, and this was ſaid to be by *Poſtulation*: But being an Uſurpation and againſt our Law, it was reſtrained by the Stat. 16 *R.* 2. and 9 *H.* 4. *c.* 8. Since which Tranſlations of Biſhops have been by Election, and not by *Poſtulation*. 1 Jones 160. 1 Salk. 137. *Poſtulations* were made upon the unanimous Voting any Perſon to a Dignity or Office; of which he was not capable by the ordinary Canons or Statutes, without ſpecial Diſpenſation: And by the ancient Cuſtoms, an Election could be made by a Majority of Votes; but a *Poſtulation* muſt have been *Nemine Contradicente*.

Pot, An Head-Piece for War, mentioned in the Stat. 13 *Car.* 2. *c.* 6.

Pound, (*Parcus*) Is generally any Place incloſ'd, to keep in Beaſts; but eſpecially a Place of Strength to keep Cattle that are diſtrained, or put in for any Treſpaſs done by them, until they are replevied or redeemed. In this Signification, it is called *Pound overt*, and *Pound covert*; a *Pound overt* is an *open Pound*, uſually built on the Lord's Waſte, and which he provides for the Uſe of himſelf and his Tenants, and is alſo called the Lord's or the Common *Pound*; and a Backſide, Yard, &c. whereto the Owner of the Beaſts impounded may come to give them Meat, without Offence, is a *Pound overt*: And a *Pound covert* is a *cloſe* Place, as the Owner of the Cattle cannot come to for the Purpoſe aforeſaid, without giving Offence; ſuch as a Houſe, &c. *Kitch.* 144. *Terms de Ley* 483. 1 *Inſt.* 96. There is a Difference between a common *Pound*, an open *Pound*, and a cloſe *Pound*, as to Cattle impounded: For where Cattle are kept in a common *Pound*, no Notice is neceſſary to the Owner to feed them; but if they are put into any other open Place, it is otherwiſe, Notice is to be given; and if Beaſts are impounded in a *Pound* Cloſe, in Part of the Diſtrainer's Houſe, &c. he is to feed them, at his Peril. 1 *Inſt.* 47. A common *Pound* belongs to a Townſhip, Lordſhip or Village; and there ought to be ſuch a *Pound* in every Pariſh, kept in Repair by them who have uſed to do it Time out of Mind; The Overſight whereof, and want of it, is to be by the Steward in the Leet, where any Default herein is puniſhable. *Dyer* 288. *Noy* 52. See *Diſtreſs*.

Pound-breach. If a Diſtreſs be taken, and impounded, though without juſt Cauſe, the Owner cannot *break* the *Pound*, and take away the Diſtreſs; if he doth, the Party diſtraining may have his Action, and retake the Diſtreſs where-ever he finds it: And for *Pound breaches*, &c. Action of the Caſe lies, whereon treble Damages may be recovered. 1 *Inſt.* 161. 2 *W.* & *M.* *c.* 5. Alſo *Pound-breaches*, may be inquired of in the Sheriff's Turn; as they are common Grievances, in Contempt of the Authority of the Law. 2 *Hawk. P. C.* 67.

Poundagium, The Liberty of Pounding Cattle. *Hiſt. Croyland contin. pag.* 519.

Poundage, is a Subſidy or Duty granted to the King of 12 *d.* in the *Pound* on all Goods and Merchandizes exported and imported. Stat. 1 & 2 *Ed.* 6. *c.* 13. 1 *Jac.* 1. *c.* 33. 12 *Car. c.* 4. See *Cuſtoms*.

Pound in Money, (From the Sax. *Pund*, i. e. *Pondus*) Is Twenty Shillings: In the Time of the *Saxons* it conſiſted of 240 Pence, as it doth now; and 240 of thoſe Pence weighed a *Pound*, but 720 ſcarce weigh ſo much at this Day. *Lambard.* 219.

Pour fair proclaimer, que null inject Fimes ou Ordures en Foſſes ou Rivers pres Cities, &c. Is an antient Writ directed to the Mayor or Bailiff of a City or Town, requiring them to make Proclamation, That none caſt Filth into the Ditches or Places near ſuch City or Town, to the *Nuſance* thereof; and if any be caſt there already, to remove the ſame: It is founded on the Stat. 12 *R.* 2. *c.* 13. *F. N. B.* 176.

Pourpreſture, In Lands and Woods, &c. See *Purpreſture*.

Pour ſeiſir Terres la Femme que tient in Dower, Was a Writ whereby the King ſeiſed the Land, which the Wife of his Tenant in *Capite* had for her *Dowry* after his Deceaſe, if ſhe *married* without the King's Leave; by Virtue of the Statute of the *King's Prerogative*, *c.* 3. *F. N. B.* 174.

Pourſuivant, A Meſſenger of the King. Vide *Purſuivant*.

Power, Is an Authority which one Man gives to another to Act for him; and it is ſometimes a Reſervation which a Perſon makes in a Conveyance for himſelf to do ſome Acts, *i. e.* to make Leaſes, or the like. 2 *Lill. Abr.* 339. And *Powers* are either *Appendant*, or *Collateral*; the one is where a Man deviſes Lands for Life, with a *Power* for the Deviſee to make a Jointure, &c. and the other is when he deviſes to his Executor to ſell, &c. In the firſt Caſe, the *Power* is annexed to the Eſtate, and derived out of it; but in the other Caſe, 'tis collateral to it. 3 *Salk.* 276. A Feoffment, Fine or Recovery, will deſtroy a *Power* coupled with an Intereſt to the Party himſelf; though not a collateral *Power*: As for Inſtance; Lands are deviſed to *W. R.* in Tail, Remainder over, with a *Power* given to him to make a Jointure to a ſecond Wife, &c. The Tenant in Tail, in the Life-time of his firſt Wife, ſuffered a common Recovery to the Uſe of himſelf and his Heirs; then his Wife died, and he married a ſecond Wife, and covenanted to ſtand ſeiſed to the Uſe of himſelf, and his Wife for their Lives, &c. Adjudged, that this *Power* then created, was to be executed out of the Eſtate-tail, which was now deſtroyed by ſuffering the Recovery, and by Conſequence the *Power* to make a Jointure was deſtroyed. 2 *Lev.* 58, 60. A ſingle Lady made a Settlement of her Eſtate for Life, Remainder in Tail, with a *Power* to make Leaſes (being ſole) for three Lives; afterwards ſhe married, and ſhe and her Husband made a Leaſe, *&c.* And it was held that this Leaſe was void, being not purſuant to the *Power*; for the Leaſe of the Husband and Wife is the Leaſe of the Husband; and the Difference betwixt a naked *Power* and a *Power* which ariſes from an Intereſt, is, That if a Woman hath only a naked or bare *Power*, as by a Will to ſell Lands, ſhe may ſell, tho' ſhe marry, becauſe this is not a *Power* created by herſelf out of any Intereſt; but where a *Power* is reſerved upon a Settlement, ſhe muſt execute it purſuant to that *Power*, when it was at firſt reſerved. *Chanc. Rep.* 18. 3 *Salk.* 273. It is ſaid, if a Man hath a *Power* to make a Leaſe for three Lives or Twenty-one Years, he cannot make a Leaſe for Ninety-nine Years, if three Perſons live ſo long: But if he hath a *Power* to make a Leaſe, *Proviſo* that it doth not exceed three Lives, *&c.* he may make a Leaſe for Ninety-nine Years if three live ſo long. 4 *Rep.* 70. A *Power* ought to be exactly and ſtrictly executed. 6 *Rep.* 33. But a *Power* may be well executed, though there be no Recital of the *Power* in the Deed for the Execution thereof. 1 *Lev.* 150. And a *Power* hath been decreed in Equity, though not purſued ſtrictly. *Chanc.* 263, 264. Yet it hath been held that a *Power* not well executed in Law, ſhall not be made good in Equity. 1 *Lev.* 241. A *Power* to ſell Lands, is ſubject to the Rules of Equity. *Chanc. Rep.* 281. *Powers* ought to be conſtrued according to the Intent of the Parties; and a bare *Power* is not aſſignable over. 5 *Mod.* 379. 2 *Mod.* 318. Where *Attornies* have *Power* to make Leaſes for Years, they muſt make them in the Name of him who gave the Authority. 9 *Rep.* 76. And the Leaſe ought to run thus: This Indenture *made*, &c. between *A. B. and* C. D. *of the one Part, and* E. F. *of the other Part,* Whereas *the ſaid* A. B. *by a Writing or Letter of Attorney under his Hand and Seal duly executed, dated,* &c. *among other Things therein mentioned, did authorize the ſaid* C. D. *in the Name of him the ſaid* A. B. *and on his Behalf, to ſeal and execute Leaſes of ſuch Parts of his Lands, Tenements,* &c. *as he thought fit to be leaſed:* Witneſſeth *that in Conſideration of,* &c. *he the ſaid* A. B. *by his Attorney* C. D. hath *demiſed and granted*, Habend', &c. *yielding and paying to the ſaid* A. B. *&c. And the ſaid* E. F. *covenants with the ſaid* A. B. *his Heirs,* &c. *And the ſaid* A. B. *by the ſaid* C. D. *his ſaid Attorney doth covenant,* &c. 2 Lill. 340. *See* Letter of Attorney.

Power of the County, On what Occaſions and how raiſed, *&c.* See *Poſſe Comitatus.*

Poyning's Law, Is an Act of Parliament made in *Ireland* in the Reign of King *Hen.* 7. and ſo called becauſe Sir *Edward Poyning* was Lieutenant there when it was made, whereby all the Statutes in *England* were declared of Force in *Ireland*; which before that Time were not, nor are any ſince that Time, but by ſpecial Words. 12 *Rep.* 109.

Practice. The Law loves plain and fair *Practice*, and will not countenance Fraud in Proceedings, nor ſuffer Advantage to be taken thereby. 2 *Lill.* 342. Private clandeſtine Proceedings in ſeveral Caſes, are ſaid to be by *Practice.*

Præceptories, (*Præceptoriæ*) Were a Kind of Benefices, having their Name from being poſſeſſed by the more eminent *Templers*, whom the Chief Maſter by his Authority created and called *Præceptores Templi:* And of theſe *Præceptories*, there are recorded ſixteen, as belonging to the Templars in *England*, viz. *Creſſing Temple, Balſhal, Shengay, Newland, Yevely, Witham, Templebruere, Willington, Rothely, Ovenington, Temple Combe, Trebigh, Ribſtane, Mount St. John, Temple Newſum* and *Temple Hurſt.* Mon. Angl. Tom. 2. pag. 543. But ſome Authors ſay, theſe Places were Cells only, ſubordinate to their principal Manſion the *Temple* in *London.* 32 Hen. 8. c. 24.

Præcipe in capite, Was a Writ iſſuing out of the *Chancery*, for a Tenant holding of the King *in capite*, *viz.* in Chief as of his Crown. *Magn. Chart. cap.* 24. *Reg. Orig.* 4.

Præcipe quod reddat, Is the Form of a Writ, which extends as well to a *Writ of Right*, as to other Writs of *Entry* or *Poſſeſſion*, beginning *Præcipe* A. *quod reddat* B. *unum meſſuagium, &c.* Old Nat. Br. 13.

Præcipitaria, A Battering Ram, mentioned in *Matt. Pariſ. pag.* 396.

Præcipitium, Was a Puniſhment inflicted on Criminals, by caſting them from ſome high Place or Rock. *Malmſ. lib.* 5. *p.* 155.

Prædict', *Prædictus* (Lat.) in *Engliſh* Aforeſaid, is a Word uſed in Pleadings, applied to Places, Towns, Lands, Names, Parties, *&c.* before mentioned. *Law Lat. Dict.* In a Deed or Grant, the Words *prædict. Manerii*, are a Deſcription of the Manor beforenamed: And a Town, repeated by the Name of Pariſh *prædict.* ſhall be held all one; for the Word aforeſaid couples then. *Hob.* 6. A Difference as to *prædict.* Term granted, *&c.* See 10 *Rep.* 65.

Præfectus Villæ, Is the ſame as *Præpoſitus Villæ*, *i. e.* The Mayor of a Town. *Leg. Ed. Confeſſ. c.* 28.

Præfine, Is that Fine which upon ſuing out the Writ of Covenant on levying *Fines of Lands*, is paid before the Fine is paſſed. 22 & 23 *Car.* 2.

Præmium, A Reward or Recompence; among *Merchants* it is uſed for that Sum of Money, which the *Inſured* gives to the *Inſurer*, for inſuring the ſafe Return of any Ship or Merchandize. Stat. 19 *Car.* 1. *cap.* 1.

Præmunire, Is taken either for a Writ ſo called, from the Words therein *Præmunire facias*, or *Præmonere facias, &c.* ſignifying to forwarn or bid the Offender take heed; or it is the Offence on which the Writ is granted. The Church of *Rome*, under Pretence of her Supremacy, formerly carried Things to that Height in this Kingdom, that King *Ed* 3. in the 27th Year of his Reign made a Statute againſt thoſe that drew the King's People out of the Realm, to anſwer and ſue for Things belonging to the King's Court; which greatly reſtrained this Liberty of the Pope: But notwithſtanding, he ſtill adventured to continue his Mandates and *Bulls*, inſomuch that King *Rich.* 2. made ſeveral Statutes againſt them, but moſt expreſly that of 16 *R.* 2. *cap.* 5. commonly called the *Statute of Præmunire*, which ordains the Puniſhment of this Offence, *viz. The Offenders are to be out of the King's Protection, forfeit their Lands and Goods, and be impriſoned and ranſomed at the King's Pleaſure,* &c. *and if the Offenders are not to be found, they ſhall be outlawed.* After him King *Hen.* 4. in like Manner aggrieved at other Abuſes not remedied by former Statutes, in the ſecond Year of his Reign added certain new Caſes, laying upon the Offenders the ſame Puniſhment; as likewiſe did 3 *Hen.* 5. *cap.* 4. And by the 24 *Hen.* 8. *cap.* 12. to appeal to *Rome* from any of the King's Courts is made a *Præmunire.* So if any Dean and Chapter refuſe to elect a Biſhop named by the King, or any Archbiſhop or Biſhop to confirm him, *&c.* 25 *Hen.* 8. *cap.* 20. Refuſing the Oath of Supremacy is a *Præmunire:* And affirming the Authority of the Pope; or contributing to the Maintenance of a Popiſh Seminary, is the ſame Offence. 1 *Eliz. c.* 1. 13 *Eliz. c.* 1. and 27 *Eliz. cap.* 2. To refuſe the Oath of Allegiance, upon Tender, incurs a *Præmunire.* 3 *Jac.* 1. *cap.* 4. Affirming that both or either Houſes of Parliament, have a Legiſlative Power without the King, is made a *Præmunire.* 13 *Car.* 2. *cap.* 1. The Oaths of Supremacy and Allegiance preſcribed in former Acts are abrogated, and new Oaths ſubſtituted by 1 *W. & M. c.* 8. which to refuſe upon Tender, makes one liable to the Penalty of a *Præmunire:* And Counſellors, Attornies, Solicitors, Proctors, *&c.* practiſing as ſuch in any Court without taking the Oaths of Allegiance and Supremacy, and ſubſcribing the Declaration, incur a *Præmunire*, by the Statute 7 *&* 8 *W.* 3. *c.* 24. If any ſhall maliciouſly and directly, by Preaching, or adviſedly Speaking, affirm that the pretended *Prince of Wales* hath any Title to the Crown, or that the King with Authority of Parliament, cannot by Laws limit the ſame, *&c.* it is a *Præmunire.* 1 *&* 2 *Ann. cap.* 17. 4 *Ann. c.* 8. And ſo in divers other Caſes; and moſt of theſe latter Statutes refer the Puniſhment to the Stat. 16 *R.* 2. On the Statutes 27 *Ed* 3. and 16 *R.* 2. making it a *Præmunire* to ſue or purſue Cauſes out of the Realm, in the Court of *Rome* or elſewhere, or in any other Court, to defeat the Judgments given in the King's Courts; it has been formerly holden, by the Words *elſewhere*, &c. That Suits in Equity brought to relieve againſt a Judgment given at Law, as of the Court of Chancery in the Proceeding in Courſe of Equity, which is no Court of Record; Suits in the Admiralty, or in the Courts of the Conſtable and Marſhal; and Eccleſiaſtical Courts, for Matters belonging to the Cogniſance of the Common Law, are within the Statute: And he that procures one to ſue to the Court Chriſtian, in a Temporal Cauſe, ſhall forfeit as much as he that ſueth as Principal, and is in equal Degree of *Præmunire.* 3 *Inſt.* 121. 2 *Inſt.* 601, *&c.* But it is agreed at this Day, that no ſuch Suit in Equity ſeeking Relief after Judgment at Law, *&c.* is within the Intention of the ſaid Statutes. 1 *Hawk. P. C.* 51. The Writ of *Præmunire* runs *Contra Coronam & Dignitatem Regis*; and it hath been held by all the Judges, that when an Eccleſiaſtical Judge doth uſurp upon the Temporal Laws, which are the Birthright of the Subject, he draweth the Matter *ad aliud Examen*, and therein he offends *contra Coronam & Dignitatem*, *&c.* 12 *Rep.* 50. A Prohibition was granted againſt a Prior, for that the King having recovered againſt him in a *Quare Impedit*, he ſent his Brother with an Appeal to *Rome*, and ſued there to avoid the Judgment; upon Not guilty pleaded, it was found againſt the Defendant, and thereupon the King prayed Judgment upon the Stat. 27 *Ed.* 3. as in Caſe of a *Præmunire*; but it was adjudged, that he ſhould not have ſuch Judgment, becauſe the Suit was not brought according to the Statute, but by a Writ of Prohibition at Common Law. 9 *Rep.* 71. And yet it hath been reſolved, That a Statute, by appointing that an Offender ſhall incur the Penalty and Danger mentioned in the 16 *R.* 2. of *Præmunire*, does not confine the Proſecution for the Offence to the particular Proceſs thereby given. 1 *Ven.* 173. A *Præmunire* lieth as well for the Party grieved, as for the King; and both may join in one Writ. 3 *Inſt.* 125. *Davies* 83. But where the Attorney General proſecuted a *Præmunire* for the Queen and *R. B.* againſt the Dean of *Chriſtchurch* in *Oxford*, and others, and afterwards withdrew his Suit: It was held, that by this Means the Party grieved could not proceed, becauſe the principal Matter of the *Præmunire* was the Putting the Defendants out of the King's Protection, *&c.* and the Damages to the Party are but acceſſary; ſo that the Principal being releaſed, the Damages are ſo likewiſe. 1 *Leon.* 290. In Proſecutions on the Stat. 1 *Eliz.* and 3 *Jac.* 1. for refuſing the Oaths of Allegiance, *&c.* the Trial muſt be by a Jury of the County wherein the Oaths were refuſed; though the Statute authorizes an Indictment by a Jury of the County where the Court ſits: And any Miſrecital of the very Words of the Oath, in an Indictment for not taking it, is erroneous; but the Tenour of the Oath is as much as if it were *verbatim. Dyer* 234. *Raym.* 212, 374. The Lord *Vaux* was indicted for refuſing to take the Oath of Allegiance, being lawfully tendered to him, and he being about 18 Years old; this was certified into *B. R.* under the Hands of ſeveral of the Privy Council; and he being brought into Court, and the Oath read to him, he prayed to have Counſel; but it was denied; and being preſs'd to plead to the Indictment, he confeſſed it, and thereupon had Judgment of *Præmunire, viz.* To be out of the King's Protection, to forfeit his Lands, Tenements, Goods, and Chattels to the King, and to be impriſoned during Life. 1 *Bulſt.* 197. *A.* being indicted upon the Statute 1 *Eliz.* for aiding *B.* knowing him to be a principal Maintainer of the Authority of the See of *Rome*; which Offence in the ſaid Statute has the Words, *upon purpoſe and to the Intent to extol the Power of that See:* And becauſe theſe Words were omitted in the Indictment, it was adjudged inſufficient by all the Judges; for they make the Offence, as to the Forfeiture of *Præmunire. Jenk. Cent.* 243. The Forfeiture of Lands to the King in a *Præmunire*, is underſtood of Lands in Fee only for ever; and of Lands in Tail but during Life, or of ſuch Eſtate as one may lawfully forfeit. 1 *Inſt.* 130. 3 *Inſt.* 125. Tenant in Tail is attainted in a *Præmunire*, he ſhall forfeit his Lands only during Life; and afterwards the Iſſue in Tail ſhall inherit. 11 *Rep.* 56. A Perſon being ſeiſed in Fee of Lands, was indicted for a *Præmunire* upon the Stat. 13 *Eliz.* but before Conviction he made an Entail of his Lands; and it was adjudged, that the Attainder ſhall relate to the Time of the Offence, and that was before he entailed the Lands, and not the Time of the Judgment, which was afterwards; and the Freehold being in him at the Time of the Attainder, ſhall not be deveſted without an Inquiſition, under the Great Seal. *Cro. Car.* 123, 172. It is ſaid the Statute of *Præmunire* doth not extend to the Forfeiture of Rents, Annuities, Fairs, *&c.* or any other Hereditaments that are not within the Word *Terre.* 3 *Inſt.* 126. This Suit need not be by original Writ in *B. R.* for if the Defendant be *in Cuſtodia Mareſchalli*, the Suit may be againſt him by Bill; and the Defendants cannot be ſued in any other Court, when they are *in Cuſtodia Mareſchal'*. And if a Defendant come not at the Day, *&c.* or if he appears and pleads, and the Iſſue be found againſt him, or he demurs in Law, *&c.* Judgment ſhall be given, that he ſhall be out of Protection, *&c.* 3 *Inſt.* 124. So odious was this Offence of *Præmunire*, that a Man attainted of the ſame, being out of the King's Protection, might be ſlain by any Perſon; becauſe it was provided by Law, that a Man might do to him as to the King's Enemy, and any Man may lawfully kill an Enemy: But this Severity and Inhumanity is reſtrained and provided againſt by Stat. 5 *Eliz.* Though no Perſon attainted of *Præmunire* can bring an Action for any Injury whatſoever; and no one knowing him to be guilty, can with Safety give him Aid, Comfort or Relief. 1 *Inſt.* 130. 1 *Hawk.* 55 The Laws making Offences to be *Præmunire*, it has been obſerved are ſo very ſevere, that they are ſeldom put in Execution: And notwithſtanding the Statutes, the King may protect and pardon an Offender; for this Protection is given him by the Law of Nature. 2 *Bulſt.* 299. A *Præmunire* is ſaid to be a Defence of the Crown, and the Laws of the Land, from the Tyranny and Oppreſſion of the Pope's Juriſdiction, *&c.* See *Pope.*

Præpoſitus Eccleſiæ, Is uſed for a Church-reve, or Church-warden.

Præpoſitus Villæ, Is ſometimes taken for the Conſtable of a Town; and frequently an Head or Chief Officer of the King in any Town, Village, Manor, *&c. Leg. Edw. Confeſſ. cap.* 28. *Crompt. Juriſd.* 205. But this *Præpoſitus Villæ* in old Records, was no more than the Bailiff of the Lord of the Manor: And by the Laws of *Hen.* 1. the Lord anſwered for the Town where he was reſident, and where he was not, his *Seneſchal*; but if neither of them could be preſent, then Præpoſitus *& quatuor* *de unaquaque Villa, i. e.* The Bailiff or Reeve and Four of the moſt ſubſtantial Inhabitants, were ſummoned to appear before the Juſtices, *&c. Brad. Gloſſ. pag.* 97.

Præſentare ad Eccleſiam, Denotes originally the Patron's Sending or Placing an Incumbent in the Church; and is uſed for *Repræſentare,* which in the Council of *Lateran,* and elſewhere, occurs for *Præſentare.* Selden of Tithes, pag. 390.

Pragmaticus, A Practiſer in the Law; Petty-fogger, or Splitter of Cauſes.

Pratum falcabile, A Meadow or mowing Ground. *Trin.* 18 *Edw.* 1.

Pray in Aid, Or Aid-Prayer. See *Aid.*

Prayers of the Church, Are to be read in Churches by Clergymen, as directed by the Book of *Common Prayer,* under Penalties. Stat. 1 *Eliz. c.* 2. 14 *Car.* 2. *c.* 4. Vide *Common Prayer.*

Preaching. Every beneficed *Preacher,* reſiding on his Benefice, and having no lawful Impediment, ſhall in his own Cure, or ſome neighbouring Church, *preach* one Sermon every Sunday of the Year: And if any beneficed Perſon be not allowed to be a *Preacher,* he ſhall procure Sermons to be *preached* in his Cure by licenſed *Preachers;* and every Sunday whereon there ſhall not be a Sermon, he or his Curate is to read ſome one of the Homilies: Alſo no Perſon not examined and approved by the Biſhop, or not licenſed to *preach,* ſhall expound the Scripture, *&c.* nor ſhall any be permitted to *preach* in any Church, but ſuch as appear to be authorized thereto, by ſhewing their Licence; and Church-wardens are to note in a Book the Names of all ſtrange Clergymen that *preach* in their Pariſh; to which Book every *Preacher* is to ſubſcribe his Name, the Day when he *preached,* and the Name of the Biſhop of whom he had Licence to *preach. Can.* 44, 45, 49. If any Perſon licenſed to *preach,* refuſes to conform to the Laws Eccleſiaſtical, after Admonition, the Licence of every ſuch *Preacher* ſhall be void: And if any Parſon ſhall *preach* Doctrine contrary to the Word of God, or the Articles of Religion, Notice is to be given of it to the Biſhop by the Church-wardens, *&c.* So likewiſe of Matters of Contention and impugning the Doctrine of other *Preachers* in the ſame Church; in which Caſe, the *Preacher* is not to be ſuffered to *preach* except he faithfully promiſe to forbear all ſuch Matter of Contention in the Church, until the Biſhop hath taken farther Order therein. *Can.* 53, 54. No Miniſter ſhall *preach* or adminiſter the Sacrament in any private Houſe, unleſs in Times of Neceſſity, as in Caſe of Sickneſs, *&c.* upon Pain of Suſpenſion for the firſt Offence, and Excommunication for the Second; which laſt Puniſhment is alſo inflicted on ſuch Miniſters as meet in private Houſes, to conſult upon any Matter tending to the Impeaching the Doctrine of the Church of *England.* Can. 71, *&c.*

Prebend, (*Præbenda*) Is the Portion which every *Prebendary* of a Cathedral Church receives, in Right of his Place for his Maintenance; as *Canonica Portio* is properly uſed for that Share, which every Canon receiveth yearly out of the Common Stock of the Church. And *Præbenda* is a ſeveral Benefice riſing from ſome Temporal Land, or ſome Church, appropriated towards the Maintenance of a Clerk, or Member of a Collegiate Church, and is commonly named of the Place whence the Profit ariſes. *Præbenda,* ſtrictly taken, is that Maintenance which daily *præbetur* to another; but now it ſignifies the Rents and Profits belonging to the Church, divided into thoſe Portions called *Præbenda,* and is a Right of Receiving the Profits for the Duty perform'd in the Church, ſufficient for the Support of the Parſon in that Divine Office where he reſides. *De ret.* Tit. *De Præbend* The Spirituality and Temporality make a *Prebend,* but the Spirituality is the higheſt, and moſt worthy; and a Perſon is not a complete *Prebend,* to make any Grant, *&c.* before Inſtallation and Induction. *Dyer* 221. *Prebends* are diſtinguiſhed into thoſe which are called *Simple* and *Dignitary:* A Simple *Prebend* hath no more than the Revenue for its Support; but a *Prebend with Dignity* hath always a Juriſdiction annexed, and for this Reaſon the *Prebendary* is ſtiled a *Dignitary,* and his Juriſdiction is gained by Preſcription: And *Prebends* are ſome of them donative; and ſome are in the Gift of Laymen, but in ſuch Caſe they muſt preſent the *Prebendary* to the Biſhop, and the Dean and Chapter inducts him, and places him in a Stall in the Cathedral Church, and then he is ſaid to have *Locum in Choro;* at *Weſtminſter* the King collates by Patent, and by Virtue thereof the *Prebendary* takes Poſſeſſion, without Inſtitution or Induction. 2 *Roll. Abr.* 356. As a *Prebend* is a Benefice without Cure, *&c.* a *Preband* and a Parochial Benefice are not incompatible Promotions; for one Man may have both without any Avoidance of the Firſt: But though *Prebendaries* are ſuch as have no Cure of Souls, yet there is a ſacred Charge incumbent upon them in thoſe Cathedrals where they are reſident, and they are obliged to Preaching by the Canons of the Church; and it is not lawful for a *Prebendary* to poſſeſs two *Prebends* in one and the ſame Collegiate Church. *Roll. Abr.* 361. *Prebendaries* are ſaid to have an Eſtate in Fee-ſimple in Right of their Churches, as well as Biſhops of their Biſhopricks, Deans of their Deaneries, *&c.*

Prebendary, (*Præbendarius*) Is he that hath ſuch a *Prebend;* ſo called, not as is ſaid by ſome Writers, *a* Præbendo *auxilium & conſilium Epiſcopo, &c.* but from Receiving the *Prebend:* And if a Manor be the Body of a *Prebend,* and is evicted by Title paramount; yet the *Prebendary* is not deſtroyed. 3 *Co. Rep.* 75. There is a *Golden Prebendary of Hereford,* otherwiſe termed *Præbendarius Epiſcopi,* who is one of the twenty-eight minor *Prebendaries* there, and has *ex Officio* the firſt Canon's Place that falls; he was antiently *Confeſſarius* of the Cathedral Church, and to the Biſhop, and had the Offerings at the *Altar,* whereby, in reſpect of the *Gold* commonly given there, he had the Name of *Golden Prebendary.* Blount.

Precariæ, Days Work that the Tenants of ſome Manors are bound to give the Lord in Harveſt; which in ſome Places are called *Bind-Days.*

Precedence Of the Nobility. *Vide* Stat. 31 *H.* 8. *c.* 10.

Precedents, Are Examples or Authorities to follow, in Judgments and Determinations in the Courts of Juſtice. *Precedents* have always been greatly regarded by the Judges and Sages of the Law: The *Precedents* of the Courts are ſaid to be the Laws of the Courts; and the Court will not reverſe a Judgment, contrary to many *Precedents.* 4 *Rep.* 93. *Cro. Eliz.* 65. 2 *Lill. Abr.* 344. But new *Precedents* are not conſiderable; *Precedents* without judicial Deciſion upon Argument, are of no Moment; and an extrajudicial Opinion given in or out of Court, is no good *Precedent. Vaugh.* 169, 382, 399, 429. It has been held, that there can be no *Precedent* in Matters of Equity, as Equity is univerſal Truth; but according to the *Lord Keeper Bridgman, Precedents* are neceſſary in Equity to find out the Reaſons thereof for a Guide; and beſides the Authority of thoſe that made them, it is to be ſuppos'd they did it upon great Conſideration, and it would be ſtrange to ſet aſide what has been the Courſe for a long Series of Time; therefore *Precedents* were order'd. 1 *Mod.* 307. And ſays *Hale* Ch. Baron, If a Man doubt whether a Caſe be equitable, or no, in Prudence he will determine as the *Precedents* have been; eſpecially if made by Men of good Authority and Learning. *Ibid. Precedents* muſt be ſhewed by Plaintiffs in Actions, for the Court to go againſt what is generally held. 1 *Keb.* 47. And where *Precedents* are alledged contrary to the Opinion of the Court, Day may be given to produce and ſhew them. *Mod. Caſ.* 199. *Precedents* in ſome Caſes may make an Act good, which otherwiſe would be void in Strictneſs of Law: And tho' the Forms of Writs ought not to be altered, yet *Precedents* and conſtant Uſage muſt be obſerved. *Jenk. Cent.* 162, 172. If there be a ſpecial Cauſe to alter an antient *Precedent* of a Writ, by Reaſon of any new Statute, *&c.* the Curſitors are not to keep to the old Form, but to alter it as the Caſe requires; to prevent Abatement of Writs, and Vexation to the People. *Trin.* 1650. See *Innovation.*

Prece partium, Is where a Suit is continued by the *Prayer*, or Aſſent of both Parties. 13 *E.* 1. *c.* 27.

Precept, (*Præceptum*) Is generally taken for a Commandment in Writing ſent out by a Juſtice of Peace, *&c.* for the Bringing of a Perſon or Records before him; of which divers are mentioned in the Table of the *Regiſter judicial.*

Precontract, Is a Contract made before another Contract; chiefly applicable to Contracts of Marriage. 2 & 3 *Ed.* 6. *c.* 23.

Predial Tithes, (*Decimæ Prædiales*) Are thoſe which are paid of Things ariſing and growing from the Ground only; as Corn, Hay, Herbs, *&c.* 2 *Ed.* 6. *c.* 13.

Pre-emption, (*Præ-emptio*) Signifies the firſt Buying of a Thing; and it was a Privilege allow'd the *King's Purveyor*, to have the Choice and firſt Buying of Corn, and other Proviſions for the King's Houſe. 12 *Car.* 2. *c.* 24.

Prelate (*Prælatus*) We commonly underſtand to be an Archbiſhop or Biſhop. It is a Biſhop, or one who hath a Dignity in the Church: And the learned *Spelman* ſaith Prælati *Eccleſiæ vocantur nedum ſuperiores, ut Epiſcopi, ſed etiam inferiores, ut Arch.diaconi, Presbyteri, &c.* Spelm.

Premiſſes, Is that Part in the Beginning of a Deed whoſe Office is to expreſs the Grantor and Grantee, and the Land or Thing granted. 5 *Rep.* 55. See *Deed.*

Prender, (Fr. *Prendre,* i. e. *Accipere*) Is the Power or Right of Taking a Thing before it is offered; as it lies in *Render*, but not in *Prender*, *&c.* 1 Rep.

Prender de Baron, Signifieth literally to take an Huſband; and it is uſed for an Exception to diſable a Woman from purſuing an Appeal of Murder, againſt one who killed her former Huſband. *S. P. C. lib.* 3. *c.* 59.

Prepenſed, (*Præpenſus*) Forethought; as *prepenſed* Malice is *Malitia Præcogitata*, which makes Killing Murder: And when a Man is ſlain upon a ſudden Quarrel, if there were Malice *prepenſed* formerly between the Parties, it is Murder, or as it is called by the Statute *prepenſed Murder.* 12 H. 7. c. 7. 3 Inſt. 51. See *Murder.*

Prerogative, (*Prærogativa Regis*, from *Præ ante*, & *Rogare*, to aſk or Demand) Is that Power, Preeminence, or Privilege which the King hath and claimeth over and beyond other Perſons, and above the ordinary Courſe of the Common Law, in Right of his Crown: Set forth in the *Statute* called *Prærogativa Regis.* 17 Ed. 2. c. 1. and other Statutes. See *King.*

Prerogative of the Biſhop of Canterbury or York, (*Prærogativa Archiepiſcopi Cantuarienſis ſive Eboracenſis*) Is an eſpecial Pre-eminence that theſe Sees have in certain Caſes above the other Biſhops within their Province. *De Antiq. Britan. Eccl. cap.* 8. *pag.* 25. This *Prerogative* of the Archbiſhop of *Canterbury*, conſiſts in viſiting the whole Province; the aſſembling of Synods, and ſupplying Defects of inferior Biſhops, *&c.* And he hath an extraordinary Power, of Calling Perſons, in any Cauſe belonging to *Spiritual* Juriſdiction, out of any Part of his Province, tho' not appeal'd, *&c.* which is now limited by 23 *H.* 8. *c.* 9. Vide *Archbiſhop.*

Prerogative Court, (*Curia Prærogativa Archiepiſcopi* Cant.) The Court wherein all Wills are proved and Adminiſtrations granted, that belong to the Archbiſhop by his *Prerogative*; that is, in Caſes where the Deceaſed had Goods of any conſiderable Value out of the Dioceſe, wherein he died within the Archbiſhop's Province, and that Value is uſually 5 *l.* and above. And if any Contention ariſe between two or more, touching any ſuch Will or Adminiſtration, the Cauſe is properly to be debated and decided in this Court; the Judge whereof is termed *Judex* Curiæ Prærogativæ *Cantuarienſis*, the Judge of the *Prerogative Court* of *Canterbury.* Not only all Cauſes of Inſtance for proving or revoking ſuch Wills as aforeſaid, and for granting or revoking ſuch Adminiſtrations; but alſo Cauſes concerning Accounts upon the ſame, and Legacies bequeathed in ſuch Wills are to be tried in the *Prerogative Court:* Though of late ſuch Legacies are ſuffered by this Court to be ſued for in the inferior Eccleſiaſtical Court, under whoſe Juriſdiction the Executor dwells. 1 *Ventr.* 233. *Wood's Inſt.* 502. Appeal lies from this Court to the King in *Chancery*; who appoints Delegates, *&c.* 25 *Hen.* 8. *c.* 19. Tho' if the Delegates revoke a Will, *&c.* they cannot grant Letters of Adminiſtration; for their Power is to hear and determine the Appeal. 2 *Bulſt.* 2. *Roll. Abr.* 233. The Archbiſhop hath Probate of every Biſhop's Teſtament, *&c.* though he hath not *Bona Notabilia* out of the Dioceſe: So where a Perſon dies beyond Sea. 4 *Inſt.* 335. Vide *Bona Notabilia.*

Prerogative Court of York. The Archbiſhop of *York* hath the like Court, but inferior to that of *Canterbury* in Power and Profit; which is called his *Exchequer.*

Preſbyter, A Prieſt; and Elder, or honourable Perſon. *Iſidore, lib.* 7.

Preſbyterium, A *Preſbytery*; or that Part of the Church where Divine Offices are performed, applied to the Choir or Chancel, becauſe it was the Place appropriated to the Biſhop, Prieſts and other Clergy, while the Laity were confined to the Body of the Church. *Mon. Ang. Tom.* 1. *pag.* 243.

Preſbyterian, A Sectariſt or Diſſenter from the Church. 13 *Car.* 2.

Preſcription, (*Præſcriptio*) Is a Title acquired by Uſe and Time, and allowed by the Law; as when a Man claims any Thing becauſe he, his Anceſtors, or they whoſe Eſtate he hath, have had or uſed it all the Time, whereof no Memory is to the contrary: Or it is where for Continuance of Time, *ultra Memoriam Hominis*, a particular Perſon hath a particular Right againſt another. *Kitch.* 104. 1 *Inſt.* 114. 4 *Rep* 32. *Preſcriptions* are properly Perſonal, and therefore are always alledged in the Perſon of him who preſcribes, *viz.* That he, his Anceſtors, or all thoſe whoſe Eſtate he hath, *&c.* or of a Body Politick or Corporation, they and their Predeceſſors, *&c.* Alſo a Parſon may *preſcribe, quod ipſe & prædeceſſores ſui*, and all they whoſe Eſtate, *&c.* for there is a perpetual Eſtate, and a perpetual Succeſſion, and the Succeſſor hath the very ſame Eſtate which his Predeceſſor had, as that continues, though the Perſon alters, like the Caſe of the Anceſtor and the Heir. 3 *Salk.* 279. There is a Difference between *Preſcription*, Cuſtom and Uſage: *Preſcription* hath Reſpect to a certain Perſon, who by Intendment may have Continuance for ever; as for Inſtance; he and all they whoſe Eſtate he hath in ſuch a Thing, this is a *Preſcription:* But Cuſtom is local, and always applied to a certain Place, as Time out of Mind there has been ſuch a Cuſtom in ſuch a Place, *&c.* And *Preſcription* belongeth to one or a few only; but Cuſtom is common to all: Now Uſage differs from both, for that may be either to Perſons or Places; as to Inhabitants of a

Town, to have a Way, &c. 2 *Nelſ. Abr.* 1277. A Cuſtom and *Preſcription* are in the Right; Uſage is in Poſſeſſion: And a *Preſcription* that is good for the Matter and Subſtance of the Thing, yet may be bad by the Manner of laying and ſetting it forth; but where that which is claimed as a Cuſtom, in or for many, will be good, that regularly will be ſo when claimed by *Preſcription* for one. *Godb.* 54. *Preſcription* is to be Time out of Mind; though it is not the Length of Time, that begets the Right of *Preſcription*, nothing being done by Time, although every Thing is done in Time, but it is a Preſumption in Law, that a Poſſeſſion cannot continue ſo long quiet and not interrupted, if it was againſt Right, or injurious to another. 3 *Salk.* 278. A *Preſcription* cannot be annexed to any Thing but an Eſtate in Fee, which muſt be ſet forth; but it is always applied to incorporeal Inheritances: One cannot make Title to Land by *Preſcription*; but only to Rent, or Profit out of Land. 2 *Mod.* 318. 4 *Rep.* 31. A Perſon may make Title by *Preſcription*, to an Office, a Fair, Market, Toll, Way, Water, Rent, Common, Park, Warren, Franchiſe, Court-Leet, Waifs, Eſtrays, &c. But nothing may be *preſcribed*, which cannot be raiſed by Grant at this Day, and a *Preſcription* muſt not be laid in an Uncertainty; no Perſon can *preſcribe* againſt an Act of Parliament, or againſt the King where he hath a certain Eſtate and Intereſt, againſt the Publick Good, Religion, &c. Nor can one *Preſcription* be pleaded againſt another, unleſs the Firſt is anſwered or traverſed; or where one may ſtand with the other. *Lutw.* 381. *Raym.* 232. 2 *Roll. Ab.* 264. 2 *Inſt.* 167. 7 *Rep.* 28. *Cro. Car.* 432. 1 *Bulſtr.* 115. 2 *Lill.* 346. Tenants in Fee-ſimple are to *preſcribe* in their own Name, and Tenants for Life, or Years, &c. though they may not *preſcribe* in their own Names, yet they may in the Name of him who hath Fee: And where a Perſon would have a Thing that lies in Grant by *Preſcription*, he muſt *preſcribe* in himſelf and his Anceſtors, whoſe Heir he is by Deſcent; not in himſelf, and thoſe whoſe Eſtate, &c. (unleſs the *Que Eſtate* is but a Conveyance to the Thing claimed by *Preſcription*) for he cannot have their Eſtate that lies in Grant without Deed, which ought to be ſhewed to the Court. 1 *Inſt.* 113. *Wood's Inſt.* 297. A Copyholder, by Reaſon of the Baſeneſs of his Tenure, cannot lay a *Preſcription* in himſelf and his Anceſtors; but he may *preſcribe* in the Name of the Lord of the Manor, that the Lord and his Anceſtors have had Common, &c. for themſelves and Tenants, &c. And this ſerves where Perſons cannot *preſcribe* in their own Name, or of any certain Perſon; Pariſhioners cannot generally *preſcribe*, but they may alledge a Cuſtom; and Inhabitants may *preſcribe* in a Matter of Eaſement, Way to a Church, Burying Place, &c. 2 *Saund.* 325. 1 *Lev.* 253. *Cro. Eliz.* 441. *Cro. Car.* 419. 2 *Roll.* 290. To lay a *Preſcription* for Common, a Man muſt ſhew, that he and his Anceſtors, or all thoſe whoſe Eſtate he hath, have Time out of Mind of Man had and uſed to have Common of Paſture in ſuch a Place, being the Land of another, &c. And as a *Preſcription* is a Title or Claim of a real Intereſt or Profit in the Land of another Perſon, it muſt be pleaded according to certain Rules; and they are not like Cuſtoms or improper *Preſcriptions*, that are by Way of Diſcharge, or for Eaſements, or for Matters of perſonal Exemption or Privilege. *Wood's Inſt.* 298, 299. A *Preſcription* may be laid in ſeveral Perſons, where it tends only to Matters of Eaſement or Diſcharge; though not where it goes to Matter of Intereſt or Profit *in alieno ſolo.* for that is a Title, and the Title of one doth not concern the other; therefore ſeveral Men having ſeveral Eſtates, cannot join in making a *Preſcription.* 1 *Mod.* 74. 3 *Mod.* 250. The Word *Eaſement* is a Genus to ſeveral Species of Liberties, which one may have in the Soil of another, without claiming any Intereſt in the Land itſelf; but where the Thing was ſet forth in a *Preſcription* to catch Fiſh in the Water of another Man, &c. and no Inſtance could be given of a *Preſcription* for ſuch a Liberty by the Word *Eaſement*, a Rule was made to ſet the *Preſcription* right, and to try the Merits. 4 *Mod.* 362. In Treſpaſs for breaking the Plaintiff's Cloſe, the Defendant *preſcribed*, that the Inhabitants of ſuch a Place, Time out of Mind, had uſed to dance there, at all Times of the Year, for their Recreation, and ſo juſtified; and Iſſue being taken upon this *Preſcription*, the Defendant had a Verdict; it was objected againſt it, that a *Preſcription* to dance in the Freehold of another, and ſpoil his Graſs was ill, eſpecially as laid in the Defendant's Plea, *viz.* At all Times of the Year, and not at ſeaſonable Times, and for all the Inhabitants; who though they may *preſcribe* in Eaſements which are neceſſary, as a Way to a Church, &c. they cannot in Eaſements for Pleaſure only: But adjudged, that the *Preſcription* is good, Iſſue being taken upon it, and found for the Defendant; although it might have been ill on a Demurrer. 1 *Lev.* 175. 2 *Nelſ.* 1280. A Cuſtom that the Farmers of ſuch a Farm have always found Ale, &c. to ſuch a Value at Perambulations, was held naught; becauſe it is no more than a *Preſcription* in Occupiers, which is not good in Matter to charge the Land. 2 *Lev.* 164. *Preſcription* by the Inhabitants of a Pariſh to dig Gravel in ſuch a Pit, which was the Soil of *W. R.* it was doubted whether this was good, or not, though it was to repair the Highway; but the Inhabitants may *preſcribe* for a Way, and by Conſequence for neceſſary Materials to repair it. 2 *Lutw.* 1346. A Defendant pleaded, that within ſuch a Pariſh, all Occupiers of a certain Cloſe *habent, & habere conſueverunt*, a Way leading over the Plaintiff's Cloſe, to the Defendant's Houſe; this was held to be ill, for it is not like a *Preſcription* to a Way to the Church or Market, which are neceſſary, & *pro bono publico.* 2 *Ventr.* 186. Where a Man *preſcribes* for a Way to ſuch a Cloſe, he muſt ſhew what Intereſt he hath in the Cloſe: *Aliter* if he *preſcribes* for a Way to ſuch a Field; becauſe that may be a common Field by Intendment. *Latch* 160. The Plaintiff declared, that the Occupiers of the adjoining Field have, Time out of Mind, repaired the Fences, which being out of Repair, his the Plaintiff's Beaſts eſcaped out of his own Ground, and fell into a Pit; it is good, without ſhewing any Eſtate in the Occupiers, but it had not been ſo if the Defendant had *preſcribed.* 1 Ventr. 264. *Preſcription*, &c. to take Underwood growing on the Lands of another, to make Hedges, is not good. 1 *Leon.* 313. A Man may claim a Fold courſe, and exclude the Owner of the Soil by *Preſcription.* 1 Saund. 153. But a Diverſity has been taken where a *Preſcription* takes away the whole Intereſt of the Owner of the Land; and where a particular Profit is reſtrained: In one Caſe it is good, and in the other it is void. 1 *Leon.* 11. If a Perſon *preſcribes* for Common Appurtenant, it is ill, unleſs it be for Cattle *Levant & Couchant*, &c. And the Reaſon is, becauſe by ſuch a *Preſcription* the Party claims only ſome Part of the Paſture, and the *Quantum* is aſcertained by the Levancy and Couchancy, the Reſt being left for the Owner of the Soil; and therefore if he who thus *preſcribes*, ſhould put in more Cattle than are Levant and Couchant on his Tenement, he is a Treſpaſſer. *Noy* 145. 2 *Saund.* 324. In a *Preſcription* to have Common, the Jury found it to be Paying every Year a Penny: Here the *Preſcription* is intire, whereof the Payment of one Penny is Parcel; which ought to be intirely alledged in the *Preſcription* in the Plea, or it will not be good. *Cro. Eliz.* 563, 564. But where the Payment is collateral from the *Preſcription*, a *Preſcription* may be good without alledging it. *Cro. Eliz.* 405. Upon the Pleadings in a Cauſe, it was a Queſtion, Whether a Toll, independent of Markets and Fairs, might be claimed by *Preſcription*, without ſhewing that the Subject hath ſome Benefit; and ſome Arguments were brought for it, from an Authority in *Dyer* 352. Though by *Holt* Ch. Juſt. this *Preſcription* cannot be good, becauſe there was no Recompence for it; and every *Preſcription* to charge the Subject with a Duty, muſt import ſome Benefit to him who pays it; or elſe ſome Reaſon muſt be ſhewed why the Duty is claimed. 4 *Mod.* 319. A Court-Leet is derived out of the Hundred; and if a Man claims a Title to the Leet, he may *preſcribe* that he and his Anceſtors, and all thoſe whoſe Eſtate he hath in the Hundred, Time out of Mind had a Leet. 1 *Inſt.* 125. There may be a *Preſcription* for a Court to hold Pleas of all Actions, and for any Sum or Damage, and it will be good. *Jenk. Cent.* 327. If a Court held by *Preſcription* is granted and confirmed by the King's Letters Patent; this doth not deſtroy the *Preſcription*, but it is ſaid the Court may be held by *Preſcription* as before. 2 *Roll. Abr.* 271. And a Grant may enure as a Confirmation of a *Preſcription*; and the *Preſcription* continue unaltered by a new Charter, *&c.* where the Charter is not contrary to the *Preſcription. Moor* 818, 830. But in ſome Caſes it is intended, that a *Preſcription* ſhall begin by Grant; and as to *Preſcriptions* in general, the Law ſuppoſes a Deſcent, or Purchaſe originally. *Cro. Eliz.* 709. 1 *Inſt.* 113. Every *Preſcription* is taken ſtrictly: And a Man ought not to *preſcribe* to that which the Law of common Right gives. 3 *Leon.* 13. *Noy* 20. A *Preſcription* muſt have a lawful Commencement, and peaceable Poſſeſſion and Time are inſeparably incident to it. 1 *Inſt.* 113. Though a Title gained by Cuſtom or *Preſcription*, will not be loſt by Interruption of the Poſſeſſion for ten or twenty Years; but it may be loſt by Interruption in the Right. 1 *Inſt.* 114. 2 *Inſt.* 653. *Preſcription* at Common Law, is Time out of Memory of Man; and by *Statute*, where a certain Time is limited, as from the Reign of *Rich.* 1, *&c. Co. Litt.* 115. *Preſcriptions* for repairing Highways, ſee *Highways*.

Preſcriptions againſt Actions and Statutes. The 7 *Hen.* 8. ordains, That four Years being paſt after the Offences committed, provided againſt by this Statute, no Suit can be commenced. By 31 *Eliz. cap.* 5. all Actions, *&c.* brought upon Statutes, the Penalty whereof belongs to the King, ſhall be brought within two Years after the Offence done, or ſhall be void. And the Stat 23 *Eliz. cap.* 1. enacts, that Offences compriſed in that Statute, *&c.* are inquirable and determinable before Juſtices of Peace and Aſſiſe, within a Year and a Day after the Offence, *&c.* ſo that whoſoever offendeth againſt any of theſe Statutes and eſcapes unqueſtioned for four Years, Two, or one Year, may be ſaid to *preſcribe* againſt the Actions and Puniſhments ordained by thoſe Statutes: And there are other Statutes which have the like Appointments or Limitations of Time, whence may ariſe the like *Preſcription* and Bar. 4 *Rep.* 84. 2 *Inſt.* 652. Vide *Action.*

Preſcription by the *Eccleſiaſtical Law*, as to Tithes, *&c.* See *Modus Decimandi.*

Preſence. Sometimes the *Preſence* of a Superior Magiſtrate, takes away the Power of an Inferior. 9 *Rep.* 118. And the *Preſence* of one may ſerve for all the reſt of the Feoffees or Grantees, *&c.* 3 *Rep.* 26. When *Preſence* of a Man, in the Place where an Offence is done, may make him guilty, *vide Acceſſary.*

Preſentation, (*Præſentatio*) Is properly the Act of a Patron, offering his Clerk to the Biſhop of the Dioceſe, to be inſtituted in a Church or Benefice of his Gift, which is void. 2 *Lill. Abr.* 351. Anciently the *Preſentation* to all Churches was ſaid to be in the Biſhop of common Right, till ſince it has been indulged to the Laity, to encourage them to build and endow Churches; and now if the Patron neglects to *preſent* to the Church, then this Right returns to the Biſhop by Lapſe, *&c.* 1 *Nelſ. Abr.* An *Alien* born cannot *preſent* to a Benefice in his own Right; for if he purchaſe an Advowſon, and the Church becomes void, the King ſhall *preſent* after Office found that the Patron is an Alien. 2 *Nelſ.* 1290. And by Statute no Alien ſhall purchaſe a Benefice in this Realm; nor occupy the ſame, without the King's Licence, on Pain of a *Præmunire.* 7 R. 2. cap. 12. *Papiſts* are diſabled to *preſent* to Benefices, and the Univerſities are to *preſent*, *&c.* But a Popiſh Recuſant may grant away his Patronage to another, who may make *Preſentation*, where there is no Fraud. Stat. 3 *Jac.* 1. 1 *W. & M.* 1 *Jon.* 19. All Perſons that have Ability to purchaſe or grant, have likewiſe Ability to *preſent* to vacant Benefices: But a Dean and Chapter cannot *preſent* the Dean; nor may a Clergyman who is Patron *preſent* himſelf, though he may pray to be admitted by the Ordinary, and the Admiſſion ſhall be good. An *Infant* may *preſent* of whatſoever Age, becauſe Guardians have not Power to do it in Right of the Heir; a Guardian in Socage cannot *preſent* to a Church, by the Law he being not to meddle with any Thing but for what he may Account, which he cannot do for a *Preſentation*, by Reaſon he is to take Nothing for it: If a *Feme Covert* hath Title to *preſent*, the *Preſentation* ought to be in the Name of both Husband and Wife, and not be by her alone; or he may *preſent* in his own Name during the Coverture: *Coparceners* are but as one Patron, and ought to agree in the *Preſentation* of one Perſon; if they cannot agree, the Eldeſt ſhall *preſent* firſt alone, and the Biſhop is obliged to admit her Clerk, and afterwards the others in their Order ſhall prefer their Clerks; *Jointenants* and *Tenants in Common* muſt regularly join in *Preſentation*, and if either *preſent* alone, the Biſhop may refuſe his Clerk, as he may alſo the Clerk *preſented* by the major Part of them; but if there are two Jointenants of the next Avoidance, one of them may *preſent* the other, and two Jointenants may *preſent* a Third, but not a Stranger: The next *Preſentation* was granted to four Perſons, *& eorum cuilibet conjunctim & diviſim*, *&c.* And the Church becoming void, one of the Grantees alone *preſented* one of the others; and it was adjudged, that this *Preſentation* by one was good: When an aggregate *Corporation preſents*, it muſt be under their common Seal, and by the true Name of their Corporation: The *King* may *preſent* by Letters Patent under the Great Seal, and by theſe Words, *viz. Damus & concedimus*; for this amounts to a Warrant for the Biſhop to admit the Clerk; it is ſaid the King may *preſent* by Word, or in Writing under any Seal, who cannot do any other legal Act but by Matter of Record; and in the Opinion of ſome, the King may *preſent* to a Church by his Letter ſent to the Ordinary to inſtitute and induct ſuch a One his Clerk to the Living; but the moſt ſecure Way is to have a *Preſentation* under the Great Seal: If a Rector is made Biſhop, the King ſhall *preſent* to the Rectory, unleſs he grant to the Biſhop before he is conſecrated, a Diſpenſation to hold it with his Biſhoprick; and if an Incumbent of a Church is made a Biſhop, and the King *preſents* or grants that he ſhall hold the Church in *Commendam*, which is *quaſi* a *Preſentation*, a Grantee of the next Avoidance or *Preſentation* hath loſt it, the King having the next *Preſentation*: If the King do *preſent* to a Church by *Lapſe*, where he ought to *preſent Pleno jure*, and as Patron of the Church, ſuch a *Preſentation* is not good; for the King is deceived in his Grant, by miſtaking his Title, which may be prejudicial to him, the *Preſenting* by Lapſe intitling only that *Preſentation*: The

Lord Chancellor *preſents* to the King's Benefices under 20*l.* &c. 2 *Roll. Abr.* 354. 3 *Inſt.* 156. 1 *Inſt.* 186. 2 *Nelſ. Abr.* 1288, 1290. 2 *Lill.* 351. The King may repeal a *Preſentation*, before his Clerk is inducted; and this he may do by granting the *Preſentation* to another, which without any farther Signification of his Mind is a Revocation of the firſt *Preſentation.* *Dyer* 293, 360. A Patron may revoke his *Preſentation* before Inſtitution, but not afterwards; a *Preſentation* being no more than a Power given to the Ordinary to admit the Clerk, and if the Patron die before Induction, his *Preſentation* is determined. But this was in the Caſe of the King; for in the Caſe of a common Perſon, it he die after Inſtitution, and before Induction, the *Preſentation* is not determined by his Death. *Latch* 191. *Dyer* 348. If two Patrons *preſent* their Clerks to a Church, the Biſhop is to determine who ſhall be admitted by a *Jus Patronatus*, &c. And two Patrons pretending a Title to *preſent*, one of them *preſented W. R.* but the Biſhop refuſed Inſtitution; whereupon he ſued in the Court of Audience of the Archbiſhop, and had an Inhibition to that Biſhop, and upon that Suit he obtained and Inſtitution by the Archbiſhop, on which he was inducted; afterwards the Biſhop who was inhibited, granted Inſtitution upon the *Preſentation* of the other Patron, and his Clerk was likewiſe inducted; and thereupon *W. R.* who had been inſtituted and inducted before, on a Motion procured a Prohibition, becauſe by the firſt Induction the Incumbency was determined: So that *quoad* the Incumbence, the Prohibition was granted; but not as to the Contempt of the Ordinary after he had been inhibited. *Moor* 499. The Father was incumbent, and after his Death the Patron *preſented* his Son, who was refuſed by the Biſhop, becauſe by the Canon Law *Filius non poteſt ſuccedere patri in eadem Eccleſia*, and the Patron *preſented* another Perſon; then the Son who was firſt *preſented*, obtained a Diſpenſation *non obſtante* the Canon; but the Ordinary admitted the ſecond *Preſentee*, who was alſo inſtituted and inducted; thereupon the Son ſued him and the Biſhop in the Spiritual Court, but a Prohibition was granted. *Latch* 191. A Clerk may be refuſed by the Biſhop, if the Patron is excommunicate; or if the Clerk is not *Perſona Idonea*, which includes Ability of Learning, and Honeſty in Converſation, &c. But in a *Quare Impedit* brought againſt the Biſhop for Refuſal of a Clerk, he muſt ſhew the Cauſe of his Refuſal ſpecially and directly; and becauſe the Clerk is of ill Life, or a Schiſmatick in general, is not ſufficient, without ſhewing what Crimes, or Sort of Schiſm he has been guilty of: And the Temporal Court then will judge whether the Cauſe be juſt or not; and if the Party denies the ſame, the Court may write to the Metropolitan to examine the Matter, and certify; and though the Matter be of a Spiritual Nature, it ſhall be tried by a Jury: For whether the Cauſe be Temporal or Spiritual, the Examination of the Biſhop concludes not the Clerk; he is Judge of the Ability, but not the ultimate Judge: But in Caſe of Refuſal for Inſufficiency in Learning, it hath been adjudged, that the Ordinary is not accountable to any Temporal Judge; and that *in Literatura minus ſufficiens*, &c. is a good Plea, without ſetting forth the Kind of Learning, or Degrees of it. 5 *Rep.* 58. 2 *Inſt.* 631. 3 *Lev.* 311. *Show.* 88. *Wood's Inſt.* 32, 33. That the *Preſentee* has a Benefice already, is no good Cauſe of Refuſal, &c. 1 *Roll. Abr.* 355. If the Biſhop refuſes to admit the Clerk *preſented*, he muſt give Notice of his Refuſal, with the Cauſe of it forthwith; and on ſuch Notice the Patron muſt *preſent* another Clerk, within ſix Months from the Avoidance, if he thinks the Objection againſt his firſt Clerk contains ſufficient Cauſes of Refuſal; but if not, he may bring his *Quare Impedit* againſt the Biſhop. 2 *Roll. Abr.* 364. And where a Church becomes void by Deprivation by the Canon Law, or Reſignation, the Patron muſt have Notice from the Ordinary, to *preſent* another Perſon: But if the Church becomes void by the Act of God, as Death of the Incumbent; or by Creation, or Ceſſion, &c. the Patron is bound to take Notice himſelf of the Avoidance, and to *preſent*, &c. *Wood's Inſt.* 154. If a Defendant, or any Stranger, *preſents* a Clerk pending a *Quare Impedit*, and afterwards the Plaintiff obtains a Verdict and Judgment, he cannot by Virtue of that Judgment remove him who was thus *preſented*; but he is to bring a *Scire facias* againſt him to ſhew Cauſe *Quare Executionem non habet*; and then if it be found that he had no Title, he ſhall be amoved: Now the Way to prevent ſuch a *Preſentation*, is to take out a *Ne admittas* to the Biſhop; and then the Writ *Quare Incumbravit* lies, by Virtue whereof the Incumbent ſhall be amoved, and put to his *Quare Impedit*, let his Title be what it will; but if a *Ne admittas* be not taken out, and another Incumbent ſhould come in by good Title *pendente lite*, he ſhall hold it. *Sid.* 93. 2 *Cro.* 93. A Man muſt ſet forth a *Preſentation* in himſelf, or thoſe under whom he claims, in a *Quare Impedit*; and it ought to be alledged in him that hath the Inheritance: And when ſix Months paſs hanging the Writ, &c. by the Diſturbance of any one, ſo that the Biſhop hath a Right to *preſent* by Lapſe, Damages ſhall be recovered by two Years Value of the Church, if the Perſon loſe his *Preſentation*; and if he recovers his *Preſentation* within the ſix Months, Damages to Half a Year's Value, &c. 2 *Inſt.* 362. *Vaugh.* 7, 57. *Cro. Eliz.* 518. 13 *Ed.* 1. *c.* 5. Where a Perſon gets the Fee to his *Preſentation*, which is his Title, he muſt in his Declaration alledge the *Preſentation* to be *Tempore pacis*, or it may be intended to be *Tempore belli*, and then it is no Title; but where the bare *Preſentation* is not his Title, but only in Purſuance of a former Right, in ſuch Caſe he may alledge it generally: As for Inſtance; where he declares that *A. B.* was ſeiſed of the Manor of *D.* as of Fee, to which an Advowſon was appendant, and that being ſo ſeiſed he *preſented W. R.* and afterwards granted the next Avoidance to the Plaintiff; this is good, for here the Plaintiff ſhews a precedent Right, and doth not make the *Preſentation* itſelf his Title. 1 *Mod.* 130. 2 *Mod.* 183. 3 *Salk.* 280. If a Church becomes void in the Lifetime of a Biſhop, he cannot deviſe the next *Preſentation*; but if the Biſhop, or any Incumbent of a Church, hath the Advowſon in Fee, and then either of them deviſeth, that upon the next Avoidance his Executor ſhall *preſent*; this is good, though they deviſe the Inheritance to another. *Dyer* 285. When a Biſhop hath a *Preſentation* in Right of his Biſhoprick, and dies, his Executor, nor Heir, ſhall not have the void Turn; but the King, in whoſe Hands are the Temporalties, and he hath a Right to *preſent* upon an Avoidance after the Seizure, on the Death of the Biſhop: Though where an Incumbent was ſeiſed of the Advowſon in Fee, and died, upon a Queſtion who ſhould *preſent*, either his Heir or Executor, the Advowſon not deſcending to the Heir till after the Death of his Anceſtor, and immediately upon his Death the Church was void, and therefore that Avoidance was veſted in the Executor; it was adjudged, that the Heir ſhall *preſent*, becauſe the Deſcent to him, and the Avoidance to the Executor, happened at one and the ſame Inſtant, and where two Titles concur in an Inſtant, the Elder Title ſhall be preferred. 3 *Lev.* 47. A Grant was made of the next *Preſentation* to a Church, the Grantee died, and then the Church became void; and it was held, that the Executor of the Grantee ſhall have the *Preſentation* as a Chattel. *Glanvil*, *lib.* 6. *c.* 7. 2 *Nelſ. Abr.* 1286. But in *Quare Impedit*, the Defendant pleaded, that the Patron granted the next *Preſentation* to B. B. who died, and made his Executor, who *preſented* the Defendant; Iſſue was taken upon *Non conceſſit*, and the Jury found, that the Patron granted the *Preſentation* to B. B. during his Life, and that he died before the Church became void; adjudged that this was not an abſolute Grant of the next *Preſentation*, but reſtrained during the Life of the Grantee; wherefore it ſhall not go to the Executor, unleſs the Church become void in the Life-time of the Teſtator. *Cro. Car.* 363. A Tenant in Tail of an Advowſon, and his Son and Heir joined in a Grant of the next *Preſentation*, the Tenant in Tail died; this Grant was held void as to the Son and Heir, becauſe he had nothing in the Advowſon at the Time that he joined with his Father in the Grant. *Hob.* 45. By Laſt Will and Teſtament, the Right of *Preſenting* to the next Avoidance, may be deviſed to any Perſon; and by Deed the next Avoidance of a Church may be granted, where the Church is then full; alſo whilſt a Church is void, the next Avoidance that ſhall happen, or the Inheritance of the Advowſon may be granted away, and by Deed or Grant, the Right of *Preſenting* will paſs: But the void Turn itſelf is not grantable by any common Perſon, tho' it may be granted by the King, and be good; for that it is a meer Spiritual Thing annexed to the Perſon of the Patron, and during the Time of the Vacation it is a Thing in Right and in Action, the Fruit and Execution of the Advowſon, not the Advowſon itſelf. 2 *Cro.* 371. *Clergym. Law* 154. As a void Turn is not grantable; ſo if Two have a Grant made to them of a next Avoidance, and after the Church is void, one doth releaſe all his Right and Title which he had in the Advowſon and *Preſentation* to his Companion, who *preſents* to the Church, this *Preſentation* is void; becauſe after the Avoidance, the Intereſt was attached in both, and both had a Power to *preſent*, which could no more be releaſed by one to the other, than it could be granted in that Manner, being but a Right, and not a Chattel in Poſſeſſion: But a Releaſe in this Caſe may be good, if it be made before the Church is void, and the Party to whom made may *preſent*, *&c.* 1 *And.* 223. 3 *Cro.* 173. *Moor* 467. If a *Preſentation* itſelf bears Date whilſt the Church is full of another Clerk, it is void: And where two or more have a Title to *preſent* by Turns, one of them *preſents*, and his Clerk is admitted, inſtituted and inducted, and is afterwards deprived for ſome Crime; he ſhall not *preſent* again, but that *Preſentation* ſhall ſerve his Turn: Though where the Admiſſion and Inſtitution of his Clerk is void, there the Turn ſhall not be ſerved; as if after Induction he neglects to read the thirty-nine Articles, *&c.* his Inſtitution is void by the Stat. 13 *Eliz.* and the Patron may *preſent* again. *F. N. B.* 33. 5 *Rep.* 102. The Right of *Preſenting* to a Church, may paſs from one ſeiſed of the ſame, by the Patron's Acknowledging of a Statute, *&c.* which being extended, if the Church doth become void, during the Conuſee's Eſtate, the Conuſee may *preſent. Owen* 49. Every Church-Living is to be given and received by *Preſentation*, Collation, *&c.* And where-ever a Writ of *Quare Impedit*, or Right of Advowſon will lie for any Man on a Diſturbance; there he hath a Right to the *Preſentation* for that Time at leaſt. 1 *Shep. Abr.* 240, 241. Where the Patron of a Church, hath an Eſtate in the Manor or other Thing to which it is appendant, or has it in Groſs for Life or Years only; if the Church becomes void during his Eſtate, he may *preſent* to it: Or he may grant the next Avoidance to another for a Term, and this will be good, if it happen in the Time. But if one be diſſeiſed of his Manor, and the Diſſeiſor die ſeiſed, and after the Church become void; in this Caſe the Diſſeiſee cannot *preſent* till he hath recontinued the Manor, but before the Dying ſeiſed he might do it. *Co. Litt.* 120. 8 *Rep.* 145. *Dyer* 29. *Plowd.* 500. A *Preſentation* to a Church by a Perſon who had not Right, at Common Law, did put the rightful Patron out of Poſſeſſion, and oblige him to bring the Writ of Right of Advowſon, *&c.* And *Preſentment* by Uſurpation, and Admiſſion upon it, doth gain the Fee to the *Preſentor* till he be evicted by Action. 6 *Rep.* 30. 1 *And.* 300. *Yelv.* 91. One may not make a Deputy to preſent for him: And yet a *Preſentation* by a Proctor, is ſaid to be good, as if done by the Party himſelf. *F. N. B.* 35. If a Man do *preſent* to any Church in Time of War, the Law hath ſuch Regard to the original Act, *viz.* the *Preſentation*, that all which follows thereon ſhall be void. 6 *Ed* 3. 41. 2 *Co. Rep.* 93. Where a common Perſon is Patron, he may *preſent* to a Church by Parol; as well as by writing to the Biſhop. *Co. Litt.* 120. A *Preſentation* doth not carry with it the Formality of a Deed; but is in the Nature of a Letter Miſſive, by which the Clerk is offered to the Biſhop; and it paſſeth no Intereſt, as a Grant doth, being no more than a Recommendation of a Clerk to the Ordinary to be admitted. *Young Clergym. Lawyer* 17, 18. But where a Plaintiff declared upon a Grant of the next *Preſentation*, and on *Oyer* of the Deed it appeared to be only a Letter written by the Patron to the Father of the Plaintiff, that he had given his Son the next *Preſentation*; adjudged, that it would not paſs by ſuch Letter, without a formal Deed. *Owen* 47.

Form of a *Preſentation* to a *Benefice.*

R*Everendo in Chriſto Patri & Domino, Domino B. Permiſſione Divina Epiſcopo* S. *&c. ejus vel in Abſentia Vicario ſuo in Spiritualibus Generali, aut alii cuicunque in hac parte ſufficientem Authoritatem habenti: Prænobilis* A. B. *Baro de, &c. verus & indubitatus Patronus Rectoriæ Eccleſiæ Parochialis de, &c. Salutem in Domino Sempiternam. Ad Eccleſiam Parochialem de, &c. prædict. veſtræ Dioceſeos modo per mortem naturalem* C. D. *ultimi Incumbentis ibidem vacantem, & ad meam* Præſentationem *pleno jure ſpectantem, dilectum mihi in Chriſto* E. F. *Clericum, Artium Magiſtrum, Paternitati veſtræ* Præſento, *humiliter ſupplicans ut præfatum* E. F. *ad dictum Eccleſiam admittere, ipſumq; in Rectoriam ejuſdem Eccleſiæ Inſtitui & Induci facere, cum ſuis juribus & pertinentiis Univerſis, cæteraq; omnia & ſingula peragere & adimplere in hac parte, quæ ad veſtrum munus Epiſcopale pertinere videbuntur, dignenimi cum favore. In cujus rei Teſtimonium, his* Præſentibus *ſigillum meum appoſui. Dat' Die, &c. Anno Regni, &c. Annoq; Dom.* 1727.

A *Grant* of the next *Preſentation to a Church.*

TO all *to whom theſe* Preſents *ſhall come*, A. B. *of, &c. Eſq; the true and undoubted Patron of the Rectory or Pariſh Church of* D. *in the County and Dioceſe of,* &c. *ſendeth Greeting.* Know ye, *that the ſaid* A. B. *for divers good Cauſes and Conſiderations him thereunto moving,* hath *given, granted and confirmed, and by theſe Preſents, doth for him and his Heirs, give, grant and confirm unto* C. D. *of,* &c. *his Executors, Adminiſtrators and Aſſigns, the firſt and next Advowſon,* Preſentation, *free Diſpoſition and Right of Patronage, of and to the Parſonage, Rectory, or Pariſh Church of* D. *aforeſaid, with all its Appurtenances, with full Power and Authority to and for the ſaid* C. D. *his Executors, Adminiſtrators and Aſſigns, to* preſent *a learned and fit Perſon to the ſaid Parſonage, Rectory, or Pariſh-Church, with all its Rights and Appurtenances, whenſoever the ſame ſhall firſt and next happen to become void, by the Death, Reſignation, Ceſſion, or Deprivation of* E. F. *the preſent Incumbent, or otherwiſe however; and to do and perform all and every other Act and Acts, Thing and Things whatſoever, in order to the ſame, in* *as full and ample Manner, to all Intents and Purpoſes, as the ſaid* A. B. *or his Heirs might, or hereafter could have done, if this preſent Grant had not been made.* In Witneſs, &c.

Right of *Preſentation* may be forfeited in ſeveral Caſes: As by *Attainder* of the Patron, or by *Outlawry*, and then the King ſhall *preſent*; and if the Outlawry be reverſed, where the Advowſon is forfeited by the Outlawry, and the Church becomes void after, the *Preſentation* is veſted in the Crown; but if at the Time of the Outlawry the Church was void, then the *Preſentation* is forfeited as a Chattel, and upon reverſing the ſame, the Party ſhall be reſtored to it. By *Appropriation* without Licence from the Crown, Right of *Preſentation* may be forfeited: though the Inheritance in this Caſe is not forfeited, only the King ſhall have the *Preſentation* in Nature of a Diſtreſs, till the Party hath paid a Fine for his Contempt. By *Alienation* in Fee of the Advowſon, by a Grantee for Life of the next Avoidance, a *Preſentation* is forfeited; and after ſuch Alienation the Grantor may *preſent*, but then he muſt enter for the Forfeiture of the Grantee in the Life-time of the Incumbent, to determine his Eſtate before the *Preſentation* veſts in him on the Incumbent's Death. And by *Simony* it may be likewiſe forfeited and loſt, where any Perſon for Money, &c. ſhall *preſent* any one to a Benefice. *Moor* 269. *Plowd.* 299. 2 *Roll. Abr.* 352. *Stat.* 31 *Eliz.* See *Advowſon*, *Patron*, *Simony*, &c.

Preſentee, The Clerk *preſented* to a Church by the Patron. In our Statutes there is Mention of the *King's Preſentee*, that is he whom the King *preſents* to a Benefice. 13 *R.* 2. *c.* 1.

Preſentia, Preſents, ſo called, becauſe they are given *Præſenti:* And they differ from *Munera*, which are Gifts ſent to the Perſon. *Matt. Pariſ. Anno* 1170.

Preſentment, Is a meer Denunciation of Jurors, or ſome Officers, &c. (without any Information) of an Offence inquirable in the Court whereunto it is *preſented. Lamb. Eiren. lib.* 4. *c.* 5. Or *Preſentment* is an Information made by the Jury in a Court, before a Judge who hath Authority to puniſh any Offence done contrary to the Law: It is that which a Grand Jury finds and *preſents* to the Court, without any Bill or Indictment delivered; and it is afterwards reduced into the Form of an Indictment. 2 *Inſt.* 739. The *Preſentment* is drawn up in *Engliſh* by the Jury, in a ſhort Note, for Inſtructions to draw the Indictment by; and differs from an *Indictment*, in that an Indictment is drawn up at large in *Latin*, and brought ingroſſed to the Grand Jury to find. 2 *Lill. Abr.* 353. There are *Preſentments* of Juſtices of Peace in their Seſſions, of Offences againſt Statutes, in order to their Puniſhment in ſuperior Courts; and *Preſentments* taken before Commiſſioners of Sewers, &c. But a *Preſentment* of Commiſſioners of Sewers was quaſhed, becauſe it did not appear in the *Preſentment* by what Authority the Commiſſioners did ſit who took the *Preſentment*, or that any of them were of the *Quorum*, as directed by Statute. *Hill.* 1649. And *Preſentments* are made in Courts Leet and Courts Baron, before the Stewards thereof; and in the latter of Surrenders, Grants, &c. Alſo by Conſtables, Church-wardens, Surveyors of the Highways, &c. of Things belonging to their Offices.

Preſident, (*Præſes*) Is uſed for the King's Lieutenant in any Province, as *Preſident* of *Wales*, &c.

Preſident of the Council, Relates to the Function of the Perſon, and is the Fourth great Officer of State: He is as antient as the Reign of King *John*; and hath ſometimes been called *Principalis Conſiliarius*, and other Times *Capitalis Conſiliarius* The Office of *Preſident of the Council* was ever granted by Letters Patent under the Great Seal *durante beneplacito*; and this Officer is to attend upon the King, to propoſe Buſineſs at the Council Table, and report to his Majeſty the Tranſactions there: Alſo he may aſſociate the Lord Chancellor, Treaſurer, and Privy Seal, at naming of Sheriffs; and all other Acts limited by any Statute, to be done by them. 21 *H.* 8. *c.* 20.

Preſident of the Weavers. There is Mention of a *Preſident of Weavers* of *Kidderminſter-Stuffs* Stat. 22 & 23 Car. 2. c. 1.

Preſſing, for *Sea* Service: In Time of War, the King has Power to *impreſs* Seamen; though he ought not to impriſon them. *Comber.* 340. But Watermen withdrawing themſelves during the Time of *Preſſing*, ſhall be liable to Impriſonment, &c. Stat. 2 & 3 *P. & W.* Where a Man receives *Preſs* Money to ſerve the King, and is deliver'd over to a Captain; (not common *Preſs-Maſters*) if he runs away without Licence, it is Felony having Benefit of Clergy, by the 7 *Hen.* 7. *cap.* 1. *Hale's Hiſt. P. C.* 678. A late Statute has ordain'd, that every Perſon who ſerves in any Merchant Ship belonging to the Subjects of *Great Britain*, being Fifty-five Years of Age, or under Eighteen; and alſo every Foreigner in ſuch Ships ſhall be privileged from being *preſs'd* into his Majeſty's Service; and all others of any Age, for the Space of two Years after their firſt going to Sea; but Apprentices are thus exempted three Years. Stat. 13 *Geo.* 2. *cap.* 17. See *Navy*.

Preſt, Is taken for a Duty paid by Sheriffs upon their Accounts in the *Exchequer*; or for Money left or remaining in their Hands. 2 & 3 *Edw.* 6. *cap.* 4.

Preſt-Money, Is ſo termed from the Fr. *Preſt*, i. e. *Promptus, Expeditus*; for that it binds thoſe that receive it to be *ready* at all Times appointed, commonly meant of Soldiers. 18 *Hen.* 6. *cap.* 19. 7 *Hen.* 7. *cap.* 1. 3 *Hen.* 8. *cap.* 5.

Preſtation-Money, (*Præſtatio*, a Performing or Paying) Is a Sum of Money paid by Archdeacons, and other Clergymen, yearly to their Biſhop, *pro exteriori Juriſdictione.* And *Præſtatio* was anciently uſed for other Payments; and ſometimes for Purveyance.——*Et quieti ſint a* Præſtatione *Muragii*, &c. Chart. Hen. 7.

Preſumption, (*Præſumptio*) Signifies an Opinion or Belief of a Thing; and is of three Sorts: 1. *Violent Preſumption*, which is many Times *plena Probatio*; as if one be found to be killed in a Houſe, and a Man is obſerved to come out of that Houſe with a bloody Sword or Knife, no other Perſon being at that Time in the Houſe; this is a *violent Preſumption*, that that Man was the Murderer, and paſſeth for Proof. 2. *Probable Preſumption*, which is of ſome Weight, though it hath but a ſmall Effect. 3. *Light Preſumption*, *Levis ſeu Temeraria*, which proveth nothing at all. 1 *Inſt.* 6. If all the Witneſſes to a Charter of Feoffment or other Deed be dead, then *violent Preſumption*, which ſtands for a Proof, is continual and quiet Poſſeſſion: If a Defendant pleads Payment to a Bond, and it appears that the Debt is of very long ſtanding by the Bond, and it hath not been demanded, nor Intereſt paid for many Years, it ſhall be *preſumed* that the Money is paid, though the Plaintiff hath the Bond in his Cuſtody: Alſo if a Rent be behind and in Arrear for twenty Years, and the Landlord gives a Receipt for the laſt Year that is due, all the Reſt is *preſumed* to be paid, &c. 1 *Inſt.* 6, 373. *Wood's Inſt.* 599. Where divers Houſes are let to a Man by one Leaſe, the Court will *preſume* that the Leſſee is in Poſſeſſion of them all, if he be in Poſſeſſion of any one of them, and the contrary doth not appear to the Court: And ſo in other Caſes, though *Preſumption* is what may be doubted of, yet it ſhall be accounted Truth, if the contrary be not proved. 2 *Lill. Abr.* 354. But no *Preſumptions* ought to be admitted againſt the *Preſumptions* of Law, and a Wrong ſhall never be *preſumed.* 1 Inſt. 232, 373.

Preſumptio, Was anciently taken for Intruſion, or the unlawful Seiſing of any Thing. *Leg. Hen.* 1. *cap.* 11.

Pretender. The *pretended Prince of Wales* is attainted by Statute 13 *Will.* 3. *cap.* 3. And the Lord Treaſurer, &c. out of the Money granted by Parliament is impowered to give 100,000*l.* Reward to any one that ſhall ſeize the *Pretender*, when he ſhall land or attempt to land in *England*, &c. 1 Geo. 1.

Pretenſed Right, (*Jus Prætenſum*) Is where one is in Poſſeſſion of Land, and another who is out of Poſſeſſion claims and ſues for it; here the *pretenſed Right or Title* is ſaid to be in him who ſo claims and ſues for the ſame. *Blount.* See *Mod. Caſ.* 302.

Pretium Sepulchri, Is applied to thoſe Goods which accrue to the Church when a Corps is buried. *Iriſh Can. Lib.* 19. *c.* 6.

Price. Things are to be ſold at reaſonable *Prices*: And Juſtices in Corporations, &c. may ſet the *Price* of Victuals and other Things, by Statute 23 *Ed.* 3. *c.* 6. 3 *H.* 8. *c.* 8.

Pride-gavel, (From *Prid*, the laſt Syllable of *Lamprid*, and *Gavel*, a Rent or Tribute) In the Manor of *Rodeley* in the County of *Glouceſter* is a Rent paid to this Day to the Lord, by certain Tenants, in Duty and Acknowledgment to him for their Liberty and Privilege of Fiſhing for *Lampreys* or *Lamprids* in the River *Severn.* Tayl. Hiſt. Gavelk. 112.

Prieſts, In general Signification are any Miniſters of a Church; but in our Law, this Word is particularly uſed for Miniſters of the Church of *Rome.* *Prieſts* ſaying Maſs ſhall forfeit 200 Marks, by Stat. 23 *Eliz. c.* 1. And Perſons apprehending a *Romiſh Prieſt*, ſaying Maſs, ſhall have 100*l.* from the Sheriff of the County, to be paid within four Months after Conviction of the Offence, &c. And ſuch *Prieſts*, &c. keeping Schools, are liable to perpetual Impriſonment. 11 & 12 *W.* 3. *c.* 4. See *Jeſuits.*

Primage, Is a Duty at the Water-ſide, due to the Maſter and Mariners of a *Ship*; to the Maſter for the Uſe of his Cables and Ropes, to diſcharge the Goods of the Merchant, and to the Mariners for Loading and Unloading of the Ship or Veſſel in any Port or Haven; it is uſually about 12 *d. per* Tun, or Six-pence *per* Pack or Bale, according to Cuſtom. *Merch. Dict.*

Primecerius, The firſt of any Degree of Men; and the Nobility of *England* were anciently called *Primecerios totius Angliæ.* Mon. Angl. Tom. 1. pag. 838.

Primier Seiſin, (*Prima Seiſina*) The firſt Poſſeſſion. It was a Branch of the King's Royal Prerogative, whereby he had the firſt Poſſeſſion or Profits for a Year of all Lands and Tenements holden of him *in Capite*, whereof his Tenant died ſeiſed in Fee, his Heir being then at full Age; and this the King formerly took, until the Heir, if he were of Age, did his Homage, and if under Age till he were ſo: But ſince the Taking away of the Tenure *in Capite* by Statute, all Charges of *Primier Seiſin* are of Conſequence taken away alſo. *Staundf. Prærog.* 11. *Stat.* 12 *Car.* 2. *c.* 24.

Primier Serjeant, Is the King's firſt Serjeant at Law.

Primo Beneficio, The firſt Benefice in the King's Gift, &c. See *Beneficio.*

Primogeniture, (*Primogenitura*) Is the Title of an elder Brother, in Right of his Birth: The Reaſon of which is, *Qui prior eſt Tempore, Potior eſt Jure. Co. Litt.* And according to *Dodderidge*, it was anciently ordained, that all *Knights Fees* ſhould come to the eldeſt Son by Succeſſion of Heritage, that he ſucceeding his Anceſtors in the whole Inheritance, might be the better inabled to maintain the Wars againſt the King's Enemies, and for Defence of the Realm: And that the *Socage* Tenure ſhould be partible among the Male Children, to inable them to increaſe into many Families for the better Furtherance and Maintenance of Husbandry. *Leg. Alfred. Dodd. Treat. Nobil.* 119.

Prince, (*Princeps*) Is ſometimes taken at large for the King himſelf; but more properly for the King's eldeſt Son, who is called *Prince of Wales.* It is ſaid by ſome Writers, that the King's eldeſt Son is *Prince of Wales* by Nativity; but others ſay, the eldeſt Son of our King is born *Duke of Cornwall*, and afterwards he is created *Prince of Wales*, though from the Day of his Birth he is ſtiled *Prince of Wales*, a Title originally given by King *Edward* 1. And all his Titles are, *Prince of Wales, Duke of Cornwal*, and *Earl of Cheſter.* Before *Eward* 2. who was the firſt *Prince of Wales*, and born at *Carnarvan* in that Principality, (his Mother being ſent there big with Child by King *Edw.* 1. to appeaſe the Tumultuous Spirits of the *Welchmen*) the eldeſt Son of the King was called *Lord Prince*; but *Prince* was a Name of Dignity long before that Time in *England. Staundf. Prærog.* 75. As Duke of *Cornwal*, and likewiſe Earl of *Cheſter*, the *Prince of Wales* is to appoint the Sheriffs, and other Officers in thoſe Counties, by 1 *Geo.* 2. *c.* 5. The *Prince of Wales*, beſides the Principality of *Wales*, Dutchy of *Cornwal*, &c. has alſo a Revenue, ſettled upon him by Parliament; for by Statute, his late Majeſty was empowered to grant to his Royal Highneſs the *Prince of Wales* his Son, now King, an Annuity of 100,000*l. per Annum*, payable out of the Poſt-Office and Exciſe-Duties, &c. 1 *Geo.* 1. *cap.* 22. And the preſent King is enabled by Letters Patent, &c. to grant the *Duke of Cumberland* an Annuity of 15,000*l. per Ann.* to commence from his Majeſty's Death, payable to the Duke and the Heirs of his Body in Tail, and charged on the Poſt-Office Revenues, &c. but ſo as not to be aliened or incumber'd by him. Stat. 12 *Geo.* 2. *c.* 15.

Princeſs. The King was alſo enabled to grant to the *Princeſs of Wales*, the late Queen, an Annuity of 50,000*l.* a Year, after the Prince's Death, out of the aboveſaid Duties; and to grant to her Royal Highneſs *Somerſet-houſe* Palace, &c. 1 *Geo.* 1. The like Annuity of 50,000*l.* a Year, is ſettled on the preſent *Princeſs of Wales*, in Caſe ſhe ſurvives his Royal Highneſs the *Prince*, to be paid Quarterly free from Taxes and other Charges. 10 *Geo.* 2. *c.* 29. Alſo the King may grant one Annuity of 24,000*l. per Annum* to the Princeſſes *Amelia*, *Carolina*, *Mary* and *Louiſa* among them all; and upon the Death of any of them, or Marriage and Payment of 40,000*l.* Portion, her Title to the Annuity to ceaſe, and go to the others, by 12 *Geo.* 2. *cap.* 15. See 13 *Geo.* 2. *c.* 13.

Prince and Princeſs of Orange. A Bill lately paſſed in Parliament, for Naturalizing his Highneſs *William Prince of Orange*, without receiving the Sacrament, or taking the Oaths, &c. Whereupon he was declared to be a Natural-born Subject of this Kingdom, as if born within the ſame, by 7 *Geo.* 2. *c.* 3 & 4. The Sum of 80,000*l.* for the Portion of the *Princeſs Royal*, on her Marriage with the *Prince of Orange*, was granted out of the Money ariſing by Sale of Lands in the Iſland of St. *Chriſtopher's.* 6 *Geo.* 2. *c.* 25. And the King is empowered to grant to the *Princeſs Royal* an Annuity of 5000*l. per Ann.* for her ſeparate Uſe. Stat. 7 *Geo.* 2. *cap.* 13.

Principal, (*Principalium*) Is variouſly uſed in our Law; as an Heir-Lome, the beſt Beaſt, beſt Bed, Table, &c. which paſs to the eldeſt Child, and are not ſubject to Partition, are called *Principals*: And the chief Perſon in the *Inns of Chancery* is called *Principal* of the Houſe.

Principal and Acceſſary. The *Principal* is the Perſon who actually commits any Crime; and the *Acceſſary* is he who is aſſiſting to him in the Doing thereof. 2 *Lill. Abr.* 355. And if one do wilfully hold a Man in his Arms, whilſt another kills him, he is a *Principal.* 9 *Rep.* 67. A Man is preſent, and moves a Perſon to kill another, who doth ſo; by this he is as much a *Principal* as he that killeth the Perſon: And all thoſe who come in Company in any Place or Aſſembly, where any Murder, Robbery, or Felony is committed, if they come there for that Cauſe, are *Principals*, although they do nothing. *Staundf. P. C. cap.* 45. *Fitz. Coron.* 314, 350. *Poult.* 138. But if one happen to be preſent when another is killed, or a Felony done, and he came not in Company of the Felons, nor is of their Confederacy; he will not be a *Principal* or *Acceſſary*. *Fitz. Coron.* 314, 395. No Man can regularly be a *Principal* in Felony, without being preſent, unleſs it be in Caſe of wilful Poiſoning, wherein if the Perſons intended or any others take the Poiſon in the Abſence of him that lays it, he is a *Principal. Hale's Hiſt. P. C.* 615. In the higheſt Offences, as in Treaſons, *&c.* all are *Principals*; and ſo in the loweſt, ſuch as Riots, Forcible Entries, and other Treſpaſſes; in theſe Caſes, there are no Acceſſaries. 1 *Inſt.* 71. By the Common Law, if a *Principal* be pardoned before Judgment, or hath his Clergy, the Acceſſary may not be tried; but if it be after Attainder, the Acceſſary ſhall be arraigned: And where the *Principal* dies before attainted, or is acquitted by Verdict, *&c.* the Acceſſary ſhall be diſcharged: Alſo if the *Principal* appears not, tho' the Acceſſary may be put to anſwer, he ſhall not be tried till the *Principal* is attainted, *&c.* 4 *Rep.* 43. *H. P. C.* 47. *Dalt.* 339. But this is altered by Stat. 1 *Ann. cap.* 9. See *Acceſſary.*

Principal Money, On Mortgages, Bonds, *&c.* Vide *Scrivener* and *Uſury.*

Printing. By Statute, the *Printing*, Selling, or Buying popiſh or ſuperſtitious Books, *&c.* is liable to Penalties and Forfeitures. 3 *Jac.* 1. *c.* 5. None ſhall *print* heretical or ſeditious Pamphlets, or tending to the Scandal of the Government, *&c.* nor *print* any Books, unleſs entered in the Regiſter at *Stationers Hall* and licenſed; Books of Law, by the Allowance of the Lord Chancellor, Chief Juſtice, *&c.* of Divinity, by the Archbiſhop of *Canterbury*, *&c.* and Hiſtory, by a Secretary of State: And *Printers* are to ſhew the Names of Authors, if required: The Number of *Printing* Preſſes is limited; and no Perſon ſhall print beyond Sea, or uſe Preſſes in Vaults, without Notice, *&c.*. And Meſſengers, by Warrant of a Secretary of State, may ſearch for and ſeiſe ſeditious Books. 13 *&* 14 *Car.* 2. *cap.* 33. This particular Statute made for regulating *Printing*, was revived and continued by 4 *&* 5 *W. & M.* *&c.* but is now *expired.* The Archbiſhop of *Canterbury*, Lord Chancellor, Biſhop of *London*, and Chief Juſtices, *&c.* on Complaint, have Power to reform unreaſonable Prices of Books: Nine Copies of Books *printed* entered at *Stationers Hall*, are to be delivered for the Uſe of publick Libraries: Authors of Books already *printed*, and the Copies not transferred, and Bookſellers who have already purchaſed, are to have the ſole Right of *printing* Books for twenty-one Years; and Authors of Books not yet *printed*, ſhall have ſuch Right for fourteen Years: And when the Copies are transferred, after the End of fourteen Years, the Right of *Printing*, *&c.* is to return to the Authors for the like Term: Other Perſons *reprinting*, or importing any Book *printed*, within thoſe Times, without Conſent, ſhall forfeit the Books to the Proprietor, and 1 *d.* for every Sheet in Poſſeſſion, the Book being entered in the Regiſter of the *Stationers* Company. 8 *Ann. c.* 19. By the new Act, Perſons that import Books *reprinted* in any other Country, are to forfeit them, and alſo 5 *l.* and double the Value of every Book imported; but this ſhall not extend to ſuch Books, as have not been *printed* in twenty Years, nor hinder the importing any Book *reprinted* abroad among other Tracts, *&c.* And ſo much of the Statute 8 *Ann.* for Encouragement of Learning, as empowers the Archbiſhop and Lord Chancellor, *&c.* to ſettle the Price of any Books, is *repealed.* 12 *Geo.* 2. *c.* 36. There are certain *Stamp-Duties* payable for Pamphlets and Books under ſuch and ſuch Sizes, for every Sheet in one *printed* Copy, *&c.* And *Printers* or Publiſhers are to put their Names thereto, under the Penalty of 20 *l.* *&c.* Stat. 10 *Ann. c.* 19. Vide *Libel.*

Prior, He who was firſt in Dignity next to the *Abbot*, or the Chief of a Convent, *&c.* And there was a *Lord Prior* of St. *John's of Jeruſalem.* 26 *H.* 8. *cap.* 2.

Priors Aliens, (*Priores Alieni*) Were certain religious Men, born in *France* and *Normandy*, Governors of religious Houſes erected for Outlandiſh Men here in *England*; but they were ſuppreſſed by King *Henry* 5. and afterwards their Livings were given to other Monaſteries and Houſes of Learning, and eſpecially towards the erecting of thoſe two famous Colleges, called the King's Colleges, at *Cambridge* and *Eaton.* 2 Inſt. 584.

Priors perpetual, And *Datary* and *Removable*, are mentioned in the Statutes 9 *R.* 2. *cap.* 4. and 1 *Ed.* 4. *cap.* 1.

Priority, (*Prioritas*) Is an Antiquity of Tenure, in Compariſon of another leſs ancient. *Old Nat. Br.* 94. And we read that the Lord of the *Priority* ſhall have the Cuſtody of the Body, *&c. Crompt. Juriſd.* 120. See *Poſteriority.*

Priority of Debts and Suits. A *Prior Suit* depending may be pleaded in Abatement of a ſubſequent Action or Proſecution. A *Prior Mortgage* ought to be firſt paid off; and *Debts firſt due* ſhould be firſt ſatisfied; for as the firſt Creditor advances his Money before his Debtor is incumbered, it is but reaſonable he ſhould be paid his Debt before the Diſcharge of the ſubſequent Incumbrances: But Debts firſt due muſt likewiſe be firſt proſecuted; otherwiſe in ſome Caſes *Priority* will not be allowed. *Comp. Attorn.* 120. There is no *Priority* of Time in *Judgments*; for the Judgment firſt executed ſhall be firſt paid.

Priſage, (*Priſagium*) Is that Part and Share which belongs to the King, or Admiral, out of ſuch Merchandizes as are taken at Sea by Way of lawful *Priſe*, which is uſually a tenth Part.——Priſagium *eſt jus* Priſas *capiendi*, *&c.* Stat. 31 Eliz. c. 5. And *Priſage of Wines* is an ancient Duty or Cuſtom on Wines, payable at certain Ports, except *London*, *Southampton*, *&c.* It is where the King claims out of every Ship or Veſſel laden with Wines, containing twenty Tons or more, two Tons of Wine, the one before, the other behind the Maſt, at his Price, which is twenty Shillings for each Ton; but this varies according to the Cuſtom of Places; and at *Boſton* every Bark laden with ten Tons of Wine, or above, pays *Priſage*: This Word is almoſt out of Uſe, being now called *Butlerage*, becauſe the King's chief Butler receives it. 1 *Hen.* 8. *cap.* 5. 4 *Inſt.* 30. *Calthrop's Rep.* 20.

Priſe, (*Captio*, *Prada*, from the Fr. *Prendre*) Signifies a Prey or Booty taken from an Enemy in Time of War, *&c.* If Ships are laden with contraband Goods, both Ship and Goods may be taken as *Priſe*; and Powder, Shot, Guns, Swords, and all other Inſtruments and Proviſions of Armature for Sea or Land, bound for an Enemy from a neuter Nation, *&c.* ſhall be taken as *Priſe*; ſo alſo Money, Corn, Victuals, *&c.* in Time of Neceſſity. *Lex Mercat.* 178. Whether a Ship be *Priſe* or not, ſhall be tried in the Admiralty, and no Prohibition ſhall be granted: And if a Suit be commenced between the Captor of a *Priſe* and a Claimant, and a Decree is obtained either for or againſt the Claimer; on giving Security, ſuch Sentence or Decree ſhall be put in Execution, notwithſtanding any Appeal, &c. 1 *Sid.* 320. 2 *Keb.* 158. During the late War with *France*, all Veſſels with their Ladings, taken as *Priſe*, were to be brought into ſome Port, and put into the Poſſeſſion of the Commiſſioners of *Priſes*, and after adjudged *Priſe*, to be ſold by the ſaid Commiſſioners, and the Product diſtributed amongſt the Captors, &c. But where Veſſels were taken in Ports or Havens, they were adjudged a Perquiſite of the Admiralty, and the Captors to have what ſhould be thought fit; and if any *Engliſh* Veſſels ſeiſed by the *French* as *Priſe*, ſhould be retaken, they were to be returned, paying an eighth Part of the Value for Salvage. Stat. 4 & 5 *W.* & *M.* *cap.* 25. *Priſe* Goods imported ſhall be ſubject to the ſame Duties and Cuſtoms as other Goods and Merchandizes. 9 *Ann.* *c.* 27. See *Privateers*.

Priſo, Is uſed for a Priſoner taken in War. *Hoveden*, *pag.* 541.

Priſon, (*Priſona*) Is a Place of Confinement for the ſafe Cuſtody of Perſons, in order to their anſwering any Action, Civil or Criminal: And it has been obſerved, that this *Salva Cuſtodia* muſt be only *Cuſtodia*; for *Carcer ad Homines cuſtodiendos, non ad Puniendos dari debet.* *Co. Litt. lib.* 3. *cap.* 7. Any Place where a Man is reſtrained of his Liberty, is a *Priſon*: And when any one is arreſted on Proceſs, he is to be committed to *Priſon*, or be bound in Recogniſance with Sureties, or give Bail, according to the Nature of the Caſe, to appear at a Day in Court, and anſwer what is alledged againſt him. *Dalt.* 421. If one is brought before a Juſtice of Peace for Suſpicion of Felony, where a Felony has been committed, the Juſtice may ſend him to *Priſon*, or bail him; and if no Felony be done, he hath Power to diſcharge him. *H. P. C.* 98. But when a Perſon is committed to *Priſon* for Treaſon, or Felony, he cannot regularly be diſcharged from *Priſon*, till indicted, and acquitted, &c. Though one taken and committed to *Priſon* in a Civil Cauſe, may be releaſed and ſet at Liberty by the Plaintiff in the Suit. 3 *Inſt.* 209. *H. P. C.* 94. But ſee *Habeas Corpus*, &c. Vide *Gaol*.

Priſon-breaking, By my Lord *Hale*, is not only where a Felon is formally committed to Gaol by *Mittimus*; but if he be put in the Stocks, or kept in the Conſtable's Houſe, &c. and he *break Priſon*, it is Felony. 1 *Hale's Hiſt. P. C.* 610. And if *A.* arreſt *B.* for Suſpicion, and carry him to the common Gaol, and there deliver him; if he *breaks Priſon*, and be indicted upon it, there muſt be an Averment in the Indictment, that there was a Felony done, and that *A.* having probable Cauſe did ſuſpect *B.* and arreſted and committed him, and that he broke the Priſon, all which muſt be proved upon the Evidence: But where a Felon is taken by *Capias*, and committed, and *break Priſon*, there needs no ſuch Averment, &c. becauſe all appears by Matter of Record. 2 *Co. Inſt.* 590. *Hale's Hiſt. P. C.* 610. The Felony of *Breach of Priſon* is within Clergy, though the Offence for which the Party was committed be excluded Clergy. 1 *Hale's Hiſt. P. C.* 612. See *Eſcape*.

Priſoner, (*Priſonarius*, Fr. *Priſonnier*) Signifies one that is confined in *Priſon*, on an Action, or upon Commandment: And a Man may be a *Priſoner* upon *Matter of Record*, or of *Fact*; a *Priſoner* on Matter of *Record*, is he who being preſent in Court, is by the Court committed to Priſon; and the other is upon an Arreſt, be it by the Sheriff, Conſtable, &c. *Staundf. P. C.* 34, 35. A *Priſoner* for the King may not be charged in an Action at the Suit of the Subject, without Leave of the Court. 1 *Lev.* 125, 146. The Court of *King's Bench* hath Power to ſend for a *Priſoner* out of the *Marſhalſea* Court, by Rule of Court, and need not iſſue an *Habeas Corpus*, as that Priſon belongs to this Court; but they cannot ſend for a *Priſoner* out of any other Priſon, without Writ of *Habeas Corpus*. *Mich.* 1650. Every Judge of *B. R.* may remit *Priſoners*, with their Indictments, to the Places where the Offences wherewith they are charged were committed; and a *Priſoner* for Debt may be removed from the *Fleet* to the *King's Bench*, and thence to the *Marſhalſea*, on ſomething charged againſt him in the *Habeas Corpus* or Return, or on bringing him into Court. *Dyer* 275. 2 *Lill. Abr.* 357. *Priſoners* in the *King's Bench* and *Fleet* Priſons, on meſne Proceſs, &c. are to be actually confined within the ſaid Priſons, or the Rules of the ſame, till they are diſcharged; and the Profits of the *Marſhal*'s and *Warden*'s Places are liable to Sequeſtration for Payment of Debt on Judgment, upon an Eſcape, beſides the common Remedy: And Judgment may be ſigned againſt a Priſoner in the *Fleet*, in a Perſonal Action, entring a Declaration, and leaving a Copy thereof with the *Priſoner*, &c. after a Rule to plead, to be out at 8 Days, &c. *Priſoners* in the *King's Bench* are not to pay above 2*s.* 6*d.* *per* Week Chamber-Rent, on Pain of Keepers taking more, to forfeit 20*l.* Stat. 8 & 9 *W.* 3. *cap.* 7. And *Priſoners* in the aforeſaid Priſons, going at large, may be taken up on an Eſcape Warrant. 1 *Ann.* *cap.* 6. But *Priſoners* may go out of the Rules, on a Day-Rule of Court, about their Buſineſs, ſo as they do not go into the Country, or to Plays, Diverſions, &c. *Trin.* 6 *Ann.* *B. R.* 2 *Lill.* 366. A Perſon in Execution in the *King's Bench Priſon*, was put in Irons by the *Marſhal*; and the Court ordered the *Marſhal* to keep his *Priſoner* according to Law: Though they ſaid he might juſtify putting him in Irons, if he feared an Eſcape, or if the *Priſoner* was unruly. *Mich.* 1 *Ann.* *Farreſt. Rep.* 52. In the ſecond Year of King *Geo.* 2. Sir *William Rich* being laid in Irons in the *Fleet* Priſon, had his Irons taken off by Order of the Houſe of Commons; who thereupon began an Inquiry into the Conduct of Gaolers to *Priſoners*, &c.

Priſoners diſcharged. The 22 & 23 *Car.* 2. 2 *W.* & *M.* and 7 & 8 *W.* 3. 1 *Annæ*, and 6 and 11 *Geo.* 1. were made for releaſing, by Juſtices of Peace in their Seſſions, &c. of *poor Priſoners* for Debt, actually in Cuſtody, making Oath that they had no Effects of the Value of 10*l.* &c. and who owed not above 100*l.* to any one Perſon; and by the 7 & 8 *W.* 3. the *Priſoners diſcharged* under forty Years of Age, were to liſt themſelves in the King's Service during the War againſt *France*. A Defendant was taken by Proceſs of the Court of *B. R.* and pray'd the Benefit of being diſcharged upon *Common Bail*, according to the Statute for diſcharging poor *Priſoners*; ſhewing the Certificate of the Gaoler, and the Adjudication of the Juſtices of Peace, &c. And it was held, that the Juſtices had no Authority, unleſs the Defendant was in Cuſtody on ſuch a Day; for a bare being within the Rules will not be ſufficient; and this Court will examine the Truth of it, notwithſtanding the Certificate, and Adjudication. *Mich.* 5 *Ann.* 3 *Salk.* 330. One being indebted on a Bond of 100*l.* conditioned to pay 90*l.* and Intereſt on ſuch a Day, was arreſted, and diſcharged by the Juſtices, upon the Statute of poor *Priſoners*: But *per Curiam*, there being 20*l.* due for Intereſt, at the Time that Statute was made, by Conſequence the Defendant owed at that Time more than 100*l.* and therefore the Juſtices could not lawfully diſcharge him; ſo their Order was made void. *Ibid.* And if a *Priſoner* for Debt is diſcharged by Juſtices of Peace, as a poor *Priſoner* on the Statutes for Relief of ſuch, where the Debt is above 100*l.* &c. and they have no Power to diſcharge him; this hath been adjudg'd an Eſcape. 1 *Salk.* 273. Where a *Mandamus* has been granted to Juſtices of the Peace having Power, to give Judgment upon the Statute for releaſing poor *Priſoners*, ſee *Comb.* 203. A late Statute was made for diſcharging all *Poor Priſoners* (in Priſon at ſuch a Time) for Debts under 500 *l.* And Creditors for that Sum oppoſing the Diſcharge of any Perſon, are to allow the *Priſoner* a Weekly Maintenance of 3 *s.* 6 *d. per* Week, and on Non-payment for ſix Weeks, he ſhall be diſcharged on Application to the Juſtices, &c. But *Priſoners* muſt give Notice to their Creditors, and deliver in Schedules of all their Eſtates on Oath, which are to be divided amongſt the Creditors; and if any *Priſoner* forſwear himſelf, he ſhall be guilty of Felony, &c. And Debts from the *Priſoner* and Judgments had, to ſtand good againſt his Lands and Goods, which he may have hereafter, and Creditors may take out a new Execution, tho' not charge his Perſon, &c. Stat. 2 *Geo.* 2. *c.* 20. And by another late Act, *Priſoners* ſeiſed of an Eſtate-Tail in Freehold Lands, &c. (which Intail they can defeat) claiming Benefit by this Statute, ſhall be deemed ſeiſed in Fee-Simple, as if a Fine had been levied thereof, &c. and ſo delivered up to the Creditors: And every Aſſignee of Copyhold Eſtates of *Priſoners*, may compound with the Lord of the Manor of whom held, for the uſual Fine on Surrender; and then the Lord, at the next Court, ſhall grant to the Aſſignee the Copyhold Eſtate, during the Term or Intereſt aſſign'd, and admit him Tenant, &c. Stat. 10 *Geo.* 2. *c.* 26. Alſo in a further Statute there is a Clauſe, that every *Priſoner* for Debt committed ſince the 1ſt of *January* 1730. and continued in Priſon, may be compelled to deliver up his Effects, in the Form preſcribed, on Requeſt of any Creditor, at whoſe Suit he has been in Cuſtody. 11 *Geo.* 2. *cap.* 9. By the laſt Statute, for diſcharging *Priſoners*, they are to deliver up all their Goods and Effects, and which ſhall be aſſigned to ſuch of their Creditors as the major Part ſhall appoint, &c. whereupon the *Priſoners* may be diſcharged, if they do not owe more than 500 *l.* to one Perſon, &c. On Aſſignment of a *Priſoner*'s Eſtate, all Powers of Leaſing Lands are veſted in the Aſſignees, to be executed for the Benefit of the Creditors: But where any Rent, not exceeding two Years, is due from any *Priſoner*, his Goods liable to be diſtrained, ſhall not be aſſigned for Creditors, till the Landlord is firſt paid ſuch Rent, &c. Stat. 16 *Geo.* 2. *cap.* 17. See *Execution.*

Privateers, Are a Kind of private Men of War, the Perſons concerned wherein adminiſter at their own Coſts a Part of a War, by fitting out theſe Ships of Force, and providing them with all military Stores; and they have, inſtead of Pay, Leave granted them to keep what they can take from the Enemy, allowing the Admiral his Share, &c. *Privateers* may not attempt any Thing againſt the Laws of Nations; as to aſſault an Enemy in a Port or Haven, under the Protection of any Prince or Republick, whether he be Friend, Ally, or Neuter; for the Peace of ſuch Places muſt be inviolably kept; and therefore by a Treaty made by King *William* and the States of *Holland*, before a Commiſſion ſhall be granted to any *Privateer*, the Commander is to give Security if the Ship be not above 150 Tons, in 1500 *l.* and if the Ship exceeds that Burden, in 3000 *l.* that they will make Satisfaction for all Damages which they ſhall commit in their Courſes at Sea, contrary to the Treaties with that State; upon Pain of forfeiting their Commiſſions, and the Ship is made liable. *Lex Mercat.* or *Merch. Compan.* 177, 178. Beſides theſe private Commiſſions, there are *ſpecial* Commiſſions for *Privateers*, granted to Commanders of Ships, &c. that take Pay, who are under a Marine Diſcipline; and if they do not obey their Orders, they may be puniſhed with Death: And the Wars in later Ages, have given Occaſion to Princes to iſſue theſe Commiſſions, to annoy the Enemies in their Commerce, and hinder ſuch Supplies as might ſtrengthen them, or lengthen out the War; and likewiſe to prevent the Separation of Ships of greater Force from their Fleets or Squadrons. *Ibid.* By Statute, Ships taken in the late War by *Privateers*, were to be divided into five Parts; four Parts whereof to go to the Perſons intereſted in the *Privateer*, and the Fifth to his Majeſty: And as a farther Encouragement, *Privateers*, &c. deſtroying any *French* Man of War, or *Privateer*, ſhould receive for every Piece of Ordnance in the Ship ſo taken 10 *l.* Reward, &c. 4 & 5 *W.* & *M.* By a particular Statute lately made, the Lord Admiral, or Commiſſioners of the Admiralty, may grant Commiſſions to Commanders of *Privateers*, for the taking Ships and Merchandize, &c. which being adjudg'd *Prize*, and the Tenth Part paid to the Admiral, &c. ſhall wholly belong to the Owners of the *Privateers* and the Captors, in Proportions agreed upon between themſelves; and the Officers and Seamen of *Ships of War*, are to have the ſole Property of all Ships they take, to be divided as his Majeſty ſhall order by Proclamation: Alſo if any Ships belonging to the *Engliſh* be taken by the Enemy, and afterwards retaken by any of our Men of War or *Privateers*, they are to be reſtored to the Owners, on paying an eighth Part of the Value, in lieu of Salvage, after having been in the Enemy's Poſſeſſion 24 Hours; and if above that Time, paying further to a Moiety, &c. And by this Act, Ships of War or *Privateers*, taking any Ship of War or *Privateer* of the Enemy, the Officers and Seamen ſhall be paid by the Treaſurer of the Navy 5 *l.* for every Man that was on Board ſuch Ship at the Beginning of the Engagement. Stat. 13 *Geo.* 2. *c.* 4.

Privation, (*Privatio*) A Taking away or Withdrawing; moſt commonly applied to a Biſhop or Rector of a Church, when by Death or other Act they are deprived of their Preferments: It ſeems to be an Abbreviation of the Word *Deprivation* Co. Litt. 329.

Privatus, Signifies a Friend or Familiar; by *Blount.*

Privement enſent, Is where a Woman is with Child by her Husband; but not quick with Child. *Wood's Inſt.* 662.

Privies, (From the Fr. *Prive*, i. e. *Familiaris*) Are thoſe that are Partakers; or have an Intereſt in any Action or Thing, or any Relation to another: As every Heir in Tail is *privy* to recover the Land entailed, &c. *Old Nat. Br.* 117. And there are five ſeveral Kinds of *Privies*, viz. *Privies in Blood*, ſuch as the Heir to the Anceſtor; *Privies in Repreſentation*, as Executors or Adminiſtrators to the Deceaſed; *Privies in Eſtate*, between Donor and Donee, Leſſor and Leſſee, &c. *Privies* in reſpect of *Contract*; and *Privies* on Account of *Eſtate* and *Contract* together. 3 *Rep.* 23, 123. 4 *Rep.* 123. *Latch* 260. If a *Fine* be levied, the Heirs of him that levied it, are termed *Privies.* If a Leſſor grants his Reverſion, the Grantee and Leſſee are *Privies* in Eſtate: And *Privies* in Contract extend only to the Perſons of the Leſſor and Leſſee; and where the Leſſee aſſigns all his Intereſt, here the Leſſor and Leſſee remain *privy* in Contract, but not in Eſtate, which is removed by the Aſſignment. 3 *Rep.* 23. *Privies* in Reſpect of Eſtate and Contract appears, where the Leſſee aſſigns his Intereſt, but the Contract between the Leſſor and Leſſee as to Action of Debt continues, the Leſſor not having accepted of the Aſſignee. 3 *Lev.* 295. But where there are *Privies* in Contract, and this *Privity* is alter'd by Aſſignment of an Executor, &c. before any Rent due, and after the *Privity* of Eſtate by the Aſſignment of the Executor's Aſſignee, nothing remains whereby to maintain any Action. *Latch* 260. There are likewiſe *Privies* in *Deed*, or in *Law*; where the Deed makes the Relation; or the Law implies it, in Caſe of Eſcheats to the Lord, &c. And only Parties and *Privies* ſhall take Advantage of Conditions of Entry on Lands, &c. 1 *Inſt.* 516.

Privilege, (*Privilegium*) Is defined to be a private or particular Law, whereby a private Perſon or Corporation is exempted from the Rigour of the Common Law; or it is ſome Benefit or Advantage granted or allowed to any Perſons contrary to the Courſe of Law, and is ſometimes uſed for a Place that hath a ſpecial Immunity: A *Privilege* is therefore *Perſonal*, or *Real*; *Perſonal*, as of Members of Parliament, and of Convocation, and their menial Servants, not to be arreſted in the Time of Parliament or Convocation, nor for certain Days before or after; Peers, Ambaſſadors and their Servants, &c. *Real*, that which is granted to a Place, as to the King's Palaces, the Courts at *Weſtminſter*, the Univerſities, &c. that their Members or Officers muſt be ſued within their Precincts or Courts, and not in other Courts. *Cowel.* 2 *Roll. Abr.* 272. *Finch* 321. Alſo the Counties Palatine, Cinque Ports, and many Cities and Towns, &c. have *Privileges* as to Pleas, that none ſhall be compelled to appear or anſwer out of their Juriſdiction. 4 *Inſt.* 212. *Crompt. Juriſd.* 137. The King's Servants are *privileged* from Arreſts; for that the King ſhall not be deprived of them, without Leave. *Raym.* 152. And the Queen's Servants are the King's, and his Chamberlain may *privilege* them. 2 *Keb.* 455. A Member of Parliament is *privileged*, as well in his Lands and Goods, as in his Perſon; becauſe being diſturb'd in any of them, he is hinder'd in ſerving of the Commonwealth, which is to be preferr'd before all private Intereſts. 2 *Lill. Abr.* 370. The Lord Mayor of *London* is *privileged* from all Actions, that he may not be hindered in the Government of the City: And ſo is an Alderman from ſerving Offices, &c. *Ibid. Cro. Car.* 585. *Privileges* are of *Parliament*; of *Courts*, and their *Officers* and *Suitors*; and of *Attornies*, &c. 2 *Lill. Abr.* 368. According to *Holt* Chief Juſtice, *Privilege* is either of Court, or of Proceſs; as in the Court of *Common Pleas*, every Perſon who belongs to that Court, ſuch as Attornies, and their Clerks, &c. ſhall have the *Privilege* of being ſued there, and not elſewhere; and this is the *Privilege* of the Court: But none ſhall be allowed the *Privilege* of Proceſs but thoſe who are the Officers of the Court, and are ſuppoſed to be always attending therein. 3 *Salk.* 283. And there are two Kinds of *Privileges* in the Court of *C. B.* the one is of the Officers of the Court, to be ſued there by Bill; and the other of the Clerks to be ſued there by Original. *Ibid.* In the Court of *Exchequer* there are three Sorts of Perſons who are *privileged*, i. e. Debtors to the King, Accountants, and Officers; againſt the firſt of theſe Perſons, any Man who has a *Privilege* in another Court, as an Officer or Attorney thereof, ſhall have his *Privilege*; for the *Privilege* of a Perſon as Debtor, is but a general *Privilege*: But if an Accountant begin his Suit here, he hath in ſuch Caſe a ſpecial *Privilege*, and no other *Privilege* ſhall be allowed againſt him, becauſe of his Attendance to paſs his Account, in which the King hath a particular Concern; and it is the ſame in an Officer of the Court, who commences a Suit here, no *Privilege* ſhall prevail againſt him: Though where the Account is cloſed and reduced to a Debt, there the Accountant hath only the general *Privilege* as Debtor; and the like of a Servant to an Officer or Miniſter of the Court, he has no *Privilege* againſt a *privileged* Perſon elſewhere. *Hardr.* 267, 507. By *Hale* Chief Baron, a general *Privilege* of a Perſon as a Member of the Univerſity, or a Clerk in Chancery, doth not take away the particular *Privilege* of the Court of *Exchequer*, where the Perſon is Debtor and Accountant to the King. *Ibid.* 189. But one who was Receiver General of the Revenues of the Crown in *W.* being ſued in the Common Pleas, brought a Writ of *Privilege* out of the Exchequer, and it was diſallowed by the Court. *Dyer* 328. 2 *Nelſ. Abr.* 1296. And the King's Debtors ſhall not be *privileged* by Parliament. Stat. 12 *W.* 3. In the Exchequer it hath been held, that there are two Ways of pleading *Privilege*; one is, if the Party is an Officer on Record, to go to Trial, and at the Trial to produce the Record; and if he is no Officer, but Attendant on the Court, that muſt be tried by a Jury: The other Way is, if he be an Officer on Record, then to produce a *Writ of Privilege*, at the Time of the Plea pleaded, upon which there can be no Iſſue joined; and being otherwiſe pleaded, &c. Judgment may be given to anſwer over. *Mod. Caſ.* 305. Writ of *Privilege* lies for an Officer of the Courts at *Weſtminſter*, that is ſued in any other Court than where he attends, to remove the Cauſe to his own Court. 2 *Inſt.* 551. Stat. 18 *Ed.* 3. A Defendant pleaded his *Privilege*, that he was an Attorney of *C. B.* and upon Demurrer to this Plea, it was objected, that it ought to be concluded with a *Profert hic in Curia*, the Writ of *Privilege* teſtifying him to be an Attorney, which is true, and that he ought to have ſaid *prout patet per Recordum*; but that muſt be in ſuch Caſe where he ſets forth the Writ, and he may plead *Privilege* upon the Writ, or Exemplification of the Record of his Admiſſion, or without it. 2 *Salk.* 545. If *Privilege* of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; if without, he may, and then a *Certiorari* ſhall be awarded to certify whether he be an Attorney or not. *Ibid.* By Order of the Court of *C. B.* the Clerk of the Warrants is to certify that an Attorney's Name is upon the Roll of Attornies, before he ſhall have a Writ of *Privilege*; and Writs of *Privilege* are to be ſigned by the Clerk of the Warrants, to ſhew the Perſon is an Attorney of the Court, or they ſhall not be allowed. *Trin.* 29 *Car.* 2. *Trin.* 9 *W.* 3. And to ſave Arreſt upon Proceſs, an Attorney muſt deliver his Writ of *Privilige* to the Sheriff, and allow it with him; otherwiſe the Sheriff will not diſcharge him upon the Writ of *Privilege*, unleſs it be on Proceſs iſſuing out of an inferior Court, but he muſt plead his *Privilege ſub pede ſigilli.* Pract. Solic. 322. *Privilege* is not to be pleaded in the Negative; as that an Attorney or Clerk, ought not to be ſued elſewhere but in ſuch a Court, without ſaying it is uſual for them to be ſued there, &c. and it ſhould not be pleaded too general. 2 *Sid.* 164. But ſee 2 *Salk.* 543. In Treſpaſs againſt an Attorney of *C. B.* he pleaded his *Privilege per Attornatum*, to which Plea the Plaintiff demurred; becauſe he ought to have pleaded it in Perſon, and pleading by Attorney deſtroys the very Reaſon of his *Privilege*, which is his Attending the Court in Perſon; but the Plea was adjudged good, for he may be ſick, or have Buſineſs in another Court to attend. *Style* 413. But an Information being brought againſt a *Cuſtos Brevium* of *B. R.* for ſeveral Abuſes in his Office, he inſiſted not to appear in Perſon, but by Attorney; and it was ruled that he ſhould appear in Perſon, becauſe he is an Officer of the Court, and is preſumed to be always preſent; and if he doth not appear Judgment ſhall be given againſt him without any other Proceſs. *Sid.* 134. *Privilege* has been allowed for a Clerk in the Office of *Cuſtos Brevium*, and a Writ of *Privilege* ſigned by the Juſtices of *C. B.* to exempt him from being arreſted or preſſed, &c. It being the Cuſtom and *Privilege* of that Court, that the Attornies and Clerks ſhall not be preſſed, nor choſe in any Office, *ſine voluntate*, but ought to attend the Service of the Court. *Cro. Car.* 8. Though it is ſaid an Attorney ſhall not be excuſed by *Privilege* from Offices which may be executed by Deputy; only thoſe which require perſonal Duty, as that of Church-warden, Conſtable, &c. *March* 30. 2 *Lill. Abr.* 374. A *Filizer*'s Clerk claimed to be *privileged* in *B. R.* but was denied it; for tho' the Maſter may be *privileged*, the Court takes no Notice of the Servant, he having no neceſſary

ceſſary Dependance on the Court. *Mich.* 23 *Car.* And *Privilege* extends only to ſuch Attornies, *&c.* who have an immediate Dependance on the Court; and not to their Servants: It hath been held, that although an Attorney doth not practiſe, he ſhall have *Privilege* ſo long as he continues an Attorney upon Record. *Lutw.* 1667. Attornies or Filizers of the Common Pleas, if ſued in *B. R.* may plead their *Privilege*, becauſe they owe a perſonal Attendance to that Court: But a Serjeant at Law being ſued in the Court of *B. R.* cannot plead *Privilege* of *C. B.* for he may ſign Pleas, be of Counſel, and Practice in other Courts in *Weſtminſter-Hall*, and is not confined to Practice in the *C. B.* though if he is ſued in any inferior Court, he ſhall have his *Privilege.* 2 *Lev.* 129. 1 *Mod.* 298. And yet formerly a Serjeant at Law claiming his *Privilege* to be ſued in the Court of *C. B.* had his *Privilege* allowed; ſo a Serjeant's Clerk. *Trin.* 6 *Ed.* 6. and 28 *Hen.* 8. *Dyer* 24. *Cro. Car.* 59. A Barriſter at Law, attending on the Court, ought to have *Privilege* to be ſued in all tranſitory Actions in *Middleſex*: And an Attorney of *C. B. &c.* may chuſe whether he will ſue or be ſued out of the County of *Middleſex*; becauſe his Attendance is always ſuppoſed to be there. 2 *Lill.* 370. Where an Attorney is ſued as Executor or Adminiſtrator, he ſhall not be allowed his *Privilege*; nor in a joint Action, with another not *privileged*; though if the Action may be ſevered, the Want of *Privilege* of one ſhall not take away the *Privilege* of the other. 1 *Salk.* 2, 245. 2 *Nelſ. Abr.* 1295. *Privilege* ſhall not be allowed to a Man, where his Wife is joined in the Action with him: The Wife of an Attorney of *B. R.* if ſhe be arreſted, ſhall not have *Privilege*; but her Husband is to put in Bail for her, or for Want thereof ſhe is to be committed to Priſon; for the Husband is *privileged* only in Regard of his perſonal Attendance upon the Court, and his *Privilege* is annexed to his Perſon, and concerns not his Wife. *Noy* 68. 2 *Lill. Abr.* 371. An Attorney of the Common Pleas was indebted to *A. B.* who was indebted to *C. D.* who according to the Cuſtom of *London* attached the Money in the Attorney's Hands; and he brought a Writ of *Privilege*, which was allowed by the Court, becauſe the Attorney was not indebted to *C. D.* but only by Cuſtom; and the *Privileges* of thoſe attending the Courts at *Weſtminſter*, ſhall not be impeach'd by any Cuſtom whatſoever. 2 *Leon.* 156. But where Money was attached in *London*, in the Hands of an Attorney of *B. R.* it was held, he ſhall not have his Writ of *Privilege*, becauſe the Plaintiff cannot follow his Attachment againſt him in the *King's Bench*, but only in the Court of *London*; and if this Court ſhould ſtay Proceedings there, then there would be a Failure of Juſtice. 2 *Lill. Abr.* 371, 372. One that hath a Suit depending in *B. R. &c.* is *privileged* from being arreſted in coming to the Court from his Houſe or Lodging, to follow his Cauſe, and alſo in going back again directly to his Houſe or Lodging; and if he be arreſted in ſo doing, the Court upon Motion made to inform them of it, will ſet the Party at Liberty, and puniſh the Perſon that arreſted him, if he knew the other had a Suit depending here, and came hither to attend it. 2 *Lill.* 371. One that was coming to the Court of King's Bench to attend upon his Cauſe, was arreſted as he was coming, and forced to put in Bail; and on Motion, making it appear to the Court, he and his Bail were both diſcharged; and the Party that arreſted him had been alſo puniſhed, had he not alledged that he knew not that the Party arreſted came about his Buſineſs depending in the Court. *Mich.* 22 *Car. B. R.* An Action of Aſſault, *&c.* was brought in the Common Pleas, and the Parties were at Iſſue, and after the Trial, when the Jury went out to conſider of their Verdict, the Defendant in this Action arreſted the Plaintiff by Proceſs out of *B. R.* for an Aſſault made before that Time on him; and this appearing to the Court, they order'd him to releaſe the Party from the Arreſt, and they ſet a Fine upon him for the Contempt, which he immediately paid in Court: And the Court declared, that the Suitors ought ſafely to come and go, by the *Privilege* of the Court, without Vexation elſewhere. *Goldſ.* 33. One arreſted in *Weſtminſter-Hall ſedente Curia*, may be diſcharged upon Motion, if the Arreſt was on Meſne Proceſs; but not if he was taken in Execution, tho' even in that Caſe, the Officer is puniſhable *per Curiam.* Bulſt. 85. Where a Man is arreſted in an inferior Court, coming to *Weſtminſter* upon a Suit brought for or againſt him, he ſhall have the *Privilege* to be diſcharged from the Suit below: But this ought to appear by the Examination of the Party. *Jenk. Cent.* 172. And if the Defendant be in Execution in any ſuch inferior Court, and he had Cauſe of *Privilege* at that Time; if the Writ of *Privilege* be delivered before it, he ſhall be diſcharged: 'Tis otherwiſe if not delivered till after the Execution. *Ibid.* *Privilege* of the Court was prayed to protect a Witneſs from being arreſted in coming to and going from the Court, which was granted. *Hill.* 1655. 2 *Lill.* 370. In Treaſon, Felony, or Breach of the Peace, no *Privilege* ſhall be allowed; nor on an Indictment, *&c.* It has been adjudged, that where Proceedings are merely at the Suit of the King, as upon Indictments or Informations brought by the Attorney General, in ſuch Caſes *Privilege* ſhall not be allowed; but where the Proceedings are at the Suit of the King and the Party, as in Caſe of a common Informer, *&c.* there the Defendant may have his *Privilege.* 1 *Lutw.* 193. If a *privileged* Perſon in one Court, do ſue a *privileged* Perſon in another, in a Civil Action, the Perſon ſued ſhall not have his *Privilege.* 2 *Leon.* 41. 2 *Lill. Abr.* 368. A *privileged* Perſon ſhall not be generally allowed his *Privilege* upon Motion; but he muſt plead it, and on Pleading it ſhall be allowed. *Mich.* 23 *Car. B. R.* But there is no Need to plead the *Privilege* of the Exchequer; for it ſhall be granted upon producing the Red Book of the Exchequer by a Baron of the Court. 1 *Lutw.* 46. And of later Times, the Party hath been admitted to *Privilege* upon Prayer to the Court. 2 *Lill.* 370. By ſome Opinions, *Privilege* may be allowed, after Bail put in; and not after Imparlance: By others, that *Privilege* of Attornies may not be pleaded after Bail given in, which allows the Juriſdiction, *&c.* 3 *Lev.* 343. 1 *Salk.* 1, 2. To ſue an Attorney *privileged*, or any Clerk or Officer of the Court of *B. R.* they are not to be arreſted, but be proceeded againſt as follows: A Declaration is to be filed againſt the Party *privileged*, and a Copy of it delivered to him, and then Rules given in order for his Plea; and the Declaration and Rules being delivered and ſerved in Time, he will be obliged to plead the ſame Term; and if he do not appear and plead, after called in Court, *&c.* he may be *forejudged* the Court: If ſuch Attorney, Clerk or Officer be Plaintiff, and his Declaration is delivered, and the Rules given in Time, the Defendant is to plead the ſame Term, and cannot imparl over to the next; which ought to be remember'd, for fear of Executions when not thought of. *Pract. Solic.* 259, 260. In *B. R.* where an Attorney is Plaintiff, he cannot by his *Privilege* have ſpecial Bail where other Perſons cannot have it; except it be for Fees, as a Miniſter of the Court, in which Caſe he may. In the Court of *C. B.* if an Attorney is Defendant in any Suit, it is not required that he ſhall give in Bail; and by giving Bail, he waves his *Privilege*: Yet by the Uſage of the Court, on Attachment at the Suit of an Attorney Plaintiff, though the Debt be but 40 *s.* ſpecial Bail ſhall be given. *Ibid.* 260, 323. A Bill muſt be filed, though an Attorney agrees to appear and diſpenſe with it; but it may in ſuch Caſe be filed afterwards: And a Bill cannot be filed againſt a Perſon *priviledged* in Vacation, for then he is not preſent in Court. *Hill.* and *Paſch.* 9 *W.* 3. B. *R.* If without filing a Declaration, an Action is brought againſt an Attorney, &c. he may bring *Attachment of Privilege*, and ſuperſede the Action.

A *Bill* filed againſt a *Member of Parliament*, &c. having *Privilege*.

A. B. *complains of* C. D. *Eſq*; &c. *the ſaid* C. D. *having* Privilege *of Parliament*; *for that*, to wit, *That whereas the ſaid* A. *the Day*, &c. *in the Year of the Reign*, &c. *at* Weſtminſter *in the County of* M. *aforeſaid, accounted with the ſaid* C. *of and concerning divers Sums of Money, before that Time due and owing by the ſaid* C. *to the ſaid* A. *and then being in Arrear and unpaid*; *and upon that Account, the ſaid* C. *was then and there found in Arrearage to the ſaid* A. *in ſixty five Pounds of lawful Money of* Great Britain; *and being ſo found in Arrear, the ſaid* C. *afterwards, that is to ſay, the ſame Day of*, &c. *in the Year aforeſaid, at* Weſtminſter *aforeſaid, in Conſideration thereof did undertake, and to the ſaid* A. *then and there faithfully promiſe, that he the ſaid* C. *would well and truly pay and content to the ſaid* A. *the ſaid ſixty-five* Pounds, *when after he ſhould be thereto required: And alſo whereas afterwards, that is to ſay, the Day of*, &c *in the Year*, &c. *at* W. *aforeſaid, he the ſaid* C. *was indebted to the ſaid* A. *in three hundred Pounds of like lawful Money of* Great Britain, *for ſo much Money of the ſaid* A. *before that Time had and received by the ſaid* C. *to the Uſe of the ſaid* A. *And being ſo indebted, he the ſaid* C. *afterwards, that is to ſay, the ſame Day and Year laſt aboveſaid, at*, &c. *aforeſaid, in Conſideration thereof undertook, and to the ſaid* A. *then and there faithfully promiſed, that he ſaid* C. *would well and truly pay the ſaid three hundred Pounds to the ſaid* A. *whenever after he ſhould be thereunto required*, &c. *Nevertheleſs the ſaid* C. *not regarding his ſaid ſeveral Promiſſes and Undertakings, made in Manner as above, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid* A. *in this particular, hath not paid the ſaid* A. *the ſaid ſeveral Sums of Money, or any Part thereof, nor in any Manner made him Satisfaction for the ſame, although the ſaid* C. *was thereto required by the ſaid* A. *afterwards*, to wit, *on the Day of*, &c. *in the Year*, &c. *abovementioned, and often after, at* W. *aforeſaid*; *but he the ſaid* C. *hath hitherto refuſed, and ſtill doth refuſe ſo to do, to the Damage of the ſaid* A. *five hundred Pounds*; *and therefore he brings his Suit*, &c. *And thereupon the ſame* A. *prays the Proceſs of the Lord the King to be thereof made according to the Form of the Statute in ſuch Caſe made and provided*; *and it is granted to him*, &c.

Form of the Writ of *Summons* thereon.

GEORGE the Second, &c. *To the Sheriff of* M. *Greeting: We command you, that you ſummon* C. D. (*having* Privilege *of Parliament*) *that he be before us at* Weſtminſter, *on the Day*, &c. *next after*, &c. *to anſwer to* A. B. *of a Plea of Debt, or Treſpaſs upon the Caſe, as reaſonably ſhewn may be, that he ought to anſwer*; *and have you there this Writ.* Witneſs, &c.

Form *of a Writ of* Attachment of Privilege.

GEORGE the Second, &c. *To the Sheriff of* S. *Greeting: We command you, that you attach* A. B. *and* C. D. *if they are to be found in your Bailiwick, and ſafely keep them, ſo that you have their Bodies before us at* Weſtminſter, *on the Day*, &c. *next after*, &c. *to anſwer to* E. F. *Gentleman, one of the Clerks of* Edward Ventris, *Eſq*; *our chief Clerk, aſſigned to inrol Pleas in our Court before us, according to the Liberties and Privileges of ſuch chief Clerk and his Clerks, uſed and approved of in the ſame Court, from the Time whereof the Memory of Man is not to the contrary*; *in an Action of Treſpaſs*, &c. *And have you then there this Writ.* Witneſs, &c.

Privileged Places. A Perſon was arreſted in the *Temple*, and upon a Motion to ſet it aſide, it was inſiſted for him, that the *Temple* is *privileged* from Arreſts by the King's Grant; for which the Authority of *Stow's Chronicle* and *Dugdale* were alledged: But by *Holt* Chief Juſtice, if the King hath made any ſuch Grant to that Society, 'tis void in Law, they having no Court of Juſtice within themſelves: 'Tis true the *Temple* is *extraparochial*, and not within any Pariſh, nor in the City, ſo as to come within the Cuſtoms of the City, but 'tis within the County of the City; and *White Friars* is within the Juriſdiction of the City: Yet the Court inclined not to countenance Arreſts in the *Temple*, eſpecially in Term-Time; though they would not ſet aſide this Arreſt, ſo the Defendant was held to ſpecial Bail. 9 *W.* 3. B. *R.* 3 *Salk.* 285. By an Act made 8 & 9 *W.* 3. *cap.* 26. for preventing the many ill Practices uſed in *privileged Places* to defraud Perſons of their Debts; the pretended *Privileges* of *White Fryars*, the *Savoy*, *Salisbury Court*, *Ram Alley*, *Mitre Court*, *Fuller's Rents*, *Baldwin's Gardens*, *Montague Cloſe*, the *Minories*, *Mint*, *Clink*, or *Deadman's Place*, are taken away. And the Sheriffs of *London* or their Officers are enabled to take the *Poſſe Comitatus*, and ſuch other Power as ſhall be requiſite, and enter ſuch *privileged Places* to make any Arreſt on legal Proceſs, and in Caſe of Refuſal, to break open Doors; and if ſuch Sheriff, Bailiff, &c. ſhall neglect with ſuch Force to uſe their beſt Endeavours for executing any Proceſs, they ſhall forfeit to the Plaintiff 100 *l.* to be recovered in any of Courts at *Weſtminſter*; and if any Perſon doth reſiſt the Officers in executing any Proceſs, or any who ſhall be aiding and aſſiſting to them, he ſhall forfeit 50 *l.* ſuffer Impriſonment, and be ſet in the Pillory, as the Court of Aſſiſes, Gaol-Delivery, &c. ſhall think fit: Perſons reſcuing any one arreſted in the aforeſaid pretended *privileged Places*, are to forfeit to the Plaintiff in the Action 500 *l.* On Non-payment whereof, within one Month after recovered in the Courts at *Weſtminſter*, and Judgment ſigned, they ſhall be tranſported to the Plantations for ſeven Years; and returning within that Term, be adjudged guilty of Felony without Benefit of Clergy; alſo Harbourers and Concealers of ſuch Reſcuers knowingly, are liable to Tranſportation, unleſs they pay the Plaintiff his Debt for which the Action was brought, with full Coſts, &c. That Stat. 9 *Geo.* 1. *c.* 28. enacts, That if any Perſon within the Place commonly called *Suffolk Place*, or the *Mint*, in the Pariſh of St. *George* in the County of *Surry*, or the pretended Limits thereof, ſhall wilfully obſtruct or oppoſe any Perſons in the Serving or Executing any Writ, or legal Proceſs, Rule or Order of Court, or Warrant of any Juſtice of Peace, &c. or aſſault or abuſe any Perſon, ſerving or executing the ſame, whereby he ſhall receive Damage or bodily Hurt, the Perſon offending ſhall be deem'd Guilty of Felony, and be tranſported to the Plantations, by ſuch Ways, and for ſuch Time, and under ſuch Pains, as Felons in other Caſes: And upon Complaint to three Juſtices of Peace, &c. by any Perſon who ſhall have a Debt owing from any one who reſides in the *Mint*, having a legal Proceſs taken out for Recovery thereof, if the Debt be above 50 *l.* on Oath, thereof, the Juſtices are impowered to iſſue their Warrant to the Sheriff of *Surrey*, to raiſe the *Poſſe*, and to enter the ſaid pretended *privileged Place*, and arreſt the Party, &c. And the Sheriff neglecting or refuſing, incurs a Forfeiture of 200 *l.*

Perſons reſiſting the Sheriff, *&c.* or making a Reſcous of a Priſoner; or harbouring or concealing any Priſoner ſo taken, or Perſon that reſcued him; or who ſhall exerciſe any unlawful Juriſdiction, or make or execute any pretended Ordinance for ſupporting any pretended *Privilege*, &c. within the ſaid Place, for hindering the due Execution of legal Proceſs; every ſuch Offender ſhall be guilty of Felony, and be tranſported: And Perſons in Vizards or Diſguiſes, oppoſing the Execution of any Proceſs in the *Mint*, or abetting any Riot or Tumult there, ſhall be adjudged guilty of Felony without Benefit of Clergy, *&c.* Perſons apprehending any Offender, and proſecuting him to Conviction; or an Offender out of Priſon, diſcovering and convicting two of his Accomplices, are entitled to a Reward of 40 *l.* The Rewards and Charge of raiſing the *Poſſe* for inforcing this Act, are to be paid by the Sheriff, and allowed in his Accounts, or repaid by the Treaſury, *&c.* And by this Statute the *Minters* reſiding in the *Mint*, not owing more than 50 *l.* to any one Creditor, delivering up their Effects upon Oath, for the Benefit of their Creditors, on Petition, and Notice to Creditors, *&c.* were to be diſcharged by the Juſtices in their Quarter-Seſſions.

Privy Council, (*Conſilium Regis, Privatum Conſilium*) Is a moſt honourable Aſſembly of the King and *Privy Counſellors* in the King's Court or Palace, for Matters of State. 4 *Inſt.* 53. The King ſits himſelf in Council, and appoints *Privy Counſellors* without Patent or Grant, by putting them on the Liſt, and on their Removal ſtriking them out, which he may do as he pleaſes: They take an Oath to the King, juſtly to adviſe him, to keep Secrecy, *&c.* Their Number at the firſt Inſtitution was Twelve; but at this Time is without Limitation, at the King's Will: Next to the *Lord Preſident of the Council*, the *Lord Privy Seal* ſits in Council, the *Secretaries of State*, and many other Lords and Gentlemen: And in all Debates of the Council, the Loweſt delivers his Opinion firſt, and the King declares his Judgment laſt; and thereby the Matter of Debate is determined. 4 *Inſt.* 55. Sir *Edward Coke* has theſe notable Concluſions, with Reſpect to the Proceedings of the *Privy Council*, *viz.* That it is conſiſtent with Safety, for a *Privy Counſellor* to give the King Council when demanded; and that the Trueſt and beſt Council is ever given to a Prince, when the Queſtion is ſo evenly ſtated and propounded, as the Counſellor cannot diſcern which way the King himſelf inclines; that Reſolution ſhould never precede Deliberation, nor Execution go before Reſolution; and when upon Debate and Deliberation, any Matter is well reſolved by the Council, a Change of it upon ſome private Information is neither ſafe nor honourable. 4 *Inſt.* The *Court of Privy Council* is of great Antiquity: The Way of Government in *England*, it is ſaid, was originally by the King and his *Privy Council*; though at preſent the King and *Privy Council*, only intermeddle in Matters of Complaint on ſudden Emergencies; their conſtant Buſineſs being to conſult for the Publick Good, Honour and Welfare of the Realm, in Affairs of State. 4 *Inſt.* 53. The Lords and Commons aſſembled in Parliament, have oftentimes tranſmitted Matters of high Concern to the King and his *Privy Council:* And Acts of the *Privy Council*, whether Orders or Proclamations, were heretofore of very great Authority in *England*; and in the Reign of King *Hen.* 8. that King procured an Act of Parliament to be made, that with the Advice of his *Privy Council*, he might ſet forth Proclamations, which ſhould have the Force of Acts of Parliament; but that Statute was repealed in the Reign of King *Ed.* 6. Though Acts of the *Privy Council* ſtill continued of great Authority until the Reigns of King *Charles* the Firſt and Second: And by theſe were Controverſies ſometimes determined touching Lands and Rights between Party and Party; as well as the Suſpenſion of Penal Laws, *&c.* But this ſeemed to be contrary to the 25 *Ed.* 3. *cap.* 4. And by Stat. 16 *Car.* 1. *cap.* 10. it is declared, that neither the King, nor the *Privy Council*, have Authority by Petition, Bill, *&c.* to determine or diſpoſe of Lands, Tenements, Hereditaments or Goods and Chattels of any Subject. The King with the Advice of his Council, publiſhes Proclamations binding to the Subject; but they are to be conſonant to, and in Execution of the Laws of the Land: It is in the Power of the *Privy Council*, to inquire into Crimes againſt the Government, and they may commit Perſons for Treaſon, and other Offences againſt the State, in order for their Trial in ſome of the other Courts; and any one or two of the *Privy Council* may lawfully do it: But they take Cogniſance of no private Matters that may be determined by the ordinary Laws in other Courts; yet the Kingdom of *Ireland*, and the *Plantations* are in many Reſpects ſubject to the Controul, and under the Direction of the *Privy Council* of *Great Britain*; and Law-Controverſies among the Subjects of *Jerſey* and *Guernſey*, &c. are determined by the *Privy Council.* 3 *Inſt.* 182. 4 *Inſt.* 53. *Wood's Inſt.* 458. By Stat. 33 *Hen.* 8. *cap.* 23. Perſons examined by the *Privy Council*, on Treaſons, Murders, *&c.* done within or without the Realm, may be tried before Commiſſioners of *Oyer and Terminer* appointed by the King in any County of *England:* This Statute, as far as it relates to Treaſon committed within the Kingdom, is repealed by 1 *&* 2 *P.* *&* *M.* *cap.* 10. If a Perſon be killed beyond Sea, out of the Realm, the Fact may be examined by the *Privy Council*, and the Offender tried according to the aforeſaid Statute. Conſpiracy by the King's Servants, againſt the Life of a *Privy Counſellor*, &c. is Felony. 3 *Hen.* 7. *cap.* 14. And Perſons attempting to kill, or unlawfully aſſault any *Privy Counſellor*, when in the Execution of his Office, are guilty of Felony, without Benefit of Clergy, by the Stat. 9 *Ann. cap.* 16. And antiently if one did ſtrike another Perſon in the Houſe of a *Privy Counſellor*, or in his Preſence, the Party offending was to be fined. 4 *Inſt.* 53. No Perſon born out of the King's Dominions, except of *Engliſh* Parents, ſhall be of the *Privy Council.* 12 *W.* 3. *cap.* 2. There is to be but one *Privy Council* in *Great Britain:* And the *Privy Council* is not diſſolved by the Death of the King; but to continue for ſix Months, *&c.* 6 *Ann. cap.* 6, 7.

Privy Seal, (*Privatum Sigillum*) Is a Seal that the King uſeth to ſuch Grants or Things, as paſs the Great Seal. 2 *Inſt.* 554. Firſt they paſs the Privy Signet, then the *Privy Seal*, and laſtly the *Great Seal* of *England*; and the Clerks of the *Privy* Signet-Office write out ſuch Grants, Patents, *&c.* as paſs the *Sign Manual*, which being tranſcribed and ſealed with the Signet, is a Warrant to the *Privy Seal*, as the *Privy Seal* is a Warrant to the *Great Seal. Wood's Inſt.* 457. How the King's Grants, Writings, and Leaſes, ſhall paſs the three Seals, *viz.* the *Privy* Signet, the *Privy Seal*, and the *Great Seal*; and the Duties of the Clerks of the *Privy* Signet, and *Privy Seal*, and what Fees ſhall be paid to them, and many Articles concerning the Paſſing of the King's Grants, *&c.* are mentioned in the Statute 27 *H.* 8. *cap.* 11. No Protection can be granted under the *Privy Seal*, but under the Great Seal: But a Warrant of the King under the *Privy Seal* to iſſue Money out of his Coffers, is ſufficient; tho' not under the *Privy* Signet. 2 *Inſt.* 555. 2 *Rep.* 17. 2 *Roll. Abr.* 183. And the *Privy Seal* is ſometimes uſed in Things of leſs Conſequence, that never paſs the Great Seal; as to diſcharge a Recogniſance, Debt, *&c.* But no Writs ſhall paſs under the *Privy Seal*, which touch the Common

Law. 2 *Inſt.* 555. And Matters of the *Privy Seal* are not iſſuable, or returnable in any Court, *&c.* 3 *Nelſ. Abr.* 211. See *Keeper of the Privy Seal.*

Pridwen, Was the Name of the Seal of King *Arthur,* on which the *Virgin Mary* was engraved. *Geoff. of Monm. lib.* 7. *cap.* 2.

Pro, Is a Prepoſition, ſignifying for, or in reſpect of a Thing; as *Pro Conſilio, &c.* And in Law, *Pro* in the Grant of an Annuity *pro Conſilio,* ſhewing the *Cauſe* of the Grant amounts to a Condition: But in a Feoffment, or Leaſe for Life, *&c.* it is the Conſideration, and doth not amount to a Condition; and the Reaſon of the Difference is, becauſe the State of the Land by the Feoffment is executed, and the Grant of the Annuity is executory. *Plowd.* 412. *Wood's Inſt.* 231.

Probare, In the Laws of *Canutus,* was uſed for to claim a Thing as a Man's own. *Leg. Canut. cap.* 44.

Probate of Teſtaments, (*Probatio Teſtamentorum*) Is the Exhibiting and Proving Laſt Wills and Teſtaments before the Eccleſiaſtical Judge, delegated by the Biſhop, who is Ordinary of the Place where the Party dies: And if all the Deceaſed's Goods, Chattels and Debts owing to him, were in the ſame Dioceſe, then the Biſhop of the Dioceſe, *&c.* hath the *Probate of the Teſtament*; but if the Goods and Chattels were diſperſed in divers Dioceſes, ſo that there were any Thing out of the Dioceſe where the Party lived, to make what is called *Bona Notabilia,* then the Archbiſhop of *Canterbury,* or *York,* is the Ordinary to make *Probate* by his Prerogative. *Blount.* The *Probate* of a Will is uſually made in the Spiritual Court, and this is done by granting Letters Teſtamentary to an Executor under the Seal of the Court, by which the Executor is enabled to bring any Action, *&c.* And if ſuch Letters Teſtamentary are granted to the Party who exhibits the Will, meerly upon his Oath, by ſwearing that he believeth it to be the Laſt Will of the Deceaſed; this is called Proving it in *common Form,* and ſuch a *Probate* may be controverted at any Time: If the Executor, beſides his own Oath, produces Witneſſes to prove it to be the Laſt Will of the Deceaſed, and this in the Preſence of the Parties who claim any Intereſt, or in their Abſence, if ſummoned and they do not appear; this is termed a *Probate per Teſtes,* which cannot be queſtioned after thirty Years. 2 *Nelſ. Abr.* 1301. Upon an Iſſue whether the Deceaſe made an Executor or no, the *Probate* of the Will was adjudged to be good Proof. 2 *Lill. Abr.* 375. And where a *Probate* of a Will is produced in Evidence at a Trial, the Defendant cannot ſay that the Will was forged, or that the Teſtator was *Non Compos Mentis,* becauſe it is directly againſt the Seal of the Ordinary in a Matter where he had a proper Juriſdiction; but the Defendant may give in Evidence that the Seal itſelf was forged, or that the Teſtator had *Bona Notabilia,* or he may be relieved on Appeal. 1 *Lev.* 235. *Raym.* 405. As the Judge of the Spiritual Court only can determine the Validity of Wills for Things Perſonal; therefore the *Probate* of ſuch a Will, is undeniable Evidence to a Jury, and it may not be controverted at Common Law. 1 *Ld. Raym.* 262. A *Probate,* according to *Holt* Chief Juſtice, is Evidence of a Will only as to Chattels: But if a Will of Lands be loſt, it ſhall be allowed for ſuch a Will concerning Lands. *Ibid.* 731, 735. When *Probate* is to be granted of a Will, wherein a Legacy is interlined in a different Hand, and ſuppoſed to be forged, the Executor has no Remedy but in the Spiritual Court; where the Will ought to be proved, with a ſpecial Reſervation as to that Clauſe. 1 *Peer Will.* 388. Notwithſtanding Appeal from a Will, a Perſon is complete Executor by the *Probate*; though the *Probate* may be traverſed, if an Executor Plaintiff do not conclude with a *Profert hic in Curia,* or the Defendant may demand *Oyer* of the Will. 3 *Bulſt.* 72. An Executor being made by the Act of the Party deceaſed himſelf, therefore the Law intitles him to the *Probate* of the Will; and the *Probate* cannot be revoked or altered, which would in Effect make a new Will; yet it may be ſuſpended by an Appeal: But if Adminiſtration be granted to one, this is by the Act of the Court; and if he afterwards become Bankrupt, *&c.* the Adminiſtration may be repealed. 1 *Roll. Rep.* 226. *Show.* 293. 1 *Salk.* 36. 2 *Nelſ. Abr.* 1302. By the Statute 21 *Hen.* 8. *cap.* 5. it is ordained, that on *Probate* of Wills, *&c.* 6 *d.* and no more ſhall be taken by the Regiſter, where the Goods of the Deceaſed do not exceed five Pounds Value; and when the Goods of the Deceaſed are above the Value of 5 *l.* and under 40 *l.* the Fee to the Judge ſhall be 2 *s.* 6 *d.* and to the Regiſter 1 *s.* and if the Goods exceed 40 *l.* in Value, the Judge's Fee is 2 *s.* 6 *d.* and to the Regiſter 2 *s.* 6 *d.* but this he may refuſe, and take a Penny for every ten Lines of the Will, *&c.* And if the Officer takes more than his due Fees, he ſhall forfeit 10 *l.* to be divided between the King and the Party grieved. But it hath been held on this Statute, that a Tranſcript of the Will muſt be brought to the Regiſter ready ingroſſed, and with Wax to be ſealed, ſo that the Regiſter, *&c.* may have nothing to do but to annex the *Probate* to it; and then no Fee ſhall be taken for ſuch Tranſcript. 4 *Inſt.* 336. *Co. Ent.* 166. The Power of granting *Probates* and Adminiſtrations of the Goods of Perſons dying, for Wages or Work done in the King's Docks and Yards, ſhall be in the Ordinary of the Dioceſe where the Perſon dieth, or in him to whom Power is given by ſuch Ordinary, excluſive of the Prerogative Court, *&c.* Stat. 4 & 5 *Ann. cap.* 16. See *Executor,* &c.

Probator, Is an Accuſer, or *Approver*; or one who undertakes to *prove* a Crime charged upon another. *Fleta, lib.* 2. *cap.* 52.

Procedendo, Is a Writ which lieth where an Action is removed out of an Inferior Court, to a Superior Court, as the *Chancery, King's Bench,* or *Common Pleas,* by *Habeas Corpus, Certiorari,* or Writ of *Privilege*; to ſend down the Cauſe to the Court from whence removed, to *proceed* upon it, it not appearing to the higher Court that the Suggeſtion is ſufficiently proved. *F. N. B.* 153. 5 *Rep.* 63. 21 *Jac.* 1. *cap.* 23. And if the Party who ſues out a *Habeas Corpus,* or *Certiorari,* doth not put in good Bail in Time, (where good Bail is required) then there goes this Writ to the inferior Court to proceed *non obſtante* the *Habeas Corpus, &c.* 2 *Lill. Abr.* 376. If a *Certiorari* or *Habeas Corpus,* to remove a Cauſe, be returned before a Judge, the Judge will give a Rule thereupon to put in good Bail by ſuch a Day, which if the Defendant, upon ſerving his Attorney with a Copy of the Rule, doth not do, then the Judge will ſign a Warrant for a *Procedendo,* to remove the Cauſe back again where the Action was firſt laid: Alſo if Bail be put in at the Time, and do not prove good, the Judge will grant a Rule for better Bail to be put in by ſuch a Day, or elſe to juſtify the Bail already put in; which if the Defendant doth not do, the Judge will then likewiſe grant a Warrant for a *Procedendo.* 2 *Lill.* 377. Where Bail put in on Removal of a Cauſe into *B. R.* is diſallowed by the Court, if the Defendant upon a Rule for that Purpoſe, and Notice given, refuſe to put in better Bail, ſuch as the Court ſhall approve of, a *Procedendo* may be granted; for Diſallowing of the Bail makes the Defendant to be in the ſame Condition as if he had put in no Bail, and until the Bail is put in and filed, the Court is not poſſeſſed of the Cauſe ſo as to proceed in it. *Mich.* 24 *Car. B. R.* After a Record returned, and the Defendant hath *filed Bail* in *B. R.* on a Cauſe's being removed, a *Procedendo* ought not to be granted; becauſe by giving and filing Bail in this Court, the Bail below is diſcharged. *Sid.* 313. 2 *Nelſ. Abr.* 1304. And it hath been held, that by the *Common Law* if a *Certiorari* be once filed, the Proceedings below can never be revived by any *Procedendo. Hill.* 6 *Geo.* 2 *Hawk. P. C.* 294. When a Cauſe by the *Cuſtom of London* is actionable, and will not bear an Action at the Common Law, if upon a *Habeas Corpus* or *Certiorari*, brought to remove ſuch Cauſe into the Court of *B. R.* it doth ſo appear to the Court; the Court will grant a *Procedendo* to authoriſe the Court of *London* to proceed in the Matter; otherwiſe the Party that brought the Action would be without Remedy, 2 *Lill. Abr.* 376. This Writ of *Procedendo* is called a *Procedendo in Loquela.*

Procedendo on Aid Prayer. If a Man *Pray* in *Aid* of the King, in a real Action, and the *Aid* be granted; it ſhall be awarded that he ſue to the King in the *Chancery*, and the Juſtices in the *Common Pleas* ſhall ſtay until the Writ of *Procedendo in Loquela* come unto them: And if it appear to the Judges by Pleading or ſhewing of the Party, that the King hath Intereſt in the Land, or ſhall loſe Rent or Service, &c. there the Court ought to ſtay until they have from the King a *Procedendo in Loquela:* And then they may proceed in the Plea, until they come to give Judgment; when the Juſtices ought not to proceed to Judgment, without a Writ for that Purpoſe. *New Nat. Br.* 342. So in a perſonal Action, if the Defendant *Pray in Aid* of the King, the Judges are not to proceed until they receive a *Procedendo in Loquela.* And though they may then proceed and try the Iſſue joined, they ſhall not give Judgment until a Writ comes to them to proceed to Judgment. *Ibid.*

Procedendo ad Judicium, Lies where the Judges of any Court delay the Party, Plaintiff or Defendant, and will not give Judgment in the Cauſe, when they ought to do it. *Wood's Inſt.* 570. If Verdict paſs for the Plaintiff in *Aſſiſe of Novel Diſeiſin* before the Juſtices of Aſſiſe, and before they give Judgment, by a new Commiſſion, new Juſtices are made; the Plaintiff in the Aſſiſe may ſue forth a *Certiorari* directed to the other Juſtices to remove the Record before the new Juſtices; and another Writ to the new Juſtices to receive and inſpect the Record, and then proceed to Judgment, &c. *New Nat. Brev.* 342, 343. Where the Authority of Commiſſioners of *Oyer and Terminer*, &c. is ſuſpended by Writ of *Superſedeas*; their Power may be reſtored by a Writ of *Procedendo.* Regiſt. 124. 12 Aſſ. 21. H. P. C. 162.

Proceſs, (*Proceſſus, à Procedendo ab initio uſque ad finem*) Is ſo called, becauſe it *proceeds* or goes out, upon former Matter, either original or judicial; and hath two Significations: Firſt, it is largely taken for all the Proceedings in any Action, real or perſonal, civil or criminal, from the Beginning to the End: Secondly, we call that the *Proceſs* by which a Man is called into any Temporal Court, becauſe it is the Beginning or principal Part thereof, by which the reſt is directed; or if taken ſtrictly, it is the Proceeding, after the Original, before Judgment. *Briton* 138. *Lamb. lib.* 4. *Crompt.* 133. 8 *Rep.* 157. *Proceſſes* are *General*, or *Special*; and ſpecial *Proceſs* is that which is eſpecially appointed for any Offence, &c. by Statute: And there is a very great Diverſity of *Proceſſes.* F N. B. *Proceſs* to call Perſons into Court, &c. muſt be in the Name of the King; and if it iſſue from the Court of *King's Bench*, it ought to be under the *Teſte* of the Chief Juſtice, or of the ſenior Judge of the Court, if there be no Chief Juſtice; and if it iſſueth from any other Court, it is to be under the *Teſte* of the firſt in Commiſſion, &c. *Dalt. ch.* 132. *Finch* 436. *Cro. Car.* 393. No *Proceſs* ſhall regularly iſſue in the King's Name and by his Writ, to apprehend a Felon or other Malefactor, unleſs there be an Indictment or Matter of Record in the Court, upon which the Writ iſſues. 1 *Hale's Hiſt. P. C.* 575. All legal Proceedings take Commencement by original Writ, Indictment, or Information; or in *B. R.* by Bill of *Middleſex*, or *Latitat*, which is the original *Proceſs* of this Court; and is in Nature of an Original to cauſe Appearance. 2 *Lill. Abr.* 377. There is no Need of *Proceſs* upon an Indictment, &c. where the Defendant is preſent in Court; only where he is abſent. 2 *Hawk.* 281. The *Proceſs* on Indictments of *Capias*, &c. is appointed by the 25 *Edw.* 3. and 8 *Hen.* 6. In Actions of the Caſe; and Writs of Annuity and Covenant, by Stat. 19 *Hen.* 7. 23 *Hen.* 8. And no Writ, *Proceſs*, &c. ſhall be diſcontinued by the King's Death. 4 & 5 *W. & M.* 1 *Ann.* If *Proceſs* is awarded out of a Court which hath not Juriſdiction of the principal Cauſe, it is *coram non Judice* and void: And the Sheriff executing it will be a Treſpaſſer. 2 *Leon.* 89. Proceedings in the Superior and Inferior Courts muſt be regularly and formally entered, according to the legal Courſe; or they may be reverſed for Error in B. R. 2 *Lill.* 379. Anciently all Law Proceedings and Pleadings, &c. were in *French:* Though by Statutes ſince made, it was enacted, that they ſhould be pleaded and anſwered in *Engliſh*, and entered and inrolled in *Latin.* 36 *Ed.* 3. *c.* 15. 22 *Car.* 2. *c.* 3. The old Entries of the Law Proceedings in *French* was required by *Will.* 1. called the *Conqueror*, it being a Language which he himſelf knew; and the Uſe of *Latin*, is ſaid to be introduc'd by the Clergy, when the Biſhops and other Spiritual Perſons were Judges, and chief Officers of our Courts; and this they did, as knowing whatever Alteration there were in national Languages, the *Latin* would be generally underſtood. Yet ſome give another Reaſon for it, that it was done to keep the People in Ignorance, and to have in their own Power only the Interpretation of the Laws. *Forteſcue* 100. By a late Statute, all Proceedings in the Courts of Juſtice in *England*, and in the Court of *Exchequer* in *Scotland*, *viz.* all Writs, and *Proceſs* thereon, Pleadings, Indictments, Informations, Preſentments, Inquiſitions, Verdicts, Records, Judgments, Commiſſions, Pardons, Statutes, Bonds, Rolls, Entries, Fines and Recoveries, Proceedings of Courts Leet and Courts-Baron, &c. ſhall be in the *Engliſh* Tongue, and not in *Latin* or *French*; and be written in a common Ingroſſing Hand, not *Court* Hand, in Words at length, &c. on Pain of forfeiting the Sum of 50 *l.* And Miſtranſlations, Errors in Form, and Miſtakes of Clerkſhip, may be amended before or after Judgment: Alſo the Statutes of *Jeofails* ſhall extend to all Forms, and Proceedings in *Engliſh*, except in criminal Caſes. But this Statute extendeth not to the Court of *Admiralty*, as to certifying any Proceedings beyond the Seas, &c. which may be in *Latin* as formerly. Stat. 4 *Geo.* 2. *cap.* 26. And in the Court of Receipt of the *Exchequer* in *England*, Officers and Clerks may carry on their Buſineſs in their uſual Courſe; alſo Writs, Proceſs, Pleadings, &c. may be written expreſſing Numbers by Figures, and with uſual Abbreviations in *Engliſh*; and Names of Writs, &c. to be expreſſed in the ſame Language as hath been commonly uſed, by 6 *Geo.* 2. *c.* 6. 14.

Proceſſion. In *Cathedral* and *Conventual Churches*, the Members had their ſtated *Proceſſions*, wherein they walked in their moſt ornamental Habits, with Muſick before them, ſinging of Hymns, and other ſuitable Solemnity: And in every Pariſh, there was a cuſtomary annual *Proceſſion* of the Pariſh Prieſt, the Patron of the Church, with the chief Flag, or holy Banner, and the other Pariſhioners, to take a Circuit round the Limits of the Pariſh or Manor, and pray for a Bleſſing on the Fruits of the Earth; to which we owe our preſent Cuſtom of *Perambulation*, which in moſt Places is ſtill called

Proceſſioning, and *going in Proceſſion*, though we have loſt the Order and Devotion, as well as Pomp and Superſtition of it.

Proceſſum continuando, Is a Writ for the *Continuance* of *Proceſs*, after the Death of the Chief Juſtice, or other Juſtices in the Commiſſion of *Oyer and Terminer*. Reg. Orig. 128.

Prochein Amy, (*Proximus Amicus*) Is uſed in Law for him that is the *next Friend*, or next of Kin to a Child in his Nonage, and in that Reſpect is allowed to deal for the Infant in the Management of his Affairs; as to be his Guardian if he holds Lands in Socage, and in the Redreſs of any Wrong done to him. Stat. *Weſtm.* 1. *cap.* 48. *Weſtm.* 2. *cap.* 15. 2 *Inſt.* 261. And *Prochein Amy* is commonly taken for *Guardian in Socage*; but otherwiſe it is he that appears in Court for an Infant who ſues any Action, and aids the Infant in Purſuit of his Action: For to ſue, an Infant may not make an Attorney, but the Court will admit the next Friend of the Infant Plaintiff; and a Guardian for an Infant Defendant: If no Guardian is appointed by the Father, *&c.* of an Infant, the Courſe of the Court of *B. R.* hath been to allow one of the Officers of the Court to be *Prochein Amy* to the Infant to ſue. *Terms de Ley* 493. 2 *Lill. Abr.* 52. It hath been held, that a Guardian and *Prochein Amy*, are diſtinct, though either of them may be admitted for the Plaintiff being an Infant. *Prochein Amy* was never before the Statute *Weſtm.* 1. and was appointed in Caſe of Neceſſity, where an Infant was to ſue his Guardian, or the Guardian would not ſue for him; for which Reaſon he may be admitted to ſue by *Prochein Amy*, when he is to demand or gain any Thing. 2 *Nelſ. Abr.* 997. The Plaintiff Infant may ſue *per Guardianum*, or *per* Proximum Amicum *ad proſequendum*; and if the Admiſſion is to ſue *per Guardianum*, when it ſhould be *per Proximum Amicum*, it will be well enough, there being many Precedents both Ways: But if he is ſued, it muſt be *per Guardianum*. Cro. Car. 86, 115. Hut. 92. If an Infant be diſturbed by the Chief Lord, ſo that he cannot bring *Aſſiſe*, his *Prochein Amy* ſhall be admitted. 3 *Ed.* 1. *cap.* 48. So where the Infant is *Eloined*, *&c.* 13 *Ed.* 1. *cap.* 15. See *Infant*.

Prochein Avoidance, Is nothing but a Power to Preſent a Miniſter to a Church when it ſhall become void: As where one hath Preſented a Clerk to a Church, and then grants the *next Avoidance* to another, *&c.* See *Avoidance*.

Proclamation, (*Proclamatio*) Is a Notice publickly given of any Thing, whereof the King thinks fit to advertiſe his Subjects: As that if a Man do not ſurrender himſelf, at ſuch a Time, he ſhall be eſteemed a Rebel; or to forbid or command a Thing; and it is a Branch of the King's Prerogative, by which he may do many Things alone. 7 *R.* 2. *cap.* 6. 3 *Inſt.* 162 *Shep. Epit.* 819. And in this Senſe, none may make any *Proclamation* without the King's Authority; except Mayors, or ſuch like Governors of Towns, *&c.* by Cuſtom or Privilege. *Crompt. Juriſd.* 41. By the Stat. 31 *Hen. cap.* 8. The King's *Proclamation* was to be of the ſame Effect as an Act of Parliament; not to prejudice Life, Liberty, *&c.* and Contemners of it to be adjudged Traytors. The King may make a *Proclamation* to his Subjects, *Quoad terrorem Populi*, and put them in Fear of his Diſpleaſure; but not upon any other certain Pain, as Forfeiture of their Lands or Goods, or to undergo the Penalty of a Fine and Impriſonment, *&c.* *Daliſ.* 20 2 *Lill. Abr.* 381, 382. Yet the King by his *Proclamation* may inhibit his Subjects that they go not out of the Realm, without Licenſe; and if the Subject act contrary thereunto, for this Contempt he ſhall be fined to the King. 12 & 13 *Eliz.* *Dyer* 296. There are *Proclamations* of divers Kinds; and a *Proclamation* is to be pleaded under the Great Seal, without which it doth not bind, *&c.* *Cro. Car.* 130. Vide *King*, and *Privy Council*.

Proclamation of Courts, Is uſed particularly in the Beginning or Calling of a Court, and at the Diſcharge or Adjourning thereof; for the Attendance of Perſons, and Diſpatch of Buſineſs incident thereto: And before a *Parliament* is diſſolved, *&c.* Publick *Proclamation* is to be made, that if any Perſon hath any Petition, he ſhall come in and be heard. *Lex Conſtitut.* 156. At the latter End of the *Aſſiſes*, there is uſually *Proclamation* made, that no more Records of *Niſi Prius*, ſhall be put in to be tried at that Aſſiſes; after which they will not be received, and all Perſons who have not then put in their Records of *Niſi Prius* may depart, and are bound to give no longer Attendance at that Aſſiſes. *Paſch.* 1652. 2 *Lill. Abr.* 381. *Proclamation* is made in *Courts Baron*, for Perſons to come in and claim vacant Copyholds, of which the Tenants died ſeiſed ſince the laſt Courts; and the Lord may ſeiſe a Copyhold, if the Heir come not in to be admitted upon *Proclamation*, *&c.* 1 Lev. 63.

Proclamation of Exigents. On awarding an *Exigent*, in order to *Outlawry*, a Writ of *Proclamation* iſſues to the Sheriff of the County where the Party dwells, to make three *Proclamations* for the Defendant to yield himſelf, or be outlawed. Stat. 6 *Hen.* 8. *cap.* 4. 31 *Eliz. cap.* 3. 4 & 5 *Will. & Mar.*

Proclamation of a Fine. When any Fine of Land is paſſed, *Proclamation* is ſolemnly made thereof in the Court of Common Pleas where levied, after the Ingroſſing it; and Tranſcripts are alſo ſent to the Juſtices of *Aſſiſe*, and Juſtices of the Peace of the County in which the Lands lie, to be openly *proclaimed* there. 1 *R.* 3. *cap* 7.

Proclamation of Nuſances. By Statute, *Proclamation* is to be made againſt *Nuſances*, and for the Removal of them, *&c.* 12 *R.* 2.

Proclamation of Rebellion, Is a Writ, whereby a Man, not appearing upon a *Subpœna*, or an *Attachment* in the *Chancery*, is reputed and declared a *Rebel*, if he render not himſelf by a Day aſſigned. See *Commiſſion of Rebellion*.

Proclamation of Recuſants. There is a *Proclamation of Recuſants*, by which they ſhall be convicted, on Non-appearance at the Aſſiſes. 29 *Eliz.* 3 *Jac.* 1.

Proclamation of Statutes, Is for their better Obſervance, and that the People may avoid the Penalties thereof.

Pro confeſſo, Is where a Bill is exhibited in the *Chancery*, to which the Defendant appears, and is afterwards in Contempt for not anſwering; when the Matter contained in the Bill ſhall be taken as if it were *confeſſed* by the Defendant. *Terms de Ley* 494. If a Defendant is in Cuſtody for Contempt in not anſwering the Complainant's Bill, upon a *Habeas Corpus*, which is granted by Order of Court, to bring him to the Bar, the Court aſſigns him a Day to anſwer; and the Day being expired, and no Anſwer put in, a ſecond *Habeas Corpus* is iſſued, and the Party being brought into Court a further Day is aſſigned; by which Day, if he anſwer not, the Bill upon the Plaintiff's Motion ſhall be taken *Pro confeſſo*, unleſs Cauſe be ſhewed by a Day; and for Want of ſuch Cauſe ſhewed on Motion, the Subſtance of the Bill ſhall be decreed to the Plaintiff. *Hill.* 1662. Alſo after a fourth inſufficient Anſwer made to the Bill of the Complainant, the Matter of the Bill not ſufficiently anſwered unto by the Defendant ſhall be taken *Pro confeſſo*, and decreed accordingly.

Proctor, (*Procurator*) Is he who undertakes to manage another Man's Cauſe, in any Court of the *Civil* or *Eccleſiaſtical* Law, for his Fee: *Qui aliena negotia gerenda ſuſcipit*.

Proctors of the Clergy, (*Procuratores Cleri*) Are thoſe who are choſen and appointed to appear for Cathedral or other Collegiate Churches; as alſo for the common Clergy of every Dioceſe, to ſit in the *Convocation* Houſe in the Time of Parliament. On every new Parliament the King directeth his Writ to the Archbiſhop of each Province, for the Summoning of all Biſhops, Deans, Archdeacons, &c. to the Convocation, and generally of all the Clergy of his Province, aſſigning them the Time and Place in the Writ; then the Archbiſhop of *Canterbury*, upon his Writ received, according to Cuſtom directs his Letters to the Biſhop of *London*, as his provincial Dean, firſt citing himſelf peremptorily, and then willing him to cite in like Manner, all the Biſhops, Deans, Archdeacons, &c. and generally all the Clergy of his Province to the Place, and againſt the Day prefixed in the Writ; but directeth withal, that one *Proctor* be ſent for every Cathedral or Collegiate Church, and two *Proctors* for the Body of the inferior Clergy of each Dioceſe; and by Virtue of theſe Letters authentically ſealed, the ſaid Biſhop of *London* directs his like Letters ſeverally to the Biſhop of every Dioceſe of the Province, citing them in like Sort, and willing them not only to appear, but alſo to admoniſh the ſaid Deans and Archdeacons perſonally to appear; and the Cathedral and Collegiate Churches, and the common Clergy of the Dioceſe to ſend their *Proctors* to the Place at the Day appointed; and alſo willeth them to certify to the Archbiſhop the Names of all and every Perſon ſo warned by them, in a Schedule annexed to their Letter certificatory: Then the Biſhops proceed accordingly, and the Cathedral and Collegiate Churches, and the Body of the Clergy make choice of their *Proctors*; which being done and certified to the Biſhop, he returneth all at the Day. *Cowel.*

Procurations, (*Procurationes*) Are certain Sums of Money which Pariſh Prieſts pay yearly to the Biſhop or Archdeacon, *ratione Viſitationis*: They were anciently paid in neceſſary Victuals for the Viſitor and his Attendants; but afterwards turned into Money: And Complaints were often made of the exceſſive Charges of the *Procurations*, which were prohibited by ſeveral Councils and Bulls; and that of *Clement* the Fourth is very particular, wherein Mention is made that the *Archdeacon of Richmond*, viſiting the Dioceſe, travelled with one Hundred and three Horſes, twenty-one Dogs, and three Hawks, to the great Oppreſſion of religious Houſes, &c. Theſe are alſo called *Proxies*; and it is ſaid there are three Sorts of *Procurations*, or *Proxies*; *Ratione viſitationis, Conſuetudinis, & Pacti*; and that the firſt is of Eccleſiaſtical Cogniſance, but the two laſt are triable at Law. *Hardr.* 180. A Libel was brought in the Spiritual Court for *Procurations* by the Archdeacon of *York*, ſetting forth, that for ten or twenty Years, &c. there had been due and paid to him ſo much yearly by a Parſon and his Predeceſſors; who ſuggeſted for a Prohibition, that the Duty had been payable, but denied the Preſcription, and that the Eccleſiaſtical Court cannot try Preſcriptions; but it was adjudged, that *Procurations* are payable of common Right, as Tithes are, and no Action will lie for the ſame at Common Law; if he had denied the *Quantum*, then a Prohibition might go. *Raym.* 360. See Stat. 34 *Hen.* 8. *cap.* 19.

Procurator, Is one who hath a Charge committed to him by any Perſon; in which general Signification it hath been applied to a Vicar or Lieutenant, who acts inſtead of another; and we read of *Procurator Regni*, and *Procurator Reipublicæ*, which is a publick Magiſtrate: Alſo *Proxies* of Lords in Parliament are in our Law-Books called *Procuratores*; the Biſhops are ſometimes termed *Procuratores Eccleſiarum*; and the Advocates of religious Houſes, who were to ſolicit the Intereſts, and plead the Cauſes of the Societies, were denominated *Procuratores Monaſterii*; and from this Word comes the common Word *Proctor*. It is likewiſe uſed for him that gathers the Fruits of a Benefice for another Man; and *Procuracy* for the Writing or Inſtrument whereby he is authoriſed. 3 *R.* 2. *c.* 3.

Procurſus, Signifies the Genealogy of a Man. *Matt. Pariſ. Anno* 1130.

Prodes Homines, Is a Title often given in our old Books to the *Barons* of the Realm, or other military Tenants, that were ſummoned to the King's Council, and were no more than *Diſcreti & fideles Homines*, who according to their Prudence and Knowledge, were to give their Counſel and Advice.

Proditorie, A Word neceſſary in Indictments of Treaſon. 2 *Hawk. P. C.* 224.

Profaneneſs, (*Qu. procul à fano*) Is a Diſreſpect paid to the Name of God, and to Things and Perſons conſecrated to him. *Wood's Inſt.* 396. And *Profaneneſs* is puniſhable by divers Statutes; as for reviling the Sacrament of the Lord's Supper, *profanely* uſing the Name of God in Plays, &c. *Profaning* the Lord's Day, Curſing and Swearing, &c. 1 *Ed.* 6. *c.* 1. 1 *Eliz. c.* 1. 3 *Jac.* 1. *c.* 21. 1 *Car.* 1. *c.* 1. 13 *Car.* 2. *c.* 9. 6 & 7 *W.* 3. *c.* 11.

Profer, (*Profrum*, vel *Proferum*, from the Fr. *Proferer*, i. e. *Producere*) Is the Time appointed for the Accounts of *Sheriffs*, and other Officers in the *Exchequer*, which is twice in the Year. Stat. 51 *H.* 3. As to the *Profers of Sheriffs*, though the certain *Debet* of the Sheriff could not be known before the Finiſhing of his Account; yet it ſeems there was anciently an Eſtimate made of what his conſtant Charge of the *annual* Revenue amounted to, according to a *Medium*, which was paid into the *Exchequer* at the Return of the Writ of Summons of the *Pipe*; and the Sums ſo paid were and are to this Day called *Profre Vicecomitis*: But although theſe *Profers* are paid, if upon the Concluſion of the Sheriff's Accounts, and after the Allowances and Diſcharges had by him, it appears that there is a Surpluſage, or that he is charged with more than he could receive, he hath his *Profers* paid or allowed to him again. *Hale's Sher. Account* 52. There is a Writ, *De Attornato Vicecomitis pro Profro faciendo*. Reg. Orig. 139. And we read of *Profers* in the Statute 32 *Hen.* 8. *cap.* 21. in which Place *Profer* ſignifies the *Offer* and Endeavour to proceed in an Action. See *Briton*, *cap.* 28. and *Fleta*, *lib.* 1. *cap.* 38.

Profer the Half-Mark, That is to *Offer* or tender the *Half-Mark*. Vide *Half-Mark*.

Profert in Curia, Is where the Plaintiff in an Action declares upon a Deed, or the Defendant pleads a Deed, he muſt do it with a *Profert in Curia*, to the End that the other Party may at his own Charges have a Copy of it, and until then he is not obliged to anſwer it. 2 *Lill. Abr.* 382. And if a Man pleads by Virtue of an Indenture, which is loſt, on Affidavit made thereof, the Court will compel the Plaintiff to ſhew the Counterpart, that the Defendant may plead thereto; or will grant an Imparlance. *Cro. Jac.* 429. When he who is Party or Privy in Eſtate or Intereſt, or who juſtifies in the Right of him who is Party or Privy, pleads a Deed; notwithſtanding the Party privy claims but Part of the original Eſtate, yet he muſt ſhew the original Deed. 10 *Rep.* 92, 93. But where a Man is a Stranger to a Deed, and claims nothing in it, &c. there he may plead the Patent or Deed, without a *Profert in Curia*. Ibid. A Man may claim under a Deed of Uſes, without ſhewing it; becauſe the Deed doth not belong to him, though he claims by it, but the Covenantor's, and he hath no Means to obtain it; and for that it is an Eſtate executed by the Statute of Uſes, ſo as the Party is in by Law, like unto Tenant in Dower, or by Statute, &c. who may have a Rent-charge extended, and need not ſhew the Deed. *Cro. Car.* 442. And in Things executed, or Eſtates determined, there need not be any *Profert in Curia*. 3 Lev. 204. Alſo an Aſſignee of Commiſſioners of Bankrupts, need not ſhew the Bond to the Bankrupt, becauſe he comes in by Act of Law, &c. *Cro. Car.* 209. By Statute, no Advantage or Exceptions ſhall be taken for Want of a *Profert in Curia*; but the Court ſhall give Judgment according to the very Right of the Cauſe, without regarding any ſuch Omiſſion and Defect, except the ſame be ſpecially and particularly ſet down, and ſhewn for Cauſe of Demurrer. 4 & 5 *Ann. cap.* 16. Where a Deed is pleaded and ſhewn in Court, the Deed in Judgment of Law remains in Court all the Term in which it is ſhewn; and if it be not denied, then at the End of the Term it is delivered to the Party whoſe it is: And if it be denied, it ſhall ſtill remain in Court, for if it be found *Non eſt factum*, it ſhall be damned. 5 *Rep.* 74, 75, 47. See *Monſtrans de fait*, and *Oyer*, &c.

Profeſſion, (*Profeſſio*) Is uſed particularly for the Entring into any *Religious Order*, &c. By which a Monk offered himſelf to God, by a Vow of three Things, *viz.* Obedience, Chaſtity, and Poverty, which he promiſed conſtantly to obſerve; and this was called *Sanctæ Religionis Profeſſio*, and the Monk a *Religious profeſſed*. New Book Entr. And in our Law, this Entring into Religion, whereby a Man is ſhut up from all the common Offices of Life, is termed a *Civil Death*.

Profits. A Deviſe of the *Profits* of Lands, is a Deviſe of the Land itſelf. *Dyer* 210. A Husband deviſed the *Profits* of his Lands to his Wife, until his Son came of Age, this was held to be a Deviſe of the Lands until that Time: Though if the Land were deviſed to the Son, and that his Mother ſhould take the *Profits* of it until he come of Age, &c. this would give the Mother only an Authority, and not an Intereſt. 2 *Leon.* 221. By Deviſe of *Profits*, the Lands uſually paſs; unleſs there are other Words to ſhew the Intention of the Teſtator. *Moor* 753, 758. 2 *Nelſ. Abr.* 1051.

Programma, In the old *Saxon* ſignifies a Letter ſealed with the King's Seal. *Spec. Sax. lib.* 3. *Art.* 34.

Prohibition, (*Prohibitio*) Is a Writ iſſuing out of the Chancery, King's Bench, or Common Pleas, to forbid the Spiritual Court, Admiralty Court, &c. to proceed in a Cauſe there depending, upon ſuggeſting that the Cogniſance thereof belongs not to the ſaid Courts, but to the Common Law Courts. *F. N. B.* 39, 40, &c. Or it may *prohibit* the Judges of any Temporal Court, from proceeding in any Cauſe out of their Juriſdictions: And the King's Courts, that may award *Prohibitions*, being informed by the Plaintiff or Defendant, or by any Stranger, that any Court Temporal or Eccleſiaſtical do hold Plea where they have no Juriſdiction, may lawfully *prohibit* that Court, as well after Judgment as before. 2 *Inſt.* 229, 601, 602. 4 *Rep.* 127. *Finch* 450. This Writ is directed not only to the Judge, but the Parties; and if the Judge of the inferior Court, or the Party, proceeds notwithſtanding the *Prohibition*, an Attachment may be had againſt them, or Action of the Caſe: But on a *Prohibition* in the Spiritual Court, the Party may appear, and take a Declaration upon the Suggeſtion, and go to Trial; and if thereupon it be found againſt the Plaintiff in the *Prohibition*, a Writ of *Conſultation* ſhall be awarded, with Coſts. 2 *Lill. Abr.* 384. *Wood's Inſt.* 570. 8 & 9 *W.* 3. A *Prohibition* is generally a proper Remedy where a Court exceeds its Juriſdiction; and *Prohibitions* are granted either *pro defectu Juriſdictionis*, or *pro defectu Triationis*: In a *Prohibition*, upon Motion for a *Conſultation*, it was inſiſted, that it ought not to be granted without pleading or demurring to the *Prohibition*; but it was held, that anciently in *B. R.* there were no Declarations or Demurrers upon *Prohibitions*, and therefore Conſultations were granted upon Motions. 1 *Ventr.* 180. 3 *Salk.* 287. In Caſes of *Prohibitions*, where they were granted upon a Motion, the ancient Courſe was, that the Party *prohibited* ſued out a *Scire facias, Quare Conſultatio non debet concedi poſt Prohibitionem*, in which Writ the Suggeſtion was recited, and alſo the *Prohibition* granted thereon *ad Damnum* of the Party: Afterwards this Practice was altered, and the Courſe came to be thus, (*viz.*) upon granting a *Prohibition* to the Plaintiff, the Court bound him in a Recogniſance to proſecute an *Attachment of Contempt* againſt the Defendant for ſuing in the Spiritual Court, &c. after a *Prohibition* granted, and then to declare upon the *Prohibition*; ſo that he who was the Defendant in that Court, now becomes Plaintiff in the Court above. *Plowd.* 472. 3 *Salk.* 289. If any Matter appears in the Declaration in an inferior Court, which ſheweth that the Cauſe of Action did not ariſe *infra Juriſdictionem*; or the Subject Matter be not proper for the Judgment of ſuch Court; or if the Defendant who intended to plead to the Juriſdiction is prevented by any Artifice, or his Plea be not accepted or is over-ruled, in all theſe Caſes a Prohibition will lie at any Time: But not after the Defendant hath admitted the Juriſdiction by pleading to the Action, &c. 2 *Mod.* 273. A *Prohibition* lies in all Cauſes wherein a *Habeas Corpus* doth lie at Common Law; but it is moſt commonly granted to the Spiritual Courts, where a Cauſe belongs to the Temporal Juriſdiction: And the Court ought not to deny a Perſon a *Prohibition* that prays it, if there be Cauſe therefore; the Granting *Prohibitions* being not a diſcretionary Act of the Court, but *ex merito Juſtitiæ*; tho' a *Prohibition* will not be granted on Motion the laſt Day of the Term, but ſometimes in ſuch a Caſe, a Rule has been made to ſtay Proceedings until next Term. 2 *Lill. Abr.* 385, 388. *Raym.* 4, 92. *Prohibition* may be granted to the Court of the Earl Marſhal, by the Courts of Common Law, if it exceedeth its Juriſdiction; and it hath been ſtrongly inſiſted on, that the Court of the Conſtable and Marſhal may alſo be *prohibited*, but there having been no Court holden before the Conſtable and Marſhal for many Years paſt, little is mentioned in our Books on that Head. 2 *Hawk. P. C.* 14. The Court of *B. R.* may by the Common Law grant a *Prohibition* to the Court of Admiralty, to ſtay their Proceedings, if they hold Plea of any Matter which the Juriſdiction of their Court doth not extend to: And the Defendant in the Court of Admiralty may have a *Prohibition*, after he hath pleaded, although he cannot have it to an inferior Court; for an inferior Court doth not draw the Matter in Queſtion *ad aliud Examen*, but doth proceed therein according to the Common Law; but the Court of Admiralty doth draw the Matter *ad aliud Examen*, that is to try it by the Civil Law; and therefore, and that the Common Law may not be injured, this Court will uſe their Authority at any Time to ſtay Proceedings in the Admiralty, though the Defendant by his incautelous Pleading hath allowed their Juriſdiction. *Trin.* 23 *Car. B. R.* 2 *Lill. Abr.* 387. Upon a Suggeſtion that the Admiralty holds Plea upon a Promiſe, &c. made *infra Corpus Comitatûs*, which is not triable there, but at Common Law, a *Prohibition* lies; but the Surmiſe and Suggeſtion muſt be abſolute and certain, that a Promiſe was actually made *infra Corp Comitat.* for upon an uncertain Suggeſtion no *Prohibition* can be granted, and no Iſſue can be taken upon it tho' it ſhould be falſe. 2 *Lill.* 384. If the Court of Admiralty proceeds in any Matter, which is not Maritime, although the Thing were done upon the Sea, the Court of *B. R.* will grant a *Prohibition*; the Admiralty having Juriſdiction only in Maritime Cauſes, *viz.* ſuch as concern Sea Affairs, and not of all Matters done at Sea, as of Contracts, *&c.* *Ibid.* 378. *Prohibition* doth not lie to the Admiralty to ſtop Proceedings on a Bond made beyond Sea, ſued there; nor for a Suit for Mariners Wages, *&c.* and a *Prohibition* lies not to that Court in Caſes of Felony which are to be tried there. 3 *Leon.* 514. 3 *Lev.* 60. 2 *Lill.* 389. *Prohibitions* may be granted to the Prerogative Court, to hinder them from granting Letters of Adminiſtration contrary to Law; or to prevent any other Proceedings, which are not agreeable to the Common Law. *Hill.* 22 *Car. B. R.* But if the Eccleſiaſtical or Spiritual Courts proceed wholly on their own Canons, they ſhall not be *prohibited* by the Common Law; for they ſhall be preſumed to be the beſt Judges of their own Laws: Though if they proceed upon Temporal Matter, or act in Derogation of the Common Law, by queſtioning a Matter not triable by them, *&c.* *Prohibition* ſhall be granted. 2 *Roll. Rep.* 439. 1 *Bulſt.* 159. Where the Eccleſiaſtical Court hath the ſole Cogniſance of a Cauſe, their Proceedings are not examinable at Common Law, though erroneous; and no *Prohibition* will lie, but an Appeal to the Delegates. *Mar.h.* 92. But of Things whereof our Law, and the Eccleſiaſtical Law, take Cogniſance, the Judges are only to rely on our Law; and not on the Eccleſiaſtical Law. *Ibid.* 84. If a Matter is properly determinable in the Spiritual Court, and they make an erroneous Decree, *B. R.* will not grant a *Prohibition*; though if they decree a Matter which they have no Juriſdiction of, this Court will grant a *Prohibition* to annul the Sentence. 2 *Lill.* 386. A *Prohibition* may be granted to the Spiritual Court, after Sentence given in a Cauſe in that Court; but the Court applied to, will not do it until they have heard Counſel on both Sides, although before Sentence they grant it upon a bare Suggeſtion of the Party, if the Matter ſuggeſted will bear it; for a Sentence in an Eccleſiaſtical Court is in the Nature of a Judgment given at the Common Law, and preſumed to be given upon mature Deliberation; wherefore their Sentence is not be made void but by good Advice. *Ibid.* 388. A Libel was exhibited in the Prerogative Court for a Legacy, and a *Prohibition* prayed, for that the Party lived out of the Dioceſe, *&c.* upon the Stat. 23 *H.* 8. But becauſe the Will was proved in that Court, and the Suit was there, and Sentence given for the Legacy, and upon an Appeal to the Delegates that Sentence was affirmed, and Execution granted thereon; it was held too late for a *Prohibition*. *Cro. Car.* 69. Though it has been adjudged, that it is never too late to move *B. R.* for a *Prohibition* in a Caſe where the Spiritual Court had no original Juriſdiction. *Mod. Ca.* 252, 1 *Mod.* 273. By *Holt* Chief Juſtice, if an Action is commenced in an inferior Court, which hath no Juriſdiction of the Cauſe; a *Prohibition* will not lie after Sentence. 3 *Salk.* 288. No *Prohibition* ſhall be allowed after a Conſultation duly granted, by the Stat. 50 *Edw.* 3. *cap.* 4. which ordains, that but one *Prohibition* ſhall lie in one Cauſe: A Conſultation being once granted, there ſhall be no new *Prohibition* upon the ſame Libel; unleſs it is apparent that the Conſultation was unduly obtained, when it is otherwiſe. 1 *Leon.* 130. It is a Rule, that a *Prohibition* ſhall not be granted where the Proceedings in the Eccleſiaſtical Court are not againſt the Law of the Land, nor the Liberty of the Subject. *Cro. Jac.* 431. If a Suit is for a Penſion, it being merely Spiritual, no *Prohibition* ſhall be granted. *Cro Jac.* 666. But where Property, or the Freehold of an Office, *&c.* comes in Queſtion, a *Prohibition* ſhall go to the Spiritual Court. 4 *Leon.* 261. *Raym.* 88. And ſo where a Cuſtom is alledged in the Eccleſiaſtical Court: Though a bare Preſcription is not ſufficient for a *Prohibition*, except it concerns a Layman; for it was never granted, where a Perſon claimed a Penſion by Preſcription. 2 *Lev.* 103. *Salk.* 350. If in ſuing for Tithes, *&c.* the Boundaries of Pariſhes come in Queſtion, *Prohibition* lies; becauſe the Bounds of Pariſhes are triable at Common Law. 1 *Cro.* 228. Though a *Prohibition* was denied, where the Bounds of two Vills in the ſame Pariſh were conteſted. 1 *Lev.* 78. And it hath been adjudged, that where a Thing triable at Law is collateral to the Complaint in a Libel, and of which the Spiritual Court have original Juriſdiction, they ſhall not be *prohibited*; as where the Libel is for the Tithes of ſuch a Cloſe, here they have an original Juriſdiction of the Cauſe, *viz.* for Tithes; then the Defendant pleads that it is not his Cloſe, but the Cloſe of another Perſon; this is triable at Law, but being collateral to the original Cauſe, it ſhall be tried in the Spiritual Court. *Sid.* 89. 3 *Nelſ. Abr.* 12. A Libel was for Tithes, the Defendant pleaded an Award, and prayed a *Prohibition* for that an Award is Matter triable at Law; but a *Prohibition* was denied: And it is the ſame if a Suit is for a Legacy, and the Defendant ſuggeſts Payment for a *Prohibition*, or if an Acquittance is pleaded, no *Prohibition* ſhall go; becauſe where the Spiritual Court hath a Juriſdiction of the original Matter, if any ſubſequent Matter ſhould ariſe, and which is triable at Law, that ſhall not deprive the Spiritual Court of their Juriſdiction; though if that Court ſhall adjudge otherwiſe upon an Acquittance, or an Award, than according to the Common Law, in ſuch Caſe a *Prohibition* may be had. 1 *Roll. Rep.* 12. *Moor* 413. Eccleſiaſtical Courts, when the principal Cauſe is of Eccleſiaſtical Cogniſance, may try Matters triable at Law, which come in incidentally: And it has been ruled, that where a Thing incident to a Suit in the Spiritual Court is of a Temporal Nature, they muſt try it in the ſame Manner in that Court, as it would have been tried at Law, or a *Prohibition* will be granted; but if the Matter incident is of a Spiritual Nature, they are to try it according to their own Law; for Inſtance; If they require two Witneſſes to the Proof of a Revocation of a Will, a *Prohibition* will not lie, becauſe ſuch Proof is required at Law; but if they require two Witneſſes to prove a Releaſe, or refuſe to admit the Proof of one Witneſs to the Payment of a Legacy, *&c.* a *Prohibition* may be granted. 2 *Lev.* 64. *Show.* 158, 172. 3 *Salk.* 288. And if the Spiritual Court refuſes a proper Plea to a Libel, *&c.* the Refuſal is a temporal Injury, for which *Prohibition* lieth. *Hob.* 307. *Cro. Eliz.* 655. No *Prohibition* will lie in a Suit for any Legacy; where it is pretended that the Teſtator was an Ideot, or *Non Compos Mentis.* Jenk. Cent. 305. Where Articles *ex Officio* are exhibited againſt any one in the Spiritual Court for criminal Matters, and the Party is required to anſwer upon Oath, he may plead *Non tenetur reſpondere*, and if they will proceed, a *Prohibition* ſhall be awarded; but not if the Articles are for civil Matters, and they refuſe ſuch Plea. *Sid.* 374. 3 *Nelſ. Abr.* 8. Adjudged, that a Refuſal of the Copy of the Libel; or where the Libel againſt the Defendant in the Spiritual Court is too general, theſe are good Cauſes for a *Prohibition*. *Hardr.* 364. It is always granted for denying a Copy of the Libel, becauſe the Party ought to know whether the Matter is within the Juriſdiction or not, and how to anſwer. 1 *Roll. Rep.* 337. 2 *Salk.* 553. If a Man promiſe another 10*l.* if he will marry his Daughter; if he marry the Daughter, and the other will not pay the Money, he ſhall not libel for the ſame in the Spiritual Court; if he doth *Prohibition* will lie: But if he promiſe one with his Daughter in Marriage 10*l.* *&c.* if he doth marry the Daughter, and he do not pay the Money, he may ſue for it in the Spiritual Court, becauſe it concerns Matrimony. 22 *Edw.* 3. *lib. Aſſ.* And if a Perſon gives Goods in Marriage with his Daughter, and afterwards they are divorced, the Wife may ſue in the Spiritual Court for the Goods, and no *Prohibition* lieth thereof. 13 *Hen.* 3. *Prohibitions* concerning Marriages, and to diſſolve a Marriage, *&c.* 2 *Lutw.* 1059, 1075. A Parſon grants to one by Deed, that he ſhall be diſcharged of Tithes of his Lands, and afterwards he ſueth in the Spiritual Court for the Tithes, *&c.* it is ſaid that the Party ſued ſhall not have a *Prohibition*, for he may ſuggeſt this Matter in the Spiritual Court, to diſcharge him of the Tithes: But if it were upon a Compoſition made before Time of Memory, and now the Parſon ſues for the Tithes of thoſe Lands, there he ſhall have a *Prohibition* againſt the Parſon, *&c. Mich* 8 *Ed.* 4. 14. In a Suggeſtion for a *Prohibition* to the Eccleſiaſtical Court in a Cauſe of Tithes, and other Spiritual Profits, the Suggeſtion muſt be made good to the Court by two ſufficient Witneſſes, within ſix Months after ſuch *Prohibition* granted; provided the Suggeſtion doth not contain a Negative. 2 & 3 *Ed.* 6. *c.* 13. 2 *Inſt.* 662. If any Contention be in the Spiritual or Eccleſiaſtical Court between two Incumbents, who claim by divers Patrons; a *Prohibition* lieth, if the Suit concerns the fourth Part or more: But if it be for leſs, *Prohibition* doth not lie. *Jenk. Cent.* 108. By the Statute *Articuli Cleri*, for Tithes, (if the Right ariſeth not from the Rights of Patronage, *&c.*) Oblations, Mortuaries, Commutation of corporal Penance for Money, Defamation, *&c.* no *Prohibition* ſhall be granted. 9 *Ed.* 2. 2 *Inſt.* 619. 4 *Rep.* 20. And ſee 2 *Lutw.* 1043, 1057, 1062, 1066, *&c.* Before the Reign of King *Charles* I. many *Prohibitions* were granted for defamatory Words, in calling Women Whores, *&c.* but ſince ſuch *Prohibitions* have been denied, the Spiritual Court having a Juriſdiction in Caſes of Whoredom, they ſhall not be *prohibited.* 1 *Mod.* 21. *Jones* 246. *Cro. Car.* 229. No *Prohibition* will lie at the Common Law upon a Suit in the Spiritual Court for the Word *Whore*, becauſe it is of Eccleſiaſtical Cogniſance. 2 *Lev.* 63. But by the Cuſtom of *London*, it is actionable to call a Woman Whore; and therefore where the Libel is for that Word there, a *Prohibition* will be granted. 2 *Lutw.* 1039. *Stile* 69, 229, 245. A *Prohibition* was moved for to ſtay a Suit for theſe Words, *You were ſuch a one's Whore, before he married you*; and on a Suggeſtion that the Plaintiff gave the Defendant provoking Language, calling him Rogue, *&c.* but the *Prohibition* was denied, the Provocation being no Bar to the Suit in the Spiritual Court, though it might be of Mitigation of Damages in an Action at Common Law. 3 *Lev.* 137. A Perſon called a Woman Bitch, Whore, and an old Bawd, and on a Libel in the Spiritual Court, a *Prohibition* was granted; becauſe ſome of the Words are puniſhable at Common Law, and ſome in the Spiritual Court; and if a *Prohibition* ſhould not be granted, the Plaintiff might be doubly vexed. 3 *Mod.* 74. On a Libel for calling a Woman Bawd, it was held, this being an Offence of a mixed Nature, and puniſhable either at Common Law, or in the Spiritual Court; if the Suit is commenced in that Court, a *Prohibition* ſhall not go, becauſe the Proſecutor hath determined her Election in which Court to ſue; but if it had been for keeping a Bawdy-Houſe, which is an Offence that may be proſecuted in a Leet, a *Prohibition* ſhall go. *W. Jones* 246. *Palm.* 379, 521. 3 *Nelſ. Abr.* 2. Libel for theſe Words, *You are a Rogue, Raſcal, and Son of a Whore*; and the Suggeſtion for a *Prohibition* was, that they were Words of Heat and Paſſion; but a *Prohibition* was not allowed; for the Words import that his Mother is a Whore, and he a Baſtard, and ſo both are ſcandalized, and this is an Eccleſiaſtical Scandal. 3 *Lev.* 119. One called another Whoremaſter; on a Libel, *&c.* it was urged, that this was a Word of Paſſion, and not defamatory; but adjudged it is the ſame as calling a Woman Whore, which is an Eccleſiaſtical Slander. 2 *Salk.* 692. *Prohibition* will not lie upon a Suit in the Spiritual Court by Husband and Wife, for calling the Husband *Cuckold*; for the Words charge the Wife with Incontinence, and for that Reaſon ſhe ſhall have this Suit in the Eccleſiaſtical Court, to puniſh the Defamation that ſubjects her to Penance in the Spiritual Court: But if the Husband had ſued ſolely, then a *Prohibition* might be granted; becauſe he doth not incur ſuch Danger by ſpeaking of the Words. 2 *Lev.* 66. 2 *Lill.* 391. And yet it hath been ruled, where Husband and Wife libelled in the Spiritual Court for calling the Husband Cuckold, that a *Prohibition* ſhall go; and that they cannot both ſue in that Court for that Word. *Hill.* 13 *W.* 3. 3 *Salk.* 288. And to call a Man *Cuckold*, hath been reſolved not to be an Eccleſiaſtical Scandal, but that *Wittal* is; for that implies his Knowledge and Conſent to the Adultery of his Wife. 2 *Salk.* 692. Theſe Words were ſpoken of a Parſon, he is a lying Fellow, and has lain with all the Women at *H. &c.* a *Prohibition* was refuſed; for theſe Words are ſcandalous, being ſpoken of a Parſon, though not actionable at Law. 3 *Lev.* 18. But to ſay of a *Parſon*, He hath *no Senſe, he is a Dunce, Blockhead*, &c. *Prohibition* hath been granted; becauſe a Parſon is not puniſhable in the Spiritual Court for being a Blockhead. 2 *Salk.* 693. So for calling a Parſon Fool, *&c.* in a Thing which doth not concern his Profeſſion. 2 *Lev.* 41. And where a Suit is in the Spiritual Court for Defamation, the Matter ought to be intirely of Eccleſiaſtical Cogniſance; otherwiſe a *Prohibition* will lie. 4 *Rep.* 20. *Moor* 873. In an extraordinary Caſe, a Suit being brought for Defamation in the Spiritual Court, of which they had Cogniſance, notwithſtanding an Action at Law was commenced for Special Damage, occaſioned by ſpeaking the ſame Words; a *Prohibition* was denied. 2 *Ld. Raym.* 1101. If one call another Drunkard, this may be puniſhed in the Temporal Courts, and a *Prohibition* ſhall be granted. *Cro. Car.* 285. 2 *Roll.* 296. 3 *Salk.* 288. If a Man ſue another Perſon in the County-Court for Debt, *&c.* amounting to the Sum of 40 *s.* or above, the Party ſhall have a *Prohibition* to the Sheriff, that he do not hold Plea thereof, *&c.* 2 *Lev.* 230. *New Nat.* 103. A Suggeſtion for *Prohibition* begins, *Be it remember'd, that on the Day*, &c. *comes before our Sovereign Lord the King at* Weſtminſter, C. D. *in his proper Perſon, and gives this Court here to underſtand and be informed, That whereas* A. B. *&c.* (ſetting forth the Complaint and Proceeding in the other Court, contrary to the Laws and Cuſtoms of the Kingdom) *Wherefore the ſaid* C. *imploring the Aid of this honourable Court, before the King himſelf, prayeth to be relieved, and that he may have his Majeſty's Writ of Prohibition, directed to the Judge of the ſaid Court*, &c. *to prohibit him and them from taking any further Cogniſance of the ſaid Plea before them, touching or concerning the Premiſſes: And it is granted to him accordingly*, &c. And the common *Form* of a *Prohibition* runs thus: *George the Second*, &c. *To* A. B. *&c. Greeting: We* prohibit *you, that you hold not Plea in the Court*, &c. *of*, &c. *whereof* C. D. *complains, that* E. F. *draws him into Plea before you*, &c. And to the Party himſelf; *We* prohibit *or forbid you* E. F. *that you follow not the Plea in the Court of*, &c. *whereof* C. D. *complains, that you draw him into the Court*, &c.

Prohibitio de vaſto directa Parti, A Writ judicial directed to the Tenant, *prohibiting* him from making Waſte upon the Land in Controverſy, during the Suit. *Reg. Judic.* 21. And it hath been adjudged, that a *Prohibition* ſhall be granted to any one who commits Waſte, either in the Houſe or Buildings of the Incumbent of a Spiritual Living; or that cuts down any Trees on the Glebe, or doth any other Waſte. *Moor* 917. 3 *Nelſ. Abr.* 5.

Pro indiviſo, for undivided, is taken in Law for a Poſſeſſion or Occupation of Lands or Tenements belonging to two or more Perſons, whereof none knows his ſeveral Portion; as Coparceners before Partition. *Bract. lib.* 5.

Proles (*Lat.*) In Engliſh *Progeny*, are ſuch Iſſue as proceed from a lawful Marriage; though if the Word be uſed at large, it may denote others.

Prolocutor of the Convocation, (*Prolocutor Domus Convocationis*) Is an Officer choſen by Perſons Eccleſiaſtical, publickly aſſembled in Convocation by Virtue of the King's Writ, at every Parliament: And there are two *Prolocutors*, one of the Higher Houſe of Convocation, and the other of the Lower Houſe; the latter of which is choſen by the Lower Houſe, and preſented to the Biſhops of the Higher Houſe as their *Prolocutor*, that is the Perſon by whom the Lower Houſe of Convocation intend to deliver their Reſolutions to the Upper Houſe, and have their own Houſe eſpecially ordered and governed: His Office is to cauſe the Clerk to call the Names of ſuch as are of that Houſe, when he ſees Cauſe; to read all Things propounded, gather Suffrages, *&c.*

Promiſe, (*Promiſſio*) Is when upon a valuable Conſideration, Perſons bind themſelves by Words to do or perform ſuch a Thing as is agreed on; upon which Action may be brought: And a *Promiſe* againſt a *Promiſe* made at one and the ſame Time, is a ſufficient Ground for an Action. *Cro. Eliz.* 543, 703, 848. If *Promiſes* are Executory on both Sides, Performance need not be averred; becauſe it is the *Counter-Promiſe*, and not the Performance that raiſes the Conſideration. 4 *Mod.* 189. Where a *Promiſe* is made to do a Thing, and there is no Breach of it, the ſame may be diſcharged by Parol; but if it be once broken, it cannot be diſcharged without Releaſe in Writing, being then a Debt. 1 *Mod. Rep.* 206. 2 *Mod.* 44. And when an Action is grounded on a *Promiſe*, Payment or ſome other legal Diſcharge muſt be pleaded. 1 *Mod.* 210. If a *Promiſe* be to pay a Sum of Money, by ſeveral monthly Payments, the *Promiſe* being intire, a Breach of the Payment of the firſt Month, is a Breach of the whole *Promiſe*. 2 *Rol. Rep.* 47. See *Mutual Promiſe*, *Aſſumpſit*, and *Action on the Caſe*.

Promoters, (*Promotores*) Are thoſe who in popular and penal Actions proſecute Offenders, in their Name and the King's, as *Informers* do, having Part of the Fines or Penalties for their Reward: They belonged chiefly to the *Exchequer* and *King's Bench*; and Sir *Edward Coke* calls them *Turbidum hominum genus*. 3 Inſt. 191.

Promulge a Law, (*Promulgare Legem*) Is to declare, publiſh, and proclaim a Law to the People; and ſo *Promulged*, *Promulgatus*, ſignifies publiſhed, or proclaimed. 6 *H.* 8. *c.* 4.

Proof, (*Probatio*) Is the Trial or making out of any Thing, by a Jury, Witneſſes, *&c.* And *Bracton* ſays, there is *Probatio duplex*, viz. *Viva voce*, by Witneſſes; and *Probatio mortua*, by Deeds, Writings, *&c.* *Proof*, according to *Lilly*, is either in giving of Evidence to a Jury upon a Trial, or elſe upon Interrogatories, or by Copies of Records, or Exemplifications of them. 2 *Lill. Abr.* 393. Tho' where a Man ſpeaks generally of *Proof*, it ſhall be intended of *Proof* by a Jury, which in the ſtrict Signification is legal *Proof*. 3 *Bulſt.* 56. The Condition of a Bond was to pay Money as an Apprentice ſhould miſpend, upon *Proof* made by the Confeſſion of the Apprentice or otherwiſe; and it was held, that although generally *Proof* ſhall be intended to be made at a Trial by the Jury, in this Caſe it being referred to the Confeſſion of the Party, it is ſufficient if he confeſs it under his Hand. 2 *Cro.* 381. 3 *Nelſ. Abr.* 15. It hath been inſiſted upon, that the Law knows no other *Proof* but before a Jury in a judicial Way, and that which is on Record; but if the *Proof* is modified by the Agreement of the Parties, that it ſhall be in ſuch a Manner, or before ſuch a Perſon, that Modification which allows another Manner of *Proof* ſhall be obſerved, and prevail againſt the legal Conſtruction of the Word *Proof*. *Sid.* 313. 2 *Lutw.* 436. Where in Agreements, *&c.* required to be proved, no particular Form is directed how the *Proof* ſhall be made, the Plaintiff may bring his Action, and aver that the Thing was done; and the Defendant may take Iſſue that it was not done, and then the Plaintiff muſt prove the Doing it. *Brownl.* 57, 33. *Cro. Eliz.* 205. *Cro. Jac.* 232. A Plaintiff ſaid that a Wager was won by Deceit; the Defendant replied, give me a Shilling, and if you can prove that it was won by me by Deceit, I will give you five Pounds; and in an Action on the Caſe brought againſt the Defendant upon his Promiſe to pay the five Pounds, the Plaintiff alledged *in facto* that he had got the Wager by Deceit; and it was adjudged, that he need not make any other *Proof* of it, but in this Action. 3 *Bulſt.* 56. *Cro. Eliz.* 205. In Articles the Parties bound themſelves in the Penalty of 100 *l.* *&c.* to be paid upon due *Proof* of a Breach; *Proof* at the Trial will maintain the Action. *Lutw.* 441. And *Proof* may be in the Action, in ſeveral other Caſes. *Cro. Jac.* 188, 488. *Proof* by Witneſſes, *&c.* See *Evidence.*

Pro partibus Liberandis, Is an ancient Writ for the Partition of Lands between Co-heirs. *Reg. Orig.* 316

Property, (*Proprietas*) Is the higheſt Right a Man hath or can have to any Thing; being uſed for that Right that one hath to Lands or Tenements, Goods, or Chattels, which no way depends upon another Man's Curteſy; and was firſt introduced, that every Man might know what was his own. *Stud. Compan.* 159. Before the *Flood*, there was no ſuch Thing as particular *Property*, but an univerſal Right inſtead of it; every Man might then take to his Uſe what he pleaſed, and what he had ſo poſſeſs'd himſelf of, another could not, without manifeſt Injury, take away from him: But upon the Increaſe of People, Trade and Induſtry, *Property* was gained by Purchaſe, and other lawful Means; for the ſecuring whereof, proper Laws were ordained. *Lex Mercat.* 2. *Property* in Lands and Tenements at this Day, is acquired either by *Entry*, *Diſcent* by Law, or by *Conveyance*; and in Goods and Chattels, it may be gained a great many Ways, tho' it is uſually by *Deed of Gift*, or *Bargain and Sale*. 2 *Lill. Abr.* 400. And for preſerving Men's *Properties* our Law hath theſe Rules, 1ſt, That no Man is to deprive another of his *Property*, or diſturb him in enjoying it. 2dly, Every Perſon is bound to take due Care of his own *Property*, ſo as the Neglect thereof may not injure his Neighbour. 3dly, All Perſons muſt ſo uſe their Right, that they do not, in the Manner of doing it, damage their Neighbour's *Property*. *Mod. Entr. Engl.* 229. There are likewiſe three Sorts of *Properties*, viz. *Property* abſolute; *Property* qualified; and *Property* poſſeſſory: And an abſolute *Proprietor* hath an abſolute Power to diſpoſe of his Eſtate as he pleaſes, ſubject to the Laws of the Land. The Huſband hath a qualified *Property* in his Wife's Land, real Chattels and Debts; but in her Chattels perſonal, he hath an abſolute *Property*. *Plowd.* 5. Every Owner of Goods, *&c.* hath a general *Property* in them: Tho' a Legatee of Goods hath no *Property* in the Goods given him by Will until actually delivered him by the Executors, ſo that he hath the Poſſeſſion. *Mich.* 23 *Car. B. R.* And though by a bare Agreement, a Bargain and Sale of Goods may be ſo far perfected, without Delivery or Payment of Money, that the Parties may have an Action of the Caſe for Non-performance, yet no *Property* veſts until there is a Delivery; and therefore it is ſaid if a ſecond Buyer gets a Delivery, he has the better

ter Title. 3 *Salk.* 61, 62. But if one Covenant with me, that if I pay him ſo much Money ſuch a Day, I ſhall have his Goods in ſuch a Place, and I pay him the Money: This is a good Sale, and by it I have the *Property* of the Goods. 27 *H.* 8. 16. *Property* is of Things in *Poſſeſſion*, or *Action*: In Poſſeſſion, it is *generally*, when no other can have them from the Owner, or with him, without his Act or Default; or *ſpecially*, when ſome other hath an Intereſt with him, or where there is a *Property* alſo in another, as well as in the Owner; as by Bailment, Delivery of Things to a Carrier, or to an Innkeeper, where Goods are pawned or pledged, diſtrained, or leaſed out for a Term, &c. And *Property* in Action, is when one hath an Intereſt to ſue at Law for the Things themſelves, or for Damages for them; as for Debts, Wrongs, &c. and all theſe Things, in Poſſeſſion, or Action, one may have in his own Right, or in the Right of another, as Executor. *Wood's Inſt.* 314. A Perſon hath ſuch a ſpecial *Property* in Goods delivered to him to keep, that he may maintain Actions againſt Strangers, that take them out of his Poſſeſſion: It is the ſame of Things delivered to a Carrier; and when Goods are pawned, &c. *Hill.* 22 *Car.* 2. *Lill. Abr.* 400, 401. An Executor or Adminiſtrator, hath the *Property* of the Goods of the Deceaſed: But a Servant hath neither General or Special *Property* in his Maſter's Goods; and therefore to take them from his Maſter, may be Treſpaſs or Felony, as the Caſe is. *Goldsb.* 72. If a Man hires a Horſe for a particular Time to ride ſuch a Journey, he hath a ſpecial *Property* in the Horſe during that Time againſt all Men, even againſt the right Owner; againſt whom he may have an Action if he diſturbs him in the Poſſeſſion. *Cro. Eliz.* 236. But it hath been adjudged, that if a Man deliver Goods, &c. to another to keep for a certain Time, and then to redeliver them to the Owner; if he to whom they were delivered doth ſell them in open Market, before the Day appointed for the Re-delivery, the Owner may ſeiſe them wherever he finds them, becauſe the general *Property* was always in him, and not altered by the Sale. *Mich.* 7 *Jac. Godb.* 160. 3 *Nelſ. Abr.* 18. And if one delivers a Horſe, or other Cattle, or Goods, to another to keep, and he kills the Horſe, or ſpoils the Goods, Action of Treſpaſs lies againſt him; for by the Killing or Spoiling, the *Property* is deſtroyed. 5 *Rep.* 13. If a Swarm of Bees light on a Tree, they are not the Owner's of the Tree till covered with his Hive; no more than Hawks that have made their Neſts there, &c. But their young ones will be his *Property*, and for them he may have an Action of Treſpaſs. *Doct. & Stud. c.* 5. *Co. Litt.* 145. A Man's Geeſe, &c. fly away out of Sight, wherever they go, he hath ſtill a *Property* in them: And it is ſaid, that whilſt a Perſon's Hawk is in Flight of a Partridge, or his Hounds in Purſuit of a Hare, &c. in theſe Caſes, he hath a Kind of *Property* in the wild Creature. *Staundf. lib.* 1. *c.* 16. 3 *Shep. Abr.* 111. Wild Beaſts, Deer, Hares, Conies, &c. though they belong to a Man upon Account of his Game and Pleaſure, none can have an abſolute real *Property* in; but if they are incloſed and made Tame, there may be a qualified and poſſeſſory *Property* in them. One may have abſolute *Property* in Things of a baſe Nature, as Maſtiff Dogs, Hounds, Spaniels, &c. but not in Things *Feræ Naturæ*, unleſs when dead. *Dalt.* 371. *Finch* 176. 11 *Rep.* 50. *Raym.* 16. *Property* in Lands, Goods and Chattels, may be forfeited or loſt, by Treaſon, Felony, Flight, Outlawry; alſo of Goods by their becoming Deodand, Waif, Eſtray, &c. *Bac. Elem.* 77, 78.

Property in Highways, &c. He that hath the Land that lies on both Sides of the Highway, hath the *Property* of the Soil of the *Highway* in him, notwithſtanding the King hath the Privilege for his People to paſs through it at their Pleaſures; for the Law preſumes that the Way was at firſt taken out of the Lands of the Party that owns the Lands lying upon both Sides of the Way: And divers Lords of Manors do claim the Soil as Part of their Waſte. *Mich.* 22 *Car. B. R.* 2 *Lill. Abr.* 400. If the *Sea*, or a *River*, by violent Incurſion carries away the Soil of Ground in ſo great a Quantity, that he that had the *Property* in the Soil, can know where his Land is, he ſhall have his Land; but if his Soil or Land be inſenſibly, or by little and little, waſted by the Sea or River, he muſt loſe his *Property*, becauſe he cannot prove which is his Land. *Paſch.* 1650. A Tenant hath by Law only a ſpecial *Property* in the *Trees* on the Lands demiſed, ſo long as they remain Part of the Freehold; for as ſoon as they are ſevered, his *Property* is gone. 11 *Rep.* 82.

Property altered. A Man borrows, or finds my Goods, or if he take them from me; neither of theſe Acts will alter the *Property*. *Bro. Propert.* 27. If one having taken away Corn of another, make it into Malt; turn Plate into Money, or Timber into a Houſe or Building, &c. the *Property* of them is altered. *Doddridge Law.* 132, 133. And where Goods are generally ſold in a Market overt, for valuable Conſideration, and without Fraud, it alters the *Property* thereof. 5 *Co. Rep.* 83. To alter or transfer Men's *Properties* is lawful; but to violate *Property* is never lawful, *Property* being a ſacred Thing which ought not to be violated. And every Man (if he hath not forfeited it) hath a *Property* and Right allowed him by the Law, to defend his Life, Liberty, and Eſtate; and if either be violated, it gives an Action to redreſs the Injury, and puniſh the Wrong doer. 2 *Lill. Abr.* 400.

Prophecies, (*Prophetiæ*) Are in our Statutes taken for Foretellings of Things to come, in hidden myſterious Speeches; whereby great Commotions have been often cauſed in this Kingdom, and Attempts made by thoſe to whom ſuch Speeches promiſed good Succeſs, though the Words were myſtically framed, and pointed only to the Cogniſance, Arms, or ſome other Quality of the Parties: But theſe for Diſtinction-ſake, are called *Falſe or Phantaſtical Prophecies.* 3 *Ed.* 6. *c.* 15. Falſe *Prophecies*, (where Perſons pretend extraordinary Commiſſions from God) to raiſe Jealouſies in the People, or terrify them with impending Judgments, &c. are puniſhable at Common Law, as Impoſtures: And by Statute 5 *Eliz. c.* 15. None ſhall publiſh or ſet forth any falſe *Prophecy*, with an Intent to raiſe Sedition, on Pain of 10 *l.* for the firſt Offence, and a Year's Impriſonment; and for the ſecond Offence to forfeit all his Goods and Chattels, and ſuffer Impriſonment during Life: The Proſecution to be within ſix Months. 3 *Inſt.* 128, 129. To *prophecy* when the King ſhall die, hath been anciently held to be Treaſon. *Roll. Rep.* 88.

Proportion, *Proportio.* See *De onerando pro Rata Portionis.*

Proportum, Is uſed in ancient Charters for Purport, Intention, or Meaning. *Chart.* 31 *H.* 3.

Propounders, Are mentioned with *Monopoliſts* and *Projectors*; and ſignify the ſame as *Monopoliſts* 3 Inſt.

Proprietary, (*Proprietarius*) Was heretofore commonly applied to him that had the Profits of an Eccleſiaſtical Benefice to himſelf and his Heirs or Succeſſors; as in Times paſt *Abbots* and *Priors* had, to them and their Succeſſors. And *Proprietarii Monachi* were thoſe Monks who had any Goods or Subſtance of their own. *Mon. Angl Tom.* 3. *pag.* 307.

Proprietate probanda, Is a Writ to the Sheriff to inquire of the *Property* of Goods diſtrained, when the Defendant claimeth *Property* upon a *Replevin* ſued; for the Sheriff cannot proceed till that Matter is decided by Writ; and if it is found for the Plaintiff, then the Sheriff is to make Replevin; but if for the Defendant, he can proceed no further. *F. N. B.* 77. *Finch* 316, 450. 1 *Inſt.* 145.

Pro rata, Is as much as *pro proportione*; as Jointenants, *&c.* are to pay *Pro rata*, i. e. in Proportion to their Eſtates. 16 *Car.* 2. *c.* 6.

Prorogue, (*Prorogare*) Signifies to prolong, or put off to another Day. 6 *Hen.* 8. *c.* 8. *Prorogation* of the *Parliament*, and *Adjournment* were anciently uſed as *Synonyma's*; but of late there hath been a Diſtinction, a *Prorogation* making a Seſſion, and an Adjournment only a Continuance. Vide *Parliament.*

Protection, (*Protectio*) Is generally taken for that Benefit and Safety which every Subject hath by the King's Laws; every Man who is a loyal Subject is in the King's *Protection*; and in this Senſe to be out of the King's *Protection*, is to be excluded the Benefit of the Laws. 25 *Edw.* 3. *c.* 22. In a ſpecial Signification, a *Protection* of the King is an Act of Grace, by Writ iſſued out of the Chancery, which lies where a Man will paſs over Sea in the King's Service; and by this Writ (when allowed in Court) he ſhall be quit of all Manner of Suits between him and any other Perſon, except Aſſiſes of *Novel Diſſeſin*, Aſſiſe of *Darrein Preſentment*, Attaints, *&c.* until his Return into *England.* 2 Lill. Abr. 398. *Protection* is an Immunity granted by the King to a certain Perſon, to be free from Suits at Law for a certain Time, and for ſome reaſonable Cauſe; and 'tis a Branch of the King's Prerogative ſo to do: There are two Sorts of theſe *Protections*; one is *cum Clauſula volumus*; and of that *Protection* there are three Particulars; one is called *Quia profecturus*, and is for him who is going beyond Sea in the King's Service; another is *Quia moraturus*, which is for him who is already abroad in the King's Service, as an Ambaſſador, *&c.* And another is for the King's Debtor, that he be not ſued till the King's Debt is ſatisfied: And the other Sort of *Protection* is *cum Clauſula nolumus, &c.* which is granted to a Spiritual Corporation, that their Goods or Chattels be not taken by the Officers of the King, for the King's Service; it may likewiſe be granted to a Spiritual Perſon ſingle, or to a Temporal Perſon. *Reg. Orig.* 23. 3 *Nelſ. Abr.* 20. On a Perſon's going over Sea, in the Service of the King, Writ of *Protection* ſhall iſſue, to be quit of Suits till he returns; and then a Reſummons may be had aagainſt him: But one may proceed againſt the Defendant having ſuch *Protection*, until he comes and ſhews his *Protection* in Court, and hath it allowed; when his Plea or Suit ſhall go *ſine die*; though if after it appears that the Party who hath the *Protection*, goes not about the Buſineſs for which the *Protection* was granted; the Plaintiff may have a Repeal thereof, *&c.* *Terms de Ley* 496. 2 *Lill. Abr.* 398. A *Protection* is to be made for one Year, and may be renewed from Year to Year; but if it be made for two or three Years, the Juſtices will not allow the ſame: And if the King grant a *Protection* to his Debtor, that he be not ſued till his Debt is paid; on theſe *Protections* none ſhall be delayed; the Party is to anſwer and go to Judgment, and Execution ſhall be ſtayed. 1 *Inſt.* 130. 25 *Ed.* 3. The King granted a *Protection* to one of his Debtors; and upon a Demurrer it was alledged, that by the Statute 25 *Edw.* 3. *c.* 19. *Protections* of this Kind are expreſly, that none ſhall be delayed upon them; but the Party ſhall anſwer and proceed to Judgment, and Execution ſhall ſtay: And the Court ordered, that when it came to Execution they would adviſe; ſo a *Reſpondeas Ouſter* was awarded. *Cro. Jac.* 477. In all *Protections* there ought to be a Cauſe ſhewn for granting them: If obtained pending the Suit, they are naught; and a Perſon giving Bail to an Action on Arreſt, 'tis ſaid may not plead his *Protection*; one may not be diſcharged out of Priſon to which he is committed in Execution, by *Protection* to ſerve the King, *&c.* Nor will a *Protection* be allowed where a Perſon is taken on a *Capias Utlagatum*, after Judgment; for though the *Capias Utlagatum* is at the King's Suit in the firſt Place, it is in the ſecond Degree for the Subject. *Latch* 197. 1 *Leon.* 185. *Dyer* 162. *Hob.* 115. But in Action on *Aſſumpſit*, a *Protection* under the Great Seal was brought into Court, for that the Defendant was in the Wars in *Flanders*, *&c.* and it was allowed though after an *Exigent.* 3 *Lev.* 332. The Plaintiff in an Action cannot caſt a *Protection*; for the *Protection* is for the Defendant, and ſhall be always for him, if it be not in ſpecial Caſes where the Plaintiff becomes Defendant. *New Nat Br.* 62. And no *Protection* ſhall be allowed againſt the King. 1 *Inſt.* 131. A *Protection* to ſave a Default, is not good for any Place within the Kingdom of *England*: And regularly it lies only where the Defendant or Tenant is demandable; for the *Protection* is to excuſe his Default, which cannot be made when he is not demanded. *Jenk. Cent.* 66, 94. There are many Kinds of *Protections*; but they are rarely uſed, being often ouſted by Act of Parliament. *Wood's Inſt.* 571. When the King grants a *Protection*, the Writ thereupon in ſome Caſes has been as follows.

A Writ of *Protection* by the *King*.

GEORGE the Second, *&c.* *To all and ſingular Sheriffs,* &c. *and others, who ſhall ſee or hear our preſent Letters,* Greeting. Know you, *that we have taken into our ſpecial* Protection A. B. *and his Servants, Lands and Tenements, Goods and Chattels in,* &c. *in the County of* S. *and in,* &c. *And alſo all his Writings whatſoever: Therefore we command you, that you protect and defend the ſaid* A. B. *and his Servants, Lands, Tenements,* &c. *aforeſaid, not doing to him or them, or any of them, or permitting to be done to them, any Injury, Damage or Violence, on Pain of grievous Forfeiture,* &c. In Teſtimony *of which,* &c. *for one Year to endure.* In Witneſs, *&c.*

Protections of Parliament. Peers, and Members of Parliament, *&c.* by their Privilege, may *protect* their *Menial Servants*, and thoſe actually employ'd by them in Service; but by a late *Order*, this extends not to others, on written *Protections* One *Cater*, Gentleman to the *Earl of Suffolk*, was by Order of the Houſe of Lords committed to *Newgate*, on Proof of his being Guilty of procuring and ſelling written *Protections*, from and in the Name of that Peer, to ſeveral Perſons, to the great Damage of their Creditors, and in Breach of the Orders of that Houſe; and being charged with other Crimes, reflecting on the Houſe of Peers, he was ſentenced to pay a Fine, and to ſtand in the Pillory, *&c.* *Mod. Caſ. in L. & E.* 341. See *Privilege.*

Protection of the Courts at Weſtminſter. The *Protection of the Court of* B. R. is allowed for any Perſon who attends his own Buſineſs in this Court, or by Virtue of any *Subpœna*; but this is more properly *Privilege.*

Protectionibus, The *Statute* of allowing a Challenge to be entered againſt a *Protection*, &c. 33 *Edw.* 1.

Proteſt, (*Proteſtari*) Hath two divers Applications; one by Way of Caution, to call Witneſs, as it were, openly to affirm, that a Man doth not yield his Conſent to any Act which may be prejudicial to him, or but conditionally; or that he doth not agree to the Proceedings of a Judge, in a Court wherein his Juriſdiction is doubtful, *&c.* The other is by Way of Complaint, to *proteſt* a Man's *Bill of Exchange*, refuſed Acceptance or Payment; which is neceſſary to recover Damages, *&c.* See *Bill of Exchange.*

Proteſtando, Is a Word made uſe of to avoid double Pleading in Actions; it prevents the Party that makes it from being concluded by the Plea he is about to make, that Iſſue cannot be joined upon it; and it is alſo a Form of Pleading, where one will not directly affirm or deny any Thing alledged by another, or himſelf: In the firſt Caſe, it is where a Man pleadeth a Thing which he dares not affirm, or that he cannot plead for Fear of Making his Plea double; as in Title to Land by two Deſcents, the Defendant muſt plead one of them, and put the Word *Proteſtando* inſtead of *dicit*, as to the other, that ſuch a one died ſeiſed, &c. And in the laſt Caſe, when one is to anſwer to two Matters, and by the Law he ought to plead but to one; then in the Beginning of the Plea he may ſay *Proteſtando*, that ſuch Matter is not true, and add to his Plea, *Pro Placito dicit*; and ſo he may take Iſſue upon the other Part of the Matter. *Plowd.* 276. *Finch* 359. *Practiſ. Attorn. 1ſt Edit. pag.* 83. A *Proteſtando* muſt not be repugnant, &c. And effectual Matters in Bar ought not to be taken in a Plea by Proteſtation: A *Proteſtando* is ſometimes thus: *Proteſtando non Cognoſcendo* ſuch and ſuch Things, *Pro Placito in hac parte dicit*, &c.

Proteſtant Diſſenters, Exempt from Penalties, &c. See *Diſſenters*.

Prothonotary, (*Protonotarius, vel Primus Notarius*) Is a Chief Officer or Clerk of the *Common Pleas* and *King's Bench*; and for the firſt named Court there are three *Prothonotaries*, and the other hath but one: He of the *King's Bench*, records all Actions Civil; as the *Clerk of the Crown* Office doth all Criminal Cauſes in that Court: Thoſe of the *Common Pleas*, ſince the Order 14 *Jac.* 1. upon an Agreement entered into between the *Prothonotaries* and *Filizers* of that Court, do enter and inrol all Manner of Declarations, Pleadings, Aſſiſes, Judgments, and Actions: They make out all judicial Writs except Writs of *Habeas Corpus*, and *Diſtringas Jurator'*, (for which there is a particular Office erected, called the *Habeas Corpora Office*:) Alſo Writs of Execution, and of Seiſin, of Privilege for removing Cauſes from inferior Courts, Writs of *Procedendo*, *Scire facias's* in all Caſes, and Writs to inquire of Damages; and all Proceſs upon Prohibitions, on Writs of *Audita Querela*, Falſe Judgment, &c. They likewiſe enter Recognizances acknowledged in that Court; and all Common Recoveries; and make Exemplifications of Records, &c. 5 *H.* 4. *cap.* 14.

Proto-foreſtarius, Was he whom our ancient Kings made Chief of *Windſor Foreſt*, to hear all Cauſes; a Kind of Lord Chief Juſtice in Eyre. *Camd. Britan.* 213.

Prover, *Anno* 28 *Edw.* 1. *and* 5 *Hen.* 4. See *Probator*.

Providentiæ, Proviſions of Meat and Drink. *Knighton*, *Anno* 1354.

Province, (*Provincia*) Signifies an out Country, govern'd by a Deputy or Lieutenant. *Litt. Dict.* It was uſed among the *Romans* for a Country, without the Limits of *Italy*, gained to their Subjection by the Sword; whereupon that Part of *France* next the *Alps* was ſo called by them, and ſtill retains the Name. But with us, a *Province* is moſt uſually taken for the Circuit of an Archbiſhop's Juriſdiction; as the *Province of Canterbury*, and that of *York*: Yet it is mentioned in ſome of our Statutes, for ſeveral Parts of the Realm; and ſometimes for a County. 32 *H.* 8. *c.* 23.

Provincial, (*Provincialis*) Of or belonging to a *Province*; alſo a chief Governor of a Religious Order; as of Friars, &c. Stat. 4 *H.* 4. *c.* 17.

Proviſion, (*Proviſio*) By the old Laws of *England*, as well as the *Canon Law*, is the *Providing* a Biſhop, or any other Eccleſiaſtical Perſon, with a Living, by the *Pope*, before the Incumbent is dead: It is alſo called *Gratia expectativa*, or *Mandatum de providendo*; the great Abuſe whereof heretofore in this Kingdom, occaſioned divers Statutes to prevent it. 35 *Ed.* 3. *c.* 22. 37 & 38 *Ed.* 3. 2, 3 & 7 *R.* 2.

Proviſiones. The *Decrees* which were made in a *Parliament* at *Oxford*, *Anno* 1258. are termed *Proviſiones*. Contin. Matt. Pariſ.

Proviſo, Is a Condition inſerted into any *Deed*, on the Performance whereof the Validity of the Deed depends; and ſometimes it is only a Covenant, *ſecundum ſubjectam Materiam*. 2 *Rep.* 70. 2 *Lill. Abr.* 399. The Word *Proviſo* is generally taken for a Condition; but it differs from it in ſeveral Reſpects; for a Condition is uſually created by the Grantor or Leſſor, but a *Proviſo* by the Grantee or Leſſee; there is likewiſe a Difference in Placing the *Proviſo*, as if immediately after the *Habendum*, the next Covenant is that the Leſſee ſhall repair, *provided* always that the Leſſor ſhall find Timber, this is no Condition; nor is it a Condition, if it comes among other Covenants after the *Habendum*, and is created by the Words of the Leſſee, as if the Leſſor covenants to ſcour the Ditches, *Proviſo* that the Leſſee carry away the Soil, &c. 3 *Nelſ. Abr.* 21. It hath been held, that the Law hath not appointed any proper Place in a Deed to inſert a *Proviſo*; but that when it doth not depend on any other Sentence, but ſtands originally by itſelf, and when it is created by the Words of the Grantor, &c. and is reſtrictive or compulſory, to inforce the Grantee to do ſome Act, in ſuch Caſe the Word *Proviſo* makes a Condition, though 'tis intermixed with other Covenants, and doth not immediately follow the *Habendum*. 2 *Rep.* 70. A *Proviſo* always implies a Condition, if there be no Words ſubſequent which may change it into a Covenant: Alſo it is a Rule in *Proviſoes*, that where the *Proviſo* is that the Leſſee, &c. ſhall do, or not do a Thing, and no Penalty is added to it; this is a Condition, or 'tis void; but if a Penalty be annexed, it is otherwiſe. *Cro. Eliz.* 242. 1 *Lev.* 155. And where a *Proviſo* is a Condition, it ought to do the Office of a Condition, *i. e.* make the Eſtate conditional, and ſhall have Reference to the Eſtate, and be annexed to it; but ſhall not make it void without Entry, as a Limitation will: A Leaſe was made for Years, rendring Rent at ſuch a Day, *Proviſo* if the Rent be arrear for one Month after, the Leaſe to be void; the Queſtion was, whether this was a *Condition* or *Limitation*; for if it was a Condition, then the Leaſe is not determined without Entry; adjudged, that it was a Limitation, though the Words were conditional, becauſe it appeared by the Leaſe itſelf that it was the expreſs Agreement of the Parties that the Leaſe ſhould be void upon Non-payment of the Rent; and it ſhall be void without Entry. *Moor* 291. 1 *Nelſ. Abr.* 22, 26. If a *Proviſo* be the mutual Words of both Parties to the Deed, it amounts to a *Covenant*: And a *Proviſo* by Way of Agreement to pay, is a Covenant, and an Action well lies upon it. 2 *Rep.* 72. The Plaintiff convey'd an Office to the Defendant, *Proviſo* that out of the firſt Profits he pay the Plaintiff 500 *l.* And it was reſolved, that an Action of Covenant lay on this *Proviſo*; for 'tis not by Way of Condition or Defeaſance, but in Nature of a Covenant to pay the Money. 1 *Lev.* 155. But a Defendant in Conſideration of 400 *l.* granted his Lands to the Plaintiff for ninety-nine Years, *Proviſo* if he pay ſo much yearly during the Life of *S. T.* &c. or 400 *l.* within two Years after his Death, then the Grant to be void, and there was a Bond for Performance of Covenants; in Action of Debt brought upon this Bond, it was adjudg'd, that there being no expreſs Covenant to pay the Money, there could be no Breach aſſigned on this *Proviſo*. 2 *Mod.* 36. In Articles of Agreement to make a Leaſe, *Proviſo* that the Leſſee ſhould pay ſo much Rent, &c. although there be no ſpecial Words of Reſervation of Rent, the *Proviſo* is a good *Reſervation*. *Cro. Eliz.* 486. And *Proviſo* with Words of Grant added to it, may make a Grant, and not a Condition. *Moor* 174. Yet in the Caſe of a Leaſe for Life, *Proviſo* if the Leſſee died before the End of Sixty Years, that his Executors ſhould enjoy it for ſo many Years as would make up the ſaid Sixty Years; it was held, that by this *Proviſo* the Leſſee had no Eſtate for Years, nor his Execuors any Remainder of a Term, becauſe nothing was limited thereby to the Leſſee for Life as a Remainder, to him and his Executors. 1 *And.* 19. When Uſes are raiſed by Covenant, in Conſideration of paternal Love to Children, *&c.* and after in the ſame Indenture, there is a *Proviſo* to make Leaſes, without any particular Conſideration, it is void; though ſuch a *Proviſo* might be good, if the Uſes were created by Fine, Recovery, *&c.* becauſe of the Tranſmutation of the Eſtate; and for that in this Caſe Uſes ariſe without Conſideration. 1 *Rep.* 176. *Moor* 144. 1 *Lev.* 30. 2 *Lill. Abr.* 402. In a Deed, a *Proviſo*, that if the Son diſturb the other Uſes, *&c.* that then a Term granted to him, and the Uſes to the Heirs of his Body, ſhall be void; this *Proviſo* is ſufficient to ceaſe the other Uſes, on Diſturbance. 8 *Rep.* 90, 91. But a *Proviſo* to make an Eſtate, limited to one and the Heirs Males of his Body, to ceaſe as if he was naturally dead, on his Attempting any Act by which the Limitation of the Land, or any Eſtate in Tail, ſhould be undone, barred, *&c.* hath been adjudged not good; becauſe the Eſtate-tail is not determined by the Death of Tenant in Tail, but by his Dying without Iſſue Male. *Dyer* 351. 1 *Rep.* 83. A Teſtator deviſed his Lands to one and the Heirs Males of his Body, *Proviſo* that if he attempt to alien, then his Eſtate to ceaſe, and remain to another; the *Proviſo* is void. 1 *Ventr.* 521. A *Proviſo* that would take away the Whole Effect of a Grant, as not to receive the Profits of Lands granted, *&c.* is void; and ſo is a *Proviſo* that is repugnant to the expreſs Words of the Grant: In a Will, a Teſtator made another his Executor, provided he did not adminiſter his Eſtate; adjudged this *Proviſo* is void for Repugnancy. *Cro. Eliz.* 107. *Dyer* 3. And if a *Proviſo* is good at firſt, and afterwards it happens, that there is no other Remedy but that which was reſtrained; the Remedy ſhall be had, notwithſtanding the Reſtraint. *Wood's Inſt.* 231. Where a *Proviſo* is Parcel of, or abridgeth a Covenant, it makes an *Exception*; when 'tis annexed to an Exception in a Deed, 'tis an *Explanation*; and where added at the End of any Covenant, there it extends only to defeat that Covenant. 4 *Leon.* 72, 73. *Moor* 105, 471. See *Deed.*

Proviſo, concerning *Matters judicial*, is where the Plaintiff in an Action deſiſts in Proſecuting his Suit, and doth not bring it to Trial in convenient Time; the Defendant in ſuch Caſe may take out the *Venire facias* to the Sheriff, which hath in it theſe Words, *Proviſo quod, &c.* To the End, that if the Plaintiff take out any Writ to that Purpoſe, the Sheriff ſhall ſummon but one Jury upon them both; and this is called going to *Trial by Proviſo. Old Nat. Br.* 159. By the ſtanding Rules of the Court of *B. R.* if a Plaintiff will not enter his Iſſue, the Defendant may by Rule compel him to enter it; and if 'tis entered, and he will not carry down the Cauſe to Trial, the Defendant may carry it down by *Proviſo.* 3 *Salk.* 362. See Stat. 7 & 8 *W.* 3. *c.* 32. Proceſs may be taken out by the Defendant in Criminal Caſes by *Proviſo* in Appeals, in the ſame Manner as in other Actions, on the Default of the Appellant; but not in Indictments, nor in Actions where the King is ſole Party; and it hath been queſtioned, whether there can be any ſuch Proceſs in Informations *Qui tam.* 2 Hawk. 407, 408.

Proviſor, Is taken for him that hath the Care of *providing* Things neceſſary; but more eſpecially in our Law it ſignifies one that formerly ſued to the Court of *Rome* for a *Proviſion.* Stat. 25 Ed. 3.

Proviſor Monaſterii, The Treaſurer or Steward of a Religious Houſe. *Cowel.*

Proviſor Victualium, The King's *Purveyor*, who provided for the Accommodations of his Court.

Provocation, To make Killing a Perſon Manſlaughter, *&c.* See *Murder.*

Provoſt Marſhal, In this Kingdom is an Officer of the King's Navy, who hath the Charge of Priſoners taken at *Sea:* And is ſometimes uſed for like Purpoſe at Land. 13 *Car.* 2. *cap.* 9.

Proxies, Are Perſons appointed inſtead of others, to repreſent them. Every *Peer* of the Realm called to *Parliament*, hath the Privilege of conſtituting a *Proxy* to vote for him in his Abſence, upon a lawful Occaſion; but ſuch *Proxies* are to be entered in Perſon, and ſometimes *Proxies* have been denied by the King; particularly *Anno* 6, 27 & 39 *Edw.* 3. *Marriage Contracts* have been often made by *Proxy*, *&c.*

Proxies, Alſo are annual Payments made by Parochial Clergy to the Biſhop, *&c.* on Viſitations. See *Procurations.*

Pryk, Is a Kind of Service or Tenure; and according to *Blount*, ſignifies an old-faſhion'd Spur, with one Point only, which the Tenant holding Land by this Tenure, was to find for the King.—— *Per ſervitium inveniendi unum Equum, unum Saccum & unum* Pryk *in Guerra Walliæ.* 1 *R.* 2. And in the Time of K. *Hen.* 8. Light Horſemen in War were called *Prickers*; becauſe they uſed ſuch Spurs or *Pryks*, to make their Horſes go with Speed.

Puberty, (*Pubertas*) The ripe Age, of fourteen in Men and twelve in Women, when they are fit for Marriage: But as to Crimes and Puniſhments, it is the Age of 14 Years, in both the Male and Female Sex, and not before. 1 *Hale's Hiſt. P. C.* 18.

Publication, Is uſed of *Depoſitions* of Witneſſes in a Cauſe in *Chancery*, in order to the Hearing, and Rules may be given to paſs *Publication*; which is a Power to ſhew the Depoſitions openly, and to give out Copies of them, *&c.* There is alſo a *Publication* of a *Will*, which is a Solemnity requiſite to the Making thereof, by declaring it to be the Laſt Will of the Teſtator, in the Preſence of ſuch a Number of Witneſſes; and a Will which hath been made many Years, may be *New publiſhed* with Additions, and that makes it equivalent to a new Will. 3 *Nelſ. Abr.* 27. *Publication* of *Libels.* Vide *Libels.*

Publick Accounts. Commiſſioners are to Enquire of the *Accounts* of Sheriffs, Cuſtomers, and other the *King's Officers*, after paſſed in the *Exchecher*, and if detected of any Fraud, they ſhall pay treble Damages, by Stat. 6 *H.* 8. *c.* 3. And all the Lands, Tenements and Hereditaments, which any *Accountant* hath, ſhall for the Payment of Debts to the *Crown*, be liable and put in Execution in like Manner as if he had ſtood bound by Writing Obligatory, having the Effect of a Statute Staple, *&c.* Stat. 13 *Eliz. c.* 4. And there have been ſeveral Statutes for taking the *Publick Accounts* of the Kingdom, and examining and determining the Debts due to the Army and Navy; Alſo Corruptions in the Management of the *King's Treaſure*, &c. impowering Commiſſioners for that Purpoſe, who were to give an *Account* of their Proceedings to the King and Parliament. Stat. 2 *W.* & *M.* 1 *Ann.* 2 *Geo.* 1, *&c.*

Publick Faith, (*Fides Publica*) In the Reign of King *Charles* 1. was a Pretence or Cheat, to raiſe Money of the ſeduced People, upon what was termed the *Publick Faith* of the Nation, to make War againſt the King about the Year 1642. Stat. 17 *Car.* 1. *c.* 18.

Pucellage, (*Pucellagium*) Is uſed for Virginity, Maidenhead. *Bracton, lib.* 3. In an antient Manuſcript it is written *Puellagium.* Mich. 19 Ed. 3.

Puis Darrein Continuance, Is a Plea of new Matter, pending an Action, *poſt ultimam Continuationem*. See *Plea*.

Puiſne, (*Fr.*) Younger, *Puny*; born, or coming after.

Pulla, (Sax. *Pul*) A Pool, or Lake of ſtanding Water. *Mon. Angl. Tom.* 1. *pag.* 722.

Pulles, The Young of any Thing, commonly put for Colts. Stat. 18 *H.* 8. *c.* 2.

Pulſator, The Plaintiff or Actor; and *Pulſare* ſignifies to accuſe any one. *Leg. Hen.* 1. *c.* 26.

Pultura, Is an Examination or Demand; and 'tis ſo called from the Monks, who before they are admitted into a Monaſtery, *Pulſabant ad fores*, for ſeveral Days, and then enter. *Mon. Ang. Tom.* 2. *pag.* 1035.

Pundfulda, A Pound for Cattle, or Pinfold. *Placita inter Abbat.* Glaſton. & Henr. de Hamel, *Anno* 1236.

Puniſhment, (*Pœna*) Is the Penalty of Tranſgreſſing the Laws: And as Debts are diſcharged to private Perſons by Payment; ſo Obligations to the Publick, for diſturbing Society, are diſcharged when the Offender undergoes the *Puniſhment* inflicted for his Offence. Kings, and ſuch as have equal Power with them, have a Right to require *Puniſhment* for Injuries committed againſt themſelves on their Subjects, upon the Violation of National Laws; though the Right of inflicting *Puniſhments* to provide for the Safety of Society, was originally (before Commonwealths were erected and Courts of Juſtice ordained) in the Hand of every Man being equal to, and independent of others; but ſince, it has reſided in the Hands of the higheſt Powers, as Subjection to others hath taken away that primitive Right: However, this Power and *natural* Right of *puniſhing* an Equal, ſtill remains in thoſe Places where the People are not ſubject to ſome Form of Government. *Grot. de Jure Belli, lib.* 2. *cap.* 21. The *Puniſhments* of Offences are many and various, adapted to the ſeveral Degrees of Crimes, and the Countries wherein committed; and in *England* are Beheading, Hanging, Impriſonment, Fine, Amercement, &c.

Pur auter vie, Is where Lands, &c. are held for another's Life. See *Occupant*.

Purchaſe, (*Acquiſitum, Perquiſitum, Purchaſium*) Signifies the Buying or Acquiſition of Lands, or Tenements with Money, or by Deed or Agreement; and not obtaining it by Deſcent, or hereditary Right: And *Conjunctum Perquiſitum* is where two or more Perſons *join* in the *Purchaſe*. *Litt.* 12. *Reg. Orig.* 143. One cometh in by *Purchaſe* when he comes to Lands by legal Conveyance, and he hath a lawful Eſtate: And a *Purchaſe* is always intended by Title, either for ſome Conſideration, or by Gift; (For a Gift is in Law a *Purchaſe*) whereas Deſcent from an Anceſtor cometh of Courſe by Act of Law: Alſo all Contracts are comprehended under this Word *Purchaſe*. 1 *Inſt* 18. *Doct. & Stud. chap.* 24 *Purchaſe* in Oppoſition to Diſcent is taken largely; If an Eſtate comes to a Man from his Anceſtors without Writing, that is a Diſcent: But where a Perſon takes any Thing from an Anceſtor, or others, by Deed, Will, or Gift, and not as Heir at Law; that is a *Purchaſe*. 2 *Lill. Abr.* 403. When an Eſtate doth originally veſt in the Heir, and never was nor could be in the Anceſtor; ſuch Heir ſhall take by way of *Purchaſe*: And when the Thing might have veſted in his Anceſtor, though it be firſt in the Heir, and not in him at all; the Heir ſhall have it in Nature of Deſcent. 1 *Rep.* 95, 106. An Heir takes an Eſtate by Will, in another Manner than the Common Law would have given it; there he takes by *Purchaſe*, and not by Deſcent; but then he muſt be the right Heir. 2 *Lev.* 79. None can generally take as Heir by *Purchaſe*, which is not a right Heir; nor by Deſcent, where the Eſtate was never executed in the Anceſtor: By *Hale* Ch. Juſt. a ſpecial Heir, may take as ſuch, by ſpecial Limitation, and the Law takes Notice of him. *Ibid.* The Word *Heir* will not ſerve for a Name of *Purchaſe*, if he be not right and lawful Heir; but Son, or reputed Son or Daughter will. *Jenk. Cent.* 203. In a new created Eſtate to right Heirs, they muſt of Conſequence take by *Purchaſe*. 4 *Mod.* 380. At Common Law a Man could not make his own right Heir take by *Purchaſe*, without Departing with the whole Fee-ſimple; but now by Way of Uſe he may: And where a Remainder of an Eſtate-tail was veſted in a Perſon as a *Purchaſer*, it was held that the Eſtate ſhould go on in a Courſe of Deſcent. 1 *Mod* 226. 3 *Salk.* 292, 293. If the Father deviſes Lands to his eldeſt Son, upon Condition; the Son ſhall be in by *Purchaſe*, not by Diſcent. *Cro. Car.* 161. And there is this Difference between *Purchaſe* and Deſcent of Lands; if a Perſon takes by *Purchaſe*, a Fine, &c. may be no Bar. 3 *Nelſ. Abr.* 30. Where the Heir takes Land by Will with a Charge, he doth not take by Deſcent, but by *Purchaſe*; and the Land is no Aſſets. 2 *Mod.* 286. And if a Power of Entry for a Condition broken deſcend, and a Daughter enter; ſhe is in as a *Purchaſer*, and the Son born after ſhall not have it. 1 *Rep.* 99. 1 *Inſt.* 76. Every common *Purchaſer* of Land ought at his Peril to take Notice of the Eſtates and Charges, which are upon the Land he *purchaſes*; for the Law preſumes that no Man will *purchaſe* Lands without Advice of Counſel. 2 *Leon.* 89. 2 *Lill. Abr.* 403. But there are ſeveral Statutes which guard againſt fraudulent Incumbrances; as the 27 *Eliz. cap.* 4. enacts, that Conveyances of Lands made to defraud a *Purchaſer*, ſhall be void: The 29 *Car.* 2. *cap.* 3. makes Judgments of Lands good againſt *Purchaſors bona fide*, only from the Time of Signing by the Judges, &c. And no Judgment ſhall affect *Purchaſers* of Lands, &c. till docketted. 4 & 5 *W. & M. cap.* 20. Chancery will relieve the *Purchaſer* of a Term, againſt a dormant Title, when Money hath been laid out upon Improvements. 2 *Lev.* 152. A Man contracted for the *Purchaſe* of Lands, but before the Conveyance was made, he died, having deviſed the Land, &c. and it was held the Deviſe was good; becauſe the Vendor, after the Contract, ſtood Truſtee for the Vendee. 3 *Salk.* 85. And if a Man covenant on a *Purchaſe* to pay another ſuch a Sum of Money, he making him an Eſtate in ſuch Land; if the other tender him a Feoffment, and offer to make Livery and Seiſin, &c. he may bring an Action for the Money, as if he had actually made a Title. 1 *Ventr.* 148. Natural Perſons, incorporate Perſons, ſole or aggregate, deaf, dumb and blind Perſons, Minors, and all reaſonable Creatures may *purchaſe*, except in ſome Caſes; but ſome have Capacity to *purchaſe*, and not to hold, as Aliens, Felons, &c. and others have Ability to hold, or not to hold upon a *Purchaſe*, at the Election of themſelves or others, as Infants, and Feme Coverts. 1 *Inſt.* 2, 3. 11 *Rep.* 77. 7 *Rep.* 17. See *Deſcent*, *Heir*, &c.

Purchaſe and Value of Land. Lands are *purchaſed* at divers *Rates* in this Kingdom; according to their Situation, &c. An Eſtate of Fee-ſimple in Lands, is uſually valued in the Country at twenty Years *Purchaſe*. Lands near *London* yield about twenty-five Years *Purchaſe*; and in *Wales*, not above eighteen or nineteen. The Fee of Tithes of perpetual Advowſons is worth about twenty-two Years *Purchaſe*: And Fee-farm Rents iſſuing out of Lands, and the Fee of Ground-Rents, are rated at twenty-four or twenty-five Years *Purchaſe*. The Fee of Houſes in *London* ſells for ſeventeen or eighteen Years *Purchaſe*, if in good Repair, and the Ground-Rents are not high; otherwiſe for leſs: Houſes not in *London*, but well ſituated, without any Lands to them, are ſold for fifteen or ſixteen Years

Purchaſe: For a Leaſe of a Houſe for thirty Years, about eight Years *Purchaſe* is given in *London*; and for one and twenty Years about ſix Years Value. A Freehold Leaſe for three Lives abſolute, or a Copyhold Eſtate for the like Term, where the Quit-Rents and Heriots reſerved are not higher than uſual, is rated at fourteen Years *Purchaſe*; for the firſt Life eight, for the ſecond four, and two for the third Life; or ſeven, five and two. A Chattel Leaſe for three Lives, thirteen Years *Purchaſe*. The Exchanging one Life for another is generally one Year's *Purchaſe*; but if a ſickly Life be exchanged for a healthy one, two or three Years *Purchaſe*. A Widowhood in a Copyhold, after the Death of the Husband a third Life, is valued at one Year's *Purchaſe*. The Fee in Reverſion after Lives, is worth nine, ſeven, and five Years *Purchaſe*, after one, two or three Lives; and more where there is Timber, or the Eſtate is improveable. *Land Purch. Compan.* 1, 2, 3, 4, *&c.*

Purgation, (*Purgatio*) Is the Clearing a Man's Self of a Crime, whereof he is publickly ſuſpected, and accuſed before a Judge: Of which there was formerly great Uſe in *England*. And *Purgation* is either *Canonica*, or *Vulgaris*; *Canonical Purgation* is that which is preſcribed by the Canon Law, the Form whereof uſed in the *Spiritual Court*, is that the Perſon ſuſpected take his Oath, that he is clear of the Fact objected againſt him, and bringing his honeſt Neighbours with him to make Oath, that they believe he ſwears truly: The *Vulgar Purgation*, according to the ancient Manner, was by Fire or Water *Ordeal*, or by *Combat*, practiſed by Infidels as well as Chriſtians, 'till aboliſhed by Canon. *Staundf. P. C. lib.* 2. *cap.* 48. *Stat. Weſtm.* 1. *cap.* 2. *Purgation* is one of the Puniſhments of the Eccleſiaſtical Courts; but the Stat. 13 *Car.* 2. *cap.* 12. having taken away the Oath *ex Officio*, of Perſons accuſing or *Purging* themſelves, *&c.* ſome maintain that all the Proceedings of *Purgation* upon common Fame do fall too; though others ſay, there is ſtill a legal *Purgation* left, but not canonical. *Wood's Inſt.* 506, 507. Vide *Clergy*, *&c.*

Purificatio Beatæ Mariæ Virginis, Mentioned in the Stat. 32 *Hen.* 8. *cap.* 21. See *Candlemas*.

Purlue, or **Purlieu**, (From the Fr. *Pur*, i. e. purus, & *Lieu*, locus) Is all that Ground near any Foreſt, which being added to the ancient Foreſts by King *Hen.* 2. *Rich.* 1. and King *John*, was afterwas diſafforeſted and ſevered by the Stat. *Charta de Foreſta*, and the Perambulations and Grants thereupon, by King *Hen.* 3. ſo that it became *Purlue*, *viz.* pure and free from the Laws and Ordinances of the Foreſt. *Manwood's For. Laws*, *par.* 2. *cap.* 20. Our Anceſtors called this Ground *Purlieu*, *purum Locum*, becauſe it was exempted from that Servitude which was formerly laid upon it: And whereas *Manwood* and *Crompton* call it *Pourallee*, we may derive it from *Pur*, *purus*, & *Allee*, *Ambulatio*, becauſe he that walketh or courſeth within that Circuit, is not liable to the Laws or Penalties incurred by them which hunt within the Foreſt Precincts; but *Pourallee* is ſaid to be properly the Perambulation whereby the *Purlieu* is *deafforeſted*. Stat. 33 *Edw.* 1. 4 *Inſt.* 304. The Owners of Grounds within the *Purlieu* by Diſafforeſtation, may fell Timber, convert Paſtures into arable, *&c.* incloſe them with any Kind of Incloſure; erect Edifices, and diſpoſe of the ſame as if they had never been afforeſted; and a *Purlieu-Man* may as lawfully hunt to all Intents within the *Purlieu*, as any Man may in his own Grounds that were never afforeſted: He may keep his Dogs within the *Purlieu* unexpeditated; and the Wild Beaſts do belong to the *Purlieu-Man ratione ſoli*, ſo long as they remain in his Grounds, and he may kill them. 4 *Inſt.* 303. If the *Purlieu-Man* chaſe the Beaſt with Grey-hounds, and they fly towards the Foreſt for Safety, he may purſue them to the Bounds of the Foreſt, and if he then do his Endeavour to call back and take off his Dogs from the Purſuit, although the Dogs follow the Chaſe in the Foreſt, and kill the King's Deer there; this is no Offence, ſo as he enter not in the Foreſt, nor meddle with the Deer ſo killed: And if the Dogs faſten upon the Deer, before he recover the Foreſt, and the Deer drag the Dogs into the Foreſt, in ſuch Caſe the *Purlieu-Man* may follow his Dogs and take the Deer. 4 *Inſt.* 303, 304. But in the Caſe of Sir *Richard Weſton*, Attorney General, it was ſaid, that there was no *Purlieu* in Law to hunt; that it cannot be by Preſcription, and there is nothing in Statutes as to Hunting; and therefore *Purlieu-Men* may only keep out the Deer, but cannot kill them, though they be in their Ground. 1 *Jones Rep.* 278. See *Moor* 706, 987. And notwithſtanding *Purlieus* are abſolutely diſafforeſted, it hath been permitted, that the Ranger of the Foreſt ſhall, as often as the Wild Beaſts of the Foreſt range into the *Purlieu*, with his Hounds rechaſe them back into the Foreſt. 4 *Inſt.*

Purlieu-men, Are thoſe that have Ground within the *Purlieu*, and being able to diſpend forty Shillings a Year *Freehold*; who, upon theſe two Points, are licenſed to hunt in their own *Purlieus*, obſerving what is required. *Manw. For. Laws* 151, 157, 180, 186.

Purparty, (Fr. *Pour part*, i. e. *pro parte*) Is that Part or Share of an Eſtate, firſt held in Common by Parceners, which is by Partition allotted to any of them: To make *Purparty* is to divide and ſever the Lands that fall to Parceners, which till Partition they held jointly, and *pro Indiviſo*. Old Nat. Br. 11.

Purpreſture, (*Pourpreſtura*, from the Fr. *Pourpriſt*, an Incloſure) Is when any Thing is done to the Nuſance of the King's Demeſnes, or the Highways, *&c.* by Incloſure, or Buildings; endeavouring to make that Private which ought to be Publick. *Glanvil, lib.* 9. *cap.* 11. 1 *Inſt.* 38, 272. And when a Man takes to himſelf, or incroaches any Thing which he ought not, whether it be in Lands, Franchiſe, or Juriſdiction, it is a *Purpreſture*, and ſome Writers mention three Sorts of *Purpreſtures*; one againſt the King, the Second againſt the Lord of the Fee, and the Third againſt a Neighbour. *Kitch.* 10. 2 *Inſt.* 38. *Purpreſture* in a *Foreſt* is every Incroachment made therein, by Building, Incloſing, or Uſing any Liberty, without lawful Warrant to do the ſame: And if any Incloſures are made in Foreſts, they may be laid open, *&c.* *Manwood*, *cap.* 10. *Cro. Jac.* 156. By Statute, *Purpreſtures* or Uſurpations upon the King, ſhall be reſeiſed; and if any complain thereof, he may be heard, and have Right done him. 4 *Edw.* 1. *cap.* 4. *Purpreſtures* and Incroachments are to be inquired of in the Sheriff's Tourn. *Dalt. Sher.* 393.

Purpriſum, (Fr. *Pourpris*) A Cloſe or Incloſure; alſo the whole Compaſs or Extent of a Manor-Place. *Mon. Ang. Tom.* 2. *fol.* 106.

Purpurati, The Sons of Emperors and Kings. *Malmsb. lib.* 3.

Purſe, A certain Quantity of Money, containing 500 Dollars, or 125 *l.* in *Turkey*. Merch. Dict.

Purſuivant, (From the Fr. *Pourſuivre*, i. e. *Agere, perſequi*) Signifies the King's Meſſenger attending upon him in his Wars, or at the Council-Table, in his Court, and at his Chamber, the Exchequer, *&c.* to be ſent upon any Buſineſs or Meſſuage. Thoſe that are uſed in Martial Affairs, are called *Purſuivants at Arms*; whereof there are four of ſpecial Name among the *Heralds*: And *Stow*, ſpeaking of the Death of the tyrannical King *Rich.* 3. hath theſe remarkable Words; *His Body was naked to the Skin, not ſo much as a Rag about him, and he was truſſed behind a* Purſuivant at Arms, *like a Hog, or* *a Calf*, &c. The reſt of theſe *Purſuivants* are uſed upon Meſſages in Time of Peace, and eſpecially in Matters concerning Juriſdiction. 24 *H.* 8. *c.* 13.

Purveyance, (Fr. *Pourveyance*, from *Pourvoir*, *pro videre*) Is the Providing of Corn, Fuel, Victuals, and other Neceſſaries for the King's Houſe: And *Purveyor* is an Officer of the King or Queen, that provides ſuch Corn, Victuals, &c. 2 *Inſt.* 543. Formerly the King's Court was ſupplied with Neceſſaries from the Demeſnes of the Crown, which were manured for that Purpoſe; but this Method being found to be troubleſome, was by Degrees diſuſed, and afterwards the King appointed Officers to buy in Proviſions for his Houſhold, who were *Purveyors*, and claimed divers Privileges by the Prerogative of the Crown. They are mentioned in *Magna Charta*, *cap.* 22. and other ſubſequent Statutes: But misbehaving themſelves, ſeveral Offences of *Purveyors* were made Felonies; as if they took Things above the Value of 12 *d.* againſt the Will of the Owner, without Warrant, or ſuch Appraiſement as was directed, or without paying for them, &c. 28 *Ed.* 1. *c.* 2. 5 *Ed.* 3. *c.* 2. 36 *Ed.* 3. *c.* 2, 3, &c. Though theſe Laws having not ſufficiently provided againſt the Oppreſſions of Perſons employed for making Proviſions for the King's Houſhold, Carriages, and other *Purveyance*; and the People of many Countries having been obliged to ſubmit to ſundry Rates and Taxes, and Compoſitions, to redeem themſelves from ſuch Vexations and Oppreſſions, as it is recited by the 12 *Car.* 2. *cap.* 24. it was enacted by that Statute, that from thenceforth no Sum or Sums of Money, or other Thing, ſhall be taken, raiſed, rated, impoſed, or levied, for or in Regard of any Proviſion, Carriages, or *Purveyance* for his Majeſty, his Heirs or Succeſſors: And by the ſaid Statute it is ordained, that no Perſon, by any Warrant or Commiſſion from the King, &c. ſhall, by Colour of Buying or making Proviſion or *Purveyance* for his Majeſty, or any King or Queen of *England*, or for their Houſhold, take any Timber, Cattle, Corn, Grain, Malt, Hay, Straw, Victuals, Carriages, or other Things, of any of the Subjects of his Majeſty, his Heirs or Succeſſors, without the full and free Conſent of the Owner or Owners thereof, had and obtained without Menace or Force; nor ſhall require any to find Horſes, Oxen, Carts, or Carriages, for the carrying the Goods of his Majeſty, &c. without ſuch Conſent: And no *Pre-emption* ſhall be allowed or claimed in Behalf of his Majeſty, in Markets, &c. but they ſhall be free to all the Subjects to ſell, notwithſtanding any Pretence of *Purveyance*; and if any ſhall make Proviſion or *Purveyance*, or impreſs Carriages, contrary to this Statute, the Juſtices of Peace are to commit the Offenders to Gaol till the next Seſſions, when they ſhall be indicted, and proceeded againſt for the ſame, &c. Stat. 12 *Car.* 2. *cap.* 24. *par.* 13 & 14. This abſolute and univerſal Reſtraint of all Kinds of *Purveyance*, having been found inconvenient, it was enacted by 13 & 14 *Car.* 2. *cap* 20 That the Officers of the Navy, &c. may preſs Carriages for the Uſe of his Majeſty's Navy and Ordnance, according to the Regulations preſcribed by that Statute, as at ſo much *per* Mile; and the like was provided by 1 *Jac.* 2. *cap.* 10. in Reſpect to the King's Royal Progreſſes, &c.

Purview, (Fr. *Pourveu*, a Patent or Grant) Is frequently uſed by Sir *Edw. Coke*, for the Body, or that Part of an *Act of Parliament* which begins with *Be it enacted*, &c. The Statute 3 *Hen.* 7. ſtands upon a *Preamble* and *Purview*. 2 Inſt. 403. 12 Rep. 20.

Putage, (*Putagium*) *Fornicatio ex parte Fœminæ: quaſi* puttam agere *à Gall.* Putte, *i. e. Meretrix.* Amongſt our Anceſtors this Crime was eſteemed very heinous; for if any Heir Female under Guardianſhip, were guilty of it, ſhe forfeited her Part to the other Coheirs; or if ſhe were a ſole Heireſs, the Lord of the Fee had her Lands by Eſcheat. *Spelm. Glanv. lib.* 7. *c.* 12.

Putativus, *Putative*, Reputed, or commonly eſteemed; oppoſed to what is notorious and unqueſtionable. ———*Pater Pueri* Putativus, *i. e.* the reputed Father of the Child.

Putura, (*q. Potura*) Is a Cuſtom claimed by *Keepers* in *Foreſts*, and ſometimes by *Bailiffs of Hundreds*, to take Man's Meat, Horſe Meat, and Dog's Meat, of the Tenants and Inhabitants within the Perambulation of the Foreſt, Hundred, &c. and in the Liberty of *Knaresburgh* it was long ſince turned into the Payment of 4*d.* in Money by each Tenant. *MS. de Temp. Ed.* 3. 4 *Inſt.* 307. The Land ſubject to this Cuſtom is called *Terra Putura.* Plac. apud Ceſtr. 31 Ed. 3.

Pyker, or **Pycar**, A ſmall Ship or Herring boat. 31 *Ed.* 3. *c.* 2.

Q.

QUadra, Signifies any Kind of Square, a Quarter, &c.

Quadrageſima, The fortieth Part; alſo the Time of *Lent*, from our Saviour's *Forty Days Faſt.* Litt. Dict.

Quadrageſima Sunday, Is the Frſt *Sunday* in *Lent*; and ſo called, becauſe it is about the *fortieth Day* before *Eaſter.* Blount.

Quadrageſimalia, In former Days it was the Cuſtom for People to viſit their Mother-Church on *Midlent Sunday*, and to make their Offerings at the High Altar; as the like Devotion was again obſerved in *Whitſun-Week:* But as the Proceſſions and Oblations at *Whitſontide* were ſometimes commuted into a rated Payment of *Pentecoſtals*; ſo the *Lent* or *Eaſter* Offerings were changed into a Cuſtomary Rate called *Quadrageſimalia*, and *Denarii Quadrageſimales*, alſo *Lætare Jeruſalem.*

Quadrans, A fourth Part of a Penny: And before the Reign of King *Edw.* 1. the ſmalleſt Coin was a *Sterling* or Penny, marked with a Croſs, by the Guidance whereof a Penny might be cut into Halves for a Half-penny, or into Quarters or four Parts for Farthings; till to avoid the Fraud of unequal Cutting, that King coined Half-pence and Farthings in round diſtinct Pieces. *Matt. Weſtm. Anno* 1279.

Quadrantata Terræ, The fourth Part of an Acre. See *Fardingdeal.*

Quadraria, A Place where Men dig Stones; ſometimes writ *Quararia*, which we call a *Quarry*, &c. Mon. Angl. Tom. 2. p. 133, 177.

Quadrivium, The Center of four Ways, where four Roads meet and croſs each other. By Statute, Poſts with Inſcriptions are to be ſet up at ſuch Croſs Ways, as a Direction to Travellers, &c. 8 & 9 *W.* 3. *c.* 16.

Quadrugata terræ, A Team-Land; or ſo much Ground as may be tilled with four Horſes.

Quæ eſt eadem, In Pleading is uſed to ſupply the Want of a Traverſe. 2 *Lill. Abr.* 405. In a *Clauſum fregit* ſuch a Day, the Defendant pleads the Plaintiff's Licence to him to enter on the ſame Day, and that *virtute inde* he entered; he need not ſay *Quæ eſt eadem Tranſgreſſio:* So in Treſpaſs for Taking of Goods; if the Defendant juſtifies the ſame Day and Place: And in Treſpaſs and Battery, if the Defendant juſtifies that the ſame Day and Place the Plaintiff aſſaulted him, and that what Damages happened to him was of his own Wrong; this is good without *Quæ eſt eadem Tranſgreſſio*, &c though he doth not directly anſwer the Aſſault laid by the Plaintiff; but where he juſtifies at an other Day, or at other Place, then he ought to ſay, *Quæ eſt eadem.* 21 *Hen.* 7. *pl.* 2. A Fact laid to be *Nov.* 1. and a Juſtification *Nov.* 2. *Quæ eſt eadem* is well enough without a Traverſe, the Day not being material; but it had been naught, if the Day had been material. 1 *Lev.* 241. If a Treſpaſs is alledged 10 *Nov.* and Juſtification the 11 *Nov.* and there be an Averment of *Que eſt eadem*, it is here held good without making any Traverſe. *Lutw.* 1457. Where a Defendant juſtifies *dicto Tempore* in the Plaintiff's Declaration, he hath no Occaſion to ſay *Quæ eſt eadem tranſgreſſio*; becauſe he agrees with the Plaintiff in the Time and Place mentioned in his Declaration, and gives an Anſwer to it. *Mich.* 5 *W.* & *M. B. R.*

Quæ plura, Was a Writ that lay where an Inquiſition had been taken by an *Eſcheator* of Lands, &c. that a Man died ſeiſed of, and all the Land was ſuppoſed not to be found by the Office or Inquiſition; this Writ was therefore to inquire of what other Lands or Tenements the Party died ſeiſed: But it is now made uſeleſs, ſince the taking away the Court of *Wards* and *Offices poſt mortem.* 12 Car. 2. c. 24. Reg. Orig. 293.

Quære, or *Querie*, Is where any Point of Law, or Matter in Debate is doubted; as not having ſufficient Authority to maintain it. See 2 *Lill. Abr.* 406.

Querens non invenit Plegium, A Return made by the Sheriff, upon a Writ directed to him with this Clauſe, *viz. Si A. fecerit* B. *ſecurum de Clamore ſuo Proſequendo*, &c. F. N. B. 38.

Quæ ſervitia, A Writ concerning Services, &c. See *Per quæ ſervitia.*

Quæſta, An Indulgence or Remiſſion of Penance expoſed to Sale by the *Pope*; and the Retailers of them were called *Quæſtionarii*, and deſired Charity for themſelves or others. *Matt. Weſtm. Anno* 1240.

Quæſtus, Is that which a Man hath by Purchaſe; as *Hæreditas* is what he hath by Deſcent. ——— *Aut habet* Hæreditatem *tantum*, *vel* Quæſtum *tantum*, &c. Glanv. lib. 7. cap. 1.

Quakers, (From *Tremulus*) Are ſuch who pretend to tremble or *quake*, in the Exerciſe of their whimſical Religion. *Quakers* to the Number of Five or more, aſſembling in Religious Worſhip not authorized by Law, were to forfeit for the firſt Offence 5*l.* for the ſecond 10*l.* &c. by Stat. 13 & 14 *Car.* 2. *cap.* 1. but they are exempted from the Penalties of that Act by the 1 *W.* & *M. c.* 18. The 7 & 8 *Will.* 3. *cap.* 27. enacts, That *Quakers* making and ſubſcribing the Declaration of Fidelity mentioned in 1 *W.* & *M.* and owning King *William* to be rightful and lawful King, ſhall not be liable to the Penalties of this Act againſt others refuſing to take the Oaths; and not ſubſcribing the Declaration of Fidelity, &c. they are diſabled to vote at Election of Members of Parliament: *Quakers*, where an Oath is required, are permitted to make a ſolemn *Affirmation* or Declaration, declaring in the Preſence of Almighty God the Witneſs of the Truth, &c. But they are not capable of being Witneſſes in a Criminal Cauſe; nor of ſerving on Juries; or having Offices in the Government. 7 & 8 *W.* 3. *c.* 34. The *Quakers* Affirmation is ordained to be in Force for ever, and the Form of it appointed by 1 *Geo.* 1. *cap.* 6. And the 8 *Geo.* 1. *cap.* 6. authorizes the Affirmation of the *Quakers* with the Words, *I do promiſe and ſincerely declare in the Preſence of you*, &c. without ſaying in the *Preſence of God*; but falſe and corrupt Affirming, incurs the Pains and Penalties of wilful Perjury. *Quakers* refuſing to pay Tithes, or Church-Rates, Juſtices of Peace are to determine them, and order Coſts, &c. 7 & 8 *W.* 3. 1 *Geo.* 1. And *Quakers* may be committed to Priſon for Non-payment of Tithes, upon the Stat. 27 *H.* 8. *c.* 20. which is not repealed by the 7 & 8 *W.* 3. that gives another Remedy. 1 *Ld. Raym.* 323.

Quale jus, A Writ judicial which was brought where a Man of Religion had Judgment to recover Land, before Execution was made of the Judgment; it went forth to the Eſcheator between Judgment and Execution, to make Inquiry whether the Religious Perſon had Right to recover, or the Judgment were obtained by Colluſion between the Parties, to the Intent that the Lord might not be defrauded. *Reg. Judic.* 8, 16, 46. Stat. *Weſtm.* 2. *cap.* 32.

Qualified, Signifies a Man enabled to hold two Benefices. See *Plurality.*

Quamdiu ſe bene geſſerit, Is a *Clauſe* often inſerted in *Letters Patent* of the Grant of Offices, as in thoſe to the *Barons* of the *Exchequer*, &c. which muſt be intended in Matters concerning their Office; and is nothing but what the Law would have implied, if the Office had been granted for Life. 4 *Inſt.* 117.

Quantum meruit, *i. e.* How much he has deſerved, is a Man's Action of the Caſe, ſo called, grounded upon the Promiſe of another, to pay him for doing any thing ſo much as he ſhould deſerve or *merit.* If a Man retains any Perſon to do Work or other Thing for him; as a Taylor to make a Garment, a Carrier to carry Goods, &c. without any certain Agreement; in ſuch Caſe, the Law implies that he ſhall pay for the ſame, as much as they are worth, and ſhall be reaſonably demanded; for which *Quantum meruit* may be brought: And if one ſue another upon a Promiſe to ſatisfy him for Work done, &c. he muſt ſhew and aver in his Declaration how much he deſerved for his Work. *Comp. Attorn.* A Plaintiff declared, that the Defendant, in Conſideration that the Plaintiff had found him ſufficient Meat, Drink, Waſhing and Lodging, for ſeveral Months laſt paſt, promiſed to pay him as much as he ſhould deſerve, and averred that he deſerved ſo much; upon *Non Aſſumpſit* pleaded, the Plaintiff had a Verdict; but it was moved in Arreſt of Judgment, that the Declaration was ſhort and incertain, as to the Time and Number of Months: Though the Declaration was held good, and the Plaintiff had Judgment. *Mich.* 12 *W.* 3. *B. R.* 2 *Salk.* 557. Where the Word *Quantum* was omitted in the Declaration, *Tantum* hath been adjudged ſufficient, *viz.* The Defendant promiſed to pay ſo much as he deſerved; and *Meruiſſet* ſignifies as much as *ipſe Meruiſſet*: Alſo on ſeveral Counts, *Quantum habere meruit* was conſtrued to be *Quantum habere meruerit*, to make the Parties mean ſomewhat, as it was plain they did, though this was contrary to the Grammatical Conſtruction; and the Court held that they muſt take the Words of the Declaration, to be the very Words of the Promiſe, &c. *Paſch.* and *Hill.* 4 *Ann. B. R.* In a *Quantum Meruit*, bringing Money into Court was denied. *Hill.* 8 *W.* 3. *B. R.* But it was allowed, *ex motione Magiſtri* Raymond, *Paſch.* 5 *Ann.* 2 *Salk.* 597.

Quantum valebat, Is where Goods and Wares ſold are delivered by a Tradeſman at no certain Price, or to be paid for them as much as they are worth in general; then *Quantum valebat* lies, and the Plaintiff is to aver them to be worth ſo much: So where the Law obliges one to furniſh another with Goods or Proviſions, as an Inn-keeper his Gueſts, &c. *Practiſ. Attorn. Edit.* 1. *pag.* 72.

Quare cum, Are general Words uſed in original Writs, &c. See *Original.*

Quare ejecit infra Terminum, Is a Writ that lies for a Leſſee, where he is caſt out of his Farm before his Term is expired, againſt a Feoffee of the Lands, or the Leſſor that *ejects* him; and the Effect of it is to recover his Term again, and his Damages. *Reg. Orig.* 227. *F. N. B.* 197. *New Nat. Br.* 439. It is ſaid this Writ was deviſed for the following Cauſe: If a Man make a Leaſe of Land for Years, and after he ouſts his Leſſee, and then makes a Feoffment of the Land unto a Stranger in Fee; now the Leſſee cannot have a Writ of *Ejectione firmæ* againſt the Feoffee, becauſe he did not put him out, and in that Caſe the Leſſee hath no other Remedy but to enter again into the Land; and if the Feoffee do then put him out, the Leſſee may bring *Ejectione firmæ Vi & Armis*; but before Entry made by the Leſſee, he had no Remedy againſt the Feoffee: And therefore, by the Equity of the Statute of *Weſtm.* 2. *c.* 24. which enacts, that where it ſhall happen in one Caſe, a Writ is found, and in the like Caſe falling under the ſame Law, and wanting the ſame Remedy, &c. it is not ſo, the Clerks of the Chancery are to agree upon a proper Writ, &c. By Reaſon of that Statute, was this Writ deviſed. *New Nat. Br.* 439. And if a Perſon leaſe Lands for Years, and the Leſſor doth ſuffer a Recovery to be had againſt him upon a feigned Title, and the Recoverer entereth; the Leſſee ſhall have his Writ of *Quare ejecit infra Terminum*, &c. And the Words of the Writ are, *Occaſione cujus Venditionis*; and yet the ſame is not properly a Sale, but thoſe Words are only of Form. *Ibid.* It is in the Election of the Leſſee, or, if he grants over his Term, the ſecond Leſſee, to ſue a Writ of *Ejectione firmæ*, or a *Quare ejecit infra termin.* againſt the Leſſor, or his Heir, or againſt the Lord by Eſcheat, &c. if they put the Termor out of his Term. 19 *Hen.* 6.

Quare Impedit, Is a Writ lying for him who hath purchaſed an *Advowſon*, againſt a Perſon that diſturbs him in his Right of Advowſon by Preſenting a Clerk thereto, when the Church is void. *F. N. B.* 32. *Stat. Weſtm.* 2. *cap.* 5. It differs from Aſſiſe of *Darrein Preſentment* (or *Ultimæ Præſentationis*) becauſe that lies where a Man or his Anceſtors, under whom he claims, have formerly preſented to the Church; and this is for him that is the Purchaſer himſelf: But in both theſe, the Plaintiff recovers the Preſentation and Damages; though in the Writ of *Darrein Preſentment*, &c. he recovers only the Preſentation, not the Title to the Advowſon, as he doth in a *Quare Impedit*; for which Reaſon that Aſſiſe is ſeldom brought, and for that the Proceedings in it are very tedious: And where a Man may have Aſſiſe of *Darrein Preſentment*, he may have *Quare Impedit* 2 *Inſt.* 356. 3 *Nelſ Abr.* 31. The Writ *Quare Impedit* is to be brought in Six Months after the Avoidance; and by it a Patron may be relieved, not only in his Preſentation to a *Church*, but to a *Chapel*, *Prebend*, *Vicarage*, &c. And this Writ lies of a *Donative*, and the ſpecial Matter is to be ſet forth in the Declaration: It alſo lieth for a *Deanery* by the King, although it be elective; and for an *Archdeaconry*, but not for a meer *Office* of the Church. 1 *Inſt.* 344. 1 *Leon.* 205. And the *Chapter* may have a *Quare Impedit* againſt the *Dean* of their ſeveral Poſſeſſions 40 *Ed.* 3. 48. If the *Quare Impedit* be for a Donative, the Writ ſhall be *Quare Impedit* to preſent to the Donative; if of a Parſonage, then it is *Quare Impedit Præſentare ad Eccleſiam*; if to a Vicarage, it is *ad Vicariam*; if to a Prebend, *ad Præbendam*, &c. 3 *Nelſ. Abr.* 35. If a Biſhop be diſturbed to collate, where he ought to make Collation, he may have a Writ *Quare Impedit*, and the Writ ſhall be *quod permittat ipſum Præſentare*, &c. and he ſhall count upon the Collation: And if the King be diſturbed in his Collation by Letters Patent, he ſhall have *Quare Impedit*, &c. *New Nat. Br.* 73. A Grantee of a next Avoidance may bring this Writ againſt the Patron who granted the Avoidance. 39 *Hen.* 6. It may be brought by Executors, for a Diſturbance *in vita Teſtatoris*; and Executors being diſturbed in their Preſentation, may bring *Quare Impedit* as well as their Teſtator might. *Owen* 99. *Lutw.* 1. Husband and Wife jointly, or the Husband alone without his Wife may have the Writ *Quare Impedit*; and if a Man who hath an Advowſon in Right of his Wife, be diſturbed in his Preſentation, and dies, the Wife ſhall bring it on that Diſturbance. 14 *Hen.* 4. 5 *Rep.* 97. The Heir ſhall not have *Quare Impedit*, for a Diſturbance *tempore patris*; nor can he have Execution upon a Recovery by the Anceſtor. *Br. Q. Imp. pl.* 7, 9. But by Statute 13 *Ed.* 1. *c.* 5. Uſurpation of Churches during Wardſhip, particular Eſtates or Vacancy, &c. ſhall not bar an Heir at full Age, Reverſioner in Poſſeſſion, or a Spiritual Perſon in Succeſſion, from having a Writ poſſeſſory of *Quare Impedit*, &c. as the Anceſtor or Predeceſſor might have had, if ſuch Uſurpation had been in their Time: And the ſame Form of Pleading ſhall be had in *Darrein Preſentment*, and *Quare Impedit*. Where Partition is made upon Record, to preſent by Turns, the Coparcener that is diſturbed ſhall not be put to a *Quare Impedit*; but may have Remedy upon the Roll, by *Scire facias*: It is otherwiſe on an Agreement to preſent. Stat. *ibid.* 22 *Ed.* 4. 8. If Tenant in Tail ſuffers an Uſurpation, and dies, and ſix Months paſs, the Iſſue in Tail cannot bring *Quare Impedit*; but at the next Avoidance he may have it within the ſix Months. 46 *Aſſiſe* 4. This Writ is all in the Poſſeſſion; and the Preſentment of Grantee of the next Avoidance is a good Title for the Grantor and Patron in Fee to bring it; and likewiſe for his Heir, and other Grantees. 9 *Hen.* 7. 23. 5 *Rep.* 97. Preſentment alledged in Leſſee for Life, or Years, or it is ſaid in Tenant at Will, is ſufficient in *Quare Impedit*: So of Tenant in Dower, or by the Curteſy; alſo of Tenants by Statute Merchant, Staple or *Elegit*, &c. 21 *Ed.* 4. 2, 5. *Co Rep.* 97. *Mallory's Q. Imped.* 155. It ſuppoſes both a Poſſeſſion and a Right; and a Plaintiff muſt alledge a Preſentation in himſelf, or in thoſe under whom he claims; unleſs it be in Caſe of Lapſe, &c. In the Declaration of the Plaintiff, it is not ſufficient for him to alledge, that he, or ſuch a Perſon from whom he claims, were ſeiſed of the Advowſon of the Church, but he muſt alledge a Preſentation made by one of them; for if he doth not, the Defendant may demur to the Declaration: And the Reaſon of this is, that the Defendant, by joining the laſt Preſentation to his own Title, is to make appear, that he hath a Right to preſent now as well as then. *Cro. Eliz.* 518. 5 *Rep.* 97. *Vaugh.* 57. The Writ muſt be brought in that County where the Church is; the Patron and Incumbent are to be named in it, the one as he may be diſpoſſeſſed of his Patronage, and the other of his Preſentation; and it is uſual likewiſe to make the Biſhop a Defendant, to prevent a Lapſe, where the Church is void, *pendente lite*: *Quare Impedit* will not lie againſt the Ordinary and Incumbent, without naming the Patron; becauſe at Common Law the Incumbent could not plead any Thing which concerned the Right of Patronage, and therefore it is unreaſonable that he alone ſhould be named in the Writ who could not defend the Patronage; but the Stat. 25 *Ed.* 3. *c.* 7. enables him to plead againſt the King, and to defend his Incumbency, although he claims nothing in the Patronage; and by that Statute he ſhall plead againſt any common Perſon; though with this Difference, that when the Inheritance of the Patron is to be deveſted by a Judgment in a *Quare Impedit*, there he muſt be named in the Writ; but where the next Preſentation only is to be recovered, he need not be named: Yet where the King preſents without a Title, and his Clerk is inducted, the *Quare Impedit* is to be againſt the Ordinary and Incumbent; for it will not lie againſt the King; but if he is Plaintiff, the Writ may be brought againſt the Patron alone, without naming the Incumbent. 7 *Rep.* 25. 2 *Cro.* 650. *Palm.* 306. If the Church be full of a Preſentation, ſo that there is no Danger of Lapſe, the Biſhop need not be named in a *Quare Impedit*; but it is otherwiſe where it ſtands upon a Diſturbance only: And though this Writ will lie againſt a Patron alone; yet in a common Caſe, where any Clerk is preſented and inducted, the Incumbent ſhall not be removed, without naming him alſo. *Hob.* 320. *Gliſs. & Gulſt.* 235. *Jenk. Cent.* 200. The only Plea which the Biſhop hath by the Common Law on a *Quare Impedit* is, that he claimeth nothing but as Ordinary; he could not counterplead the Patron's Title, or any Thing to the Right of Patronage, nor could the Incumbent counterplead ſuch Title, till the ſaid Stat. 25 *Ed.* 3. by which both the Biſhop and the Incumbent may counterplead the Title of the Patron; the one, when he collates by Lapſe, or makes Title himſelf to the Patronage; and the other being *Perſona imperſonata*, may plead his Patron's Title, and counterplead the Title of the Plaintiff: And it has been adjudged, that the Incumbent cannot plead to the Title of the Parſonage, without ſhewing that he is *Perſona imperſonata* of the Preſentation of the Patron, *W. Jones* 4. *March* 159. 3 *Nelſ. Abr.* 38. In a *Quare Impedit*, though it was found that the Church was full of another, who was a Stranger to the Writ, and it did not appear whether he came in by a better Title than that which was found for the Plaintiff; it was held, that the Plaintiff might have a general Writ to the Biſhop, which he is bound by Law to execute, or ſhall be amerced, *&c.* and he cannot return that the Church is full of another; for no Iſſue can be joined between the Biſhop and the Plaintiff, becauſe he has no Day in Court. 6 *Rep.* 51. 3 *Leon.* 136. But where a Plaintiff recovered an Advowſon in Ejectment, and thereupon had a Writ to the Biſhop, there being another Incumbent in the Church, who was not a Party to the Action; adjudged, that this Writ would not lie without a *Scire facias* to the Incumbent. *Sid.* 93. If it appears in a *Quare Impedit*, either in Pleading, or by Confeſſion of the Parties, that neither of them have a Title, but that it is in the King; the Court may award a Writ to the Biſhop for the King, to remove the Incumbent, and admit *idoneam Perſonam ad Præſentationem Regis*; but this muſt be when his Title is very plain. *Hob.* 126, 163. 1 *Leon.* 323. In *Quare Impedit*, the Plaintiff and Defendant are both Actors, ſo that the Defendant may have a Writ to the Biſhop, as well as the Plaintiff; but not without a Title appearing to the Court; wherefore if the Defendant never appears, the Plaintiff muſt make out a Title for Form-ſake, and ſo muſt the Defendant if the Plaintiff be nonſuited. *Hob.* 163. If the Plaintiff, after Appearance, in a *Quare Impedit* be nonſuited, it is peremptory; becauſe the Defendant upon a Title made, whereby he becomes Actor, ſhall have a Writ to the Biſhop: And it is the ſame in Caſe of a Diſcontinuance. 7 *Rep.* 27. It is the Nature of a *Quare Impedit* to be final, either upon a Diſcontinuance or Nonſuit; and a Man cannot have two Suits for the ſame Thing in this Caſe againſt one Perſon, though he may have ſeveral *Quare Impedits* againſt ſeveral Perſons. 7 *Rep.* 27. *Hob.* 137. The Parſon, Patron, and Ordinary are ſued; the Ordinary diſclaims, and the Parſon loſeth by Default; the Plaintiff ſhall have Judgment to recover his Preſentation, and a Writ iſſue to the Biſhop, *&c.* with a *Ceſſat executio*, until the Plea is determined between the Plaintiff and Patron. *Vaugh.* 6. Several were Plaintiffs in a *Quare Impedit*, the Defendant pleaded the Releaſe of one of them pending the Writ; and it was reſolved, that this Releaſe ſhall only bar him who made it, and that the Writ ſhall ſtand good for the Reſt. 5 *Rep.* 97. In a *Quare Impedit* againſt the Archbiſhop, the Biſhop, and three Defendants; the Archbiſhop pleaded that he claimed nothing but as Metropolitan; and the Biſhop pleaded that he claimed nothing but as Ordinary; and the three Defendants made a Title; but there was a Verdict againſt them: It was a Queſtion, Whether the Writ of Execution ſhould be awarded to the Archbiſhop, or the Biſhop; and it was held, that where neither of them are Parties in Intereſt, it may be directed to either; but if the Biſhop is Party in Intereſt, it muſt be directed to the Archbiſhop. 6 *Rep.* 48. 3 *Bulſt.* 174. And if the Archbiſhop of *Canterbury* be Plaintiff in a *Quare Impedit*, the Writ muſt be directed to the Archbiſhop of *York*, *&c. Show.* 329. If the Defendant pleads *Ne diſturba*, which is in Effect the General Iſſue in a *Quare Impedit*, this will be only a Defence of the Wrong with which he ſtands charged, and is ſo far from controverting the Plaintiff's Title, that it as it were confeſſes it; and the Plaintiff may preſently pray a Writ to the Biſhop, or maintain the Diſturbance in order to recover Damages. *Hob.* 163. There muſt be a Diſturbance to maintain this Action: In a *Quare Impedit*, the Patron declared upon a Diſturbance of him to preſent 1 *November*; the Incumbent pleaded, that 1 *May* next after, the Preſentation devolved upon the Queen by Lapſe, and ſhe preſented him to the Church, *&c.* And upon Demurrer the Plea was held ill; becauſe the Defendant had not confeſſed and avoided, nor traverſed the Diſturbance, ſet forth in the Declaration: And though by the Demurrer the Queen's Title was confeſſed, it appearing that it was already executed, and the Defendant having loſt his Incumbency by ill Pleading, the Writ ſhall not be awarded to the Biſhop for the Queen to preſent again, but for the Patron. 1 *Leon.* 194. In all *Quare Impedits*, the Defendant may traverſe the Preſentation alledged by the Plaintiff, if the Matter of Fact will bear it; but the Defendant muſt not deny the Preſentation alledged, where there was a Preſentation. *Vaugh.* 16, 17. And if a Preſentment is alledged in the Grantor and Grantee, the Preſentment in the Grantor is only traverſable; for that is the Principal. *Cro. Eliz.* 518. The Courts at *Weſtminſter* are very cautious not to abate the Writ of *Quare Impedit*, for any Want of Form, *&c.* yet if the Biſhop againſt whom the Writ is brought, or any of the Defendants are miſnamed, it is good Cauſe of Abatement: If the Patron be not named in the Writ, it may be pleaded in Abatement; though the Death of the Patron pending the Writ doth not abate it, if the *Quare Impedit* is brought againſt the Biſhop, Patron, and Incumbent: And if the Incumbent dies, pending the Writ, and a Diſturber ſhould preſent again, and die, *Quare Impedit* would lie upon the firſt Diſturbance by *Journies Accounts*; but the firſt Writ is abated by the Plaintiff's Death; alſo if the Plaintiff bring a new Writ within fifteen Days after the Abatement, that ſhall be a Continuance of the firſt Writ, and prevent the Defendant's taking any Advantage: But if the Writ abate for any Fault in the Declaration, the Defendant ſhall have a Writ to the Biſhop to admit his Clerk; and ſo he ſhall if Judgment is given upon a Demurrer, *&c. Cro. Eliz.* 324. *Cro. Car.* 651. 7 *Rep.* 57. *Dyer* 240. In a Plea of *Quare Impedit*, Days are given from 15 to 15, or from three Weeks to three Weeks, according to the Diſtance of Place: And if the Diſturber come not in on the great Diſtreſs, a Writ is to be ſent to the Biſhop, that he claim not to the Prejudice of the Plaintiff for that Time; and upon Recovery, Judgment is to be given to the Party to recover the Preſentation and Advowſon. *Stat.* 52 *H.* 3. *c.* 12. 2 *Roll. Abr.* 377. And Damages are given in a *Quare Impedit*, by the Stat. of *Weſtm.* 2. *c.* 5. though Damages ſhall not be had againſt the Biſhop, where he claims nothing but as Ordinary, and is no Diſturber. 3 *Lev.* 59. Before this Statute no Damages were allowed on a *Quare Impedit*; and the King hath none at this Day, for although he declares *Ad damnum, &c.* he is not within that Statute; becauſe by his Prerogative he cannot loſe his Preſentation. 6 *Rep.* 52. If a Plaintiff hath a Verdict, and the Church is found to be vacant, the Patron may have the Fruits of his Preſentation, and ſo not be intitled to Damages; in which Caſe, a *Remittitur de damnis* is entered. 3 *Lev.* 59. There are two *Judgments* in a *Quare Impedit, viz.* That the Plaintiff ſhall have a Writ to the Biſhop; and this is the final Judgment, that goes to the Right between the Parties, and is the Judgment at Common Law: And Judgment for Damages, ſince the Stat. of *Weſtm.* 2. after the Points of the Writ are inquired into; which Judgment is not to be given but at the Inſtance of the Party. 1 *Mod.* 254, 255. The Points to be inquired of, where the Jury find for the Plaintiff, *&c.* are, of whom, and upon whoſe Preſentment the Church is full; how long ſince it was void; the yearly Value of the Church, *&c.* which being found, Damages are to be given accordingly. 6 *Rep.* 51. No Coſts are recoverable in *Quare Impedit*, becauſe of the great Damages given by the Statute of *Weſtm.* 2. *cap.* 5. which ordains, that when ſix Months paſs hanging a *Quare Impedit, &c.* ſo that the Biſhop preſents by Lapſe, the Patron ſhall recover Damages to two Years Value of the Church; otherwiſe to have only half a Year's Value. See 10 *Rep.* 36. Where Judgment is given to have a Writ to the Biſhop in *Quare Impedits*; it ſhall not be reverſed upon a Writ of Error brought on the whole Judgment, though the Judgment by the Statute for Damages be erroneous and reverſed. 5 *Co. Rep.* 58, 59. A *Quare Impedit* was brought againſt two, one of them caſt an Eſſoin, and *idem dies datus eſt* to the other, *&c.* Then an Attachment iſſued againſt them for not appearing at the Day, and Proceſs continued to the *Grand Cape*; which being returned, and the Parties not appearing, it was ruled that final Judgment ſhould be entered according to the Stat. 52 *H.* 3. But on Motion to diſcharge this Rule, becauſe the Defendants were not ſummoned either upon the Attachment or grand Diſtreſs, the Summoners being only the feigned Names of *John Doe*, and *Richard Roe*, the Judgment was ſet aſide; for the Deſign of the Statute was to have Proceſs duly executed, and that muſt be with Notice, *&c.* And where the Right is for ever concluded, this being ſo fatal, the Proceſs muſt never be ſuffered to be a Thing of Courſe. 1 *Mod.* 248. A Writ of *Quare Impedit* is had againſt two Perſons, one doth not appear at the Grand Diſtreſs; the other pleads in Bar; there ſhall be a Writ to the Biſhop for the Plaintiff, without his making any Title, by Stat. *Malbr. cap.* 12. And if the Bar pleaded by the other Defendant be found for him, he ſhall alſo have a Writ to the Biſhop; and theſe two Perſons being admitted, inſtituted and inducted upon the two Writs, ſhall try their Right in an Aſſiſe, or Treſpaſs. *Jenk. Cent.* 95. Though where two Defendants in a *Quare Impedit* plead ſeveral Bars, and one of them is found againſt the Plaintiff, and the other with him; he ſhall not have his Writ to the Biſhop. If there are many Defendants, pleading ſeveral Pleas; the Plaintiff ſhall not have Judgment before all the Pleas are tried; for though ſome be for the Plaintiff, others may be found againſt him, and he cannot have Judgment without good Title. *F. N. B.* 30. *Hob.* 70. When one recovers in a *Quare Impedit* againſt an Incumbent, the Incumbent is ſo removed by the Judgment, that the Recoverer may preſent without any Thing farther; but the Incumbent continues Incumbent *de facto*; till ſuch Preſentation is made: And if the Plaintiff in this Suit be inſtituted upon a Writ to the Biſhop, the Defendant cannot appeal; if he doth, a Prohibition lies; becauſe in this Caſe, the Biſhop acts as the King's Miniſter, and not as a Judge. 2 *Roll. Abr.* 365. 1 *Roll. Rep.* 62. If one brings a *Quare Impedit* againſt the Patron and Incumbent of a Church within ſix Months, and recovers after the ſix Months, he ſhall remove the Incumbent, if named in the Writ. 2 *Roll. Abr.* 373. And the King cannot remove an Incumbent, preſented, inſtituted and inducted, although upon a Uſurpation, but by *Quare Impedit* in a judicial Way. 2 *Cro.* 385. If a Man at this Day, by the King's Licence, creates a Church which ſhall be preſentable, if he be diſturbed to preſent to it, he may have a *Quare Impedit* without alledging a Preſentation in any Perſon: But anciently it was held he might not, becauſe he could not alledge a Preſentment. 20 *Ed* 4. 14. *Mallory's Q. Imped.* 153. See *Preſentation, &c.*

Form of the Writ of *Quare Impedit.*

GEORGE *the Second,* &c. *to the Sheriff of* W. *Greeting: Command* B. *Biſhop of* S. *and* A. B. *that they juſtly and without Delay, permit* C. D. *of,* &c. *to preſent a fit Perſon to the Church of* H. *which is void, and belongeth to his Gift, as he ſaith; and whereof the ſaid* C. *complains, that the ſaid* B. *Biſhop and* A. *him unjuſtly diſturb therein: And if they ſhall not ſo do, and the ſaid* C. *gives you Security,* &c. *then do you ſummon by good Summoners the ſaid Biſhop and the ſaid* A. *that they be before our Juſtices at* Weſtminſter, &c. *to ſhew Cauſe why they will not do it: And have you there,* &c.

Form of a *Declaration*, Plea, and Judgment, *&c. in Quare Impedit.*

Wilts. ſſ. B. *Biſhop of* Salisbury *and* A. B. *Clerk, were ſummoned to anſwer to* C. D. *Eſq*; *of a Plea, or in an Action, that they permit him to preſent a fit Parſon to the Vicarage of the Church of* H. *which is vacant, and belongs to his Gift,* &c. *And whereupon the ſaid* C. D. *by* &c. *his Attorney ſaith or declares, that whereas one* E. F. *was ſeiſed of the Rectory of* H. *in the County aforeſaid, whereunto the Advowſon of the Vicarage of the Church aforeſaid doth belong, in his Demeſne as of a Fee and Right; and being ſo ſeiſed thereof, the ſaid* E. F. *afterwards, to wit, the Day of,* &c. *in the Year of the Reign,* &c. *at* H. *aforeſaid, by his certain Deed in Writing, which the ſaid* C. D. *with the Seal of the ſaid* E. *ſealed, here brings into this Court, the Date whereof is the ſame Day and Year, granted to the ſaid* C. *and one* W. M. *the Rectory aforeſaid, with the Appurtenances, whereunto the Advowſon,* &c. *amongſt other Things; To have and to hold to the ſaid* C. *and* W. *and the Heirs of the ſaid* C. *for ever: By Virtue of which Grant the ſaid* C. *and* W. *were ſeiſed of the Rectory aforeſaid, with the Appurtenances, whereto,* &c. *in their Demeſne, to wit, the ſaid* C. *as of Fee and Right, and the ſaid* W. *as of Freehold for Term of his Life; and the ſaid* C. *and* W. *being ſo thereof ſeiſed, afterwards the Vicarage of the ſaid Church became vacant, by the Death or Reſignation of,* &c. *the laſt Incumbent, and yet is void: And for that Reaſon, it now belongs to the ſaid* C. *to preſent a fit Parſon to the ſaid Vicarage; and the ſaid Biſhop and* A. *unjuſtly hinder, or diſturb him therein, whereupon he declares, that he is injured and endamaged to the Value of* 100 l. *and thereof he brings Suit,* &c. And *the ſaid* B. *Biſhop of* S. *and* A. B. *Clerk, by,* &c. *their Attorney, come and defend the Force and Injury when,* &c. *And the ſaid* A. B. *pleads,* &c. *And the ſaid Biſhop and* A. B. *further plead, that the ſaid* C. D. *ought not to have his ſaid Action againſt them, becauſe they ſay that the ſaid Vicarage of the ſaid Church of* H. *became vacant by the Death of the ſaid,* &c. *on the Day,* &c. *in the Year of our Lord,* &c. *on which Day the ſaid Biſhop collated the ſaid Church ſo vacant, to the ſaid* A. B. *for that the ſix Months after the Avoidance of the ſaid Church were fully elapſed, ſo that the Right of Collating was devolved to the Biſhop as Ordinary of that Place, as it was* *lawful for him to do*; *and this they are ready to verify*; *wherefore they pray Judgment, whether the ſaid* C. D. *ought to have his ſaid Action againſt them*, &c. And *the ſaid* C. D. *replies, that he ought not by any Thing above alledged, to be precluded or barred from his ſaid Action*; *becauſe he ſaith*, &c. (*Here ſetting forth a Preſentment of one* G. H. *and the Biſhop's Refuſal to admit him*, &c. *whereon they are at Iſſue, and a* Verdict *for the Plaintiff.*) *That the Biſhop did totally refuſe to admit and inſtitute him, and that the Church is full of the ſaid* A. B. *by the Collation of the ſaid Biſhop of* S. *and that the ſaid Church is, and at the Time*, &c. *was of the yearly Value of*, &c. Therefore *it is adjudged, that the ſaid* C. D. *do recover againſt the ſaid Biſhop of* S. *and* A. B. *his Preſentation of the Vicarage of the Church aforeſaid, and his Damages, to the Value of the Church for Half a Year, which amount to*, &c. *aſſeſſed by the ſaid Jury in the Manner aforeſaid*; *and let him have a Writ to the Archbiſhop of* Canterbury, *Primate of all* England, *and Metropolitan of that Place, becauſe the ſaid Biſhop of* S. *is a Party*, &c. (*and for that the ſaid* A. B. *is admitted, inſtituted and inducted into the ſame Church by the ſaid Biſhop*) *to remove the ſaid* A. B. *from that Church, and that he admit a fit Parſon thereto, on the Preſentment of the ſaid* C. D. *and be the ſaid Biſhop and* A. B. *amerced*, &c.

Quare Incumbravit, A Writ that lieth againſt the Biſhop, who within ſix Months after the Vacation of a Benefice, confers it upon his Clerk, whilſt two others are contending at Law for the Right of Preſentation. *Reg. Orig.* 32. Or it is a Writ brought after a Recovery in a *Quare Impedit*, or Aſſiſe of *Darrein Preſentment*, againſt the Biſhop that thus admits a Clerk, notwithſtanding the Writ *Ne admittas* ſerved on him: For if the Biſhop doth incumber the Church before a *Ne admittas* is iſſued, then the Party ſhall have a *Quare Impedit*; as the Ordinary can have no Notice till the *Ne Admittas*. *F. N. B.* 32, 33. *Wood's Inſt.* 571. And if a Man hath a Writ of *Right of Advowſon* depending between him and another, and the Church is void pendant the Writ, the Plaintiff ſhall not have a *Quare Icumb.* or *Ne admittas*, although the Biſhop incumber the Church; becauſe the Plaintiff ſhall not recover the Preſentment upon this Writ, but the Advowſon: And where he hath Title to preſent, he may do it; and have *Quare Impedit*, if he be diſturbed. *New Nat. Br.* 108, 109. If the Biſhop delay the true Patron in his Preſentation, and the Patron ſues a *Quare Impedit*, he may thereupon have a *Ne Admittas*; and if the Biſhop after the Receipt of ſuch Writ, admit the Clerk of any other Perſon without a Verdict in a *Jure Patronatus*, the true Patron ſhall have *Quare Incumbravit* againſt the Biſhop, and thereby recover the Preſentment with Damages: Alſo a Writ is to be directed to the Biſhop to diſincumber the Church. *F. N. B.* 37. This Writ may be brought after the ſix Months; and if the Plaintiff be Nonſuit in a *Quare Incumbravit*, he may have another Writ, and vary for his firſt Declaration, *&c.* *Ibid.* 48. After a *Ne Admittas* delivered, if the ſix Months paſs, the Biſhop may preſent his Clerk for Lapſe, and ſhall not be charged by the Writ of *Quare Incumbravit* for the Preſentation; but he cannot admit the Clerk of the other Man, for that would be againſt the Writ *Ne Admittas* delivered to him. *F. N. B.* 48. If the Biſhop does incumber the Church, where there is no Diſpute about it, yet this Writ *Quare Incumbravit* lies; but according to the beſt Opinions there ought to be a Suit depending, though there is no actual Recovery. 18 *E* 3. 17. *Fitz. Q. Imped.* 3. *The Writ is to ſummon the Biſhop, to be before the Juſtices*, &c. *to ſhew Cauſe why he hath incumbred the ſaid Church, to the great Damage and Injury of the Plaintiff* A. *and contrary to the Laws and Cuſtoms of the Kingdom*, &c.

Quare non admiſit, Is a Writ which lies againſt a Biſhop where a Man hath recovered his Advowſon, or Preſentation in a Writ of Right of Advowſon, or in *Quare Impedit*, or other Action, and the Biſhop doth refuſe to admit his Clerk, upon Pretence of Lapſe, *&c.* it is requiſite in the Writ to mention the Recovery; and it is to be brought in the County where the Refuſal was. *F. N. B.* 47. 7 *Rep. Dyer* 40. In a *Quare non Admiſit* the Plaintiff ſhall recover Damages: And if a Plaintiff have Judgment in a *Quare Impedit*, and a Writ is awarded to the Biſhop; if upon this Writ the Biſhop makes a falſe Return, the Plaintiff may have *Quare non Admiſit* againſt him, and have his Damages. *Dyer* 260. King *Edw.* 1. preſented his Clerk to a Benefice in *Yorkſhire*, and the Archbiſhop of that Province refuſed to admit him; upon which the King brought a *Quare non Admiſit*, and the Archbiſhop pleaded that the Pope had a long Time before *provided* for that Church, as one having ſupreme Authority in that Caſe, and therefore he could not admit the King's Clerk: It was adjudged, that for his Contempt to execute the King's Writ, the Archbiſhoprick ſhould be ſeiſed, *&c.* 5 *Rep.* 12. If the Biſhop refuſe the King's Preſentee, and doth afterwards admit him, yet the King ſhall have *Quare non Admiſit* for the Refuſal: and ſo it is preſumed may a common Perſon. *New Nat. Br.* 106.

Quare non permittit, Is mentioned as an ancient Writ that lieth for one who hath a Right to preſent to a Church for a Turn, againſt the *Proprietary*. Fleta, lib. 5. cap. 6.

Quarentine or **Quarentaine**, (*Quarentena*) Is a Benefit allowed by Law to the *Widow* of a Man dying ſeiſed of Lands, whereby ſhe may challenge to continue in his capital Meſſuage, or chief Manſion-houſe, (not being a Caſtle) by the Space of *forty Days* after his Deceaſe, in order to the Aſſignment of her Dower, *&c.* And if the Heir, or any other eject her, ſhe may bring the Writ *De Quarentena habenda*; but the Widow ſhall not have Meat, Drink, *&c.* though if there be no Proviſion in the Houſe, according to *Fitzherbert*, ſhe may kill Things for her Proviſion. *Magn. Charta, cap.* 7. *Bract. lib.* 2. *cap.* 40 *F. N. B.* 161.

Quarentine, Is alſo the Term of *forty Days* wherein any Perſons coming from foreign Parts infected with the *Plague*, are not permitted to land or come on Shore, until ſo many Days are expired. Stat. 9 *Ann. cap.* 2. 7 *Geo.* 1. *cap.* 3. 1 *Geo.* 2. *c.* 17. See *Plague*.

Quarentine, Likewiſe ſignifies a Quantity of Ground, containing *forty Perches*. Leg. Hen. 1. cap. 16.

Quare obſtruxit, Is a Writ for a Perſon obſtructed and hindred in paſſing through the Land of another, having a Liberty and Right to paſs through the ſame. *Fleta, lib.* 4. *cap.* 26.

Quareria, A Quarry of Stone. *Mon. Angl. tom.* 2. *fol.* 595.

Quarrels. The Word *Quarrels* properly concerns Perſonal Actions, or Mixt at the higheſt: And yet by a Releaſe of all *Quarrels*, Actions Real and Perſonal are diſcharged. *Co. Litt.* 291. *Quarrels* extend to Actions; and alſo to Cauſes of Actions and Suits. 8 *Rep.* 153.

Quartelois, Were upper Garments with Coats of Arms quartered on them, the old Habit of our *Engliſh* Knights. *Walſing. in vit. Ed.* 2.

Quarter, A Meaſure of Corn, containing eight Buſhels ſtriked. Stat. 15 *R.* 2. *c.* 4. ——— Quarterium *Frumenti conſtat ex octo Buſſellis.* Fleta.

Quarterium Anni, A Quarter or the fourth Part of a Year. *Matt. Weſtm. Ann.* 1259.

Quarterizatio, Is Part of the Puniſhment and Execution of a *Traitor*, by dividing his Body into four Quarters. ——— *Fecit decollari, & Membratim dividi*,

dividi, & quarteriſari, & *Caput* & *ejus* Quarterias *ad Regni certas Civitates tranſmitti*; &c. *Artic.* Ricardi Scrope *Archiep.* Ebor. *apud* Angl. Sacr. par. 2. pag. 366.

Quarter-Seſſions, Is a General Court held by the *Juſtices of Peace* in every County, once every *Quarter* of a Year; originally erected only for Matters touching the Breach of the Peace, but now its Power is greatly increaſed, and extends much farther by many Statutes. The Holding theſe *Seſſions Quarterly* was firſt ordained by the 25 *Ed.* 3. *Stat.* 1. *cap.* 8. And the particular Times are appointed by 36 *Ed.* 3. *c.* 12. See *Juſtices of Peace*.

Quaſh, (*Quaſſare*, Fr. *Quaſſer* or *Caſſer*, i.e. *Caſſum facere*) Is to overthrow or annul any Thing *Bract. lib.* 5. 11 *Hen.* 6. *cap.* 2. As if the Bailiff of a Liberty return any Jurors out of his Franchiſe, the Array ſhall be *quaſhed*. *Co. Lit.* 156. And the Court of *B. R.* hath Power to *quaſh* Orders of Seſſions, Preſentments, Indictments, &c. Though this *Quaſhing* is by the Favour of the Court, and the Court may leave the Party to take Advantage of the Inſufficiency by Pleading; as they generally do where an Indictment is for an Offence very prejudicial to the Commonwealth, as for Perjury, &c. 2 *Lill. Abr.* 410. 2 *Hawk. P. C.* 258. The Court will not *quaſh* an Information; but there muſt be a Demurrer to it, if it be inſufficient. 2 *Lill.* 411. Vide Stat. 7 *W.* 3. *c.* 3. See *Indictment*. The Bill of the Plaintiff *quaſhed*, ſee *Plea*.

Quaterymes of Wines, (Fr. *Quatrieſme*) A Tax of the *Fourth Penny* for all Wines retailed.

Quechbord, A Kind of Game, ſuppoſed to be what we now call *Shovelbord*, prohibited by the Stat. 17 *Ed.* 4. *c.* 3.

Queen, (Lat. *Regina*, Sax. *Cwen*, i. e. *Uxor*, a Wife, *ſed propter Excellentiam*, the *Wife* of the *King*) In our Law is, either ſhe that holds the Crown of this Realm by Right of Blood, or who is married to the King; the Firſt of which is called *Queen Regnant*, and the laſt *Queen Conſort*: She that holdeth by Blood is, in Conſtruction of Law, the ſame with the King, and hath the like regal Power in all Reſpects; but the *Queen* Conſort is inferior to the King, and his Subject. *Staundf. Prærog.* 10. 3 *Inſt.* 7. 1 *Mar. Parl.* 2. *cap.* 1. To compaſs the Death of the *Queen* is Treaſon: Violating the *Queen*'s Perſon, &c. is alſo Treaſon; and if ſhe conſents to the Adulterer, it ſhall be Treaſon in her. 25 *Ed.* 3. 3 *Inſt.* 9. The *Queen*, as the King's Wife, partakes of ſeveral *Prerogatives* above other Women, *viz.* By the Common Law, the Wife of a King is a publick Perſon, exempt from the King; and is capable of Lands or Tenements of the Gift of the King, which no other *Feme Covert* is; ſhe is of Ability, without the King, to purchaſe, grant, and make Leaſes; and may ſue and be ſued alone, in her own Name only, by *Præcipe*, not by Petition: She may have in herſelf the Poſſeſſion of perſonal Things during her Life, &c. But both Real and Perſonal Eſtate goes to the King after her Death; if ſhe doth not in her Life-time diſpoſe of them, or deviſe them away by Will. 1 *Inſt.* 3, 31, 133. *Finch* 86. 1 *Roll. Abr.* 912. Acts of Parliament relating to her, need not be pleaded; for the Court muſt take Notice of them, becauſe ſhe is a publick Perſon. 8 *Rep.* 28. If a Tenant of the *Queen* aliens a Part of his Tenancy to one, and another Part to another; the *Queen* may diſtrain in any one Part for the Whole, as the King may do. *Wood's Inſt.* 22. And in a *Quare Impedit* brought by the *Queen*, ſome ſay that Plenarty is no Plea; but ſee 2 *Inſt.* 361. The *Queen* ſhall pay no Toll, &c. 1 *Inſt.* 133. By Statute, the preſent King might grant to his late *Queen* out of the Crown Revenues, an Annuity of 100,000 *l. per Annum*, to commence after his Death, and continue during the *Queen*'s natural Life, for ſupporting her Royal Dignity, &c. Stat. 1 *Geo.* 2. *cap.* 3. And his Majeſty conſtituted the *Queen* Regent of the Kingdom, during his Abſence abroad; to be capable of the Office, without taking the Oaths, or doing any Act required by Law to qualify any other. 2 *Geo.* 2. *c.* 27.

Queen Dowager. No Man may marry the *Queen Dowager* without Licenſe from the King, on Pain to forfeit his Lands and Goods: But if ſhe marry any of the Nobility, or under that Degree, ſhe loſeth not her Dignity; but by the Name of *Queen* may maintain an Action. 1 *Inſt.* 18, 50. The Statute 25 *Ed.* 3. making it Treaſon to violate the *Queen*, extends not to a *Queen Dowager*, but the King's Wife and Companion: And a *Queen Conſort* and *Queen Dowager* ſhall be tried, in Caſe of Treaſon, by the Peers. 2 *Inſt.* 50.

Queen-gold, (*Aurum Reginæ*) Is a Royal Duty or Revenue belonging to every *Queen of England*, during her Marriage to the King, payable by Perſons in this Kingdom and *Ireland*, upon divers Grants of the King, by Way of Fine or Oblation, &c. being one full tenth Part above the entire Fines, on Pardons, Contracts, or Agreements, which becomes a real Debt to the *Queen*, by the Name of *Aurum Reginæ*, upon the Party's bare Agreement with the King for his Fine, and Recording the ſame. *Lib. Nig. Scac. pag.* 43. 12 *Co. Rep.* 21, 22.

Que Eſtate, Signifies *which Eſtate*; and is a Plea, where a Man intitling another to Land, &c. ſaith that the ſame Eſtate ſuch other had, he has from him: As for Example, in a *Quare Impedit*, the Plaintiff alledges that two Perſons were ſeiſed of Lands, whereunto the Advowſon in Queſtion was appendant in Fee, and did preſent to the Church, and afterwards the Church was void: *Que Eſtate*, that is, *which Eſtate* of the two Perſons he hath now, by Virtue whereof he preſented, &c. *Broke* 175. *Co Lit.* 121. A Man cannot plead a *Que Eſtate* in an Eſtate-tail, nor can it be pleaded in Eſtates for Life, or for Years; a *Que Eſtate* of a Term may not be pleaded, by Reaſon a Term cannot be gained by Diſſeiſin, as a Fee may; but one may plead a *Que Eſtate* in a Term in another Perſon, under whom he doth not claim, and be good; for he is not privy to the Eſtate of the Stranger, to know his Title. 1 *Rep.* 46. 3 *Lev.* 19. 1 *Lev.* 190. *Lutw.* 81. A Thing that lies in Grant, cannot be claimed by a *Que Eſtate*, directly by itſelf; yet it may be claimed as Appurtenant to a Manor, by *Que Eſtate* in the Manor. 1 *Mod.* 232. A Man may not preſcribe by a *Que Eſtate* of a Rent, Advowſon or Toll; but he may of a Manor, &c. to which theſe are appendant. 2 *Mod.* 144. 3 *Mod* 52. A Perſon cannot plead a *Que Eſtate*, without ſhewing the Deed how he came by it. *Cro. Jac.* 673. This is in Caſe of a Rent in Groſs or Lands which cannot paſs from one Man to another without Deed. *Jenk. Cent.* 26.

Que eſt eadem, See *Quæ eſt eadem*, &c.

Que eſt meſme, (Signifying *Verbatim*, the ſame Thing) Is a Word of Art, in Actions of Treſpaſs, &c. for a direct Juſtification of the very Act complained of by the Plaintiff as a Wrong: And if where Tenants at Will bringing an Action againſt their Lord, the Plaintiffs ſay, that he threatned them in ſuch Sort, that he forced them to give up their Lands; to which the Lord pleads, that he ſaid unto them, if they would not depart he would ſue them at Law; this being the *ſame Threatning* that he uſed, or to ſpeak artificially *Que eſt le meſme*, the Defence is good. *Kitch.* 236.

Querela, An Action or Declaration preferred in any Court of Juſtice; whence comes *Querens* or Complainant, and the Word *Quarrel* againſt any Perſon. And *Quietos eſſe à Querelis* was to be exempted from the cuſtomary Fees paid to the King or Lord of a Court, for Liberty to prefer ſuch an

Action; but more uſually to be free from Fines and Amercements impoſed for common Treſpaſſes and Defaults. *Chart. King Hen.* 2. to *Bernard de S. Wallery. Kennet's Gloſſ.* See *Plaint.*

Querela coram Rege & Concilio, &c. A Writ whereby one is called to juſtify a Complaint of Treſpaſs made to the King himſelf, before the King and his Council. *Reg. Orig.* 124.

Querela freſcæ Fortiæ, Is a Writ of *Freſh Force.* Vide *Freſh Force.*

Queſt, An *Inqueſt* or Inquiſition, upon the Oaths of an impanelled Jury: In *London,* in the *Chriſtmas* Holidays, the Aldermen and Citizens of every Ward hold a *Queſt,* to inquire of Miſdemeanors and Annoyances, &c.

Queſtus eſt nobis, Is the Form of a Writ of *Nuſance* ordained by Statute, lying againſt him to whom the Houſe or other Thing that occaſioned the Nuſance is ſold or alienated. Stat. 13 *Ed.* 1. *c.* 24. See *Quod permittat.*

Quia improvide, Seems to be a *Superſedeas* granted in the Behalf of a Clerk of the *Chancery,* who is ſued contrary to the Privilege of that Court in *C. B.* and proſecuted to the *Exigent*; and in many other Caſes, where a Writ is unwarily and erroneouſly ſued out, or miſawarded. *Dyer* 33.

Quid juris clamat, Is a Writ judicial, iſſuing out of the Record of a *Fine* before it is ingroſſed; and it lies for the Grantee of a Reverſion or Remainder, when the particular Tenant will not attorn. *Reg. Judic.* 36, 37. After the Fine is ingroſſed, the Cogniſee ſhall not have a *Quid juris clamat* againſt the Tenant for Life: But the Courſe is, when he in the Reverſion upon the Writ of Covenant ſued againſt him, maketh Recogniſance of the Reverſion by Fine, &c. then upon that the Cogniſee may have this Writ againſt the Tenant for Life; and if he be ſick or not able to travel, a *Dedimus Poteſtatem* ſhall be granted to take his Cogniſance, and to certify the ſame into *C. B.* When after Plea pleaded, the Tenant may make Attorney; and if he be adjudged to attorn, a *Diſtringas ad attornandum* ſhall be awarded againſt him, &c. *New Nat. Br.* 328. This Writ ſeems to be obſolete and diſuſed, ſince the Stat. 4 & 5 *Ann.* See *Attornment.*

Quid pro quo, Signifieth what for what; and is uſed in the Law, for the giving of one Thing of Value for another Thing, being the mutual Conſideration and Performance of both Parties to a Contract. *Kitch.* 184. And as this is the Conſideration of a good and binding Contract or Bargain: So that which is contrary to it, is what the Law calleth *Nudum pactum.* 5 Rep. 83. Dyer 98.

Quietancia, A Quittance, or Acquittance. See *Acquietantia.*

Quietare, To quit, diſcharge, or ſave harmleſs; often found in old *Deeds* and Conveyances.

Quiete clamare, Is to quit Claim, or renounce all Pretenſions of Right and Title. ——— *De una virgata terræ in* M. Richardus & Aldreda *remiſerunt* & Quiete clamaverunt *de ſe & hæredibus,* &c. *prædict.* A. & *hæred. ſuis,* & *pro hac Remiſſione* Quieta clamatione *idem* A. *dedit,* &c. Bract. lib. 5.

Quietus, (Freed or Acquitted) Is a Word made Uſe of by the Clerk of the *Pipe* and Auditors in the *Exchequer,* in their Acquittances or Diſcharges given to *Accountants*; uſually concluding with *abinde receſſit quietus,* which is called a *Quietus eſt:* A *Quietus eſt* granted to the Sheriff, will diſcharge him of all Accounts due to the King. Stat. 21 *Jac.* 1. *cap.* 5. And theſe *Quietus's* are mentioned in the Acts of General Pardon. 12 *Car.* 2. *cap.* 11. and 14 *Car.* 2. *cap.* 21.

Quietus Redditus, Rent acquitting the Tenant from all other Services, &c. See *Quit-Rent.*

Quinquageſima Sunday, Is what we call *Shrove-Sunday*; about the *fiftieth* Day before *Eaſter.* Britt.

Quinque-portus, The *Cinque Ports*; which are *Haſtings, Romney, Dover, Sandwich,* &c. See *Cinque Ports.*

Quinzieme or **Quinzime,** A *French* Word ſignifying a *Fifteenth*; with us it was a *Tax,* ſo called, being raiſed after the Rate of the *Fifteenth Part* of Men's Lands or Goods. 10 *Ric.* 2. *cap.* 1. 7 *Hen.* 7. *cap.* 5. Though it is ſaid to be a Miſtake, that this was a Tax of the Fifteenth Part of Lands; for it was of the Goods only, and was firſt granted by the Parliament, 18 *Ed.* 1. And the Way of collecting it, was by two *Aſſeſſors* appointed in every County by the King; and they deputed others in every Hundred, who made a true Valuation of every Man's Goods, and then cauſed the Fifteenth Part to be levied. *Blount.* See *Fifteenths.*

Quinſime, Is ſometimes uſed for the *Fifteenth* Day after any Feaſt; as the *Quinzime* of St. *John Baptiſt.* 13 Ed. 1.

Quintal, One hundred Pound Weight of Fiſh, &c.

Quintane, (*Quintena*) Was a *Roman* military Sport or Exerciſe, by Men on Horſeback, formerly practiſed in this Kingdom to try the Agility of the Country Youth: It was a Tilting at a Mark made in the Shape of a Man to the Navel, in his Left Hand having a Shield, and in his Right Hand a wooden Sword, the Whole made to turn round, ſo that if it was ſtruck with the Lance in any other Part but full in the Breaſt, it turned with the Force of the Stroke, and ſtruck the Horſeman with the Sword which it held in its Right Hand: This Sport is recorded by *Matt. Pariſ. Anno* 1253.

Quint-exact, (*Quinto exactus*) Is the laſt Call of the Defendant, who is ſued to *Outlawry*; and if he do not then appear, he is by the Judgment of the Coroners returned outlawed. 31 *Eliz. c.* 3.

Qui tam, Is when an Information is exhibited againſt any Perſon on a *Penal Statute,* at the Suit of the King and the Party who is Informer, where the Penalty for Breach of the Statute is to be divided between them; and the Party Informer proſecutes for the King and himſelf. *Finch* 340. If the whole Sum is given by Statute to any Perſon who will ſue for the ſame, the Proſecutor may bring Action *Qui tam,* or ſue in his own Name, &c. 2 *Lill. Abr.* 59. See *Information.*

Quit-claim, A Releaſe of one from any Action he hath againſt him, &c. See *Quiete clamare.*

Quit-Rent, (*Quietus Redditus, quaſi* Quit-Rent) Is a certain ſmall Rent, payable by the Tenants of Manors, in Token of Subjection, and by which the Tenant goes *quiet* and free: In ancient Records, it is called *White Rent*; becauſe paid in Silver Money, to diſtinguiſh it from Rent-Corn, &c. 2 *Inſt.* 19.

Quoad hoc, Is often uſed in Law Pleadings and Arguments, to ſignify *As to this Thing named, the Law is ſo,* &c.

Quod Clerici non Eligantur in Officio, Is a Writ that lies for a *Clerk,* who by Reaſon of Lands he is poſſeſſed of, is made Bailiff, Reeve, or ſuch like Officer. *Reg. Orig.* 187.

Quod cum, In Indictments, &c. As *A. B.* was indicted *Quod cum C. D.* he had done ſuch a Thing: And this being by way of Recital, and not poſitively, is not good. 2 *Hawk. P. C.* 227. 3 *Salk.* 188. In Forgery, a *Quod cum* has been held well enough, where it was but an Inducement to the Fact; and when the Inducement came to charge the Offence, it did it in a particular Manner; but it is otherwiſe in Action of Treſpaſs, &c. for there it is only Recital. *Trin.* 2 *Annæ.*

Quod ei deforceat, A Writ for Tenant in Tail, Tenant in Dower, by the Curteſy, or for Term of Life, having loſt their Lands by Default, againſt him that recovers, or his Heir. *Reg. Orig.* 171. *Stat. Weſtm.* 2. *cap.* 4. And *Quod ei deforceat* may be brought againſt a Stranger to the Recovery; as if a Man recover by Default, and maketh a Feoffment this Writ may be had againſt the Feoffee: If a Woman loſe by Default, and taketh Husband, ſhe and her Husband ſhall have the *Quod ei deforceat*; but where Tenant in Tail loſeth by Default, and dieth, his Heirs ſhall not have a Writ of *Quod ei deforceat*, but a *Formedon:* And if Husband and Wife loſe by Default the Land of the Wife, which ſhe holdeth for Term of Life, and the Husband dieth, ſhe may not have this Writ, for *Cui in vita* is her Remedy; and when one bringeth *Quod ei deforceat*, he counts that he was ſeiſed of the Land in his Demeſne, as of Freehold, or in Tail, &c. without ſhewing of whoſe Gift he was ſeiſed; alſo he ought to alledge *Eſplees* in himſelf, and then the Defendant is to deny the Right of the Plaintiff, &c. and ſhew how that at another Time he recovered the Land againſt the Plaintiff, by *Formedon*, or other Action; and ſhall ſay in the End of his Plea, *Quod ipſe paratus eſt ad manutenendum jus & Titulum ſuum prædict. per Donum, &c. unde petit Judic.* &c. *New Nat. Br.* 347, 349. If Tenant in Tail, or ſuch other Tenant, who hath a particular Eſtate, loſe by Default, where he is not ſummoned, &c. he may have either a *Writ of Diſceit*, or *Quod ei deforceat*. Ibid.

Quod permittat, Is a Writ which lieth againſt any Perſon who erects a Building, though upon his own Ground, ſo near to the Houſe of another, that it hangs over, or becomes a *Nuſance* to it. 2 *Lill. Abr.* 413. Formerly where a Man built a Wall, a Houſe, or any Thing which was a Nuſance to the Freehold of his Neighbour, and afterwards died; in ſuch Caſe, he who received any Damage thereby, ſued a *Quod permittat* againſt the Heir of him that did the Nuſance; and the Form of it was *Quod permittat proſternere murum, &c.* 3 *Nelſ. Abr.* 44. The Writ was given by the Statute *Weſtm.* 2. And at Common Law an Aſſiſe of Nuſance did not lie againſt the Alienee of a Wrong-doer, for the Purchaſer was to take the Land in the ſame Condition that it was convey'd to him; but by the ſaid Statute of *Weſtm.* 2. *c.* 24. Damages may be recovered againſt the Perſon who ſold the Land, if the Nuſance be not abated on Requeſt made to him, or againſt the Perſon to whom he ſold it; though this doth not extend to the Alienee of the Alienee. 3 *Nelſ.* 45. *Lutw.* 1588. This Writ is ſeldom brought, being turned into Action on the Caſe. Vide *Nuſance*.

Quod permittat lies alſo for the Heir of him that is diſſeiſed of his Common of Paſture, againſt the Heir of the Diſſeiſor, being dead. *Terms de Ley* 507. And according to *Broke*, this Writ may be brought by him whoſe Anceſtor died ſeiſed of Common of Paſture, or other like Thing annexed to his Inheritance, againſt the Deforceor: If a Man is diſturbed by any Perſon in his Common of Paſture, ſo that he cannot uſe it, he ſhall have a *Quod permittat*; ſo of a Turbary, Piſcary, Fair, Market, &c. *New Nat. Br.* 272, 273, 275, 276. And a Parſon may have a *Quod permittat* againſt a Diſſeiſor, &c. in the Time of his Predeceſſor. 13 *Ed.* 1. *c.* 24. The Writ *Quod permittat*, on a Diſſeiſin of Common of Paſture, directed to the Sheriff; *Commands* A. *that juſtly*, &c. *he permit* B. *to have Common of Paſture in*, &c. *which he ought to have, as it is ſaid*; *and unleſs he ſhall do it*, &c. *then ſummon*, &c.

Quo jure, Is a Writ to compel a Man to ſhew by what Title he claims Common in the Land of another Perſon, brought by ſuch other. *F. N. B.* 128. It is a Writ of Right in its Nature, and lieth againſt ſeveral Tenants; but they muſt make ſeveral Defences and Titles, &c. *New Nat. Br.* 284.

Quo minus, A Writ that lies for the King's Farmer or Debtor in the *Exchequer*, againſt any Perſon indebted to him on Bargain, or Contract, &c. becauſe by the Detaining of his Debt, he is the *leſs able* to pay the King. *Terms de Ley.* It iſſues out of the *Exchequer*, to take the Body of the Defendant, as the *Capias* in the *Common Pleas*; and the *Latitat* in the *King's Bench*; and runs into *Wales*, where no Writ does out of thoſe Courts, except it be the *Capias Utlagatum:* And tho' formerly it was allowed only to ſuch Perſons, as were Tenants or Debtors to the King; at this Day the Practice is become general for the Plaintiff to ſurmiſe that for the Wrong which the Defendant doth him, he is leſs able to ſatisfy his Debt to his Majeſty; which Surmiſe gives Juriſdiction to the Court of Exchequer, to hear and determine the Cauſe. *Pract. Excheq.* 225. In this Caſe a Debtor hath a Kind of Prerogative Remedy granted to him, ſuppoſing that he is diſabled to pay the King: And in this Suit, the Plaintiff hath many Privileges above other Men in their ordinary Suits. *Old Nat. Br.* 148. *Kitch.* 178. *Finch* 66. If a privileged Perſon of the Exchequer Court ſue out a *Quo minus* in any Action in which the King is Party, the Sheriff in Execution thereof may, after Requeſt to open Doors, break them open, &c. *Pract. Solic.* 194.

Quorum, (*Lat.*) Often occurs in our Statutes, and *Commiſſions* both of the Peace and others, but particularly in Commiſſions to Juſtices of Peace; and a *Juſtice* of the *Quorum* is ſo called, from the Words in the Commiſſion, *Quorum* A. B. *unum eſſe volumus:* As where a Commiſſion is directed to five Perſons, whereof *A. B.* and *C. D.* to be Two: In this Caſe *A. B.* and *C. D.* are ſaid to be of the *Quorum*, and the Reſt cannot proceed without them. They are uſually Perſons of greater Quality or Eſtates than the common Commiſſioners. 3 *Hen.* 7. *cap.* 3. 32 *Hen.* 8. *cap.* 43.

Quorum nomina, In the Reign of King *Hen.* 6. the King's Collectors, and other Accountants, were much perplexed in paſſing their Accounts, by new extorted Fees, and forced to procure a then late invented Writ of *Quorum nomina*, for the Allowing and Suing out their *Quietus* at their own Charge, without the Allowance of the King. *Chron. Angl.*

Quota, A Tax to be levied in an equal Manner. *Chart. Ric.* 2.

Quo Warranto, Is a Writ which lies againſt any Perſon or Corporation, that uſurps any Franchiſe or Liberty againſt the King, without good Title; and is brought againſt the Uſurpers to ſhew by what Right and Title they hold or claim ſuch Franchiſe or Liberty: It alſo lies for Miſuſer, or for Nonuſer of Privileges granted; and by *Bracton*, it may be brought againſt one that intrudes himſelf as Heir into Land, &c. *Old Nat. Br.* 149. *Finch* 322. 2 *Inſt.* 279. The Statute of *Quo Warranto* is the 18 *Ed.* 1. which is commented upon 2 *Inſt.* 494, 495, &c. And the Attorney General may exhibit a *Quo Warranto* in the Crown-Office againſt any particular Perſon, Body Politick or Corporate, who ſhall claim or uſe any Franchiſes, Privileges or Liberties, not having a legal Grant or Preſcription for the ſame; and compel them by Proceſs to appear in the Crown-Office, and ſhew Cauſe or ſet forth by way of Pleading what Title they have to the Privileges claimed, and Iſſue ſhall be joined and tried thereon by *Niſi Prius*, or the Plea be determined by the Judges on Demurrer, as in other Caſes: But though on Demurrer, &c. the Queſtion be determined for the Defendant, yet he has no Coſts allowed him; if againſt him, he muſt be fined for the Uſurpation, and pay large Coſts to the Proſecutor. *Inſtit. Legal.* 147, 148, 157. But this is altered by Statute 9 *Ann.* It hath been adjudged, that the Stat. 4 & 5 *W. & M. cap.* 18. by which Informations in the Crown-Office are not to be filed without expreſs Order in open Court, &c. being a remedial Law, extends to *Informations* in the Nature of a *Quo Warranto*,

ranto, which always ſuppoſe a Uſurpation of ſome Franchiſe; and it is the general Practice not to make ſuch an Order for an Information, without firſt making a Rule upon the Perſon complained of to ſhew Cauſe to the contrary; and this Rule is grounded on an Affidavit of the Offence, *&c.* and if the Perſon on whom the Rule is made and perſonally ſerv'd, do not at the Day given ſatisfy the Court by Affidavit, that there is no reaſonable Cauſe for the Proſecution, the Court generally grants the Information; and upon ſpecial Circumſtances, will grant it againſt thoſe who cannot be perſonally ſerv'd with ſuch Rule; as if they purpoſely abſent themſelves, *&c.* But if the Party on whom ſuch a Rule is made, ſhew to the Court a reaſonable Cauſe againſt ſuch Proſecution; as againſt a *Quo Warranto* Information, that his Right in the Franchiſe in Queſtion hath been already determined on a *Mandamus*; or been acquieſced in many Years; or that it depends on the Right of others which hath not been tried; or that the Franchiſe no way concerns the Publick, but is wholly of private Nature, *&c.* the Court will not generally grant the Information. 2 *Hawk. P. C.* 262, 263. A *Quo Warranto* was brought for Vexation, on Forty-eight Points; and the Court on Motion, ordered that the Proſecutor ſhould wave that *Quo Warranto*, and bring a new one, and therein inſiſt only upon three Points; but that he might proceed to Trial upon his new *Quo Warranto*, in ſuch Time as he might have done upon the old. *Hill.* 22 *Car. B. R.* 2 *Lill. Abr.* 414. A *Quo Warranto* requires to know of the Defendant by what Authority he claims the Liberties, and charges him with the wrongful Uſurpation of them: In a *Quo Warranto* to ſhew by what Authority a Perſon claimed to have a *Court-Leet*, and alledging farther *quod uſurpavit Libertatem ſine aliqua conceſſione, &c.* The Defendant pleaded *Non uſurpavit*, and it was objected that this was no good Plea, for that the Anſwer to a *Quo Warranto* is either to claim or diſclaim; but the better Opinion was, that by this Plea the Defendant had anſwered the Uſurpation, tho' it did not ſhew by what Title he had claimed. *Godb.* 91. In *Quo Warranto* for uſing a *Fair* and *Market*, and taking *Toll*, Iſſue was taken, whether they had Toll by Preſcription, or not; and it was found that they had; and it was moved in Arreſt of Judgment, that here was a Diſcontinuance, becauſe there was no Iſſue as to the other Liberties claimed: But it was held, they were too ſoon to make this Objection, and that there can be no Diſcontinuance againſt the King before Judgment; for by Virtue of his Prerogative, the Attorney General may proceed to take Iſſue upon the Reſt, or may enter a *Nolle Proſequi*; but if he will not proceed, the Court may make a Rule on him *ad replicandum*, and then there may be a ſpecial Entry made of it. *Hardres* 504. 3 *Nelſ. Abr.* 43. A Motion was made for an Information in Nature of a *Quo Warranto*, againſt a Mayor and Aldermen, to ſhew by what Authority they admitted Perſons to be Freemen of the Corporation, who did not inhabit in the Borough: The Motion was ſaid to be in Behalf of the Freemen, who by this Means were encroached upon; and an Information was granted, there being no other Way to try it, nor to redreſs the Parties concerned. 1 *Salk.* 374. *Quo Warranto Information* may be brought againſt a Perſon voting in the Election of a Mayor, or other Chief Magiſtrate of a Corporation, that hath no Right to do it, upon Affidavit made that the Defendant voted in ſuch an Election, and that the Deponent the Proſecutor believes he had no Right to do it, *&c.* And by Stat. 9 *Ann. c.* 20. If any Perſon ſhall uſurp, intrude into, or unlawfully hold or execute the Office of a Mayor, Bailiff, or other Office in any Town Corporate or Place in *England*, the proper Officer of the Court of *King's Bench*, &c. may exhibit *Informations* in the Nature of a *Quo Warranto*, at the Relation of any Perſon deſiring to proſecute, who ſhall be mentioned therein to be the Relator againſt ſuch Uſurper, and proceed as uſual; and if the Right of divers Perſons may properly be determined in one Information, one Information ſhall ſerve, and the Defendants ſhall appear and plead as of the ſame Term, *&c.* the Information is filed, unleſs the Court give further Time; and the Proſecutor ſhall proceed with all convenient Speed: And if the Defendants be found guilty of an Uſurpation, *&c.* the ſaid Courts may as well give Judgment of *Ouſter*, as fine the Defendants; and alſo give Judgment that the Relator ſhall recover his Coſts: And if Judgment be given againſt the Relator, the Defendants ſhall have Coſts to be levied by *Capias ad Satisfaciend. Fieri facias, &c.* In a *Quo Warranto*, the Judgment is final, becauſe that is a Writ of Right; but Judgment on Information, in Nature of a *Quo Warranto*, is not concluſive: The Proceedings in one are Summons, and Judgment that the Liberties be ſeiſed, if the Defendant doth not appear; but in the other the Proceſs is a *Venire facias* and *Diſtringas. Sid.* 86. *Kelw.* 139, *&c.* 3 *Nelſ. Abr.* 43. Upon *Quo Warranto*, when the Liberties are ſeiſed *quouſque, &c.* and they do not replevy them, the Courſe is, that Judgment final be given, *Niſi* they plead within ſuch a Time. *Comberbach* 18, 19. Wherever Judgment is given for the King on a *Quo Warranto*, for Liberties uſurped, the Judgment is *Quod extinguatur*, and that the Uſurpers *Libertates, &c. nullatenus intromittant*; and in ſuch Caſe the Writ muſt be brought againſt particular Perſons: But where the *Quo Warranto* is for a Liberty claimed by a Corporation, there it is to be brought againſt the Body Politick; and the Liberties may be ſeiſed, but the Corporation ſtill ſubſiſts, and is not diſſolved without Cauſe of Forfeiture. 4 *Mod.* 52, 58. A Judgment of Seiſure cannot be proper where a Thing is diſſolved: And by the Judgment in the *Quo Warranto* againſt the City of *London*, which was *quod Libertates & Franchiſiæ capiantur & ſeiſantur in manus Regis*, the Corporation was not diſſolved; for it implied that they were not extinguiſhed. *Ibid.* It has been obſerv'd, that frequent and violent Proſecutions on *Quo Warranto's* in Behalf of the Crown, have been fatal to both King and People.

R.

Rabbi, in the *Greek* ſignifies *Magiſter* or Maſter. *Litt. Dict.*

Race, (*Progenies*) A Stock or Lineage. *Law. Lat. Dict.*

Rachetum, (From the Fr. *Racheter*, i. e. *Redimere*) The Compenſation or Redemption of a Thief. ——— *Nullus capiat* Rachetum *de Latrocinio.* 1 Stat. Rob. K. Scot, c. 9.

Rachimburgi, Saith *Blount*, are Judges. *Leg. Canut. c.* 103.

Rack, An Engine to extort *Confeſſion* from Delinquents: And *John Holland* Earl of *Huntingdon*, being by King *Hen.* 6. created *Duke of Exeter*, and made Conſtable of the *Tower of London*, he and *William de la Poole Duke of Suffolk* and others, intending to have introduced the *Civil Laws* in this Kingdom, for a Beginning brought into the *Tower* the *Rack* or *Brake*, allowed in many Caſes by the Civil Law. 3 Inſt. 35.

Rack-Rent, Is the full yearly Value of the Land let by Leaſe, payable by Tenant for Life or Years, *&c.* *Wood's Inſt.* 185.

Rack-Vintage, A ſecond Vintage, or Voyage made by our Merchants for *Rack'd Wines*, i. e. Wines drawn from the Lees. Stat. 32 *Hen.* 8. *c.* 14.

Radecheniſtres, Are *Liberi Homines.* Domeſday. 1 Inſt. 5.

Radius, Signifies a Furrow in Land. *Fleta, lib.* 2. *cap.* 73.

Radman or **Readman**, (From Sax. *Read*, Counſel) A Counſellor. *Domeſ.*

Rageman, Is a Statute of Juſtices aſſigned by King *Ed.* 1. and his Council, to hear and determine all Complaints of Injuries done throughout the Realm, within the five Years next before *Michaelmas*, in the fourth Year of his Reign.

Ragman's Roll, *Rectius* Ragimund's Roll, ſo called from one *Ragimund* a Legate in *Scotland*, who calling before him all the beneficed Clergymen in that Kingdom, cauſed them upon Oath to give in the true Value of their Benefices; according to which they were afterwards taxed by the Court of *Rome:* And this Roll, among other Records, being taken from the *Scots* by our King *Ed.* 1. was redelivered to them in the Beginning of the Reign of King *Ed.* 3. Sir *Richard Baker* in his Chronicle ſaith, That *Ed.* 3. ſurrendered by Charter all his Right of Sovereignty to the Kingdom of *Scotland*, and reſtored divers Inſtruments of their former Homages and Fealties, with the famous Evidence called *Ragman's Roll.* Bak. Chron. 127.

Ramilia, Little Branches, or Loppings of Trees, cut off or blown down. *Mon. Ang. Tom.* 1. *pag.* 809.

Ran, (*Sax.*) Is open or publick Theft; an open Spoiling a Man, ſo manifeſt that it cannot be denied. ——— *Ran dicitur aperta Rapina, quæ negari non poteſt.* Lamb. 125. Leg. Canut. cap. 58. Conſonant whereto it is to this Day vulgarly ſaid by one, who taketh the Goods of another injuriouſly and violently, that he hath taken or ſnatched all he could *Rap* and *Ran.*

Range, (From the Fr. *Ranger*, i. e: to order, array, or diſpoſe of) Is uſed in the Foreſt Laws as a Verb, as *to range*; and as a Subſtantive, *to make Range.* Chart. Foreſt, c. 6.

Ranger, A Sworn Officer of the Foreſt, to inquire of Treſpaſſes, and drive the Beaſts of the Foreſt out of the deafforeſted Grounds into the Foreſt, &c. He is made by Patent, and hath a Fee paid yearly out of the *Exchequer*, and certain Fee Deer. *Chart. Foreſt. c.* 7. *Manwood's For. Laws, pag* 50. See *Foreſt.*

Ranſome, (Fr. *Rancon*, i. e. *Redemptio*) Is properly the Sum paid for redeeming a Captive or Priſoner of War; and ſometimes taken in our Law for a Sum of Money paid for the Pardoning ſome great Offence, and ſetting the Offender at Liberty who was under Impriſonment. Stat. 1 H. 4. *cap.* 7. 11 *Hen.* 6. *cap.* 11. *Fine* and *Ranſom* go together, and ſome Writers tell us that they are the ſame; but others ſay, that the Offender ought to be firſt impriſoned, and then delivered or *ranſomed* in Conſideration of a Fine. 1 *Inſt.* 127. *Dalt.* 203. And *Ranſom* differs from *Amerciament*, being a Redemption of a Corporal Puniſhment due to any Crime. *Lamb. Eiren.* 556.

Rape, (*Rapus vel Rapa*) Is a Part of a County, ſignifying as much as a Hundred, and often-times contains in it more Hundreds than one. As all *Suſſex* is divided into ſix *Rapes* only, *viz.* The *Rape* of *Chicheſter*, *Arundel*, *Bramber*, *Lewis*, *Pevenſey* and *Haſtings*; every of which, beſides Hundreds, hath a Caſtle, River, and Foreſt belonging to it. *Camd. Britann.* 225, 229. Theſe *Rapes* are incident to the County of *Suſſex*; as *Lathes* are to *Kent*; and *Wapentakes* to *Yorkſhire*, &c.

Rape of the Foreſt, (*Raptus Foreſtæ*) Treſpaſs committed in the Foreſt by Violence; and is reckoned among thoſe Crimes, whoſe Cogniſance belonged only to the King. ——— *Inter delicta numeratur, quorum cognitio ad unicum Regem ſpectat.* Leg. Hen. 1. c. 10.

Rape of Women, Is an unlawful and carnal Knowledge of a Woman, by Force and againſt her Will: A *Raviſhment* of the Body, and violent deflouring her; which is Felony by the Common and Statute Law. *Co. Lit.* 190. And the Word *Rapuit* is ſo appropriated by Law to this Offence, that it cannot be expreſſed by any other; even the Words *Carnaliter Cognovit*, &c. without it, will not be ſufficient. 1 *Inſt.* 124. 2 *Inſt.* 180. There muſt be *Penetration* and *Emiſſion*, to make this Crime; and it is ſaid Emiſſion may be Evidence *prima facie* of Penetration, tho' not full Evidence: If there be no Penetration and Emiſſion, an Attempt to raviſh a Woman, though it be never ſo outragious, will be an Aſſault only. 1 *Hawk. P. C.* 108. It was a Queſtion before 18 *Eliz. c.* 7. whether a *Rape* could be committed on the Body of a Child of the Age of ſix or ſeven Years; and a Perſon being indicted for the *Rape* of a Girl of ſeven Years old, although he was found guilty, the Court doubted whether a Child of that Age could be raviſhed; if ſhe had been nine Years old ſhe might, for at that Age ſhe may be endowed. *Dyer* 304. By the Stat. 18 *Eliz.* whoſoever ſhall carnally know and abuſe any Woman Child under the Age of ten Years, he ſhall ſuffer as a Felon, without Benefit of Clergy: And upon an Indictment for this Offence, it is no way material whether ſuch Child conſented, or were forced; but it muſt be proved that the Offender entered her Body, &c. 3 *Cro.* 332. *Dalt.* 393. In *Rapes*, it is no Excuſe or Mitigation of the Crime, that the Woman at laſt yielded to the Violence, and conſented either after the Fact or before, if ſuch her Conſent was forced by Fear of Death or of Dureſs; or that ſhe was a common Strumpet, for ſhe is ſtill under the Protection of the Law, and may be forced: But it was antiently held to be no *Rape* to force a Man's own Concubine; and 'tis ſaid by ſome to be Evidence of a Woman's Conſent, that ſhe was a common Whore. 1 *Hawk.* 108. 1 *Inſt.* 123. Alſo formerly it was adjudged not to be a *Rape* to force a Woman, who conceived at the Time; becauſe if ſhe had not conſented, ſhe could not have conceived: Though this Opinion hath been ſince queſtion'd, by Reaſon the previous Violence is no way extenuated by ſuch a ſubſequent Conſent; and if it were neceſſary to ſhew that the Woman did not conceive, to make the Crime, the Offender could not be tried till ſuch Time as it might appear whether ſhe did or not. 2 *Inſt.* 190. The ſooner Complaint is made of a *Rape* the better: In *Scotland* it ought to be complained of the ſame Day or Night it is committed; and our Law mentions forty Days: It is a ſtrong Preſumption againſt a Woman, that ſhe made no Complaint in a reaſonable Time after the Fact. 1 *Inſt.* 123. 7 *Inſt.* 59. *H. P. C.* 117. On a Bill of Conſpiracy, &c. where a Defendant did not indict the Plaintiff for a *Rape*, in a ſhort Time after the Injury ſuppoſed to be done, but concealed it for Half a Year, and then would have preferred an Indictment againſt him; this was reſolved to be malicious, and that there not being *Recens proſecutio* argued a Conſent. 3 *Nelſ. Abr.* 45. A Woman raviſh'd may proſecute, and be a Witneſs in her own Cauſe. 3 *Rep.* 37. Yet a Woman's poſitive Oath of a *Rape*, without concurring Circumſtances, is ſeldom credited: If a Man can prove himſelf to be in another Place, or in other Company, at the Time ſhe charges him with the Fact, this will overthrow her Oath; ſo if ſhe is wrong in the Deſcription of the Place, or ſwears the Fact to be committed in a Place whereto it was impoſſible the Man could have Acceſs at that Time; as if the Room was lock'd up, and the Key in the Cuſtody of another Perſon, &c. Aiders and Abettors in committing a *Rape*, may be indicted as principal Felons, whether Men or Women; and the Lord *Audley* was indicted and executed as a Principal, for aſſiſting his Servant to raviſh his own Wife, who was admitted a Witneſs againſt him. *Dalt.* 107. *State Trials, Vol.* 1. *p.* 265. By *Hale* C. J. A Party raviſhed may give Evidence upon Oath; but the Credibility of her Teſtimony, and how far ſhe is to be believed, muſt be left to the Jury, being more or leſs credible according to the Circumſtances of Fact, and Signs of the Injury, which are many; and tho' *Rape* is a moſt deteſtable Crime, it is an Accuſation eaſily made, and hard to be proved, but harder to be defended by the Man accuſed, altho' ever ſo innocent: And there are ſeveral Inſtances of *Rapes* fully proved, but have after been diſcovered to be malicious Contrivances. 1 *Hale's Hiſt. P. C.* 633, 635. Of old Time, *Rape* was Felony, and puniſhed with Death; eſpecially if the Party raviſhed were a Virgin, unleſs ſuch Virgin would accept of the Offender for her Huſband, in which Caſe ſhe might ſave his Life; by marrying him; for if ſhe demanded him for her Huſband before Judgment paſſed, he eſcaped Puniſhment; but by the Stat. *Weſtm.* 2. her Election is taken away: Afterwards it was looked upon as a great Miſdemeanor only, and not Felony, but dreadfully puniſhed, *viz.* by the Loſs of Eyes and Privy Members; and by the Statute of *Weſtm.* 1. 3 *Ed.* 1. *cap.* 13. it was reduced to Treſpaſs, ſubjecting the Offender to two Years Impriſonment, and a Fine at the King's Will: But the Stat. *Weſtm.* 2. *c.* 34. made it Felony again; and it is excluded from the Benefit of the Clergy, by 18 *Eliz. Rape* was excepted out of the general Pardon, 2 *W. & M. c.* 10, *&c.* See *Appeal of Rape.*

An *Indictment* for a *Rape.*

Wilts. ſſ. THE *Jurors,* &c. *that* A. B. *of* M. *in the County of* W. *aforeſaid, Labourer, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the Day of,* &c. *in the Year of the Reign,* &c. *at* M. *aforeſaid in the ſaid County, with Force and Arms did feloniouſly make an Aſſault in and upon* E. D. *of the Age of eighteen Years, then and there being in the Peace of God and of our ſaid Lord the King, and then and there forcibly and feloniouſly did* raviſh *and carnally know the ſaid* E. D. *againſt the Will, and without the Conſent of her the ſaid* E. D. *againſt the Peace of our ſaid Sovereign Lord the now King, his Crown and Dignity, and contrary to the Form of the Statute in ſuch Caſe made and provided.*

Rapine, (*Rapina*) To take a Thing in private againſt the Owner's will, is properly Theft; but to take it by Violence, is *Rapine.* Stat. 14 *Car.* 2. *c.* 22. Vide *Ran.*

Raptu hæredis, Is an ancient Writ lying for the Taking away an Heir, holding in Socage; of which there are two Sorts, one when the Heir is married, the other when not. *Reg. Orig.* 163.

Raſe, (*Raſarium*) Seems to have been a Meaſure of Corn now diſuſed: Toll ſhall be taken by the *Raſe,* and not by the Heap or Cantel. *Ordin. for Bakers, &c. cap.* 4. *Pat.* 12 *Ed.* 3.

Rate, A Valuation of every Man's Eſtate; or the appointing and ſetting down how much every one ſhall pay, or be charged with to any Tax. Stat. 43 *Ed.* 2.

Rate-Tithe, Is where any Sheep or other Cattle are kept in a Pariſh for leſs Time than a Year, the Owner muſt pay Tithe for them *pro Rata,* according to the Cuſtom of the Place. *F. N. B.* 51.

Ratian, A Foreign Meaſure, containing about four Buſhels; but more commonly a Day's Allowance of Forage, for Man and Horſe in an Army. *Lex Mercat.*

Ratification, (*Ratificatio*) A Ratifying or Confirming: It is particularly uſed for the Confirmation of a Clerk in a Prebend, *&c.* formerly conferred upon him by the Biſhop, where the Right of Patronage is doubted or ſuppoſed to be in the King. *Reg. Orig.* 304.

Ratio, A Cauſe, or Judgment given therein; and *ponere ad rationem,* is to cite one to appear in Judgment. *Walſingh.* 88.

Rationabile Eſtoverium, Was Alimony heretofore ſo called. *Rot.* 7 *H.* 3.

Rationabili parte, A Writ of Right for Lands, *&c.* See *Recto de Rationalibi parte.*

Rationabili parte Bonorum, Is a Writ that lies for the Wife, after the Death of her Huſband, againſt the Executors of the Huſband denying her the third Part of his Goods after Debts and Funeral Charges paid. *F. N. B.* 222. And it appears by *Glanvile,* that by the Common Law of *England,* the Goods of the Deceaſed, his Debts firſt paid, ſhall be divided into three Parts; one Part for the Wife, another Part for his Children, and the Third to the Executors: And this Writ may be brought by the Children, as well as the Wife. *Reg. Orig.* 142. But it ſeems to be uſed only where the Cuſtom of the Country ſerves for it; and the Writs in the Regiſter rehearſe the Cuſtoms of the Counties, *&c. New Nat. Br.* 270, 271. As to Children bringing this Writ, their Marriage is no Advancement, if the Father's Goods be not given in his Life-time; but where a Child is advanced by the Father, this Writ will not lie. *Ibid.*

Rationabilibus diviſis, A Writ lying where two Lords, in divers Towns, have *Seigniories* or Lordſhips joining together, for him that finds his Waſte by little and little to have been incroached upon, againſt the other that had made the Incroachment, to rectify the Bounds and *Diviſions;* in which Reſpect *Fitzherbert* ſays it is in its Nature a *Writ of Right:* And the *Old Nat. Br.* calls it a Kind of *Juſticies,* that may be removed by a *Pone* out of the County-Court into the *Common Pleas.* F. N. B. 128. Reg. Orig. 157. New Book Entries.

Rationale, A Prieſt's Garment, worn by the Pope and Biſhops, as a Token of the higheſt Virtue, *Quæ gratia &* Ratione *perficitur.* See *Pectorale.*

Ravage, (From the Fr. *Ravager*) Is Spoil or Deſtruction by Enemies. *Law Fr. Dict.*

Raviſhment, (Fr. *Raviſſement,* i. e. *Direptio, raptio*) Signifies an unlawful Taking away either of a Woman, or an Heir in Ward; and ſometimes it is uſed in the ſame Senſe with *Rape.*

Raviſhment de gard, Was a Writ that lay for the Guardian by Knights-Service, or in Socage, againſt a Perſon who took from him the Body of his Ward. *F. N. B.* 140. By the Stat. 12 *Car.* 2. *c.* 24. this Writ is taken away, as to Lands held by Knights-Service, *&c.* but not where there is Guardian in Socage, or appointed by Will: And the Mayor and Aldermen and Chamberlain of *London,* who have the Cuſtody of Orphans, if they commit any Orphan to another, he ſhall have a Writ of *Raviſhment* of Ward againſt him who taketh the Ward out of his Poſſeſſion. *New Nat. Br.* 317.

Ray, Is a Word appropriated to Cloth, never colour'd or dy'd. 11 *H.* 4. *c.* 6.

Razure, Of a Deed, ſo as to alter it in a material Part, without the Privity of the Party bound by it, *&c.* will make the ſame void: And if it be *razed* in the Date, after the Delivery, it is ſaid it goes through the Whole. 5 *Rep.* 23, 119. *Razure, &c.* is moſt ſuſpicious, when it is in a *Deed poll,* that there is but one Part of the Deed, and it makes to the Advantage of him to whom made. And where a Deed by *Razure,* Addition or Alteration becomes no Deed, the Defendant may plead *Non eſt factum* to it. *Ibid.*

Reafforeſted, Is where a Foreſt which had been *diſafforeſted* is again made Foreſt; as the Foreſt of *Dean* is by Stat. 20 *Car.* 2. *c.* 3.

Realty, Is an Abſtract of *Real*, as diſtinguiſhed from *Perſonalty*.

Reapſilver, Was Money paid by Tenants for Exemption from the Duty of *Reaping* for the Lord. *Cartular. S. Edmundi MS. fol.* 316. See *Rippers*.

Reaſon, It has been obſerv'd, is the very Life of the Law; and that what is contrary to it, is unlawful: When the *Reaſon* of the Law once ceaſes, the Law itſelf generally ceaſes; becauſe *Reaſon* is the Foundation of all our Laws. *Co. Litt.* 97, 183. If Maxims of Law admit of any Difference, thoſe are to be preferred which carry with them the more perfect and excellent *Reaſon*. Ibid.

Reaſonable Aid, Was a Duty claimed by the Lord of the Fee of his Tenants holding by Knights-Service to marry his Daughter, &c. *Stat. Weſtm.* 2. *cap.* 24. See the Stat. 12 *Car.* 2. *cap.* 24.

Reattachment, (*Reattachiamentum*) Is a ſecond *Attachment* of him who was formerly attached and diſmiſſed the Court without Day, by the not coming of the Juſtices, or ſome ſuch Caſualty. *Broke, Reg. Orig.* 35. A Cauſe diſcontinued, or put without Day, cannot be revived without *Reattachment* or Reſummons; which if they are ſpecial, may revive the whole Proceedings; but if general, the original Record only. 2 *Hawk.* 300. And on a *Reattachment*, the Defendant is to plead *de novo*, &c. See *Day*.

Rebate, Is an Abating what the Intereſt of Money comes to, in Conſideration of *prompt* Payment. *Merch. Dict.*

Rebellion, (*Rebellio*) Among the *Romans*, was where thoſe who had been formerly overcome in Battle, and yielded to their Subjection, made a ſecond Reſiſtance: But with us it is generally uſed for the Taking up of Arms traiterouſly againſt the King, whether by natural Subjects, or others when once ſubdued; and the Word *Rebel* is ſometimes applied to him that wilfully breaks a Law; likewiſe to a Villein diſobeying his Lord. Stat. 25 *Ed.* 3. *cap.* 6. 1 *R.* 2. *c.* 6. There is a Difference in our Law between *Enemies* and *Rebels*; for Enemies are thoſe that are out of the King's Allegiance; and therefore Subjects of the King, either in open War, or *Rebellion*, are not the King's Enemies, but Traitors. And *David Prince of Wales*, who levied War againſt K. *Ed.* 1. becauſe he was within the Allegiance of the King, had Sentence pronounced againſt him as a Traitor and Rebel. *Fleta, lib.* 1. *cap.* 16. Private Perſons may arm themſelves to ſuppreſs *Rebels*, Enemies, &c. 1 *Hawk. P. C.* 136.

Rebellious Aſſembly, Is a Gathering together of twelve Perſons, or more, intending or going about to practice or put in Uſe unlawfully, of their own Authority, any Thing to change the Laws or Statutes of the Realm; or to deſtroy the Incloſures of any Ground, or Banks of any Fiſh-Pond, Pool or Conduit, to the Intent the ſame ſhall lie waſte and void; or to deſtroy the Deer in any Park, or any Warren of Conies, Dove-houſes, or Fiſh in Ponds; or any Houſe, Barns, Mills, or Bays; or to burn Stacks of Corn; or abate Rents, or Prices of Victuals, &c. Stat. 1 *Mar. cap.* 12. 1 *Ed.* 6. See *Aſſembly unlawful*.

Rebinare, Was to give a ſecond Stirring or Ploughing to Arable Land that lay fallow, to prepare it for ſowing Wheat, &c. or to plough the Ground a third Time for that Purpoſe.——*Tempus* Rebinandi *erit poſt Feſtum Nativitatis Sancti* Johannis *Baptiſtæ cum terra pullulaverit poſt carucam.* Fleta, lib. 3. c. 73.

Rebutter, (From the Fr. *Bouter*, i. e. *Repellere*, to put back or bar) Is the Anſwer of the Defendant in a Cauſe to the Plaintiff's *Surrejoinder*: And the Plaintiff's Anſwer to the Defendant's *Rebutter* is called a *Surrebutter*; but 'tis very rarely that the Parties go ſo far in Pleading. *Pract. Attorn. Edit.* 1. *pag.* 86. *Rebutter* is alſo where a Man by Deed or Fine grants to Warranty any Land or Hereditament to another; and the Perſon making the Warranty or his Heir, ſues him to whom the Warranty is made, or his Heir or Aſſignee, for the ſame Thing; if he who is ſo ſued, plead the Deed or Fine with Warranty, and pray Judgment if the Plaintiff ſhall be received to demand the Thing which he ought to warrant to the Party, againſt the Warranty in the Deed, &c. this is called a *Rebutter*. *Terms de Ley* 511. And if I grant to a Tenant to hold without Impeachment of Waſte, and afterwards implead him for Waſte done, he may debar me of this Action by ſhewing my Grant; which is *Rebutter*. *Co. Entr.* 284. 1 *Inſt.* 365.

Recaption, (*Recaptio*) Signifies the *Taking a ſecond Diſtreſs* of one formerly diſtrained, during the Plea grounded on the former Diſtreſs; and it is a Writ to recover Damages for him whoſe Goods being diſtrained for Rent, or Service, &c. are diſtrained again for the ſame Cauſe, hanging the Plea in the County-Court, or before the Juſtices. *F. N. B.* 71, 72. Stat. 47 *Ed.* 3. *cap.* 7. And a *Recaption* lieth where the Lord diſtrains other Cattle of the Tenant than he firſt diſtrained, as well as if he had diſtrained the ſame Cattle again, if it be for one and the ſame Cauſe; but 19 *E.* 3. Iſſue was taken whether the Cattle were other Cattle of the Plaintiff, &c. *New Nat. Br.* 161. If the Lord diſtrain the Cattle of a Stranger for the ſame Rent, and not his Cattle who was firſt diſtrained; neither the Stranger, nor the Party firſt diſtrained, ſhall have the Writ of *Recaption*: And if the Lord diſtrain for Rent or Service, and afterwards the Lord's Bailiff takes a Diſtreſs on the ſame Tenant for the ſame Rent or Service, pending the Plea; the Tenant ſhall not have a *Recaption* againſt the Lord, or againſt the Bailiff, although the Bailiff maketh Cogniſance in Right of the Lord, &c. for it may be the Lord had no Notice of that Diſtreſs, or the Bailiff had not Notice of the Diſtreſs took by the Lord; though in ſuch Caſe, Action of Treſpaſs lies; and if the Lord agree to the Diſtreſs taken by his Servant or Bailiff, the Tenant may have this Writ againſt the Lord. *Ibid.* 159. A Man is diſtrained within a Liberty, and ſues a *Replevin* there by Plaint or Writ, and pendant that Plaint in the Liberty he is diſtrained again for the ſame Cauſe, by the Perſon who diſtrained before; he ſhall not upon that Diſtreſs bring a Writ of *Recaption*, becauſe the Plaint is not pendant in the County-Court before the Sheriff, nor in *C. B.* before the Juſtices: But if the Plaint be removed by *Pone* or *Recordare* out of the Liberty before the Juſtices, then the Party diſtrained may have a *Recaption*, &c. And if a Perſon be convicted before the Sheriff in a Writ of *Recaption*, he ſhall not only render Damages to the Party, but be amerced for the Contempt; and by the Juſtices be fined. 39 *Ed.* 3. For Damage feaſant Beaſts may be diſtrained as often as they ſhall be found upon the Land; becauſe every Time is for a new Treſpaſs and a new Wrong, and no *Recaption* lies.

Receiver, (*Receptor*) Is by us, as with the *Civilians*, commonly uſed in the evil Part, for ſuch as *receive* ſtolen Goods, &c. And the *Receiving* a Felon, and Concealing him and his Offence, makes a Perſon acceſſary to the Felony. 2 *Inſt.* 183. But a *Receiver* of a Felon, &c. muſt have Notice of the Felony either expreſs or implied, which is to be expreſly charged in the Indictment; and the Felony muſt be compleat at the Time of the Receipt, and not become ſo afterwards by Matter ſubſequent: If a Perſon knowing of one to have been guilty of Felony, barely receive him and permit him to eſcape, without giving him any Advice, Aſſiſtance or Encouragement, it is a high Miſdemeanor, but no capital Offence; and a Wife, in Regard to the Duty and Love which ſhe owes her Husband, may *receive* him when he hath committed Felony; but no other

Relation will exempt the *Receiver* of a Felon from Puniſhment. *S. P. C.* 41. *H. P. C.* 218, 219. 2 *Hawk. P. C.* 122, 319, 320. By Statute, if any Perſon ſhall *receive* or buy knowingly any ſtolen Goods, or conceal Felons knowing of the Felony, he ſhall be acceſſary to the Felony, and ſuffer Death as a Felon. Stat. 5 *Ann. c.* 31. Such *Receivers*, &c. may be tranſported by 4 *Geo.* 1. *c.* 11.

Receiver, Annex'd to other Words, as *Receiver of Rents*, ſignifies an *Officer* belonging to the King, or other great Perſonage. *Cromp. Juriſd.* 18. See *Accompt.*

Receiver of the Fines, Is an Officer who receives the Money of all ſuch as compound with the King upon *Original Writs* ſued out of the Chancery. *Weſt. Symb. parl.* 2. *ſect.* 106. Stat. 1 *Ed.* 4. *c.* 1.

Receiver General of the Dutchy of Lancaſter, An Officer of the *Dutchy Court*, that gathers in and collects all the Revenues, Fines, Forfeitures and Aſſeſſments, within the ſaid *Dutchy*, or what elſe is there to be received ariſing from the Profits of the Dutchy Lands, &c. 39 *Eliz. cap.* 7.

Receiver General of the Muſter-Rolls, Is mentioned in the Stat. 35 *Eliz. c.* 4.

Receivers General of the Revenue. The *Receivers* of the Revenues, are within three Months to pay in their Receipts, on Pain of Forfeiture of Place, &c. 34 & 35 *Hen.* 8. *cap.* 2. Alſo *Receivers* are to be bound with Sureties for true accounting, and to render Accounts yearly, &c. under Penalties. 7 *Ed.* 6. *c.* 1. *Receivers* of the Revenue Actions may be brought againſt, and not to be ſtaid by Privilege of Parliament. 2 *Ann. cap.* 18. And Proceſs ſhall iſſue out of the *Exchequer* againſt *Receivers* General of Taxes in Arrear, to finiſh their Accounts; and they are charged with an Intereſt, as Damages at the Rate of 10*l. per Cent.* till the Ballance is paid, by Stat. 1 *Geo.* 1. *c.* 36. If a *Receiver* General be robbed, Oath is to be made by three in Company, to recover the Money, &c. 6 *Geo.* 1.

Receiver General of the Court of Wards and Liveries, Was an Officer belonging to that Court; but that Court being taken away by the Stat. 12 *Car.* 2. *cap.* 24. this Officer is of Courſe out of Doors.

Recital, (*Recitatio*) Is the Rehearſal or making Mention in a Deed or Writing of ſomething which has been done before. 2 *Lill. Abr.* 416. A *Recital* is not concluſive, becauſe it is no direct Affirmation; and by feign'd *Recitals* in a true Deed, Men might make what Titles they pleas'd, ſince falſe *Recitals* are not puniſhable. 1 *Inſt.* 352. 2 *Lev.* 108. *Wood's Inſt.* 225. If a Perſon by Deed of Aſſignment recite that he is poſſeſſed of an Intereſt in certain Lands, and aſſign it over by the Deed, and become bound by Bond to perform all the Agreements in the Deed; if he is not poſſeſſed of ſuch Intereſt, the Condition is broken; and though a *Recital* of itſelf is nothing, yet being joined and conſidered with the reſt of the Deed, it is material. 1 *Leon.* 112. And where it is but a *Recital*, that before the Indenture the Parties were agreed to do ſuch a Thing, 'tis a Covenant; and the Deed it ſelf confirms it. 3 *Keb.* 466. The *Recital* of one Leaſe in another, is not a ſufficient Proof that there was ſuch a Leaſe as is recited. *Vaugh.* 74. But the *Recital* of a Leaſe in a Deed of Releaſe, is good Evidence of a Leaſe againſt the Releſſor and thoſe that claim under him. *Mod. Ca.* 44. A new reverſionary Leaſe ſhall commence from the Delivery, where an old Leaſe is *recited*, and there is none, &c. *Dyer* 93. 6 *Rep.* 36. *A. recites* that he hath nothing in ſuch Lands, and in Truth he has an Eſtate there, and makes a Leaſe to *B.* for Years: The *Recital* is void, and the Leaſe good. *Jenk. Cent.* 255. In this Caſe if the *Recital* were true, the Leaſe would not bind. *Ibid.*

Recluſe, (*Recluſus*) Is he who being entered into a religious Order, is ſhut up, and ſtirs not out of the Houſe or Cloyſter. *Litt.* 92.

Recognition, (*Recognitio*) Signifies an Acknowledgment; and it is the Title of the firſt Chapter of the Stat. 1 *Jac.* 1. whereby the Parliament *acknowledged* the Crown of *England*, on the Death of Queen *Elizabeth*, rightfully to have deſcended to King *James.*

Recognitione adnullenda per Vim & Duritiem facta, Is a Writ to the Juſtices of *C. B.* for the Sending a Record touching a *Recognizance*, which the *Recognizor* ſuggeſts was acknowledged by *Force and Dureſs*; that if it ſo appear, the *Recognizance* may be diſannulled. *Reg. Orig.* 183.

Recognitors, (*Recognitores*) Are the Jury impanelled upon an *Aſſiſe*; ſo called, becauſe they *acknowledge* a Diſſeiſin by their Verdict. *Bract. lib.* 5.

Recognizance, (Fr. *Recognoiſſance*, i. e. *Recognitio, Obligatio*) Is a Bond or Obligation of Record, acknowledged to the King, &c. And of *Recognizances* ſome are for Debt, ſome for Bail; and others to appear at the Seſſions or Aſſiſes to proſecute Felons, and to be of the Good Behaviour, &c. For Debt, or Bail, they are taken or acknowledged before the *Judges*, a *Maſter in Chancery*, &c. And to appear at the Aſſiſes, or Seſſions, they may be taken by *Juſtices of Peace*; which *Recognizances* are to be returned by the Juſtices to the Seſſions, or an Information lies againſt them. 2 *Lill. Abr.* 417. When a *Recognizance* of the Peace is made, the Condition is to be read to the Parties bound, calling them by their Names thus: *You* A. B. *do acknowledge to owe unto our Sovereign Lord King* George, &c. And then it is to be ingroſſed on Parchment, and the Juſtice is to ſubſcribe it. *Dalt.* 479, 480. In theſe *Recognizances*, the Principal is bound in double the Sum of the Sureties; and the uſual Number of Sureties are Two, and the uſual Penalty 40*l.* at leaſt; though if the Party be a very dangerous Perſon, a Juſtice may inſiſt upon a *Recognizance* of 1000*l.* Penalty. *Style* 322. *Recognizances* in general are of ſeveral Sorts; one is founded on the Stat. 23 *H.* 8. *c.* 6. By which Statute, the *Chief Juſtices* of the *King's Bench*, and *Common Pleas* in Term-Time, or in their Abſence out of the Term, the Mayor of the Staple at *Weſtminſter*, and the Recorder of *London* jointly, have Power to take *Recognizances* for the Payment of Debts in this Form, *Noverint Univerſi per præſentes nos* A. B. & C. D. *teneri & firmiter obligari* E. F. *in centum libris*, &c. They are to be ſealed with the Seal of the Cognizor, and of the King, appointed for that Purpoſe, and the Seal of one of the Chief Juſtices, &c. And the Recognizees, their Executors and Adminiſtrators ſhall have the like Proceſs and Execution againſt the Recognizors, as upon Obligations of Statute-ſtaple. 2 *Inſt.* 678. The Execution upon a *Recognizance* or Statute, purſuant to the Stat. 23 *Hen.* 8. is called an *Extent*; and the Body of the Cogniſor, (if he be a Layman) and all his Lands, Tenements and Hereditaments, into whoſe Hands ſoever they come, are liable to the Extent: Goods (not of other Perſons in his Poſſeſſion) and Chattels, as Leaſes for Years, Cattle, &c. that are in his own Hands, and not ſold *bona fide* and for valuable Conſideration, are alſo ſubject to the Extent. 3 *Rep.* 13. But the Land is not the Debtor, but the Body; and Land is liable only in Reſpect that it was in the Hands of the Cogniſor at the Time of the Acknowledgment of the *Recognizance*, or after; and the Perſon is charged, but the Lands chargeable only. *Plowd.* 72. Lands held in Tail ſhall be chargeable only during Life, and not affect the Iſſue in Tail; unleſs a Recovery be paſſed, when it is as Fee-Simple Land: Copyhold Lands are ſubject to the Extent, only during the Life of the Cogniſor: The Lands a Man hath in Right of his Wife, ſhall be chargeable but during the Lives of the Husband and Wife together; and Lands which the Cogniſor hath in Jointenancy with another, are liable to Execution during the Life of the Cogniſor, and no longer; for after his Death, if no Execution was ſued in his Life, the ſurviving Jointenant ſhall have all; but if the Cogniſor ſurvive, all is liable 2 *Inſt.* 673. If two or more join in the *Recognizance*, &c. the Lands of all ought equally to be charged: And where a Cogniſor, after he hath entered into a *Recognizance* or Statute, doth convey away his Lands to divers Perſons, and the Cogniſee ſues Execution upon the Lands of ſome of them, and not all; In this Caſe he or they whoſe Lands are taken in Execution, may by *Audita Querela* or *Scire facias* have Contribution from the reſt, and have all the Lands equally and proportionably extended. 3 *Rep.* 14. *Plowd.* 72. But the Cogniſor, or his Heirs, when he ſells Part of his Lands, and keeps the Remainder, ſhall not have any Contribution from a Purchaſer, if his Land only is put in Execution. *Ibid.* If there be a *Recognizance*, and after a Statute enter'd into by one Man to two others; his Lands may be extended *pro rata*, and ſo taken in Execution. *Yelv.* 12. This Kind of *Recognizance* may be uſed for Payment of Debts; or to ſtrengthen other Aſſurances. *Wood* 288. If a *Recognizance* is to pay 100*l.* at five ſeveral Days, *viz.* 20*l.* on each Day, immediately after the firſt Failure of Payment, the Cogniſee may have Execution by *Elegit* upon the *Recognizance* for the 20*l.* and ſhall not ſtay till the laſt Day of Payment is paſt; for this is in the Nature of ſeveral Judgments. 1 *Inſt.* 292. 2 *Inſt.* 395, 471. When no Time is limited in a Statute or *Recognizance* for the Payment of the Money, it is due preſently; as in Caſe of a Bond. *Law Secur.* 61. A *Recognizance* for Money lent, though it is not a perfect Record until entered upon the Roll; yet when entered, it is a *Recognizance* from the firſt Acknowledgment, and binds Perſons and Lands from that Time. *Hob.* 196. But by Stat. 29 *Car.* 2. *cap.* 3. no *Recognizance* ſhall bind Lands in the Hands of Purchaſers for valuable Conſideration, but from the Time of Inrollment, which is to be ſet down in the Margin of the Roll: And *Recognizances*, *&c.* in the Counties of *York* and *Middleſex*, ſhall not bind Lands unleſs regiſtered. 2, 5, 6 *&* 7 *Ann.* Alſo the Clerk of the *Recognizances* is to keep three ſeveral Rolls for the entring of *Recognizances* taken by the Chief Juſtices, *&c.* and the Perſons before whom the *Recognizances* are taken, and the Parties acknowledging are to ſign their Names to the Roll, as well as to the *Recognizance.* 8 *Geo.* 1. *cap.* 25. To make a good *Recognizance* or Obligation of Record, the Form preſcribed muſt be purſued; and therefore they may not be acknowledged before any others, beſides the Perſons appointed by the Statutes: And the ſubſtantial Forms of the Statute are to be obſerved herein. But a *Recognizance* may be taken by the Judges in any Part of *England.* *Dyer* 221. *Hob.* 195. *Recognizances* and Statutes, are like to Judgments; and the Cogniſee ſhall have the ſame Things in Execution, as after Judgment in *B. R.* or *C. B.* The Body of the Cogniſor himſelf, but not of his Heir, or Executor, *&c.* may be taken, though there be Lands, Goods and Chattels to ſatisfy the Debt: And if a Cogniſor is taken by the Sheriff, and he let him go; yet his Lands and Goods ſhall be liable. 12 *Rep.* 1, 2. *Plowd.* 62. 1 *And.* 273. By *Recognizances* of Debt, and Bail, the Body and Lands are bound; though ſome Opinions are, that the Lands of Bail are bound from the Time of the *Recognizance* entered into; and ſome, that they are not bound but from the Recovery of the Judgment againſt the Principal. 2 *Leon.* 84. *Cro. Jac.* 272, 449. In the Court of *B. R.* all *Recognizances* are enter'd as taken in Court; but in *C. B.* they enter them ſpecially where taken, and their *Recognizances* bind from the Caption, but thoſe in *B. R.* from the Time of their Entry: In *C. B.* a *Scire facias* may be brought on their *Recognizances* either in *London* or *Middleſex*; on thoſe in *B. R.* in the County of *Middleſex* only. 2 *Salk.* 659. 3 *Nelſ Abr.* 46. A *Recognizance* of Bail in *C. B.* is entered ſpecially; the Bail are bound to pay a certain Sum of Money, if the Party condemned doth not pay the Condemnation, or render his Body to Priſon: And in *B. R. Recognizances* are enter'd generally; that if the Party be condemn'd in the Suit or Action he ſhall render his Body to Priſon, or pay the Condemnation Money, or the Bail ſhall do it for him. *Paſch.* 23 *Car. B. R.* 2 *Lill. Abr.* 417. It was formerly a Queſtion whether a *Capias ad ſatisfaciend.* would lie upon a *Recognizance* taken in *Chancery*; but adjudged, that immediately after the *Recognizance* is acknowledged, it is a Judgment on Record; and then by the Stat. 25 *Ed* 3. *cap.* 17. a *Capias ad ſatisfaciend.* will lie, it being a Debt on Record. 2 *Bulſt.* 62. If a *Recognizance* be made before a Maſter in Chancery for a Debt; or to perform an Order or Decree of the Court; if the Condition be not performed, an Extent ſhall iſſue; or a *Scire facias* is the proper Proceſs, for the Recogniſor to ſhew what he can ſay why Execution ſhould not be had againſt him; upon which and a *Scire fec.* or two *Nihils* return'd, and a Judgment thereupon, the proper Execution is an *Elegit*, &c. *Cro. Jac.* 3. Where a Man is bound by *Recognizance* in the Chancery, and the Cogniſor hath certain Indentures of Defeaſance; if the Recogniſee will ſue Execution on the *Recognizance*, the Recogniſor may come into the Chancery, and ſhew the Indentures of Defeaſance, and that he is ready to perform them, and thereon he ſhall have a *Scire facias* againſt the Recogniſee, returnable at a certain Day; and in the ſame Writ, he ſhall have a *Superſedeas* to the Sheriff not to make Execution in the mean Time. *New Nat. Br.* 589. If a Perſon is bound in a *Recognizance* in Chancery, or other Court of Record, and afterwards the Recogniſee dieth; his Executors may ſue forth an *Elegit*, to have Execution of the Lands of the Recogniſor: And if the Sheriff return that the Recogniſor is dead, then a ſpecial *Scire facias* ſhall go againſt the Heir of the Recogniſor, and thoſe who are Tenants of the Lands which he had at the Day of the *Recognizance* enter'd into. *Ibid.* 590. One of the beſt Securities we have for a Debt is the *Recognizance* in Chancery, acknowledged before a Maſter of that Court; which is to be ſigned by ſuch Maſter, and afterwards inrolled: And the King may by his Commiſſion give Authority to one to receive a *Recognizance* of another Man, and to return the ſame into Chancery; and on ſuch a *Recognizance*, if the Recogniſor do not pay the Debt at the Day, the Recogniſee ſhall have an *Elegit* on the Conuſance ſo taken, as if it were taken in the Chancery. *Pract. Solic.* 131. *New Nat. Br.* 589. In Caſe Lands are mortgaged, without giving Notice of a *Recognizance* formerly had, if the *Recognizance* be not paid off and vacated in Six Months, the Mortgagor ſhall forfeit his Equity of Redemption, *&c.* 4 *&* 5 *W. & M. c.* 16. *Recognizances* may be diſcharged by Defeazance on Condition, upon Performance of ſuch Condition; by Releaſe; Payment of the Money; Delivery up of the *Recognizance*, *&c.*

Form of a *Recognizance* in *Chancery* for *Debt.*

A. B of, &c. *in the County*, &c. *before the Lord the King in his Chancery, perſonally appointed to be, hath acknowledged himſelf to owe (or that he is indebted) to* C. D. *of*, &c. *One Hundred Pounds of good and lawful Money of* Great Britain, *to be paid to the ſaid* C. D. *or to his certain Attorney, his Executors, Adminiſtrators or Aſſigns, at the Feaſt of St.* John the Baptiſt, *&c. after the Date of this* Recognizance; *and if* *it be not ſo done, he wills and grants for himſelf, his Heirs, Executors and Adminiſtrators, that the ſaid Sum of One Hundred Pounds ſhall be levied and recovered out of the Manors, Meſſuages, Lands, Tenements, Goods, Chattels, and Hereditaments, of him the ſaid* A. B. *his Heirs, Executors or Adminiſtrators, whereſoever they ſhall be found, by theſe Preſents, To the only Uſe of the ſaid* C. D. *his Executors or Adminiſtrators,* &c. Witneſs, *&c.*

A *Recognizance* according to *the Statute* 23 H. 8.

K*NOW all Men by theſe Preſents, that we* A. B. *and* C. D. *are held and firmly bound to* E. F. *in* 100l. *to be paid to the ſaid* E. F. *or to his certain Attorney, on ſhewing this Writing, his Heirs, Executors or Adminiſtrators, at the Feaſt of*, &c. *next coming after the Date of theſe Preſents; and if we ſhall fail in Payment of the Debt aforeſaid, we Will and Grant that then the Penalty of the Statute Staple ſhall run upon us, and every of us, our Heirs, Executors and Adminiſtrators, to be recovered as a Debt for Merchandizes bought, as in the ſame Statute it is ordained and provided: Dated the Day,* &c. *in the Year of the Reign, &c.*

Form of a *Recognizance* for Breach *of the Peace.*

South'ton, ſſ. BE it remembered, *That on the Day of*, &c. *in the tenth Year of the Reign of our Sovereign Lord* George *the Second*, &c. A. B. *of*, &c. *in the County aforeſaid, Yeoman, and* C. D. *and* E. F. *of*, &c. *came before me* J. S. *Eſquire, one of the Juſtices of our ſaid Lord the King, aſſigned to keep the Peace in the ſaid County, and acknowledged themſelves to be indebted to our ſaid Sovereign Lord the King, that is to ſay, the ſaid* A. B. *in forty Pounds, and the ſaid* C. D. *and* E. F. *ſeverally in twenty Pounds of good and lawful Money of* Great Britain, *to be levied of their Goods and Chattels, Lands and Tenements ſeverally, to the Uſe of our ſaid Sovereign Lord the King, his Heirs and Succeſſors, if the ſaid* A. B. *ſhall make Default in the Condition underwritten.*

The Condition *of this Recognizance is ſuch, That if the above bound* A. B. *ſhall perſonally appear in Court, at the next General Quarter-Seſſions of the Peace to be held at*, &c. *for the County aforeſaid, to anſwer unto all ſuch Matters as ſhall be then and there objected againſt him by* G. H. *of*, &c. *for and concerning the Breach of the Peace, and to do and receive what ſhall be enjoined by the Court; and if in the mean Time, the ſaid* A. B. *keep the Peace of our Sovereign Lord the King, as well towards his Majeſty as his Subjects, and eſpecially towards the ſaid* G. H. &c. *That then, &c. Or elſe*, &c.

Taken and acknowledged the Day and Year aboveſaid,
Before me J. S.

Recognizor, Is the Party that enters into the *Recognizance*; as the Perſon to whom it is made, or one is bound thereby, is the *Recogniſee.*

Reconciliari. A Church is ſaid *Reconciliari* when conſecrated again after it hath been polluted, or in the Poſſeſſion of Pagans or Hereticks. *Matt. Weſtm. Anno* 1015.

Record, (*Recordum*, from the Lat. *Recordari*, to remember) Signifies a Memorial or Remembrance, or an authentick Teſtimony in Writing, contained in Rolls of Parchment, and preſerved in a Court of *Record. Britton, c.* 27. It is a Writing in Parchment, wherein are inrolled Pleas of Land, or Common Pleas, and criminal Proceedings in Courts of *Record*; and *Records* are reſtrained to ſuch Courts only, and do not extend to the Rolls of inferior Courts, the Regiſtries of Proceedings whereof are not properly called *Records.* 1 *Inſt.* 260. 2 *Lill. Abr.* 418. And there are ſaid to be three Kinds of *Records, viz.* A *Record judicial*, as an Attainder, *&c.* a *Record miniſterial* upon Oath, being an Office or Inquiſition found; and a *Record* made by *Conveyance* and Conſent, as a Fine, or a Deed inrolled. 4 *Rep.* 54. But it has been held, that a Deed inrolled, or a Decree in Chancery inrolled, are not *Records*, but a Deed and a Decree *recorded*; and there is a Difference between a *Record* and a Thing *recorded.* 2 Lill. 421. *Records* being the Rolls or Memorials of the Judges, import in themſelves ſuch incontroulable Verity, that they admit of no Proof or Averment to the contrary, inſomuch that they are to be tried only by themſelves; for otherwiſe there would be no End of Controverſies: But during the Term wherein any judicial Act is done, the Roll is alterable in that Term, as the Judges ſhall direct; when the Term is paſt, then the *Record* admitteth of no Alteration, or Proof that it is falſe in any Inſtance. 1 *Inſt.* 260. 4 *Rep.* 52. A Matter of *Record* is to be proved by the *Record* itſelf, and not by Evidence, becauſe no Iſſue can be joined upon it to be tried by a Jury like to Matters of Fact; and the Credit of a *Record* is greater than the Teſtimony of Witneſſes. 21 *Car. B. R.* Tho' where Matter of *Record* is mix'd with Matter of Fact, it ſhall be tried by a Jury. *Hob.* 124. A Man cannot regularly aver againſt a *Record*; yet a Jury ſhall not be eſtopped by a *Record* to find the Truth of the Fact: And it was adjudg'd by the Court, that upon Evidence, 'tis at the Diſcretion of the Court to permit any Matter to be ſhewn to prove a *Record.* 1 *Ventr.* 362. *Allen* 18. 3 *Nelſ. Abr.* 48, 49. A *Record* may be contradictory in Appearance, and yet be good: And tho' it hath apparent Falſhood in it, 'tis not to be denied; but a *Record* may in ſome Caſes be avoided by Matter in Fact. *Style's Reg.* 281. *Co. Litt.* 3 *Cro.* 329. *Hutt.* 20. The Judges cannot judge of a *Record* given in Evidence, if the *Record* be not exemplified under Seal: But a Jury may find a *Record* although it be not ſo, if they have a Copy prov'd to them, or other Matter given in Evidence ſufficient to induce them to believe that there was ſuch a *Record.* 2 *Lill. Abr.* 421. By Statute, Judges may reform Defects in any *Record*, or Proceſs, or Variance between *Records, &c.* And a *Record* exemplified or inrolled, may be amended for Variation from the Exemplification. Stat. 8 *H.* 6. A *Record* of an *Iſſue* made up ready for Trial of a Cauſe, on Motion and Leave of Court, may be amended ſo as not to deface the *Record*; and notwithſtanding it be entered for Trial, on paying Coſts to the Defendant: But the Court will not give Leave to amend it, if it may not be done without defacing or much altering the *Record. Mich.* 22 *Car. B. R.* 2 *Lill.* 420. The Court of *B. R.* will amend a *Record* removed thither out of *C. B.* and alſo *Records* removed out of inferior Courts, as to Faults and Miſpriſions of Clerks, which are adjudg'd amendable by the Statutes of *Jeofails*; though formerly *B. R.* would not amend *Records* out of inferior Courts, but the Law in this Caſe is now altered by the Stat. 4 & 5 *Ann.* 2 *Lill. Abr.* 421, 422. If the Tranſcript of a *Record* be falſe, the Court of *B. R.* will upon Motion, order a *Certiorari* to an inferior Court, to certify how the Record is below; and if it be upon a Writ of Error out of the *Common Pleas*, they will grant a Rule to bring the *Record* out of *C. B.* into this Court, and then order the Tranſcript to be amended in Court, according to the Roll in *C. B.* And a *Record* cannot be amended without a Rule of the Court, grounded upon Motion. *Ibid.* Where a *Record* is ſo drawn, that the Words may receive a double Conſtruction, one to make the *Record* good, and another to make it erroneous, the Court will interpret the Words that Way which will make the *Record* good, as being moſt for the Advancement of Juſtice: So if a Letter of a Word in a *Record* be doubtful, that it may be taken for one Letter or another, the Court will conſtrue it to be that Letter that is for upholding the *Record*. *Hill.* 21 *Car. B. R.* See 1 *Cro.* 161. 2 *Cro.* 119, 153, 244, &c. A *Record* that is raſed, if legible, remains a good *Record* notwithſtanding the Raſure; but he that raſed it is not to go unpuniſhed for his Offence. *Mich.* 1649. And in Caſe of a Raſure in a Judgment, done by Practice to hinder Execution, the *Record* hath been ordered to be amended, and a ſpecial Entry thereof to be made; but though the *Record* by this Means be made perfect, the Offender may be indicted for Felony; for not only ſuch an Alteration whereby a Judgment is actually reverſed, but alſo ſuch whereby it is reverſable, whether it be or be not afterwards amended by the Court, is within the Act 8 *H.* 6. *c.* 12. making it Felony to take away, or avoid any *Record*, &c. 2 *Roll. Rep.* 81. 1 *Hawk. P. C.* 113. The Court will not ſupply a Blank left in a *Record*, to make it perfect, when before it was defective; as this would be to make a *Record*, which is not the Office of the Court to do, but to judge of them. 2 *Lill. Abr.* 420. If a ſubſequent *Record* hath any Relation to one that is precedent; in ſuch Caſe it muſt appear in Pleading, &c. to be the ſame without any Variation. 3 *Lutw.* 905. Where *Records* are pleaded, they muſt be ſhewed; and one may not plead any *Record*, if it be not in the ſame Court where it remaineth, unleſs he ſhew it under the Great Seal of *England*, if denied: Acts of *Record* muſt be ſpecially pleaded. *Bro. ca.* 20. 2 *Cro.* 560. 10 *Rep.* 92. 5 *Rep.* 218. *Style* 22. And *Records* are to be pleaded intire, and not Part of them, with an *inter alia* referring to the *Record*; and ſo ſhould a Special Verdict find a *Record*, unleſs a Judgment be pleaded, or you declare upon a Judgment in a ſuperior Court, when the Plaintiff may ſay *recuperavit* generally; but not in an inferior Court, for there all the Proceedings muſt be ſet forth particularly. *Mich.* 22 *Car. B. R.* When a *Record* is pleaded, it is to conclude *prout patet per Recordum*, or the other Side may anſwer *Nul tiel Record*; but this being only Matter of Form, may be ſometimes help'd by a general Demurrer; and Writs are Matter of *Record*, but they need not be ſo pleaded. 1 *Salk.* 1. 1 *Lev.* 211. 3 *Nelſ. Abr.* 49. If a *Record* is to be read in Court, the Counſel at the Bar muſt open the Effect of it, after read by the Clerk of the Court, by Cuſtom and Practice; though the Court may ſuffer it to be read afterwards if they pleaſe; and after Reading, &c. it is then by Rule of Court ordered to be ſet down for a *Cenſilium*. *Hill.* 23 *Car. B. R.* 2 *Lill. Abr.* 421. *Records* certified out of inferior Courts, on Writs of Error, and the Judgment on ſuch *Records* are to be entered in *B. R.* for until then the *Records* are not perfected: And if a *Record* once comes into *B. R.* by Writ of Error, it never goes out again; but a Tranſcript of it may go to the Houſe of Lords, upon a Writ of Error there. 2 *Lill.* 422. Writ of Error removes the *Record*; but the Original is no Part of it. *Jenk. Cent.* 164. A *Record* cannot be removed by Writ of Error, until the Judgment in that *Record* is entered: And when and how a *Record* may be removed; and where and how remanded, 2 *Cro.* 206. 2 *Brownl.* 145. Attornies are to enter the whole *Record* upon the Roll, after a Cauſe is tried, before the next Term after the Trial, on Pain of 20 *s.* That the *Record* may be ſpoken to the next Term, if there be Cauſe, and the Client not be delay'd. *Hill.* 1649. Juſtices of Aſſiſe, Gaol-Delivery, &c. are to ſend all their *Records* and Proceſſes determined to the *Exchequer* at *Michaelmas* in every Year; and the Treaſurer and Chamberlains on Sight of the Commiſſions of ſuch Juſtices, are to receive the ſame *Records*, &c. under their Seals, and keep them in the Treaſury. Stat. 9 *Ed.* 3. *cap.* 5. *Record of a Cauſe* made up for Trial, ſee *Trial*.

Recordare facias Loquelam, Is a Writ directed to the Sheriff to remove a Cauſe depending in an inferior Court, to the *King's Bench* or *Common Pleas*, and it is called a *Recordare*, becauſe it commands the Sheriff to make a *Record* of the Proceedings in the County-Court, and then to ſend up the Cauſe. *F. N. B.* 71. 2 *Inſt.* 339. This Writ is in the Nature of a *Certiorari*; on which the Plaintiff may remove the Plaint, in the County-Court, without Cauſe; but the Defendant cannot remove it without Cauſe ſhewn in the Writ, as upon a Plea of Freehold, &c. If the Plaint is in another Court, neither the Plaintiff or Defendant can remove it without Cauſe. *Wood's Inſt.* 572. If a Plea is diſcontinued in the County, the Plaintiff or Defendant may remove the Plaint into the *Common Pleas* or *King's Bench* by *Recordare*, and it ſhall be good, and the Plaintiff may declare upon the ſame, and the Court hold Plea thereof. *New Nat. Br.* 158. The Form of this Writ in the Regiſter is, *Et Recordum illud habeas*, &c. But in a *Recordare* to remove a Record out of the Court of ancient Demeſne, the Writ ſhall ſay *Loquelam & Proceſſum*, &c. And there is a Writ to call a Record, &c. to an higher Court at *Weſtminſter*, called *Recordo & Proceſſu mittendis*. Tab. Reg. Orig. By the uſual Writ *Recordare*; *The Sheriff is commanded in his full Court, to cauſe to be recorded the Plea which is in the ſaid Court between* A. *and* B. *of*, &c. *And have that Record before the Juſtices at* Weſtminſter *the Day*, &c. *under the Seals*, &c. *And to the ſaid Parties appoint the ſame Day, that they be then there to proceed in that Plea, as ſhall be juſt*, &c.

Recorder, (*Recordator*) Is a Perſon whom the Mayor and other Magiſtrates of any City or Town Corporate, having Juriſdiction, and a Court of *Record* within their Precincts by the King's Grant, do aſſociate unto them for their better Direction in Matters of Juſtice, and Proceedings according to Law: And therefore he is, for the moſt part, a Counſellor or other Perſon well verſed and experienced in the Law. The *Recorder* of *London*, is one of the Juſtices of *Oyer* and *Terminer*; and a Juſtice of Peace of the *Quorum*, for putting the Laws in Execution for Preſervation of the Peace and Government of the City: And being the Mouth of the ſaid City, he learnedly delivers the Sentences and Judgments of the Courts therein; and alſo certifies and *records* the City-Cuſtoms, &c. *Chart. K. Charles* 2. 1 *Inſt.* 288. He is choſen by the Lord Mayor and Aldermen; and attends the Buſineſs of the City, on any Warning by the Lord Mayor, &c.

Recovery, (*Recuperatio*, from the Fr. *Recouvrer*, i. e. *Recuperare*) In a legal Acceptation, ſignifies an Obtaining any Thing by Judgment or Trial at Law: And there is a *true Recovery*, and a *feigned* one. A *true Rocovery* is an actual or real *Recovery* of a Thing, injuriouſly taken away or detained, or the Value thereof, by Judgment in the ordinary Courſe; as if a Man ſue for Land or any other Thing moveable or immoveable, and have a Verdict and Judgment for him. *Co. Litt* 154. A *feigned Recovery*, which is the *Recovery* intended here, is a formal Act by Conſent, uſed for the better Aſſurance of Lands and Tenements, &c. It is a feigned Suit and Judgment upon a real Action brought in the *Common Pleas* Court, by one againſt another that is ſeiſed of the Freehold, to cut off and deſtroy Eſtates-Tail, Remainders and Reverſions, and to bar the former Owners thereof. 1 *Inſt.* 154. *Accom. Conv.* 1 *Vol.* 108. And it is called a *Common Recovery*, becauſe it is a *common* Path to that End for which it was ordained, *viz.* to cut off Eſtates Tail, &c. Alſo it is by Cuſtom become a Common Conveyance of Lands; and is much favoured by the Law, many of the Inheritances of the Kingdom depending upon theſe Aſſurances. 5 *Rep.* 40, 41. This *Recovery*, it is ſaid, was introduced in the Time of *Hen.* 8. But ſome

Authors mention it to be uſed much earlier; and was framed by the Wiſdom and Policy of our Law, whereby though there be a Judgment of a Court, it is not in an adverſary Manner, but by the Conſent and Permiſſion of the Parties; which is the Reaſon we generally ſay, that a *Recovery* is to be ſuffered: But though this Judgment is *fictitious* as to any actual Litigation upon which it is had; yet it is given on a *real Writ* brought, and is a Judgment according to the Rules of the Common Law. *Jenk. Cent.* 250, 257. 1 *Rep.* 131. *Attorn. Compan.* 291. And Common *Recoveries* ſuppoſe a Recompenſe in Value, to all Perſons that loſt the Eſtate, which has been held to be the principal Cauſe why they bar; and being become the common Aſſurances of the Nation, ſhall not be taken ſo ſtrictly as real *Recoveries* are. 2 *Lill. Abr.* 423. The Force and Effect of a *Recovery*, is to deſtroy all Eſtates in Remainder, &c. and Incumbrances derived out of them, that one may ſell, give or deviſe the Eſtate in Fee, or in what Manner he pleaſes; and the Recompence adjudged over ſhall go in Succeſſion of the Eſtate, as the Land loſt ſhould have done, and then it would not be reaſonable for the Heir, &c. to have the Land and Recompence in Value alſo; therefore he loſeth the Land, and muſt truſt to the Recompence. 1 *Rep.* 62. 3 *Rep.* 61. 6 *Rep.* 42. This ſuppoſed Recompence is the Reaſon why a *Common Recovery* is a Bar to all that are in Remainder or Reverſion, as well as the Iſſues in Tail; whereas a Fine bars only the Heirs in Tail, and not thoſe in Remainder or Reverſion, unleſs upon Non-claim in due Time. *Wood's Inſt.* 252. A late Author ſays, the Recompence in Value, is the true Reaſon for barring the Iſſue in Tail, on ſuffering a common *Recovery*; but not ſo of the Remainders, &c. to which the Recompence does not extend: And that a *Recovery* by Tenant in Tail, bars the Eſtate-Tail, and all Remainders and Reverſions thereon expectant; becauſe at Common Law, that which is now a Tail Eſtate, was a Conditional Fee; and no Remainder could come after it, for a Fee by the Rules of Law cannot be created on a Fee. *Pigot's Com. Recov.* 13, 21. And a *Recovery* diſaffirms all Title of him againſt whom it is had; and this ſo ſtrongly, that if there be three or four Diſcents after 'tis ſuffered, yet the *Recoveror* may enter, for the *Recovery* binds the Blood, and diſapproves the Title. *Ibid.* 18. It is alſo ſaid by the ſame Author, that the Uſe of *Common Recoveries*, is to reduce Eſtates to that Purity and Condition they were in by the *Common Law*, and avoid many Inconveniencies; without which a Tenant in Tail cannot make a Jointure on his Wife, nor any Proviſion for Children, or even for paying his Debts, &c. *Pigot* 20. A Common *Recovery* is the beſt Aſſurance (except an Act of Parliament) that a Man can have; and it may be had of ſuch Things, for the moſt part, as paſs by a Fine: An Uſe may be raiſed upon a *Recovery*, as well as on a Fine, &c. and the ſame Rules are generally to be obſerved and followed for the guiding and directing the Uſes of a *Recovery*, as are obſerved for the Guidance and Direction of a Fine. *Weſt. Symb. ſect.* 2, 3. 1 *Rep.* 15. There muſt be three Perſons at leaſt to make a Common *Recovery*, *i. e.* a *Recoveror*, a *Recoveree*, and a *Vouchee*; the *Recoveror* is the Plaintiff or Demandant, that brings the Writ of *Entry ſur Diſſeiſin*, &c. The *Recoveree* is the Defendant or Tenant of the Land, againſt whom Writ is brought, and he muſt be perfect Tenant of the Freehold; and the *Vouchee* is he to whom the Defendant or Tenant voucheth or calls to Warranty of the Land in Demand, either to defend the Right, or yield him other Lands in Value according to a ſuppoſed Agreement. 1 *Inſt.* 101. Now to ſuffer a *Recovery*, the Tenant of the Freehold agrees with the Demandant (uſually ſome Friend) that he ſhall bring his Action real againſt him, as though he the Demandant had good Right to the Land, and the Tenant no Right of Entry to the ſame, but on a Diſſeiſin which a Stranger, one *Hugh Hunt* a fictitious Diſſeiſor, had unjuſtly made; though the Demandant never had Poſſeſſion thereof, nor the Stranger: The Tenant appearing to the Writ vouches to Warranty *A. B.* the *Cryer* of the Court, or the *Bag-bearer* of Writs to the *Cuſtos Brevium*, who is called the *common Vouchee*, and is ſuppoſed to warrant the Title; this Vouchee appears, as though he would defend the Title, and the Demandant exhibits a Declaration againſt him, who thereupon prays a Day to make his Defence; but on the Day given by the Court he makes Default, and the Plaintiff or Demandant hath Judgment to *recover* the Land againſt the Defendant or Tenant in Tail, and he to *recover* in Value againſt the common Vouchee; whereupon iſſues a *Writ of Seiſin* for the Poſſeſſion of the Lands, &c. Yet this *Recovery* in Value is only imaginary, becauſe the common Vouchee hath no Lands to render in Value; though it is taken for a Bar of the Tail for ever, and is ſaid to be good in Conſcience as well as Law, notwithſtanding the Stat. *Weſtm.* 1. *cap.* 2. wherein it is provided, that the Will of the Donor ſhall be obſerved. *Dr. & Stud. cap.* 26. 10 *Rep.* 37, 38. 1 *Inſt.* 224. To every *Recovery* there muſt be a good *Tenant to the Præcipe*, or it will be void. 2 *Lill. Abr.* 425. If the Tenant in Tail be not in Poſſeſſion, this Tenant is to be made by Leaſe and Releaſe, Bargain and Sale inrolled, Fine, &c. ſo as he may thereby become Tenant in Poſſeſſion of the Freehold. And if the Tenant to the *Præcipe* gains a Freehold before Judgment, it is ſufficient: Alſo where a *Præcipe* was made by a Fine, and a Common *Recovery* ſuffered, and afterwards in a Writ of Error that Fine was reverſed; although this was aſſigned for Error to reverſe the *Recovery*, it was adjudged that the *Recovery* was good, for there was a Tenant to the *Præcipe* at that Time. 2 *Salk.* 568. There is no Occaſion of ſetting forth a Leaſe and Releaſe to make a Tenant to the *Præcipe*, becauſe where a Man claims under a common *Recovery* it ſhall be intended that there was a good Tenant to the *Præcipe* till the contrary is ſhewn; and rather than the *Recovery* ſhall fail, they ſhall be intended to be Tenants to the *Præcipe* by Diſſeiſin, eſpecially if it is alledged in the Pleadings that they are Tenants *liberi Tenementi*. 3 Rep. 59. 2 Mod. 70. *Adtunc tenens* is a ſufficient Averment in the Pleading a Common *Recovery*; but it is not ſo when in the ſame Sentence a Matter is ſet forth which is contradictory and inconſiſtent with it. 1 *Mod.* 418. A Defendant pleaded a Title under a Common *Recovery*, in which he ſet forth the Leaſe and Releaſe to make the Tenant to the *Præcipe*, the Writ of Entry, and the particular Proceedings upon it, the Judgment, Writ of Seiſin, &c. And it was a Queſtion, whether it might have been pleaded in a ſhorter Manner, (*viz.*) That *A.* was Demandant in the Writ of Entry, and *B.* and *C.* Tenants; that the ſaid Tenants vouched to Warranty *L. D.* and he vouched the Common Vouchee; and thereon *Taliter proceſſum fuit*, that Judgment was given for the Demandant to *recover* againſt the Tenants, and that they ſhould *recover* againſt *L. D. ad valentiam*, and that he ſhould *recover* againſt the Common Vouchee. 2 *Lutw.* 1539. In ſuch ſhort Pleading it is neceſſary to ſhew that the *Recovery* was executed, either by Entry, or by Return of the Writ of Seiſin; for till then the Eſtate is not altered. 1 *Jones* 10. 3 *Nelſ. Abr.* 57. A Deed and the *Recovery* make but one Conveyance: When precedent Indentures are made, and afterwards a *Recovery* is ſuffered, no Averment can be taken by Parol that the *Recovery* was to other Uſes than thoſe in the Indenture; though nothing veſts till the *Recovery* is had: Upon an Indenture ſubſequent, an Averment may be taken, that other

Uſes than in the Indenture were declared and limited before and at the Time of the *Recovery*. 9 *Rep.* 10. 1 *Mod.* 250. If the Uſes of a *Recovery* are declared by a Deed bearing Date afterwards, there a Stranger ſhall be admitted to plead other Uſes before the Deed; but an Heir at Law ſhall not. 2 *Lill. Abr.* 428. Formerly it was doubted, whether Declarations of Fines and *Recoveries* after had and levied were good in Law, the Stat. 29 *Car.* 2. of *Frauds and Perjuries*, requiring Writing to paſs Eſtates at the very Time of the Conveyance: But now all Declarations of Uſes, of Fines or *Recoveries*, by any Deed made by the Party who is by Law enabled to declare ſuch Uſe, after the ſuffering ſuch *Recovery*, &c. ſhall be good and effectual in Law. 4 & 5 *Ann.* c. 16. A Common *Recovery* is either with *ſingle*, *double*, or *treble Voucher*; in the *Recovery* with ſingle Voucher, the Writ of Entry is to be brought againſt Tenant in Tail in Poſſeſſion, and he is to vouch the common Vouchee: In a *Recovery* with double or treble Voucher, the Eſtate muſt be diſcontinued by Fine, Feoffment, Leaſe and Releaſe, &c. and a Tenant made of the Freehold of the Land; and then the Writ is to be brought againſt that Tenant, the Conuſee, Feoffee, &c. and he is to vouch the Tenant in Tail, and he the common Vouchee, &c. And this *Recovery* with double Voucher, is the moſt common and ſafeſt Way of Proceeding. 1 *Inſt.* 102, 372. *Wood's Inſt.* 251. The *Recovery* with ſingle Voucher bars the Tenant in Tail, and his Heirs only, of ſuch Eſtate-tail which is in his Poſſeſſion, with the Remainder depending upon it, and the Reverſion expectant, which others have; and of all Leaſes and Incumbrances derived out of ſuch Remainder or Reverſion: A *Recovery* with double Voucher bars the firſt Voucher and his Heirs of every ſuch Eſtate as at any Time was in him, or any of his Anceſtors, whoſe Heir he is of ſuch Eſtate; and all others of Right to Remainders and Reverſions, dependant and expectant upon the ſame, and all Leaſes and Incumbrances derived out of them; and it will alſo be a Bar of the Eſtate whereof the Tenant was then ſeiſed in Reverſion or Remainder, &c. The *Recovery* with treble Voucher is to make a perpetual Bar of the Eſtate of the Tenant, and of every ſuch Eſtate of Inheritance as at any Time had been in the firſt or ſecond Vouchee, or their Anceſtors, whoſe Heirs they are of ſuch Eſtate; and as well of every Reverſion thereon dependant, as of all Leaſes, Eſtates, Charges, and Incumbrances derived out of any ſuch Reverſion or Remainder. 3 *Rep.* 5. 10 *Rep.* 37. 2 *Roll. Abr.* 204. *Noy* 81, 82. A Tenant in Tail cannot be reſtrained from ſuffering a Common *Recovery*. 10 *Rep.* 38, 41. If there be Tenant for Life, Remainder in Tail, Remainder or Reverſion in Fee; and Tenant for Life is impleaded by Agreement, and vouches Tenant in Tail, and he vouches over the common Vouchee; this ſhall bar the Remainder and Reverſion in Fee; though he in Remainder or Reverſion did never aſſent to the *Recovery*: And if Tenant for Life ſurrender to him in Remainder in Tail, he may bind the Remainder and Reverſion expectant upon his Eſtate. 1 *Rep.* 15. 3 *Rep.* 60. 1 *Inſt.* 362. But if Tenant for Life alone ſuffer a *Recovery*, without the Aſſent of him in Remainder, the *Recovery* will be void: And if a *Recovery* be had againſt Tenant for Life, and a Remainder-man in Tail, (not being vouched by Tenant for Life) and they vouch the common Vouchee; the *Recovery* thus ſuffered doth not bar the Intail, nor the Remainder over, neither are the Iſſue in Tail barred by it. *Cro. Eliz.* 670. If Tenant for Life ſuffers a Common *Recovery* by Conſent and Covin, between ſuch Tenant and the *Recoverer*; this is a Forfeiture of his Eſtate, and he in the Reverſion may enter preſently: And all *Recoveries* had by Agreement of the Parties by Covin, againſt Tenants in Tail after Poſſibility of Iſſue extinct, Tenants by the Curteſy, or for Term of Life or Lives, &c. ſhall be void againſt them in Remainder or Reverſion, and their Heirs, &c. *Wood's Inſt.* 251. *Stat.* 14 *Eliz.* c. 8. This Statute extendeth not to any *Recovery*, except it be by Agreement and Covin; and it was never the Intent of the Act to extend to ſuch a *Recovery* in which a Tenant in Tail was vouched. 1 *Rep.* 15. Tenant for Life, Remainder in Tail, Remainder in Fee; the Tenant for Life ſuffered a Common *Recovery*, in which the Iſſue in Tail was vouched, &c. And it was objected, that the Remainder-man in Fee was not barred by this *Recovery*, becauſe the Statute 14 *Eliz.* enacts, That *Recoveries* ſuffered by Tenant for Life, ſhall be void againſt thoſe in Reverſion or Remainder; and the *Proviſo* in that Statute extends to bind only thoſe in Remainder who aſſent to the Record; but as the Tenant in Tail was vouched in this *Recovery*, it was adjudged, that he in Remainder in Fee was barred, as he would have been if the Tenant in Tail had been the firſt Tenant to the *Præcipe*, inſtead of the Tenant for Life; which Judgment was affirm'd in Error in the *Exchequer*-Chamber. *Moor* 690. A Father deviſed his Lands to his Son *B.* for Life, and after his Deceaſe, to the Iſſue of his Body, &c. And for Want of ſuch Iſſue, Remainder over; *B.* ſuffered a Common *Recovery*, and as to the Eſtate that *B.* had, two Judges held, he had only an Eſtate for Life, becauſe ſuch an Eſtate was expreſly deviſed to him; but *Hale* Ch. Juſt. held, that he had an Eſtate-tail by Implication, and by Conſequence the *Recovery* was well ſuffered; for the Words *Iſſue of his Body*, and theſe which follow, *viz. For want of ſuch Iſſue*, make an Eſtate-tail by Implication; tho' Judgment was given according to the Opinion of the Judges, which was afterwards reverſed in the Exchequer-Chamber, on the Opinion of the Chief Juſtice. 2 *Lev.* 58. 1 *Venir.* 214, 225. 3 *Salk.* 296. A Man made a Feoffment in Fee, to the Uſe of himſelf for Life, after to his eldeſt Son in Tail, Remainder to his right Heirs, he not having then any Son: Afterwards he ſuffer'd a *Recovery*, had Iſſue a Son, who died in the Life of his Father, leaving a Son, and after he himſelf died; and it was held, that the Son and Heir of the Son ſhould not avoid this *Recovery* by 32 *Hen.* 8. for there was not any Remainder in him at the Time of ſuch *Recovery*. 3 *Shep. Abr.* 139. If Land be given to *A.* in Tail, with Remainders to divers others in Tail, &c. and *A.* doth make a Deed of Feoffment; and a Writ of Entry is brought againſt the Feoffee, who vouches *B.* the ſecond Remainder-man in Tail, and he doth vouch the common Vouchee; this is a good *Recovery*, and Bar to the ſecond Eſtate-Tail, and all the Remainders and Reverſions depending thereon: But the firſt Eſtate which *A.* hath is not barred by it. *Ibid.* 140. The *Recovery* of Tenant in Tail, after a Fine levied, and Render in Fee, is no Bar to him in Remainder; for by the Render a new Eſtate is gained, and the Recompence ſhall not go to the ancient Remainder. 1 *Cro.* 828. Tenant for Life, with Remainder over, vouched a Stranger; the Demandant recovered againſt the Tenant, and the Tenant over in Value: And it was held, that this ſhould bind the Remainder. But it hath been adjudged otherwiſe in ſuch a Caſe; unleſs he doth vouch the Donor, or his Heir, who is privy, &c. *Bro. ca.* 91. *Jenk. Cent.* 251. If there be Tenant in Tail, Remainder in Fee, and he in Remainder is attaint of Treaſon; a *Recovery* in his Life-time, in which he is Tenant or Vouchee, doth not bar the King of his Remainder: So if he die, and the Heir of his Body is vouched, becauſe the Tail doth not deſcend upon him. *Ibid.* A *Recovery* had againſt Tenant in Tail of the King's Gift, the Reverſion or Remainder being in the King, ſhall not be a Bar; nor ſhall the Remainder or Reverſion, which at the Time of the *Recovery* is in the King, be barred by a *Recovery*.

34 & 35 *H.* 8. *c.* 20. But by the Stat. 34 *H.* 8. the Eſtate-tail is not preſerved, where a Reverſion or Remainder is in the King, except it was created by the Crown, and not where it was made by a common Perſon; for before that Statute a common *Recovery* barred an Eſtate-tail made by the King. *Dyer* 32. 2 *Rep.* 15. A Feme Covert, with her Huſband, is bound by a *Recovery*; but as in a Fine ſhe ought to be examined. 3 *Cro.* 307. It is not abſolutely neceſſary for the Judges to examine a Feme Covert, *per Rolle* Ch. Juſt. when ſhe joins with her Husband to ſuffer a *Recovery* of her own Lands; it ſhall be ſuppoſed ſhe doth it freely and voluntarily: But it is prudential to do it, becauſe it may happen that the Feme may be brought to it by Fraud or Force. 2 *Lill. Abr.* 424. The Caſe upon a Special Verdict in Ejectment was: There was Tenant for Life, Remainder to Husband and Wife, and their Heirs, and the Husband and Wife ſuffered a *Recovery*; it was objected, that the Heirs of the Wife were not barred by this *Recovery*, by Reaſon ſhe was not Tenant to the *Præcipe*, neither did it appear that ſhe was examined; but it was reſolved, that ſhe is concluded to ſpeak againſt this *Recovery*, as ſhe joined with her Husband in it, and the *Record* is perfect, and ſhe being Party and privy to the *Recovery*, her Heirs ſhall be bound thereby. *Style* 319. Husband and Wife, Jointenants for Life, Remainder to the Heirs of the Body of the Husband, Remainder to *A. B.* in Tail, the Husband alone ſuffered a *Recovery*; and it was held a Bar only as to a Moiety of the Lands, for by the *Recovery* the Jointure was ſevered, and the other Moiety was the Freehold of the Wife, ſo that the *Recovery* could not bar the Eſtate-tail or Remainder, as to that Moiety. 3 *Rep.* 3, 4. 5 *Moor* 210. 4 *Leon.* 93, 222. But when the Husband and Wife have not a joint Eſtate of Inheritance, and they join in a Fine to make a Tenant to the *Præcipe*, and the *Recovery* is ſuffered by the Husband alone; that ſhall be a good Bar to the Remainder. 3 *Rep.* 6. A Husband and Wife, Tenants in ſpecial Tail, Remainder to *B.* in Tail, Remainder to *C.* in Fee; the Husband alone levied a Fine to *D.* and died, leaving Iſſue, the Wife entered, ſhe is in of her Eaſtate-tail: and though the Iſſue in Tail were barred by the Fine, yet by her Entry *B.* and *C.* are *remitted* to their ſeveral Ramainders; and if ſhe ſuffers a *Recovery*, which ſhe lawfully may, becauſe ſhe hath the whole Eſtate-tail, thoſe Remainders are barred. *Hob.* 259. 3 *Nelſ. Abr.* 55. An Infant it hath been held, cannot ſuffer a Common *Recovery* by Guardian; though if he obtains a Privy Seal for that Purpoſe, he himſelf may. 10 *Rep.* 43. *Hob.* 196. If an Infant ſuffers a *Recovery* by his Guardian, with privy Seal, 'tis here ſaid it may be avoidable for Error; and the Judges do not permit it to paſs, but when it will be an Advantage to the Infant. 1 *Ld. Raym.* 113. But a Guardian was allowed by Order of the Court to an Infant, that a *Recovery* might be ſuffered againſt him as Vouchee; and he was brought into Court, and vouched, and his Guardian appeared and vouched the common Vouchee. *Cro. Eliz.* 172, 471. *Hob.* 197. And adjudged, that a Common *Recovery* ſuffered by an Infant by Guardian, ſhall bind him; and when the Vouchee in a Common *Recovery* is within Age, the Infancy muſt be tried by Inſpection, &c. *Cro. Car.* 307. 1 *Sid.* 322. 1 *Inſt.* 380. Mortgagees cannot ſuffer a *Recovery*; nor can Tenant for Years levy a *Recovery*, for Want of a Freehold. *Wood's Inſt.* 251. Where an Eſtate-tail is barred by a *Recovery*, all Things depending upon it are barred, as well as the Eſtate itſelf; but nothing which is collateral: And therefore a *Recovery* will not bar the Right of a Mortgagee, unleſs he is vouched, &c. 3 *Salk.* 297. And if Tenant for Life, with Power to make a Jointure on his Wife, ſuffers a Common *Recovery*, his Power is extinguiſhed: Though it is otherwiſe where a Power is collateral; as for Inſtance, where an Executor has Power to ſell. *Ibid.* Tenant in Tail mortgages for Years, and afterwards marries, and ſuffers a *Recovery* for his Wife's Jointute; this *Recovery* ſhall enure to make good the Mortgage, though deſigned only for the Marriage Settlement: And ſo it is in the Caſe of a Judgment; for a *Recovery* ſhall make good all his precedent Acts. *Chanc. Rep.* 120. 2 *Lill. Abr.* 425. If there be a Limitation of Uſes upon Condition, and the *Ceſtuy que Uſe* ſuffers a *Recovery*, that will not deſtroy the Condition, the Eſtate being charged with it; and the *Recoveror* can only have the Eſtate, as he that ſuffered the *Recovery* had it. 1 *Mod.* 109. A Tenant in Tail grants a Rent-Charge, and ſuffers a *Recovery*, the *Recovery* ſhall not avoid the Rent-Charge; though it doth a Reverſion: Becauſe the Eſtate of him that ſuffers the *Recovery* is charged with the Rent. 1 *Mod.* 109. 1 *Cro.* 598. If he in Remainder grants a Rent-Charge, a *Recovery* ſuffered by Tenant in Tail ſhall bar it; for the *Recoveror* comes in, in the Continuance of that Eſtate which is not ſubject to the Rent, but is above all thoſe Charges. 1 *Mod.* 109. Tenant in Tail, Remainder in Tail, he in Remainder granted a Rent-Charge, and the Tenant in Tail ſuffered a Common *Recovery*, and died without Iſſue; it was adjudged, that it ſhall bind not only the Remainders, and all Charges made by them, but alſo the Reverſioners and all Grants by them. 1 *Rep.* 62. *A.* is Tenant in Tail, the Remainder to *B.* in Tail, Remainder to *C.* in Fee; and *B.* or the other in Remainder makes a Leaſe of the Land, or grants a Rent-Charge out of it, enters into a Statute, or the like; or if he grant the Remainder or Reverſion upon Condition: And after *A.* ſuffers a Common *Recovery* of the Lands, and afterwards dies without Iſſue; in this Caſe, the *Recoveror* ſhall hold the Land diſcharged of all theſe Eſtates and Charges in Remainder. 5 *Rep.* 41. 2 *Bulſt.* 235. 3 *Shep. Abr.* 136. But if *A.* himſelf make a Leaſe, enter into a Statute, &c. and then ſuffer a *Recovery*, it ſhall not avoid, but affirm and make good the Leaſe and Charge; and where it was before voidable by the Iſſue in Tail, or him in Remainder or Reverſion, it will now be good againſt them all; and the Perſon recovering ſhall hold the Lands as charged by the Tenant in Tail. *Ibid.* If Tenant in Tail mortgages the Land, or confeſſes a Judgment, and afterwards ſuffers a *Recovery* to any particular collateral Purpoſe; that Recovery ſhall enure to make good all his precedent Acts and Incumbrances. 1 *Chan. Caſ.* 720. *Recoverors*, &c. may diſtrain for Rents and Services, and have Actions of Debt for Rent, and of Waſte, &c. as thoſe againſt whom the *Recovery* was had; and Termors for Years are to enjoy their Terms againſt ſuch *Recoverors*, their Heirs and Aſſigns, according to their Leaſes. Stat. 7 *H.* 8. *c.* 4. 21 *H.* 8. A Leaſe for Years made by him who after ſuffers a *Recovery*, is good, and ſhall not be defeated by the *Recovery*; but otherwiſe where the *Recovery* is by a good Title. 2 *Leon.* 65. It was a Doubt by 9 *Eliz.* that if there was a Tenant in Tail, Remainder for Years, and Tenant in Tail ſuffers a *Recovery*, whether the Leaſe for Years be barred, or no? Becauſe it was ſaid that no Recompence can go to this, being a Chattel: But it was ruled, that this Leaſe ſhould be barred, and that ſo the conſtant Experience had been. 2 *Lev.* 30. 1 *Mod.* 110. A *Recovery* bars only where there is a Privity in Law; as the Iſſue of a Tenant in Tail, and he in Remainder, Reverſion, &c. *Carter* 53. Strangers are not barred by a *Recovery* and Nonclaim, as they are in a Fine. 3 *Rep.* 5. Nor ſhall a *Recovery* bar the Heir, who claims as a Purchaſer, and not by Diſcent; or where there is an executory Eſtate, which depends upon Contingencies; but it will bar a contingent Remainder. *Lutw.* 1224. 3 *Salk.* 297.

The Teſtator had Iſſue three Sons, *A. B.* and *C.* and deviſed his Lands to *B.* his ſecond Son, paying ſo much to *C.* and if *B.* died without Iſſue, living *A.* then to *A.* upon the like Condition; *B.* ſuffered a *Recovery*, and it was held that this *Recovery* ſhould not bar *A.* becauſe he had only a Poſſibility to have the Eſtate if he ſurvived *B.* dying without Iſſue, which cannot be touched by a *Recovery*. 2 *Cro.* 590. A common *Recovery* is adjudg'd to be no Bar of a Remainder created in a Settlement, as a Security for raiſing Money; for though Remainders are barred by a *Recovery*, here the Perſons to whom the Land was limited, were but in Nature of Truſtees after Money raiſed for thoſe in Remainder. *Preced. Canc.* 435. Yet where a *Ceſtui que Truſt* in Tail in Poſſeſſion under the Truſtee, who has the Freehold, ſuffers a *Recovery*; in which he himſelf is Tenant, and ſo no good Tenant to the *Præcipe*; this ſhall bar the Remainder in Fee of the Truſt, and Equity will ſupply that Defect. 2 *Chan. Caſ.* 63. See *Preced. Canc.* 228. *Recoveries* are now declared valid in Law, without Conveyances from Leſſees to make Tenants to the Writs of Entry, *&c.* and ſhall be as effectual as if a good Eſtate of Freehold was granted to any Tenant to ſuch Writs: But they are not ſo, unleſs the Perſons intitled to the firſt Eſtates, have lawfully conveyed an Eſtate for Life at leaſt, to the Tenants to any Writ aforeſaid. 14 *Geo.* 2. *c.* 20. Purchaſers of Lands, where *Recoveries* are neceſſary, and all that claim under them, having been in Poſſeſſion twenty Years, may produce Deeds making a Tenant for ſuffering any *Recovery*, and declaring the Uſes, which ſhall be allowed to be Evidence that the ſame was duly perfected, though it be not regularly entered on Record, *&c.* Stat. *Ibid.* And after twenty Years, all common *Recoveries* ſhall be good and valid, if it appears there was a Tenant to the Writs, and the Perſons joining therein had an Eſtate ſufficient to ſuffer them, notwithſtanding the Deeds thereof are loſt. *Ibid.* A Party who ſuffered a *Recovery*, died the firſt Day of *Michaelmas-Term*, between Five and Six in the Morning, upon which Day the *Recovery* was ſuffered; and adjudged good. 1 *Rep.* 93, *&c.* 2 *Lill.* 425. And moſt Errors in a *Recovery* are amendable by the Court the firſt Term after the *Recovery* had: But for groſs Error in the Proceedings in Matter of Subſtance, a *Recovery* may be avoided by Writ of Error; as when an Infant or Feme Covert, without her Husband, ſuffers a *Recovery*, *&c.* and it may be alſo avoided by Pleading, that it was by Covin againſt Tenant for Life to diſinherit him in Reverſion; or that he againſt whom the Writ is brought is no Tenant of the Freehold by Right or Wrong; or he that hath the Eſtate is neither Party nor Privy to the *Recovery*; or becauſe another hath ſome Eſtate in the Thing whereof the *Recovery* is had, *&c.* Alſo by Motion to the Court, and praying a *Vacat* of the Judgment, a *Recovery* may be *falſified* and avoided. 8 *Rep.* 162. 1 *Inſt.* 104. *Recoveries* ſhall be adjudged void as any other Conveyance, if ſuffered by Fraud to deceive Purchaſers, *&c.* And to ſuffer a *Recovery* in another Perſon's Name, not Privy or Conſenting to the ſame, is Felony without Benefit of Clergy. 21 *Jac.* 1. *cap.* 26. Where a *Recovery* is avoidable, for any Cauſes; it muſt be avoided by him whom it doth concern, that is bound thereby; and ſhould have the Land, if the ſame had not been. As where an erroneous *Recovery* is ſuffered by Tenant in Tail; the Iſſues in Tail, or the next in Remainder, *&c.* muſt defeat it: And if the Land be recovered againſt a Diſſeiſor, the Diſſeiſee ſhall avoid it, *&c.* But a *Recovery* ſhall bind every one that cannot falſify the ſame. 5 *Rep.* 39. 1 *Rep.* 62. *Plowd* 415. 2 *Cro.* 591. Common *Recoveries* are ſuffered in the *Common Pleas* by the Tenants and Vouchers perſonally in Court, or by Attornies; and ſometimes by Attorney in the Country on a *Dedimus Poteſtatem*, or Commiſſion out of *Chancery*: They may be ſuffered at the *Aſſiſes* and *Great Seſſions* in *Wales*; and in the Counties Palatine of *Lancaſter*, *Cheſter* and *Durham*. 34 & 35 *H.* 8. *c.* 16. 27 *Eliz.* *c.* 9. Alſo in the Court of *Huſtings* of the City of *London*. Privil. Londin. 92. And *Recoveries* may be had in a Court-*Baron*, by Cuſtom. *Kitch.* 176. In *C. B.* the *Præcipe*, naming the Demandant and the Tenant, the Quantity and Quality of Land, *&c.* is delivered to one of the *Serjeants* at the Bar, who will count upon it; and then the *Prothonotary* marks it, after which it is carried to the *Curſitor* of the County, and he makes out the *Writ of Entry*, *&c.* and the *Recovery* is paſſed through the ſeveral Offices. *Clerk's Remembr.* 212, 213.

A *Præcipe* for ſuing forth a *Recovery*.

South'ton, ſſ. COMMAND A. B. *Gentleman, that he juſtly,* &c. *render to* C. D. *Eſq;* *one Meſſuage, two Gardens, one Hundred Acres of Land, fifty Acres of Paſture,* &c. *with the Appurtenances in,* &c. *which he claimeth,* &c.

The Tenant in his proper Perſon koucheth to Warranty E. F. *Gentleman, who being alſo preſent voucheth over* J. M.

Form of the *Writ of Entry* Sur Diſſeiſin, *&c.*

GEORGE *the Second,* &c. *To the Sheriff of* S. *Greeting: Command* A. B. *that juſtly, and without Delay, he render to* C. D. *one Meſſuage, two Gardens,* &c. *with the Appurtenances in* E. *which he claims to be his Right and Inheritance, and into which the ſaid* A. *hath not an Entry; but after a Diſſeiſin which* Hugh Hunt, *thereof unjuſtly and without Judgment hath made to the ſaid* A. B. *within thirty Years now laſt paſt, as he ſaith; and whereupon he Complains, that the ſaid* A. B. *deforced him: And unleſs he ſhall ſo do, and the ſaid* C. D. *ſhall give you Security that his Suit ſhall be proſecuted; then Summon by good Summoners, the ſaid* A. B. *that he be before our Juſtices at* Weſtminſter, *the Day,* &c. *to ſhew, wherefore he will not; and have you there the Summons, and this Writ.* Witneſs, *&c.*

The Writ of *Entry* is returned thus:

Pledges of Proſecution John Doe.
Richard Roe.
Summoners John Den.
Richard Fenn.

Entry of a *Recovery* with ſingle Voucher.

South'ton, ſſ. C. D. *Eſquire, in his proper Perſon, demandeth againſt* A. B. *Gentleman, one Meſſuage, two Gardens, one Hundred Acres of Land, fifty Acres of Paſture,* &c. *with the Appurtenances in* E. *as his Right of Inheritance; and into which the ſaid* A. *hath no Entry, but after a Diſſeiſin,* &c. *And whereupon he declares, that he was ſeiſed of the ſaid Tenement, with the Appurtenances, in his Demeſne, as of a Fee and Right, in Time of Peace, in the Time of our Lord the King that now is; by taking the Profits to the Value,* &c. *and into which,* &c. *And thereof he bringeth his Suit,* &c. *And the ſaid* A. B. *in his proper Perſon cometh and defendeth his Right, when,* &c. *and thereupon voucheth* J. M. *to Warranty, who is preſent here in Court in his proper Perſon; and freely Warranteth to him the ſaid Tenement, with the Appurtenances,* &c. *And hereupon the ſaid* C. *demandeth againſt the ſaid* J.

Tenant, by his Warranty, the ſaid Tenement with the Appurtenances in Manner aforeſaid, &c. *And whereupon he ſaith, that he was ſeiſed of the ſaid Tenement, with the Appurtenances, in his Demeſne, as of Fee and Right in Time of Peace, in the Time of our Lord the King, that now is; by taking the Profits thereof to the Value,* &c. *into which,* &c. *and thereof he bringeth his Suit,* &c. *And the ſaid* J. *the Tenant, by his own Warranty defendeth his Right, when,* &c. *and ſaith, that the ſaid* Hugh Hunt *did not Diſſeiſe the ſaid* C. *of the ſaid Tenement, with the Appurtenances, as the ſaid* C. *by his Writ and Declaration aforeſaid, doth above ſuppoſe: And thereof he putteth himſelf upon the Country,* &c. And *the ſaid* C. *thereupon craveth Leave to imparle, and he hath it,* &c. *And afterwards the ſaid* C. *cometh again here into Court, this ſame Term, in his proper Perſon; and the ſaid* J. *although ſolemnly called, cometh not, but departed in Contempt of the Court, and maketh Default: Therefore it is adjudged, that the ſaid* C. *do recover his Seiſin againſt the ſaid* A. *of the ſaid Tenement, with the Appurtenances; and that the ſaid* A. *have of the Land of the ſaid* J. *to the Value,* &c. *and the ſaid* J. *in Mercy,* &c. *And thereupon the ſaid* C. *prays a Writ of our Lord the King, to be directed to the Sheriff of the County aforeſaid, to cauſe full* Seiſin *of the ſaid Tenement, with the Appurtenances, to be delivered to him; and it is granted to him, returnable the Day,* &c. *At which Day the ſaid* C. *cometh here into Court, in his proper Perſon; and the Sheriff (namely* J. S. *Eſquire) now returneth, that he by Virtue of the ſaid Writ to him directed, on the Day of,* &c. *laſt paſt, cauſed full Seiſin of the ſaid Tenement, with the Appurtenances, to be delivered to the ſaid* C. *as by the ſaid Writ he was commanded,* &c.

A *Deed* to lead the *Uſes of a Recovery*.

THIS Indenture *tripartite, made,* &c. Between A. B. *of,* &c. *of the firſt Part,* C. D. *and* E. F. *of,* &c. *of the ſecond Part, and* G. H. *and* J K. *of,* &c. *of the third Part,* witneſſeth, *that the ſaid* A. B. *for the Docking, Barring and Cutting off all Eſtates-tail and Remainders in Tail, of and in the Meſſuage, Tenement, Lands and Hereditaments herein after-mentioned, and for the Settling and Aſſuring of the ſame, to and for the Uſes, Intents and Purpoſes herein after limited, expreſſed and declared, and in Conſideration of* 5 s. *to him in Hand paid by the ſaid* C. D. *and* E. F. *the Receipt whereof is hereby acknowledged, and for divers other good Cauſes and Conſiderations him the ſaid* A. B. *in this Behalf moving,* hath *granted, bargained and ſold, releaſed and confirmed, and by theſe Preſents doth grant, bargain and ſell,* &c. *unto the ſaid* C. D. *and* E. F. (*in their actual Poſſeſſions now being, by Virtue of a Bargain and Sale to them thereof made for one whole Year,* &c.) *and to their Heirs and Aſſigns,* &c. *all that Meſſuage or Tenement, and alſo all thoſe Lands,* &c. *ſituate, lying and being in,* &c. *And all Ways,* &c. *And the Reverſions, Remainders, Rents and Services thereof, or incident thereunto;* To have and to hold *the ſaid Meſſuage, Tenement, Lands and Premiſſes above-mentioned, and every Part and Parcel thereof with the Appurtenances unto the ſaid* C. D. *and* E. F. *and their Heirs for ever;* To the Intent *and Purpoſe only that the ſaid* C. D. *and* E. F. *ſhall and may become perfect Tenants of the Freehold of the ſaid Meſſuage, Lands and Premiſſes, and ſhall and may ſtand and be ſeiſed thereof until a good and perfect Common* Recovery *with double Vouchers over, may be duly had, ſuffered and executed of the ſaid Meſſuage, Tenement, Lands and Premiſſes, according to the uſual Courſe of Common* Recoveries *for the Aſſurance of Lands and Tenements in ſuch Caſes uſed and accuſtomed.* And *thereupon it is covenanted, concluded and agreed, by and between all the ſaid Parties to the Preſents, for themſelves and their and every of their Heirs by theſe Preſents in Manner following,* (*that is to ſay*) *That the ſaid* C. D. *and* E. F. *ſhall and will before the End of* Michaelmas-Term *next coming, permit and ſuffer the ſaid* G. H. *and* J. K. *to ſue forth and proſecute againſt them the ſaid* C. D. *and* E. F. *One Writ of Entry* ſur Diſſeiſin en le poſt, *returnable before his Majeſty's Juſtices of the Court of* Common Pleas *at* Weſtminſter, *thereby demanding againſt the ſaid* C. D. *and* E. F. *the ſaid Meſſuage, Tenement, Lands, Hereditaments and Premiſſes herein before mentioned by ſuch Name and Names, Number of Acres, Quantities, Qualities, Terms and Deſcriptions in the ſaid Writ to be contained, and in ſuch Manner and Form as by Counſel learned in the Law ſhall be adviſed;* unto *and upon which ſaid Writ of Entry ſo to be proſecuted and ſued forth, the ſaid* C. D. *and* E. F. *ſhall appear* gratis *and vouch to Warranty the ſaid* A. B. *which ſaid* A. B. *ſhall appear either in Perſon or by Attorney lawfully authoriſed, and enter into Warranty, and after his Entry into Warranty, ſhall vouch to Warranty the common Vouchee, who ſhall likewiſe appear and imparl, and afterwards make Default, and depart in Contempt of the Court, ſo that Judgment may be thereupon had and given for the ſaid* G. H. *and* J. K. *to recover the ſaid Meſſuage or Tenement, Lands, Hereditaments and Premiſſes againſt the ſaid* C. D. *and* E. F. *And for the ſaid* C. D. *and* E. F. *to recover in Value againſt the ſaid* A. B. *and for the ſaid* A. B. *to recover in Value againſt the common Vouchee; to the End one perfect Common* Recovery, *with double Voucher, may be thereupon had and ſuffered, and all and every other Thing and Things be done and perfected, needful and convenient for the having and ſuffering the ſame* Recovery, *according to the Courſe of Common* Recoveries *in ſuch Caſes uſed; and the ſame* Recovery *is alſo to be executed by one Writ of* Habere facias Seiſinam *accordingly.* And *it is hereby further covenanted, concluded and agreed, by and between all the ſaid Parties to theſe Preſents for themſelves and every of them, their, and every of their Heirs, that the ſaid* Recovery *ſo as aforeſaid, or in any other Manner to be had and ſuffered of the ſaid Meſſuage, Tenement, Lands, Hereditaments and Premiſſes abovementioned* ſhall be *and enure, and ſhall be deemed, adjudged and taken, and is meant and intended, and by all the ſaid Parties to theſe Preſents is hereby declared to be and enure, and the ſaid* G. H. *and* J. K. *and their Heirs, from and immediately after the ſuffering the ſame, ſhall ſtand and be ſeiſed of all and ſingular the ſaid Meſſuage, Tenement, Lands, and Hereditaments above-mentioned, and every Part and Parcel thereof with the Appurtenances, to and for the only proper Uſe and Behoof of the ſaid* A. B. *his Heirs and Aſſigns for ever, and to and for none other Uſe, Intent, or Purpoſe whatſoever.* In Witneſs, *&c.*

Form of a *Deed* of Conveyance by *Fine and Recovery*.

THIS Indenture *tripartite, made,* &c. Between A. B. *of,* &c. *and* E. *his Wife,* C. D. *of,* &c. *and* M *his Wife, of the firſt Part,* E. F. *of,* &c. *and* G. H. *of,* &c. *of the ſecond Part, and* J. K. *of,* &c. *and* L. M. *of,* &c. *of the third Part,* witneſſeth, *that for and in Conſideration of the Sum of,* &c. *to the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife, in Hand paid by the ſaid* J. K. *and* L. M. *the Receipt whereof they do hereby acknowledge, and in Conſideration alſo of* 5 s. *of,* &c. *to the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife in Hand paid by the ſaid* E. F. *and* G. H. *the Receipt whereof they do alſo hereby acknowledge; and the ſaid* A. B. *and* C. D. *for the Barring, Docking, Cutting off and Deſtroying of all Eſtates-tail and Remainders over, now in Being in and upon the Meſſuage, Lands, Tenements and Hereditaments herein after mentioned, and for Conveying and Aſſuring the ſame Premiſſes, to the only proper Uſe and Behoof of the ſaid* J. K. *and* L. M. *and their Heirs; they the ſaid* A. B. *and* C. D. have, *and each of them hath covenanted and granted, and by theſe Preſents do, and each of them doth covenant and grant, to and with the ſaid* E. F. *and* G. H. *their Heirs and Aſſigns, that they the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife, ſhall* *and will on this Side, and before the End of,* &c. *Term next coming, before his Majeſty's Juſtices of the Court of* Common Pleas at Weſtminſter, *in due Form of Law, levy and acknowledge unto the ſaid* E. F. *and* G. H. *and their Heirs, or to the Heirs of one of them, one Fine* ſur Conuzance de Droit come ceo, &c. *with Proclamations to be thereupon had according to the Form of the Statute in that Caſe made and provided, of* all *that Meſſuage or Tenement,* &c. *and alſo of the Reverſion and Reverſions, Remainder, and Remainders, Rents and Services of the ſaid Premiſſes above-mentioned, and of every Part and Parcel thereof with the Appurtenances, by ſuch Name and Names, Quantity and Number of Acres and Things, and in ſuch Manner and Form as by the ſaid* E. F. *and* G. H. *or their Counſel learned in the Law ſhall be reaſonably deviſed or adviſed and required:* Which *ſaid Fine ſo to be had and levied in Manner aforeſaid, and all and every other Fine and Fines already had, or at any Time hereafter to be had, levied, ſued or proſecuted of the ſaid Premiſſes, or any Part thereof, by itſelf, or jointly with any other Lands or Tenements, by or between the ſaid Parties to theſe Preſents, or by or between them, or any or either of them, and any other Perſon or Perſons before the ſaid,* &c. *Term, as for and concerning all and ſingular the ſaid Premiſſes above mentioned, with the Appurtenances,* ſhall be *and enure, and ſhall be adjudged, eſteemed and taken to be and enure, to and for the only proper Uſe and Behoof of the ſaid* E. F. *and* G. H. *their Heirs and Aſſigns, to the Intent and Purpoſe that they may become perfect Tenants of the Freehold of the ſaid Premiſſes:* Yet nevertheleſs *to this further End, Intent and Purpoſe, that they the ſaid* E. F. *and* G. H. *ſhall and will on this Side, and before the End of the ſaid next,* &c. *Term, permit and ſuffer the ſaid* J. K. *and* L. M. *to ſue or proſecute one or more Writ or Writs of Entry* Sur Diſſeiſin en le poſt, *returnable before his Majeſty's Juſtices of the ſaid Court of* Common Pleas *againſt them the ſaid* E. F. *and* G. H. *of all and ſingular the ſaid Premiſſes abovementioned, and of every Part and Parcel thereof with the Appurtenances, by ſuch Name and Names, Quantity and Number of Meſſuages Acres and Things, and in ſuch Sort, Manner and Form, as by the ſaid* J. K. *and* L. M. *ſhall be thought fit and convenient*; unto *and upon which ſaid Writ of Entry ſo to be brought, the ſaid* E. F. *and* G. H. *ſhall appear, and vouch to Warranty the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife, who ſhall likewiſe appear, either in their ſeveral Perſons, or by their Attornies lawfully authoriſed, and enter into the ſaid Warranty, and after their Entry into the ſaid Warranty, ſhall vouch over the common Vouchee, who ſhall alſo enter into the ſaid Warranty, and imparle, and afterwards make Default, To the End one perfect Common* Recovery *ſhall and may of all and ſingular the ſaid Premiſſes abovementioned be had, proſecuted and executed in all Things, according to the uſual Form of Common* Recoveries *for Aſſurance of Lands, Tenements and Hereditaments in ſuch Caſes uſed and accuſtomed; and the ſame* Recovery *ſhall in due form of Law be executed by one Writ of* Habere facias Seiſinam *accordingly.* And *it is covenanted, granted, concluded and agreed upon, by and between the ſaid Parties to theſe Preſents, and the true Meaning hereof is, and it is hereby ſo declared, that the ſaid* Recovery *ſo, or in any other Manner to be had and ſuffered, and all and every other* Recovery *and* Recoveries *to be had, ſuffered and executed of the ſaid Premiſſes, or any Part thereof, by or between the ſaid Parties to theſe Preſents, or by or between them or any or either of them, and any other Perſon and Perſons, on this Side and before the End of,* &c. *Term next coming, and the full Force and Execution of them, and every of them, and all other Conveyances and Aſſurances of the ſaid Premiſſes, or any Part thereof, had, or to be had, or made between the ſaid Parties, or any of them,* ſhall be *and enure, and ſhall be adjudged, eſteemed and taken to be and enure, to and for the only proper Uſe and Behoof of the ſaid* J. K. *and* L. M. *their Heirs and Aſſigns for ever.* And *each of them the ſaid* A. B. *and* C. D. *for himſelf ſeverally and apart, and not jointly, and for his ſeveral and reſpective Heirs and Aſſigns, doth ſeverally and apart, and not jointly, covenant and grant to and with the ſaid* J. K. *and* L. M. *their Heirs and Aſſigns, that they the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife, are, or ſome or one of them now is lawfully and rightfully ſeiſed of a good, ſure, perfect, and indefeaſible Eſtate of Inheritance in Fee ſimple, or Fee-tail, of and in the ſaid Premiſſes above-mentioned, with the Appurtenances, in their, or ſome, or one of their own Rights, or Right, without any Condition, Mortgage, Limitation of Uſe or Uſes, or other Matter or Thing, to alter, charge, change, and determine the ſame.* And alſo, *that they the ſaid* J. K. *and* L. M. *their Heirs and Aſſigns, ſhall and may from Time to Time, and at all Times hereafter for ever, peaceably and quietly enter into, have, hold, occupy, poſſeſs, and enjoy, all and ſingular the ſaid Premiſſes above-mentioned, and every Part and Parcel thereof with the Appurtenances, without the Let, Trouble, Hinderance, Moleſtation, Interruption, and Denial of them the ſaid* A. B. *and* E *his Wife, and* C. D. *and* M. *his Wife, their Heirs and Aſſigns, or any of them, and of all and every other Perſon and Perſons whatſoever claiming, or to claim by, from, or under them, or any or either of them, or by, from, or under,* &c. *deceaſed.* And further, *That they the ſaid* A. B. *and* E. *his Wife, and* C. D. *and* M. *his Wife, and their Heirs, and all and every other Perſon and Perſons, and his and their Heirs, any Thing, having or claiming in the ſaid Premiſſes above mentioned, or any Part thereof, by, from, or under them, or any or either of them, or under the ſaid,* &c. *ſhall and will at any Time or Times hereafter upon the reaſonable Requeſt, and at the Coſts and Charges of the ſaid* J. K. *and* L. M. *their Heirs and Aſſigns, make, do and execute, or cauſe or procure to be made, done and executed, all and every ſuch further and other lawful and reaſonable Grants, Acts, and Aſſurances, in the Law whatſoever, for the further, better, and more perfect granting, conveying, and aſſuring of all and ſingular the ſaid Premiſſes above-mentioned, with the Appurtenances, unto the ſaid* J. K. *and* L. M *their Heirs and Aſſigns, To the only proper Uſe and Behoof of the ſaid* J. K. *and* L. M. *their Heirs and Aſſigns for ever, according to the true Intent and Meaning of theſe Preſents, as by the ſaid* J. K. *and* L. M. *their Heirs or Aſſigns, or their or either of their Counſel learned in the Law ſhall be reaſonably deviſed or adviſed and required.* In Witneſs, *&c.*

Recoupe, (From the Fr. *Recouper*) Signifies the keeping back and ſtopping of Something which is due, and in our Law we uſe it for to Defalk or Diſcount; as if a Perſon hath a Rent of ten Pounds out of certain Lands, and he diſſeiſes the Tenant of the Land, in an *Aſſiſe* brought by the Diſſeiſee, if he recover the Land and Damages, the Diſſeiſor ſhall *recoupe* the Rent due in the Damages: So of a Rent-Charge iſſuing out of Land, paid by the ſaid Tenant to another, *&c.* he may *recoupe* the ſame. *Terms de Ley. Dyer* 2. And an Inn keeper may keep back and detain his Gueſt's Horſe, *&c.* 'till he pay for his Entertainment: But a Man that receives another's Cattle to Paſturage, it is ſaid may not do ſo; unleſs it be agreed between them at firſt. 1 *Cro.* 196, 197.

Recreant, (*Fr.*) Cowardly, Faint-hearted; and was formerly a Word very reproachful. *Fleta, lib.* 3.

Rectatio, Claim of Right, or an Appeal to the Law for Recovery thereof.

Rectitudo, Right or Juſtice; and ſometimes it ſignifies legal Dues, a Tribute or Payment. *Leg. Edw. Confeſſ. cap.* 30. *Si quis Dei* Rectitudines *per vim deforceat, emendet, &c. viz.* If any one doth violently detain the Rights of God, (*i. e.* Tithes and Oblations) let him be fined or amerced, to make full Satisfaction. *Leg. Hen.* 1. *cap.* 6.

Recto, Is uſed for a Writ of *Right*, which is of ſo high a Nature, that whereas other Writs in Real Actions are only to recover the Poſſeſſion of the

Lands, *&c.* in Queſtion; this aims to recover the Seiſin, and the Property, and thereby both the Rights of *Poſſeſſion* and *Property* are tried together. 1 *Inſt.* 158. It hath two *Species*; Writ of *Right Patent*, and Writ of *Right Cloſe:* The firſt is ſo called, becauſe it is ſent *open*, and is the higheſt Writ of all others, lying for him that hath a Fee-ſimple in the Lands or Tenements ſued for, againſt Tenant of the Freehold at leaſt, and in no other Caſe. *F. N. B.* 1, 2, *&c.* But this Writ of *Right Patent* ſeems to be extended farther than originally intended; for a Writ of *Right* of *Dower*, which lies for Tenant in Dower, is *Patent*, as appears by *Fitzherb. Nat. Br* 7. And the like may be ſaid in ſome other Caſes. *Table Reg. Orig.* Alſo there is a Special Writ of *Right Patent* in *London*, otherwiſe termed a *Writ of Right according to the Cuſtom*, which lieth of Lands or Tenements within the City, *&c.* And the Writ of *Right Patent* is likewiſe called *Breve magnum de Recto. Reg. Orig.* 9. *Fleta, lib.* 5. *cap.* 32. A Writ of *Right Cloſe* is brought where one holds Lands and Tenemens by Charter in *Ancient Demeſne*, in Fee-ſimple, Fee-tail, or for Term of Life, or in Dower, and is diſſeiſed; and is directed to the Bailiff of the King's Manors, or to the Lord of Ancient Demeſne, if the Manor is in the Hands of a Subject, commanding him to do Right in his Court: This Writ is alſo called *Breve parvum de Recto. F. N. B.* 11. *Reg. Orig.* 9. *Britan. cap.* 120. And he who holds Lands in Acient Demeſne by Court-Roll, if he be ouſted, ſhall not have the Writ of *Right Cloſe*, but is to ſue by *Bill* in the Lord's Court, *&c.* If a Perſon ſeiſed in Fee-ſimple dies ſeiſed of ſuch Eſtate, and a Stranger doth abate and enter into the Land, and deforce the Heir; the Heir may ſue a Writ of *Right Patent* againſt the Tenant of the Freehold of the ſame Land, or an *Aſſiſe of Mortdanceſtor.* 11 *Aſſ.* 17. And in a Writ of *Right Patent*, the Demandant is to count of his own Seiſin, or of the Seiſin of his Anceſtor; if one bring the Writ as Heir unto an Anceſtor, he muſt lay the Seiſin and *Eſplees* as in Pernancy of the Profits of the Lands in his Anceſtors; and where it is brought by a Biſhop or Body Politick, Seiſin of the Eſplees is to be laid in themſelves, or in their Predeceſſors. *New. Nat. Br.* 10. Where a *Writ of Right Cloſe* is directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon it; a Writ ſhall iſſue requiring him to hold his Court, *&c.* And if the Lord hold his Court, but will not do the Demandant Right, or delay it, the Plea may be removed by the Writ called *Tolt* into the County-Court of the Sheriff; and from thence by *Recordare* into the *Common Pleas. Ibid.* 6, 7. *Glanvil* ſeems to make every Writ, whereby a Man ſues for any Thing due unto him, a Writ of *Right. Glanv. cap.* 10, 11, 12.

Form of a *Writ of Right Patent.*

GEORGE *the Second*, &c. *To* A. *Lord* B. &c. *Greeting: We command you, that without Delay you do full* Right *to* C. D. *of*, &c. *of one Meſſuage, and twenty Acres of Land, with the Appurtenances, in*, &c. *which he claims to hold of you by free Service*, &c. *of which* E. F. *deforces him*, &c. *that no more Clamour thereof we may hear for Defect of* Right. Witneſs, *&c.*

Writ of Right may be had after an *Aſſiſe*, Writ of *Entry ſur Diſſeiſin*, *&c.* or other Real Action, where the Demandant is barred by Action tried; and ſo if he loſe by Default in a Writ of *Right*, before the Miſe is joined, *&c.* But if a Perſon once loſeth his Cauſe upon a Writ of *Right* by Trial and Judgment, *&c.* he is without Remedy, and ſhall be finally concluded. *New Nat. Br.* 12.

Recto de Advocatione Eccleſiæ, Is a Writ lying where a Man hath *Right of Advowſon*, and the Parſon of the Church dying, a Stranger preſents his Clerk to the Church, the Party that hath Right not having brought his Action of *Quare Impedit* nor *Darrein Preſentment*, but ſuffered the Stranger to uſurp upon him: And it lieth only where an Advowſon is claimed in Fee to him and his Heirs. *F. N. B.* 30. 4 *Ed.* 3. *cap.* 18.

Recto de Dote, A Writ of *Right of Dower*, which lies for a Woman that has received Part of her Dower, and demands the Reſidue againſt the Heir of the Husband, or his Guardian. *F. N. B.* 7, 8, 147. 1 *Inſt.* 32, 38.

Recto de Dote unde nihil habet, Is where the Wife hath received no Part of her Dower; as in Caſe a Man having Lands or Tenements, hath made no Aſſurance of any Part thereof to his Wife, ſo that ſhe is driven to ſue for her Thirds againſt the Heir, *&c. F. N. B.* 6. 20 *H.* 3. *c.* 1.

Recto quando Dominus remiſit, Is a Writ that lieth where Lands or Tenements in the Seigniory of any Lord, are in Demand by a *Writ of Right*; If the Lord in ſuch Caſe holdeth no Court at the Prayer of the Demandant or Tenant, but ſends to the King's Court his Writ to put the Cauſe thither for that Time, (ſaving to him at other Times the Right of his Seigniory) then this Writ ſhall iſſue out for the other Party, and hath its Name from the Words therein contained. *F. N. B.* 16.

Recto de Rationabili parte, A Writ lying between Privies in Blood, as Brothers in *Gavelkind*, Siſters, and other Coparceners, for Land in Fee-ſimple. If there be two Siſters, and the Anceſtor dieth ſeiſed of Land in Fee, and one of the Siſters enters into the Whole, and deforces the other Siſter, ſhe who is deforced ſhall have the Writ of Right *de Rationabili parte:* And if where there are two Siſters, after the Death of the Anceſtor they enter and occupy in common as Coparceners, and then one of them deforce the other to occupy that which is appendant or appurtenant to the Meſſuage, *&c.* which they have in Coparcenary; ſhe that is deforced ſhall have this Writ. Alſo if the Anceſtor were diſſeiſed of Lands, and dieth, and one Siſter entereth into the whole Land, and deforceth her Siſter, ſhe ſhall have the Writ againſt her other Siſter: For it lieth as well upon a Dying ſeiſed of the Anceſtor, if one Siſter enter upon all, as where the Anceſtor doth not die ſeiſed; and it is a Writ of *Right Patent*, *&c. F. N. B.* 9. *New Nat. Br.* 19, 20. In this Writ the Demand ſhall be of a certain Portion of Land, to hold in Severalty; and Voucher and View do not lie in it, becauſe of the Privity of Blood; but in a *Rationabili parte* the View was granted, 15 *H.* 5. for that the Anceſtor did not die ſeiſed, *&c.* The Proceſs in the Writ, after removing into *C. B.* is *Summons*, *Grand Cape*, and *Petit Cape*, *&c. Ibid.*

Recto ſur Diſclaimer, Is a Writ that lies where the Lord, in the Court of *Common Pleas*, avows upon his Tenant, and the Tenant *diſclaims* to hold of him; upon which *Diſclaimer* the Lord ſhall have this Writ; and if he avers and proves that the Land is holden of him, he ſhall recover the Land for ever: This Writ is grounded on the Statute of *Weſtm.* 2. *cap.* 2. Old Nat. Br. 150.

Rector, (*Lat.*) Signifies a Governor; and *Rector Eccleſiæ parochialis*, Is he that hath the Charge or Cure of a Pariſh Church. It has been held, that *Rector Eccleſiæ* is one who hath a Parſonage where there is a Vicarage endowed. And when Dioceſes were divided into Pariſhes in this Kingdom, the Clergy who had the Charge in thoſe Places were called *Rectors*; and afterwards when their *Rectories* were appropriated to Monaſteries, *&c.* the Monks kept the great Tithes; but the Biſhops were to take Care that the *Rector*'s Place ſhould be ſupplied by another, to whom he was to allow the ſmall Tithes for his Maintenance, and this was the *Vicar*. *Count. Parſ. Comp.* 75.—Rector *tantum jus in Eccleſia parochiali habet, quantum Prælatus in Eccleſia Collegiata.*

Rectory, (*Rectoria*) Is taken *pro integra Eccleſia parochiali, cum omnibus ſuis juribus, prædiis, decimis aliiſque proventuum Speciebus. Spelm.* Alſo the Word *Rectoria* hath been often applied to the *Rector*'s Manſion or Parſonage Houſe. *Paroch. Antiq.* 549. See *Parſonage.*

Rectum, Right; and anciently it was uſed for a Trial or Accuſation. *Bract. lib.* 3.

Rectum, *Eſſe ad Rectum in Curia Domini*, is the ſame with *Stare ad* Rectum. *Leg H.* 1. *c.* 43.

Rectum, *Stare ad* Rectum, To ſtand Trial at Law, or abide the Juſtice of the Court. *Hoved.* 655.

Rectum *Rogare*, Is to petition the Judge to do Right. *Leg. Inæ, cap.* 9.

Rectus in Curia, *i. e.* Right in Court, is he that ſtands at the Bar, and no Man objects any Offence againſt him. *Smith de Repub. Angl. lib.* 2. *cap.* 3. And when a Perſon *outlawed* hath reverſed the Outlawry, ſo that he can participate of the Benefit of the Law, he is ſaid to be *Rectus in Curia.*

Recuſants, Are ſuch as adhere to the *Pope* as Supream Head of the Church, and who refuſe or deny Supremacy to the King. At the Reformation, thoſe were deem'd *Recuſants* who diſputed the Authority of the Crown in Cauſes Eccleſiaſtical, and denied the King's Supremacy; but the Acts of Parliament made againſt *Recuſants*, particularly the 35 *Eliz.* deſcribe a *Recuſant* to be one that does not repair to ſome Church or Chapel, or uſual Place of Common Prayer, to hear Divine Service: Afterwards the Receiving the Sacrament of the Church was made a farther Teſt of Conformity: And by the 25 & 30 *Car.* 2. a Declaration againſt Tranſubſtantiation was required, to diſtinguiſh Papiſts and Popiſh *Recuſants* from Proteſtants: At this Day all Perſons are judged Popiſh *Recuſants* convict, who refuſe the Oaths of Allegiance and Supremacy, or Abjuration; and are liable to ſuffer and forfeit accordingly, *viz.* they incur a *Præmunire*, whereupon they forfeit all their Goods and Chattels, with their Lands, &c. *Read. Stat.* 4 *Vol. pag.* 315. *Recuſants* convict, above the Age of ſixteen Years, are to go to their Places of Abode or Settlement, and not travel above five Miles from thence, without Licence from the King, three of the Privy Council, or four Juſtices of the Peace, with the Aſſent of the Biſhop of the Dioceſe, or the Lieutenant, or a Deputy Lieutenant of the County, on Pain of forfeiting their Goods, &c. And not having Lands worth twenty Marks *per Ann.* or Goods to the Value of 40 *l.* if they do not make the Submiſſion of Conformity mentioned in 35 *Eliz. cap.* 2. being required by a Juſtice of Peace, they may be compelled to abjure the Realm; which Abjuration muſt be certified to the next Aſſiſes; and it is Felony if they do not depart within the Time limited by the Juſtices, or departing and returning again without the King's Licenſe: But if any Perſon offending againſt that Act, ſhall before Conviction, come to ſome Pariſh Church on a *Sunday*, and make a publick Declaration of his Conformity, he ſhall be diſcharged from all Penalties, &c. though if ſuch Offender afterwards relapſe, and become a *Recuſant* again, he ſhall loſe the Benefit he might otherwiſe have had upon his Submiſſion: And *Recuſants* required by Proceſs to make their Appearance, ſhall not incur any Forfeiture for travelling on ſuch Occaſions. 35 *Eliz.* 3 *Jac.* 1. *c.* 5. As to the Licenſing a *Recuſant* to travel, the Biſhop, Lieutenant, or Deputy Lieutenant, who gives his Aſſent to it, muſt be a diſtinct Perſon from the Juſtices of Peace that gave the Licenſe; and therefore if one and the ſame Perſon be a Juſtice of Peace, and Deputy Lieutenant, he cannot act in both Capacities; but if he ſign and ſeal the Licenſe as a Juſtice of Peace, the Aſſent of ſome other Deputy Lieutenant, &c. muſt be had: And it is a good Exception to a Licenſe by four Juſtices, that no particular Cauſe of the *Recuſant*'s travelling is expreſſed in it. *Cro. Jac.* 352. *Cawley* 210. A Perſon was indicted for *Recuſancy*, but conformed before Conviction: And ſo again the ſecond Time, and was indicted a third Time for a Relapſe; and on Motion, that it might be certified into the *Exchequer*, becauſe by the Stat. 35 *Eliz.* he is to loſe all the Benefit which he was to have by his former Conformity, the Relapſe was certified accordingly. 1 *Bulſt.* 153. Juſtices of Peace in their Seſſions are to cauſe Proclamation to be made, that Popiſh *Recuſants* ſhall render themſelves to the Sheriff or Bailiff of the Liberty where they are, before the next Aſſiſes or Seſſions, &c. And if they do not, the Default being recorded, ſhall be taken as a ſufficient Conviction. 3 *Jac.* 1. *cap.* 4. And Conſtables and Church-wardens of every Pariſh, or one of them, or if there be none ſuch, the Conſtables of the Hundred there, are to preſent once a Year at the Quarter-Seſſions ſuch *Recuſants* as ſhall abſent from the Church for a Month together; the Forfeiture of which is 20 *l. per* Month, &c. *Stat. Ibid.* If a *Recuſant* ſhall conform, and not receive the Sacrament once a Year at leaſt; he ſhall forfeit for the firſt Year 20 *l.* for the ſecond 40 *l.* and for every Default after 60 *l.* And if after he hath once received it, he make Default therein by the Space of one Year, he ſhall forfeit 60 *l.* to be recovered at the Quarter-Seſſions by Indictment, and divided between the King and the Proſecutor: But the Huſband is not chargeable with the Offence of the Wife; nor the Wife for the Huſband after his Death. *Ibid.* It hath been adjudged, that a Writ of Error will not lie on a Conviction of a *Recuſant*, for not rendring himſelf to the Sheriff, &c. becauſe the Conviction is no Judgment, but the Statute gives Proceſs upon it for the Forfeiture: So that if there be any Faults in it, the ſame is to be quaſhed in the *Exchequer*, the Party firſt conforming. *Raym* 433. An Information *tam quam* was brought againſt a Defendant, ſetting forth, that before and on ſuch a Day he was a *Recuſant* convict, and that afterwards he conformed, &c. and for three Years after had not received the Sacrament, and ſo demanded 60 *l.* for every Year: Upon Not guilty pleaded, the Plaintiff had a Verdict; and thereupon it was moved that the Information was incertain, becauſe neither the Time was alledged, nor how, or in what Court, nor before whom the Conviction was; and the Informer demands the Penalty for three Years, when by Statute no Informer can demand a Penalty upon the Penal Law, but by an Information exhibited within a Year after the Offence: But it was reſolved, that the firſt Exception had been good on a Demurrer; but the Defendant having pleaded Not guilty, all the Circumſtances of his Conviction were admitted, and that nothing remained to be tried but the Fact: And as for the ſecond Exception, it was good againſt the Informer for his Part, but ſhould not prejudice the King. 2 *Cro.* 365. 3 *Nelſ. Abr.* 52. The Stat. 23 *Eliz. c.* 1. gives ſeveral Remedies againſt *Recuſants*; one for the King alone, and there the Proſecution muſt be by Indictment in *B. R.* The other for a common Perſon, and that is to be by Action of Debt, Bill, Plaint, or Information: And the 28 *Eliz. c.* 6. was made for the Benefit of the Crown upon Indictments, and doth not extend to Informations; therefore ſuch Informations may be brought in any Court of Record. *Hob.* 204. Where the Defendant is indicted on the Statute of *Recuſancy*, Conformity is a good Plea; but not if an Action of Debt be brought. 1 *Mod.* 213. But *vide* 2 *Show* 332. A *Recuſant* certified into the Court of *King's Bench*, according to the 23 *Eliz.* ſhall give Security for his good Behaviour, &c. 2 *Bulſt.* 155. See *Papiſts.*

Red, (Sax. *Raed*) Is an old Word ſignifying Advice: And *Redbana* is one who adviſed the Death of another.

Red Book of the Exchequer, (*Liber rubeus Scaccarii*) Is an ancient Record, wherein are regiſtred the Names of thoſe that held Lands *per Baroniam* in King *Henry* the 2d's Time. *Ryley* 667. It is a Manuſcript Volume of ſeveral Miſcellany Treatiſes in the Keeping of the *King's Remembrancer* in his Office in the *Exchequer*; and hath ſome Things (as the Number of the Hides of Land in many of our Counties, &c.) relating to the Times before the Conqueſt. There is likewiſe an exact Collection of the Eſcuages under King *Hen.* 1. *Rich.* 2. and King *John*; and the Ceremonies uſed at the Coronation of Queen *Eleanor*, Wife to King *Hen.* the 3d, &c.

Reddendum, Is uſed ſubſtantively for the Clauſe in a Leaſe, whereby the Rent is reſerved to the Leſſor; and anciently Corn, Fleſh, Fiſh, and other Victuals, were for the moſt part reſerved on Leaſes. 2 *Rep.* 72. *Wood's Inſt.* 226. In Debt for Rent, the Plaintiff declared upon a Leaſe made 25 *Auguſt* 11 *Will.* 3. of a Meſſuage, &c. for ſeven Years, to commence from the 24th Day of *June* before; *Reddendum* Quarterly at *Michaelmas*, St. *Thomas*'s Day, *Lady Day*, and *Midſummer*, three Pounds ten Shillings, the firſt Payment to be made at *Michaelmas* then next; and aſſigned for Breach that fourteen Pounds of the ſaid Rent was in Arrear for one Year ending 24 *December*, *Anno* 13 *Will.* And upon Demurrer to this Declaration, it was objected that on this Leaſe there was no Year could be ended on the 24th of *December*, but on St. *Thomas*'s Day according to the *Reddendum*; which was held to be true, becauſe where ſpecial Days are limited in the *Reddendum*, the Rent muſt be computed from thoſe Days, and not according to the *Habendum*; and that the Rent is never computed from the *Habendum*, but when the *Reddendum* is general; *i. e.* paying Quarterly ſo much; ſo the Plaintiff had Leave to diſcontinue, &c. 1 *Salk.* 141. See *Deed* and *Reſervation.*

Reddidit ſe, Is where a Man procures Bail for himſelf to an Action in any Court at Law; if the Party bailed at any Time before the Return of the ſecond *Scire facias* againſt the Bail, *renders himſelf* in Diſcharge of his Bail, they are thereby diſcharged. 2 *Lill. Abr.* 430. A *Capias ad ſatisfaciend'* was returned *Non eſt inventus* againſt the Principal, and one *Scire Fac'* and a *Nichil*; and upon the ſecond *Scire Fac.* he *rendered* himſelf, and was received: But if there had been a *Scire feci* and Judgment thereupon, he had come too late. *Cro. Jac.* 109. If a Defendant renders himſelf to the Marſhal of *B. R.* upon any Action in that Court, in Diſcharge of his Bail, the Defendant's Attorney is forthwith to give Notice of ſuch Render to the Plaintiff's Attorney, and ſhall make Oath of the Notice, &c. And a *Reddidit ſe* will not diſcharge the Bail, unleſs the Attorney who is concerned for the Defendant or his Bail, enters it in the Marſhal's Book; and having given Notice thereof to the Attorney for the Plaintiff, brings the Bail-Piece to the Secondary, who upon producing of a Note from the Marſhal or his Clerk, that the Defendant is in Cuſtody, will diſcharge it; and until this is done, the Plaintiff may notwithſtanding proceed to Judgment and Execution againſt the Bail; for until the Bail-Piece is diſcharged, there is a Record ſtill remaining in Court againſt them. 15 *Car.* 2. 2 *Lill.* 431. A *Reddidit ſe* of the Principal, in Diſcharge of the Bail, is no Plea in a Writ of Error; for the Recognizance is not to render the Body, but to pay the Debt; adjudged 3 *Jac.* 1. *c.* 8. Vide *Bail.*

Redditarius, A Renter; and *Redditarium* hath been uſed for a Rental of a Manor, or other Eſtate. *Cartular. Abbat. Glaſton. MS.* 92.

Reddition, (*Redditio*) A Surrendring or Reſtoring; being alſo a judicial Confeſſion and Acknowledgment that the Land or Thing in Demand belongs to the Demandant, and not to the Perſon ſo ſurrendring. Stat. 34 & 35 *H.* 8. *c.* 24.

Redditus Aſſiſus, Is ſet or ſtanding Rent. Vide *Aſſiſus.*

Redecima, The Tenth of the Tenth. *Mon. Angl. Tom.* 2. *pag.* 199.

Redelivery, Is a Yielding and Delivery back of a Thing: If a Perſon has committed a Robbery, and ſtolen the Goods of another, he cannot afterwards purge the Offence by any *Re-delivery*, &c. 1 *Inſt.* 69. *H. P. C.* 72.

Redemiſe, Is a Regranting of Lands demiſed or leaſed. See *Demiſe and Redemiſe.*

Redemption, (*Redemptio*) A Ranſom, or Commutation; and by the old *Saxon* Laws, a Man convicted of a Crime paid ſuch a Fine, according to the Eſtimation of his Head, *pro Redemptione ſua.*

Redebable, (from the *Sax. Redevoir, debere*) ſignifies bound or obliged to another, for ſome Benefit received. *Blount.*

Rediſſeiſin, (*Rediſſeiſina*) Is a *Diſſeiſin* made by him, who once before was found and adjudged to have *diſſeiſed* the ſame Man of his Lands or Tenements; for which there lies a ſpecial Writ called a *Writ of Rediſſeiſin. Old Nat. Br.* 106. *F. N. B.* 188. The *Writ of Rediſſeiſin* lieth where a Perſon doth recover by *Aſſiſe of Novel Diſſeiſin* any Lands, Rent, or Common, &c. and is put in Poſſeſſion thereof by Verdict and Judgment, and afterwards he is diſſeiſed of the ſame by him by whom he was diſſeiſed before. Statute of *Merton*, *c.* 3. *New Nat. Br.* 417. Alſo this Writ lies againſt him who committed the *Rediſſeiſin*, and another who was not Diſſeiſor, if he be Tenant of the Land; and if a Man do recover by *Rediſſeiſin*, and after he is diſſeiſed again by the Perſon who made the firſt *Rediſſeiſin*, he ſhall have a new Writ of *Rediſſeiſin*; and ſo one *Rediſſeiſin* after another, every Time he is rediſſeiſed. *Ibid.* 418, 420. And the *Rediſſeiſin* being found on the Sheriff's Inquiſition, the Party who did it is to be committed to Priſon, and the Lands reſeiſed; and he who recovereth in *Rediſſeiſin*, ſhall have double Damages, &c. Stat. *Weſtm.* 2. *c.* 26. The Puniſhment for *Rediſſeiſin* ſee in the Statute 52 *H.* 3. *c.* 8. If a Plaintiff be re-diſſeiſed of Parcel of the Tenement formerly recovered, he ſhall have a *Rediſſeiſin:* And when Coparceners be diſſeiſed, and recover in an *Aſſiſe*, if after they make Partition and are ſeverally diſſeiſed, they may bring ſeveral Writs of *Rediſſeiſin*, &c. *Co. Litt.* 154 A Recovery in *Aſſiſe of Novel Diſſeiſin* is againſt two Diſſeiſors, and one of them diſſeiſes the Plaintiff again, he may have a *Rediſſeiſin* againſt him: But where the Recovery is againſt a Woman in an *Aſſiſe*, and ſhe taketh Husband, and both of them diſſeiſe the Plaintiff, he ſhall not have this Writ; becauſe the Husband is *alius*, and not the ſame firſt Diſſeiſor. *Ibid.* And if in a Writ of Right, &c. the Demandant makes his Proteſtation to ſue in the Nature of *Aſſiſe*, and after is re-diſſeiſed; he ſhall not have a Writ of *Rediſſeiſin*, the firſt Recovery not being by Writ of *Aſſiſe of Novel Diſſeiſin.* 2 *Inſt.* See *Poſt-Diſſeiſin.*

Redubbors, Are thoſe that buy ſtolen Cloth, and turn it into ſome other Colour or Faſhion, that it may not be known again. *Britton*, *cap.* 29. 3 *Inſt* 134.

Re-entry, (from the Fr. *Rentrer*, i. e. *rurſus intrare*) Is the Reſuming or Retaking a Poſſeſſion lately had; as if a Man makes a Leaſe of Lands, &c. to another, he thereby quits the Poſſeſſion; and if he covenants with the Leſſee, that for Non-payment of the Rent at the Day, it ſhall be lawful for him to *re-enter*; this is as much as if he conditioned to take again the Land into his own Hands, and to recover the Poſſeſſion by his own Act, without the Aſſiſtance of the Law. But Words in a Deed give no *Re-entry*, if a Clauſe of *Re-entry* be not added. *Wood's Inſt.* 140. One may reſerve a Rent on Condition in a Feoffment, Leaſe, &c. That if the Rent is behind he ſhall *re enter*, and hold the Lands till he is ſatisfied, or paid the Rent in Arrear; and in this Caſe, if the Rent is behind, he may *re-enter*; though when the Feoffee, &c. pays or tenders on the Land all the Arrears, he may enter again. *Litt.* 327. 1 *Inſt.* 203. And the Feoffor, &c. hath only an Intereſt, and not the Freehold, to take the Profits in the Nature of a Diſtreſs: Here the Profits ſhall not go in Part of Satisfaction of the Rent; but 'tis otherwiſe if the Feoffor was to hold the Land till he was paid by the Profits thereof. *Ibid.* All Perſons that would *re-enter* upon their Tenants for Non-payment of Rent, are to make a Demand of the Rent; and to prevent the *Re-entry*, Tenants are to tender their Rent, &c. 1 *Inſt.* 201. If there is a Leaſe for Years, rendring Rent with Condition, That if the Leſſee aſſigns his Term, the Leſſor may *re-enter*; and the Leſſee aſſigneth, and the Leſſor receiveth the Rent of the Aſſignee, not knowing or hearing of the Aſſignment, he may *re-enter* notwithſtanding the Acceptance of the Rent. 3 *Rep.* 65. 1 *Cro.* 553. A Feoffment may be made upon Condition, That if the Feoffor pay to the Feoffee, &c. a certain Sum of Money at a Day to come, then the Feoffor to *re-enter*, &c. *Litt.* 322.

Re-exchange, Is the like Sum of Money payable by the Drawer of a *Bill* of *Exchange* which is return'd Proteſted, for the *Exchange* of the Sum mentioned in the Bill *back* again to the Place whence it was drawn. *Lex Mercat.* 98.

Re-extent, Is a *ſecond Extent* upon Lands or Tenements, on Complaint that the former Extent was partially made, &c. *Broke* 313.

Refare, (From the Sax. *Reaf*, or *Ræfan*) To bereave, take away, or rob. *Leg. H.* 1. *c.* 83.

Refectio, A Dinner or Supper; ſometimes taken for a Duty incumbent to provide Suppers, &c. The Word is derived from *Reficio*, to refreſh.

Refectory, (*Refectorium*) Is that Place in *Monaſteries* where the Monks uſed to eat: So the Halls in *Colleges* and *Inns of Courts*, wherein the Scholars and Students eat and refreſh themſelves, may properly be called *Refectories*. Cowel.

Reference, In the Acceptation of Law is, where a Matter is *referred* by the Court of *Chancery* to a *Maſter*, and by the *Courts at Law* to a *Prothonotary* or *Secondary*, to examine and report to the Court. 2 *Lill. Abr.* 432. In Chancery, by Order of Court, Irregularities, Exceptions, Matters of Account, &c. are referred to the Examination of a Maſter of that Court. In the Court of B. R. Matters concerning the due Proceedings, or undue Proceedings in a Cauſe, by either of the Parties, are proper Matters of *Reference* under the Secondary, and for him in ſome ordinary Caſes to compoſe the Differences betwixt them; and in others to make his Report how the Matters do ſtand, that the Court may ſettle the Differences according to their Rules and Orders. *Paſch.* 1650. If a Matter in Difference between the Plaintiff and Defendant be referred to the Secondary, and one of the Parties will not attend at the Time appointed, after Notice thereof given, to hear the Buſineſs referred; the other Party may proceed in the *Reference* alone, and get the Secondary to make his Report without hearing of the Party not attending. 2 *Lill.* 432. See *Report.*

Referendary, (*Referendarius*) Is an Officer abroad, of the ſame Nature as *Maſters of Requeſt* were to the King among us: The *Referendaries* being thoſe who exhibit the Petitions of the People to the King, and acquaint the Judges with his Commands. And there was ſuch an Officer in the Time of the Engliſh *Saxons* here, viz. *Ego Augemundus* Referendarius *approbavi*, &c. And we read of a *Referendarius Angliæ*. Spelm.

Refugium, A Sanctuary or Privilege of the Church. ——— *Cum omni ſua Libertate &* Refugio *Eccleſiæ Sancti Petri*, &c. Mon. Angl. Tom. 3. pag. 122.

Refullus, For *Refluxus*; and perhaps *Refullum Aquæ* is the High-water Mark, or ſo high as the Water comes at full Sea. *Mon. Angl.*

Refuſal, Is where one hath by Law a Right and Power of having or doing ſomething of Advantage to him, and he refuſeth it. An Executor may refuſe an *Executorſhip*; but the *Refuſal* ought to be *before the Ordinary*: If an Executor be ſummoned to accept or refuſe the Executorſhip, and he doth not appear upon the Summons and prove the Will, the Court may grant Adminiſtration, &c. which ſhall be good in Law till ſuch Executor hath proved the Will; but no Man can be compelled to take upon him the Executorſhip, unleſs he hath intermeddled with the Eſtate. 1 *Leon.* 154. *Cro. Eliz.* 858. Where there are ſeveral Executors, and they all *refuſe*, none of them ſhall adminiſter afterwards; but if there is a *Refuſal* by one, and the other proves the Will, the *Refuſing* Executor may adminiſter when he will, during the Life of his Co-executor. 5 *Rep.* 28. 2 *Nelſ. Abr.* 63. There is a Difference where there is but one Executor, and where there are more Executors than one, as to *Refuſal* of an Executorſhip; for if there is but one, and in ſuch Caſe he adminiſter, he cannot *refuſe* afterwards; and if once he *refuſe* he cannot adminiſter afterwards: As for Inſtance; the Teſtator being poſſeſſed of Lands, &c. for a Term of Years, deviſed the ſame to the Lord Chief Juſtice *Catline*, and made him Executor, and died: Afterwards the Executor wrote a Letter to the Judge of the Prerogative Court, intimating that he could not attend the Executorſhip, and deſiring him to grant Adminiſtration to the next of Kin to the Deceaſed, which was done accordingly; and after this, the Executor entered on the Lands, and granted the Term to another; but it was adjudged void, becauſe the Letter which he wrote was a ſufficient *Refuſal*; and he may not once *refuſe*, and afterwards take upon him the Executorſhip. *Moor* 272. An Executor after a *Caveat* entered againſt the Will, took the uſual Oath of an Executor, and afterwards refuſed to prove the Will; and it was held, that having taken the Oath of Executor, the Court could not admit him to *refuſe* afterwards, but ought to grant *Probate* to him notwithſtanding the *Caveat*, on another's Conteſting for the Adminiſtration, &c. 1 *Ventr.* 335. There is a *Refuſal of a Clerk* preſented to a *Church*, for Illiterature, &c. And if a Biſhop once *refuſes* a Clerk for Inſufficiency, he cannot accept of him afterwards, if a new Clerk is preſented. 5 *Rep.* 58. 1 *Cro.* 27. In *Actions of Trover and Converſion*, a Demand of the Goods and *Refuſal* to deliver them, muſt be proved, &c. 10 *Rep.* 56. 1 *Danv. Abr.* 20.

Refutantia, A Diſcharge; or Renouncing of all future Claim. ——— *Viſis Libris, Inſtrumentis, Regiſtris*, Refutationibus, *aliiſque Evidentiis*, &c. Thorn. *Anno* 1389.

Regal, (*Regalis*) Royal, or Kingly; like a King. *Litt. Dict.*

Regale Epiſcoporum, The Temporal Rights and Privileges of a Biſhop. *Mandatum eſt* Roberto *de* B. *quod faciat habere Epiſcopo* Norwicenſi *totum* Regale *quod ad Epiſcopatum ſuum pertinet.* Brady's Append. to the Hiſtory of England. pag. 108.

Regal Fiſhes, Are *Whales* and *Sturgeons*; to which ſome add *Porpuſſes*. The King by his *Prerogative* ought to have every Whale caſt on Shore in all Places within this Realm, (except granted to Subjects by Special Words) as a *Royal Fiſh*: And 'tis ſaid the King himſelf ſhall have the Head and Body to make Oil and other Things; and the

Queen the Tail, to make Whale-Bones for her Royal Veſtments. *Pat.* 1 *Edw.* 1. Stat. 17 *Edw.* 5. *cap.* 1. 1 *Eliz. cap.* 5.

Regalia, (*Lat.*) Royalties, the Royal Rights of a King; which the *Civilians* ſay are ſix. 1. Power of Judicature. 2. Power of Life and Death. 3. All Kind of Arming. 4. Maſterleſs Goods, as Waifs, Eſtrays, *&c.* 5. Aſſeſſments, and 6. The Value of Money, *&c.* Alſo the Crown, the Scepter, four ſeveral Swords, the Globe, and other ſuch like Things, uſed at the Coronation of our Kings, are called *Regalia.* Stat. 13 *Eliz. cap.* 16. And *Regalia* is ſometimes taken for the Dignity and Prerogative of the King. Likewiſe *Regalia* is applied to thoſe Rights, which the Church enjoys by the Grants and Conceſſions of Kings: And ſometimes to the Patrimony of the Church; and thoſe Lands and Hereditaments that have been given by our Kings thereto. *Mon. Angl. Tom.* 2. *pag.* 231.

Regardant, (Fr. *i. e.* Seeing, Marking, or Vigilant) As a *Villein Regardant*, was one who had the Charge to do all baſe Services within the Manor, and to ſee the ſame freed of Annoyances; and therefore called *Regardant* to the Manor. *Co. Litt.* 120.

Regard, (*Regardum*, Fr. *Regard*, i. e. *Aſpectus*) Signifies generally any Care, or looking on; and in a ſpecial Signification is uſed only in Matters of the Foreſt, and there two Ways, one for the Office of the *Regarder*, the other for the Compaſs of Ground belonging to the *Regarder*'s Charge, which is the whole Foreſt, *viz.* All that Ground which is Parcel of the Foreſt; for there may be Woods within the Limits of the Foreſt, that are no Part thereof, and thoſe are without the *Regard.* Cromp. Juriſd. 175, 199. Manw. par. 2. cap. 7.

Regarder, (*Regardator*, Fr. *Regardeur*, *Spectator*) Is the Officer of the King's Foreſt, who is ſworn to make the *Regard* of it, as has been uſed in ancient Time; and to view and inquire of all Offences of the *Foreſt*, as well of *Vert* as of *Veniſon*; and of Concealments of any Offences or Defaults of the Foreſters, and all other Officers of the King's Foreſt, relating to the Execution of their Offices, *&c.* *Cromp. Juriſd.* 153. *Manwood.* This Officer was ordained in the Beginning of the Reign of King *Hen.* 2. And the *Regarders* of the *Foreſt* muſt make their *Regard*, before any General Seſſions of the Foreſt, or Juſtice Seat can be holden; when the *Regarder* is to go through the Foreſt, and every Bailiwick, to ſee and inquire of the Treſpaſſes therein; *ad videndum*, *ad inquirendum*, *ad imbreviandum*, *ad Certificandum*, *&c.* Manw. part 1. pag. 194. A *Regarder* may be made either by the King's Letters Patent; or by any of the Juſtices of the Foreſt, at the General *Eyre*, or ſuch Times as the *Regard* is to be made, *&c.* *Manw.*

Rege inconſulto, Is a Writ iſſued from the King to the Judges not to proceed in a Cauſe which may prejudice the King, until he is adviſed. K. *James* 1ſt granted the Office of *Superſedeas* in *C. B.* to one *Mitchel*, and thereupon *Brownlow*, chief Prothonotary, brought an *Aſſiſe* againſt him; and the Defendant *Mitchel* obtained the King's Writ to the Judges, reciting the Grant of this Office, commanding them not to proceed *Rege inconſulto*: And it was argued againſt the Writ, that the Court might proceed, becauſe the Writ doth not mention that the King had a Title to the Thing in Demand, nor any Prejudice which might happen to the King if they ſhould proceed: The Cauſe was compromiſed. *Moor* 844. A *Rege inconſulto* may be awarded, not only for the Party to the Plea, but upon Suggeſtion of a Stranger, on Cauſe ſhewn that the King may be prejudiced by the Proceeding, *&c.* *Jenk. Cent.* 97.

Regio Aſſenſu, A Writ whereby the King gives his Royal Aſſent to the Election of a Biſhop. *Reg. Orig.* 294.

Regiſter, (*Regiſtrarius*) Is an Officer that writes and keeps a *Regiſtry.* And *Regiſter* is the Name of a Book, wherein are entered and ſet down moſt of the Forms of *Writs* Original and Judicial uſed at Common Law, called the *Regiſter of Writs*: Sir *Edward Coke* affirms, That this *Regiſter* is one of the moſt antient Books of the Common Law. *Co. Litt.* 159.

Regiſter of the Pariſh Church, *Regiſtrum Eccleſiæ Parochialis*) Is that wherein *Baptiſms*, *Marriages*, and *Burials* are *regiſtred* in each Pariſh every Year; which was inſtituted by the Lord *Cromwell*, *Anno* 13 *Hen.* 8. while he was Vicar General to that King. Theſe *Pariſh Regiſters* are to be ſubſcribed by the Miniſter and Church-wardens; and the Names of the Perſons, ſhall be tranſmitted yearly to the Biſhop, *&c.*

Regiſtry, (*Regiſtrum*, from the old Fr. *Giſter*, i. e. *in Lecto Reponere*) Is properly the ſame with *Repoſitory*; and the Office Books, and Rolls wherein the Proceedings of the *Chancery*, or any *Spiritual Court* are recorded, *&c.* are called by this Name.

Regiſtry of Deeds. The *Regiſtring* of *Deeds* and Incumbrances is a great Security of Titles to Purchaſers of Lands and Mortgagees; and ſome Laws have been made requiring the ſame. By the 2 *Ann. cap.* 4. A *Regiſtry* is to be kept of all Deeds and Conveyances affecting Lands executed in the Weſt Riding of *Yorkſhire*; and a publick Office erected for that Purpoſe; and the *Regiſter* is to be choſen by Freeholders having 100*l. per Annum*, *&c.* The 6 *Ann. cap.* 35. ordains, that a Memorial and *Regiſtry* of all Deeds, Conveyances, Wills, *&c.* which affect any Lands or Tenements, ſhall be made in the Eaſt-Riding of the County of *York*; and the *Regiſter* is to be ſworn by the Juſtices in Quarter-Seſſions, and every Leaf of his Book ſigned by two Juſtices. By 7 *Ann. cap.* 20. A Memorial and *Regiſtry* is to be made of all Deeds and Conveyances, and of all Wills whereby Lands are affected, *&c.* in the County of *Middleſex*, in like Manner as in the *Weſt* and *Eaſt Ridings* of *Yorkſhire.* And by theſe Statutes, Deeds, Conveyances and Wills, ſhall be void againſt ſubſequent Purchaſers or Mortgagees, unleſs *regiſtred* before the Conveyances under which they claim: Alſo no Judgment, Statute, or Recognizance, ſhall bind any Lands in thoſe Counties, but from the Time a Memorial thereof ſhall be entred at the *Regiſter's* Office; but the Acts do not extend to Copyhold Eſtates, Leaſes at a Rack-Rent, or to any Leaſes, not exceeding 21 Years, where the Poſſeſſion goes with the Leaſe; nor to any Chambers in the *Inns of Court.* By the 8 *Geo.* 2. *c.* 6. A *Regiſtry* ſhall be of all Deeds made in the *North-Riding* of the County of *York*: The Deeds and Conveyances *regiſtred* to be in Parchment, under the Hand and Seal of ſome of the Grantors, or Grantees, *&c.* atteſted by two Witneſſes, who ſhall on Oath prove the Signing and Sealing of the Memorial and Execution of the Deeds. Memorials of Wills, muſt be *regiſtred* within ſix Months after the Death of the Teſtator; the *Regiſter* neglecting his Duty, or guilty of fraudulent Practices, ſhall forfeit his Office, and pay treble Damages; and Perſons counterfeiting any Memorial, *&c.* be liable to the common Penalties of Forgery.

Regiſtry of Papiſts Eſtates. Papiſts are to *regiſter* their Eſtates, or on Default ſhall forfeit them. 1 *Geo.* 1. *cap.* 55. And all Perſons refuſing to take the Oaths, are obliged to *regiſter* their Eſtates as Papiſts, *&c.* 9 *Geo.* 1. *cap.* 24. See *Papiſts.*

Regius Profeſſor, Is a Reader of *Lectures* in the *Univerſities*, founded by the *King*: K. *Hen.* 8. was the Founder of five Lectures in each Univerſity of *Oxford* and *Cambridge*, *viz.* of *Divinity*, *Greek*, *Hebrew*, *Law* and *Phyſick*, the Readers of which are called in the Univerſity Statutes *Regii Profeſſores.*

Regni Populi, A Name given to the People of *Surrey* and *Suſſex*, and on the Sea-Coaſts of *Hampſhire.* Blount.

Regnum Eccleſiaſticum. In ſome Countries formerly, the Clergy held there was a double ſupreme Power, or two Kingdoms in every Kingdom; the one a *Regnum Eccleſiaſticum*, abſolute and independent upon any but the *Pope* over Eccleſiaſtical Men and Cauſes, exempt from the ſecular Magiſtrate; and the other a *Regnum Seculare*, of the King or Civil Magiſtrate, which had Subordination and Subjection to the Eccleſiaſtical Kingdom: But theſe Uſurpations and Abſurdities, were exterminated here by K. *H.* 8. 2 *Hale's Hiſt. P. C.* 324.

Regrator, (*Regratarius*, Fr. *Regrateur*, Signifies him that buys and ſells any Wares or Victuals in the ſame Market or Fair: And by Statute, *Regrators* are particularly deſcribed to be thoſe who buy or get into their Hands in Fairs or Markets, any Grain, Fiſh, Butter, Cheeſe, Sheep, Lambs, Calves, Swine, Pigs, Geeſe, Capons, Hens, Chickens, Pigeons, Conies, or other dead Victuals whatſoever, brought to a Fair or Market to be ſold there, and do ſell the ſame again in the ſame Fair, Market, or Place, or in ſome other within four Miles thereof. Stat. 5 & 6 *Ed.* 6. *cap.* 14. 13 *Eliz. cap.* 25. *Regrating* is a Kind of *Huckſtry*, by which Victuals are made dearer; for every Seller will gain ſomething, which muſt of Conſequence enhance the Price. 3 *Inſt.* 195. And in antient Time, both the *Ingroſſer* and *Regrator* were comprehended under the Word *Foreſtaller.* Ibid. *Regrators* are puniſhable by Loſs and Forfeiture of Goods, and Impriſonment, in Proportion to the firſt, ſecond, or third Offence, *&c.* Vide *Foreſtaller.*

Regula, The Book of *Rules*, Orders or Statutes in a *Religious Convent. Regulars* are *Monks* or *Canons*, who profeſs to live under ſome *Rule* of Obedience.

Regulus, Is a Word often mentioned in the Councils of the *Engliſh Saxon* Kings, and uſed for *Comes*; as the *Subregulus* was the *Vicecomes: Offa Rex Merciorum, Uthredus* Regulus, & *Aldredus* Subregulus W. *&c.*

Rehabere facias ſeiſinam, *Quando Vicecomes liberavit ſeiſinam de majore parte, quam deberet*, is a judicial Writ; of which there is another of the ſame Name and Nature. *Reg. Judic.* 13, 51, 54.

Rehabilitation, (*Rehabilitatio*) A Reſtoring to former *Ability*; and is one of thoſe Exactions claimed by the *Pope* heretofore in *England*, by his *Bull* or *Brief*, for *re-enabling* a Spiritual Perſon to exerciſe his Function who had been diſabled. Stat. 25 *Hen.* 8. *c.* 21.

Reif, (Sax. *Refian*, i. e. *Spoliare*) In our old Laws ſignifies Robbery. *Cowel.*

Rejoinder, (*Rejunctio*) Is where the Defendant in any Action makes Anſwer to the Plaintiff's *Replication:* It is an Exception or Anſwer thereto, and it ought to be a ſufficient Anſwer to the Replication, and follow and enforce the Matter of the Bar pleaded. 2 *Lill. Abr.* 433. The Defendant is not to *rejoin* upon ſuch Words as are not contained in the Declaration, or Replication; and if the Defendant do in his *Rejoinder* depart from his Plea pleaded in Bar, the *Rejoinder* is not good, becauſe this is uncertain, and to ſay and unſay, which the Law doth not allow. *Mich.* 22 *Car. B. R.* It is obſerv'd, that in many Caſes, if the Plaintiff in his Replication alledges any *new Matter*, the Defendant may there make a new Anſwer in the *Rejoinder*; though if the Defendant pleads a general Plea, he ſhall not commonly make that good afterwards, by a particular Thing in his *Rejoinder.* 5 *Hen.* 7. 19. *Raym.* 22. Where a Replication is pleaded, which is iſſuable, the Clerk of the Papers when he makes up the Paper-Book, doth of Courſe make up the *Rejoinder*, and *joins* the Iſſue in it; and if the *Rejoinder* be iſſuable, he hath the Making up of the *Surrejoinder* to it, and the Iſſue thereupon. 2 *Lill.* 433. See *Departure.*

Relation, (*Relatio*) Is where, in Conſideration of Law, two different Times or other Things are accounted as one; and by ſome Act done the Thing ſubſequent is ſaid to take Effect by *Relation* from the Time preceding: As if one deliver a Writing to another, to be deliver'd to a third Perſon, as the Deed of him who made it, when ſuch third Perſon hath paid a Sum of Money; now when the Money is paid, and the Writing delivered, this ſhall be taken as the Deed of him who made and delivered it, at the Time of its firſt Delivery, to which it has *Relation*; and ſo Things relating to a Time long before, ſhall be as if they were done at that Time. *Terms de Ley* 515. *Shep. Epit.* 837. This Device is moſt commonly to help Acts in Law, and make a Thing take Effect; and ſhall relate to the ſame Thing, the ſame Intent, and between the ſame Parties only; and it ſhall never do a Wrong, or lay a Charge upon a Perſon that is no Party. 1 *Inſt.* 190. 1 *Rep.* 99. *Plowd.* 188. And when the Execution of a Thing is done, it hath *Relation* to the Thing executory, and makes all but one Act or Record, although perform'd at ſeveral Times. 1 *Rep.* 199. A Judgment had in full Term ſhall have *Relation* to the firſt Day of the Term, which is the *Eſſoin*-Day; but this muſt be underſtood of a Judgment given after Appearance; and if it be upon Default, then the *Quartus dies poſt* is the Day. *Cro. Car.* 73. 1 *Bulſt.* 33. Judgments ſhall have *Relation* to the firſt Day of the Term, as if given on that very Day, unleſs there is a *Memorandum* to the contrary; as where there is a Continuance till another Day in the ſame Term. 3 *Salk.* 212. A Verdict was given in a Cauſe for the Plaintiff, and there was a Motion in Arreſt of Judgment within four Days; the Court took Time to adviſe, and in four Days afterwards the Plaintiff died: It was adjudged, that the Favour of the Court ſhall not prejudice the Party, for the Judgment ought to have been given after the firſt four Days; and though it is given after the Death of the Party, it ſhall have *Relation* to the Time when it ought to have been given. 1 *Leon.* 187. Rule was had for Judgment, and two Days after the Plaintiff died; yet the Judgment was enter'd, becauſe it ſhall have *Relation* to the Day when the Rule was given, which was when the Plaintiff was alive. *Popb.* 132. Judgment againſt an Heir upon the Obligation of his Anceſtor, ſhall have *Relation* to the Time of the Writ firſt purchaſed; and from that Time it will avoid all Alienations made by the Heir. 3 *Cro.* 102. And if one be Bail for a Defendant, and before Judgment he Leaſes his Lands; they ſhall be liable to the Bail, and Judgment by *Relation. Popb.* 132, 112. The Defendant in a Suit after the *Teſte* of the *Fieri facias*, but before the Sheriff had executed it, ſold the Goods, and delivered them to the Buyer; and it was reſolved, that the Sheriff might take them in Execution in the Hands of the Buyer; for when ſuch Execution is made, it ſhall have *Relation* to the *Teſte* of the *Fi. fa.* 1 *Leon.* 304. Sale of Goods of a Bankrupt, by Commiſſioners, ſhall have *Relation* to the firſt Act of Bankruptcy; and be good, notwithſtanding the Bankrupt ſells them afterwards. 1 *Jac.* 1. *cap.* 15. *Wood's Inſt.* 311. And if a Man buys Cattle in a Market that are ſtolen, and ſelleth them out of the Market, though the Cattle are afterwards brought into the Market, and the ſecond Bargain confirm'd, and Money paid, *&c.* this Bargain will not be good; for it ſhall have *Relation* to the Beginning, which was unlawful. *Dyer* 99. Fines being but common Aſſurances, ſhall be guided by the Indentures precedent; and the Execution thereof ſhall have *Relation* to the original Act. 2 *Cro.* 110. A Bargain and Sale was made to *A. B.* and before it was inroll'd, the ſame Bargainor levied a Fine to the Bargainee, and afterwards and within the ſix Months the Deed was inroll'd; adjudg'd that the Bargainee was in by the Fine, and not by the Deed inroll'd, becauſe though the Inrollment ſhall have *Relation* to the Delivery of the Deed, that is only to protect the Lands from all Incumbrances to be made by the Bargainor to others after the Deed, and before the Inrollment, but not to deveſt any lawful Eſtate made by him before. 4 *Rep.* 70. After an Indenture of Bargain and Sale is inroll'd, according to the Statute, it relates to the Delivery; nothing paſſes till Inrollment, but then it relates. 3 *Nelſ. Abr.* 68. One made a Leaſe for Years, rendring Rent at certain Feaſts, he in Reverſion bargained and Sold the Land to a Stranger, who gave Notice to the Leſſee; and the Day of Payment coming, he paid the Rent to the Bargainor, and then the Deed was inrolled: It was held, that the Bargainee ſhould not have this Rent by Relation. *Hugh's Abr.* 1644. If an Infant or Feme Covert, diſagree to a Feoffment to them made, when they are of Age, or diſcovert; it ſhall relate as to this Purpoſe, to diſcharge them of Damages from the Time. 3 *Rep.* 29. *Co. Litt.* 310. But generally in Caſes at Common Law, there is no *Relation*; as between the Feoffment of Lands and Livery and Seiſin; or between the Grant of a Reverſion and the Attornment, which is only the Aſſent of the particular Tenant, and ſhall not relate to the Grant. *Ibid.* Though if one diſtrains for Rent as Bailiff, when in Truth he is not; if he in whoſe Name he took the Diſtreſs will afterwards aſſent to it, he ſhall not be a Treſpaſſer, for the Aſſent ſhall have *Relation* to the Time of the Diſtreſs taken. 2 *Leon.* 196. Letters of Adminiſtration relate to the Death of the Inteſtate, and not to the Time when they were granted. *Stile* 341. And when the Wife is endowed of Lands by the Heir, ſhe ſhall be in immediately from the Husband by *Relation.* 36 *H.* 6. 7. It is a Rule in Pleadings, Grants, &c. *Ad proximum antecedens fiat Relatio*; but that Rule has an Exception, (*viz.*) *niſi impediat ſententia:* And it hath been held that this Rule hath many Reſtrictions, i. e. *Fiat Relatio*, ſo as there is no Abſurdity or Incongruity; and therefore it is always *ſecundum ſubjectam materiam. Hardr.* 77. 3 *Salk.* 199. A Perſon granted *Totam illam portionem Decimarum* in B. with all other his Tithes in B. then or late *in Occupatione* of *J. C.* here the Words *in Occupatione* of *J. C.* have *Relation* to the whole Sentence, and not only to the Precedent Words, with all other his Tithes, becauſe the Pronoun *illam* relates as well to the Tenure of the Tithes, as to the Place where they ariſe. 4 *Rep.* 34. In Debt upon Bond conditioned that if *J. M.* died before *Midſummer* Day, without Iſſue Male of her Body then living, that in ſuch Caſe the Bond ſhould be void: The Defendant pleaded that before *Midſummer* Day, ſhe did die without Iſſue Male then living; and the Queſtion was, Whether the Adverb *then* ſhould relate to *Midſummer* Day, or to the Death of *J. M.* And it was agreed, that it might relate to either; but becauſe it happened in Fact that ſhe had a Son living at her Death, which Son died before *Midſummer* Day, therefore the Words *then living* ſhall relate to that Day, and not her Death; and becauſe it is moſt beneficial to the Obligor, that it ſhould be ſo. *Dyer* 17. 3 *Nelſ. Abr.* 65.

Relator, (*Lat.*) A Rehearſer, or Teller; alſo apply'd to an Informer. Stat. 9 *Ann. c.* 20. See *Quo Warranto.*

Releaſe, (*Relaxatio*) Is an Inſtrument, whereby Eſtates, Rights, Titles, Entries, Actions, and other Things are extinguiſhed or abridged, and ſometimes transferred and enlarged. *Weſt's Symb. par.* 1. *lib.* 2. Generally it is a giving up or diſcharging of the Right or Action which any Man hath or claimeth againſt another, or his Lands, &c. and is uſually made by the Words, Have *Remiſed*, *Releaſed*, and *Quit-claimed*, or other Words to the like Purpoſe: He that *releaſeth* is the *Releaſor*, and he to whom the *Releaſe* is made is call'd the *Releaſee.* Litt. 445. 1 Inſt. 264. *Releaſes* are of two Kinds, *viz.* a *Releaſe* as to Lands, (called *Leaſe* and *Releaſe*) and of Goods and Chattels; and a *Releaſe* of Actions, whether Real, Perſonal or Mix'd. *Litt.* 492. And they are alſo either in *Fact expreſs'd*, or *implied in Law:* In *Fact* or expreſs'd, is that which the very Words expreſly declare, and the Act of the Party *releaſing* by Deed: In *Law* or implied, is that *Releaſe* which the Law makes, and which acquits by Way of Conſequent or Intendment of Law, and is ſometimes by Writing, and ſometimes without. 1 *Inſt.* 264. *Perkins* 71. And a *Releaſe* in Law, ſhall be more favourably regarded, according to the Intent of the Parties, than *Releaſe* in Deed. When an Obligee or Creditor, makes the Obligor or Debtor his Executor, who accepts thereof; this is a *Releaſe* in Law by Writing: But if an Obligor is made Adminiſtrator to the Obligee, this is no *Releaſe* in Law; and when he is made Executor, though this is a *Releaſe* in Law of the Action, the Duty remains, and it ſhall be Aſſets in his Hands. 8 *Rep.* 136. If a Feme Obligee or Creditor takes the Obligor or Debtor to Husband, it is a *Releaſe* in Law without Writing; but not if a Feme *Executrix* takes the Debtor to Husband, for that would be a Wrong to the Dead. *Ibid.* If a Charge or Duty grow by Record, the *Releaſe* muſt be upon Record; and if by Deed, the Releaſe is to be by Deed. 1 *Inſt.* 298. And it is to be obſerv'd, That no Right paſſeth by *Releaſe*, but the Right which the Releaſor had at the Time of the *Releaſe* made; if he has no Right, the *Releaſe* is void. *Litt.* 446, 450. Rights and Titles to Goods, Chattels, Actions, Real and Perſonal, &c. may be *releaſed:* Alſo Conditions annex'd to Eſtates, Powers of Revocation of Uſes, Warranties, Covenants, Rents, Services, Commons, and other Profits to be taken out of Lands, may be diſcharged and extinguiſhed by *Releaſe.* 1 *Rep.* 112. 2 *Rep.* 51. 10 *Rep.* 48. A Condition cannot be *releaſed* upon Condition; but the *Releaſe* will be good, and the Condition void. 1 *Inſt.* 237, 265. A Man may not *releaſe* a Perſonal Thing, as an Obligation, upon a Condition ſubſequent; becauſe a Perſonal Thing once ſuſpended, is extinguiſhed for ever. 1 *Roll. Abr.* 412, 490. If a Perſon *releaſes* upon Condition, the Condition is void; but a *Releaſe* may be delivered as an Eſcrow, to be a Man's Deed when ſuch a Thing is performed, which makes it in the Nature of a Condition. *Keilw.* 88. A *Releaſe* of an Action or Right cannot be for a Time: It will enure for ever, if made but for an Hour. 1 *Inſt.* 274. *Litt.* 467. A Duty certain may be *releaſed* before the Day of Performance of the Condition; but a Duty uncertain at firſt, upon a Condition precedent to be made certain afterwards, being in the mean Time but a mere poſſibility, cannot be *releaſed.* 5 *Rep.* 70. 10 *Rep.* 11. *Cro. Eliz.* 580. As a Man may *releaſe* any Debt or Duty due to himſelf; ſo a Perſon may *releaſe* any Thing or Wrong done to his Wife, before or after the Marriage: A *Releaſe* by the Husband of his Wife's Suit in the Eccleſiaſtical Court for Defamation, is a good *Releaſe* as to the Coſts, but not as to the Defamation; for the Court may give Sentence that the Defendant ſhall make a corporal Satisfaction by Penance and Submiſſion, which the Husband cannot *releaſe. Cro. Car.* 161. If the Wife is Executrix to another, the Husband may *releaſe* any Debt or Duty due to the Teſtator; which the Feme-Executrix cannot to the Prejudice of her Husband. 5 *Rep.* 27. A Wife is divorced *cauſa Adulterii*, the Husband may *releaſe* a Duty to the Wife. *Cro. Eliz.* 909. Regularly the *Releaſe* of an Infant is void; yet an Infant Executor may *releaſe* a Debt duly paid to him as Executor. *Ibid.* An Executor before Probate of the Will, may *releaſe* a Debt due to the Teſtator, becauſe he hath an abſolute Intereſt of the Debt in him. 5 *Rep.* 27. 9 *Rep.* 39. If a Man *releaſeth*, and after taking out Adminiſtration, this is no Bar to him; by Reaſon at the Time of the *Releaſe* made, he had not ſo much as a Right of Action in him. 5 *Rep.* 28. A Merchant of *Ireland* entered into a Bond there to one in *London*, which Bond was afterwards brought to *London*, the Obligee died Inteſtate in *England*, and his Son obtained Adminiſtration in *Ireland*, and *releaſed* the Debt to the Obligor; after this the Widow of the Inteſtate obtained a Prerogative Adminiſtration here, and ſued the Obligor, and recovered notwithſtanding the *Releaſe*, the Adminiſtration granted to the *Releaſor* being wrong; for it ought to be granted where the Bond was, and not where the Debt began. *Dyer* 305. Where there are two joint Executors, and one alone doth *releaſe* a Debt due to the Teſtator, before Judgment, this will bar the other Executor; but not if the *Releaſe* is after Judgment. 1 *Cro.* 648. If divers Perſons join in an Action to recover any Perſonal Thing, of which they are to have the joint Benefit or Intereſt, there the *Releaſe* of one of them ſhall bar all the Reſt; as where there are two Plaintiffs in Debt, *&c.* and one of them doth *releaſe* to the Defendant, this is alſo a Bar to the other Plaintiff: But where they are to diſcharge themſelves of a Perſonal Thing, it is otherwiſe, for if there is Judgment againſt three, and they bring a Writ of Error, and the Defendant in Error pleads the Releaſe of one of them, this is no Bar to the other, becauſe they are all compelled by Law to join in a Writ of Error, which is brought not to recover any Perſonal Thing, but to diſcharge themſelves of a Charge impoſed by the Judgment. 6 *Rep.* 25. A Defendant being in Execution brought a Writ of Error in *B. R.* and before the Judgment was affirmed, he obtained a *Releaſe* of all Actions, Debts, Duties, Executions, *&c.* and afterwards the Judgment was affirmed; and upon a *Scire facias* againſt the Bail, they pleaded this *Releaſe:* It was the Opinion, that both the Debt and Bail were diſcharged. 2 *Bulſtr.* 231. But before Judgment given againſt the Principal, there can be nothing due from the Bail, to be *releaſed* or barred. 5 *Rep.* 71. Such a *Releaſe* before Judgment, is no Bar of Execution againſt the Bail; for here is no abſolute, but a contingent Duty. *Goldſ.* 162. Where two are bound jointly in a Bond or Obligation, and the Obligee *releaſes* to one of them, this ſhall diſcharge the other; and no Relief ſhall be had in Equity thereupon. 1 *Inſt.* 232. 1 *Cro.* 648. A *Releaſe* by a Lord to one Jointenant ſhall extend to both of the Jointenants. If two commit a Treſpaſs againſt a Man, his *Releaſe* to one of them ſhall diſcharge the other; for againſt joint Treſpaſſers there can be but one Satisfaction. 1 *Inſt.* 232. 2 *Roll. Abr.* 410. *Hob.* 66. And when a Promiſe is of two Parts, a *Releaſe* of one Part will be a *Releaſe* of the other Part. 1 *Inſt.* 232. Trover was brought againſt two, and one pleads a *Releaſe*, and the other Not guilty; the Jury find him Guilty who pleaded Not guilty, and alſo the *Releaſe* for the Party, who pleaded it: The Judgment was thereupon ſtay'd, becauſe a *Releaſe* to one joint Treſpaſſer is a *Releaſe* to all the Reſt; though they may ſever in Pleading, yet one Jury ſhall aſſeſs Damages for all: And the Plaintiff having joined and made him a Defendant with one to whom he had *releaſed*, the *Releaſe* ſhall extend to diſcharge him who pleaded Not guilty. 1 *Lill. Abr.* 439. In an *Aſſiſe* by two, the *Releaſe* of one of the Parties is no Bar for the Lands, nor for the Damages which enſue in the Realty. *Cro. Eliz.* 649. And a *Releaſe* of an Action by one Churchwarden is not good; nor can both of the Churchwardens *releaſe* to the Prejudice of the Church. 1 *Danv. Abr.* 788. A *Releaſe of all Manner of Actions*, diſcharges all Real, Perſonal and mix'd Actions, and Cauſes of Action ſubſiſting at the Time of the *Releaſe:* And a *Releaſe* of all Actions Real or Perſonal, *releaſes* mix'd Actions; but by a *Releaſe* of all Actions Real and Perſonal, a Writ of Error is not *releaſed*; nor is it a Bar to an Execution, if the Party is not put to a *Scire facias*; though a *Releaſe of all Suits*, will be a Bar to an Execution, except in the Caſe of the King: A *Releaſe* of all Actions bars only in civil Actions: not in Appeal of Death, *&c. Litt.* 406. 1 *Inſt* 285. 4 *Rep.* 63. 8 *Rep.* 152. *Releaſe* of all Actions generally, is better than to ſay all Actions Real and Perſonal. 2 *Lill. Abr.* 437. In Debt for Arrears of an Annuity, the Defendant pleads a *Releaſe* of all Actions before the Day of Payment; and it was held to be an ill Plea, becauſe a *Releaſe* cannot diſcharge a Duty not then in Being. 1 *Inſt* 292. *Cro. Eliz.* 897. An Annuity, or Rent payable at a Time to come, cannot be diſcharged by a *Releaſe* of all Actions; but one may *releaſe* the Rent, *&c.* before the Day, by ſpecial Words. *Wood's Inſt.* 278. A *Releaſe* of all Actions, barreth not a Right, if there be other Means to come at it. 8 *Rep.* 159. *Releaſe* of *all Quarrels*, Controverſies, *&c.* amounts to a *Releaſe* of all Actions; but if a Man making ſuch a *Releaſe*, be diſpoſſeſſed of his Goods, he may take his Goods again, though he has *releaſed*; for ſuch a *Releaſe* doth not bar the Right; it is the ſame in *Releaſe* of all Actions. 1 *Inſt.* 292. 4 *Rep.* 63. 11 *Rep.* 82. A *Releaſe* of all Actions will not diſcharge a Covenant before broken; before Breach there is not any Duty or Cauſe of Action: By a *Releaſe* of *all Covenants*, a Covenant not broken may be *releaſed.* 1 *Rep.* 112. 5 *Rep.* 71. Upon a Bond for Performance of Covenants, the Obligee before any Breach *releaſes* all Covenants, and afterwards a Covenant is broken, the Obligation is not forfeited but diſcharged. 3 *Leon.* 105. A *Releaſe* of *all Statutes*, diſcharges all Statutes; *Releaſe* of *Errors*, all Writs of Error, *&c.* 1 *Inſt.* 76. A Defendant pleaded that after a Bond, *&c.* by him given, the Plaintiff *releaſed* to him all Errors, and all Actions, Suits, and Writs of Error; and upon Demurrer it was inſiſted that the Obligation makes the Duty, and the *Releaſe* of all Actions ſhould be a good Bar; but adjudged that this was a ſpecial *Releaſe*, and extends only to the Errors, and that the Debt on the Bond was not *releaſed*. *Hetl.* 9, 15. 3 *Nelſ. Abr.* 76. By *Releaſe* of all *Debts*, Debts upon Specialties, Executions, *&c.* are diſcharged; and by *Releaſe* of all Actions and Duties, a *Releaſe* which was in Queſtion was held to be *releaſed*. 1 *Inſt.* 291. *Owen* 71. A *Releaſe* of all *Dues or Duties*, will *releaſe* perſonal Actions, and Executions; not bar a Writ of Account, there being nothing certainly due before the Account made: A *Releaſe* of all Actions will be a good Bar in Account; though a *Releaſe* of all Accounts, ſhall be extended only to Account. 8 *Rep.* 153. 2 *Roll Abr.* 404. By *Releaſe* of all Advantages, it is ſaid Actions of Debt upon Account are diſcharged. 8 *Rep.* 150. *Releaſe* of all *Judgments*, bars a Man from the Fruit and Effect of any Judgment he hath againſt the Releaſee; and if Execution be not taken out, he is barred of it: Alſo if the Party be in Execution when this *Releaſe* is made, he and his Land may be diſcharged by *Audita Querela.* 1 *Inſt.* 290. By a *Releaſe* of all Executions, a Perſon bars himſelf of the having, or taking out any Execution upon a Judgment, *&c. Litt. Sect.* 507. The *Releaſe* of all *Demands* is the beſt *Releaſe* of all, and the moſt effectual to bar Actions, Rights, *&c.* and includes in it moſt of the others: By this *Releaſe*, all Rights, and Titles to Lands, Conditions before broken or after, Contracts, Covenants broken, Rents, Annuities and Arrearages of Rents and Annuities, Debts, Duties, Obligations, Recognizances, Statutes, Judgments, Executions, *&c.* all Manner of Actions Real and Perſonal, &c. are barred and diſcharged. *Litt.* 508. 1 *Inſt.* 291. 5 *Rep.* 71. 8 *Rep.* 153. *Dyer* 56. But a *Releaſe* of all Demands doth not extend to ſuch Writs, where nothing is demanded; as to bar a Writ of Error, to reverſe an Outlawry, &c. 8 *Rep.* 152. And it hath been reſolv'd, that a *Releaſe* before any Rent due, of all Demands that the Releaſor had or ſhould have againſt the Releaſee, ſhall not *releaſe* the accruing Rent not being then due. 1 *Inſt.* 291. 1 *Lev.* 29. 2 *Lev.* 210. A *Releaſe* of all Demands may diſcharge all Rent actually due, but not the growing Rent afterwards due, and which is incident to the Reverſion; and if the *Releaſe* be pleaded in Bar to the whole Rent, when 'tis good only for Part, the Plea is ill. 2 *Salk.* 578. In Award, that all Suits ſhould ceaſe, and that the Defendant ſhould pay 10 *l.* and the Plaintiff on Payment thereof ſhould *releaſe* all Demands, &c. It was held, that if the Plaintiff would not receive the 10 *l.* becauſe he would not be obliged to *releaſe*, and the Defendant tendered, and he refuſed, the Plaintiff was as much obliged to *releaſe* upon the Tender, as if he had actually received the Money. 1 *Salk.* 74, 75. One in Conſideration that the Plaintiff had lent him 10 *l.* and aſſign'd over a Bond to him, and had promiſed to *releaſe* him from all Demands; he promiſed that if the Money was not received upon the Bond, he would at ſuch a Time pay 20 *l.* The Plaintiff avers all done on his Part, and that the 20 *l.* was not paid: And the Defendant pleads the *Releaſe*; but it was not good, the *Releaſe* being Part of the Conſideration, without making of which the Plaintiff could not maintain his Action: Alſo it doth not *releaſe* what is future. *Cro. Jac.* 623. 2 *Lill. Abr.* 439. *Releaſe* of all Demands doth not avoid Obligations ſubſequent to the *Releaſe*; yet where a Man is bound in an Obligation to pay 10 *l.* at *Michaelmas*, a *Releaſe* of all Actions and Demands before *Michaelmas*, will be a good Diſcharge. *Litt.* 512. Notwithſtanding the Plaintiff could not have his Action till after *Michaelmas*, it is *Debitum in præſenti*, and although *ſolvendum in futuro.* *Ibid.* 5 *Rep.* 28. If a Man makes a *Releaſe* of all Demands to the perſonal Eſtate of another, this doth not *releaſe* a Bond; for a Bond is not a Demand to the perſonal Eſtate before Judgment and Execution, &c. And there is a Difference between a *Releaſe* of all Demands to the Perſon, and the perſonal Eſtate. *Yelv.* 214. 2 *Salk.* 575. A *Releaſe* of all Actions and Demands, in Caſe of Land, *releaſes* the Right and Entry: The *Releaſe* of a Right, or of all Demands, gives a Right; but it ſuppoſes him who *releaſes* to be out of Poſſeſſion. And a *Releaſe* may bar an Action, but give no Right. *Jenk. Cent.* 202, 268, 16. *Releaſe* of all *Claims*, is much of the ſame Nature, as the *Releaſe* of all Demands: But by *Releaſe* of all Demands, or all Claims, is not diſcharged any Thing whereof a *Releaſe* cannot be made. *Brigm.* 124. 5 *Rep.* 70. Rights and Titles of Entry, &c. may be *releaſed*; though they can't be granted over: A Duty that reſts meerly in Poſſibility, and Contingency, may not be *releaſed* before it happens. 1 *Inſt.* 266. 1 *Brownl.* 109. *Releaſe* of all Demands, &c. may be to a Time paſt, as until the firſt of *May* laſt, or the Day of the Date of the *Releaſe*; and this ſhall diſcharge all Actions till that Day, and none after. *Dyer* 307. 1 *Inſt.* 274. A Statute was acknowledged 3 *Octob.* and by a *Releaſe* dated the 2 *Octob.* the Cogniſee *releaſed* to the Cogniſor all Debts and Demands *uſque Confectionem* of the *Releaſe*, which was deliver'd the 4th Day; adjudged that the Statute was diſcharged, becauſe the Day of the Delivery is *Dies Confectionis* of the *Releaſe*; and that being after the Statute acknowledged, it muſt *releaſe* it; but if it had been a *Releaſe* of all Demands, *uſque datum* of the *Releaſe*, it had not been *releaſed.* *Dyer* 307. Releaſe *uſque diem dati* of a Bond, &c. excludes the Day whereon made. 2 *Mod.* 280. If a *Releaſe* be made on a particular Occaſion, that ſhall reſtrain the Generality of the Words. 3 *Lev.* 275. *Raym.* 399. 2 *Mod.* 277. And a general *Releaſe* of all Demands, &c. relating to a particular Perſon or Thing, ſhall not bar by the general Words, but only for that Purpoſe. 2 *Lev.* 214, 215. 3 *Nelſ. Abr.* 77, 78. If a Bond be entered into to *A.* to the Uſe of another; this Bond cannot be *releaſed* by *A.* And if an Obligee in Truſt for another *releaſes* to the Obligor all Demands, upon his own Account; this doth not *releaſe* the Obligation. 1 *Lev.* 235, 272. In Debt on a ſingle Bill made to *W. R.* to the Uſe of him and *L. R.* In this Caſe *L. R.* may not *releaſe* or ſue, becauſe he is not a Party to the Deed. *Ibid.* Where *A.* is bound to *B.* and then *B.* the Obligee reciting the Bond covenants not to ſue the Obligor, or to ſave him harmleſs; this is an abſolute *Releaſe*; and if it is to ſave him harmleſs upon a Contingency, then 'tis a conditional *Releaſe.* 2 *Salk.* 573. If one covenant with *J. S.* that if he will marry his Daughter, then to pay him 100 *l.* and he *releaſe* before Marriage; notwithſtanding this *Releaſe*, if he marry her after, he may recover it. *Godb.* 12. A Man may *releaſe* Part of any Debt due by Obligation, and not all. 1 *And.* 235. An Acknowledgment under Hand and Seal that a Debt is ſatisfied, is a good *Releaſe* of the Debt. 9 *Rep.* 52. And how a *Releaſe* is to be pleaded by the Defendant, &c. See 2 *Lutw.* 1178. *Releaſe of Lands*, Vide *Leaſe and Releaſe.*

Form of a *general* Releaſe.

KNOW all Men *by theſe Preſents, That I* A. B. *of*, &c. *Have remiſed*, releaſed, *and for ever quit-claimed; and by theſe Preſents do for me, my Heirs, Executors and Adminiſtrators, remiſe*, releaſe, *and for ever quit-claim* unto C. D. *of*, &c. *his Heirs, Executors and Adminiſtrators, all and all Manner of Action and Actions, Cauſe and Cauſes of Action and Actions, Suits, Bills, Bonds, Writings, Obligations, Debts, Dues, Duties, Reckonings, Accounts, Sum and Sums of Money, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, both at Law and in Equity, or otherwiſe howſoever, which againſt him the ſaid* C. D. *I ever had, now have, or which I, my Heirs, Executors and Adminiſtrators, ſhall or may have, claim, challenge or demand, for or by Reaſon or Means of any Act, Matter, Cauſe or Thing, from the Beginning of the World to the Day of the Date of theſe Preſents.* In Witneſs, &c.

Relegation, (*Relegatio*) Signifies a Baniſhing or Sending away, for a Time only: As *Abjuration* is a Forſwearing the Realm for ever. *Co. Litt.* 133.

Relief, (*Relevium, Relevatio*, from the Lat. *Relevare*) Is a certain Sum of Money that every Freehold Tenant being at full Age payeth unto his Lord at the Death of his Anceſtor, on his Entrance upon or taking Poſſeſſion of the Inheritance; by Payment whereof the Heir *relieves*, and as it were raiſeth up again his Lands, after they were fallen down into his Superior's Hands. 1 *Inſt.* 76. *Compl. Cop. Sect.* 25. And to explain this Word; firſt, a *feudatory* or beneficiary Eſtate in Lands was granted only for Life; and after the Death of the Tenant it returned to the chief Lord, for which Reaſon it was called *Feudum caducum, viz.* fallen to the Lord by the Death of his Tenant; afterwards theſe feudatory Eſtates being turned into an Inheritance by the Aſſent of the chief Lord, when the Poſſeſſor of ſuch an Eſtate died, it was termed *Hæreditas caduca, i. e.* fallen to the Lord, but to whom the Heir having paid a Sum of Money, he did then *relevare Hæreditatem caducam* out of the Lord's Hands, and the Money thus paid was denominated a *Relief:* But this is underſtood after the Conqueſt; for in the Time of the *Saxons*, there were no *Reliefs*, but *Heriots* paid to the Lord at the Death of his Tenant. *Blount.* We may read in the Laws of *Will.* 1. called the Conqueror, and of King *Hen.* 1. that

Reliefs were anciently paid by Earls, Barons, *&c.* yet the Payment was very uncertain, till the Statute of *Magna-Charta*, *cap.* 3. by which it was made certain, *viz.* it was declared to be the fourth Part of the annual Revenue which was required by Law to ſupport the Dignity of the Perſon; as the Son of a Knight was to pay for a *Relief* 5 *l.* the fourth Part of 20*l.* *per Ann.* a Son of a Baron to pay 100 Marks, the fourth Part of 400 Marks *per Ann.* the Son of an Earl 100 *l.* the fourth Part of 400 *l.* a Year; and of a Duke 200 *l.* which is the fourth Part of 800 *l.* *per Ann.* ſuch Eſtates being at that Time reputed ſufficient to ſupport theſe Dignities; and of others, according to the ancient Cuſtom of Fees. 9 *Rep.* 122. 3 *Nelſ. Abr.* 79, 81. The Heir of every Anceſtor who held by *Knight-Service*, was to pay a *Relief*; and wherever there was a Title of Wardſhip, there was likewiſe a *Relief* to be paid; but the Lands muſt come to the Heir by Diſcent, otherwiſe no *Relief* was due; for many Biſhops and Abbots had Baronies, and yet they paid no *Relief*, becauſe they came in by Succeſſion, not by Diſcent. *Ibid.* A *Relief* may be due by *Tenure*; as for Inſtance; a Man may hold Land of *A. B.* as of ſuch a Manor by Rent, and a cuſtomary *Relief* of one Year's Value, *&c.* 3 *Bulſt.* 323. And there is *Relief-Service*, and *Relief-Cuſtom*: The *Relief*-Service is that which is paid upon the Death of any Free holder: And *Relief*-Cuſtom is that which is paid on the Death or Alienation of a Freeholder, according to the Cuſtom of the Place. *Coke's Compl. Cop. Sect.* 25. 1 *Inſt.* 83. But *Reliefs* are more properly divided into a *Relief* at the Common Law, and by Cuſtom; a *Relief* being no Service, but an Incident to and the Fruit of it, 2 *Lill. Abr.* 440. 3 *Rep.* 60 *Reliefs* are paid by Freeholders only: In many Places, the *Relief* is Half a Year's or a Year's Rent and Profit of the Land; and in ſome, double the Rent of that Year; and for this the Lord may diſtrain, but cannot have an Action of Debt, tho' his Executors or Adminiſtrators may bring an Action of Debt for it, and cannot diſtrain. 1 *Inſt.* 83. And Debt lies by an Executor againſt an Executor of an Heir, who was to pay a *Relief*. *Cro. Eliz.* 883. Acceptance of the Rent of a new Tenant, is no Bar of a *Relief* due from a former Tenant. *Cro. Eliz.* 886. 3 *Rep.* 66. *Moor* 643. And an Avowry for a *Relief* is good, without ſhewing particularly how due; becauſe a *Relief* is incident to every Tenure *de communi jure*, though it is not Parcel of it; and if ſeparated, muſt be ſhewn on the other Side. 3 *Lev.* 145. See *Latch* 37, 129.

Religion, (*Religio, à religando*) Signifieth Piety, Devotion, and the Worſhip of God: And there are many Temporal Laws, made for the Support of *Religion*. The Law hath ſo tender a Regard for the Intereſts of the King and of *Religion*, that an Indictment will lie for doing any Thing which plainly appears immediately to tend to the Prejudice of either of them; and be good, though it do not expreſly complain of it as a common Grievance. 1 *Hawk. P. C.* 198. Offences tending to ſubvert all *Religion* and Morality, which are the Foundation of Government, are puniſhable by the temporal Judges by Fine and Impriſonment, and alſo ſuch corporal Puniſhment as the Court in Diſcretion ſhall think fit; and ſeditious Words, in Derogation of the eſtabliſhed *Religion*, are indictable, as tending to a Breach of the Peace. *Ibid.* 7. So alſo prophane Scoffing of the Scripture; Impoſtures in Religion, *&c.* By Statute, no Perſon in Authority to execute Spiritual Juriſdiction, has Power to adjudge any Matters of *Religion* to be Hereſy, but ſuch as have been ſo adjudged by Canonical Scripture, by one or more of the General Councils, or ſhall be adjudged by the Parliament with the Aſſent of the Convocation. 1 *Eliz. cap.* 1. The 13 *Eliz.* eſtabliſhes the Thirty-nine *Artticles of Religion*, to be ſubſcribed by the Clergy, *&c.* But Proteſtant Diſſenters are exempted from ſubſcribing the 34, 35 and 36th Articles, by 1 *W. & M. cap.* 18. Perſons educated in the Chriſtian *Religion*, who by Writing or Speaking, deny any one of the Perſons in the Holy Trinity, to be God; or aſſerting there are more Gods than one; or who ſhall deny the Chriſtian *Religion* to be true; or the Old and New Teſtament to be writ by divine Authority, are rendered incapable to hold any Office or Imployment; and being convicted of a ſecond Offence, are diſabled to proſecute any Action, to be Executor, Guardian, *&c.* and ſubject to Impriſonment for three Years: But for the firſt Offence, the Offender ſhall be diſcharged from Penalties, on renouncing his Errors in open Court. 9 & 10 *W.* 3. *cap.* 32. If any Perſon ſhall come into a Church, Chapel, or Congregation for *Religion*, and diſturb the ſame, or miſuſe the Teacher, he ſhall forfeit 20 *l.* 1 *W. & M.*

Religious Houſes, Are Houſes ſet apart for the Uſe or Exerciſe of *Religion*, and other pious and charitable Uſes; as Monaſteries, Hoſpitals, *&c.*

Religious Men, (*Religioſi*) Such as enter into ſome Monaſtery or Convent, there to live devoutly: And in ancient Deeds of Sale of Land, the Purchaſers were often reſtrained by Covenant from giving or alienating it *viris Religioſis*, to the End the Land might not fall into *Mortmain*. Cowel.

Religious Orders, For the Qualification of Clergy. See *Ordination*.

Relinquiſhment, Is a forſaking, abandoning, or giving over. It hath been adjudged, that a Perſon may *relinquiſh* an ill Demand in a Declaration, *&c.* and have Judgment for that which is well demanded. *Stile* 175. In Aſſiſe the Count was of a Meſſuage, and four Acres of *Land* in *B.* and the Jury having a View only of the Land, the Demandant *relinquiſhed* his Plaint to the Houſe. *Dyer* 66. But on Aſſiſe where the Plaint was for Fifty-three Shillings and Four Pence Rent, no Part of that Rent could be *relinquiſhed*, becauſe a Rent is an entire Thing. *Ibid.* 61. In a Writ of Annuity, where the Jury found the Arrears, but did not aſſeſs Damages or Coſts, which could never be ſupply'd by a Writ of Enquiry; the Plaintiff was admitted to *relinquiſh* and releaſe the Damages, and had Judgment for the Arrears. 11 *Rep.* 59.

Reliques, (*Reliquiæ*) Are ſome Remainders, ſuch as the Bones, *&c.* of Saints that are dead, preſerved by Perſons living, with great Veneration, as ſacred Memorials of them: They are forbidden to be uſed or brought into *England*, by ſeveral Statutes; and Juſtices of Peace are empowered to ſearch Houſes for popiſh Books and *Reliques*, which when found are to be defaced and burnt, *&c.* 3 *Jac.* 1. *c.* 26.

Remainder, (*Remanentia*) Is an Eſtate limited in Lands or Tenements, to be enjoyed after the Eſtate of another expired; as if one grant Lands for Term of Years, or Life, and afterwards the ſame to *remain* to another Perſon, and his Heirs. *Bract. lib.* 2. *cap.* 23. 2 *Lill. Abr.* 441. It is alſo defined to be the Reſidue of an Eſtate in Land, depending upon a particular Eſtate, and created together with the ſame; and if a Man ſeiſed in Fee, lets Lands or Tenements for Years, the Remainder over to another for Life, in Tail, or in Fee; here is firſt a particular Eſtate for Years, created out of a Fee, and afterwards the Reſidue diſpoſed of, which we call a *Remainder*; though the particular Eſtate, and all the *Remainders*, make but one Eſtate in Law. 1 *Inſt.* 49, 143. *Plowd.* 25, 35. And where it depends upon a Leaſe for Life or Years, Livery is to be made on the Leaſe, or the *Remainder* will not paſs. *Ibid.* *Remainders* and *Reverſions* are ſo called, becauſe they are Eſtates in Expectancy only; they are a preſent Intereſt, yet ſtand in a Degree removed from the Poſſeſſion till the particular Eſtate is determined: And as by a Reverſion, after the appointed Term, the Eſtate returns to the Donor or his Heirs; ſo by a *Remainder*, it goes to ſome third

Perſon or a Stranger. *Wood's Inſt.* 152. *Spelm.* If a Man make a Leaſe for Life, with *Remainder* to his Heirs, or *Remainder* to himſelf, and his Heirs, or to himſelf and the Heirs of his Body, the *Remainder* is void, and his Eſtate is not altered: But it is otherwiſe if hè convey the Land by Way of *Uſe*, with ſuch Limitation; and if he make a Feoffment to the Uſe of himſelf for Life, Remainder to the Heirs Male of his Body; this is an Entail executed in him; and ſo it is if he covenant to ſtand ſeiſed in the ſame Manner. 1 *Ventr.* 378. 1 *Mod.* 159. 3 *Salk* 292. A Leaſe was made for Life, and afterwards the Leſſor reciting that Leaſe, demiſed the *Remainder* to another; *Habendum* the ſaid *Remainder*, after the Determaination of the firſt Leaſe, for twenty Years; and it was held, that the Reverſion did paſs by the Name of the *Remainder:* And if a Man grants Lands to another Perſon, and to the Heirs of his Body; and for Want of ſuch Iſſue, that the Lands ſhall revert to the Grantor; by theſe Words the *Remainder* doth paſs. *Dyer* 46. 3 *Nelſ. Abr.* 90. And a Leſſor by Deed reciting that *A. B.* held a Cloſe of him at Will, granted the ſame Cloſe to him for Life, rendring Rent to the Leſſor, and by the ſame Deed granted the Reverſion to another in Fee; adjudged that *A. B.* had an Eſtate for Life by way of Confirmation, and that the other had a good Eſtate in *Remainder*, but not in Reverſion. 1 *And.* 23. Though an Eſtate at Will is not ſuch a particular Eſtate, whereon a *Remainder* may depend. *Wood* 150. In Deeds, by limited *Remainders*, the Reverſion may paſs: There being a Grandfather, Father, and Son, *&c.* the Grandfather levied a Fine to the Uſe of himſelf for Life, *Remainder* to the Father in Tail, and *Remainder* to the right Heirs of the Grandfather; here the Grandfather had an Eſtate in Fee, expectant upon the Determination of the Eſtate-tail, as a Reverſion, and not in *Remainder.* 2 *Rep.* 91. And a Feoffment was made in Fee by a Man to the Uſe of himſelf for Life, *Remainder* over to the Uſe of *A. B.* for Life, *Remainder* to the right Heirs of the Feoffor; and it was reſolved, that the Fee-ſimple was in the Feoffor in the Nature of a Reverſion, not of a *Remainder* to his Heirs, as it proceeded from himſelf, and was his own Act. 1 *And.* 256. 3 *Nelſ. Abr.* 90. The following Rules are to be obſerved, in the Creation of *Remainders:* There muſt be a particular Eſtate precedent made at the ſame Time, that the *Remainder* may depend upon it; and the particular Eſtate muſt continue till the *Remainder* ſhall veſt; the *Remainder* is to commence in Poſſeſſion, at the very Time the particular Eſtate ends, for there muſt not be a Mean between; and paſs out of the Leſſor executed or executory at the Time of the Poſſeſſion taken by the particular Tenant; but it cannot depend upon a Matter *ex poſt facto:* Alſo a *Remainder* may depend upon a Condition, that is not repugnant or againſt Law, and then it will paſs either executed or executory; the Perſon to whom the *Remainder* is limited, is to be capable of it at the Time it was created, or by common Poſſibility during the particular Eſtate; and the Thing whereof a *Remainder* ſhall be created, muſt be *in eſſe* before and at the Time of the Appointment and Creation thereof. 1 *Rep.* 66, 129, 130. 2 *Rep.* 51. 3 *Rep.* 20. 2 *Inſt.* 378. *Noy's Max.* 31. But in ſome Caſes, there may be a *Remainder*, without a particular Eſtate *in eſſe* to ſupport it; as in the Caſe of an Uſe in *Remainder*, by the Statute of Uſes. 2 *Lill. Abr.* 443. And if the *Remainders* are limited by a Deviſe, they are good without a particular Eſtate; though not where the Eſtate paſſes by Livery and Seiſin; for when the particular Eſtate is defeated, the Livery is gone, and all the Eſtates which depend upon it. *Dyer* 126. *Plowd.* 403. A *Remainder* muſt be created with the particular Eſtate, and be limited for a certain Eſtate: A Cogniſor levied a Fine to the Uſe of himſelf for Life, and afterwards to the Uſe of his two Daughters, till his Son returned from beyond Sea, or came of Age, or died, which ſhould firſt happen; and then *Remainder* to his Son, *&c.* This was a good *Remainder*, and did not depend upon any Uncertainty, becauſe though his Returning or Coming of Age was incertain, yet his Death is certain. *Cro. Eliz.* 269. If a Perſon hath a Son nine Years old, and make a Leaſe till his Son come of full Age; and after that, that it ſhall remain to another in Fee: If he live to his Age, it will be a good *Remainder*; and otherwiſe not. 3 *Rep.* 20. *A.* ſeiſed of Lands makes a Leaſe for Years to *B. Remainder* in Tail to *C.* and *Remainder* to the right Heirs of *B.* In this Caſe *B.* hath nothing in the Fee: It is a contingent *Remainder* to the Heirs of *B.* and if *C.* dies without Iſſue in *B.*'s Life-time, the *Remainder* is void; for *B.* during his Life cannot have an Heir. *Jenk. Cent.* 248. If a Leaſe be made for Years, the *Remainder* to the right Heirs of *J. S.* who is then living; this *Remainder* is not good: But if it be a Leaſe for Life, with ſuch a *Remainder*, it may be good. *Plowd.* 83. 1 *Rep.* 132, 136. A Leaſe is for Life, with Condition that if the Leſſee die, it ſhall remain over: Or if Lands be given to *A.* and *B.* ſo long as they live jointly together, the *Remainder* to the right Heirs of him that dieth firſt; theſe are good *Remainders.* *Plowd.* 25. 1 *Inſt.* 378. A *Remainder* to the Wife one ſhall marry, and that ſhall ſurvive him, is a void *Remainder:* But where a Leaſe was made to Husband and Wife for their Lives, *Remainder* to the Heirs of the Survivor; it was held a good *Remainder* notwithſtanding the Incertainty, and that the Husband after her Death ſhould recover the Land. *Moor Ca.* 750. *Godb.* 139. If an Eſtate be made to one and his Heirs, during the Life of *W. R.* this is a good precedent Eſtate on which to limit a *Remainder:* And ſome *Remainders* may be good, although the Eſtates preceding be void and never take Effect. A Uſe was to a Man's ſelf for Life, the *Remainder* to his Executors for Years, *Remainder* in Tail, and he made no Executor; yet it was adjudged, that the *Remainder* in Tail was good. *Finch* 133. *Moor Ca.* 686, 244. Where a Leaſe is granted to a Man during Life, with *Remainder* to another, and the Leſſee for Life wave his Eſtate; the *Remainder* will be void. 1 *Rep.* 110. Though where an Eſtate could not be waved, becauſe of the Prejudice of the *Remainder.* See *Jenk. Cent.* 334. If a Leſſor diſſeiſe his Tenant for Life, and after make a new Leaſe to him, with a *Remainder* over; the *Remainder* ſhall be void; for the Leſſee for Life is in of his firſt Eſtate, and the laſt Eſtate for Life which was the Foundation is gone. *Plowd.* 25. A Perſon conveys Lands to the Uſe of himſelf for ninety-nine Years, if he lives ſo long, *Remainder* to his firſt, ſecond, or third Son, *&c.* this *Remainder* is not good, for Want of a Freehold to ſupport the ſame; a Freehold being neceſſary to ſupport every *contingent Remainder*; and it is againſt the Rules of Law that ſuch a *Remainder* can be ſupported by a Term for Years, or by any Thing leſs than a Freehold. 2 *Lill.* 446. *Moor* 486, 718. 4 *Mod.* 54. 2 *Salk.* 679. One may make a Leaſe for Years to one, ſo long as he ſhall live of thoſe Years; *Remainder* to another for the Reſt of the Years: But he cannot give a Term for Years to one for Life; and after the Expiration of the ſaid Term, *Remainder* to another. 1 *Rep.* 153. 2 *Roll. Abr.* 415. Though in a Deviſe, or Laſt Will and Teſtament, a Leaſe for Years may be given to one for Life, or ſo long as he ſhall live; and after to another during the Reſidue of the Term. 8 *Rep.* 94. 10 *Rep.* 47. 1 *Roll. Abr.* 610. A Rent may be deviſed to one for Life, with *Remainder* over. 2 *Salk.* 577. All contingent *Remainders* before the Statute 10 *&* 11 *W.* 3. were to be ſupported by particular Eſtates for Life, *&c.* and to veſt either during ſuch

Eſtates, or at that very Inſtant when the particular Eſtates were determined: For if thoſe Eſtates were determined, before the Contingencies happened, then the *Remainders* were void. Tenant for Life, made a Feoffment of his Eſtate, the contingent *Remainder* was deſtroyed; but not if the Tenant had been diſſeiſed, becauſe there the particular Eſtate remains in Right, and may be reveſted; ſo that the *Remainder* is good. 3 *Nelſ. Abr.* 84. 1 *Rep.* 66, 67. 'Tis held that a Right of Action, will not ſupport a contingent *Remainder*; but a preſent Right of Entry will. If there be Tenant for Life with a contingent *Remainder*, and he makes a Feoffment in Fee upon Condition; here if the Contingency happens before the Condition is broken, it is gone and deſtroyed: But if before the happening of the Contingency, the Tenant for Life enters for the Condition broken, the contingent *Remainder* ſhall be revived; and the Contingency, if it happen, will then veſt. 1 *Ld. Raym.* 314, 316. A Teſtator being ſeiſed of Lands deviſed them to *H.* his Nephew, eldeſt Son of his Brother *R. L.* for Life, *Remainder* to his firſt Son in Tail, *Remainder* to *R.* the ſecond Son of *R. L.* with ſeveral *Remainders* over: *H.* entered by Virtue of this Deviſe, and died before his Son was born, leaving his Wife with Child of a Son, and *R.* the ſecond Son of *R.* entered as in *Remainder*, and about ſix Months afterwards the Son of *H.* was born; and adjudged, that this being a contingent *Remainder* to that Son, who was not born when his Father, who had the particular Eſtate for Life, died, it was therefore void; and *R.* being the next in *Remainder*, and entering before the Son of H. was born, it was veſted in him by Purchaſe; this Judgment was affirmed upon a Writ of Error in *B. R.* But it was reverſed in the Houſe of Lords, for it being a Caſe ariſing upon a Will, it ſhall be conſtrued according to Equity, and agreeable to the Intention of the Teſtator, which could never be to diſinherit the Heir of his Family, upon ſuch a Nicety in the Law. 4 *Mod.* 282. And becauſe ſuch Caſes might often happen, it was enacted by the 10 *&* 11 *W.* 3. *cap.* 16. That where any Eſtate is limited in *Remainder*, to the Sons or Daughters of any Perſon, with *Remainders* over to others, and a Son ſhall be born after the Deceaſe of his Father, ſuch Son ſhall take in the ſame Manner as if born in the Life-time of his Father; although no Eſtate is limited to Truſtees after the Father's Deceaſe, to preſerve ſuch contingent *Remainder* to ſuch after-born Son, *&c.* A Perſon not *in eſſe* at firſt may take a *Remainder* by Way of Purchaſe, if he be *in eſſe* before the particular Eſtate ends; and it is here ſaid, that the *Remainder* ſhall be in Abeyance, until the Birth of the Child. 2 *Lill. Abr.* 404. A Feoffment was made to the Uſe of Husband and Wife for their Lives, *Remainder* to the firſt Son in Tail, *Remainder* to the Husband and Wife, and to the Heirs of their two Bodies, they having then no Son: In this Caſe, the Husband and Wife are Tenants in Tail; but when a Son is born, then the Eſtate is opened again, and they are Tenants for Life, *Remainder* to the Son in Tail, *Remainder* to them in Tail; and the Reaſon is, becauſe all theſe Eſtates were created by one and the ſame Conveyance; wherefore the *Remainder* ſhall veſt in the Husband and Wife 'till the Contingency happens, when the Eſtates ſhall be open and disjoined, to let in the contingent *Remainder* to the Son, which before were united in the Husband and Wife: But where the *Remainder in eſſe* comes to the particular Eſtate by any Means whatſoever, after the original Conveyance, it is otherwiſe. 1 *Inſt.* 28. 2 *Saund.* 385. Tenant for Life, with *Remainder* to his Wife for Life, *Remainder* to his firſt and ſecond Son, *&c.* in Tail, *Remainder* to the right Heirs of the Tenant for Life, who afterwards committed Treaſon, and then his Son was born, and the Father was attainted: It was adjudged, that whether the Son was born before or after the Attainder, the contingent *Remainder* to him was not diſcharged by the Veſting of the Eſtate in the Crown, during the Life of the Father; becauſe of the intermediate Eſtate to the Wife for Life, which ſupported the *Remainder.* 2 *Salk.* 576. Ruled by *Hale* Chief Juſtice, that where *W. R.* is Tenant for Life, *Remainder* to *R. R.* for Life, *Remainder* to *C. W.* for Life, *Remainder* to *L. L.* and the Heirs of his Body: If *W. R.* and *R. R.* join in a Fine, the Right of Entry of *C. W.* preſerves the contingent Eſtate over: And if there be Tenant for Life, *Remainder* to his firſt, ſecond and third Sons, the like *Remainder* to others, and their Sons, *&c.* one of which hath Iſſue a Son, and then he and the others join in a Fine to Tenant for Life, who after makes a Feoffment; by this the *Remainders* are not deſtroyed, as there is a Son, of one of the *Remainder*-Men born, who has a Right of Entry left in him, which will ſupport the *Remainders.* 1 Mod. 92. *Contingent Remainders* are where the Eſtate is to take Place upon an uncertain Event; and are preſented by making a Feoffment, *&c.* to the Uſe of *A. B.* for Life, *Remainder* to the Uſe of the Feoffees, for the Life of *A. B.* and ſo on for the contingent *Remainders*, when he that hath the firſt Eſtate cannot deſtroy the *Remainder.* 1 Ventr. 189. 10 *Rep.* 85. A contingent *Remainder* doth not depend upon a Reverſion, which comes after; but upon the Eſtate, which precedes it: And may be deſtroyed by levying a Fine, ſuffering a Recovery, or otherwiſe deſtroying the particular Eſtate upon which the contingent Eſtate depends, before the Contingency happens. 2 *Lill.* 446. Alſo where the particular Eſtate is drowned in the Reverſion, the contingent *Remainder* depending upon it is gone. 2 *Saund.* 382. If Feoffees, who have only an Eſtate during the Life of a Son, *&c.* where divers *Remainders* are limited over, make a Feoffment in Fee to him; by the Feoffment all the future *Remainders* are deſtroyed, becauſe the Eſtate for Life on which they were ſupported, was forfeited by it. 1 *Rep.* 120. Land was deviſed to the Father for Life, *Remainder* to the next Heir Male of the Father, and to the Heirs Males of his Body; the Father made a Feoffment with Warranty; and it was held, that by the Feoffment of the Tenant for Life, the *Remainder* was deſtroyed; for the particular Eſtate for Life being determined by the Feoffment, by Conſequence he in *Remainder* ought to enter for the Forfeiture; and here the immediate *Remainder* being limited to the next Heir Male, he could not enter as ſuch, as he cannot be Heir whilſt his Father is living. 1 *Rep.* 66. It has been adjudged, that if an Eſtate be deviſed to *A.* for Life, the *Remainder* to the right Heirs of *B.* In that Caſe, if *A.* dies in *B.*'s Life-time, this being a contingent *Remainder* is void; for that the Fee does not deſcend during the Life of *B.* to ſupport ſuch *Remainder.* 2 *Peere Will.* 511. There are *croſs Remainders* in Wills and Deeds; as where the Teſtator deviſeth an Eſtate to two Perſons, and that each ſhall be the other's Heir, *&c.* but ſuch croſs *Remainders* are ſeldom or never allowed by Implication: And though they are permitted between two Perſons, they are rarely amongſt three or more; unleſs it plainly appears by the Will, that the Teſtator ſo intended. 2 *Roll. Rep.* 281. 3 *Nelſ. Abr.* 98. If a Man deviſe one Acre of Land to *A.* the eldeſt Son, and the Heirs Males of his Body, another Acre to B. the ſecond Son in like Manner, and another Acre to *C.* the third Son in the ſame Manner; and if they all die without Iſſue of their or any of their Bodies, or either of them, *Remainder* over; here are croſs *Remainders* among all the three Sons, by reaſon of the Words or any of their Bodies, *&c.* *Dyer* 303. 1 *Ventr.* 224. Three Things one ſhall have by *Remainder*, by Conveyance at the Common Law: A *Remainder* veſted; Poſſeſſion in Law; and Poſſeſſion in Fact. *Plowd.* 25. 2 *Lill.* 445. A Man makes a Conveyance to the Uſe of himſelf for Life, *Remainder* to the eldeſt Child; he hath Iſſue a Daughter, and afterwards a Son; as ſoon as the Daughter is born, the *Remainder* is veſted in her, and ſhall not be deveſted by the Birth of the Son. 2 *Leon.* 219. In a Limitation of a *Remainder*, the Word *Puer* may be conſtrued either a Son or Daughter; but in a Family Settlement it ſhall be intended a Son, where the Sons are always preferred: And where a Tenant in Tail ſuffered a Recovery to Uſes, with *Remainder Seniori Filio* of his Body in Tail, *&c.* and afterwards the ſame Perſon and his Wife levied a Fine to Uſes, *Remainder* to the eldeſt Child of the Husband, *Remainder* over; after which the Husband had Iſſue a Daughter, and a Son after that, and then the Father died; adjudged that the Son ſhall have the Land, and not the Daughter, by reaſon of the firſt Limitation. *Bendl.* 29. *Dyer* 337. If a *Remainder* be *Seniori puero* in Tail, it ſhall be intended a Son, and not a Daughter, who ſhall enjoy the Land. *Owen* 64. *T. P.* being ſeiſed of Land which deſcended to him as Heir on the Part of his Mother, levied a Fine thereof to *A.* and *B.* to the Uſe of them and their Heirs, in order to make them Tenants of the *Præcipe*; upon which a common Recovery was had, and the Uſes declared to the ſaid *T. P.* for Life, *Remainder* to his Wife for Life, *Remainder* to his firſt and ſecond ſon, *&c.* in Tail, with *Remainder* to his own right Heirs, afterwards *T. P.* and his Wife died without Iſſue; and in Ejectment the Queſtion was, whether this Limitation of the *Remainder* to the right Heirs of *T. P.* did create a new Eſtate in him deſcendible to the Heirs general; but it was reſolved, that the *Remainder* ſhall be to the Heirs of *T. P.* on the Part of his Mother, according to the ancient Eſtate and Uſe which he had before the Fine and Recovery, as it did ariſe immediately out of the Eſtate which moved from him. 2 *Salk.* 590. A *Remainder* may not be limited after a Fee-ſimple; becauſe the whole Eſtate is in the Grantee, *&c.* and one Fee-ſimple cannot remain upon another. 1 *Plowd.* 29. *Raym.* 29. Tenant in Tail cannot limit a *Remainder* over by Deed; for an Eſtate for his own Life, is as long as he can grant: But where there is an Eſtate-tail, with Condition, that if the Tenant in Tail aliens in Fee, Fee-tail, *&c.* then the Eſtate to ceaſe, and the Land to remain to another; this is a void *Remainder*; the Alienation veſts the Eſtate in the Alienee, or the Donor. 2 *Rep.* 52. 1 *Lutw.* 832. *Wood's Inſt.* 150. A Proviſo will not make a *Remainder*; but it may determine it. *A.* leaſed to *B.* for Life, *Remainder* to *C.* Provided that if *A.* had a Son who ſhould live to ſuch an Age, then the Eſtate ſhould remain to his Son in Tail; he had ſuch a Son, and it was held that he ſhould not have the Eſtate. *Cro. Eliz.* 360. 2 *Lill. Abr.* 444. But *vide Plowd.* 25. He in *Remainder* of an Eſtate veſted, may grant, or deviſe the ſame; and if one in *Remainder* makes a Leaſe to commence at a Day to come, and afterwards grants his Eſtate in *Remainder* to another, it ſhall be charged with this Leaſe in the Hands of the Grantee, although the Lands were never in the Poſſeſſion of the Grantor. 3 *Nelſ. Abr.* 92. Action of the Caſe lies for him in *Remainder* againſt the Copyholder for Life committing Waſte, *&c.* 3 *Lev.* 130. A Perſon in *Remainder* may have a Writ of Intruſion, if any do intrude after the Death of Tenant for Life: And the Writ *Ex gravi Querela* lies to execute a Deviſe in *Remainder*, after the Death of Tenant in Tail, without Iſſue. *Nat. Br.* 441, 453. An Entry is requiſite to avoid a *Remainder* for Life: And a Claim of a *Remainder* by Force of a Condition, muſt be upon the Land. 2 *Rep.* 53. A Bargain and Sale made off from the Land, is not ſufficient to make a Claim, and then to paſs the *Remainder.* 2 *Rep.* 54. A *Remainder* limited after an Eſtate which is void, is alſo void: And where a Limitation is impoſſible and void, all the *Remainders* alſo are void. 1 *Saund.* 150. 2 *Lev.* 157. One that takes an Eſtate by way of *Remainder* muſt not be a Party to the Deed: For a *Remainder*-Man may take though he is not a Party to the Conveyance; but not preſent Eſtates. *Cro. Eliz.* 10. 2 *Lill.* 444. The moſt proper Word to create an Eſtate in *Remainder*, is the Word *Remainder* itſelf; though it may be made and created by other Words. *Bro. Remaind. Plowd.* 134, 159. And the Tenant for Life and *Remainder*-Man in Fee, having only one Eſtate; therefore the Execution of the one's Eſtate may be that of the other: And hence it is, that which is done by, or to one of them, in many Caſes ſhall bind and advantage the other; as in Caſe of a Releaſe, *&c.* 1 *Cro.* 504. 3 *Shep. Abr.* 221. If any Perſons, for whoſe Lives any Eſtates are granted, be abſent abroad, and no Proof made of their being living, they ſhall be accounted as dead; and thoſe in *Remainder* may move the Lord Chancellor to order Perſons to be produced, or enter, *&c.* Stat 19 *Car.* 2. and 6 *Ann.* See *Executory Deviſe* and *Recovery.*

Remanentes, *Remanſi*, Are Words uſed to ſignify belonging to ——— As *de hominibus ſive Tenentibus qui huic manerio* remanſi *ſunt*. Domeſday.

Remanet in Cuſtodia. Entry of an Action in the *Marſhal*'s Book, by *reman. Cuſtod.* where a Man is actually in Cuſtody, is a good Commencement of an Action in *B. R.* 3 Salk. 150.

Remedy, (*Remedium*) Is the *Action* or Means given by Law, for the Recovery of a Right; and whenever the Law giveth any Thing, it gives a *Remedy* for the ſame: There is a Maxim, *Lex ſemper dabit Remedium.* Stud. Compan. 177, 179. *Remedies* are favourably extended, and ſometimes to be had without *Action* or applying to the Courts of Juſtice, *viz.* by *Accord* and Agreement of the Parties; by *Arbitrament*; *Retaking Goods* wrongfully taken away; taking *Diſtreſſes* for Rent; *Entry on Lands*, to regain Poſſeſſion, *&c. Wood's Inſt.* 528, 529, 530.

Remembrancers, (*Rememoratores*) Formerly called *Clerks of the Remembrance*, are Officers of the *Exchequer*; of which there are Three, diſtinguiſhed by the Names of the *King's Remembrancer*, the *Lord Treaſurer's Remembrancer*, and the *Remembrancer of Firſt Fruits:* Upon whoſe Charge it lies, to put the Lord Treaſurer and the Juſtices of that Court in *Remembrance* of ſuch Things as are to be called upon and dealt in for the King's Behoof and Benefit. The *King's Remembrancer* enters in his Office all Recognizances taken before the Barons for any of the King's Debts, for Appearances, *&c.* and he takes all Bonds for ſuch Debts, and makes out Proceſs for the Breach of them; alſo he writes Proceſs againſt the Collectors of Cuſtoms, Subſidies, Exciſe, and other publick Payments for their Accounts: All Informations upon penal Statutes are entered and ſued in his Office; and he makes the Bills of Compoſition on penal Laws, and takes the Stallment of Debts: And all Matters upon *Engliſh Bills* in the Exchequer-Chamber remain in the Office of this *Remembrancer.* He has delivered into his Office the Indentures, Fines, and other Evidences, that concern the Paſſing any Lands to or from the King. *In Craſtino animarum* yearly he reads in Court the Oath of all the Officers of the Court, when they are admitted. Writs of Prerogative or Privilege, for Officers and Miniſters of the Court are made out by him, and ſo Commiſſions of *Niſi Prius*, by the King's Warrant, on Trial of any Matters within his Office at the Aſſiſes in the Country; he hath the Entring of Judgments, of Pleas, *&c.* And all Differences touching Irregularities in Proceedings ſhall be determined by the King's *Remembrancer*; who is to ſettle the ſame, if he can, and give Coſts where he ſhall find the Fault; but if not, the Court is to determine it, &c. By *Order* of Court, his Majeſty's *Remembrancer*, or his Deputy, are diligently to attend in Court, and to give an Account touching any Proceedings as they ſhall be required; and they enter the Rules and Orders of the Court. The *Treaſurer's Remembrancer* iſſues out Proceſs of *Fieri facias* and Extents, for Debts to the King; and againſt Sheriffs, Eſcheators, &c. not accounting, he takes the Accounts of all Sheriffs, and makes the Record, whereby it appears whether Sheriffs and other Accountants pay their *Profers* due at *Eaſter* and *Michaelmas*; and he makes another Record, whether Sheriffs and other Accountants keep their Days prefixed: There are alſo brought into his Office all the Accounts of Cuſtomers, Controllers, and Accountants, to make Entry thereof on Record. All *Eſtreats* of Fines, Iſſues and Amerciaments, ſet in any of the Courts at *Weſtminſter*, or at the Aſſiſes or Seſſions, are certified into his Office; and by him delivered to the Clerk of the Eſtreats to make out Proceſs upon them; and he may iſſue Proceſſes for Diſcovery of Tenures; and all ſuch Revenue as is due to the Crown by Reaſon thereof, &c. The *Remembrancer of the Firſt Fruits*, his Office is to take all Compoſitions, and Bonds for the Payment of the Firſt-Fruits and Tenths; and he makes Proceſs againſt all ſuch Perſons as do not pay the ſame. Stat. 35 *Eliz. cap.* 5. 5 *R.* 2. *c. cap.* 14. 37 *Ed.* 3. *cap.* 4.

Remitter, (From the Lat. *Remittere*, to reſtore or ſend back) Is where a Man hath two Rights or Titles to Land, and he comes to the Land by the laſt Title, but that proving defective, he is reſtored to and judged in by Force of his elder or ſurer Title, by Operation of Law. *Litt.* 659. 1 *Inſt.* 347. The Reaſon of this Invention of the Law, is in Favour of Right; and that Title which is firſt and moſt ancient, is always preferred. *Dyer* 68. *Finch's Law* 119. In *Remitters* to reſtore Rights, the firſt Intereſt that works ſuch *Remitter*, muſt be a Right, and not a Title of Entry; and there can be no *Remitter* before an Entry. 1 *Inſt.* 348. 2 *Bulſt.* 29. It is a Rule, that *Remitter* ſhall not be, where there is not both an Action and a Right, with a Diſcent of the Poſſeſſion of the Eſtate to the ſame Party that is to be *remitted:* Nor may it be, when the Party comes to his laſt Title by his own Wrong, or any Folly of his own; or on a void Eſtate. 1 *Inſt.* 347, 353. If Land deſcend to him, that has Right to it before, he ſhall be *remitted* to his better and more ancient Title, if he will: And a *Remitter* muſt be to a precedent Right; for regularly to every *Remitter*, there are two Incidents, *viz.* an ancient Right, and a defeaſible Eſtate of Freehold coming together. *Doct. & Stud. cap.* 9. *Wood's Inſt.* 528. Tenant in Tail makes a Feoffment in Fee upon Condition, and dieth, and his Iſſue being within Age enters for the Condition broken by Virtue of the Feoffment; he ſhall be firſt in as Tenant in Fee-ſimple, and be *remitted* as Heir to his Father: But if the Heir be of Age, he ſhall not be *remitted*; but is to bring his Writ of *Formedon* againſt the Feoffee. 1 *Inſt.* 202, 349. And if Tenant in Tail infeoff his Son or Heir apparent, who is within Age, and after dies, that is a *Remitter* to the Heir: Though if he were of full Age at the Time of ſuch Feoffment, it is no *Remitter*, becauſe it was his Folly, that he being of full Age would take ſuch a Feoffment. *Litt.* 665. If a Husband alien Lands that he hath in Right of his Wife, and after take an Eſtate again to him and his Wife for their Lives, this is a *Remitter* to the Wife, for the Alienation is the Act of the Husband, and not of the Woman; yet if the Alienation be by Fine in a Court of Record, ſuch a Taking again afterwards to the Husband and Wife, ſhall not make the Wife to be in her *Remitter*, ſhe being excluded by the Fine for ever. *Terms de Ley* 519. Lands are given to a Man and his Wife, and the Heirs of their two Bodies; and after the Husband aliens the Land in Fee, and then takes back an Eſtate to him, and to his Wife for their Lives; here they will be both of them *remitted:* But if he take an Eſtate again to himſelf for Life; *Remitter* will not be allowed againſt his own Alienation. 1 *Inſt.* 354. When the Entry of a Perſon is lawful, and he takes an Eſtate in the Land for Life; or in Fee, &c. (except it be by Matter of Record, or otherwiſe to conclude or eſtop him) he ſhall be *remitted.* 1 *Inſt.* 363. And a *Remitter* to one in Poſſeſſion, may be a *Remitter* to another in Remainder; if the Remainder be not bound, which eſtops it. *Cro. Car.* 145. If there be Tenant in Tail, Remainder in Fee to *A. B.* and the Tenant in Tail diſcontinueth, and takes back an Eſtate in Fee; and then deviſes the Lands to his Wife for Life, with Remainder to *W. R.* for Years, Remainder to the ſame *A. B.* in Fee, and dies, and his Wife enters and dies: It has been held, that he in Remainder in Fee may enter and avoid the Term for Years to *W. R.* becauſe he is *remitted* to his firſt Remainder in Fee; and a *Remitter* avoids a Leaſe for Years, without Entry. *Noy* 48. A Father was Tenant for Life, Remainder to his Son for Life, Remainder to the right Heirs of the Body of the Father; he and his Son conveyed the Lands to the Uncle in Fee, who died without Iſſue, ſo that the Son who was Heir in Tail to the Father, was now Heir at Law to the Uncle, and the Fee deſcended on him; the Wife of the Uncle brought Dower, but the Son being *remitted* to his former Eſtate, no Dower accrued to the Wife, for the Eſtate of which ſhe claims Dower is gone. 1 *Leon.* 37. 9 *Rep.* 136. Lands were purchaſed by a Man, and ſettled upon himſelf and his Wife in Tail, and they had Iſſue two Sons; then he made a Feoffment to the Uſe of himſelf for Life, Remainder to the Wife for Life, Remainder in Fee to his ſecond Son: The Wife after his Death entered, and made a Feoffment to the Iſſue of the ſecond Son; and then the eldeſt Son entered for a Forfeiture, upon the Stat. 11 *H.* 7. *cap.* 20. and it was adjudged a Forfeiture, by Reaſon the Wife having two Titles, one as Tenant in Tail, and the other as Tenant for Life, by her Entry ſhe is *remitted* to her Eſtate for Life, ſo that the Feoffment made by her is a Forfeiture of her Eſtate. *Sid.* 63. 3 *Nelſ. Abr.* 100. If Land be given to a Woman in Tail, the Remainder to another and a Third in Tail, Remainder to a Fourth in Fee; the Feme takes Husband and he Diſcontinues the Lands in Fee, and after an Eſtate is made to the Husband and Wife for their Lives, or other Eſtate: This is a *Remitter* to all them in Remainder, and if ſhe die without Iſſue, they may enter; and ſo it is of them that have the Reverſion after ſuch Entails. *Litt. Sect.* 673. Where a Perſon lets Land for Term of Life to another, who granteth it away in Fee; if the Alienee make an Eſtate to the Leſſor, it will be a *Remitter* to him, becauſe his Entry is lawful. *Ibid.* 694. If one be Diſſeiſed, and the Diſſeiſor makes a Feoffment to the Diſſeiſee; in this Caſe the Diſſeiſee may be *remitted* to his elder Title, or he may choſe to take by the Feoffment; and if it be with Warranty, he may if he will make Uſe of the Warranty. 1 *H.* 7. 20. 3 *Shep. Abr.* 237. Tenant in Tail, hath two Sons, and he leaſes the Land entailed to his elder Son for Life, the Remainder to his youngeſt Son; it is no *Remitter* to the eldeſt: But if he die without Iſſue of his Body, the youngeſt Son ſhall be *remitted.* Litt. 682. If Tenant in Tail make a Feoffment to the Uſe of himſelf and his Heirs, he ſhall not be *remitted*; but his Iſſue ſhall. 3 *Nelſ.* 100. On *Remitter* of Iſſue in Tail, Leaſes and other Charges on the Lands are avoided. *Litt.* 659, 660.

Remittitur, Entry of in *B. R.* on a *Writ of Error's* abating in the *Exchequer* Chamber, *&c.* 1 *Salk.* Vide *Error.*

Remover, Is where a Suit or Cauſe is *removed* out of one Court into another; and for this there are divers Writs and Means. 11 *Rep.* 41. And *Remanding* of a Cauſe, is the ſending it back into the ſame Court, out of which it was called and ſent for. *Marſh.* 106. See *Habeas Corpus.*

Renant, Or rather *Reniant*, i. e. *Negans*, from the Fr. *Renier*, *negare*, to deny or refuſe. 32 *H.* 8. *c.* 2.

Render, (Fr. *Rendre*, viz. *Reddere*) Signifies to yield, give again, or return. This Word is uſed in the Levying of a *Fine*, which is either *ſingle*, where nothing is *rendered* back by the Cogniſee; or *double*, when it contains a Grant and *Render* back again of the Land, *&c.* to the Cogniſor. *Weſt's Symb.* And there are certain Things in a Manor that lie in *Prender*, that is, which may be taken by the Lord or his Officers when they happen, without any Offer made by the Tenant, ſuch as Eſcheats, *&c.* and certain that lie in *Render, i. e.* muſt be *rendered* or anſwered by the Tenant, as Rents, Heriots, and other Services: Alſo ſome Services conſiſt in *Seiſance*; and ſome in *Render.* Weſt. Symb. par. 2. Perking's Reſerva. 696.

Renegate, or *Renegado*, which we corruptly call *Runnegate*, is one who was a *Chriſtian*, and afterwards *negat Chriſtum*, and apoſtatized to *Mahometiſm*: This is mentioned in *Hoveden* by the Name of *Reneez.* Hoved. Anno 1192.

Renegeld, Is a Kind of Rent or Tenure. —— *Per* Renegeld Johannes S. *Ar. clamat habere de qualibet Bovata terræ infra feodum de* A. 1 *d.* Rot. Plac. in Itin. apud Ceſtriam, 14 *H.* 7.

Renovant, (From *Renovo*) To renew, or make again: The Parſon ſued one for Tithes, to be paid of Things *Renovant*, *&c.* 2 Cro. 430.

Rent, (*Redditus*) Is a Sum of Money, or other Conſideration, iſſuing yearly out of Lands or Tenements. 1 *Inſt.* 141. It muſt be certain, or that which may be reduced to a Certainty; and regularly it is to be reſerved out of a corporal Inheritance, whereunto the Grantor may have Recourſe to diſtrain, and not granted out of a Common, Piſcary, *&c.* or ſuch like incorporeal Inheritances; but as to incorporeal Inheritances, the Reſervation may be good by Way of Contract, to have Action of Debt. 1 *Inſt.* 47, 143. A Grant of a *Rent* out of a Hundred, is void; for the *Rent* cannot iſſue out of it, nor doth an Aſſiſe lie for it, becauſe it cannot be put in View: And a Fair is but a Franchiſe, out of which a *Rent* may not be reſerved. 5 *Rep.* 3, 4. A *Rent* may be reſerved out of a Reverſion or Remainder of Lands; for the apparent Poſſibility that they may come in Poſſeſſion. *Cro. Eliz.* 792. But the Profits of the Land, which are the Thing itſelf may not be reſerved as *Rent*; notwithſtanding the *Rent* be out of the Profits. 1 *Inſt.* 206. One may make a Leaſe of the Veſture or Herbage of Land, reſerving a *Rent*: Or of a Rectory, with Reſervation of *Rent* out of it. 7 *Rep.* 18. *Rents* are to be reſerved to the Leſſor, or Feoffor, *&c.* it being a Maxim in Law, that the *Rent* muſt be reſerved to him from whom the Land moveth. 1 *Inſt.* 143. There are ſeveral Kinds of *Rents*; as a *Fee-farm Rent*, *Quit-Rent*, *Rack-Rent*, *Old-Rent*, and *improved Rent*, *&c.* but the common Diviſion of *Rents* is into three Sorts, *viz. Rent-Service*, *Rent-Charge*, and *Rent-Seck.* Litt. 213. *Rent-Service* is accompanied with ſome corporeal Service, as Fealty, *&c.* and is where upon a Gift in Tail, or Leaſe for Life, or Years, a Man reſerves to himſelf a certain *Rent*, whilſt the Reverſion of the Lands continues in him; this is a moſt certain Mark to know it to be a *Rent*-Service; and if this *Rent* be behind at the Day on which it ought to be paid, the Landlord by the Common Law may diſtrain for it, without any particular Covenant, *&c.* If a Perſon grants all his Term, and there be no Reverſion left in the Grantor, he cannot diſtrain for the *Rent*; yet Debt will lie for it as a Sum in Groſs, where there is no Reverſion. 1 *Inſt.* 87, 141, 142. *Litt.* 213. 2 *Lev.* 80. And where an annual Sum is appointed to be paid to a Stranger, it is not a *Rent* but a Sum in Groſs. 1 *Leon.* 362. *Rent-Charge* is when a Perſon by Deed maketh over his Eſtate to another in Fee, or by Gift in Tail, the Remainder in Fee, or a Leaſe for Life, Remainder over in Fee, or any other Grant where the whole Eſtate paſſeth, and by the ſame Deed reſerveth to him and his Heirs a certain *Rent*; and covenanteth that if the *Rent* be behind, it ſhall be lawful for him and his Heirs to diſtrain, *&c.* ſuch a *Rent* is called a *Rent*-Charge, becauſe the Lands are charged with ſuch Diſtreſs by Force of the Deed, and not by the Common Law, as in the Caſe of a *Rent*-Service: It muſt be a Conveyance in Fee, either in Poſſeſſion or Remainder, or a Grant of the whole Eſtate, to make a *Rent*-Charge; for the Reverſion is not to be in the Feoffor, as is requiſite in the *Rent*-Service: But if one ſeiſed of Land, Grants by Deed an yearly *Rent* iſſuing out of it to another Perſon in Fee, Fee-tail, for Term of Life, or Years, with Clauſe of Diſtreſs, it is a *Rent*-Charge; alſo if one ſeiſed of Lands in Fee, binds his Goods and Lands for the Payment of an yearly *Rent*, this is a good *Rent*-Charge, with Power to diſtrain: So that a *Rent*-Charge may be either by Reſervation or Grant. *Litt.* 217, 218. 1 *Inſt.* 143, 144, 147. If a Man hath a *Rent*-Service or *Rent*-Charge, and grants it to another by Deed for Life, rendring *Rent*, it is void; becauſe a *Rent* cannot be charged with another *Rent. Kelw.* 161. A *Rent*-Charge, of what Nature ſoever it be, is grantable over: And a *Rent* is not a Thing meerly in Action. 1 *Inſt.* 292. 3 *Nelſ. Abr.* 111. Lands are charged with a *Rent*-Charge, and after the Owner of theſe Lands makes a Leaſe thereof, and covenants with the Leſſee to ſave him harmleſs: If afterwards the Leſſee pays the *Rent* to the Grantee of the *Rent*-Charge, voluntarily and without Compulſion, *per Holt* Ch. Juſt. in ſuch Caſe he pays it in his own Wrong, and muſt pay it again to the Leſſor; though if he is diſtrained for the *Rent*-Charge, and his Goods are taken, whereby he is compelled to pay the *Rent*, it is otherwiſe, and this is a Breach of the Covenant, and not before. 3 *Salk.* 109. *Rent-Seck*, or dry *Rent*, is where a Man by Deed paſſeth his Eſtate to another, and Reſerves to him and his Heirs a certain *Rent*; or granteth a *Rent* iſſuing out of his Lands, without any Clauſe of Diſtreſs in the Deed: Now by the Common Law he cannot diſtrain for this *Rent*, by Reaſon he hath not Seiſin of the *Rent*, and no Diſtreſs is incident to it, and there being no Reverſion or particular Charge to enable him to do it: But if the King hath a *Rent-Seck*, he may diſtrain for it. *Litt.* 217, 233, 235. And a late Act of Parliament gives all Perſons the like Remedy for recovering *Rent-Seck*, Chief-Rents, *&c.* as for *Rents* reſerved on Leaſe. 4 *Geo.* 2. An Aſſiſe will lie of a *Rent*-Seck for a Grantee, if he hath had Seiſin; but if there had been no Seiſin, he was without Remedy: Non-payment of a *Rent* Seck upon Demand is a Denial in Law, whereof the Grantee may have an Aſſiſe; provided he hath had Seiſin of the *Rent* before. *Cro. Eliz.* 505. 2 *Lill. Abr.* 449. The Difference between a *Rent*-Charge and a *Rent*-Seck is, that there is a Clauſe of Diſtreſs annexed to one, and no ſuch Clauſe to the other; and therefore the one is a Charge upon the Land, but for the other the Grantee had formerly no Remedy, but to charge the Perſon of the Grantor in a Writ of *Annuity*; and he muſt have Seiſin of the *Rent*, which is to be created by Grant, and not by Deviſe; alſo the firſt Payment that gives Life to the *Rent*-Seck, ought to be made by the Tenant of the Freehold; likewiſe he ſhould attorn, or he cannot have Aſſiſe. *6 Rep.* 56. If a Rent be granted in Fee, with a Clauſe of Diſtreſs only for the Life of the Grantee, there it is a *Rent*-Charge for his Life, and after his Death his Heirs ſhall have it as a *Rent*-Seck; though if the Clauſe of Diſtreſs be for Years, then it is a *Rent*-Seck, as well during his Life as afterwards. 7 *Rep.* 23. 3 *Nelſ. Abr.* 113. If one grant that if *A.* be not paid 20 *l.* a Year for his Life, he ſhall diſtrain for it; this is a good Grant of ſuch a *Rent* during his Life. *Co. Litt.* 147. To theſe three Sorts of *Rents* may be added a *Rent* reſerved upon a Leaſe at Will, called a *Rent diſtrainable of Common Right:* And in Action of Debt for *Rent* upon a Leaſe at Will, the Plaintiff muſt ſet forth, that the Defendant entered and was poſſeſſed, and prove it, becauſe the *Rent* is due only by the Occupation; but on a Leaſe for Years, the *Rent* is due on the Contract; and if the Leſſee never enters he muſt pay the *Rent.* 1 *Inſt.* 141. 1 *Salk.* 209. A Man may have a *Rent* by *Preſcription*; and preſcribe that he and his Anceſtors have been ſeiſed thereof, and uſed to diſtrain for it, when in Arrear: And ſo a Perſon may make a good Title to a *Rent* without any Deed. 1 *Inſt.* 144. 6 *Rep.* 33. And there are *Rents*, but not properly called ſo, reſerved by Contract or Deed, which creates them with Clauſe of Diſtreſs, without a Tenure, againſt the natural Courſe of the Law; though ſuch *Rent* is rather a Penalty: In all Caſes, by late Statutes, a Landlord may diſtrain for his *Rent* upon any Contract. 1 *Inſt.* 144, 213. *Litt.* 345. *Wood's Inſt.* 185, 598. *Rent* will not be barred by Fine levied by Tenant in Tail; but remains a collateral Charge on the Land. 2 *Lev.* 30. And where a Donor grants a *Rent* out of a Reverſion, it may not be barred by Recovery againſt the Tenant in Tail; though if a Man makes a Gift in Tail, reſerving a *Rent*, it may. *Cro. Car.* 598. If a Leaſe for Years, or Life, or Gift in Tail, be made to one with Reſervation of *Rent*; and the Leſſor or Donor grant the Reverſion over generally to another, the *Rent* paſſeth to the Grantee, although no Mention be made of it in the Grant; the *Rent* being incident to the Reverſion: But tho' a *Rent* be incident to the Reverſion, it is not inſeparably incident; the Reverſion may be granted, ſo as not to paſs the *Rent.* 1 Inſt. 143, 317. *Rents* may be deviſed by Will in the ſame Manner as Lands: A Teſtator ſeiſed of Lands in Fee, made a Leaſe thereof rendring *Rent*, and afterwards deviſed the *Rent* to another; and adjudged that the Executor, and not the Heir ſhall have it; becauſe it is but a Chattel in the Deviſee. 2 *Cro.* 144. *Dyer* 5. A Leaſe is made for Years of Land in Fee-ſimple, rendring *Rent* to the Leſſor, his Executors or Aſſigns, during the Term; the Heir ſhall have the *Rent*; it running with the Reverſion: And if a Leſſor dies before the Day of Payment of *Rent*, it ſhall go to his Heir, as incident to the Reverſion; but if it becomes due in the Leſſor's Life-time, it ſhall go to the Executors. 12 *Rep.* 36. 10 *Rep.* 127. *Raym.* 213. 2 *Saund.* 367. If the Leſſor dies upon the Day of Payment, and the *Rent* is unpaid, the Heir ſhall have it; for the *Rent* is not due till the laſt Minute of the Day: But if it be paid that Morning before the Leſſor dies, his Executor ſhall retain it againſt the Heir. 10 *Rep.* 127. 1 *Inſt.* 212. In what Caſes the *Rent* ſhall go to Executors, or him in Remainder; on the Leſſor for Life's dying, and the *Rent* not paid before the laſt Inſtant of the Day whereon due, ſee *Preced. Canc.* 555. One ſeiſed of Lands in Fee makes a Leaſe of the ſame Lands for ten Years, yielding to him and his Heirs a yearly *Rent* of 20 *l.* at the Feaſt of St. *Michael*, or within one Month after; now if the Leſſor dieth between the Feaſt of St. *Michael* and the End of the Month, the *Rent* muſt be paid to the Heir, and not the Executor; becauſe this was not due until the End of the Month. 10 *Rep.* 127. 1 *Saund.* 287. If a Leaſe is made for Years, paying a yearly *Rent* at *Michaelmas* and *Lady-day*, or within twelve Days after, upon Condition that if the *Rent* be not paid by that Time, next after the ſaid Feaſts, or Days of Payment, then the Leaſe ſhall be void; in this Caſe, it is ſaid the Tenant or Leſſee hath twelve Days after the twelve Days, to pay the ſaid *Rent*; for the twelfth Day after the Feaſts was a Day of Payment: But if the Clauſe in the Leaſe had been, that if the *Rent* is behind for the Space of twelve Days after either of the ſaid Feaſt-Days of Payment, the Leaſe to be void, *&c.* here the Tenant hath but the twelve Days allowed him. 10 *Rep.* 129 4 *Rep.* 27. A Man ſeiſed in Fee of Lands, lets them for Years, and reſerves a *Rent* to himſelf, not to him and his Heirs, the *Rent* ſhall determine by his Death, if he dies within the Term: So if he reſerves a *Rent* to him and his Aſſigns, the Reſervation is good only during his Life. *Wood's Inſt.* 186. Tho' if he reſerves a *Rent* generally, without ſhewing to whom it ſhould go, it will go to his Heirs. 1 *Inſt.* 47. 5 *Rep.* 11. An Heir ſhall have the *Rent*, where he is named in the Grant: And if the *Rent* is reſerved to the Leſſor, his Heirs and Aſſigns, the Aſſigns of the Reverſion ſhall enjoy it, if the *Rent* is incident to the Inheritance. 2 *Cro.* 282. *Plowd.* 167. 1 *Inſt.* 47. Where a Tenant for Life lets a Leaſe for Years, if he ſhall ſo long live, under certain *Rent*, and the Tenant for Life dieth before a Quarter-Day, or Day of Payment, the Tenant is diſcharged of the *Rent* for that Quarter by the Act of God: But this may be guarded againſt by dividing the *Rent*, and making it payable weekly, *&c.* though it be not uſually received otherwiſe than quarterly; or by Covenant in the Leaſe, to oblige the Tenant to pay the Executors of the Leſſor for ſo much of the Profits as ſhall be received 'till his Death, if he die before any Day of Payment. 10 *Rep.* 127, 129. Without this Care, the Tenant might receive the Profits of the Lands and detain the *Rent* too, by quitting the Eſtate upon the Death of the Landlord, who did not live till the *Rent* was due; and thereby barring thoſe in Remainder and Reverſion, *&c.* of the *Rent*, becauſe he was not their Tenant at the Day of Payment: And this has been often done by the Tenants of Biſhops and Parſons, and of Widows endowed, or having Jointures of Lands for Life, *&c.* The ſame as to Tenants at Will, where the Landlord dies the Day before the *Rent*-Day. See *Comber.* 255. This Law is now altered by Statute; for if any Tenant for Life die on the Day, on which the *Rent* was made payable, his Executors, *&c.* may in Action on the Caſe recover from the Under-Tenants, the Whole, or if he die before ſuch Day, a due Proportion of ſuch *Rent:* And where Demiſes are not by Deed, Landlords may recover reaſonable Satisfaction, for the Uſe of what the Tenants held, *&c.* 11 *Geo.* 2. If a *Rent* upon a Leaſe for Years of Land is reſerved and made payable at four Quarter-Days, the Leſſor may have Action of Debt after the firſt Day of Failure; for every Quarter's *Rent* is a ſeveral Debt, and diſtinct Actions may be brought for each Quarter, and it is not like Debt for Part of the Money on Contract. 5 *Rep.* 81. 10 *Rep.* 128. 2 *Vent.* 129. Thus it is of a Covenant or Promiſe to pay 100 *l.* at five ſeveral Days after the firſt Default; though if one leaſeth a Stock of Cattle, or other perſonal Goods and the *Rent* is to be paid at ſeveral Days, the Leſſor muſt ſtay till all the Days are expired, becauſe it is all but one perſonal Contract. 4 *Rep.* 94. 1 *Inſt.* 292. An Action was for one Quarter's *Rent*, when two Quarters were due, ſo that the Plaintiff ſued for leſs than was his Due, without ſhewing how the Reſt was ſatisfied, which it was objected the Law would not allow, has been adjudged good on Demurrer,

murrer, every Quarter being a ſeveral Debt; but not if it appears by the Plaintiff's own ſhewing that *Rent* for a whole Year is due, and he brings an Action only for Half a Year, *&c.* 2 *Ventr.* 129 3 *Nelſ. Abr.* 117. In Debt for *Rent*, the Plaintiff demands more in his Declaration than is due, he may remit Part, and have Judgment for the Reſidue. 2 *Lill.* 449. Action of Debt may be brought for *Rent* due for a Copyhold and Freehold together. 3 *Lev.* 39. *Cro. Eliz.* 851. Alſo for *Rent* upon a Leaſe of Land, and a Flock of Sheep. 3 *Lev.* 150. Aſſignee of *Rent* upon a Leaſe for Years, ſhall have Debt for it. 1 *Lev.* 22. And Covenant for *Rent* lies againſt the Leſſee after an Aſſignment, by the Grantee in Reverſion; and this, although Notice and Acceptance of the *Rent* had been pleaded, as it is upon an expreſs Covenant. 3 *Lev.* 233. A Leſſee for Years rendring *Rent*, aſſigned his Term in Parcel of the Land, and that Aſſignee made another Aſſignment of that Parcel; and it was held, that the Leſſor might have an Action of Debt againſt the firſt Leſſee for the whole *Rent*, becauſe the Privity of Contract remained between them, and that the *Rent* ſhould not be apportioned. *Dyer* 4. 2 *Leon.* 121. If a Leaſe be made of three Acres of Land of equal Value, paying ſuch a *Rent*, and afterwards the Leſſor grants the Reverſion of one Acre to another; the Grantee ſhall have the proportionable *Rent*, for though it is but one Leaſe and one *Rent*, yet becauſe the Reverſion is ſeverable the *Rent* ſhall attend upon it and be likewiſe ſeverable. 8 *Rep.* But in a Leaſe of a Warren which extended into three Vills, where the Leſſor granted the Reverſion of that Part which lay in one of the Vills to another, and the Leſſee attorned; adjudged that the Grantee ſhall not have any Part of the *Rent*, nor the Grantor neither, becauſe an entire Contract cannot be apportioned, and therefore the *Rent* is determined. *Moor* 115. Action of Debt was brought for *Rent* on a Leaſe of three ſeveral Acres of Land for three ſeveral Terms, paying *Rent pro Terminis prædict.*' And it was inſiſted, that the *Rent* could not iſſue out of all, becauſe they were ſeveral Terms; but the Court ruled, that it was an intire Leaſe, and that the *Rent* iſſued out of all the Lands; and if one of the Terms determines, it ſhall be paid out of the Reſidue. *Daliſ.* 139. A Leaſe is made of Lands, rendring ten Pounds *Rent*, *viz.* For five Acres five Pounds, and for other five Acres the like Sum, *&c.* in this Caſe it ſhall be one, and not ſeveral *Rents.* 1 *And.* 174. But if one grant twenty Pounds a Year out of Land; to hold ten Pounds yearly for thirty Years, and the other ten Pounds thirty-ſix Years, payable at the Feaſts of, *&c.* they will be ſeveral *Rents*, and a Diſtreſs may be for either of them alone. 1 *Cro.* 109. A Man grants a *Rent*-Charge to another for Life out of his Lands; if he grant further by the ſame Deed, that he and his Heirs may diſtrain in the Land for the ſame *Rent:* This will amount to a new Grant of the *Rent* in Fee-ſimple. 1 *Inſt.* 148. Where *Rent* is granted for Life, out of Land in Fee, and a Term for Years; there it ſhall iſſue out of the Lands in Fee, not the Term of Years. 7 *Rep.* 23. The Land in Fee only ſhall be charged with this *Rent*; and yet the Perſon and the other Land are chargeable after a ſort for the ſame. 1 *Inſt.* 47, 146. *Plowd.* 198. If a Man grant *Rent* out of his Lands, and ſays not what Land, nor where; it cannot be a good Grant of the *Rent*; though it may be good to charge his Perſon as in an Annuity: So if one grant any *Rent* out of a Thing not chargeable with a *Rent*; as a Common, or Franchiſe, *&c.* 6 *Rep.* 58. 10 *Rep.* 93. But where Lands in general, are charged with a *Rent*, with Clauſe in the Deed, That if it be not paid, the Grantee ſhall diſtrain for it in the Manor of *S.* it will charge that Manor, but not any other Lands. 1 *Inſt.* 146. If the *Rent* be granted out of one Manor, with Power to diſtrain in another; both the Manors are liable to it. 7 *Rep.* 23. A *Rent* reſerved out of Land, is of the Nature of the Land: If a Perſon has a *Rent* of the Part of his Mother, the Diſtreſs and Remedy for it ſhall go to the Heir on the Part of the Mother, *&c.* *Moor* 301. 1 *Inſt.* 142. And if two Coparceners make a Feoffment in Fee, rendring *Rent* to them and their Heirs, the *Rent* ſhall be of the Quality of the Lands, and the Heirs of one and of the other ſhall inherit. 5 *Rep.* 8. Yet if there be two Jointenants, and one makes a Leaſe for Years, rendring *Rent*; the Leſſor dieth, the other ſhall not have this *Rent.* 1 *Rep.* 96. A *Rent* was reſerved on a Leaſe to be paid at two Feaſts, and not ſaid by what Portions; and yet held good, and that the Leſſee ſhould have Liberty to make the Payments by what Portions he pleaſed. 3 *Leon.* 322. The Husband after the Wife's Death is liable to pay the *Rent* in arrear, upon a Leaſe to the Wife: And any Man who in Right of his Wife, ſhall have any real Eſtate in *Rents*, *&c.* which ſhall be due and in Arrear at her Death, may after her Death bring Debt for thoſe Arrears. 1 *Lev.* 25. 4 *Rep.* 50. An Action of Debt lies for *Rent* in arrear upon a Leaſe for Life, or Years; at Common Law it lay not on Leaſes for Life, but it may be brought by 8 *Ann. c.* 17. If Tenants for Life or Years hold over Lands after the Determination of their Terms, and Demand being made to deliver the Poſſeſſion, they ſhall pay double the yearly Value, to be recovered by Action of Debt: And when Half a Year's *Rent* is due and in arrear from any Tenant, and no ſufficient Diſtreſs can be had on the Premiſſes, the Landlord may ſerve a Declaration in *Ejectment*, and recover Judgment, *&c.* but the Tenant may file his Bill in Equity, within ſix Months, to be relieved; though not have an Injunction againſt the Proceedings at Law, (unleſs he bring the Money due into Court) and paying the *Rent* in arrear, and Coſts, all Proceedings to ceaſe, *&c.* by the 4 *Geo.* 2. *c.* 28. If any Tenant, holding Lands, *&c.* at a *Rack-Rent*, being in arrear one Year's *Rent*, ſhall deſert and leave the ſame uncultivated or unoccupied; two Juſtices of Peace, may at the Requeſt of the Landlord go upon and view the Premiſſes, and fix on the moſt notorious Part thereof, a Notice in Writing, on what Day (at the Diſtance of 14 Days) they will take a ſecond View; and if the Tenant, or ſome Perſon for him, do not then pay the *Rent*, and there is no Diſtreſs, the Tenant's Leaſe ſhall become void: The ſaid two Juſtices Proceedings to be examined into in a ſummary Way, by the next Juſtices of Aſſiſe of the County; who if they ſee Cauſe may award Reſtitution and Coſts to the Tenant, *&c.* By this Statute, in Caſe a Tenant gives Notice of his quitting the Premiſſes, and do not accordingly deliver up Poſſeſſion, at the Time notified; he is thenceforward to pay double *Rent* recoverable as ſingle *Rent.* Stat. 11 *Geo.* 2. *cap.* 19. Debt may be brought for Part of *Rent* due, and a Diſtreſs taken for the other Part; ſo as to make both the Perſon and Land liable: If Tenant in Fee, or in Tail die, his Executor may have Action of Debt by the Stat. 32 *H.* 8. for *Rent* in arrear, or he may diſtrain; but before this Act, the Executor had no Remedy by the Common Law: So it was in the Caſe of a Tenant *pur autur vie*, for his Executor had no Remedy till the Death of *Ceſtuy que vie*; and now he may diſtrain or have an Action of Debt for the *Rent* arrear. 1 *Cro.* 471. 3 *Salk.* 333. If Tenant for Life die, his Executor may bring Action of Debt for the *Rent* in arrear; and this was his Remedy at Common Law; but a new Remedy is given by this Statute, and that is to diſtrain: Though if there be a Grantee of a *Rent* for twenty Years, if he ſo long live, and there is *Rent* in arrear, and then the Grantee dies; his Executor cannot diſtrain for the Arrears within the Statute, but muſt keep to his Remedy at Common Law. 3 *Salk.* 304. Where the Lord gained a *Rent* of the Tenant by Incroachment, upon a Diſtreſs taken for it, the Tenant could not help himſelf in *Replevin*, before the Statute 32 *H.* 8. *c.* 3. becauſe he could not traverſe the Tenure; but was compelled to bring the Writ *Ne injuſte vexes* againſt the Lord, and there he might traverſe the Tenure: Since that Statute, the Lord in his Avowry muſt alledge Seiſin of the *Rent* for forty Years paſt; which the Tenant may traverſe. 4 *Rep.* 8. 10 *Rep.* 88. 9 *Rep.* 33. In Debt for *Rent* upon a Leaſe for Years, the Defendant pleaded an Invaſion by Enemies, who drove him and his Cattle from the Lands demiſed, ſo that he could not enjoy the ſame; but it was adjudged againſt him; for he did not plead that the Army were all Aliens and unknown: And if a Man covenants to pay *Rent*, and it happens that the Lands are overflowed with Water, he is ſtill chargeable with the *Rent*, becauſe he might have provided againſt this Accident by his Contract; and though there was no expreſs Covenant in this Leaſe to pay the *Rent*, the Reſervation is a Covenant in Law, and a Duty is created by it, and the Law will not protect him againſt his own Agreement. *Style* 47. If no Place is appointed for Payment of *Rent*, the Law appoints it to be upon the Land. 4 *Rep.* 72. *Demand of Rent* is alſo to be on the Land, &c. and to warrant a Diſtreſs, the Demand may be at any Time after due; but it is not ſo for Re-entry. 1 *Inſt.* 201. *Dyer* 25. *Tender* of the *Rent*, which muſt be the whole *Rent* due, may be upon any Part of the Lands let. *Ibid.* *Acceptance* of *Rent*, in ſome Caſes, will give Affirmance to a voidable Leaſe, and bar Entries for Conditions broken, &c. And *Rent* may be *extinguiſhed* by Purchaſe of Parcel of the Land, &c. *Vide* the *Heads.*

Rental, A Roll wherein the *Rents* of a *Manor* are written and ſet down, and by which the Lord's Bailiff collects the ſame: It contains the Lands and Tenements let to each Tenant, and the Names of the Tenants, the ſeveral *Rents* ariſing, and for what Time, uſually a Year. *Compl. Court Keep.* 475.

Rents of Aſſiſe, The certain *Rents* of Freeholders, and ancient Copyholders, ſo called, becauſe they were *aſſiſed*, and different from others that were uncertain, paid in Corn, &c. 2 *Inſt.* 19. *Rents reſolute* are ſuch *Rents* as were anciently payable to the Crown from the Lands of Abbies and Religious Houſes; and after the Diſſolution of the Abbey Lands which were demiſed to others, the ſaid *Rents* were ſtill reſerved to the Crown: They are reckon'd among the *Fee-farm Rents*, to be ſold by the Stat. 22 *Car.* 2. *c.* 6.

Reparations, A Tenant for Life or Years, may cut down TimberTrees to made *Reparations*, although he be not compelled thereto; as where a Houſe is ruinous at the Time of the Leaſe made, and the Leſſee ſuffer it to fall, he is not bound to rebuild it, and yet if he fell Timber for *Reparations* he may juſtify the ſame. 1 *Co. Inſt.* 54. The Leſſee covenants, That from and after the Amendment and *Reparation* of the Houſes by the Leſſor, he at his own Charges will keep and leave them in Repair: In this Caſe the Leſſee is not obliged to do it, unleſs the Leſſor firſt make good the *Reparations:* And if it be well repaired at firſt, when the Leaſe began, and after happen to decay; the Leſſor muſt firſt repair, before the Leſſee is bound to keep it ſo. 2 *Cro.* 645. If one covenant for the *Reparation* of a Houſe, upon Requeſt of the Leſſor, and he repair without it; this is no Performance of the Covenant. 2 *Leon. cap.* 72. See *Leaſe*, *Covenant*, and *Waſte.*

Reparatione facienda, Is a Writ that lies in divers Caſes; one whereof is where there are Tenants in Common or Jointenants of a Houſe, &c. which is fallen to Decay, and one of them is willing to *repair* it, but the others are not: In this Caſe the Party willing to *repair* the ſame, ſhall have this Writ againſt the others. *F. N. B.* 127. And if a Man have a Houſe adjoining to my Houſe, and he ſuffer his Houſe to lie in Decay to the Annoyance of my Houſe, I may have a Writ againſt him to *repair* his Houſe. So if a Perſon have a Paſſage over a Bridge, and another ought to *repair* the Bridge, who ſuffers it to fall to Decay, &c. *New Nat. Br.* 281.

Repaſtum, A Repaſt or Meal of Meat given to ſervile Tenants, when they laboured for their Lord. *Paroch. Antiq.* 401.

Repeal, (From the Fr. *Rappél*, i. e. *Revocatio*) Signifies the ſame with revoke; as the *Repealing* of a Statute is the Revoking or Diſannulling it. *Raſtal.* It is ſaid a Pardon of Felony, &c. may be *repealed*, upon diſproving the Suggeſtions. 1 *Keb.* 19. A Deed or Will may not ſtand good as to Part, and be *repealed* for the Reſt. *Style* 241. And a Defendant in a Suit cannot *repeal* or revoke his Warrant of Attorney, given to an Attorney to appear for him, &c. 2 *Lill. Abr.* 452.

Repleader, (*Replacitare*) Is to plead that again which was once pleaded before. *Broke.* On an immaterial Iſſue in a Cauſe, *Repleader* may be awarded; and *Repleader* is to be had where the Pleading hath not brought the Iſſue in Queſtion, which was to be tried: Alſo if a Verdict be given where there was no Iſſue joined, there muſt be a *Repleader* to bring the Matter to Trial, &c. 2 *Lill. Abr.* 460. In Debt on a Sheriff's Bond, for the Defendant's Appearance in *B. R.* upon the Return of the Writ, the Defendant pleaded that he had appeared *ſecundum*, &c. and upon this they were at Iſſue; and there being a Verdict for the Plrintiff, a *Repleader* was allowed, becauſe the Appearance was not triable by a Jury, but by the Record. 1 *Leon.* 90. 3 *Nelſ. Abr.* 123. It was held by the Court of *B. R.* that at Common Law, a *Repleader* was granted before Trial, becauſe a Verdict did not cure an immaterial Iſſue; but that now a *Repleader* ought never to be awarded before Trial, becauſe the Fault in the Iſſue may be helped by the Statutes of *Jeofails:* That if a *Repleader* is denied where it ſhould be granted, or *é converſo*, it is Error; and the Judgment in *Repleader* is general, (*viz.*) *Quod Partes replacitent:* They muſt begin again at the firſt Fault, which occaſioned the immaterial Iſſue; if the Declaration and the Bar, and the Replication be all ill, they muſt begin *de novo*; but if the Bar be good, and the Replication ill, they muſt begin at the Replication; and no Coſts are allow'd on either Side; and a *Repleader* cannot be awarded after a Default. *Trin.* 2 *Ann.* 2 *Salk.* 579. Tho' a *Repleader* is allow'd after a Verdict; it has been adjudged not to be awarded after a Demurrer: (But a *Repleader* hath formerly been granted after Demurrer, and likewiſe after the Demurrer argued) and that a *Repleader* can never be awarded after a Writ of Error; but only after Iſſue joined, &c. *Latch* 147. 3 *Lev.* 440. *Mod. ca.* 102. See the *Form* of a *Repleader. Lutw.* 1622.

Replegiare, Is to redeem a Thing detained or taken by another, by putting in legal Sureties. See *Replevin.*

Replegiare de averiis, A Writ brought by one whoſe Cattle are diſtrained, or put in the Pound upon any Cauſe by another Perſon, on Surety given to the Sheriff to proſecute or anſwer the Action at Law. *F. N. B.* 68. *Reg Orig.* Stat. 7 *H.* 8. *c.* 4.

Replevin, (*Plevina*, *Replegiamentum*, *à Replegiare*) Is a Remedy grounded and granted upon a *Diſtreſs*, being a *Re-deliverance* of the Thing diſtrained to remain with the firſt Poſſeſſor, on Security or *Pledges* given by him to try the Right with the Diſtrainer, and to anſwer him in a Courſe of Law. 1 *Inſt.* 145. If one doth diſtrain another's Cattle or Goods for Rent, or Service, Damage feaſant, &c. the Owner, upon giving Security to the Sheriff that he will purſue his Action againſt the Party diſtraining, and return the Cattle or Goods again, if the Taking ſhall be adjudged lawful, may have a *Writ of Replevin* or *Replegiari facias*; whereby the Sheriff is commanded to return the Cattle or Goods to the Owner, till the Right of the Diſtreſs is determined: And the Perſon that is diſtrained is to be Plaintiff in the *Replevin*, and the Perſon diſtraining the Defendant or Avowant; for his Juſtification of the Diſtreſs is termed an *Avowry*. 1 Inſt. 268. *Replevins* are by Writ at *Common Law*; or upon *Plaint* in the Sheriff's Court by *Statute*, for the Party's more ſpeedy having again of his Cattle and Goods diſtrained; and the Sheriff ought to take two Sorts of *Pledges*, one by the Common Law, *viz. Plegii de Proſequendo*; and another by the Statute, i. e. *Plegii de Retorno Habendo:* And *Replevin* lies either in the *King's Bench* or *Common Pleas*, by Writ; alſo it lieth in the County-Court, and Court-Baron by Plaint; and a Hundred-Court may hold Plea of *Replevins*, but they are not to be granted out of Court. 1 *Inſt.* 145. *Dyer* 246. If the Cattle or Goods are not delivered upon a firſt *Replevin*, the Party diſtrained ſhall have an *Alias* and a *Pluries Replevin. F. N. B.* 69. The Sheriff may act by Virtue of the Writ of *Replevin*, or *ex Officio* by Precept to his Bailiff: And the Sheriff may take a Plaint on the Statutes, and make a *Replevin* preſently, and enter it in the County-Court afterwards. 2 *Inſt.* 139. 52 *H.* 3. *c.* 21. By the Statute 52 *H.* 3. If Beaſts are taken and wrongfully with-holden, the Sheriff upon Complaint may deliver them, if they were not taken within Liberties: And if within Liberties, and the Bailiffs thereof will not deliver them, the Sheriff ſhall cauſe them to be delivered in *Replevin.* The Stat *Weſtm.* 2. 13 *Ed.* 1. *cap.* 2. enacts, That Lords of Hundreds or Courts-Baron, ſhall have Power to hold Plea of *Replevin*; and Sheriffs, Bailiffs, &c. are to take Pledges of the Plaintiff to proſecute his Suit, and return the Diſtreſs, if it be awarded; or they ſhall anſwer the Lord for the Price of the Cattle; and if a Bailiff is not able to reſtore them, his Superior ſhall do it. But Stewards of Hundred Courts, and other Courts of Lords of Manors, though they have Power to *replevy* Goods; that muſt be by Proceſs of the Court, after Plaint entered therein. *Trin.* 8 *W.* 3. *B. R.* By 1 *Ph. & M. c.* 12. the Sheriff at his firſt County-Court, within two Months after he has his Patent, is to depute and proclaim in the Shire Town, Deputies to make *Replevins*, &c. The 21 *H.* 8. *c.* 19. ordains, that upon a *Replevin* ſued, an Avowry may be made by the Lord, or Cogniſance and Juſtification by his Bailiff, &c. on the Land holden of the ſame Lord, without naming any Perſon certain to be Tenant thereof; and the like Law is upon every Writ ſued of ſecond Deliverance: In a *Replevin* Damages and Coſts are given the Defendant, ſuch as the Plaintiff would have had if he had recovered in the Action, &c. By the 17 *Car.* 2. *cap.* 7. in *Replevin*, &c. if the Plaintiff be nonſuit, the Defendant may make Suggeſtion in the Nature of an Avowry for Rent; and on Prayer a Writ ſhall be awarded to the Sheriff to inquire of the Sum in arrear, and the Value of the Diſtreſs; and on the Return thereof, the Defendant ſhall recover the Arrears, or the Value of the Diſtreſs with Coſts, &c. And by 4 & 5 *Ann. c.* 16. the Plaintiff in a *Replevin*, with Leave of Court, may plead as many ſeveral Matters thereto, as he ſhall think neceſſary for his Defence: Provided, if any ſuch Matter upon Demurrer joined ſhall be judged inſufficient, Coſts ſhall be given at the Diſcretion of the Court; or if a Verdict be found upon any Iſſue for the Plaintiff or Defendant, Coſts ſhall alſo be given, unleſs the Judge certify that the Party had a probable Cauſe to plead ſuch Matter: Theſe two laſt Statutes relate to *Replevins* in the *Courts* at *Weſtminſter.* And by the late Act 11 *Geo.* 2. *c.* 19. In *Replevin* Defendants may allow generally, that the Plaintiff, or other Tenant of the Land, &c. whereon the Diſtreſs was made, held the ſame at certain Rent, during the Time the Rent diſtrained for incurred; which Rent was then, and ſtill remains due, &c. without ſetting forth the Landlord's Grant or Title: And if the Plaintiff becomes Nonſuit, &c. the Defendant ſhall recover double Coſts. Sheriffs and other Officers granting *Replevins*, before the Diſtreſs be delivered, ſhall in their own Names take Bond from the Plaintiff, and two Sureties, in double the Value of the Goods diſtrained, (to be aſcertained by Oath of a credible diſintereſted Witneſs) to proſecute the Suit with Effect, and without Delay, and return the Goods, in Caſe a Return be awarded; and ſuch Sheriff, &c. at the Requeſt of the Avowant, ſhall aſſign him the Bond by Indorſement, which if forfeited, he may bring an Action, and recover thereupon in his own Name: And the Court where the Action ſhall be brought, may by a Rule of the ſame, give Relief to the Parties. The moſt uſual Method to obtain a *Replevin* is by *Plaint*: But one cannot claim Property in a *Replevin* by his Bailiff or Servant, where *Replevin* is by Plaint in the County-Court; though one may claim Property in a Court of Record, by a Bailiff or Servant. 1 *Lev.* 90. And the Action of *Replevin* may be removed out of the County-Court, by *Pone*, if it was ſued out by Writ; and by *Recordare*, where the *Replevin* is upon Plaint, returnable into *B. R.* or *C. B.* there to be tried. *F. N. B.* 69, 70. The Plaintiff in *Replevin* muſt have a general or ſpecial Property in the Goods, for he who claims no Property in the Thing diſtrained ſhall not have *Replevin*; but if the Defendant in the *Replevin* claims the Property, the Sheriff cannot proceed till it is inquired into and decided before him by the Writ *Proprietate Probanda*; whereon if found for the Defendant, he can proceed no further, as he may if found for the Plaintiff; though the Plaintiff may afterwards *replevy* by Writ; and if the Sheriff returns the Property claimed, it ſhall be put in Iſſue and tried in *C. B.* 1 *Inſt.* 145. *Finch* 316, 317. If any Thing touching the Freehold comes in Queſtion, the Sheriff likewiſe muſt proceed no further. *Wood's Inſt.* 553. When a Plaint in *Replevin* is removed into *C. B.* &c. and the Plaintiff makes Default, or is Nonſuit, before or after Declaration, or Judgment is given againſt him, the Defendant in *Replevin* ſhall have the Writ *Retorno Habendo* of the Goods taken in Diſtreſs; ſo if he purſue not his Action of *Replevin*, &c. And the Plaint being removed, if the Plaintiff in *Replevin* is nonſuited before or after Avowry made, the Defendant may again diſtrain his Cattle for the ſame Cauſe he diſtrained the Firſt; yet the Plaintiff may ſue out a Writ of *Second Deliverance* upon the ſame Record, which will revive the firſt Suit: And after this Second Deliverance and Trial thereupon, or if the Plaintiff be again Nonſuit upon a Declaration, then there muſt be awarded a *Returnum irreplegiabile* to the Defendant, and then he may make his Avowry, or Plea in Juſtification of his Diſtreſs, to ground a Writ to inquire of Damages; or he may hold the Beaſts till he is ſatisfied. *Raym.* 33. *F. N. B.* 72. *Wood's Inſt.* 553. If the Defendant makes Default, the Plaintiff ſhall have Judgment to recover all in Damages; as well the Value of the Cattle, as Damages for the Taking of them, and his Coſts. *F. N. B.* 69. *Mich.* S *H.* 8. No Writ of *Second Deliverance* lies in *Replevin* after a Judgment upon a Demurrer, or after a Verdict given, but in theſe Caſes the Judgment muſt be entered with a Return irreplevilable; though on a Nonſuit a Second Deliverance will lie, becauſe there is no Determination of the Matter, and there a Writ of

Second Deliverance lieth to bring the Matter in Queſtion: But in the Caſe of a Demurrer and Verdict, the Matter is determined by Law. *Mich.* 7 *W. B. R.* 2 *Lill. Abr.* 457. The Plaintiff in a Second Deliverance was nonſuited, and a Writ of Inquiry of Damages awarded, and alſo a *Retorno Habendo*, upon which the Sheriff return'd *Averia Elongata*; whereupon a *Withernam* was granted, and all the other of the Plaintiff's Cattle were delivered to the Defendant; and ſome Time after the Plaintiff came into Court, and paid the Damages ands Coſts, on which the Court granted him a ſpecial Writ to reſtore his Cattle; but there was no Allowance for the Keeping of the Cattle, it being intended their Labour was worth the Charges. 3 *Leon.* 323. *Litt. Rep.* 54. If Cattle diſtrained are put into a Caſtle, the Sheriff muſt nevertheleſs make *Replevin* and Deliverance; and if Occaſion be, he may take the *Poſſe* or Power of the County with him for that Purpoſe: And where the Cattle are driven out of the County, &c. ſo that the Sheriff cannot make *Replevin*, a Writ of *Withernam* ſhall go to the Sheriff to take ſo many of the Diſtrainer's or Defendant's Cattle, &c. 1 *Roll. Abr.* 565. A Defendant in *Replevin* may plead Property in the Cattle in a Stranger, either in Bar or in Abatement; and where the Plea in Abatement is to the Point of the Action, as Property is, there the Defendant ſhall have a Return without making an Avowry for it; for whether the Property was in him or a Stranger, he ought to have a Return, becauſe he had the Poſſeſſion of the Cattle, which were illegally taken from him by the Plaintiff in *Replevin*: But where the Plea in Abatement is of a collateral Matter, he muſt make an Avowry to have the Return. 1 *Salk* 94. 3 *Nelſ.* 129. The General Iſſue in *Replevin* is *Non Cepit*; but the Defendant may plead Property in himſelf, in Bar or Abatement to the Action; though if he plead Property in a Stranger, he muſt conclude in Abatement; and 'tis to be obſerved, that upon the General Iſſue Property cannot be given in Evidence, therefore it muſt be pleaded there. *Vent.* 249. 3 *Salk.* 307. *Replevin* was brought for Taking and Detaining a Mare and Colt; the Defendant pleaded Not guilty as to the Taking, *infra ſex annos ultimo elapſos*; and upon Demurrer it was inſiſted, that the Plea was good, becauſe in Effect 'tis *Non Cepit*; and if he is not guilty of the Taking, he could not be guilty of the Detaining; and if this Plea be not allowed, the Statute of Limitations can never be a Bar in *Replevin*; but the Plea was adjudged ill, becauſe it doth not anſwer the Detaining, and probably the Cattle might be pounded where the Plaintiff could not come to *replevy* them, which is an illegal Detainer, tho' the Taking might be legal. *Sid.* 81. The Plaintiff is to lay his *Replevin* in the *Detinuit*, or *Detinet*; if in the *Detinet*, the Plaintiff hath his Goods again, and Damages for the Taking and Detaining; if 'tis brought in the *Detinuit*, he ſhall only recover for the wrongful Taking; for that Word being in the *preterperfect Tenſe*, implies that the Plaintiff had his Goods again: So that if in *Replevin* the Writ be in the *Detinet*, and the Plaintiff declare in the *Detinuit*, the Declaration is ill, the Variance being material. 2 *Lutw.* 1147, 1151. A *Replevin* ought to be certain, in ſetting forth the Number and Kinds of Cattle diſtrained, or it will not be good; becauſe if it be uncertain the Sheriff cannot tell how to make Deliverance of the Cattle, if a Writ be directed to him to do it. *Trin.* 23 *Car. B. R.* And in a Declaration in *Replevin* for Taking of Cattle, if the Time and Place of Taking be not named, the Declaration is naught for Uncertainty: The Declaration muſt be not only of a Taking in a Vill or Town, but *in quodam loco vocat'*, &c. or the ſame will not be good on Demurrer; but ſuch a Declaration in Action of Treſpaſs is good. *Hob.* 16. 3 *Salk.* 308. In *Replevin* for Taking ſeveral of his Beaſts *in quibuſdam locis* called *A.* and B. upon a Demurrer to this Declaration it was held ill; the Plaintiff ought to ſhew how many were taken in one Place, and how many in another Place. *Litt.* 37. And if the Plaintiff alledge two Places, and the Defendant anſwers only one, it is a Diſcontinuance. 1 *Salk.* 94. The Plaintiff in *Replevin* declared, that the Defendant took his Cattle *apud* R. omitting the Words *in quodam loco ibidem*; and on a Demurrer it was ruled, that the Effect of this Suit is the Taking of the Cattle, and not the ſhewing the Place where they were taken; for the Plaintiff might not know the Place, &c. and in this Action the Avowant is Actor, and beſt knows where the Cattle were taken, and therefore it ought to be ſhewed by him. 1 *Brownl.* 176. 3 *Nelſ. Abr.* 125. Count in a *Replevin*, for Breaking of the Plaintiff's Doors and Locks, and Carrying away his Goods and Cattle; the Defendant avows for a Rent-Charge, and ſays nothing of the Breaking of the Doors, &c. *Per Cur'*, He need not anſwer it in this Action; tho' in Action of Treſpaſs he muſt. *Trin.* 7 *W.* 3. *B. R.* 2 *Lill. Abr.* 456. In a *Replevin* for Taking of four Beaſts, the Defendant had Judgment for a Return; and he then ſurmiſed that forty Beaſts were taken and impounded, and were not all delivered back, and prayed that the Sheriff ſhould make a Deliverance to him of forty, &c. But reſolved, that the Plaintiff having declared but of four Beaſts taken, and he the Defendant agreed that Four only were taken by Avowing for them, he was therefore without Remedy: Yet he might in his Avowry have ſhewn that forty Beaſts were taken, and have avowed for all, and prayed a Return of all of them, although the Plaintiff had not declared for ſo many. *Cro. Jac.* 611. In *Replevin*, the Avowry was for Rent arrear, and the Avowant had Judgment; and in a Writ of Error brought in *B. R.* the Error aſſigned was, that Part of the Rent became due after the Diſtreſs taken, *viz.* the Diſtreſs was made three Days before *Michaelmas*, and the Defendant avowed for *Michaelmas* Rent; and it was adjudg'd ill, being for more than was due at the Time of the Diſtreſs taken: The Avowant ought to have abated his Avowry *quoad* the *Michaelmas* Rent, and taken Judgment for the Reſt; but he got the Roll amended in *C. B.* and ſo it was here. 2 *Salk.* 580. If the Jury in trying an Action of *Replevin* do not inquire as well of the Value of the Cattle diſtrained for Rent, that they may be ſold according to the Statute, as alſo of the Rent due, there ſhall be no Writ of Inquiry to ſupply it. 1 *Lev.* 255. A Verdict was found in *Replevin*, Part for the Plaintiff with Damages and Coſts; and Part for the Defendant: But in Avowry for Rent, Part was found for the Plaintiff and Damages and Coſts, and Part for the Avowant; and it was held, that the finding Damages and Coſts for the Plaintiff was void, but that Part being found for the Avowant, he ſhall have a Return with Damages and Coſts. *Lutw.* 1194. *Cro. Jac.* 473. It is a proper Concluſion of a Plea in *Replevin*, &c. to ſay *Unde petit judicium & retorn. Averiorum*, without ſaying any Thing of Damages, becauſe they are given by the Statute: And the Defendant muſt ſuggeſt Matter to have a Return, &c. which Suggeſtion is only to bring his Caſe within the Statute of *Hen.* 8. for Damages; for before that Statute at Common Law the Defendant had no Damages; and this Suggeſtion being for a particular Purpoſe, is not traverſable. 1 *Salk.* 94. A Second Deliverance may be a *Superſedeas* to the *Retorn. Habend.* but 'tis not ſo to the Writ of Inquiry for Damages; becauſe they are not given for the Thing for which the Defendant avowed, but by Virtue of the Stat. 21 *H.* 8. as a Recompence to the Avowant for his Expence and Trouble. *Ibid.* In Action of *Replevin*, the Defendant avowed for Damage-feaſant, and had a Verdict; adjudg'd, that he ſhall have a *Retorn. Habend.* for the Cattle, and a *Capias ad ſatisfaciend.* for the Damages: But if the Party tender the Coſts and Damages, the Sheriff ought not afterwards to execute the *Retorn. Habend.* And if for Want of ſuch Tender, the Sheriff doth execute it, and after the Coſts and Damages are paid, a Writ *Si conſtare poterit, &c.* lies, upon ſuggeſting that the Coſts are paid, to deliver the Diſtreſs, &c. 3 *Cro.* 162. 3 *Salk* 54. If a Man take Cattle for Damage feaſant, and the other tenders Amends, and he refuſeth it, &c. on a *Replevin* ſued for the Cattle, Damages ſhall be recovered by the Plaintiff for the Detaining of them; and not for the Taking, which was lawful. *New Nat. Br.* 154, 155. And if a Lord diſtrain his Tenant's Cattle wrongfully, and afterwards the Cattle return back unto the Tenant; the Tenant ſhall nevertheleſs have a *Replevin* againſt the Lord for thoſe Cattle, and recover Damages for the wrongful Diſtraining of them; becauſe he cannot have Action of Treſpaſs againſt his Lord for that Diſtreſs. *Ibid.* In *Replevin* an Avowry was made for Amercement in a Leet; the Plaintiff traverſed that the Defendant was ſeiſed of the Manor in Fee: And it was held good. *Hughes Abr.* 1711. If a *Replevin* be againſt two, and one of them avows for Damage feaſant in his ſeveral Land, and the other as a Commoner; both Avowries ſhall abate, and the Plaintiff recover Damages. 5 *Rep.* 19. *Plowd.* 10. After Iſſue in a *Replevin*, one of the Defendants died; and it was held the Writ was good againſt the other. 1 *Cro.* 174. A *Replevin* is triable by either Plaintiff or Defendant, without *Proviſo:* And if a Man do diſtrain Cattle in one County, and drive the Cattle into another County, the Party may ſue a *Replevin* in which of the Counties he will; but not in both the Counties. *New Nat. Br.* 155. *Replevin* may be had, where Cattle are taken that agiſt or manure Land; if one diſtrain a Cow which afterwards hath a Calf, &c. it may be brought for both: Alſo it lies for Wood cut, and any Goods or Chattels; for generally whatever is diſtrain'd, may be *replevied:* But no *Replevin* lieth of Goods taken beyond the Seas, though brought afterwards into *England*. *Show.* 91. A *Replevin* may not be had againſt the King, nor where he is Party, or the Taking was in his Right. 3 *Hen.* 7. An Infant may bring *Replevin*; and Executors or Adminiſtrators ſhall have it *de bonis Teſtatoris:* Husband and Wife ſhall join in a *Replevin*, for a Diſtreſs on the Wife's Lands; and for Goods and Chattels of the Wife, taken when ſole, the Husband alone may have it: If the Beaſts of ſeveral Men are taken, they muſt have *Replevin* ſeverally, and not join; unleſs they are Jointenants or Tenants in Common. *Land Purch. Compan.* 174, 175. If a Man whoſe Goods are diſtrained thinks himſelf wrong'd, and would have the Goods or Cattle reſtored, he may obtain them by *Replevin*; but if he be only deſirous of a reaſonable Satisfaction for them, he may bring an Action of *Treſpaſs* or *Trover, &c.* See *Avowry*.

A *Plaint* entered in *Replevin*.

A. B. *complains againſt* C. D. *of his Beaſts unjuſtly taken, in his Houſe, or his Freehold, in the Pariſh of*, &c.

Pledges, &c.

Form of a *Writ* of *Replevin*, or *Replegiare de Averiis*.

GEORGE the Second, &c. *We Command you, that juſtly and without Delay you cauſe to be* Replevied *to* A. B. *his Beaſts, which* C. D. *took, and unjuſtly detaineth, as is ſaid; and after him thoſe do you cauſe juſtly to be deduced*, &c. *That we may hear no more Clamour thereupon for Defect of Juſtice*, &c.

A *Count*, *Avowry* and Judgment in *Replevin*.

A. B. *was ſummoned to anſwer* C. D. *of a Plea, wherefore he took the Cattle or Beaſts of the ſaid* C. *and them unjuſtly detained againſt Sureties and Pledges*, &c. *and whereupon the ſaid* C. *by*, &c. *his Attorney complains, that the ſaid* A. *the Day of*, &c. *in the Year of the Reign*, &c. *at* M. *in a certain Place there called*, &c. *took the Cattle, that is to ſay, two Horſes and one Cow of the ſaid* C. *and them unjuſtly detained, againſt Sureties and Pledges, until ſuch a Day, wherein they were delivered by* G. H. *Eſq; Sheriff of the County aforeſaid, or Bailiff of the Lord the King ſworn and acknowledged*, &c. *Whereupon he ſaith, that he is the worſe, and hath Damage to the Value of ten Pounds; and therefore he brings his Suit*, &c. *And the ſaid* A. *by his Attorney comes and defends the Force and Injury, when*, &c. *And well avows the Taking of the Cattle aforeſaid, in the ſaid Place in which*, &c. *And juſtly, becauſe he ſaith*, &c. (*Here is to be inſerted the Avowry, or Plea that he took not the ſaid Cattle as the ſaid* C. *by his Declaration ſuppoſeth, with the Anſwer, Replication, Iſſue and ſpecial Verdict*). *And becauſe the Juſtices here, will adviſe themſelves of and upon the Premiſſes, before they give Judgment, Day is given to the Parties aforeſaid until the Day*, &c. *to hear their Judgment thereof, becauſe the ſaid Juſtices are not yet adviſed*, &c. *At which Day, here comes as well the ſaid* C. *as the ſaid* A. *by their Attornies aforeſaid; and upon this the Premiſſes aforeſaid being ſeen, and by the Juſtices here fully underſtood:* It is conſidered, *that the ſaid* C. *take nothing by his Writ aforeſaid, but be in Mercy for his falſe Claim*, &c. *And that the ſaid* A. *go thereof without Day*, &c. *and that he have Return of the Cattle aforeſaid, to be kept by him irreplegiable for ever. And how*, &c. *the Sheriff make it here appear in*, &c. *It is alſo conſidered, that the ſaid* A. *do recover againſt the ſaid* C. *his Damages aforeſaid, by the Jurors in Form aforeſaid aſſeſſed; as alſo*, &c. *for his Expences and Coſts, by the Court here of Increaſe with his Aſſent adjudged; which Damages in the whole amount to*, &c.

Replevy. Tenants having their Goods taken as a *Diſtreſs* for Rent, are to *replevy* them in five Days, or they may be appraiſed and ſold by Stat. 2 *W. & M. Seſſ.* 1. *c.* 5. Where any Goods are ſold, if Property is claim'd in them, and notwithſtanding the Party doth *replevy*, Treſpaſs will lie, &c. *Mod. Caſ.* 69. 2 *Lill.* 459. To *replevy* is uſed for the Bailing a Man. *Stat. Weſtm.* 1. *c.* 11. Vide *Homine Replegiando.*

Replevish, Signifies to let one to mainpriſe upon Surety. 3 *Ed.* 1. *cap.* 11.

Replication, (*Replicatio*) Is an Exception or Anſwer made by the Plaintiff in a Suit to the Defendant's *Plea:* And it is alſo that which the Complainant *replies* to the Defendant's Anſwer in *Chancery, &c.* *Weſt's Symb. par.* 2. The *Replication* is to contain Certainty, and not vary from the Declaration, but muſt purſue and maintain the Cauſe of the Plaintiff's Action; otherwiſe it will be a Departure in Pleading, and going to another Matter. 1 *Inſt.* 304. Though as a faulty Bar may be made good by the *Replication*; ſo ſometimes a *Replication* is made good by a Rejoinder; but if it wants Subſtance, a Rejoinder can never help it. 2 *Lill. Abr.* 462. A *Replication* being entire, and ill in Part, is ill in the Whole: But if there be three *Replications*, and one of them is ſuperfluous, and the other Two ſufficient, and the Defendant demurs generally, the Plaintiff may have Judgment upon thoſe which are ſufficient. 2 *Saund.* 17. 1 *Saund.* 338. Where the Defendant pleads in Bar, and the Plaintiff *replies* inſufficiently; if the Defendant demurs ſpecially upon the *Replication*, and the Bar is inſufficient, if the Action be of ſuch a Nature that a Title is ſet forth in the Declaration or Count, as in a *Formedon*, &c. Judgment may be given for the Plaintiff upon the inſufficient Bar of the Defendant: And where the Title doth not appear till ſet forth in the *Replication*, and that is inſufficient, there Judgment ſhall be had for the Defendant for the ill *Replication*. *Godb.* 138. 1 *Leon.* 75. 3 *Nelſ. Abr.* 133. If the Bar is naught, and the *Replication* likewiſe, the Plaintiff ſhall never have Judgment: So if there is a Variance between the Declaration and the *Replication*, though there be a Verdict, &c. *Hob.* 13. *Style* 356. And *Replications* conclude either with *hoc paratus eſt verificare*, or to the Country. In Action on a Bond to pay all Sums expended about a certain Buſineſs, &c. on the Defendant's pleading he paid all; the Plaintiff *replies* that he had not, *Et hoc paratus*, &c. Upon a Demurrer it was held the Plaintiff ought to have concluded *to the Country*; becauſe there is an Affirmative and Negative, and if he might be admitted to aver his *Replication* thus, there would be no End in Pleading. *Raym.* 98. But where new Matter is offered in a *Replication*, the Plaintiff ſhould aver his Plea, ſo as to give the Defendant an Opportunity to rejoin. 4 *Mod.* 285. *Lutw.* 98.

Report, (From the Lat. *Reportare*) Is a publick Relation, or bringing again to Memory, of Caſes judicially argued, debated, reſolv'd or adjudg'd in any of the King's Courts of Juſtice, with the Cauſes and Reaſons of the ſame as delivered by the Judges. *Co. Litt.* 293. There are likewiſe *Reports* when the Court of *Chancery*, or other Court, refer the Stating ſome Caſe, &c. to a Maſter of Chancery, or other Referee, his Certificate therein is called a *Report*: Upon which the Court makes an abſolute Order. *Pract. Solic.* 67. A Maſter in Chancery, having an Order of Reference, is to iſſue his Summons for the Parties to attend him at a certain Time and Place; when and where they may come with their Counſel, Clerk or Solicitor, to defend themſelves, and maintain or object againſt his *Report* or Certificate, &c. And Maſters are to draw their *Reports* briefly and as ſuccinctly as may be, preſerving the Matter clearly for the Judgment of the Court; without Recital of the ſeveral Points of the Order of Reference, or the Debates of Counſel before them; unleſs it be in Caſes doubtful, when they may ſhortly repreſent the Reaſons which induce them to what they do. *Ibid.* *Reports* and Certificates of Maſters in Chancery are to be filed with the Regiſter in four Days after the Making and Signing; and to be confirmed by the Court, to which Exceptions may be made, &c. None ſhall take any Money for the *Report* of an Order or Cauſe referred to them by any Judges, on Pain of 5*l.* &c. ſo as not to prohibit the Clerk from taking 12*d.* for the firſt, and 2*d* for every other Sheet. Stat. 1 *Jac.* 1. *c.* 10. But Maſters in Chancery, may take for every *Report* or Certificate, made on an Order upon Hearing of a Cauſe 20*s.* And for any other *Report*, &c. made upon Petition or Motion 10*s.* And their Clerks ſhall have 5*s.* for writing every *Report*, by 13 *Car.* 2. Vide *Reference.*

Repoſition of the Foreſt, (*Repoſitio Foreſtæ*, i. e. A Re-putting to) Was a *Statute* whereby certain Foreſt-Grounds being made *Purlieu* upon View, were by a ſecond View put to the Foreſt again. *Manw. par.* 1.

Repoſitorium, (*Lat.*) A Storehouſe or Place wherein Things are kept; alſo a Warehouſe. 3 *Cro.* 555.

Repoſitus, Signifies any Thing laid up in Secret or Private.

Repreſentation, (*Repræſentatio*) Is a Perſonating of another: And there is an Heir by *Repreſentation*, where a Father dies in the Life of the Grandfather, leaving a Son, who ſhall inherit his Grandfather's Eſtate, before the Father's Brother, &c. *Bro. Abr.* 303. Alſo Executors *repreſent* the Perſon of the Teſtator, to receive Money and Aſſets. *Co. Litt.* 209.

Repreſentative, A Deputy or Parliament Man. *Litt. Dict.*

Repriſal, (*Repriſale*, or *Repriſalia*) Is the Taking of one Thing in Satisfaction for another, derived from the Fr. *Repriſe*; and is all one in the *Common* and *Civil* Law. King *Hen.* 4. enacted, That Application being made to the Keeper of the Privy Seal, by Perſons injured in the Loſs of Shipping at Sea contrary to Treaties, &c. on Evidence ſhewn, he ſhall ſign *Letters of Requeſt* to demand Reſtitution and Reparation; which if not made in convenient Time, the Lord Chancellor of *England* is to grant *Letters of Repriſal*, to obtain the ſame by Force, and for the Indemnity of the Perſons intereſted: And this is confirmed by the Stat. 4 *H.* 5. *cap.* 7. Alſo there are two Sorts of *Repriſals*, Ordinary and Extraordinary; the Ordinary *Repriſals* are to arreſt and take the Goods of Merchant Strangers within the Realm; and the other is for Satisfaction out of the Realm, and is under the Great Seal, &c. *Lex Mercat.* 120. If any Perſon ſhall be killed, wounded, ſpoiled, or any ways damaged in a hoſtile Manner, in the Territories of any King or Potentate, to whom Letters of Requeſt are tranſmitted, and no Satisfaction ſhall be made, there is no Neceſſity to reſort to the ordinary Proſecution, but Letters of *Repriſal* ſhall iſſue forth; and the Prince againſt whom the ſame are iſſued, is obliged to make Satiſfaction out of the Eſtates of the Perſons committing the Injuries; and in Caſe of a Deficiency there, it will then be adjudg'd a common Debt on his Country. But where Misfortunes happen to Perſons, or their Goods, reſiding in a Foreign Country in Time of War, *Repriſals* are not to be granted: In this Caſe they muſt be contented to ſit down under the Loſs, for they are at their Liberty to relinquiſh the Place on the Approach of the Enemy, when they foreſee the Country is ſubject to Spoil and Devaſtation; and if they continue, they muſt partake of the common Calamity. *Lex Mercat.* or *Merch. Compan.* 174, 175. *Repriſals* may be granted on unjuſt and illegal Proſecutions abroad; where wrong Judgment is given in Matters not doubtful, which might have been redreſs'd either by the ordinary or extraordinary Power of the Country or Place, and which was apparently denied, &c. See *Letters of Marque.*

Repriſes, (Fr. *Reſumptions*, or a Taking back) Is uſed for Deductions and Payments out of a Manor or Lands, as Rent-Charges, Annuities, &c. And therefore when we ſpeak of the clear yearly Value of a Manor or Eſtate or Land, we ſay it is ſo much *per Annum ultra Repriſas*, beſides all *Repriſes.*

Reprive, (from the Fr. *Repris*) Signifieth to take back or ſuſpend a Priſoner from the Execution and Proceeding of the Law for that Time. *Terms de Ley* 527. Every Judge that hath Power to order an Execution, hath Power to grant a *Reprive*; and oftentimes Execution is ſtaid upon Condition of Tranſportation. But no Priſoner convicted of any Felony, for which he cannot have his Clergy, at the Seſſions of the *Old Baily* for *London* and *Middleſex*, &c. ought to be *reprived* but in open Seſſions; and *Reprives* are not to be granted otherwiſe, without the King's expreſs Warrant, nor by Order of any Juſtices of Gaol-Delivery. *Kel.* 4. 2 *Hawk. P. C.* 463. *Wood's Inſt.* 662. If a Woman is condemn'd for Treaſon or Felony, and ſhe is found by an Inqueſt or Jury of Matrons impanelled by the Sheriff, &c. to be Quick with Child, Execution ſhall be reſpited, and the Woman *reprived* till her Delivery; though ſhe ſhall take this Favour but once; and ſhe cannot ſave herſelf by this Means from pleading upon her Arraignment, nor from having Judgment pronounc'd againſt her on her Conviction. *S. P. C.* 198. *H. P. C.* 272. *Finch* 478. Where 'tis found ſound by a Jury of Women, that a Woman convicted of Felony, is with Child, ſome Judges have uſed to command a Reſpite of her Execution until a convenient Time, *i. e.* a Month after her Delivery, and then to be executed: But this is irregular, for ſhe may have a Pardon to plead, and therefore ought to be *reprived* till the next Seſſions. 12 *Aſſ.* 10. 1 *Hale's Hiſt. P. C.* 368, 369.

Repugnant, (*Repugnans*) Is what is contrary to any Thing ſaid before: And *Repugnancy* in Deeds, Grants, Indictments, Verdicts, *&c.* will make them void. 3 *Nelſ.* 135. 2 *Hawk. P. C.* The Common Law abhors *Repugnancies* and all Incongruities; but the former Part of a Deed, *&c.* ſhall ſtand, where the latter Part is *Repugnant* to it. *Jenk. Cent.* 251, 256.

Reputation, (*Reputatio*) Is defined by Sir *Edw. Coke* to be *vulgaris Opinio ubi non eſt veritas*; and he tells us, that *vulgaris Opinio eſt duplex, viz. Una orta inter graves & Diſcretos & quæ vultum veritatis habet; altera orta inter leves & vulgares homines abſque ſpecie veritatis.* 4 Rep. 104. That is not *Reputation* which this or that Man ſays; but that which generally hath been, and many Men have ſaid or thought. 1 *Leon.* 15. A little Time is ſufficient for the gaining of a *Reputation*, which needs not a very ancient Pedigree to eſtabliſh it; for general Acceptation will produce a *Reputation.* 2 Cro. 308. 1 Leon. But it has been held, that *common Reputation* cannot be intended of an Opinion which is conceived of four or five Years ſtanding; but of long Time. 2 *Lill. Abr.* 464. And ſome ſpecial Matter muſt be averred to induce a *Reputation.* Ibid. Land may be reputed Parcel of a Manor; though not really ſo. 1 *Ventr.* 51. 2 *Mod.* 69. 3 *Nelſ. Abr.* 137. And there is a Pariſh, and Office in *Reputation*, &c.

Reputation or Fame, Is under the Protection of the Law, as all Perſons have an Intereſt in their good Name; and Scandal and Defamation are injurious to it, though defamatory Words are not actionable, otherwiſe than as they are a Damage to the Eſtate of the Perſon injured. *Wood's Inſt.* 37.

Requeſt, Of Things to be done: Where one is to do a Collateral Thing, agreed on making a Contract, there ought to be a *Requeſt* to do it. 2 *Lill. Abr.* 464. If a Duty is due, it is payable without *Requeſt:* On Promiſe to pay a Duty precedent on *Requeſt*, there needs no actual *Requeſt*; but upon a Promiſe for a Penalty or Collateral Sum, there ſhould be an actual *Requeſt*, before the Action is brought. *Cro. Eliz.* 74. 1 *Saund.* 33. 1 *Lev.* 289. If a Debt is before a Promiſe, a *Requeſt* is not neceſſary, for then a *Requeſt* is not any Cauſe of the Action; though a Promiſe generally to pay upon *Requeſt*, the Action ariſes upon *Requeſt* and not before. *Cro. Jac.* 201. 1 *Lev.* 48. Action of Debt, for Money due on a Bond, may be brought without alledging a ſpecial *Requeſt*; and if the Action is for Debt, not appointed to be paid upon *Requeſt*, there needs no ſpecial *Requeſt* to be laid in the Declaration; otherwiſe if it is of a Thing collateral. *Cro. Eliz.* 229, 523. A Man promiſes to re-deliver upon *Requeſt*, ſuch Goods as were delivered to him; if an Action of Detinue is brought, the Plaintiff need not alledge a ſpecial *Requeſt*, becauſe the Action is for the Thing it ſelf: But if an Action of the Caſe is had for theſe Goods, then the *Requeſt* muſt be ſpecially alledged; as it is not brought for the Thing it ſelf, but for Damages. *Sid.* 66. 3 *Salk.* 309. If a Promiſe is made to pay Money to the Plaintiff upon *Requeſt*, no ſpecial Requeſt is required: But where there are mutual Promiſes between two Perſons to pay each other Money upon *Requeſt*, if they do not perform ſuch an Award, the *Requeſt* is to be ſpecially alledged. And if there is a Promiſe to pay Money to a Man upon *Requeſt*, and he dies before any *Requeſt* made, it ſhall be paid to his Executors; but not till the *Requeſt* is made. 3 *Salk.* 309. 3 *Bulſt.* 259. When a Perſon promiſes to pay a precedent Duty, the general Allegation *Licet ſæpius requiſit'* is ſufficient, becauſe there was a Duty without a Promiſe: As for Inſtance; If one buys or borrows a Horſe, and promiſes to pay ſo much upon *Requeſt:* But where the Promiſe is collateral, as to pay the Debt of a Stranger upon *Requeſt*, *&c.* the *Requeſt* is Part of the Agreement, and traverſable, there being no Duty before the Promiſe made; and for that Reaſon the *Requeſt* muſt be ſpecially alledged, for the bringing the Action, will not be a ſufficient *Requeſt.* *Latch* 93. 3 *Leon.* 200. 1 *Saund.* 35. 3 *Salk.* 308. If a Debt or Duty ariſes either upon Bond or Contract, *Licet ſæpius requiſitus* is good; *contra* where it becomes a Duty by the *Requeſt* it ſelf, when it is to be alledged ſpecially. 3 *Nelſ. Abr.* 144. It has been adjudg'd, that where the Thing is a Duty before any *Requeſt* made, a *Requeſt* is only alledged to aggravate Damages, and ſuch *Requeſt* is not traverſable; but if the *Requeſt* makes the Duty, as in *Aſſumpſit* to do ſuch a Thing upon *Requeſt*, there the Day, *&c.* of the *Requeſt* ought to be alledged, becauſe it is traverſable. *Palm.* 389. An *Aſſumpſit* to do a Thing upon *Requeſt*, a *Requeſt* muſt be alledged; and a ſpecial *Requeſt* muſt be laid to be made ſuch a Day, at ſuch a Place; where the Duty is not upon Bond, *&c.* If a *Requeſt* is to be ſpecially made, the Day and Year when made ſhould be ſpecially alledged. 1 *Lutw.* 231. 2 *Lill. Abr.* 466. *Cro. Car.* 280. But where a Perſon is not reſtrained to make the *Requeſt* by a Time limited, if made at any Time during his Life, it has been held to be good. *Cro. Eliz.* 136. And a *Requeſt* at any other Time than named may be given in Evidence. *Sid.* 268. A Defendant pleaded the Statute of Limitations in an Action on a Promiſe to pay ſo much on *Requeſt*, *&c.* And upon Demurrer the Plaintiff had Judgment; for though the Promiſe was within the Statute, yet the Duty was not, being no Duty till the *Requeſt* was made, and the Action being then brought within Time after the Breach, 'tis good. *Cro. Car.* 98. At a Trial the Defendant would have the Plaintiff prove the *Requeſt*; but it was ruled that he need not; for not being traverſed in the Plea, 'tis admitted. 1 *Lev.* 166. In a ſpecial Action on the Caſe for keeping a Paſſage ſtopt up, ſo that the Plaintiff could not come and cleanſe his Gutter, *&c.* after a Verdict for the Plaintiff, it was objected in Arreſt of Judgment, that the Plaintiff ought to have ſet forth a *Requeſt* to the Defendant to open the Paſſage; and this was held a good Objection after a Demurrer, but not after a Verdict. 1 *Mod.* 27. Unreaſonable *Requeſts* are not regarded in Law; and there is no Difference where a Thing is to be done upon *Requeſt*, and reaſonable *Requeſt*. *Dyer* 218. *Cro. Car.* 176. 3 *Nelſ. Abr.* 140, 142.

Requeſts Court of, The Place where held being anciently called *Camera Alba*, is taken away by Act of Parliament. See *Court of Requeſts.*

Rere County, Writs ſhall be delivered in the full County, or *Rere County.* Stat. 2 *Ed.* 3. *cap.* 5. Vide *Rier County.*

Reſceit, (*Receptio*) Is an Admiſſion or Receiving of a third Perſon to plead his Right in a Cauſe formerly commenced between two other Perſons; as where an Action is brought againſt Tenant for Life or Years, or any other particular Tenant, and he makes Default, in ſuch Caſe he in the Reverſion may move that he may be received to defend his Right, and to plead with the Demandant: *Reſceit* is likewiſe applied to the Admittance of a Plea, where the Controverſy is between the ſame two Perſons. *Broke* 205. *Co. Litt.* 192. *Nelſ.* 3 *Abr.* 146. He in Reverſion may come into Court, and pray to be received in a Suit againſt his particular Tenant; and after ſuch *Reſceit* the Buſineſs ſhall be haſtned, as much as may be by the Law, without any Delay of either Side. Stat. 13 *R.* 2. *cap.* 17. And 'tis ſaid a Wife ſhall be received, in Default of her Husband, *&c.* 2 *Lill. Abr.* 467. But *Reſceit* is admitted only for them who have Eſtates depending upon particular Eſtates for Life, Tenants by the Curteſy, or after Poſſibility, *&c.* and not for him in Remainder after an Eſtate-tail, which is perdurable. 1 *And.* 133. And Husband and Wife were Tenants for Life, Remainder to another in Fee; a *Formedon* was brought againſt the Husband, who made Default after Default; and thereupon the Wife pray'd that ſhe might be received to defend her Right; but it was denied by the Court; becauſe if the Defendant ſhould recover againſt her Huſband, it would not bar her Right if ſhe ſurvived him, and therefore it would be to no Purpoſe. Then he in Remainder prayed to be received, which at firſt the Court doubted, by Reaſon if the Husband ſhould recover, he might falſify ſuch Recovery; and becauſe his Eſtate did not depend upon the Eſtate of the Husband alone, but upon the Eſtate of Husband and Wife; but at laſt he was received. 1 *Leon.* 86. The Statute of *Glouceſter* enacts, that a Termor may be received to falſify, if he hath a Deed, and comes before Judgment; this is where he in Reverſion cauſeth himſelf to be impleaded by Colluſion, to make the Termor loſe his Term, *&c.* 6 *Ed.* 1. *c.* 11. And if any Stranger come in by a collateral Title, before he is *received*, he ſhall find Surety to ſatisfy the Demandant the Value of the Lands if he recovers from that Time till final Judgment; and the Demandant recovering, he ſhall be grievouſly amerced, *&c.* by Stat. 20 *Ed.* 1.

Reſceit of Homage, (*Receptio Homagii*) The Lord's receiving Homage of his Tenant, at his Admiſſion to the Land. *Kitch.* 148.

Reſcous, (*Reſcuſſus*) from the Fr. *Reſcouſſe*, i. e. *Liberatio*) Is an illegal Taking away and ſetting at Liberty of a *Diſtreſs* taken; or a Perſon *arreſted* by Proceſs or Courſe of Law: And where a Man has taken a Diſtreſs, and the Cattle diſtrained as he is driving them to the Pound happen to go into the Houſe of the Owner; if he that took the Diſtreſs demand them of the Owner, and he delivers them not, this is a *Reſcous* in *Law.* Co. Litt. Alſo it is uſed for a Writ which lies for this Fact, called *Breve de Reſcuſſu.* F. N. B. 101. Reg. Orig. 105. *Reſcous* is a forcible Reſiſtance and a Reſcuing of any Thing, or of a Perſon arreſted, and procuring an Eſcape againſt Law. 1 *Inſt.* 160. And there muſt be a Diſtreſs, or an Arreſt, or there cannot be a Reſcue. *Wood's Inſt.* 191. If a Diſtreſs is taken without Cauſe, as where no Rent is due; or if one diſtrain out of his Fee, or in the Highway; or diſtrains *Averia Carucæ*, where there is a ſufficient Diſtreſs beſides; or if the Landlord diſtrains any Thing that is not diſtrainable, one may make *Reſcous:* And this may be done by the Tenant, when any Thing of his is wrongfully diſtrained; or by a Stranger, when his Goods are diſtrained without juſt Cauſe, *&c.* But if the Diſtreſs was made upon good Cauſe, the Owner cannot make *Reſcous* as they are going to the Pound; and notwithſtanding the Diſtreſs be without Cauſe, if it be impounded, the Owner cannot break into the Pound to reſcue the Diſtreſs. 1 *Inſt.* 47, 160. 4 *Rep.* 11. Where the Owner of the Cattle, before Diſtreſs, tenders his Rent, and a Diſtreſs is afterwards taken, it is wrongful, and the Tenant may make *Reſcous*; tho' if he tender after the Diſtreſs, it is otherwiſe; he cannot make *Reſcous,* the Taking being lawful. 1 *Inſt.* 160. 2 *Inſt.* 107. 8 *Rep.* 147. A Tender of Amends to a Bailiff is not good; for he cannot deliver the Diſtreſs when once taken. *Wood* 192. In *Reſcous*, the Plaintiff declared that he had diſtrained forty Sheep of the Defendant's, and eighty Sheep of another Perſon's Damage-feaſant, and that the Defendant took, chaſed and reſcued all of them; the Defendant juſtified the putting his forty Sheep in the Place where, *&c.* having Right of Common there, and that the Plaintiff *de injuria ſua propria* chaſed them, and that the Defendant would have taken them from him, but they ran among the other eighty Sheep of the Stranger, and he folded them, and becauſe he could not ſever them, he chaſed them to the Fold, *quæ eſt eadem Reſcuſſio:* And upon Demurrer the Plaintiff had Judgment, becauſe, though the Defendant had ſome Colour to reſcue his own Sheep, he had none to reſcue the Sheep of the other Perſon. 2 *Cro.* 468. Unlawful *Reſcous* of Goods diſtrained, and Pound Breaches, incur treble Damages; recoverable by Statute on Action of the Caſe. 2 *W. & M.* Goods were levied on a Writ of *Fieri facias*, and the Sheriff returned that they were reſcued from him by *A. B. contra voluntatem*; adjudged, that no *Reſcous* can be on a *Fi. fac.* for that lies only on a *Capias* againſt the Perſon himſelf, and cannot be of Goods ſeiſed; but the Party injured may have an Action on the Caſe againſt *A. B.* who made the *Reſcous. Hetley* 145. In *Reſcous* of one *arreſted*, it has been held, that the Plaintiff, at whoſe Suit an Arreſt is made upon meſne Proceſs, may have his Action againſt the Reſcuers; and he cannot bring it againſt the Sheriff: And where a Perſon is reſcued, taken upon a *Capias ad ſatisfaciend.* Action lies for the Plaintiff, as well againſt the Reſcuers as the Sheriff. *Cro. Jac.* 486. *Cro. Car.* 109. For a *Reſcous* in Action upon the Caſe, the Plaintiff alledged, that he recovered againſt *A. B.* in Debt, and that he was taken by the Sheriff on a *Capias ad ſatisfaciendum*, and the Defendant reſcued him: It was adjudg'd this Action did lie by the Plaintiff againſt the Defendant; who is not bound up to ſue the Sheriff, and he to have his Remedy againſt the Reſcuers: And if the Plaintiff recover, and they are after ſued by the Sheriff, this may be pleaded in Bar. *Hughes's Abr.* 1734, 1736. If a Sheriff return, that the Defendant reſcued himſelf, it is not good: Yet the Defendant ſhall not take Advantage of his own Wrong. 1 *Cro.* 174, 185. On Action for an Eſcape on meſne Proceſs, if the Sheriff pleads a *Reſcous*, it ſhall be good; but not upon an Execution, where the Sheriff may raiſe the *Poſſe Comitatus* to ſecure the Priſoner; or when the Priſoner is in Gaol. 2 *Lev.* 144. 3 *Lev.* 46. 2 *Inſt.* 105, 193. But a Sheriff return'd a *Reſcous* of the Perſon whom he had taken by meſne Proceſs; and it was ruled no good Return, for he might upon that Proceſs raiſe the *Poſſe Comitatus.* Noy 40. 2 Cro. 419. 3 Nelſ. Abr. 149. The Sheriff cannot return a *Reſcous* made upon a Special Bailiff, not known to the Country; it ought to be upon the Sheriff's known Bailiff. 2 *Lill. Abr.* 468. And the Return of a *Reſcous* muſt be, that the Party was reſcued out of the Cuſtody of the Sheriff, and not of the Bailiff; though the Fact was that he was reſcued out of the Bailiff's Cuſtody; for the Sheriff is the Officer, and the Bailiff is but his Servant; yet a Return of a Reſcue out of the Cuſtody of the Sheriff's Bailiff hath been held ſufficient. 1 *Lev.* 214. 2 *Lev.* 26. And it hath been reſolved, that if an Action on the Caſe is brought for a *Reſcous*, it is well enough for the Plaintiff to declare *ſecundum veritatem facti*; but if the Defendant is indicted, it muſt be *ſecundum veritatem Legis*, viz. That the Priſoner was reſcued out of the Cuſtody of the Sheriff. 5 *Mod.* 216. Reſcuers may be indicted, or Action may be brought againſt them; though if on an Indictment of *Reſcous*, the Place where, and Time when the *Reſcous* was made be not expreſs'd, it is not good. *Trin.* 23 *Car. B. R.* The Sheriff return'd a *Reſcous*, but did not ſet forth the Place where it was made; this was held inſufficient, though he ſhewed where the Party was arreſted. *Dyer* 69 *Moor* 428. See *Cro. Jac.* 345. And upon a *Latitat* awarded againſt a Defendant, the Sheriff return'd a *Reſcous* on ſuch a Day, without mentioning any Place, *&c.* and adjudged a void Return; becauſe it did not appear that the Arreſt or *Reſcous* were within his Juriſdiction: But if it had appeared to be done in the County, it ſhall be intended within his Bailiwick, though within a Liberty in the ſame County; and in ſuch Caſe the *Reſcous* had been unlawful. *Yelv.* 51. An Indictment for a *Reſcous* return'd in *B R.* ought not to be quaſhed, although it be erroneous, except the Party that is indicted for it do perſonally appear in Court; for he cannot in ſuch Caſe appear by Attorney, the Offence being criminal. 21 *Car. B. R* If the Writ upon which a Defendant is arreſted be naught, and *Reſcous* is made; there is no Remedy againſt the Reſcuers. 2 *Lill. Abr.* 468. But if it is alledged that the Party was lawfully arreſted, it ſhall be intended by a good Warrant, though it be not ſet forth that he was taken by Virtue of any Warrant: And where the Warrant was ſet forth in Writing, but it was not ſaid *ſub ſigillo ſigillat'*, it was allowed to be good; but in another Caſe diſallowed, becauſe it is no Warrant if not under the Seal of Office. 2 *Cro.* 472. 3 *Nelſ. Abr.* 149. In Caſe for a *Reſcous*, *Holt*, Chief Juſt. doubted whether an Arreſt was lawful, being made by the Bailiff's Servant, and not in his Preſence; but ſaid the Plaintiff muſt prove his Cauſe of Action againſt the Perſon arreſted and reſcued: That he muſt prove the Writ and Warrant, by producing ſworn Copies of them; the Manner of the Arreſt, that it may appear to the Court to be legal; and in Point of Damage, he is to prove the Loſs of his Debt, *viz.* that the Party reſcued became inſolvent, or could not be re-taken. *Mod. Ca.* 211. Where a Bailiff hath a Warrant to arreſt a Man, and is hindered in the Execution of his Office by another; if there is no actual Arreſt, it cannot be a *Reſcous*, but it is a great Contempt of the Court. *Ibid.* Proceſs of Outlawry lies on the Return of a *Reſcous*; and Peers of the Realm, Spiritual or Temporal, are liable to an Attachment for *Reſcous*, &c. 2 *Hawk. P. C.* 302, 152. When a *Reſcous* is made, it muſt be returned upon the Writ, and then it is proper to move the Court for at Attachment againſt the Reſcuers; and not to grant it on Affidavits: So where the *Reſcous* is returned to the Filizer, and Proceſs of Outlawry iſſues, upon which the Reſcuers are brought into Court, they ſhall not be bailed upon Affidavits; but where an Attachment is granted, and they are examined on Interrogatories, upon anſwering them the Reſcuers ſhall be diſcharged. It is the Courſe upon the Return of a *Reſcous*, to ſet four Nobles Fine upon each Reſcuer. 2 *Salk.* 586. The Sheriff having returned a *Reſcous*, as he muſt on the Writ when the Return thereof is call'd for; the Parties that made the Reſcue are to anſwer to it; and if it be found againſt them, they may be fined for it: Or the Party grieved may have the Writ of *Reſcous* againſt them. 2 *Bulſt.* 137. Reſcuing a Priſoner in or before the Courts of Juſtice at *Weſtminſter*, is liable to Forfeiture of Lands and Goods, and perpetual Impriſonment. And Reſcuing a Felon lawfully arreſted for Felony, is Felony in the Reſcuers; and ſo of Treaſon, *&c. S. P. C.* 31. *H. P. C.* 131. 3 *Inſt.* 141.

Form of the Writ of *Reſcous.*

GEORGE *the Second*, &c. *To the Sheriff of* M. *Greeting: If* A. B. *ſhall make you ſecure*, &c. *then put* C. D. &c. *to ſhew why, whereas the ſaid* A. B. *at*, &c. *certain Beaſts of the ſaid* C. D. *had taken, and diſtrain'd for Rent*, &c. *And thoſe there according to the Law and Cuſtom of our Kingdom of* England, *would have Impounded, the ſaid* C. D. *the Beaſts aforeſaid with Force of Arms* Reſcued, *and other Enormities there did, to the Contempt of us, and grievous Damage of the ſaid* A. B. *and againſt our Peace*, &c.

Or *put* E. F. *and* G. H. *to Anſwer*, &c. *why, whereas the ſaid* A. B. *according to the Duty of his Office*, C. D. *whom by our Sheriff of the County aforeſaid by Writ to him directed, we commanded to be taken, at* L. *by Virtue of our ſaid Writ had taken, and him to our Priſon of*, &c. *there to abide, would have conveyed, the ſaid* E. F. *and* G. H. *him the ſaid* C. D. *at* L. *aforeſaid, with Force of Arms* Reſcued, *and other Enormities*, &c.

Reſcuſſor, The Party that commits ſuch a *Reſcous.* 2 Cro. 419.

Reſeiſer, (*Reſeiſire*) Is the Re-taking of Lands into the Hands of the King, where a general Livery or *Ouſter le main* was formerly miſ-uſed, contrary to the Order of Law. *Staundf. Prærog.* 26.

Reſervation, (*Reſervatio*) A Keeping aſide, or Providing; as when a Man lets or departs with his Land, but *reſerves* or provides for himſelf a Rent out of it for his own Livelihood; and ſometimes it has the Force of a Saving or Exception. 1 *Inſt.* 143. Exception is always of Part of the Thing granted, and of a Thing in Being: And a *Reſervation* is of a Thing not in Being, but is newly created out of the Lands or Tenements demiſed; though Exception and *Reſervation* have been uſed promiſcuouſly. 1 *Inſt.* 47. The proper Place for a *Reſervation*, is next after the Limitation of the Eſtate; and *Reſervation* of Rent may be every two, three or more Years; as well as Yearly, Half-yearly, Quarterly, *&c.* 1 *Inſt.* 47. 8 *Rep.* 71. It muſt be out of an Houſe, or Lands; and be made either by the Words *Yielding and Paying*, &c. or the Word *Covenant*, which is of both Leſſor and Leſſee, and therefore makes a *Reſervation.* Roll. Rep. 80. The *Reſervation* of Rent is good, although it is not *reſerved* by apt and uſual Words, if the Words are equivalent. *Plowd.* 120. 3 *Nelſ. Abr.* 150. But *Reſervation* of a Rent *ſecundum Ratam*, is a void *Reſervation.* 2 Ven. 272. See *Reddendum*, *Rent*, &c.

Reſiance, (*Reſiantia*) Signifies a Man's Abode or Continuance; whence comes the Participle *Reſiant*, that is continually dwelling or abiding in any Place; and is all one with *Reſidence*; but that Cuſtom ties this only to Perſons *Eccleſiaſtical.* Old Nat. Br. 85. Kitch. 33.

Reſiant-Rolls, *i. e.* Rolls containing the *Reſiants* Names of a Tithing, *&c.* which are to be called over by the Steward on holding Courts Leet. *Comp. Court Keep.*

Reſidence, (*Reſidentia*) Is peculiarly uſed both in the *Canon* and *Common* Law, for the Continuance of a Parſon or Vicar upon his Benefice: And perſonal *Reſidence* is required of Eccleſiaſtical Perſons on their Cures, upon Pain of forfeiting 10 *l.* for every Month. Stat 21 *H.* 8. *cap.* 13. One of the great Duties incumbent upon Clergymen, is that they be *Reſident* upon their Livings: And on the firſt Erecting Parochial Churches, every Clergyman was obliged to *reſide* on his Benefice, for Reading of Prayers, Preaching, *&c.* by the Laws and Canons of the Church; and by Statute, the Parſon ought to abide upon his Rectory in the Parſonage-Houſe; for the Statute is intended not only for ſerving the Cure, and for Hoſpitality, but to maintain the Houſe in Repair, and prevent Dilapidations: Tho' lawful Impriſonment, Sickneſs, *&c.* being Things of Neceſſity, are good Cauſe of Excuſe for Abſence, and excepted out of the Act by Conſtruction of Law: And it is the ſame where a Perſon is employed in ſome important Buſineſs for the Church or King; or he is entertained in the King's Service. 6 *Rep.* 21. 1 *Cro.* 580. In an Information on the Statute afore-mentioned, it was adjudged that the Parſon is to live in his Paſonage Houſe, and not in any other, though in the ſame Pariſh. But as by Stat. 13 *Eliz. cap.* 20. Leaſes made by Parſons are declared void, where the Parſon is abſent above eighty Days in any one Year, &c. On this Act a Defendant pleaded to an Agreement for Tithes, that the Parſon was abſent from his Parſonage by the Space of eighty Days in one Year; and the Jury found that he dwelt in another Town adjoining, and came conſtantly to his Pariſh Church four Days in every Week, and there read Divine Service; and it was held, that this was not ſuch an Abſence as is intended by the Statute to avoid any Agreement or Leaſe made by the Parſon. 1 *Bulſt.* 112. A Perſon allow'd to have two Benefices, may Demiſe or Leaſe one of them (on which he is Non-Reſident) to his Curate only; but if the Curate leaſes over, ſuch Leaſe ſhall laſt no longer than during the Curate's Reſidence, without Abſence above forty Days in any one Year. 1 *Leon.* 100. See 1 *Cro.* 123. Some Words in the Act 13 *Eliz.* as to Leaſes by Parſons not *Reſident*, repealed, *vide* 14 *Eliz. c.* 11. And ſee *Non-Reſidence.*

Reſidens, Is a Tenant who is bound *Reſidere* on his Lord's Land, and not to depart from thence. *Leg. Hen.* 1. *cap.* 43.

Reſiduary Legatee, Is he to whom the *Reſiduum* of the Eſtate is left by Will. And ſuch Legatee being made Executor with others, ſhall retain againſt the reſt: Where there are two *Reſiduary Legatees*, and one dies Inteſtate, his Adminiſtrator ſhall have a Moiety of the Surplus of the Perſonal Eſtate of the Teſtator, contrary to joint Executors, who are not intitled to Moieties; becauſe by making them *Reſiduary Legatees*, the Teſtator intended an equal Share to both: And if a *Reſiduary Legatee* die before the Will is proved, his Executor ſhall have Adminiſtration, &c. 6 *H.* 7. 1 *Chanc. Rep.* 238. *Show.* 26. See *Executor.*

Reſignation, (*Reſignatio*) Is the Yielding up a Benefice into the Hands of the Ordinary, called by the *Canoniſts Renunciation*; and though it is all one in Nature with the Word *Surrender*, yet it is by Uſe reſtrained to the Yielding up a Spiritual Living to the Biſhop, as Surrender is the Giving up of Temporal Land into the Hands of the Lord. And a *Reſignation* may now be made into the Hands of the King as well as the Dioceſan, becauſe he has *ſupremam Authoritatem Eccleſiaſticam*, as the *Pope* had here in ancient Times; though it has been adjudged that a *Reſignation* ought to be made only to the Biſhop of the Dioceſe, and not to the King; becauſe the King is not bound to give Notice of the *Reſignation* to the Patron, as the Ordinary is; nor can the King make a Collation himſelf, without Preſenting to the Biſhop. *Plowd.* 498. *Roll. Abr.* 358. Every Perſon that *reſigns* a Benefice, muſt make the *Reſignation* to his Superior; as an Incumbent to the Biſhop, a Biſhop to the Archbiſhop, and an Archbiſhop to the King, as ſupreme Ordinary; and a Donative is to be *reſign'd* to the Patron, and not the Ordinary; for in that Caſe the Clerk receiv'd his Living immediately from the Patron. 1 *Rep.* 137. A common Benefice is to be *reſign'd* to the Ordinary, by whoſe Admiſſion and Inſtitution the Clerk firſt came into the Church: And the *Reſignation* muſt be made to that Ordinary who hath Power of Inſtitution; in whoſe Diſcretion it is either to accept or refuſe the *Reſignation*; as the Law hath declared him the proper Perſon to whom it ought to be made, it hath likewiſe impowered him to judge thereof. 2 *Cro.* 64, 198. The Inſtrument of *Reſignation* is to be directed to the Biſhop, and when the Biſhop hath accepted of it, the *Reſignation* is good, to make void the Church, and not before; unleſs it be where there is no Cure, when it is good without the Acceptance of the Biſhop. A *Reſignation*, may be made before a Publick Notary, but without the Biſhop's Acceptation it doth not make the Church void: The Notary can only atteſt the *Reſignation*, in order to its being preſented, &c. *Ibid.* Before Acceptance of the *Reſignation* by the Biſhop, no Preſentation can be had to the Church; but as ſoon as the Acceptance is made, the Patron may preſent to the Benefice *reſigned*: And when the Clerk is inſtituted, the Church is full againſt all Men in Caſe of a common Perſon; though before Induction, ſuch Incumbent may make the Church void again by *Reſignation.* Count. Parſ. Compan. 106. A Parſonage is not to be granted over by the Incumbent, but it may be *reſigned*; and *Reſignations* are to be abſolute, and not conditional; for it is againſt the Nature of a *Reſignation* to be conditional, being a judicial Act. 3 *Nelſ. Abr.* 157. If any Incumbent ſhall corruply *reſign* his Benefice, or take any Reward directly or indirectly for *reſigning* the ſame, he ſhall forfeit double the Value of the Sum, &c. given, and the Party giving it, be incapable to hold the Living. Stat. 31 *Eliz. cap.* 6. But a Man may bind himſelf by Bond to *reſign*, and it is not unlawful, but may be upon good and valuable Reaſons; as where he is obliged to *reſign* if he take a ſecond Benefice, or if he be *Non reſident* by the Space of ſo many Months, or to *reſign* on Requeſt, if the Patron ſhall preſent his Son or Kinſman when he ſhould be of Age capable to take the Living, &c. *Cro. Jac.* 249, 274. Though Bonds for *Reſignation* of Benefices have no Encouragement in *Chancery*; for on ſuch Bonds generally the Incumbent is relieved, and not obliged to *reſign.* 1 Roll. Abr. 443. A Parſon's Refuſal to pay his Tenths, 'tis ſaid is a *Reſignation*, for which he may be deprived. *Owen* 5. And where *Reſignation* is actually made *de Eccleſia*, it extends to all the Lands and Poſſeſſions of the Church. *Cro. Jac.* 63. The uſual Words of a *Reſignation* are *Renuncio*, *Cedo*, *Dimitto*, and *Reſigno*; and the Word *Reſigno* is not a proper Term alone. 2 *Roll.* 350.

Form of a *Reſignation* of a *Benefice.*

IN *Dei Nomine Amen. Ego* A. B. *Rector & Incumbens Eccleſiæ Parochialis de, &c. in Com. & Diœceſ.* Oxon. *Volens & ex certis Cauſis & Conſiderationibus veris, juſtis & legitimis me in hac parte Specialiter moventibus, ab onere, Cura & Regimine dictæ meæ Rectoriæ, de, &c. & pertinen. ejuſdem penitus exonerari, eandem Rectoriam meam & Eccleſiam Parochialem præd. una cum ſuis juribus, membris & pertinentiis Univerſis, in manus Reverendi Patris* Johannis *permiſſione Divina Oxoniæ Epiſcopi loci iſtius Ordinarii & Diœceſani, vel ejuſdem Vicarii in Spiritualibus Generalis ſeu alterius cujuſcunque hanc meam Reſignationem admittend. Poteſtatem habentis vel habituri, non vel in metu coactus, nec dolo malo ad idem inductus, nec aliqua ſiniſtra machinatione motus, ſed ex certa Scientia, animo deliberato & Spontanea voluntate meis pure, ſimpliciter & abſolute Renuncio & Reſigno, ac re & verbo vacuam dimitto, jure quoque titulo & Poſſeſſione meis in eadem Rectoria ſive Parochiali Eccleſia, una cum ſuis juribus, Membris & pertinentiis Univerſis præhabitis & mihi hactenus conceſſis omnibus & ſingulis Renuncio eoſdemque Cedo & ab iiſdem recedo totaliter & expreſſe in his Scriptis. In cujus Rei Teſtimonium nomen & ſigllum meum his præſentibus appoſui die & Anno, &c.*

Reſignation of Offices, If a Man can have no Title to the Profits of an Office, without the Admiſſion or Confirmation of a Superior, there the *Reſignation* of that Office muſt be to him. 3 *Nelſ. Abr.* 158.

Reſort, (*Reſortum*) Signifies the Authority or Juriſdiction of a Court: *Salvo tamen tam* Reſorto *quam aliis jure noſtro, & jure etiam alieno.* Spelm. *Dernier Reſort*, the laſt Refuge.

Reſpectu computi Vicecomitis habendo, Is a Writ for the Reſpiting a Sheriff's Account, directed to the Treaſurer and Barons of the *Exchequer.* Reg. Orig. 139.

Reſpite, (*Reſpectus*) A Delay, Forbearance, or Continuation of Time. *Glanvil, lib.* 12. *c.* 9.

Reſpite of Homage, (*Reſpectus Homagii*) Is the Forbearance or Delay of *Homage*, which ought to be performed by Tenants holding by Homage, &c. though it had the moſt frequent Uſe for ſuch as held in *Knight-Service* and *in Capite*, who formerly paid into the *Exchequer* every fifth Term ſome ſmall Sum of Money to be *reſpited* their *Homage*: But this Charge being incident to and ariſing from *Knight-Service*, it is taken away by the Statute 12 *Car.* 2.

Reſpondeas Ouſter, To anſwer over in an Action to the Merits of the Cauſe, &c. If a Demurrer is joined upon a Plea to the Juriſdiction, Perſon, or Writ, &c. and it be adjudged againſt the Defendant, it is a *Reſpondeat Ouſter*. Jenk. Cent. 306. See *Judgment*

Reſpondeat Superior. If Sheriffs of *London* are inſufficient, the *Mayor and Commonalty* muſt *anſwer* for them: And *pur Inſufficience del Bailiff d'un Liberty*, Reſpondeat *Dominus Libertatis*. 4 Inſt. 114. Stat. 44 Edw. 3. cap. 13. If a Coroner of a County is inſufficient, the County as his *Superior* ſhall *anſwer* for him. *Wood's Inſt.* 83. A Gaoler conſtitutes another under him, and he permits an Eſcape, if he be not ſufficient, *Reſpondeat Superior*; and *ſuperior Officers* muſt *anſwer* for their Deputies in Civil Actions, if they are inſufficient to anſwer Damages. *Dr. & Stud. cap.* 24.

Reſponſalis, (*Qui Reſponſum defert*) Is he that appears and anſwers for another in Court at a Day aſſigned. *Glanvil, lib.* 12. *cap.* 1. And *Fleta* makes a Difference between *Reſponſalem*, *Atturnatum*, and *Eſſoniatorem*; and ſays that *Reſponſalis* was for the Tenant, not only to excuſe his Abſence, but to ſignify what Trial he meant to undergo, the Combat or the Country. *Fleta, lib.* 6. *cap.* 21. This Word is made uſe of in the *Canon Law*, & ſignificat procuratorem vel eum qui abſentem excuſat.

Reſponſions, (*Reſponſiones*) Was applied chiefly by the Knights of St. *John of Jeruſalem*, to certain Accounts made to them by ſuch as held their Lands, &c. 32 *Hen. cap.* 24.

Reſponſum, A Word uſed for Buſineſs: *Pope Alexander* ſent two Perſons to King *Edw.* 1. pro *Reſponſis Eccleſiaſticis*. Blount.

Reſtare, *i. e.* To ſtay or ſtop; it is mentioned in *Matt. Par.* 515.

Reſtitution, (*Reſtitutio*) Is a *Reſtoring* any Thing unjuſtly taken from another: It ſignifies alſo the ſetting him in Poſſeſſion of Lands or Tenements, who had been unlawfully diſſeiſed of them. *Crompt. Inſt.* 144. And *Reſtitution* is a *Writ* which lies where a Judgment is reverſed, to *reſtore* and make good to the Defendant in the Action what he hath loſt: The Court which reverſes the Judgment, gives upon the Reverſal a Judgment for *Reſtitution*; whereon a *Scire facias quare Reſtitutionem habere non debet*, reciting the Reverſal of the Judgment, and the Writ of Execution, &c. muſt iſſue forth. 2 *Lill. Abr.* 472. But the Law doth oftentimes *reſtore* the Poſſeſſion to one without a Writ of *Reſtitution*, *i. e.* by Writ of *Habere facias Poſſeſſionem*, &c. in the common Proceeding of Juſtice upon a Trial at Law. *Ibid.* 473. And there is a *Reſtitution* of the Poſſeſſions of Lands in Caſes of *forcible Entry*; a *Reſtitution* of Lands to an Heir, on his Anceſtor's being attainted of *Treaſon* or *Felony*; and *Reſtitution* of *ſtolen Goods*, &c. A Writ of *Reſtitution* is not properly to be granted but where the Party cannot be *reſtored* by the ordinary Courſe of Law; and the Nature of it is to *reſtore* the Party to the Poſſeſſion of a Freehold, or other Matter of Profit, from which he is illegally removed; and it extends to *Reſtitution* on *Mandamus* to any Publick Office. *Trin.* 23 *Car. B. R.* 2 *Lill.* 472, 473. Where a Judgment for Land is reverſed in *B. R.* by Writ of Error, the Court may grant a Writ of *Reſtitution* to the Sheriff to put the Party in Poſſeſſion of the Lands recovered from him by the erroneous Judgment; though there ought to be no *Reſtitution* granted of the Poſſeſſion of Lands, where it cannot be grounded on ſome Matter of Record appearing to the Court. *Hill.* 22 *Car.* And Perſons that are to *reſtore*, are to be Parties to the Record; or they muſt be made ſo by ſpecial *Scire fac.* Cro. Car. 328. 2 *Salk.* 587. If a Leaſe is taken in Execution upon a *Fieri fac.* and ſold by the Sheriff, and afterwards the Judgment is reverſed; the *Reſtitution* muſt be of the Money for which it was ſold, and not the Term. *Cro. Jac.* 246. *Moor* 788. But a Sheriff extended Goods and Lands upon an *Elegit*, and returned that he took a Leaſe for Years, which he ſold and delivered to the Plaintiff as *Bona & Catalla* of the Defendant for the Debt, and afterwards the Judgment was reverſed for Error; and it was adjudged that the Party ſhall be reſtored to the Leaſe, becauſe the *Elegit* gave the Sheriff no Authority to ſell the Term, and therefore a Writ of *Reſtitution* was awarded. *Yelv.* 179. And there has been in this Caſe a Diſtinction made between compulſory and voluntary Acts done in Execution of Juſtice; where the Sheriff is commanded by the Writ to ſell the Goods, and where he is not, when the Goods are to be *reſtored*, &c. 8 *Rep.* 96. If the Plaintiff hath Execution, and the Money is levied and paid, and afterwards the Judgment is reverſed, there the Party ſhall have *Reſtitution* without a *Scire fac.* for it appears on the Record what the Party had loſt and paid; but if the Money was only levied, and not paid, then there muſt be a *Scire fac.* ſuggeſting the Sum levied, &c. And where the Judgment is ſet aſide after Execution for any Irregularity, there needs no *Scire facias* for *Reſtitution*; but an Attachment of Contempt, if upon the Rule for *Reſtitution*, the Money is not *reſtored*. 2 Salk. 588. In a *Scire facias quare Reſtitution'*, &c. the Defendant pleaded Payment of the Money mentioned in the *Sci. fac.* and it was held to be no Plea. *Cro. Car.* 328. But now Payment is a good Plea to a *Scire fac.* by the Stat. 4 & 5 *Ann.* 2 *Lill. Abr.* 479. Upon a *Vi Laica removenda* a Parſon was put out of Poſſeſſion; and upon a Suggeſtion thereof, and Affidavit made, *Reſtitution* was ordered. *Cro. Eliz.* 465. The Juſtices of Peace, before whom an Indictment for *forcible Entry* is found, muſt give the Party *Reſtitution* of his Lands, &c. who was put out of Poſſeſſion by Force. *Stat.* 8 *Hen.* 6. But where one is indicted for a forcible Entry, and the Party indicted traverſes the Indictment, there cannot be *Reſtitution* before Trial and a Verdict, and Judgment given for the Party, though the Indictment be erroneous; it being too late to move to quaſh the Indictment after the Traverſe, which puts the Matter upon Trial. 2 *Lill.* 473, 474. A Perſon being *attainted of Treaſon*, &c. he or his Heirs may be *reſtored* to his Lands, &c. by the King's Charter of Pardon; and the Heir by Petition of Right may be *reſtored*, if the Anceſtor is executed: But *Reſtitution* of Blood muſt be by Act of Parliament; and *Reſtitutions* by Parliament are ſome of Blood only, ſome of Blood, Honour, Inheritance, &c. 3 *Inſt.* 240. 1 *Inſt.* 8, 391. The King may reſtore the Party or his Heirs to his Lands, and the Blood, as to all Iſſue begotten after the Attainder. *Ibid.* There ſhall be a Writ of *Reſtitution* granted the Owner of *ſtolen Goods*, by the Court where a Felon is tried on Indictment, after the Attainder of the Felon, as in Caſe of Appeal of Robbery. 21 *Hen.* 8. *cap.* 11. And it may be alſo of Money when the Felon is convicted of the Felony by Reaſon of the Evidence given by the Party robbed, or by his Procurement, &c. And by this Statute Executors and Adminiſtrators ſhall have *Reſtitution* of Goods, and it is ſaid notwithſtanding Sale in Market-overt. 2 *Inſt.* 714. 3 *Inſt.* 242. 5 *Rep.* 109.

If Goods ſtolen are not waived by Flight, or ſeiſed for the King, the Party robbed may take his Goods again without proſecuting the Felon; but after ſeiſed for the King, they may not be *reſtored* without Appeal or Indictment. *Kel.* 48. 2 *Hawk. P. C.* 168.

Re-reſtitution, Is when there hath been a Writ of *Reſtitution* before granted: And Reſtitution is generally Matter of Duty; but *Re-reſtitution* is Matter of Grace. *Raym.* 85. A Writ of *Re reſtitution* may be granted upon Motion, if the Court ſee Cauſe to grant it. And on Quaſhing an Indictment of Forcible Entry, the Court of B. R. may grant a Writ of *Re reſtitution, &c.* 2 Lill. Abr. 474.

Reſtitutione Temporalium, Is a Writ directed to the Sheriff to reſtore the Temporalities, or the Barony of a Biſhoprick to the Biſhop elected and confirmed. *F. N. B.* 169. 1 *Roll. Abr.* 880.

Reſummons, (*Reſummonitio*) Signifies a ſecond Summons, or calling a Man to anſwer an Action, where the firſt Summons is defeated by any Occaſion; and when by the Death, *&c.* of the Judges, they do not come on the Day to which they were continued, for the Trial of Cauſes, ſuch Cauſes may be revived or recontinued by *Reſummons.* Vide *Reattachment.*

Reſumption, (*Reſumptio*) Is uſed particularly for the Taking again into the King's Hands ſuch Lands or Tenements, *&c.* as before upon falſe Suggeſtion he had granted by Letters Patent to any Man. *Broke* 298. It is ſaid that the King cannot grant a Prerogative of Power ſo, but that he may *reſume* it; but otherwiſe it is of a Grant of an Intereſt. *Skinner's Rep.* 236. *Reſumption of Grants* is mentioned in the Stat. 31 *Hen.* 6. *cap.* 7. and other Statutes.

Retail, To buy by the *Great*, and ſell by *Retail* or Parcels. 3 & 4 *Ed.* 6. *cap.* 21.

Retainer, (From the Lat. *Retineo*) Is a Keeping or Maintaining; as of a Servant, not menial or continually dwelling with the Maſter, but attending ſometimes upon ſpecial Occaſions. 1 *R.* 2. *cap.* 7. See *Livery.* And *Counſellors* and *Attornies* are *retained* to attend the Cauſes of their Clients, in the ſeveral Courts, *&c.*

Retaining Fee, Is the *firſt Fee* given to any Serjeant or Counſellor at Law, whereby to make him ſure that he ſhall not be on the contrary Side.

Retenementum, Is a Word uſed for Detaining, With-holding, or Keeping back. And *ſine ullo retenemento* was a uſual Expreſſion in old Deeds and Conveyances of Lands. *Cowel.*

Retinentia, A Retinue, or Perſons retained to a Prince or Nobleman. *Pat.* 14 *R.* 2.

Retractus Aquæ, The Ebb or Return of a Tide. *Plac.* 30 *Edw.* 1.

Retraxit, Is when the Plaintiff cometh in Perſon in Court where his Action is brought, and ſaith he will not proceed in it; and this is a Bar to that Action for ever: It is ſo called, becauſe it is the emphatical Word in the Latin Entry, entred thus, ſſ. *Et præd. Quer. in propria Perſona ſua venit & dicit quod ipſe placitum ſuum præd. verſus præd. Defenden. ulterius Proſequi non vult, ſed abinde omnino ſe Retraxit, &c.* A *Retraxit* muſt be always in Perſon; and if it is by Attorney, it is Error. 8 *Rep.* 58. 3 *Salk.* 245. As to a *Retraxit*, it is a Bar to any Action of equal Nature brought for the ſame Cauſe or Duty; but a Nonſuit is not. 1 *Inſt.* 208. If the Plaintiff ſays he will not appear, this is not a *Retraxit* but *Nonſuit:* But if the Plaintiff ſays he will not ſue, it is a *Retraxit.* 2 Danv. Abr. 471. And *Retraxit* is always on the Part of the Plaintiff or Demandant: and it cannot be before a Declaration, for before the Declaration it is only a Nonſuit. 3 *Leon.* 47. 2 *Lill. Abr.* 476. If the Plaintiff enter a *Retraxit* againſt one Joint-Treſpaſſer, it is a Releaſe to the other. *Cro. Eliz.* 762. But if a *Retraxit* be entred as to one Appellee in Appeal of Murder, the Suit may be continued againſt the Reſt; becauſe the Appellant is to have a ſeveral Execution againſt every one of them. *H. P. C.* 190. In a Prohibition by three, a *Retraxit* of one ſhall not bar the other two Plaintiffs. *Moor* 460. *Nelſ. Abr.* 165. See *Nolle Proſequi.*

Retropannagium, Is *After-Pannage*, when the beſt is eaten, and only Haws and ſuch like are left. *Pet. in Parl. temp. Edw.* 3.

Rette, (*Fr.*) A Charge or Accuſation. *Stat. Weſt.* 1. *cap.* 2.

Return, (*Returna*, or *Retorna*, from the Fr. *Retour*, i. e. *Reditio, recurſus*) Hath divers Applications in our Law; but is moſt commonly uſed for the *Return* of *Writs*, which is the Certificate of the Sheriff made to the Court of what he hath done touching the Execution of any Writ directed to him; and where a Writ is executed, or the Defendant cannot be found, *&c.* then this Matter is endorſed on the Back of the Writ by the Officer, and delivered into the Court whence the Writ iſſued, at the Day of the *Return* thereof in order to be filed. *Stat. Weſtm.* 2. *cap.* 39. 2 *Lill. Abr.* 476. The Name of the Sheriff muſt always be to the *Return* of Writs; otherwiſe it doth not appear how they came into Court: If a Writ be *returned* by a Perſon to whom it is not directed, the *Return* is not good, it being the ſame as if there were no *Return* at all upon it. And after a *Return* is filed it cannot be amended; but before it may. *Cro. Eliz.* 310. 2 *Lill. Abr.* 477, 478. If the Sheriff doth not make *Return* of a Writ, the Court will amerce him; ſo if he makes an inſufficient *Return*; and if he makes a falſe *Return*, the Party grieved may have his Action of the Caſe againſt him. *Wood's Inſt.* 71. If a Sheriff *return* a Vouchee ſummoned, where in Truth he is dead, and there is no ſuch Perſon; or in a *Præcipe quod reddat* that the Tenant is dead, *&c.* there may be an Averment againſt ſuch *Returns*, by the Stat. 14 *Ed.* 3. *c.* 8. *Jenk. Cent.* 121, 122. Some *Returns* are a kind of Declaration of an Accuſation; as the *Return* of a Reſcous, and the like; and theſe muſt be certain and perfect, or they will be ill. 11 *Rep.* 40. *Plowd.* 63, 117. *Kelw.* 165. Writs to do Things in Franchiſes, are directed to and *returned* by the Sheriff, to whom Bailiffs make their *Returns:* And an Action will lie againſt a Sheriff, that takes the *Return* of one that is no Bailiff, and againſt him who makes it; and likewiſe againſt the Bailiff of a Franchiſe, for Negligence in Execution, *&c.* 7 *Ed.* 4. 14. 12 *Ed.* 4. 15. *Moor, cap.* 606. Sheriffs are to accept of *Returns* of *Bailiffs* of *Liberties*, where they are ſufficient. 1 *Danv.* 191. There is a *Return* of *Juries* by Sheriffs; and *Returns* of *Commiſſions*, by Commiſſioners, *&c.*

Return-Days, Are Days in *Term* called by that Name; or Days in *Bank.* See *Term.*

Returno Habendo, Is a Writ that lies where Cattle are diſtrained and replevied, and the Perſon that took the Diſtreſs juſtifies the Taking, and proves it to be lawful, upon which the Cattle are to be *returned* to him. This Writ alſo lieth when the Plaint in Replevin is removed by *Recordare* into the *King's Bench* or *Common Pleas*, and he whoſe Cattle are diſtrained makes Default, and doth not proſecute his Suit. *F. N. B.* 74.

Returnum Averiorum, A judicial Writ, the ſame with *Returno Habendo.* Reg. Judic. 4.

Returnum irreplegiabile, Is a Writ Judicial, directed to the Sheriff for the final Reſtitution or *Return* of Cattle to the Owner when unjuſtly taken or diſtrained by another, and ſo found by Verdict; and it is granted after a Nonſuit in a ſecond Deliverance. *Reg. Judic.* 27.

Reve, Is the Bailiff of a Franchiſe or Manor, eſpecially in the Weſt of *England*. Hence *Shire reve Church-reve*, &c. Kitch. 43. Vide *Greve*.

Reveland. The Land which in *Domeſday* is ſaid to have been *Thaneland*, and after converted into *Reveland*, ſeems to have been ſuch Lands as being reverted to the King after the Death of his *Thane*, who had it for Life, was not ſince granted out to any by the King, but reſted in Charge upon the Account of the *Reve* or Bailiff of the Manor. *Spelm. Feuds*, *cap.* 24.

Revels, Signifying with us Sports of Dancing, and Maſking, &c. commonly performed by Night. See *Maſter of the Revels*.

Revenue, (*Fr.*) Is properly the yearly Rent that accrues to any Man from his Lands and Poſſeſſions; and is generally uſed for the *Revenues* or Profits of the *Crown*. An Act paſſed for preventing all Doubts and Queſtions concerning the Collecting the publick *Revenue*. 1 *W. & M. Seſſ.* 2. *c.* 3.

Reverſal, Of a Judgment is the making it void for Error; and when upon the Return of a Writ of Error, it appears that the Judgment, is erroneous, then the Court will give Judgment, *Quod judicium revocetur, adnulletur & penitus pro nullo habeatur.* 2 Lill. Abr. 481. The ancienteſt Judge of the Court, and in his Abſence the next in Seigniority to him, doth always pronounce the *Reverſal* of an erroneous Judgment openly in Court, upon the Prayer of the Party; and he according to the ancient Courſe pronounceth it in *French*, to this Effect, *Pur les Errors evandit, & auter errors manifeſt in le Record, ſoit le Judgment Reverſe*, &c. Trin. 22 Car. B. R. A *Reverſal* of a Judgment may be pronounced conditionally, *i. e.* That the Judgment is *reverſed* if the Defendant in the Writ of Error doth not ſhew good Cauſe to the contrary at an appointed Time; and this is called a *Revocetur niſi*, and if no Cauſe be then ſhewed, it ſtands *reverſed* without further Motion. 2 *Lill* 482. The Stat. 21 *Jac.* 1. *cap.* 16. hath provided a new Writ, where Judgment is *reverſed* after a Verdict, or where an Outlawry is *reverſed*, &c. Lutw. 264. Vide *Error*.

Reverſion, (*Reverſio*, from *Revertor*) Signifies a Returning again; and therefore *Reverſio terræ eſt tanquam terra revertens in Poſſeſſione donatori ſive hæredibus ſuis poſt donum finitum.* 1 Inſt. 142. A *Reverſion* hath two Significations; the one is an Eſtate left, which continues during a particular Eſtate in Being; and the other is the Returning of the Land after the particular Eſtate is ended: It is ſaid to be an Intereſt in the Land, when the Poſſeſſion ſhall fall, and ſo it is commonly taken; or it is when the Eſtate which was parted with for a Time, ceaſeth and is determined in the Perſons of the Alienees or Grantees, &c. and returns to the Grantor or Donor, or their Heirs from whence derived. *Plowd.* 160. 1 *Inſt.* 142. But the uſual Definition of a *Reverſion* is, that it is the Reſidue of an Eſtate left in the Grantor after a particular Eſtate granted away, continuing in him that granted the particular Eſtate; and where the particular Eſtate is derived out of his Eſtate: As in a Gift in Tail, the *Reverſion* of the Fee-ſimple is in the Donor; and in a Leaſe for Life, or Years, the *Reverſion* is in the Leſſor: Alſo a *Reverſion* takes Place after a Remainder, where a Perſon makes a Diſpoſition of a leſs Eſtate, than that whereof he was ſeiſed at the Time of making thereof. 1 *Inſt.* 22, 142. *Wood's Inſt.* 151. When the particular Eſtate determines, then the *Reverſion* comes into Poſſeſſion, and before it is ſeparated from it; for he that hath the Poſſeſſion, cannot have the *Reverſion*, becauſe by uniting them, the one is drowned in the other. 2 *Lill. Abr.* 484. The *Reverſion* of Land when it falls, is the Land itſelf; and the Poſſeſſion of the Tenant, preſerves the *Reverſion* of the Lands, with the Rents, &c. in the Donor, or Leſſor. 1 *Inſt.* 324. A *Reverſion* of an Eſtate of Inheritance, may be granted by Bargain and Sale inrolled, Leaſe and Releaſe, Fine, &c. And by the Grant of Lands, a *Reverſion* will paſs; though by the Grant of a *Reverſion*, Land in Poſſeſſion will not paſs. *Bridgm. Conveyan.* 237. 6 *Rep.* 36. 5 *Rep.* 124. 10 *Rep.* 107. If one have a *Reverſion* in Fee, expectant upon a Leaſe for Years, he may make a Bargain and Sale of his *Reverſion* for one Year, and then make a Releaſe to the Bargainee in Fee; by which the *Reverſion* in Fee will paſs to the Bargainee. 2 *Lill. Abr.* 483. And a *Reverſioner* may covenant to ſtand ſeiſed of a *Reverſion* to Uſes, &c. 11 *Rep* 46. Likewiſe a *Reverſion* may be deviſed by Will; and a Teſtator being ſeiſed in Fee of Lands which he had in Poſſeſſion, and of other Lands in *Reverſion*, deviſed all his Lands for the Payment of his Debts; adjudged, that by the Words all his Lands, the *Reverſion* as well as the Poſſeſſion paſſed. 2 *And.* 59. *Cro. Eliz.* 159. A Perſon deviſed a Manor to *A. B.* for ſix Years, and ſome other Lands to *C D.* and his Heirs; and all the Reſt of his Lands to his Brother, and the Heirs Male of his Body; and it was held, that theſe Words, *the Reſt of the Lands*, did not only extend to the Lands which were not deviſed before, but to the *Reverſion* in Fee of the Manor, after the Determination of the Eſtate for Years. *Allen* 28. And by Deviſe of all Lands, Tenements and Hereditaments, undiſpoſed of before in a Will, a *Reverſion* in Fee will paſs. 2 *Vent.* 285. 3 *Nelſ. Abr.* 166. One ſeiſed of Lands in Fee, deviſes Part thereof to *B.* for Life, and after by the ſame Will gives to *C.* all his Lands not before particularly diſpoſed of; by this Deviſe of *all Lands*, &c. the *Reverſion* of the Part given for Life paſſes to *C.* Ruled, on Advice with the Judges. *Preced. Canc.* 202. There was Leſſee for Years, Remainder for Life, *Reverſion* in Fee, the Tenant for Life died, and the Leſſee for Years did not attorn to him in the *Reverſion*; yet it was reſolved, that it paſſed without Attornment, and that he might bring an Action of Debt, or avow. *Hetl.* 73. If Tenant for Life, and he in *Reverſion* join in a Leaſe for Life, or Gift in Tail, rendring Rent; it ſhall enure, after the Death of Tenant for Life, to him in *Reverſion*. 1 Inſt. 214. And if a *Reverſion* be granted to one for Life, and to another in Fee, the *Reverſion* is gone for a Moiety: Alſo if ſuch Tenant for Life get the Remainder or *Reverſion* of the Land, his Eſtate for Life is at an End. 3 *Rep.* 60. The particular Eſtate for Life or Years, and this Eſtate in *Reverſion*, are divers and diſtinct; and therefore Aid may be prayed of him in the *Reverſion*: Yet theſe Eſtates have Relation one to another. 3 *Shep. Abr.* 220. The Copyholder for Life, cannot by Forfeiture or otherwiſe deſtroy the Eſtate in *Reverſion*: And he that hath a *Reverſion* cannot be put out of it, unleſs the Tenant be ouſted of his Poſſeſſion alſo. 39 *H.* 6. *Plowd.* 162. *Yelv.* 1. *Reverſions* expectant upon an Eſtate-tail, are not Aſſets, or of any Account in Law, becauſe they may be cut off by Fine and Recovery; but it is otherwiſe of a *Reverſion* on an Eſtate for Life, or Years. 1 *Inſt.* 173. 6 *Rep.* 38. *Wood's Inſt.* 151. No Leaſe, Rent-charge, or Eſtate, &c. made by Tenant in Tail in Remainder, ſhall charge the Poſſeſſion of the *Reverſioner*. 2 Lill. 448. But as no Statute hath made any Proviſion for thoſe who have Remainders or *Reverſions* on an Eſtate-tail, they are barred by a Recovery. 10 *Rep.* 32. There were no *Reverſions* or Remainders upon Eſtates in Tail, at Common Law: And by the Common Law, no Grantee of a *Reverſion* could take Advantage of any Condition or Covenant broken by the Leſſees of the ſame Land; but by Statute, Grantees of *Reverſions* may take Advantage of Conditions and Covenants againſt Leſſees of the ſame Lands, as fully as the Leſſors and their Heirs; and Leſſees may have the like Remedies againſt the Grantees of

Reverſions, &c. 1 *Inſt.* 327. 32 *Hen.* 8. *cap.* 34. A *Reverſioner* may bring Action of the Caſe for ſpoiling of Trees; for any Injury to his *Reverſion*, he may have this Action; but he cannot have Treſpaſs, which is founded on the Poſſeſſion. 3 *Lev.* 209, 233. 3 *Cro.* 55. He in *Reverſion* ſhall have a Writ of *Entry ad Communem Legem*, where Tenant for Life, &c. aliens the Lands: And Writ of Intruſion, after their Deaths, &c. *New Nat. Br.* 461. How to plead a *Reverſion* in Fee. 1 *Lutw.* 1174. The Difference between a *Reverſion* and a Remainder, is that a Remainder is general, and may be to any Man, but he that granteth the Land, for Term of Life or otherwiſe; and a *Reverſion* is to himſelf from whom the Conveyance of the Land proceeded, and is commonly perpetual, &c. And Remainder is an Eſtate, appointed over at the ſame Time: But the *Reverſion* is not always at the ſame Time appointed over. See *Remainder*. *Reverſions in Offices*, vide *Office*.

Reugia terræ, A Ridge or Furrow of arable Land ploughed in a ſtrait Line. *Mon. Ang. Tom.* 1. *pag.* 515.

Review, (Fr. *Reveue*) A *Bill* of *Review* in *Chancery*, is where the Cauſe hath been heard, and the Decree therein is ſigned; but ſome Error appears in the Body of the Decree, or new Matter is diſcovered in Time after the Decree made: Which Bill muſt be exhibited by Leave of the Court, and is uſually done on Oath made of the Diſcovery of new Matter, which could not be had or uſed at the Time of the Decree paſſed; and the Sum of 20 *l.* muſt be depoſited in Court, on bringing this Bill, as a Security for Coſts and Delay, if the Matter be found againſt the Party, &c. *Ord. in Canc.* 69. *Pract. Solic.* 121, 122. Where a Decree of Chancery is repugnant, or one Part of it contradicts another, &c. it may be reverſed by Bill of *Review*. *Ibid.*

Review of Appeal of Delegates, Is a Commiſſion granted by the King, to certain Commiſſioners, &c. See *Appeal to Rome*.

Revivor, or *Bill of Revivor*, Is when a Bill hath been exhibited in the *Chancery*, againſt one who anſwers, and before the Cauſe is heard, or if heard, and the Decree is not inrolled, either Party dies: In this Caſe, a Bill of *Revivor* muſt be brought, praying the former Proceedings may ſtand *revived*, and be put into the ſame Condition as at the Time of the Abatement. If a Party dieth, a Female Plaintiff marries, or there have been no Proceedings on a Decree, &c. for a Year paſt, the Decree and Proceedings muſt be *revived* by *Subpœna Sci. fac.* or if the Decree be inrolled, by Bill of *Reviver*: But if the Parties are not Heirs or Executors, &c. to the Party dead, the Decree or Cauſe is to be *revived* by original Bill, and not by *Subpœn. Sci. fac.* or Bill of *Revivor*; and a Bill of *Revivor* lies not upon a Decree of long Standing, but an original Bill is to be preferred. *Practiſ. Solic.* 122.

Reviving, Is a Word metaphorically applied to Actions, Rents, &c. and ſignifies a Renewing them after they were extinguiſhed. *Broke* 223.

Revocation, (*Revocatio*) Signifies the Calling back of a Thing granted; or a Deſtroying or making void of ſome Deed that had Exiſtence until the Act of *Revocation* made it void. 2 *Lill. Abr.* 485. And a *Revocation* may be either General, of all Acts and Things before done; or Special, to *revoke* ſuch a Thing: And where any Deed or Thing is *revoked*, it is as if it never had been. 5 *Rep.* 90. *Perk. Sect.* 105. In voluntary Deeds and Conveyances, there are frequently *Proviſo's* containing Power of *Revocation*, which being coupled with an Uſe, and tending to paſs by raiſing of Uſes, according to the Stat. *H.* 8. are allowed to be good, and not repugnant; as where one ſeiſed of an Eſtate in Fee, covenants to ſtand ſeiſed thereof to the Uſe of himſelf for Life, and after to the Uſe of his Son in Tail, Remainder over, &c. with *Proviſo* that he may *revoke* any of the ſaid Uſes; now if afterwards he *revokes* them, he is ſeiſed again in Fee, without Entry or Claim: But in Caſe of a Feoffment or other Conveyance, whereby the Feoffee or Grantee is in by the Common Law, ſuch Proviſo would be meerly repugnant and void. 1 *Inſt.* 237. *Stat.* 27 *Hen.* 8. *cap.* 10. And voluntary Eſtates made with Power of *Revocation*, as to *Purchaſers*, are held in equal Degree with Conveyances made by Fraud and Covin to defraud Purchaſers. 27 *Eliz. cap.* 4. 3 *Rep.* 82. Uſes, and Powers in Contingency and Poſſibility, by mutual Aſſent of Parties may be *revoked* and determined; and as by Indenture they may be raiſed, ſo by Proviſo or Limitation in the ſame Indenture, they may be extinguiſhed and deſtroyed. 10 *Rep.* 86. And where a Power of *Revocation* is reſerved for a Man to diſpoſe of his own Eſtate, it ſhall always have a favourable Conſtruction; but it ſhall be taken ſtrictly when it is to charge the Eſtate of another. 2 *Ventr.* 250. When there is a Power to *revoke* Uſes, a new Declaration of Uſes is a ſufficient *Revocation* of the former, without any expreſs Diſannulling, &c. And limiting new Uſes, ſhews, the Power to alter and determine the former Uſes: Alſo if Power is reſerved to a Man to *revoke* a Deed by Writing, ſubſcribed and ſealed in the Preſence of two or more credible Witneſſes; if he makes his Will in Writing, without making any expreſs *Revocation*, it will be a good *Revocation*, and the Will a good Execution of the Power. *Hob.* 312. *Raym.* 295. 3 *Nelſ. Abr.* 168, 169. Tho' it hath been held, that all incident Circumſtances preſcribed by the Proviſo or Power of *Revocation*, as to Subſcription, Witneſſes, &c. ought to be obſerved. 10 *Rep.* 143. 6 *Rep.* 33. 2 *Lill.* 487. It is ſaid where the Power is only to *revoke*, when that Power is executed, a Man cannot limit new Uſes. 1 *Ventr.* 197. 3 *Salk.* 316. Yet it hath been decreed, that the Limitation of new Uſes is good, where the expreſs Power in the firſt Deed was only to *revoke*. 1 *Ch. Rep.* 242. If a Perſon make a Feoffment in Fee, or levy a Fine, &c. of the Lands, before the Deed of *Revocation* is executed; theſe amount to a *Revocation* in Law, and extinguiſh the Power of *Revocation*. 1 *Vent.* 371. 1 *Rep.* 111. Power of *Revocation* may be releaſed; and where a Man has an entire Power of *Revocation*, and he ſuſpends or extinguiſhes it as to Part, he may *revoke* as to the Reſidue, if the Conveyance was by Way of Uſe; but not where a Condition is annexed to the Land. 1 *Rep.* 174. *Moor* 615. A *Will* is *revocable*; and a laſt Will *revokes* the former: Though a new Publication of the firſt Will, where there are two Wills, it is ſaid may *revoke* the laſt. *Perk.* 479. 2 *Sid.* 2. See 3 *Mod.* 207. Wills are to be *revoked* by ſome other Will in Writing, ſigned in the Preſence of three Witneſſes, or by Cancelling by the Teſtator, &c. Stat. 29 *Car.* 2. A Will *revoking* a former, tho' it muſt be ſubſcribed by three Witneſſes, 'tis ſaid need not be in the Teſtator's Preſence, as the Will of Lands muſt be by the Statute. 1 *P. Williams* 344. If a Perſon cancels or *revokes* either the Duplicate or original Will, this avoids both; they being but one Will, and muſt ſtand or fall together: But where a Man makes a ſecond Will, and intends that as a *Revocation* of the firſt; if it be inſufficient, it ſhall not deſtroy the firſt Will though cancelled. 3 *Mod.* 220, 258. 2 *Vern.* 741. The Teſtator is to be of a good diſpoſing Memory when he *revokes* his Will, as well as when he makes it; he muſt have *Animum Revocandi*, as well as *Animum Teſtandi*, to make an effectual *Revocation*. *Show* 89. *Cro. Jac.* 497. *Hard.* 374. 3 *Mod.* 203. Writings of *Revocation* are to be taken according to the Subject-Matter, *viz.* where a laſt Will cannot ſtand with the Firſt. *Ibid.* A Teſtator made his Will, and ſome Time afterwards made a Feoffment of the Lands in the Will to Uſes; and adjudged this was a *Revocation* of his Will, becauſe a Will cannot take Effect till after his Death. *Dyer* 74. And a Tenant in Tail made his Will in Writing, which was duly executed; afterwards he made a Bargain and Sale of the ſame Lands contained in the Will, to make a Tenant to the *Præcipe*, in Order to ſuffer a common Recovery, which was done accordingly, and he declared the Uſes to himſelf and his Heirs; by the Bargain and Sale, &c. the Will was *revoked.* 3 *Lev.* 108. It hath been admitted to be a ſettled Rule in *Chancery*, that where a Teſtator deviſes his Land in Fee to one, and after mortgages it in Fee to another, and then dies before the Principal and Intereſt is paid; this is not a total *Revocation* of the Will, but only *quoad* ſo much for which the Lands were mortgaged, and the Deviſee ſhall have the Equity of Redemption. 1 *Salk.* 258, 236. Where Lands are deviſed to one in Fee, and after mortgaged to the ſame Perſon, it is *Revocation in toto* of the Deviſe; but if the Land be mortgaged to a Stranger, in that Caſe 'tis otherwiſe. *Preced. Canc.* 515. A Man ſeiſed of Lands, deviſes the ſame in Fee, or for Life, and afterwards makes a Leaſe thereof to another for Years, it ſhall not be a *Revocation* but during the Years: Though in caſe a Perſon has deviſed Lands to one and his Heirs, and after Leaſes the ſame to him for a certain Term, to commence after his Death; that is a *Revocation* of the whole Eſtate. 1 *Roll. Abr.* 616. 2 *Cro.* 49. In Caſe a Fortune be given to a Child by the Father, ſubſequent to the making of his Will, wherein he had bequeathed her a Portion; this ſhall be taken as a *Revocation* of the Legacy and Will for ſo much. *Preced. in Canc.* 183. A Perſon being unmarried, by Will deviſed all his perſonal Eſtate to *T. P.* and afterwards he married and had ſeveral Children, and died without making any other Will: It was ruled by *Commiſſioners of Delegates*, that there being ſuch an Alteration of his Eſtate and Circumſtances, ſo widely different from the Time of making his Will to his Death, there was room to *preſume* a *Revocation*, and that he did not continue of the ſame Mind when he died. 2 *Salk.* 592. *Letters of Attorney*, and other Authorities, may be *revoked* by the Perſons giving the Powers; and as they are *revocable* in their Nature, it has been adjudged, that they may be *revoked*, though they are made irrevocable. 8 *Rep.* 82. *Wood's Inſt.* 286. Theſe *Revocations* of a Power, regularly muſt be made after the ſame Manner it was given; and there ought to be Notice to the Party, &c. But if once the Power be executed, a *Revocation* after will come too late. *Dyer* 210. A Warrant of Attorney from a Defendant to appear and accept a Declaration, and plead for the Defendant, may not be *revoked* with an Intent to ſtay the Plaintiff's Proceedings; but the Defendant on good Cauſe ſhewn to the Court may change his Attorney, ſo as he plead by another in due Time. *Mich.* 24 *Car.* B. *R.* 2 *Lill.* 486. *Letters of Adminiſtration*, and *Preſentations* to Benefices, when and how *revoked*, *vide* theſe *Heads.*

Revocatione Parliamenti, An ancient Writ for recalling a Parliament; and *Anno* 5 *Ed.* 3. the Parliament being ſummoned, was recalled by ſuch a Writ before it met. *Pryn's Animad.* on 4 *Inſt. fol.* 44.

Rewards. There are *Rewards* given in many Caſes by Statute, for the apprehending of Criminals, and bringing them to Juſtice; as a *Reward* of 40 *l.* for apprehending of *Robbers* on the Highway, by 4 & 5 *W. & M.* Alſo the like *Reward* for the apprehending and taking of *Burglars.* Stat. 5 *Ann.* The ſame *Reward* for apprehending of *Money Coiners* or *Clippers*, &c. 6 & 7 *W.* 3. And the like *Reward* for the Apprehenſion of *Thief takers*, not proſecuting Felons; and of Perſons *reſiſting the Officers of the Cuſtoms*, by Force of Arms, &c. 6 *Geo.* 1. *c.* 20, 22.

Rewey, A Term among Clothiers, ſignifying Cloth unevenly wrought, or full of *Rewes.* 43 *Eliz. c.* 10.

Rhandir, Was a Part in the Diviſion of *Wales* before the Conqueſt: Every Townſhip comprehended four *Gavels*, and every Gavel had four *Rhandirs*, and four Houſes or Tenements conſtituted every *Rhandir. Taylor's Hiſt. Gavelk. p.* 69.

Rial, From the Span. *Reale*, i. e. *Royal Money*, becauſe it is ſtamped with the King's Effigies: Here in *England*, a *Rial* was a Piece of Gold Coin, current for 10 *s.* in the Reign of King *Hen.* 6. at which Time, there were *Half-Rials* paſſing for 5 *s.* and *Quarter-Rials* or *Rial* Farthings, going for 2 *s.* 6 *d.* In the Beginning of Queen *Elizabeth*'s Reign, *Golden Rials* were coined at 15 *s.* a-piece; and 3 *Jac.* 1. there were *Roſe Rials* of Gold, at 30 *s.* and *Spur-Rials* at 15 *s. Lownd's Eſſay on Coins, pag.* 38.

Ribaud, (Fr. *Ribauld, Ribaldus*) A Rogue, Vagrant, Whoremonger, or Perſon given to all Manner of Wickedneſs: And there was a Petition in Parliament againſt *Ribauds* and Sturdy Beggars. *Ann.* 50 *Ed.* 3.

Rice, To be exported from *Carolina* to other Parts of *Europe*, &c. Stat. 8 *Geo.* 2. *cap.* 19. See *Plantations.*

Rider-Roll, Is a Schedule or ſmall Piece of Parchment, often added to ſome Part of a *Roll* or Record.

Ridge waſhed Kerſey, Is *Kerſey* Cloth made of Fleece Wool, waſhed only on the Sheep's Back See Stat. 35 *Eliz. cap.* 10.

Riding armed, With dangerous and unuſual Weapons, is an Offence at Common Law. 4 *Inſt.* 160. By the Stat. 2 *Edw.* 3. *cap.* 3. none ſhall *ride armed* by Night or Day to the Terror of the People; or come with Force and Arms before the King's Juſtices, &c. doing their Office, upon Pain to forfeit their Armour, and ſuffer Impriſonment at the King's Pleaſure: And a Fine may be ſet upon them by the Juſtices, by 20 *Ric.* 2. *cap.* 1. And no Perſon can excuſe the Going or *Riding armed* in Publick, by alledging that he wears Armour for his Defence againſt an Aſſault; but Men may wear common Arms according to their Quality and the Faſhion, and have Attendants with them armed agreeable to their Characters; alſo Perſons may *ride* or go armed to take Felons, ſuppreſs Riots, execute the King's Proceſs, &c. 3 *Inſt.* 162.

Riding Clerk, Is one of the ſix Clerks in *Chancery*, who in his Turn, for one Year, keeps the Controllment-Books of all Grants that paſs the Great Seal. *Blount.*

Ridings, Are the Names of the Parts or Diviſions of *Yorkſhire*, which are three, *viz. Eaſt-Riding, Weſt-Riding*, and *North Riding*, mentioned in the Stat. 22 *H.* 8. *c.* 5. And in Indictments for Offences in that County, the Town and the *Riding* muſt be expreſſed, &c. *Weſt's Symb. par.* 2. See *Regiſtry* of *Deeds.* Stat. 2 & 6 *Ann.*

Riens arrear, A Plea uſed in an Action of Debt for Arrearages of Account, whereby the Defendant alledges that there is *Nothing in arrear.* Book Entr.

Riens paſſe per le fait, Signifies that Nothing paſſes by the Deed; and is the Form of an Exception taken in ſome Caſes to an Action. *Broke.*

Riens per Deſcent, Is the Plea of an *Heir*, where he is ſued for his Anceſtor's Debt, and hath no Land from him by Diſcent, or Aſſets in his Hands. 3 *Cro.* 151. In Action of Debt againſt the Heir, who pleads *Riens per Deſcent*, Judgment may be had preſently; and when Aſſets deſcend, a *Scire facias* lies againſt the Heir, &c. 8 *Rep.* 134.

Rier County, (*Retro Comitatus*, from the Fr. *Arrier*, i. e. *Poſterior*) Is oppoſed to full and *open County*; and appears to be ſome publick Place, which the Sheriff appoints for Receipt of the King's Money, *after* the End of his County Court. 2 *Ed.* 3. *cap.* 5. Stat. *Weſtm.* 2. *cap.* 38. *Fleta, lib.* 2. *cap.* 67.

Riffare, (From the Sax *Riefe, Rapina*) Is to take away any Thing by Force; from whence comes our *Engliſh* Word *Rifle.* Leg. Hen. 1. c. 57.

Riffura, A ſlight Wound in the Fleſh: It is mentioned in *Fleta, lib.* 1. *cap.* 41.

Right, (*Jus*) In general Signification, includes not only a *Right* for which a Writ of *Right* lies; but alſo any Title or Claim for which no Action is given by Law but only an Entry. 1 *Inſt.* 265. There is *Right* of *Entry*, and of *Action*, where a Man is put out of his Lands; of *Property*, when one is diſſeiſed, &c. and of *Poſſeſſion:* There are alſo a *Preſent*, and *future Right*; a *Jus in Re*, which may be granted to a Stranger; and what is called a naked *Right*, or *Jus ad Rem*, where an Eſtate is turned to a *Right*, on a Diſcontinuance, &c. *Co. Litt.* 345. A *Right* in Writs and Pleadings, is properly in one, when he is ouſted of the Poſſeſſion of his Eſtate by Diſſeiſin or Wrong, and hath Remedy by Entry, or Action: But *Right* doth alſo include an Eſtate *in eſſe* in Conveyances; and therefore if Tenant in Fee-ſimple makes a Leaſe and Releaſe of all his *Right* in the Land to another, the whole Eſtate in Fee paſſes. *Wood's Inſt.* 115, 116. Sir *Edward Coke* tells us, That of ſuch an high Eſtimation is *Right*, that the Law preſerveth it from Death and Deſtruction; trodden down it may be, but never trodden out: And there is ſuch an extream Enmity between an Eſtate gained by Wrong and an ancient *Right*, that the *Right* cannot poſſibly incorporate itſelf with the Eſtate gained by Wrong. 1 *Inſt.* 279. 8 *Rep.* 105. 6 *Rep.* 70. A *Right* may ſometimes ſleep, though it never dies; a long Poſſeſſion exceeding the Memory of Man, will make a *Right*; and if two Perſons are in Poſſeſſion by divers Titles, the Law will adjudge the Poſſeſſion in him that hath the *Right.* *Co. Litt.* 478. 6 *Litt. Sect.* 158. Where there is no Remedy, there is preſumed to be no *Right* by Law. *Vaugh.* 38. No Commands ſhall be made under the great or little Seal, to diſturb or delay common *Right.* Stat. 2. *Ed.* 3. *c.* 8. See *Recto.*

Rights and Liberties. The Declaration of *Rights and Liberties* againſt the Conduct of K. *James* 2d ſet forth, That he by the Aſſiſtance of divers evil Counſellors, did endeavour to ſubvert the Laws and Liberties of this Kingdom; by exerciſing a Power of diſpenſing with, and ſuſpending of Laws; by levying Money for the Uſe of the Crown by Pretence of Prerogative, without Conſent of Parliament; by raiſing and keeping a Standing Army, in Time of Peace; by violating the Freedom of Election of Members to ſerve in Parliament; by violent Proſecutions in the Court of *King's Bench*; and cauſing partial and corrupt Jurors to be returned on Trials; exceſſive Bail to be taken; and exceſſive Fines to be impoſed; alſo cruel Puniſhments inflicted, &c. All which were declared to be illegal, and inſiſting upon the ancient *Rights and Liberties* of the People. Stat. 1 *W. & M. cap.* 2.

Rine, (Sax. *Ryne*) A Water-courſe, or little Stream, which riſes high with Floods.

Ringa, A military Girdle; from the Sax. *Ring*, i. e. *Annulus, circulus*, becauſe it was girt round the Middle: But according to *Bracton*, Ringa, *enim dicuntur quod Renes circumdant, unde dicitur accingere gladio.* Bract. lib. 1. c. 8.

Ringhead, An Engine uſed in ſtretching of Cloth. 43 *Eliz. c.* 10.

Ringildre, A Kind of Bailiff or Serjeant; and ſuch *Rhingyl* ſignifies in *Welch.* Chart. Hen. 7.

Riot, (*Riota, Riotum,* Fr. *Riotte*) Is where three or more Perſons aſſembled together, do ſome unlawful Act of a private Nature, with Force and Violence, to the Diſturbance of the Peace; as by beating ſome Perſon, forcibly Entring into the Houſes, or upon the Poſſeſſion or Lands of another, breaking down Encloſures, &c. 3 *Inſt.* 176. In every *Riot*, there muſt be ſome Intention of Force, or Violence; wherefore Aſſemblies for Wreſtling, Playing at Cudgels, Dancing, &c. are not *riotous:* And this Force muſt relate to ſome private Quarrel only; for if the Intention of ſuch Aſſemblies is to redreſs Grievances of a publick Nature, and ſuch Intention is executed, it is a Levying War againſt the King, and Treaſon. *Dalt.* 322. 3 *Inſt.* 9. *Kel.* 70, 76. There are to be three Perſons at the leaſt to make a *Riot*, and two alone cannot be guilty of it; though two Perſons may make a Conſpiracy, &c. 2 *Lill. Abr.* 489. If divers Perſons aſſemble together in a peaceable Manner, and after aſſembled do ſome deliberate riotous Act; this is a *riotous* Aſſembly, notwithſtanding they did not at firſt aſſemble in a *riotous* Manner: The *riotous* Act ſhall have Relation to their Aſſembling together, and the Intentions of Perſons are beſt intepreted by their Actions. *Ibid.* But if Perſons on a lawful Meeting, fall out upon a ſudden Quarrel, here being no Intention of an unlawful Act, it is no *Riot. Dalt.* A Number of Perſons being met together at a Fair, Market, or Church-Ale, or any other lawful and innocent Occaſion, if they happen on a ſudden Quarrel to fall together by the Ears, they are not guilty of a *Riot*, but a ſudden Affray only; becauſe the Deſign of their Meeting was lawful, and the ſubſequent Breach of the Peace happen'd unexpectedly: Yet it is ſaid, if Perſons innocently aſſembled together, do afterwards upon a Diſpute happening to ariſe among them, form themſelves into Parties, and then make an Affray, they are guilty of a *Riot:* For upon their Confederating together, with an Intent to break the Peace, they may as properly be ſaid to be aſſembled together for that Purpoſe, from the Time of ſuch Confederacy, as if their firſt coming together, had been upon ſuch a Deſign. 1 *Hawk. P. C.* 156. 6 *Mod.* 43. And it is agreed, That if an Aſſembly of Perſons met together on any lawful Occaſion, ſhall on a ſudden Propoſal go in a Body to pull down a Houſe, or Incloſure, or do any Act of Violence to the Diſturbance of the publick Peace, and the ſame be executed accordingly, the Perſons concerned cannot but be *Rioters*; their Aſſociating themſelves together for ſuch a new Purpoſe, being no way extenuated by their having met at firſt upon another: And if any Perſon ſeeing others actually engaged in a *Riot*, ſhall join them, and aſſiſt them therein, he is as much a *Rioter* as if he had at firſt aſſembled with them for that Intent; nor ſhall his pretending that he came innocently into the Company avail him; for it is impoſſible to diſcover whether every particular Perſon engaged in a *Riot* was in Truth one of the firſt Aſſembly, or had a previous Knowledge of the Deſign of the Tumult. 1 *Hawk. Ibid.* On an Indictment for a *Riot*, it hath been adjudged, that where three or more are aſſembled lawfully, without any ill Intent, and an Affray happens amongſt them, none are guilty but thoſe who are actually concerned in it; but if they were unlawfully aſſembled, then the Act of one may be imputed to all: That if they are lawfully aſſembled, and afterwards quarrelling, one of the Company is beaten by the reſt, it is no *Riot*; tho' if they beat a Stranger, in that very Moment the Quarrel began, they are an unlawfully Aſſembly: And if ſuch Stranger is beaten by one of the Company, the Concurrence of the reſt is Evidence of their evil Intention, and it is a *Riot* in all of them. 2 *Salk.* 595. Any Perſon may aſſemble a Number of Men to defend his Houſe againſt Injury or Violence, and yet if a Man be threatened, that if he come to ſuch a Place, he ſhall be beaten, and he thereupon aſſembles a Company to go thither with him, though it be for the Safety of his Perſon, this may be deemed a *Riot*, becauſe of the Danger the Government may be in from ſuch Aſſemblies; and for that the Law gives him another Remedy, *viz.* by demanding Surety for the Peace. *Broke* 1. But every Man in a peaceable Manner, may aſſemble a Company to do any lawful Thing, or to remove any Nuſance; and may for that Purpoſe enter another Man's Ground: And where a Man had erected a Wear over a common River, and ſeveral People aſſembled with Spades and other Things neceſſary to remove the ſaid Wear, and made a Trench in his Land that did erect the Wear, to turn the Water ſo as they might the better take up the ſaid Wear, and did remove the ſame Nuſance; this was held neither any forcible Entry nor *Riot. Bro.* 14, 33. Though if in removing ſuch Nuſance, the Perſons aſſembling uſe any threatning Words, as that they will do it, if they die for it, or the like; or their Behaviour be in apparent Diſturbance of the Peace, then it will amount to a *Riot*; for the Manner of doing a lawful Thing may make it unlawful. *Ibid.* If one aſſembles a proper Company to carry away a Piece of Timber, to which he pretends a Right, if the Number be no more than neceſſary to carry it away, although another Man may have a better Right to the Timber, and this is an unlawful Act, it is no *Riot*, except there be a Diſturbance of the Peace; ſo that the Doing of an unlawful Act by an Aſſembly of People, may be ſo managed as not to be a *Riot.* 1 *Hawk.* 157. And Perſons aſſembled together to do any Thing prohibited by Statute, if they peaceably perform the ſame, cannot be denominated *Rioters.* 6 *Mod.* 141. An Indictment againſt *A. B.* for that he *cum multis aliis* at ſuch a Place, *&c.* did commit a *Riot*, is good: And ſeveral being indicted for a *Riot*, it was moved, that the Proſecutor might name two or three, and try it againſt them, and that the Reſt might enter into a Rule to plead guilty, if they were found guilty; and a Rule was made accordingly, this being to prevent the Charges in putting them all to plead. *Mod. Caſ.* 212. 3 *Salk.* 317. If two only are found guilty on an Indictment for a *Riot*, and the Reſt acquitted, all are acquitted; and if a Battery be likewiſe laid in the Indictment, if it be not laid as a diſtinct Offence, the Defendants being diſcharged of the *Riot*, are alſo diſcharged of the Battery. 2 *Salk.* 593. Upon an Information againſt ſeveral Perſons for committing a *Riot*, and ſetting up a Bank, *&c.* the Jury found the Defendants guilty as to ſetting up the Bank, but *quoad* the *Riot* not guilty; and it was held, that by this Verdict the Defendants were acquitted of the Charge in the Information, which was a *Riot*; for an Action on the Caſe would lie for erecting the Bank. 3 *Mod.* 72. The Defendants being found guilty on Information for a *Riot*, and hindering the Bailiff and Burgeſſes of a Borough from chooſing a Bailiff; Judgment was arreſted, becauſe the Information did not ſet forth that the Defendants were unlawfully aſſembled, *&c.* Beſides, it did not mention any Right in the Bailiff and Burgeſſes to meet together to chooſe a Bailiff, and they might be aſſembled to do an unlawful Act themſelves; and then it is not unlawful in the Defendants to diſturb them. 2 *Salk.* 594. *Dyer* 68. A Mayor and Aldermen of a Town making a *Riot*, are puniſhable in their natural Capacities; but where they have countenanced dangerous *Riots* within their Precincts, their Liberties have been ſeiſed, or the Corporation fined. 3 *Cro.* 252 *Dalt.* 204, 326. Women may be puniſhed as *Rioters*; but Infants under the Age of fourteen Years, are not puniſhable. *Dalt.* 325. *Wood's Inſt.* 429. By the Common Law, *Riots* are puniſhed by Fine and Impriſonment; and if enormous, by Pillory; And by Statute, Juſtices of the Peace have Power to reſtrain *Rioters*, &c. to arreſt and impriſon them, and cauſe them to be duly puniſhed. 34 *Ed.* 3. *c.* 1. As ſoon as the Sheriff and other the King's Miniſters hear of a *Riot*, or other Aſſembly againſt the Peace, they with the Power of the County ſhall apprehend ſuch Offenders, and put them in Priſon until delivered by Law. 27 *R.* 2. *c.* 8. And two or more Juſtices of the Peace, dwelling near the Place where ſuch Offences ſhall be committed, together with the Sheriff or Under-Sheriff of the County, ſhall by the Power of the County, if need be, ſuppreſs *Riots*, Routs, *&c.* arreſt the Offenders, and record what ſhall be done in their Preſence; by which Record the Offenders ſhall ſtand convicted, as by Stat. 15 *R.* 2. in caſe of Forcible Entries; and if the Offenders are departed, the ſaid Juſtices, *&c.* ſhall within a Month after make Enquiry thereof, and hear and determine the ſame; and if the Truth cannot be found, then within a further Month the Juſtices and Sheriff are to certify to the King and Council, *&c.* on Default whereof, the Juſtices, *&c.* ſhall forfeit 100 *l.* 13 *Hen.* 4. *c.* 7. Theſe Statutes are underſtood of great and notorious *Riots*: And the Record of the *Riot* within the View of the Juſtices, by whom it is recorded, is ſuch a Conviction as cannot be traverſed, the Parties being concluded thereby; but they may take Advantage of the Inſufficiency of the Record, if the Juſtices have not purſued the Statute, *&c.* It is ſaid that the Offenders being convicted upon the Record of their Offence, in the Preſence of the Juſtices, ought to be ſent immediately to Gaol, till they pay a Fine aſſeſſed by the ſame Juſtices; which Fine is to be eſtreated into the Exchequer; or the Juſtices may record ſuch *Riot*, and commit the Offenders, and after certify the Record into *B. R.* or to the Aſſiſes or Seſſions: If the Offenders are gone, then the Juſtices ſhall inquire by a Jury; and the *Riot* being found, they are to make a Record of it, and fine them, or receive their Traverſe, to be ſent by the Juſtices to the next Quarter-Seſſions, or into the King's Bench, to be tried according to Law. *Dalt.* 200, 201, 202. It hath been adjudg'd, that where *Rioters* are convicted upon the View of two Juſtices, the Sheriff muſt be a Party to the Inquiſition on the Stat. 13 *Hen.* 4. But if they diſperſe themſelves before Conviction, the Sheriff need not be a Party; for in ſuch Caſe the two Juſtices may make the Inquiſition without him; and this is *pro Domino Rege*: And if the Juſtices neglect to make an Inquiſition within a Month after the *Riot*, they are liable to the Penalty for not doing it within that Time; but the Lapſe of the Month, doth not determine their Authority to make an Inquiſition afterwards. 2 *Salk.* 592. *Rioters* convicted on View of two Juſtices, and of the Sheriff of the County, are to be fined by the two Juſtices and the Sheriff; and if the Sheriff do not join in ſetting the Fine, it is Error; for the Statute requires that he ſhould be joined with the Juſtices in the whole Proceedings. *Raym.* 386. 13 *Hen.* 4. *cap.* 7. By the 2 *Hen.* 5. *cap.* 8. If the Juſtices make Default in Enquiring of a *Riot*; at the Inſtance of the Party grieved, the King's Commiſſion ſhall be iſſued to inquire by ſufficient and indifferent Men of the County, at the Diſcretion of the Chancellor; and the Coroners ſhall make the Panel of Inqueſt upon the ſaid Commiſſion, which is returnable into the Chancery, *&c.* and by this Statute, heinous *Rioters* are to ſuffer one Year's Impriſonment. The Lord Chancellor having Knowledge of a *Riot*, may ſend the King's Writ to the Juſtices of Peace, and to the Sheriff of the County, *&c.* requiring them to put the Statute in Execution; and the Chancellor, upon Complaint made, that a dangerous *Rioter* is fled into Places unknown, and on Suggeſtion under the Seals of two Juſtices of Peace and the Sheriff, that the common Fame runneth in the County of the *Riot*, may award a *Capias* againſt the Party, returnable in *Chancery* upon a certain Day, and afterwards a Writ of

Proclamation returnable in the *King's Bench*, &c. 2 *Hen.* 5. *cap.* 9. 8 *Hen.* 6. *cap.* 14. If one Juſtice of Peace hath Notice of a *Riot*, he muſt endeavour to remove it, and may bind the *Rioters* to the good Behaviour; and if they have no Sureties, or refuſe to be bound, he may commit them to Priſon. 13 *Hen.* 4. *Mod. Inſt.* 368. Where *Riots* are committed, the Sheriff upon a Precept directed to him, is to return twenty-four Perſons dwelling within the County to inquire thereof, *&c.* 19 *Hen.* 7. *cap.* 13. The Stat. 1 *Geo.* 1. enacts, That if any Perſons to the Number of Twelve or more, unlawfully and *riotouſly* aſſembled againſt the Peace, being required by a Juſtice of Peace, Sheriff, or Under-Sheriff, Mayor, or other head Officer of any Town, *&c.* by Proclamation in the King's Name, to diſperſe themſelves, ſhall continue together an Hour afterwards, they ſhall be guilty of Felony without Benefit of Clergy; and Perſons thus aſſembled and continuing, are to be apprehended and carried before a Juſtice of Peace, *&c.* And if in Reſiſtance, the *Rioters* are killed, the Perſons concerned in it ſhall be indemnified: Perſons by Force hindering the Proclamation, it ſhall be adjudged Felony; and the Offenders nevertheleſs guilty, if they do not diſperſe, *&c.* *Rioters* demoliſhing any Church, Chapel, or Dwelling-Houſe, are guilty of Felony; and Inhabitants of Towns and Hundreds are to yield Damages for Rebuilding or Reparation, to be levied and paid in ſuch Manner as Money recovered againſt the Hundred, by Perſons robbing on the Highway, *&c.* 1 *Geo.* 1. *cap.* 5. Proſecutions on this Act are to be commenced within one Year after the Offence: And this is the ſevereſt Statute that hath been made againſt *Rioters*, but it being wholly in the Affirmative, it doth not take away any Authority in the ſuppreſſing a *Riot* by Common Law, or by other Statutes. *Wood's Inſt.* 430. See *Rebellious Aſſembly.*

A *Record* of a *Riot* on View.

BE it remembred, *that on the Day,* &c. *in the ninth Year of the Reign of our Sovereign Lord* George the Second, *now King of* Great Britain, *&c.* *We* A. B. *and* C. D. *Eſquires, two of the Juſtices of our ſaid Lord the King aſſign'd to keep the Peace in the County of,* &c. *aforeſaid, and* E. F. *Eſquire, then Sheriff of the ſaid County, upon the Complaint and humble Supplication of* L. B. *of,* &c. *in the County aforeſaid, in our own proper Perſons went to the Manſion-Houſe of the ſaid* L. B *in the Pariſh,* &c. *in the County aforeſaid; and then and there we ſaw* G. H. *of,* &c. *and* J. K. *and* L. M. *of,* &c. *in the County aforeſaid, and other Malefactors and Diſturbers of the Peace of our ſaid Lord the King, to Us unknown, to the Number of five Perſons, arm'd with Swords, Staves,* &c. *unlawfully and riotouſly aſſembled at the ſaid Houſe, threatning great Damage to the ſaid* L. B. *to the Diſturbance of the Peace of the ſaid Lord the King, and Terror of his People, againſt the Form of the Statute,* &c. *And therefore We the ſaid* A. B *and* C. D. *then and there cauſed the ſaid* G. H. J. K. *and* L. M. *to be arreſted, and carried to the next Gaol of our ſaid Lord the King in the County aforeſaid, by our View and Record being convicted of the unlawful Aſſembly, Tumult and* Riot *aforeſaid, there to remain until they have made Fine and Ranſom to our ſaid Lord the King for the ſame.* In Witneſs *whereof We have ſet our Seals to this our preſent Record, Dated at,* &c. *aforeſaid, the Day and Year above-mentioned.*

Form of an *Inquiſition* of a *Riot.*

South'ton, ſſ. AN *Inquiſition for our Sovereign Lord the King, taken at,* &c. *in the County aforeſaid, the Day and Year of the Reign,* &c. *on the Oath of* A. B. C. D. E. F. G. H. &c. (*the Jury*) *honeſt and lawful Men of the ſaid County, before* T. D. *and* J. B. *Eſquires, two Juſtices of our ſaid Sovereign Lord the King, aſſigned to keep the Peace in the ſaid County,* &c. *Which ſaid Jurors upon their Oath aforeſaid ſay, that* J. K. *of,* &c. L. M. N. O. &c. *and other Malefactors and Diſturbers of the Peace of our ſaid Lord the King, to the ſaid Jurors unknown, on the Day of,* &c. *laſt paſt, with Force and Arms, that is to ſay, with Swords, Staves,* &c. *and other Offenſive Weapons, into the Meſſuage of* T. W. *in the Pariſh,* &c. *aforeſaid, in the ſaid County, between the Hours,* &c. *of the ſame Day, unlawfully and* riotouſly *entered, and him the ſaid* T. W. *aſſaulted, beat and wounded, to the great Diſturbance of the Peace of our ſaid Lord the King, and Terror of his People; and againſt the Form of the Statute in ſuch Caſe made and provided.*

An *Indictment* for a *Riot.*

THE *Jurors,* &c. *do preſent, That* J. K. *late of,* &c. *in the County aforeſaid, Yeoman,* L. M. *late of,* &c. *and* N. O. *late of,* &c. *on the Day,* &c. *in the Year of the Reign,* &c. *at,* &c. *with Force and Arms,* &c. *did* riotouſly *and unlawfully meet and aſſemble themſelves together, to diſturb the Peace of our ſaid Lord the now King; and being ſo aſſembled and met together, did then and there make an Aſſault upon one* L. B. *then being in the Peace of God and of our ſaid Sovereign Lord the King; and then and there beat, wounded and evilly treated the ſaid* L. B. *and other Injuries did to him, to the great Damage of the ſaid* L. B. *and againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and alſo againſt the Form of the Statute,* &c.

Riparia, (From *Ripa*, a Bank of a River) Is a Water running between the Banks. *Magn. Chart. cap.* 5. *Weſtm.* 2. *c.* 47. 2 *Inſt.* 478.

Ripiers, (*Riparii, a Fiſcella, qua in devehendis piſcibus utuntur, Anglice* a Rip) Are thoſe that bring Fiſh from the Sea-Coaſt to the inner Parts of the Lands. *Camb. Britan.* 234.

Rippers, *Reapers* or Cutters down of Corn; and *Rip-towel* was a Gratuity or Reward given to cuſtomary Tenants when they had reaped their Lord's Corn. *Cowel.*

Rivagium, *Rivage*, or *Riverage*; a Duty paid to the King on ſome Rivers for the Paſſage of Boats or Veſſels.——*Quieti ſint ab omni Laſtagio, Taliagio, Paſſagio,* Rivagio, *&c.* *Placit. temp. Ed* 1.

Riveare, To have the Liberty of a *River* for fiſhing and fowling. *Pat.* 2. *Ed.* 1.

Rivers. By the Statute of *Weſtm.* 2. *cap.* 47. The King may grant Commiſſions to Perſons to take Care of *Rivers*, and the Fiſhery therein: And the Lord Mayor of *London* is to have the Conſervation in Breaches and Ground overflown as far as the Water ebbs and flows in the River *Thames*. 4 *Hen.* 7. *cap.* 15. Perſons annoying the River *Thames*, making Shelves there, caſting Dung therein, or taking away Stakes, Boards, Timber-Work, *&c.* of the Banks, incur a Forfeiture of 5 *l.* Stat. 27 *Hen.* 8. *cap.* 18. Commiſſioners were appointed to prevent Exactions of the Occupiers of Locks, Wears, *&c.* upon the River *Thames* Weſtward from the City of *London* to *Cricklade* in the County of *Wilts*, and for aſcertaining the Rates of Water Carriage, on the ſaid River, *&c.* by Stat. 6 *&* 7 *W.* 3. And this Statute is revived with Authority for the Commiſſioners to make Orders and Conſtitutions, to be obſerved under Penalties, *&c.* 3 *Geo.* 2. *c.* 11.

Rivers made navigable. The River *Wye* is declared a free and common *River*, for the Carrying of Goods and Paſſengers, with Power to Truſtees to make it *navigable*, and ordaining Toll or Tonnage Duties to be paid for Carriage of Goods, *&c.* by the Stat. 7 *&* 8 *W.* 3. *c.* 14. Duties and Impoſitions are granted to recover and preſerve the *Navigation* of the River *Dee*, by 11 & 12 *W.* 3. And the *River Darwent* is made navigable by Stat. 1 *Ann.* So of many other *Rivers*. Vide 13 *Geo.* 1. If Perſons break down a Lock, or other Works on any *navigable River*, it is Felony; and drawing up Floodgates made for preſerving the *Navigation* of *Rivers*, &c. ſhall be ſent to the Houſe of Correction for a Month. 8 *Geo.* 2. *c.* 20. Perſons may juſtify the going of their Servants or Horſes upon the Banks of *navigable Rivers*, for towing of Barges, &c. to whomſoever the Right of the Soil belongs. 1 *Ld. Raym.* 725.

Roba, A Robe, Coat or Garment; and thoſe who *Robas accipiebant* of another, are accounted of his Family. *Walſingh.* 267.

Robbery, (*Robberia*, or *Robaria*, derived *de la Robe*, i. e. *Veſtis*) Is a felonious and violent Aſſault upon the Perſon of another, by putting him in Fear, and taking from him his Money or Goods, on the Highway: And it is ſaid to be ſo called, becauſe a Man was thereby ſometimes bereaved of his *Robes* or Garments; and for that his Money or other Goods being taken from his Perſon, *viz.* from or out of ſome Part of his Garment or Robe. 3 *Inſt.* 68. Though *Robbery* in a large Senſe, is any wrongful Taking away of Goods. 2 *Inſt.* 236. *Robbery* on the Highway is Felony of Death, though the Sum taken is under Twelve-pence, or be but one Penny; for it may be of any Value; whereas in other Thefts Judgment of Death is only where the Thing ſtolen is above the Value of 12*d.* *H. P. C.* 73, 74. But there muſt be ſomething taken; and if any Thing be taken from the Perſon of another, on the Highway, without putting him in Fear, it is not *Robbery*, but Felony allow'd Clergy; the putting in Fear diſtinguiſhing the *Robbery* from the other ſtealing from the Perſon. 3 *Inſt.* 68. *H. P. C.* 71. *Dalt.* 364. And if there be only an Attempt to *rob*, without any Taking, it is not Felony, but a Miſdemeanor puniſhable by Fine and Impriſonment, &c. *Wood's Inſt.* 369. There is a Taking in Deed, and a Taking in Law, in *Robberies*; as when a Thief only receives Money of a Traveller, who delivers it through Fear; or if he compels him for Fear of Death to ſwear that he will fetch him a Sum of Money, and he delivers it; this is a Taking in Law, and adjudg'd a *Robbery*. 3 *Inſt.* The *Robber* muſt be in Poſſeſſion of a Thing ſtolen: For Example; If the Bag or Purſe of a Man be faſtened to his Girdle, and the Thief the more eaſily to take it do cut the Girdle, whereby it falls to the Ground, it is no Taking by Reaſon the *Robber* never had any Poſſeſſion thereof: But if the Thief take up the Bag or Purſe, and in Striving let it fall, tho' he never take it up again; or if finding little in the Purſe, he delivers it with all the Money to the Party again; theſe are a felonious Taking, becauſe he had it in his Poſſeſſion; and the Continuance of his Poſſeſſion is not required by Law. 3 *Inſt.* 69. And where a Man throws his Purſe into a Buſh, to conceal it from the *Robber*, who perceiving it, takes it up, this is deem'd in Law a Taking from the Perſon; ſo if a Man had thrown off his Coat, and whilſt it lies in his Preſence, a Thief aſſaults him and takes his Coat, it is a *Robbery*; and if one endeavouring to make his Eſcape from a *Robber*, drops his Hat, and the Thief takes it up, it is a Taking from the Perſon. *Ibid.* The Taking away a Horſe which a Man is actually riding, is not only *Robbery*; but if the Horſe is ſtanding by him, and be taken away, it is the ſame; and a Claim of Property, without Colour for it, will not avail: But if any Man leaves his Horſe tied, and ſteps aſide; or if a Carrier follows his Horſe at a Diſtance, and they are taken by a Thief, ſuch Taking is not a Taking from the Perſon, to make it *Robbery*. *Dalt.* 364. *Pult.* 128. If a Perſon having aſſaulted me, drives my Cattle in my Preſence out of my Paſture; or *robs* my Servant of my Money before my Face, he may be indicted as having taken ſuch Things from my Perſon. *S. P. C.* 27. *Stile* 156. And ſome have gone ſo far as to hold, That if a Man meeting another going with his Goods to Market in order to ſell them, compel him to ſell them againſt his Will, he is guilty of *Robbery*. *Crompt.* 34. 1 *Hawk. P. C.* 97. If a Thief bids the Party deliver his Money, &c. either with or without a Weapon drawn, and he gives it him; or a Perſon with Sword or Piſtol in his Hand, demands my Money, and afterwards prays Alms, and I give it accordingly; it is a *Robbery*: For whenever any Perſon Aſſaults another with Circumſtances of Terror that cauſe him by Reaſon thereof to part with his Money, the Taking thereof is adjudged *Robbery*; whether there were any Weapon drawn or not, or the Perſon aſſaulted delivered his Money upon the other's Command, or after gave it to him upon his Ceaſing to uſe Force, and begging Alms, &c. 3 *Inſt.* 60. *H. P. C.* 71, 72. 1 *Hawk.* 96. And if I am *robbed* by ſeveral in a Gang, and one of them only takes my Money, in this Caſe in Judgment of Law, every one of the Company ſhall be ſaid to take it, in reſpect of that Encouragement which they give to one another through the Hopes of mutual Aſſiſtance; and though they miſs of their firſt intended Prize, and one of them afterwards rides from the reſt, and *robs* another Perſon in the ſame Highway without their Knowledge or Conſent, out of their View, and returns to them, all are guilty of *Robbery*, as they came together with an Intent to *rob*, and to aſſiſt one another in ſo doing. *Cromp.* 34. 1 *And.* 116. *H. P. C.* 72. Five Perſons agreed to ride out to *rob*, but at *Hounſlow* one parted from the Company, and rode away another Road, the other four riding on towards *E.* about three Miles further, they aſſaulted a Man, and three of them *robbed* him; it was reſolved, that the Party who rode away from the reſt, was not guilty of the *Robbery*, tho' he went out with them upon the ſame Deſign, becauſe he left them at *H.* and fell not in with them, for it may be he repented of what was deſign'd, or at leaſt he purſued it not: But the other four were adjudged guilty, although one of them was not actually preſent at the *Robbery*. 1 *Hale's Hiſt. P. C.* 537. A *Robbery* was committed upon the *Thames* in a Ship there, on that Side of the River which is in *Middleſex*, and the Offenders were indicted for it as done in or near the King's Highway, and ouſted of their Clergy; for the *Thames* is in Truth *Alta via Regia*, the King's High Stream. *Ibid.* 536. Stat. 23 *H.* 8. The Words in an Indictment for a *Robbery*, by the old Form of Proceedings, are, *a Perſona* A. B. *violenter & felonice Cepit & aſportavit in magnum Terrorem*, &c. And the *Robbery* muſt be laid in the Indictment to be done *in Alta via Regia*; If it be alledged to be done *in quadam via Regia pedeſtri ducent. de* London *ad* Iſlington, &c. the Offender will not be ouſted of his Clergy, becauſe the Words of the Statute to this Purpoſe are, in or about or near the Highway. 1 *Hawk. P. C.* 97. 2 *Hawk.* 342. *Moor* 5. Streets in Cities are Highways, as to *Robberies*, &c. by a late Statute, 6 *Geo.* 1. And Perſons who with offenſive Weapons, ſhall aſſault, or in a forcible Manner demand Money, &c. of any Perſon, with an Intent to commit *Robbery*, ſhall be guilty of Felony, and be tranſported for ſeven Years. Stat. 7 *Geo.* 2. *c.* 21.

Form of an *Indictment* for a *Robbery*.

South'ton, ſſ. THE *Jurors*, &c. *That* A. B. *late of*, &c. *in the ſaid County*, *Labourer, on the Day*, &c. *in the Year of the Reign*, &c. *with Force and Arms, between the Hours*, &c. *in the Afternoon of the ſame Day, in the King's Highway, near a* *certain Place called*, &c. *in the Pariſh of* H. *in the County aforeſaid, made an Aſſault upon one* C. D. *of* R. *in the ſaid County, Gentleman, then and there being in the Peace of God and of our ſaid Lord the King, and then and there did violently and feloniouſly take and carry away from the Perſon of him the ſaid* C. D. *ten Pounds of lawful Money of* Great Britain, *in ready Money of the Goods and Chattels of the ſaid* C. D. *then and there found, to the great Terror of him the ſaid* C. D. *and againſt the Peace*, &c.

Robberies, Where committed on the Highway in the Day-time of any Day, except *Sunday*, the *Hundred* is chargeable: If the *Robbers* are not taken in 40 Days, *&c.* the Hundred ſhall anſwer it, and *Hue and Cry* is to be made after the *Robbers*; alſo if the *Robbers* are taken, and proſecuted by the Party *robbed*, he ſhall have *Reſtitution* of his Goods, *&c.* Stat. 27 *Eliz.* 21 *Hen.* 8. And he who *apprehends* and proſecutes a *Robber* on the Highway to Conviction, ſhall receive of the Sheriff of the County, where the *Robbery* was done 40 *l.* (producing the Certificate of the Judge before whom the Perſon was convicted) with his Horſe, Furniture, Arms, *&c.* And if any Perſon out of Priſon, having committed any *Robbery*, diſcovers two or more *Robbers*, ſo as they are convicted, he ſhall be intitled to a Pardon. 4 *W. & M. cap.* 8. How to ſue the Hundred for Money loſt on *Robberies*, ſee *Hue and Cry* and *Hundred.*

Robbers, (*Robatores*) Are interpreted to be mighty Thieves by *Lambard* in his *Eiren. lib.* 2. *cap.* 6.—— *Latrones validi, qui in Perſonas hominum inſilientes, bona ſua diripiunt.* Spelm.

Robberſmen or **Roberdſmen**, Were a Sort of great Thieves, mentioned in the Statutes 5 *Ed.* 3. *c.* 14. and 7 *R.* 2. *c.* 5. of whom Sir *Edw. Coke* ſays, That *Robin Hood* lived in the Reign of King *Rich.* 1. on the Borders of *England* and *Scotland*, by Robbery, Burning of Houſes, Rapine and Spoil, *&c.* and that theſe *Roberdſmen* took Name from him. 3 *Inſt.* 197.

Rochet, Is a Linen Garment worn by Biſhops, gathered at the Wriſts; it differs from a *Surplice*, which hath open Sleeves hanging down, but a *Rochet* hath cloſe Sleeves. *Lyndw. lib.* 3.

Rod, (*Roda terræ*) A Meaſure of ſixteen Foot and a Half long, otherwiſe called a *Perch.*

Rod-Knights, (From the Sax. *Rad*, i. e. *Equitatio & Cnyt, Famulus, quaſi Miniſtri Equitantes*) Certain Servitors, who held their Land by ſerving their Lords on Horſeback. *Bract. lib.* 2. *cap.* 35.

Rogation-Week, (*Dies Rogationum, Robigalia*) Is a Time ſo called, becauſe of the ſpecial Devotion of Prayer and Faſting then injoined by the Church, for a Preparative to the joyful Remembrance of *Chriſt's Aſſenſion. Cowel.* —— Robigalia, *dies feſtus ſeptimo Calend.* Maii *celebrari ſolitus, &c. ut* Robiginem *à ſegetibus averteret: Rogation*, or Gang-Week. *Litt. Dict.*

Rogue, (*Fr.*) Signifies an idle ſturdy Beggar; who by antient Statutes, for the firſt Offence was called a *Rogue of the firſt Degree*, and puniſhed by Whipping, and boring through the Griſtle of the right Ear with a hot Iron; and for the ſecond Offence, he was term'd a *Rogue of the ſecond Degree*, and executed as a Felon, if he were above eighteen Years old. 27 *Hen.* 8. *cap.* 25. 14 *Eliz. cap.* 5, *&c.* And by a late Act, Perſons apprehended as Vagabonds, and eſcaping, or refuſing to go before a Juſtice, or giving a falſe Account of themſelves; and all ſuch Perſons breaking Priſon, before the Expiration of the Term, or who having been puniſhed and diſcharged, commit a ſecond Offence, are adjudged *incorrigible Rogues.* A Juſtice of Peace may ſend any ſuch *Rogue* to the Houſe of Correction till the next Seſſions; and then the Juſtices ſhall order him to be detained ſix Months, and to be kept to hard Labour, and alſo corrected by Whipping, in Manner and as often as they think fit; and afterwards the Offender is to be paſſed away to his Place of Settlement: And if he make his Eſcape from Priſon, he ſhall be judged guilty of Felony, and be tranſported for ſeven Years, *&c.* Stat. 13 *Geo.* 2. *c.* 24.

Rogus, (*Lat.*) A great Fire, wherein dead Bodies were burn'd; and ſometimes it is taken for a Pile of Wood. *Clauſ.* 5 *Hen.* 3.

Roll, (*Rotulus*) Is a Schedule of Parchment that may be turned up with the Hand in the Form of a Pipe. *Staundf. P. C.* 11. *Rolls* are Parchments on which all the Pleadings, Memorials, and Acts of Courts are entered and filed with the proper Officer; and then they become Records of the Court. 2 *Lill. Abr.* 491. And by a Rule made by the Court of *King's Bench*, every Attorney is to bring in his *Rolls* into the Office fairly ingroſſed by the Times thereby limited, *viz.* The *Rolls* of *Trinity*, *Michaelmas*, and *Hillary* Terms, before the Eſſoin Day of every ſubſequent Term; and the *Rolls* of *Eaſter* Term before the firſt Day of *Trinity* Term; and no Attorney at large, or any other Perſon, ſhall file any *Rolls*, &c. but the Clerks of the chief Clerks of this Court. *Ord.* B. *R. Mich.* 1705. If *Rolls* are not brought into the Office in Time, it has been ordered that they ſhall not be received without a particular Rule of Court for that Purpoſe. *Mich.* 9 *W.* 3.

Rolls Office of the Chancery. There is an Office called the *Rolls* Office in *Chancery Lane*, antiently called *Domus Converſorum*, which contains all the *Rolls* and Records of the High Court of *Chancery*, the Maſter whereof is the ſecond Perſon in the *Chancery*, &c. See *Maſter of the Rolls.*

Rolls of the Exchequer, Are of ſeveral Kinds, as the great *Wardrobe Roll*, the *Cofferer's Roll*, the *Subſidy Roll*, &c.

Rolls of Parliament, The Manuſcript Regiſters of the Proceedings of our old Parliaments; and our Statutes being antiently ingroſs'd in Parchment: In theſe *Rolls* are likewiſe a great many Deciſions of difficult Points in Law; which were frequently in former Times referred to the Determination of this ſupreme Court by the Judges of both Benches, *&c.* *Nichol. Hiſt. Libr.* 47.

Rolls of the Temple. In the two *Temples* is a *Roll* called the *Calves-head Roll*, wherein every Bencher, Barriſter, and Student, is taxed yearly at ſo much to the Cook and other Officers of the Houſes, in Conſideration of a Dinner of *Calves-heads* provided in *Eaſter* Term. *Orig. Juriſd.* 199.

Roma-peditæ, Pilgrims that travel to *Rome* on Foot. *Matt. Pariſ. Anno* 1250.

Romeſcot, (*Romeſeoth* vel *Romeſee*, *Romepeny*) Is compounded of *Rome* and *Scot*; as if you would ſay the *Scot* or *Tribute* due to *Rome*: It was one Peny for every Family or Houſhold, paid yearly to *Rome.* And *Mat. Weſtminſter* ſays it was *Conſuetudo Apoſtolica, à qua neque Rex, neque Archepiſcopus, vel Epiſcopus, Abbas vel Prior, aut quilibet in Regno immunis erat.* See *Peter-Pence.*

Rome, Church of, its Incroachment of Power here, and how ſuppreſs'd; and no Impoſition to be paid to the Biſhop of *Rome*, &c. *Vide* Stat. 25 *H.* 8. and *Pope.*

Rood, or *Holy Rood*, Signifies the Holy Croſs.

Rood of Land, (*Rodata Terræ*) Is the fourth Part of an Acre. Stat. 5 *Eliz. c.* 5.

Ros, A Kind of Ruſhes, which ſome Tenants were obliged, by their Tenures, to furniſh their Lords withal. *Brady.*

Roſe-Tile, To lay upon the Ridge of a Houſe, is mentioned in the Statute 17 *Ed.* 4. *cap.* 4.

Roſetum, A low watery Place of Reeds and Ruſhes; and hence the Covering of Houſes with a Thatch made of Reeds, was called *Roſetum.* Cartular. Glaſton. MS. 107.

Roſland, Heathy Land, or Ground full of Ling; alſo watry and mooriſh Land, from the Br. *Rhos.* 1 Inſt. 5.

Rother-Beaſts, Under this Name are comprehended Oxen, Cows, Steers, Heifers, and ſuch like horned Beaſts. 21 *Jac. c.* 18.

Rotulus Wintoniæ, Was an exact Survey of all *England, per Comitatus, Centurias, &c. Decurias*, made by King *Alfred*, not unlike that of *Domeſday*; and it was ſo called, for that it was of old kept at *Wincheſter*, among other Records of the Kingdom; but this Roll Time hath conſumed. *Ingulph. Hiſt.* 516.

Rouble, Coin in *Muſcovy* going for ten Shillings, Sterling. *Merch. Dict.*

Rout, (Fr. *Route*, i. e. a Company or Number) In a legal Senſe ſignifies an Aſſembly of Perſons, going forcibly to commit an unlawful Act, though they do not do it. *Weſt. Symb. par.* 2. A *Rout* is the ſame which the *Germans* call *Rot*, meaning a Band or great Company of Men gathered together, and going to execute, or indeed executing any Riot or unlawful Act: But the Stat. 18 *Ed.* 3. *cap.* 1. againſt *Routs* before Juſtices, or in Affray of the People, and the 2 *R.* 2. *c.* 6. that ſpeaks of riding in great *Routs*, to make Entry into Lands, &c. do ſeem to make it to be where the Perſons unlawfully aſſembled, have moved forward in order to do the unlawful Act, but part without doing it; for whether they put their Purpoſe in Execution or no, if they go, ride, or move forward, after their Meeting, it is a *Rout. Broke* 4, 5. *Dalt.* 321. However, two Things are common to *Riots, Routs*, and *unlawful Aſſemblies*; the one, that three Perſons at leaſt be gathered together; the other, that they being together do diſturb the Peace, either by Words, Shew of Arms, turbulent Geſture, or actual Violence, &c. *Lamb. Eiren. lib.* 2. *cap.* 5. Proceſs granted againſt Perſons cauſing *Routs*, &c. Vide 18 *Ed.* 3.

Royal Aſſent, (*Regius Aſſenſus*) Is that *Aſſent* or Approbation which the *King* gives to a Thing done by others; as to a Bill paſſed in both Houſes of Parliament; to the Election of a Biſhop by Dean and Chapter, &c. *Cromp. Juriſd.* 8. *F. N. B.* 170. See *Le Roy le veut.*

Royalties, (*Regalitates*) The ſeveral Sorts of, you may ſee under *Prerogative* and *Regalia*. Thoſe *Royalties* which concern Government in an high Degree, the King may not Grant or Diſpoſe of *Jenk. Cent.* 79.

Rubricks, (*à Rubro colore*, becauſe antiently writ in Red Letters) Are Conſtitutions of our Church, founded upon the Statutes of Uniformity and Publick Prayer, *viz.* 5 & 6 *Ed.* 6. *cap.* 1. 1 *Eliz. cap.* 2. 13 & 14 *Car.* 2. *c* 2.

Rudmas-Day, (From the Sax. *Rode*, i. e. *Crux*, and Maſs-day, *i. e.* Feaſt day) The Feaſt of the *Holy Croſs*; and there are two of theſe Feaſts, one on the 3d of *May*, the Invention of the Croſs; and the other the 14th of *September*, called *Holy-Rood* Day, and is the Exaltation of the Croſs.

Rules of Court. Attornies are bound to obſerve the *Rules of the Court*, to avoid Confuſion; alſo the Plaintiff and Defendant in a Cauſe are at their Peril to take Notice of the *Rules* made in Court touching the Cauſe between them. 2 *Lill. Abr.* 492, 493. The Court will not make a Rule for a Thing which may be done by the ordinary Courſe; and if the Court be inform'd that they have made ſuch a *Rule*, they will vacate it. *Mich.* 22 *Car. B. R.* And if a *Rule* be made by the Court grounded upon an Affidavit, the other Side may move the Court againſt this *Rule*; and thereupon ſhall bring into Court a Copy of the Affidavit and *Rule* made, that the Affidavit may be read, to put the Court in Mind for what Reaſons they made the *Rule*, and whether there be ſtronger Reaſons for the Vacating of it, than there were for the Making of it, or not. 2 *Lill.* 494. Where a *Rule* of Court is made, and it is not drawn up and entered before the Continuance Day of the ſame Term, the Clerk of the *Rules* will not draw it up afterwards until the Court be moved, and ſhall again order it to be entered. *Paſch.* 1656. For Breach and Contempt of a *Rule* of Court, an Attachment lies; and if a *Rule* of Court is made betwixt Parties by their Conſent, though the Court would not have made ſuch *Rule* without their Conſent, yet if either Party refuſe to obey ſuch a *Rule* made, the Court will upon Motion grant an Attachment againſt the Party that diſobeys the *Rule. Hill.* 155. But generally an Attachment is not grantable for Diſobedience to any *Rule*, unleſs the Party hath been ſerved with it perſonally; nor for diſobeying a *Rule* at *Niſi prius*, till it is made a *Rule* of Court; or for Diſobedience to a *Rule* made by a Judge at his Chamber, if it be not enter'd. 1 *Salk.* 71, 83. And a *Rule* not entered, is of no Force to ground a Motion upon, &c.

Rule of Court may be granted to any *Priſoner* in the *King's Bench* or *Fleet* Priſons, every Day the Courts ſit, to go at large, if ſuch Priſoner hath Buſineſs in Law of his own to follow. 2 *Lill. Abr.* 493.

Rumney Marſh. King *Hen.* 3. granted a Charter to *Rumney Marſh*, in the County of *Kent*, impowering Twenty-four Men thereunto choſen to make Diſtreſſes equally upon all thoſe which have Lands and Tenements in the ſaid Marſh, to repair the Walls and Water-gates of the ſame, againſt the Dangers of the Sea: And there are ſeveral Laws and Cuſtoms obſerved in the ſaid Marſh, eſtabliſhed by Ordinances of Juſtices thereto appointed, in the 42d Year of King *Hen.* 3. the 16 *Edw.* 1. the 33 *Ed.* 3. &c.

Rumours, Spreading ſuch as are falſe, is criminal and puniſhable at Common Law. 1 *Hawk. P. C.* 234.

Runcaria, (From *Runca*) Signifies Land full of Brambles and Briars. 1 *Inſt.* 5.

Runcinus, *Runcilus*, (Ital. *Runzino*) Is uſed for a Load-Horſe, and a Cart-Horſe, in *Domeſday*; which *Chaucer* calls a *Rowney*.

Runlet, Is a Meaſure of Wine, Oil, &c. containing eighteen Gallons and a Half. 1 *R.* 3. *c.* 13. And it is ſaid to be an uncertain Quantity of Liquor, from Three to Twenty Gallons. *Merch. Dict.*

Ruptarii, Were Soldiers, or rather Robbers, called alſo *Rutarii*; and *Rutta* was a Company of Robbers: Hence we derive the Word *Rout*, and *Bankrupt.* Matt. Pariſ. Anno 1250.

Ruptura, Arable Land, or Ground broke up, as uſed in antient *Charters*.

Rural Deans, Were certain Perſons having Eccleſiaſtical Juriſdiction over other Miniſters and Pariſhes near adjoining, aſſigned by the Biſhop and Archdeacon, being placed and diſplaced by them; ſuch as the Dean of *Croydon*, &c. Lyndw. cap. 1. —— *Sunt Decani Temporales ad aliquod Miniſterium ſub Epiſcopo vel Archiepiſcopo exercendum conſtituti, qui nec habent Inſtitutionem Cononicam ſecundum Doctores.* Spelm. And theſe *Rural Deans* were antiently termed *Archipresbyteri*, and *Decani Chriſtianitatis.* Kennet's Paroch. Antiq. See *Dean.*

Ruſca, A Tub or Barrel of Butter, which in *Ireland* is called a *Ruskin*: *Ruſca apum* ſignifies a Hive of Bees. *Mon Angl Tom.* 2. *pag.* 986.

Ruſcaria, The Place where Kneeholm or Broom grows. *Co. Litt.* 5.

Ruſſia Company of Merchants, and their Privileges, &c. See *Muſcovy Company.*

Ruſtici, The Clowns or inferior Country Tenants, who held Cottages and Lands by the Service of Plowing and other Labours of Agriculture for the Lord; and the Land thus held was diſtinguiſhed by the Name of *Terra Ruſticorum*. Paroch. Antiq. 136.

Rye, A Corn or Gain, of which Bread is made in ſome Parts of *England*.

Rye and Winchelſea, An Act againſt Ballaſt caſt into the Channel at *Rye* and *Winchelſea*, &c. 2 *Ed.* 6. *c.* 30.

S.

Sabaia, A Sort of poor ſmall Beer. *Litt. Dict.*

Sabbatarius, A *Sabbatarian* or Jew; of or belonging to the *Sabbath*.

Sabbatum, The *Sabbath*, or Day of Reſt; the ſeventh Day from the Creation: It is uſed for Peace, in the Book of *Domeſday*.

Sabellinæ pelles, *i. e.* Sable Furs, mentioned in *Hoved. pag.* 758.——*Statutum fuit in Anglorum gente ne quis Eſcarleto*, Sabellino *vario, vel griſeo uteretur*. Brompt. Anno 1188.

Sabulonarium, A Gravel Pit; or Liberty to dig Gravel and Sand; alſo the Money paid for the ſame. *Pet. Parl. temp. Ed.* 3.

Sac, (*Saca vel Sacha*) Is an antient Privilege which a Lord of a Manor claims to have in his Court, of holding Plea in Cauſes of Treſpaſs ariſing among his Tenants, and of impoſing Fines and Amercements touching the ſame: But by ſome Writers it is the Amercement and Forfeiture it ſelf. *Raſtal.* In the Laws of King *Edward*, ſet forth by *Lambard*, *Saca* is ſaid to be the Amerciament paid by him who denies that which is proved againſt him to be true; or affirms that which is not true. *Lamb.* 244. And according to *Fleta*, Sac *ſignificat acquietantiam de ſecta ad Comitatum & Hundredum.* Flet. lib. cap. 47. *Præcip. ut* A. B. *bene & libere habeat* Socam & Sacam. *Brev. Hen.* 2.

Saca; In the *Saxon* properly ſignifies as much as *Cauſa in Lat.* whence we in *Engliſh* ſtill retain the Expreſſion, For whoſe *Sake*, *i. e.* For whoſe Cauſe, *&c.*

Sacaburh, or **Sacabere**, Is he that is robbed, or by Theft deprived of his Money or Goods, and puts in Surety to proſecute the Felon with freſh Suit. *Briton, cap.* 15 & 29. With whom agrees *Bracton, lib.* 3. *cap.* 32. The *Scots* term it *Sickerborgh*, that is *certum vel ſecurum Plegium vel Pignus*; for with them *Siker* ſignifieth *ſecurus*, and *Borgh*, *Plegius*.

Saccini, Monks ſo called, becauſe they wore next their Skins a Garment of Goats-Hair; and *Saccus* is applied to coarſe Cloth made of ſuch Hair. *Walſingh.*

Saccis, *Fratres de* Saccis, the *Sack-cloth* Brethren, or the penitential Order. *Placit.* 8 *Ed.* 2.

Saccus cum brochia, Is a Service or Tenure of Finding a *Sack* and a *Broach* to the King, for the Uſe of his Army. *Bract. lib.* 2. *cap.* 16.

Sack of Wool, A Quantity of 26 Stone of Sheeps Wool; and of Cotton-Wool, from One hundred and a Half to Four hundred. Stat. 14 *Ed.* 3. *cap.* 2.

Sacrament, (*Sacramentum*) Is the moſt ſolemn Act of Worſhip amonſt us, being inſtituted by our Saviour himſelf; and by the *Rubrick* there muſt be Three at the leaſt to communicate, and a Miniſter is not without lawful Cauſe to deny it to any who ſhall devoutly and humbly deſire it: But notorious Sinners are not to be admitted to it till they have repented; nor thoſe who maliciouſly contend until they are reconciled, *&c.* alſo the *Sacrament* is not to be adminiſtered to ſuch who refuſe to be preſent at the Prayers of the Church, or to Strangers; for a Miniſter is not obliged to give it to any but thoſe of his own Pariſh; and the Partakers of the Holy *Sacrament* ought to ſignify their Names to the Curate at leaſt a Day before it is adminiſtred. *Can.* 27. *Count. Parſ. Comp.* 36, 37, 38. If a Miniſter refuſe to give the *Sacrament* to any one, being required by the Biſhop, he is to certify the Cauſe of ſuch Refuſal; and a Parſon refuſing to adminiſter the *Sacrament* to any, without juſt Cauſe, is liable to be ſued in Action of the Caſe; becauſe a Man may have a Temporal Loſs by ſuch Refuſal. *Right Clergy* 489. By Statute, no Perſons ſhall be choſen into any Office of Magiſtracy, or Place of Truſt, *&c.* unleſs they receive the *Sacrament*, according to the Rites of the Church of *England*, and deliver a Certificate thereof to the Court of King's Bench or Quarter-Seſſions, under the Hand of the Miniſter, and prove it by Witneſſes. 13, 14 & 25 *Car.* 2. In every Pariſh Church the *Sacrament* is to be adminiſtered three Times in the Year, (whereof the Feaſt of *Eaſter* to be one) and every Layman is bound to receive it thrice every Year, *&c.* In Colleges and Halls of the *Univerſities*, the *Sacraments* are to be adminiſtred the firſt or ſecond Sunday of every Month; and in *Cathedral Churches*, upon all principal Feaſt-Days. *Canon* 21, 22, 23. The Church-wardens as well as the Miniſter are to take Notice whether the Pariſhioners come ſo often to the *Sacrament* as they ought, and on a Church-warden's Preſenting a Man for not receiving the *Sacrament*, he may be libelled in the Eccleſiaſtical Court and excommunicated, *&c.* Reviling the *Sacrament* of the Lord's Supper is puniſhable by Fine and Impriſonment. 1 *Eliz. cap.* 1.

Sacramentum, Is us'd for an Oath: The common Form of all *Inquiſitions* made by a Jury runs thus, *Qui dicunt ſuper* Sacramentum *ſuum, &c.* whence poſſibly the proverbial Offering to take the *Sacrament* of the Truth of a Thing, was firſt meant by Atteſting upon Oath.

Sacramentum altaris, The Sacrifice of the Maſs, or what is now called the *Sacrament* of the Lord's Supper; for which Communion in the Times of Popery, the Pariſh Prieſt provided Bread and Wine for the People and himſelf, out of the Offerings and Oblations. *Paroch. Antiq.* 488.

Sacrilege, (*Sacrilegium*) Is *Church Robbery*, or a Taking of Things out of a Holy Place; as where a Perſon ſteals any Veſſels, Ornaments, or Goods of the Church: And it is ſaid to be a Robbery of God, at leaſt of what is dedicated to his Service. 3 *Cro.* 153. If any Thing belonging to private Perſons, left in a Church be ſtolen, it is only common Theft, not *Sacrilege:* But the *Canon Law* determines that alſo to be *Sacrilege*; as likewiſe the Stealing of a Thing known to be conſecrated, in a Place not conſecrated. *Treat. Laws* 360. By the *Civil Law*, *Sacrilege* is puniſhed with greater Severity than any other Thefts; and the *Common Law* diſtinguiſhed this Crime from other Robberies; for it denied the Benefit of the Clergy to the Offenders, which it did not do to other Felons: But by *Statute* it is put upon a Footing with other Felonies, by Making it Felony excluded of Clergy, as moſt other Felonies are. 2 *Inſt.* 250. All Perſons not in Holy Orders, who ſhall be indicted, whether in the ſame County where the Fact was committed, or in a different County, of Robbing any Church, Chapel, or other Holy Place, are excluded from their Clergy, by 23 *H.* 8. *c.* 1. 25 *H.* 8 *c.* 3. 5 & 6 *Ed.* 6. *c.* 10. And all Perſons in general are ouſted of their Clergy for the felonious Taking of any Goods out of any Pariſh Church, or other Church or Chapel, by the 1 *Ed.* 6. *c.* 12. But the Word *Robbing* being always taken to carry with it ſome Force, it ſeems no *Sacrilege* is within theſe Statutes, which is not accompanied with the actual Breaking of a Church, *&c.* *Kel.* 58, 69. *Dyer* 224. And the Statute 23 *H.* 8. is the only Act which extends to Acceſſaries to theſe Robberies; except the Offence amount to

Burglary, in which Caſe Acceſſaries before are ouſted of Clergy, by 3 *&* 4 *W & M. c.* 9. 2 *Hawk. P. C.* 351.

Sacrilege, Or *Alienation* to Laymen and to profane or common Purpoſes of what was given to Religious Perſons and to pious Uſes, was a Guilt which our Fore-fathers were very tender of incurring; and therefore when the Order of the *Knights-Templars* was diſſolv'd, their Lands were given to the *Knights Hoſpitallers of Jeruſalem* for this Reaſon.——*Ne in pios uſus erogata contra Donatorum voluntatem in alios uſus diſtraherentur.* Paroch. Antiq. 390.

Sacriſta, (*Lat.*) A *Sexton*, belonging to a Church, in old Times called *Sagerſon* and *Sagiſton.*

Safe-conduct, (*Salvus Conductus*) Is a Security given by the Prince, under the Great Seal to a Stranger, for his *Safe-coming* into and paſſing out of the Realm; the Form whereof is in *Reg. Orig.* 25. There are Letters of *Safe-conduct* which muſt be inrolled in Chancery; and the Perſons to whom granted muſt have them ready to ſhew: And touching which there are ſeveral Statutes, *viz.* 9 *H.* 3. *c.* 30. 15 *H.* 6. *c.* 3. 28 *H.* 8. *c.* 1.

Safe-guard, (*Salva Guardia*) A Protection of the King to one who is a Stranger that fears Violence from ſome of his Subjects, for ſeeking his Right by Courſe of Law. *Reg. Orig.* 26.

Safe-pledge, (*Salvus Plegius*) A Surety given for a Man's Appearance at a Day aſſign'd. *Bract. lib.* 4 *cap.* 2.

Sagaman, (From the Sax. *Saga*, i. e. *Fabula*) Signifies a Tale-Teller, or ſecret Accuſer. *Leg. Hen.* 1. *c.* 63.

Sagibaro, alias **Sachbaro,** Is the ſame that we now call *Juſticiarius*, a Judge. *Leg. Inæ, c.* 6.

Sagitta Barbata, A bearded Arrow——*Reddendo inde annuatim pro omni ſervitio ſex* Sagittas Barbatas *ad Feſtum Sancti Michaelis, &c.* Blount.

Sagittaria, A Sort of ſmall Ships or Veſſels, with Oars and Sails. *R. de Diceto, anno* 1176.

Sail-Cloth. For encouraging the Manufacture of *Sail-Cloth*, any Perſons may import into this Kingdom undreſs'd Flax, without paying any Duty for the ſame, ſo as a due entry be made thereof at the Cuſtom-houſe, *&c.* And no Drawback is to be allowed on Re-exportation of foreign *Sail-Cloth:* But an Allowance ſhall be made of 1 *d. per* Ell for *Britiſh Sail-Cloth* exported, *&c.* 4 *Geo.* 2. *c.* 27. All foreign *Sail Cloth* imported, from which Duties are granted, ſhall be ſtamped, expreſſing from whence imported, *&c.* And Manufacturers of *Sail-Cloth* in this Kingdom, are to affix to every Piece by them made, a Stamp containing their Names, and Places of Abode, or expoſing it to Sale ſhall forfeit 10 *l.* And if any Perſons cut off or obliterate ſuch Stamps, they incur a Forfeiture of 5 *l.* upon Conviction before one or more Juſtices, to be levied by Diſtreſs, *&c.* Ships built on firſt ſetting out to Sea, to have one complete Set of Sails manufactured here, on Pain of 50 *l.* And no Sail-maker may work up into Sails foreign *Sail-Cloth* not ſtamped, under 20 *l.* Penalty: Alſo *Sail-Cloth* made in *Great Britain*, the Pieces being of certain Lengths and Breadths, ſhall weigh ſo many Pounds each Bolt, and the Warp be Wrought of double Yarn, *&c.* And Flax Yarn uſed in *Britiſh Sail-Cloth*, not to be whitened with Lime, on Forfeiture of 6 *d.* a Yard. Sail-makers, *&c.* are to cauſe this Act to be put up in their Shops and Work-houſes, under the Penalty of 40 *s.* Stat. 9 *Geo.* 2. *c.* 37.

Saio & Saiones, *Fcri vel Magiſtratus Miniſter.* A Tipſtaff or Serjeant at Arms; derived from the Sax. *Sagol*, i. e. *Fuſtis*, becauſe they uſe to carry a Rod or Staff of Silver.

Salary, (*Salarium*) Is a Recompence or Conſideration made to a Perſon for his Pains and Induſtry in another Man's Buſineſs: The Word is uſed in the Statute 23 *Ed.* 3. *c.* 1. *Salarium* at firſt ſignified the Rents or Profits of a *Sala*, Hall or Houſe; (and in *Gaſcoigne* they now call the Seats of the Gentry *Sala's*, as we do Halls) but afterwards it was taken for any Wages, Stipend, or annual Allowance.

Sale, (*Venditio*) Is the Transferring the Property of Goods from one to another, upon valuable Conſideration: And if a Bargain is that another ſhall give me 5 *l.* for ſuch a Thing, and he gives me *Earneſt*, which I accept, this is a perfect *Sale. Wood's Inſt.* 316. On *Sale* of Goods, if Earneſt be given to the Seller, and Part of them are taken away by the Buyer, he muſt pay the Reſidue of the Money upon fetching away the reſt, becauſe no other Time is appointed; and the Earneſt given binds the Bargain, and gives the Buyer a Right to demand the Goods; but a Demand without paying the Money is void: And it has been held, that after the Earneſt is taken, the Seller cannot diſpoſe of the Goods to another, unleſs there is ſome Default in the Buyer; therefore if he doth not take away the Goods and pay the Money, the Seller ought to require him ſo to do; and then if he doth not do it in convenient Time, the Bargain and Sale is diſſolved, and the Seller may diſpoſe of them to any other Perſon. 1 *Salk.* 113. A Seller of a Thing is to keep it a reaſonable Time, for Delivery: But where no Time is appointed for Delivery of Things ſold, or for Payment of the Money, it is generally implied that the Delivery be made immediately, and Payment on the Delivery. 3 *Salk.* 61. Where one agrees for Wares ſold, the Buyer muſt not carry them away before paid for; except a Day of Payment is allowed him by the Seller. *Noy* 87. It is ſaid a perfect Bargain and *Sale* between Parties, will be good, though the Seller knows of an Execution that is againſt him; and doth ſell the Goods to prevent the falling of it upon them. 3 *Skep. Abr* 115. A *Sale* may be of any living or dead Goods in a Fair or Market, be they whoſe they will, or however the Seller come by them; if made with the Cautions required by Law: But if one ſell my Goods unduly, I may have them again. *Doct. and Stud.* 328. *Perk. Sect.* 93. If a Man affirms a Thing ſold is of ſuch a Value when it is not, this is not actionable, but if he actually *Warrants* it, at the Time of the Sale, and not afterwards, it will bear an Action, being Part of the Contract. 2 *Cro.* 5, 386, 630. 1 *Roll. Abr.* 97. See *Contract.* And *Sales of Goods* in *Markets*, to be binding, *&c.* Vide *Market.*

Salet, Is a Head-piece, (from the Fr. *Salut*, i. e. *Salus*) A *Salet* or *Scull* of Iron, *&c.* 20 *R.* 2. *c.* 1. 4 *&* 5 *P. & M.*

Salicetum, The Soil where Willows grow, or an Oſier Bed. 1 *Inſt.* 4.

Salina, Is a Salt-pit, or Place wherein Salt is made: And *Salina* is ſometimes wrote for *Salma*, *i. e.* a Pound-Weight. *Chart.* 17 *Ed.* 2. and Statute *R.* 1.

Salique Law, (*Lex Salica*) A Law by which Males are only to inherit; it is peculiar to the *French*, and was made by *Pharamond* King of *France.*——*De Terra* Salica *nulla portio hæreditatis Mulieri veniat, ſed ad virilem ſexum tota Terra hæreditas perveniat, &c.*

Salisbury, For better repairing the Highways, Streets and Water-Courſes in the City of *Salisbury*, and enlightening the Streets, *&c.* the Mayor, Recorder, and Juſtices of the ſaid City, with four principal Inhabitants of each Pariſh, are appointed Truſtees, *&c.* Stat. 10 *Geo.* 2. *c.* 6.

Salmon, No Perſons may take *Salmons* in Rivers, between the 8th of *September*, (by late Acts 1ſt *Auguſt*) and the 11th *November*; and *Salmon* not to be taken under eighteen Inches long, *&c.* under Penalties. Stat 13 *Ed.* 1. 1 *Eliz. c.* 17. None ſhall ſell any *Salmon* in Veſſels before it be view'd, unleſs the

Barrel contain forty-two Gallons, and the Half Barrel twenty-one Gallons, well packed, and the great *Salmon* by itſelf, and ſmall Fiſh by themſelves, &c. on Pain to forfeit for every Veſſel 6 *s.* 8 *d.* Stat. 22 *Ed.* 4. *c.* 2. See *Fiſh*.

Salmon-pipe, An Engine to catch *Salmons*, or ſuch like Fiſh. 25 *H.* 8. *c.* 7.

Saltatorium, Signifies a Deer-Leap; *Quod habeat unum* Saltatorium *in Parco de* B. Pat. 1 Ed. 3.

Salt, The Price of *Salt* is to be ſet by Juſtices of Peace in their Seſſions; and Perſons ſelling it at a higher Rate ſhall forfeit 5 *l.* Alſo *Salt* ſhall be ſold by Weight after the Rate of 56 *lib.* to the Buſhel, under the like Penalty. Stat. 9 & 10 *W.* 3. And a Duty is impos'd on *Salt* by Statute; Pits to be enter'd, &c. at the *Salt-Office* on Pain of 40 *l.* Penalty; and Proprietors removing *Salt* from any Pit, before weighed in Preſence of the proper Officer, to forfeit 20 *l.* &c. 10 & 11 *W.* 3. 1 *Ann. c.* 21. But the Duties on *Salt* made in this Kingdom were taken off; and Duty on foreign *Salt* to continue, except for the *Britiſh* Fiſhery, &c. by Stat. *Geo.* 2. *c.* 20. And ſince the Duties on *Salt* have been revived and continued, to be managed by Commiſſioners, &c. who may grant Licenſes to erect Houſes for Refining of Rock *Salt*, at certain Places in the Counties of *Eſſex* and *Suſſex*. 5 *Geo.* 2. & 7 *Geo.* 2. The *Salt* Duties continued for a further Term, and under the ſame Proviſions, &c. with a Clauſe of Loan of 500,000 *l.* And Proprietors of *Salt* Works in *Scotland*, are not to pay their Work-People in *Salt*, under the Penalty of 20 *l.* Stat. 8 *Geo.* 2. *c.* 12. By a late Statute, the *Salt* Duties are further continued, with a Loan of 1,200,000 *l.* at 4 *l. per Cent.* Intereſt, &c. *Rock Salt* may be uſed in the making of *Salt* from Sea-Water in Works in *Wales*, paying the Duties on both. 14 *Geo.* 2. *cap.* 22.

Salt-Duty in *London*. There is a Cuſtom Duty in the City of *London* called *Granage*, payable to the Lord Mayor, &c. for *Salt* brought to the Port of *London*, being the Twentieth Part. *Cit. Lib.* 125.

Salt-Silver, One *Penny* paid at the Feaſt of *St. Martin*, by the Tenants of ſome Manors, as a Commutation for the Service of Carrying their Lord's *Salt* from Market to his Larder. *Paroch. Antiq.* 496.

Saltus, A high thick Wood or Foreſt. See *Boſcus*.

Salvage, Is an Allowance made for *Saving* of Ships or Goods from Danger of Seas, Enemies, &c. *Merch. Dict.* And by Statute, where a Ship ſhall be in Danger of being ſtranded or run on Shore, Juſtices of Peace are to command Conſtables to aſſemble as many Men as ſhall be neceſſary to ſave the Ship; and being preſerved by their Means, the Perſons aſſiſting ſhall within thirty Days after be paid a reaſonable Reward for the *Salvage* by the Maſter of the Ship or Merchant, in Default whereof the Ship or Goods ſhall remain in the Cuſtody of the Officers of the Cuſtoms as a Security. 12 *Ann. c.* 18.

Salvagius, Wild, Savage; as *Salvagius Catus*, the wild Cat. *Rot. Cart.* 1 *Joh.*

Salute, (*Salus*) Was a Coin made by K. *Hen.* 5. after his Conqueſts in *France*, whereon the Arms of *France* and *England* were ſtamp'd and quarter'd *Stow's Chron.* 589.

Sancta, Are the Reliques of the Saints; and *Jurare ſuper* Sancta was to make Oath on thoſe Reliques. *Leg. Canut. c.* 57.

Sanctuary, (*Sanctuarium*) Is a Place privileged for the Safe-guard of Offenders Lives, being founded upon the Law of Mercy, and the great Reverence and Devotion which the Prince bears to the Place whereunto he grants ſuch Privilege. *Sanctuaries* were firſt granted by King *Lucius* to our Churches and their Precincts; and among all other Nations, our ancient Kings of *England* ſeem to have attributed moſt to thoſe *Sanctuaries*, permitting them to ſhelter ſuch as had committed both Felonies and Treaſons; ſo as within forty Days they acknowledged their Fault, and ſubmitted themſelves to Baniſhment; during which Space, if any Layman expelled them, he was excommunicated; and if a Clerk, he was made irregular. *Mat. Weſt. Ann.* 187. *S. P. C. lib.* 2. *cap.* 38. *Fleta, lib.* 1. *cap* 29. St. *John's* of *Beverley* in *Yorkſhire* had an eminent *Sanctuary* belonging to it in the Time of the *Saxons*: And St. *Buriens* in *Cornwal* had the like granted by King *Athelſtan*, *Anno* 935. ſo had *Weſtminſter* granted by King *Edward the Confeſſor*; and St. *Martins le Grand* in *London*. 21 H. 8. &c.

Sanctuaries, It has been obſerv'd, did not gain the Name of ſuch till they had the *Pope's* Bull, tho' they had full Privilege of Exemption from Temporal Courts by the King's Grant only: But no *Sanctuary* granted by general Words, extended to High Treaſon; though it extended to all Felonies, except Sacrilege, and all inferior Crimes, not committed by a *Sanctuary* Man; and it never was a Protection againſt any Action Civil, any farther than to ſave the Defendant from Execution of his Body, &c. 2 *Hawk. P. C.* 335, 336. *Sanctuaries* were aboliſhed here by the Statutes 26, 28 & 32 *H.* 8. and 1 & 2 *Ed.* 6. And the *Plea of Sanctuary* with *Abjuration* is taken away by 21 *Jac.* 1.

Sandal, A Merchandize brought into *England*; and a kind of red-bearded Wheat. See 2 *R.* 2. *cap.* 1.

Sand-gavel, Is a Payment due to the Lord of the Manor of *Rodley* in the County of *Glouceſter*, for Liberty granted to the Tenants to dig *Sand* for their common Uſe. *Tayl. Hiſt. Gavelk.* 113.

Sane Memory, *i. e.* Perfect and ſound Mind and Memory, to do any lawful Act, &c. See *Non Sane*.

Sanguinem emere, Was where Villeins were bound to buy or redeem their Blood or Tenure, and make themſelves Freemen.——*Omnes Cuſtumarii Tenen. de Manerio de* Grendon *debent* Sanguinem *ſuum* emere. *Lib. niger Heref.*

Sanguis, Is taken for that Right or Power which the chief Lord of the Fee had to judge and determine Caſes where *Blood* was ſhed. *Mon. Angl. Tom.* 1. *pag.* 1021.

Sang and **Sanke**, Words uſed for Blood.

Sarabara, A Covering for the Head. *Mat. Weſtm. Ann.* 1295.

Sarclin-time, (From the Fr. *Sarcler*, Lat. *Sarclare*) Is the Time or Seaſon when Husbandmen weed their Corn.

Sarculatura, Weeding of Corn: *Una Sarculatura*, the Tenant's Service of one Day's Weeding for the Lord.——*Tenet in Bondagio, & debet unam* Sarculaturam, &c. *Paroch. Antiq.* 403.

Sarkellus, An unlawful Net or Engine for deſtroying Fiſh. *Inquiſic. Juſtic. Ann.* 1254.

Sarplar of Wool, (*Sarplera Lanæ*, otherwiſe called a *Pocket*) Is Half a Sack. *Fleta, lib.* 2. *cap.* 12.

Sart, or *Aſſart*, A Piece of Wood Land turn'd into arable. See *Aſſart*.

Saſſe, Is a kind of Wear with Flood Gates, moſt commonly in navigable and cut Rivers, for the damming and ſhutting up and looſing the Stream of Water, as Occaſion requires, for the better paſſing of Boats and Barges: This in the Weſt of *England* is called a *Lock*; and in ſome Places a *Sluice*. Stat. 16 & 17 *Car.* 2. *c.* 12.

Saſſons, The Corruption of *Saxons*, a Name of Contempt formerly given to the *Engliſh*, while they affected to be called *Angles*; they are ſtill ſo called by the *Welſh*.

Satisfaction, Is the Giving of Recompence for an Injury done; or the Payment of Money due on Bond, Judgment, &c. In which laſt, it muſt be entered on Record. 2 *Lill. Abr.* 495. Where Money given one by Will, ſhall be held to be in *Satiſ-*

faction of a Debt, being more than that amounts to; and where it is not, and both have been allowed. *Preced. Canc.* 394, 395, 236. 2 *Vern.* 478. See *Legacy.* *Satisfaction* and Amends may be pleaded for involuntary Treſpaſs, *&c.* by Stat. 21 *Jac.* 1. *cap.* 5. Vide *Payment.*

Saturday's Stop, A Space of Time from Evenſong on *Saturday* till Sun riſing on *Monday*, in which it was not lawful to take Salmon in *Scotland*, and the Northern Parts of *England. MS.*

Saver-Default, Is a Law-Term for to excuſe, as when a Man having made Default in Appearance in Court, *&c.* comes afterwards and alledges good Cauſe for it, *viz.* Impriſonment at the Time, or the like. *Book Entr.*

Saunkefin, (Fr. from *Sang*, i. e. *Sanguis & Fin*, *Finis*) Is the Determination or final End of the lineal Race and Deſcent of Kindred. *Briton, cap.* 119.

Saxon-lage, (*Saxon-laga, Lex Saxonum*) The Law of the Weſt *Saxons* by which they were governed. See *Merchenlage.*

Scabini, Is a Word uſed for Wardens at *Linne* in *Norfolk:* —— *Sciant præſentes & futuri quod nos, &c. Cuſtodes ſive* Scabini *& fratres Fraternitatis ſive Gildæ Mercatoriæ Sanctæ* Trinitatis *Villæ* Lenne *in Com.* Norf'. *Chart. Hen.* 8.

Scalam, *Ad Scalam*, The old Way of paying Money into the *Exchequer*. The Sheriff, *&c.* is to make Payment *ad Scalam*, i. e. *Solvere præter quamlibet numeratam libram ſex denarios.* Stat. *W.* 1. And at that Time Six-pence ſuper added to the Pound made up the full Weight, and near the intrinſick Value. This was agreed upon as a *Medium* to be the common Eſtimate for the defective Weight of Money; thereby to avoid the Trouble of weighing it when brought to the *Exchequer. Lownds's Eſſ. on Coin, pag.* 4. *Hale's Sher. Accounts, pag.* 21.

Scalinga, A Quarry or Pit of Stones, or rather Slates for covering Houſes: French *Eſcailere*, whence *Scaling* of Houſes, *&c. Mon. Angl. Tom.* 2. *pag.* 130.

Scandal, Signifies a Report or Rumour, or an Action whereby one is affronted in Publick. *Chamb.*

Scandalum Magnatum, Is the ſpecial Name of a *Scandal* or Wrong done to any high Perſonage of the Realm: And it is alſo a Writ granted to recover Damages thereupon. 2 *R.* 2. *c.* 5. None ſhall report any falſe or ſlanderous News or Tales of great Men, whereby any Diſcord may ariſe betwixt the King and his People, on Pain of Impriſonment until they bring forth the Author. Stat. *Weſtm.* 1. *cap.* 34. No Perſon ſhall deviſe or tell any falſe News, or Lies, of any Lord, Prelate, Officer of the Government, Judge, *&c.* by which any Slander ſhall happen to their Perſons, or Miſchief come to the Kingdom, upon Pain of being impriſoned; and where any one hath told falſe News or Lies, and cannot produce the Author, he ſhall ſuffer Impriſonment, and be puniſhed by the King's Council, *&c.* 2 *R.* 2. *c.* 5. 12 *R.* 2. *c.* 11. If the Slander is publiſhed in a Libel, the Party may be indicted, fined and impriſon'd: But the Action of *Scandalum Magnatum* is uſually brought upon the Stat. 2 *R.* 2. *tam pro Domino Rege, quam pro ſeipſo*, in the Name of the King and the Party; the King being concerned in the Credit of great Men, who act by his Authority; ſo that the Plaintiff recovers Damages upon this Statute for the Wrong, and the Defendant is impriſon'd on the Statute of *Weſtm.* upon the King's Account. 5 *Rep.* 125. The Words in theſe Caſes ſhall be taken in the worſt Senſe, to preſerve the Honour of great Perſons: Yet 'tis ſaid a Defendant may juſtify in *Scandalum Magnatum*, ſetting forth the Special Matter. 1 *Ventr.* 60. 1 *Lev.* 277. 4 *Rep.* 13, 14. And the Statutes extend only to extrajudicial Slanders, and ſo it is at Common Law; for though the Charge be falſe, which is alledged againſt one in a Court of Juſtice, no Action *de Scandalis Magnat.* lieth. 2 *Inſt.* 228. 1 *Roll. Abr.* 34. *Hob.* 35. For theſe Words, *I do not know but my* Lord *of* Peterborough *ſent* Gibs *to take my Purſe*; they were held actionable, though there was no poſitive Charge. 1 *Ventr.* 59. So where a Defendant hearing that his Father's Barns were burnt, ſaid, *I cannot imagine who ſhould do it but my Lord* Stourton. *Moor* 142. A Man ſaid of the Earl Lincoln, *That he was a baſe Earl, and a paultry Lord, and kept none but Rogues and Raſcals about him*; although the Words were ſpoken chiefly concerning his Servants, they were adjudg'd in Contempt of his Honour and Dignity, and actionable. 2 *Cro.* 195. But where the Defendant ſaid, *The Lord* Lincoln's *Man did, by his Command, take the Goods of a certain Perſon by a forged Warrant*; after a Verdict for the Plaintiff and great Damages, the Judgment was arreſted, becauſe it was not averred that the Earl knew the Warrant to be forged. *Goldsb.* 115. If one ſays of a Peer, *He is an unworthy Perſon, and acts againſt Law and Reaſon*; in the Caſe of the Lord *Townſend* it was adjudg'd Action of *Scandalum Magnatum* lay, notwithſtanding the Words were general, and charged him with nothing certain: Though Juſtice *Atkins* held an Action would not lie for theſe Words, being of a trivial Nature; and the Statute mentions only great *Scandals*, whereby Diſcord might ariſe, *&c.* 1 *Mod.* 232. 2 *Mod.* 150. 1 *Danv. Abr.* 165. In this laſt Caſe 4000 *l.* Damages were given; and on a Motion for a new Trial, becauſe of the exceſſive Damages, it was denied. 1 *Nelſ. Abr.* 130. The Defendant being a Parſon, ſpoke the following Words in the Pulpit, *The Lord of* Leiceſter *is a wicked and cruel Man, and an Enemy to the Reformation*; and in Action of *Scandalum Magnatum* the Plaintiff had 500 *l.* Damages. 2 *Sid.* 21, 30. The Statute of *Scandalum Magnatum* is a general Law, of which the Court is to take Notice. 4 *Rep.* 12. And it hath been reſolv'd, that if the Plaintiff recites ſo much of the Statute in his Declaration as will maintain his Action, though he miſtakes the reſt, it will not make his Declaration ill: But it being a general Law, it need not be recited. 2 *Mod* 98. An Action brought upon this Statute, and ſeveral particular Objections to the Declaration, with the Anſwers to them, and Judgment for the Plaintiff, ſee *Cro. Car.* 135. Bail to be taken in Action of *Scandal Magnat.* Vide 3 *Mod.* 41.

Form of a *Declaration* in *Scandalum Magnatum.*

Middleſex, ſſ. THE *Right Honourable* A. *Earl of* B. *one of the Peers and Nobles of this Kingdom of* Great Britain, *who ſues as well for the Lord the King, as for himſelf, complains of* C. D. *in Cuſtody of the Marſhal of the* Marſhalſea, *&c. for that, to wit, That whereas the ſame* A. *Earl of* B. *the Day and Year,* &c. *and long before, and continually from thence hitherto, was and ſtill is one of the Peers of this Kingdom, and had and ſtill hath a Voice and Place in the Parliament of the ſaid Lord the now King of* Great Britain, *as one of the Peers of this Realm; yet the aforeſaid* C. D. *contriving and maliciouſly intending, againſt the Form of the Statute in ſuch Caſe made and provided, to ſtir up great Scandals of the aforeſaid Earl, from whence Diſcord might ariſe between the ſaid Earl and other Peers and Nobles, and others, the Subjects of the ſaid Lord the King of this Kingdom of* Great Britain, *the aforeſaid Day and Year, at,* &c. *in the County aforeſaid, having Diſcourſe with one* E. F. *of and concerning the aforeſaid Earl, theſe falſe, feigned, ſcandalous and opprobrious Words following, in the Preſence and Hearing of divers faithful Subjects of the ſaid Lord the King, did then and there falſly, maliciouſly and ſcandalouſly ſpeak, utter, deliver and publiſh; that is to ſay,* the Earl of B. (*meaning the aforeſaid Earl*) is a pitiful Man, and no Body will take his Word for any Thing; and Men of Reputation value him (*the ſaid Earl again meaning*) no more than the Dirt of the Streets, &c. *By Pretext of which ſaid ſpeaking, uttering, declaring and publiſhing of the ſaid falſe, feigned and ſcandalous Words, he the ſaid Earl did ſuffer great Loſs and Depravation of his Honour and Eſteem among the Peers and Nobles aforeſaid, and other Subjects of the ſaid Lord the now King, and alſo ſuffered the Diſpleaſure of the ſaid Lord the King towards him the ſaid Earl; and divers great Diſcords and Scandals within this Kingdom of* Great Britain, *between the ſaid Earl and divers other Peers and Nobles, and other Subjects of the ſaid Lord the King, have ariſen within this Kingdom, and daily more and more are like to ariſe, to the great Diſturbance of the Tranquillity of the ſame Kingdom,* &c. *in Contempt of the ſaid Lord the now King, and to the* great Scandal *and Grievance of him the ſaid Earl, and againſt the Form of the Statute aforeſaid, to the Damage of him the ſaid Earl, who ſues as well for the ſaid Lord the King, as for himſelf, of* 1000 l. *and therefore the ſaid Earl, as well for the Lord the King, as for himſelf, brings his Suit.*

Scandalizing the Marriage of King *Hen.* 8. with *Anne Bullen* was declared Treaſon, by Statute 25 *Hen.* 8.

Scarborough, Perſons Incorporated there, with Power to diſtrain every Man for the Fifth Part of Houſes and Lands, towards the Repairs of the Peer and Key, &c. See Stat. 37 *H.* 8. *c.* 14.

Scatinia Lex, A Law againſt Buggery.——*Quæ præpoſteræ Veneris uſum coercebat, ita dict. a* Scatinio *latore.*

Scavage, Scevage or **Schewage,** (From the Sax, *Sceawian,* i. e. *Oſtendere*) A Kind of Toll or Cuſtom, exacted by Mayors, Sheriffs, &c. of Merchant Strangers, for Wares *ſhewed* or expoſed to Sale within their Liberties; prohibited by the Statute 19 *H* 7. *c.* 7. But the City of *London* ſtill retains this ancient Cuſtom to a good yearly Profit: And the Lord Chancellor, Treaſurer, Preſident of the Council, Privy Seal, Steward, and two Juſtices of the *King's Bench* and *Common Pleas,* are to aſcertain theſe Duties, and order Tables to be made mentioning the Particulars, &c. by 22 *H.* 8. *c.* 8.

Scavaldus, The Officer who collected the *Scavage* Money, which was ſometimes done with great Extortion.

Scavengers, (From the Belg. *Schaven,* to ſcrape or carry away) Are Perſons choſen into this Office in *London* and its Suburbs, who hire *Rakers* and Carts to cleanſe the Streets, and carry the Dirt and Filth thereof away. 14 *Car.* 2. *cap.* 2. In *Eaſter*-Week yearly, two Tradeſmen in every Pariſh within the Weekly Bills of Mortality muſt be elected *Scavengers* by the Conſtables, Church-wardens, and other Inhabitants, who are to take upon them the Office in Seven Days, under the Penalty of 10 *l.* Theſe *Scavengers* every Day except Sundays or Holidays, are to bring their Carts into the Streets, and give Notice by a Bell, or otherwiſe, of carrying away Dirt, and to ſtay a convenient Time, or ſhall forfeit 40*s.* and Juſtices of Peace in their Petit Seſſions may give *Scavengers* Liberty to lodge their Dirt in vacant Places near the Streets, ſatisfying the Owner for the Damage, &c. All Perſons within the Weekly Bills, are to ſweep the Streets before their Doors, every *Wedneſday* and *Saturday,* on Pain of forfeiting 3*s.* 4*d.* and Perſons laying Dirt or Aſhes before their Houſes, incur a Forfeiture of 5*s.* Inhabitants and Owners of Houſes are alſo to pave the Streets before their own Houſes, on the Penalty of 20*s.* for every Perch: And Conſtables, Church-wardens, &c. may make a *Scavenger's* Tax, being allowed by two Juſtices of the Peace, not exceeding 4*d.* in the Pound, &c. 2 *W.* & *M.* *cap* 2. By the Stat. 1 *Geo.* 1. *cap.* 48. Juſtices of Peace in their Quarter-Seſſions may appoint *Scavengers,* and order the Repairing and Cleanſing the Streets in any City or Market-Town, and appoint Perſons to make Aſſeſſments, ſo as not to exceed 6*d.* *per* Pound *per Ann.* to defray the Charge of ſuch *Scavengers,* to be collected and levied by Diſtreſs; and when new *Scavengers* are choſen, the old Ones muſt account before two Juſtices for the Money aſſeſſed and collected, and pay what remains in their Hands to the new *Scavengers,* or be committed to Priſon, &c. The Aſſeſſments for *Scavengers* of the Pariſhes of St. *Anne Weſtminſter,* and St. *James,* ſhall be rated according to the *Cuſtom* of the *City*; and ancient Streets in the City are to be maintained according to ancient Uſage, &c. The Lord Mayor or any Alderman may preſent upon View, any Offence within the City of *London,* and aſſeſs Fines not exceeding 20*s.* to be paid to the Chamberlain for the Uſe of the City, &c. Stat. *Ibid.* Truſtees and Commiſſioners appointed to clean and repair St. *James's Square,* and continue the ſame cleaned; and Rates to be made and aſſeſſed on Houſes, at ſo much *per* Foot in Front, leviable by Diſtreſs; and annoying the Square by Filth, is liable to 20*s.* Penalty, &c. by 12 *Geo.* 1. *cap.* 25. For the better Paving and Cleanſing the Streets in the City of *Weſtminſter,* &c. Surveyors are to be nominated by Juſtices of Peace, who ſhall take a View of all the Streets every ſix Weeks, and make Preſentments of Pavements out of Repair, cauſe the ſame to be amended, &c. And the Surveyors to have an Allowance not exceeding 8*l.* *per Ann.* out of the *Scavengers* Rates, &c. Stat. 2 *Geo.* 2. *cap.* 11. Perſons authoriſed by 22 & 23 *Car.* 2. may order ſuch Parts of *London* Streets, &c. as lie before vacant Houſes, to be paved and amended; and impoſe Aſſeſſments on the Owners, to be paid on their Account by the next Occupiers, and deducted out of Rent; and in the mean Time, the Chamberlain of the City ſhall pay the Taxes: And ſuch authoriſed Perſons may direct Poſts to be ſet up in all Paſſages within the City, to preſerve Foot-Paths, and for that Purpoſe make Aſſeſſments. 10 *Geo.* 2. *cap.* 22.

Sceat, (*Sax.*) A ſmall Coin among the *Saxons* equal to four Farthings.

Sceithman, (*Sax.*) A Pirate or Thief. *LL. Æthelredi, apud Brompton.*

Sceppa Salis, An ancient Meaſure of Salt, the Quantity now not known: And *Sceppa* or *Sceap* was likewiſe a Meaſure of Corn, from the Lat. *Schapa*; Baskets, which were formerly the common Standard of Meaſure, being called *Skips* or *Skeps* in the South Parts of *England*; and a Bee hive is termed a *Bee Skip.* Mon. Ang. Tom. 2. pag. 284. Paroch. Antiq. 604.

Schaffa, A Sheaf; as *Schaffa Sagittarum,* a Sheaf of Arrows. *Skene.*

Scharpenny, or **Scharnpenny,** A ſmall Duty or Compenſation, *i. e.* *Dung-penny*; the Saxon *Scearn* ſignifying Muck or Dung: And ſome Cuſtomary Tenants were obliged to pen up their Cattle at Night in the Yard of their Lord, for the Benefit of their Dung; or if they did not, they paid this Duty. *Cartular. S. Edmundi, MS.* In ſome Places of the North, they ſtill call Cow-Dung, by the Name of *Cow Skern.*

Schedule, Is a little Roll, or long Piece of Paper or Parchment, in which are contained Particulars of Goods in a Houſe let by Leaſe, &c. Vide *Leaſe.*

Schetes, Was formerly a Term for Uſury; and the Commons prayed that Order might be taken againſt this horrible Vice, practiſed by the Clergy as well as the Laity. *Rot. Parl.* 14 *R.* 2.

Schilla, A little Bell uſed in Monaſteries, mentioned in our Hiſtories. *Eadmer. lib.* 1. *cap.* 8.

Schirman, (Sax. *Scirman*) A Sheriff of a County. *LL. Inæ.*

Schirrens-geld, *Schire-geld*, Was a Tax paid to Sheriffs for keeping the *Shire* or *County Court.* Cartular. Abbat. St. Edmund. 37.

Schiſm, (*Schiſma*) A Rent or Diviſion in the Church: There was a Statute made to prevent the Growth of *Schiſm.* Anno 12 Ann.

Schoolmaſter. No Perſon ſhall keep or maintain a *Schoolmaſter*, which does not conſtantly go to Church, or is not allowed by the Ordinary; in Pain of 10*l.* a Month; and the *Schoolmaſter* ſhall be diſabled, and ſuffer a Year's Impriſonment. Stat. 23 *Eliz. cap.* 1. Recuſants are not to be *Schoolmaſters* in any publick Grammar *School*, nor any other, unleſs the Perſons be licenſed by the Biſhop; under the Penalty of forfeiting 40*s* a Day. 1 *Jac.* 1. *c.* 4. Every *Schoolmaſter* keeping any publick or private *School*, and every Tutor in any private Family, ſhall ſubſcribe the Declaration, that he will conform to the Liturgy of the Church of *England* as by Law eſtabliſhed, and be licenſed by the Ordinary; or he ſhall for the firſt Offence ſuffer three Months Impriſonment, *&c.* 13 & 14 *Car.* 2. *c.* 4. If any Papiſt ſhall be convicted of keeping a *School*, or take upon him the Education of Youth, he ſhall be adjudged to perpetual Impriſonment. 11 & 12 *W.* 3. *cap.* 4. Perſons keeping *Schools* without a Licence from the Biſhop, and receiving the Sacrament of the Church of *England*, taking the Oaths, *&c.* (except Tutors in Reading, Writing, and Arithmetick) ſhall be committed to the common Gaol for three Months, *&c.* 12 *Ann. Seſſ.* 2. *c.* 7. But this laſt Statute, as to *Schoolmaſters* receiving the Sacrament of the Church, is repealed by 5 *Geo.* 1. *c.* 3. By our *Canons*, no Man ſhall teach in a publick *School*, or private Houſe, but ſuch as is allowed and examined by the Biſhop, and of ſober Life: And all *Schoolmaſters* are to teach the *Catechiſm* of the Church in *Engliſh* or *Latin*; and bring their *Scholars* to Church, and afterwards examine them how they have benefitted by Sermons, *&c.* *Can.* 77, 79.

Scilicet, An *Adverb*, ſignifies, that is to ſay, to wit; and hath been often uſed in Law-Proceedings. Sir *John Hobart* in his Expoſition of this Word, ſays it is not a direct and ſeparate Clauſe, nor a direct and intire Clauſe, but *intermedia*; neither is it a ſubſtantive Clauſe of itſelf, but it is rather to uſher in the Sentence of another, and to particularize that which was too general before, or diſtribute that which was too groſs, or to explain what was doubtful and obſcure; and it muſt neither increaſe nor diminiſh, for it gives nothing of itſelf: But it may make a Reſtriction, where the precedent Words are not ſo very expreſs, but they may be reſtrained. *Hob.* 171, 172. The Word *Scilicet* in a Declaration, ſhall not make any Alteration of that which went before. *Poph.* 201, 204. And yet in ſome Caſes, the *Scilicet* which introduces a Subſequent, ſhall not be rejected. 2 *Cro.* 618.

Scire facias, Is a Writ judicial, moſt commonly to call a Man to ſhew Cauſe to the Court whence it iſſues, why Execution of a Judgment ſhould not go out. *Old Nat. Br.* 151. A *Scire facias* lieth, where Debt and Damages are recovered, and no Execution is ſued out within a Year and a Day; then after the Year and Day, the Plaintiff ſhall have this Writ to ſummon the Defendant to ſhew Cauſe why there ſhould not be Execution ſued upon the Judgment againſt him; and if he can ſhew no Cauſe, there is Judgment, *Quod habeat Executionem. Terms de Ley* 537. 2 *Lill. Abr.* 497. This Writ was not at the Common Law, but given by the Stat. of *Weſt.* 2. *cap.* 45. in perſonal Actions, when Debt or Damages were recovered: And before, if the Plaintiff had not ſued out his Execution in a Year and a Day after his Judgment, he had no Remedy but by new Action of Debt upon his Judgment; but now he hath his Liberty to bring either a *Scire facias*, or Action of Debt, as he pleaſes. 2 *Inſt.* 469. By the Statute it is ordained in lieu of a new Original; and therefore Judgment upon the *Scire facias* ſhall have the ſame Effect, as upon that. *Comber.* 455. At Common Law the Writ of *Scire facias* lay only on Judgments in Real Actions; though it has been adjudged that it lay alſo in mixed Actions. 2 *Salk.* 600. If any of the Writs of Execution, whether in Perſonal or Real Actions, are not executed within the Year and Day after the Judgment, to obtain Execution, there muſt be a *Scire facias*, to ſhew Cauſe why the Execution ſhould not be awarded: But if the Plaintiff ſueth out any of them within the Year, he may continue them after the Year till he hath Execution, and need not ſue out any *Scire facias.* And a Writ of Error is a Continuance of the Cauſe, ſo that no *Scire facias* is required, though it depend ſome Years; and becauſe pending the Writ of Error the Plaintiff cannot ſue out Execution of the Judgment, but he may after the Affirmation of it, *&c.* *Litt.* 505. 1 *Inſt.* 290. 2 *Inſt.* 471. 2 *Lill.* 500, 504. Where Judgment is had againſt a Teſtator, there muſt iſſue a *Scire facias* againſt the Executor, although within the Year, to ſhew Cauſe why Execution ſhall not be had; the like againſt an Adminiſtrator of an Inteſtate: And ſo on the Plaintiff's Part, if Heir, Executor, or Adminiſtrator; the Perſon being altered: And if one recovers againſt a Feme ſole, and ſhe is married within the Year and Day, a *Scire facias* is to go againſt the Husband. *Wood's Inſt.* 610. When either Plaintiff or Defendant, or one of the Plaintiffs or Defendants dies, Execution may not be ſued out upon a Judgment until a *Scire facias* obtained and Judgment thereupon; in theſe Caſes there is to be a new Judgment to warrant Execution. 2 *Lill. Abr.* 500. If an Adminiſtrator obtains Judgment for a Debt due to the Inteſtate, by Default or Confeſſion, and the Adminiſtrator doth after die Inteſtate, and Letters of Adminiſtration are granted to one *de bonis non*, *&c.* of him that firſt died inteſtate; this Adminiſtrator cannot have a *Scire facias* to revive the Judgment obtained by the firſt Adminiſtrator of the firſt Inteſtate, but he muſt bring a new Action to recover that Debt; for he is no Ways Party or Privy to the firſt Judgment, but a meer Stranger to it: But if the Recovery were by Verdict, he may now have a *Scire facias* upon it, by 17 *Car.* 2. *c.* 8. 2 *Lill.* 505. It hath been uſed of late to make out a *Fieri facias de bonis Teſtatoris*, and alſo a *Scire facias*, and a Writ of *Inquiry*, all in one Writ, againſt an Executor or Adminiſtrator, for the ſpeedier Obtaining of Execution upon a Judgment; though anciently they were diſtinct Writs or Proceſſes, and to be ſeverally executed. *Ibid.* 503. One may have a *Scire facias* to revive an old Judgment upon which no Execution hath been executed, without any Motion, if it be but ſeven Years paſt ſince the Judgment was had; and if it be above ſeven Years, and under ten Years ſince the Judgment was given, a *Scire facias* may be moved for at the Side Bar to revive it: But if it be above ten Years, then a *Sci. fac.* cannot be had without moving the Court, and a Rule for it; and the Court doth not uſe to deny it, if moved for. *Ibid.* 502. 2 *Salk.* 598. If a *Scire facias* be taken out to revive an old Judgment of above ten Years ſtanding, without Motion and Leave of the Court, the *Sci. fac.* is not good, but may be ſet aſide upon a Motion. *Trin.* 23 *Car. B. R.* A *Scire facias* to revive a Judgment ought not to be granted, till the Record of the Judgment be in Court where the *Sci. fac.* is moved for. 2 *Lill.* 498. In a *Sci. fac.* brought upon a Judgment given in *C. B.* it is neceſſary to ſhew before what Chief Juſtice by Name the Judgment was had; but it is not neceſſary to do it in a *Scire facias* upon a Judgment of *B. R.* And the Reaſon is, becauſe the Proceedings are in the Common Pleas *coram* the Chief Juſtice &

ſociis ſuis; and in the King's Bench they are *coram Domino Rege. Ibid.* 499. If a *Scire facias* be ſued upon a Judgment in *B. R.* where the Action is brought by Original; the Plaintiff muſt alledge a Place where the Court is held, as ſuch a *Sci. fac.* is returnable *Coram nobis ubicunque fuerimus, &c.* 'tis otherwiſe on a Judgment in *C. B.* becauſe that Court is by *Magna Charta* confined to a certain Place. 1 *Ventr.* 46. 1 *Mod.* 19. The Proceſs of *Scire facias* ought to be in the ſame Court where the Judgment was given; unleſs it be upon a Recogniſance, on a Statute Merchant, or Staple; for in ſuch Caſe it may be returnable in *Chancery*, the Recognizance being before that Court, and they may there judge of it. 2 *Bulſt.* 10. In Debt upon a Recovery in *Scire facias*, on a Recognizance taken in the *Chamber of London*; it was not ſhewed that it was a Court of Record, and that they had been uſed to take Recognizances: And on Exception taken to it, divers Caſes were put, that though the Judgment was void, yet Execution might be by *Scire facias.* For upon a voidable Judgment a Man ſhall recover, and may take out Execution; and that it ſhould ſtand good, until the Judgment were reverſed. *Godb.* 96. After the Removal of a Record by *Certiorari* into a ſuperior Court, a *Scire facias* ſhall iſſue, *&c.* And if a *Scire facias* is brought in *B. R.* upon a Judgment in an inferior Court, it muſt appear in the Writ itſelf, how the Judgment came into *B. R.* whether by *Certiorari*, or Writ of Error, becauſe the Execution is different; if it came in by *Certiorari*, the *Scire facias* is to ſet forth the ſame, and the Limits of the inferior Juriſdiction, and pray Execution within thoſe particular Limits; but if it was brought in by Writ of Error, that muſt be ſhewn in the *Scire facias* itſelf likewiſe, and pray Execution generally. 3 *Salk.* 320. A *Scire facias* is in the Nature of an Action, as the Defendant may plead to it: And it ought to be brought in the ſame County where the original Action was laid; for it muſt always purſue the firſt Action. *Finch* 477. *Cro. Jac.* 231. As a *Scire facias* is an Action, it requires a new Warrant of Attorney, and when the Party comes to pray Judgment thereon, he does it by Attorney. 2 *Ld. Raym.* 1253. And if one doth not proceed upon a Writ of *Scire facias* within a Year and a Day after it was taken out, he cannot after that Time proceed upon that Writ, which is diſcontinu'd; but is to ſue out a new *Scire facias.* 2 Lill. 504. *Scire facias* may be pleaded to, before Judgment given upon it; afterwards it is too late: Though a Writ of Error may be brought to reverſe the Judgment on the *Scire facias*, if that be not good on which the Judgment was grounded. *Ibid.* 503. Payment is no Plea at Common Law to a *Scire facias* upon a Judgment; becauſe it is a Debt upon Record. 3 *Lev.* 120. But this is altered by the 4 & 5 *Ann.* Whatever is pleadable to the original Action in Abatement, ſhall not be pleaded to diſable the Plaintiff from having Execution on a *Scire facias*; becauſe the Defendant had admitted him able to have Judgment. 1 *Salk.* 2. In *Scire facias* on a Judgment in Debt, or other Perſonal Action, the Defendant cannot plead Non tenure of the Land generally, where it is contrary to the Return of the Sheriff; but he may plead a ſpecial Non-tenure: But in a *Scire facias* to have Execution in a Real Action, the Defendant may plead Non-tenure generally, becauſe the Freehold is in Queſtion, and that is favoured in Law; and the Tertenants may plead there are other Ter-tenants not named, and pray Judgment if they ought to anſwer *quouſq*; the others are ſummoned, *&c.* though it would be otherwiſe if the *Sci. fac.* had been againſt particular Tenants by Name. 2 *Salk.* 601. On a *Sci. fac.* to have Execution upon a Judgment in Action of Debt, every Ter-tenant is to be contributory; and therefore one ſhall not anſwer, as long as he can ſhew that another is ſo, and not warned: *Contra* in a *Scire facias* upon a Judgment in a Real Action; for every Tenant is to anſwer for that which he hath, and one may be contributory, and the other not. 2 *Cro.* 507. 3 *Nelſ. Abr.* 204. There is to be a *Scire facias* againſt the Heir and Ter-tenants to reverſe a *Common Recovery* of Lands; the *Scire facias* is to iſſue againſt all the Ter-tenants, for they are to gain or loſe by the Judgment in the Recovery. *Raym.* 16. 3 *Mod.* 274. A *Scire facias* to have Execution of a *Fine*, ſhall not be ſued againſt Leſſee for Years; but againſt him who hath the Freehold, who may have ſome Matter to bar the Execution. *Cro. Eliz.* 471. 2 *Brownl.* 144. In *Ejectment*, it was adjudged, that a *Scire facias* might be brought by the Leſſee though he was but nominal, and that it may be had by the Leſſor himſelf; as either of them may have a Writ of Error on the Judgment: And that it might be brought againſt thoſe who were Strangers to the Judgment, and againſt the Executors of the Defendant, *&c.* 2 *Lutw.* 1267. A Defendant being ſummoned upon a *Scire facias*, and the Summons returned, if he doth not appear, but lets Judgment go by Default, he is for ever barred. 1 *Lev.* 41, 42. If the Sheriff hath returned him warned, he ſhall not have *Audita Querela* on a Releaſe, *&c.* for the Defendant might have pleaded the ſame on the Return of the *Scire facias*; but if the Sheriff return *Nihil*, on which an Execution is awarded, he ſhall have *Audita Querela. New Nat. Br.* 230. Where the Plaintiff in the Judgment releaſeth the Defendant of all Judgments and Executions, *&c.* the Defendant may upon his Releaſe ſue out a Writ of *Scire facias* againſt the Plaintiff in the Judgment *ad Cognoſcendum ſcriptum ſuum Relaxationis*; and he need not ſue out his *Audita Querela. Hill.* 5 *W. & M. B. R.* *Scire facias* may be ſued againſt a Sheriff, for not bringing the Money into Court levied on a Judgment, to ſhew Cauſe why Execution ſhould not be had againſt him for the Sum, with which he had charged himſelf by the Return of the Writ of Execution. *Hutt.* 32. If one ſues out two Writs of *Scire facias*, one after the other, where it is upon a Judgment by Bill, there ought to be eight Days between the *Teſte* and Return of the firſt *Sci. fac.* and ſeven Days at leaſt between the *Teſte* and Return of the ſecond *Scire facias.* And the *Teſte* of the *Alias Scire facias* is to be the Day of the Return of the Firſt. 3 *Ann. B. R.* 2 *Lill.* 503. Coſts allowed in Suits on Writs of *Scire facias, &c.* *Vide* Stat. 8 & 9 *W.* 3. *c.* 11.

Form of a Scire facias *upon a* Judgment *in Debt.*

GEORGE *the Second*, &c. *To the Sheriff of* M. *Greeting: Whereas* A. B. *lately in our Court before us at* Weſtminſter, *by Bill without our Writ, and by a Judgment of the ſame Court recovered againſt* T. D. *of*, &c. *Three hundred and ſeven Pounds for a Debt, and ſeventy Shillings for his Damages which he had ſuſtained, as well by Occaſion of the detaining the ſaid Debt, as for his Expences and Coſts laid out by him about proſecuting his Suit in that Behalf, whereof the ſaid* T. *is convicted, as appears to us of Record; and now on the Part of the ſaid* A. *we have received Information in our Court before us, that although Judgment be thereof given, nevertheleſs Execution for the ſaid Debt and Damages ſtill remains to be made to him; whereupon the ſaid* A. *hath beſought us to provide him a proper Remedy in this Caſe: And we being deſirous that what is Right and Juſt ſhould be done therein, hereby command you, that by honeſt and lawful Men of your Bailiwick you cauſe it to be known to the ſaid* T. *that he be before us at* Weſtminſter, *on the Day*, &c. *to ſhew if he knows of, or has any Thing to ſay for himſelf, why the ſaid* A. *ought not to have his Execution againſt him for the ſaid Debt* *and Damages, according to the Force, Form and Effect of the ſaid Recovery; and further to do and receive what our ſaid Court before us ſhall then and there conſider of in this Particular: And have you there the Names of thoſe by whom you ſhall ſo cauſe it to be known to him, and this Writ.* Witneſs, *&c.*

Scire facias againſt Bail, To an Action, is where a *Capias ad Satisfac.* is ſued out and returned *Non eſt Inventus* againſt the Principal, and the Writ filed; after which this Writ is brought to have Execution againſt the Bail, *&c.* And if upon the *Scire facias*, or two *Nihils* returned, the Bail do not appear, Judgment ſhall be entered againſt them. 1 *Inſt.* 290. *Lutw.* 1273. In *C. B.* there is but one *Scire fac.* againſt the Bail, and upon a *Nihil* returned, there is Execution; but in *B. R.* there are two *Scire facias's* and two *Nihils*, and the firſt is to be duly returned, before the ſecond ſued out; and there muſt be fifteen Days incluſive between the *Teſte* of the firſt and the Return of the laſt. 2 *Salk.* 599. There muſt be a particular Warrant of Attorney to a *Scire facias* againſt the Bail; for ſuch a Warrant in the principal Action is no Warrant to the *Scire facias*, becauſe theſe are diſtinct Actions; and the particular Warrant is to be entered when the Suit commences, which is when the Writ is returned. 2 *Salk.* 603. When a *Scire facias* is brought againſt the Bail, it muſt be *in ea parte*; and where it is brought againſt the Defendant in the principal Action, it is to be *in hac parte.* 2 *Salk.* 599. If Bail are proſecuted on a *Scire fac.* when a Writ of Error is depending in the Exchequer-Chamber, and the Defendants the Bail will confeſs Judgment, and enter into a Rule to pay the Debt, or to deliver up the Principal within four Days after the Judgment affirmed; in ſuch Caſe the Proceedings on the *Scire facias* ſhall be ſtayed. *Mod. Caſe in L. & E.* 130. And if there be no good Judgment againſt the Principal, Judgment againſt the Bail by *Scire facias* may be reverſed, *&c.* 3 *Nelſ. Abr.* 190. See *Bail.*

Scire facias ad audiendum Errores, On *Writs of Error.* There are to be fifteen Days between the *Teſte* and Return of every *Scire fac. ad audiend. Error.* upon a Writ of Error returnable in *B. R.* And if on the Return of two *Nichils*, *&c.* the Defendant in Error doth not appear, it is not then with him as in Caſe of a *Sci. fac. quare Execution. non*, *&c.* but the Cauſe is to be ſet down to be heard by the Court, and the Plaintiff in Errors ſhall be heard thereunto *ex parte.* 2 *Lill. Abr.* 499. If a Writ of Error is brought in *B. R.* and the Record brought in, the Defendant appearing may thereupon ſue out a *Scire facias quare Executionem habere non debet*, and an *Alias Sci. fac.* after that, if there be not a *Scire Feci* returned on the firſt Writ; and if the Plaintiff in Error after a *Sci. fec.* or two *Nichils* returned, doth not, before the Rule for Judgment upon the *Scire fac.* is out, appear and aſſign Errors, or plead to the *Scire fac.* there will be Judgment againſt him, *Quod habeat Executionem*, *&c.* But the Writ of Error depends ſtill until Judgment is affirmed or reverſed, or the Plaintiff in the Errors is nonſuited. *Ibid.* 502.

Scire facias upon a Recognizance In *Chancery*, may be ſued out to extend Lands, *&c.* If upon a *Scire facias upon a Recogniſance* in the Chancery, the Record be tranſmitted into *B. R.* to try the Iſſue, and the Plaintiff is nonſuit; he may bring a new *Sci. fac.* in *B. R.* upon the Record there. 2 *Saund.* 27. Where a Statute is acknowledged, and the Cogniſor afterwards confeſſeth a Judgment, and the Land is extended thereon; in this Caſe the Cogniſee ſhall have a *Scire facias* to avoid the Extent of the Lands; but if the Judgment be on Goods, it is otherwiſe. 1 *Brownl.* 37. 3 *Nelſ. Abr.* 186. *Sci. fac.* lies on *Recogniſance of the Pe* into *B. R.*

Scire facias to repeal Letters P Grants. A *Scire facias to repeal a Patent*, brought where the Record is, which is in C and there are to be two of theſe Writs ſued o the Petty-bag Office directed to the Sheriff of *M dleſex*, who by a Letter under the Seal of his Office muſt ſend Notice to the Corporation or Perſon whoſe Concern the *Patent* is, that there is a *Scire facias* iſſued out returnable at ſuch a Time, and remaining with him, for the Revocation of ſuch a *Patent*, and that if they do not appear thereunto, Judgment will be had againſt them by Default; and this *Letter* is to be delivered to the Corporation or Perſon intereſted in ſuch *Patent*, by ſome Perſon who can make Oath thereof. *Dalton's Sheriff.* On a *Sci. fac.* out of Chancery returnable in *B. R.* to *repeal Letters Patent*, it was held, that if the *Letters Patent* are granted to the Prejudice of any Perſon, as if a Fair is granted to the Damage of the Fair of another, *&c.* he may have a *Scire facias* on the Inrollment of ſuch *Grant* in Chancery, as well as the King in other Caſes; but it may be a Queſtion, whether a *Scire facias* upon a Record in Chancery is returnable in *B. R.* though after it is made returnable into *B. R.* that Court, and not the Chancery, hath the Juriſdiction of it. *Mod. Caſ.* 229. In all Caſes at Common Law, where the King's Title accrues by a judicial Record, and he grants his Eſtate over; the Party grieved could not have a *Scire facias* againſt the *Patentee*, but was forced to his Petition to the King; otherwiſe it is when his Title is by Conveyance on Record, which is not judicial. 4 *Rep.* 59. The King hath a Right *to repeal a Patent by Scire facias*, where he was deceived in his *Grant*, or it is to the Injury of the Subject. 3 *Lev.* 220. And where a common Perſon is obliged to bring his Action, there, upon an Inquiſition or Office found, the King is put to his *Scire facias*, *&c.* 9 Rep. 96.

Scire facias's Have iſſued to repeal the Grants of *Offices*, for Conditions broke, Non-attendance, *&c.* And for Diſability, or in Caſe of Forfeiture, the Offices may be ſeiſed without *Sci. fac.* 3 Nelſ. Abr. 201, 202.

Scire facias in *Appeal* of Murder, before a Pardon ſhall be allowed; vide *Appeal.*

Scite, (*Situs*) Signifies the Setting or Standing of any Place; the Seat or Situation of a Capital Meſſuage, or the Ground whereon it ſtood. *Mon. Angl. Tom.* 2. *fol.* 278. The Word in this Senſe is mentioned in the Stat. 32 *H.* 8. *c.* 20. and 22 *Car.* 2. *cap.* 11.

Scolds, In a legal Senſe are Troubleſome and Angry Women, who by their Brawling and Wrangling amongſt their Neighbours, break the Publick Peace, and increaſe Diſcord. Stat. 51 *H.* 3. They are indictable in the Sheriff's Turn, and puniſhed by the *Cucking-Stool*, *&c.* Kitch. 13.

Scot and Lot, (Sax. *Sceat*, pars, & *Llot*, i. e. *Sors*) Signify a cuſtomary Contribution laid upon all Subjects, according to their Ability. *Spelm.* Nor are theſe old Words grown obſolete, for whoever in like Manner (though not by equal Portions) are aſſeſſed to any Contribution, are generally ſaid to pay *Scot* and *Lot.* Stat. 33 H. 8. c. 9.

Scotal or **Scotale,** Is where any Officer of a *Foreſt* keeps an *Alehouſe* within the Foreſt, by Colour of his Office, cauſing People to come to his Houſe, and there ſpend their Money for Fear of his Diſpleaſure: It is compounded of *Scot* and *Ale*, which by Tranſpoſition of the Words is otherwiſe called an *Aleſhot.* This Word is uſed in the Charter of the Foreſt, *cap.* 8.——*Nullus Foreſtarius faciat* Scotallas, *vel Garbas colligat, vel aliquam Collectam faciat, &c.* Manwood 216.

Scotare. Thoſe Tenants are ſaid *Scottare*, whoſe Lands are ſubject to pay *Scot.* Mon. Angl. Tom. 1. pag. 875.

Scotland, Is united to *England* by 5 *Ann.* In the Reigns of King *James* 1. and K. *Car.* 2. Commiſſioners were appointed to treat with Commiſſioners of *Scotland*, concerning an Union. But the bringing about this great Work was reſerved for the Reign of Queen *Anne.* The 1 *Ann. c.* 14. ordained Articles to be ſettled by Commiſſioners for the Union of the two Kingdoms, &c. And by the 5 *Ann. cap.* 8. the Union was effected: The Kingdoms united are to be called *Great Britain*; and the Croſs of St. *George* and St. *Andrew* to be conjoined; they are to be repreſented by one Parliament, and ſixteen Peers of *Scotland*, and forty-five Commoners are to be elected for *Scotland*, and have all the Privileges of Parliament as Peers and Commoners of *England:* The Subjects of either Kingdom ſhall have Freedom of Trade, and be liable to the ſame Cuſtoms, and like Laws for publick Government, &c. Kirk-Government of the Church is confirmed; and the Courts of Juſtice are to remain the ſame as before the Union, but ſubject to Regulation: When 1,997,763 *l.* ſhall be raiſed in *England* on a Land-Tax, *Scotland* is to be charged with 48,000 *l.* And *Scotland* is to have an *Equivalent* for being charged towards the Payments of the Debts of *England*, &c. A Court of Exchequer is erected in *Scotland*, to be a Court of Record, Revenue, and Judicature for ever; and Barons of the ſaid Court to be appointed, who ſhall be Judges there. Stat. 6 *Ann. cap.* 26. Peers of *Scotland*, and all Officers Civil and Military, &c. are to take the Oath of Abjuration, &c. A Peer committing High Treaſon, or Felony in *Scotland*, may be tried by Commiſſion under the Great Seal, conſtituting Juſtices to inquire, &c. in *Scotland:* And the King may grant Commiſſions of *Oyer* and *Terminer* in *Scotland*, to determine ſuch Treaſon, &c. By 6 *Ann. c.* 14 and 7 *Ann. cap.* 21. Perſons having Lands in *Scotland*, guilty of High Treaſon by Correſponding with, Aſſiſting, or remitting Money, &c. to the *Pretender*, on Conviction, are to be liable to the Pains of Treaſon; and their Vaſſals continuing in dutiful Allegiance, ſhall hold the ſaid Lands of his Majeſty in Fee and Heritage for ever, where the Lands were ſo held of the Crown by the Offender: And Tenants continuing peaceable and occupying Land, are to hold the ſame two Years Rent-free. 1 *Geo.* 1. *c.* 20. An Act for *Diſarming the Highlands of Scotland*; and requiring Bail of Perſons for their loyal and peaceable Behaviour, &c. 1 *Geo.* 1. *cap.* 54. Perſons ſummoned are to bring in and deliver up their Arms, or refuſing to do it, ſhall be taken as liſted Soldiers to ſerve his Majeſty beyond the Seas; and concealing their Arms, are liable to Penalties: Alſo the Lords Lieutenants, or Juſtices of Peace, may appoint Perſons to ſearch Houſes for Arms, &c. Stat. 11 *Geo.* 1. *cap.* 26. When any Ordinary Place is vacant, in the Court of Seſſions in *Scotland*, the King may nominate a Perſon, who is to be examined by the Lords of the Seſſion, and then admitted, &c. 10 *Geo.* 1. *cap.* 18. And the Election of Members of Parliament for *Scotland*, is particularly regulated by a late Statute; requiring the Magiſtrates to ſummon the Councils of Boroughs, and an Oath to be taken by every Freeholder and Voter as to the Eſtates to qualify them, that they are actually their own, and not fictitious: And Sheriffs or Stewards not to make any falſe Return, &c. under the Penalty of 500 *l.* recoverable in a ſummary Way: And no Judge of the Court of Seſſion, or Baron of the Exchequer in *Scotland*, ſhall be elected a Member of Parliament. Stat. 7 *Geo.* 2. *cap.* 16. See 16 *Geo.* 2. *c.* 11. The City of *Edinburgh* in *Scotland*, to forfeit 2000 *l.* on Account of the Murder of Captain *Porteous*; (who was hanged by the Mob, for cauſing his Soldiers to fire upon Perſons hiſſing at an Execution) and a Reward of 200 *l.* ordered for apprehending the Offenders. 10 *Geo.* 2. *c.* 34. Acts for regulating the making of Pladings, Stockings, &c. And of the Linen Manufactures in *Scotland.* See 6 *Geo.* 1. and 13 *Geo.* 1. *c.* 26. In Time of Scarcity, Perſons may import Victuals from *Ireland* into *Scotland*, on obtaining a Licence for it, &c. 14 *Geo.* 2. *cap.* 7.

Scripture, All prophane Scoffing of the Holy *Scripture*, or expoſing any Part thereof to Contempt and Ridicule is puniſhed by Fine and Impriſonment. 1 *Hawk. P. C.* 7.

Scriveners, Are mentioned in the Statute againſt *Uſury* and exceſſive Intereſt of Money. 12 *Ann. cap.* 6. If a *Scrivener* is intruſted with a Bond, he may receive the Intereſt; and if he fails, the Obligee ſhall bear the Loſs; and ſo it is if he receive the Principal, and deliver up the Bond, for being intruſted with the Security itſelf, it ſhall be preſumed he is truſted with Power to receive the Principal and Intereſt; and the giving up the Bond on Payment of the Money is a Diſcharge thereof: But if a *Scrivener* be intruſted with a Mortgage-Deed, he hath only Authority to receive the Intereſt, not the Principal; the giving up the Deed in this Caſe not being ſufficient to reſtore the Eſtate, but there muſt be a Reconveyance, &c. Decreed in Chancery *Hill.* 7 *Ann.* 1 *Salk.* 157. It is held, where a *Scrivener* puts out his Client's Money on a bad Security, which on Enquiry might have been eaſily found ſo; yet he cannot be charged in Equity to anſwer the Money: For it is here ſaid no one would venture to put out Money of another upon a Security, if he were obliged to warrant and make it good, in caſe a Loſs ſhould happen, without any Fraud in him. *Preced. Canc.* 146, 149.

Scutage, (*Scutagium*) Was a Tax on thoſe that held Lands by *Knight Service*, towards furniſhing the King's Army. King *Henry* 3d, for his Voyage to the *Holy Land*, had a Tenth granted by the Clergy and *Scutage*, *viz.* Three Marks on every *Knight's Fee* by the Laity; and this was levied by King *Hen.* 2d, *Rich.* 1ſt, and King *John.* See *Eſcuage.*

Scutagio habendo, A Writ that anciently lay againſt Tenants by *Knight-Service*, to ſerve in the Wars, or ſend ſufficient Perſons, or to pay a certain Sum, &c. *F. N. B.* 83.

Scute, A *French* Gold Coin of 3 *s.* 4*d.* in the Reign of King *Hen.* 5. And *Catherine* Queen of *England* had an Aſſurance made her of ſundry Caſtles, Manors, Lands, &c. valued at the Sum of forty thouſand *Scutes*, every two whereof were worth a Noble. *Rot. Parl.* 1. *Hen.* 6.

Scutella, (from *Scutum*, Sax. *Scutel*) A Scuttle, any Thing of a flat and broad Shape, like a Shield.

Scutella eleemoſynaria, An Alms Basket or Scuttle. *Paroch. Antiq.*

Scutum Armorum, A Shield or Coat of Arms.—*Noverint Univerſi per præſentes me* Johannem *K. dediſſe*, &c. Richardo *P. filio* Humfridi *P.* Scutum Armorum *meorum: Habend' & tenend' ac portand' & utend' ubicunque voluerit ſibi & hæredibus ſuis imperpetuum; ita quod nec Ego nec aliquis alius nomine meo aliquod jus vel clameum ſeu calumpniam in prædicto* Scuto *habere potuerimus, ſed per Præſentes ſumus excluſi in perpetuum. In cujus Rei Teſtimonium*, &c. *Dat. apud* Knightley, *Anno* 14 *H.* 6.

Scyldwit, (*Sax.*) Is a Mulct for any Fault; from the Saxon *Scild*, i. e. *Delictum*, & Wite, *pœna.* Leg. Hen. 1.

Scyra, A Fine impoſed on ſuch as neglected to attend the *Scyregemot* Court, which all Tenants were bound to do. *Mon. Angl. tom.* 1. *pag.* 52.

Scyre-gemot, (*Sax.*) Was a Court held by the *Saxons* twice every Year by the Biſhop of the Dioceſe, and the *Earldorman*, in Shires that had Earldormen;

dormen; and by the Biſhop and Sheriff, where the Counties were committed to the Sheriffs, &c. wherein both the Eccleſiaſtical and Temporal Laws were given in Charge to the Country. *Seld. Tit. Hon.* 628. This Court was held three Times in the Year, in the Reign of King *Canutus* the *Dane.* ——— *Et habeatur in Anno ter* Bergimotus & Scyremotus. *Leg. Canut. cap.* 38. And *Edward the Confeſſor* appointed it to be held twelve Times in a Year. *Leg. Edw. Conf. cap.* 35.

Sea, (*Mare*) By Statute the *Sea* is to be open to all Merchants. 18 *Ed.* 3. *cap.* 3. The Main *Sea*, beneath the Low-Water-Mark, and round *England*, is Part of *England*; for there the *Admiral* hath Juriſdiction. 1 *Inſt.* 260. 5 *Rep.* 107. The *Seas* which environ *England* are within the Juriſdiction of the King of *England.* 1 *Roll. Abr.* 528. Sovereignty of the *Sea.* Vide *Navy.*

Sea-Laws, Are Laws relating to the Sea; as the *Laws* of *Oleron*, &c.

Seamen, Retained to ſerve the King, are puniſhable for departing without Licence. Stat. 2 *R.* 2. And Fighting, Quarrelling, and Diſturbances of *Seamen* may be puniſhed by the Commiſſioners of the Navy by Fine and Impriſonment. 19 *Car.* 2. *cap.* 7. Regiſtred *Seamen* are exempted from ſerving upon Juries, or in any Pariſh Office, &c. And ſhall have 40 *s. per Annum* Bounty-Money, beſides their Pay; and on Diſability of Service be admitted into *Greenwich* Hoſpital: And *Seamen* to the Number of 30,000 were to be *regiſtred* for the King's Service, by Stat. 7 & 8 *W.* 3. *cap.* 21. See Stat. 1 *Geo.* 2. *cap.* 19. *Seamen* on board *Engliſh* Merchant Ships, maimed in Fight againſt an Enemy, ſhall be admitted into the Hoſpital at *Greenwich*, as other *Seamen* wounded in the Service of his Majeſty. 8 *Geo.* 2. *cap.* 29. Proviſion for Relief of Widows of *Sea*-Officers, ſee 6 *Geo.* 2. *cap.* 25. Vide *Navy* and *Mariner.*

Sea-reeve, *In villis Maritimis eſt qui Maritimam Domini Juriſdictionem curat, litus luſtrat, & ejectum Maris* (*quod* Wreck *appellatur*) *Domino colligit.* Spelm.

Sea-Rovers, Pirates and Robbers at Sea. Stat. 16 *Car.* 2. *c.* 6. Vide *Pirates.*

Seal, (*Sigillum*) Is a little Image graven or molten, or Signet made uſe of in *ſealing* of Deeds, &c. The firſt *ſealed* Charter we had in *England*, is ſaid to be that of King *Edward the Confeſſor*, upon his Foundation of *Weſtminſter Abbey:* But *Seals* were in uſe in the Times of the *Saxons*, according to *Taylor*, in his Hiſtory of *Gavelk.* 73. Before the Conqueſt, the *Engliſh* did not *ſeal* with Wax, but they uſually made a Croſs of Gold on the Parchment, and ſometimes an Impreſſion on a Piece of Lead, which hanged to the Deed with a String of Silk; and thus it continued till the Reign of King *Hen.* 2. and then they *ſealed* their Deeds with Wax, the Colour whereof was green, with which the King's Grants were *ſealed*, to ſignify that they were always to be in Vigour; and the Impreſſion on all *Seals* was a Man on Horſeback, with his Sword in his Hand, till about the Year 1218. when they began to engrave Coats of Arms on their *Seals*, &c. *Ingulph.* 901. 2 *Nelſ.* 207. In former Times the Makers of Deeds ſubſcribed their Names, adding the *Sign of the Croſs*, and in the End ſetting down a great Number of Witneſſes, without uſing any Kind of *Seal*; but in the Time of *Will.* 1ſt, called the *Conqueror*, the King and the Nobility uſed *Seals* of Arms, which was afterwards followed by the Gentry; and in the Reign of King *Edw.* 3d, Seals with Devices became common with all Sorts of Perſons. *Terms de Ley* 331, 332. ——— *Has Donationes & Ordinationes confirmarunt &* Cruce *ſignarunt* Henricus *Rex & Mathildis Regina.* Mon. Angl. Tom. 3. pag. 7. *Sealing* of Writings by biting the Wax. See *Wang.*

Sealing Deeds, Makes Perſons Parties to them: and if they are not thus *ſealed* they are void. *Dyer* 13. If a *Seal* is broken off, it will make the *Deed* void; and when ſeveral are bound in a Bond, the pulling off the *Seal* of one makes it void as to the others. 2 *Lev.* 220. 3 *Nelſ. Abr.* 208. But in a Deed of Covenants, 'tis held that a Perſon's breaking off the *Seal* of one of the Covenantors, after making the Covenant, ſhall avoid the Deed only againſt himſelf. *Cro. Eliz.* 408, 546. In caſe the *Seal* of a Bond be broke or eat off by Rats, or it is any ways cancelled, no Action can be brought on ſuch Bond, &c. 2 *Bulſt.* 246.

Dutchy Seal, *Exchequer* Seal, *Great* Seal, *Privy* Seal, *Seals* of *Office*, of *Biſhops*, &c. Vide the *Heads.*

Sealer, (*Sigillator*) Is an Officer of the High Court of *Chancery*, appointed by the Lord Chancellor to *ſeal* the Writs and Inſtruments there made in his Preſence.

Sean Fiſh, Seems to be that Sort of *Fiſh* which is taken with a large and long Net, called a *Sean.* Stat. 1 *Jac.* 1. *c.* 25.

Searcher, an Officer of the *Cuſtoms*, whoſe Buſineſs it is to *ſearch* and examine Ships outward bound, if they have any prohibited or uncuſtomed Goods on board, &c. This Officer is mentioned in the Stat. 12 *Car.* 2. And there are *Searchers* concerned in *Alnage* Duties; of *Leather*, and in divers other Caſes.

Secondary, (*Secundarius*) Is an Officer, who is *Second* or next to the Chief Officer; as the *Secondaries* to the *Prothonotaries* of the Courts of *B. R.* and *C. B.* The *Secondary* of the *Remembrancer* in the *Exchequer*; *Secondary* of the *Compter*, &c. 2 *Lill. Abr.* 506.

Secondary of the Office of Privy Seal, Is taken Notice of by 1 *Edw.* 4. *cap.* 1.

Second Deliverance, (*Secunda Deliberatione*) Is a Judicial Writ that lies after a Nonſuit of the Plaintiff in *Replevin*, and a *Returno Habendo* of the Cattle replevied, adjudged to him that diſtrained them; commanding the Sheriff to replevy the ſame Cattle again, upon Security given by the Plaintiff in the Replevin for the Redelivery of them, if the Diſtreſs be juſtified. It is a ſecond Writ of Replevin, &c. *F. N. B.* 68.

Second Marriage, (*Secundæ Nuptiæ*) Is when after the Deceaſe of one a Man marries a *ſecond* Wife; which the Law terms *Bigamus.*

Secretary, (*Secretarius, à Secretis*) A Title given to him that is *ab Epiſtolis & Scriptis Secretis*; as the two *Secretaries of State*, &c. The *Secretaries of State* have an extraordinary Truſt, which renders them very conſiderable in the Eyes of the King, and of the Subject alſo; whoſe Requeſts and Petitions are for the moſt part lodged in their Hands, to be repreſented to his Majeſty, and to make Diſpatches thereupon, purſuant to his Majeſty's Directions: They are Privy Councellors, and a Council is ſeldom or never held without the Preſence of one of them; they wait by Turns, and one of theſe *Secretaries* always attends the Court, and by the King's Warrant, prepares all Bills or Letters for the King to ſign, not being Matter of Law. And depending on them is the Office called the *Paper-Office*, which contains all the publick Writings of State, Negotiations, and Diſpatches, all Matters of State and Council, &c. and they have the Keeping of the King's Seal, called the *Signet*, becauſe the King's private Letters are ſigned with it. There was but one *Secretary* of State in this Kingdom, 'till about the End of the Reign of King *Hen.* 8. but then that great and weighty Office was thought proper to be diſcharged by two Perſons, both of equal Authority, and ſtiled *Principal Secretaries of State.* The Correſpondence with all Parts of *Great Britain* is managed by either of the Secretaries, without Diſtinction;

tion; but in reſpect to foreign Affairs, All Nations which have Intercourſe of Buſineſs with *Great Britain*, are divided into two Provinces, the *Southern* and the *Northern*; of which the Southern is under the *Senior*, and the Northern is under the *Junior Secretary*, *&c.* Our *Secretaries* of State have Power to commit Perſons for Treaſons, and other Offences againſt the State, as Conſervators of the Peace at Common Law, or as Juſtices of Peace all over *England*; and it is incident to their Office. 1 *Salk.* 347. *Wood's Inſt.* 458.

Secta Curiæ, Suit and Service done by Tenants at the *Court* of their Lord. *Paroch. Antiq.* 320.

Secta ad Curiam, Is a Writ which lieth againſt him who refuſeth to perform his *Suit* to the *County-Court*, or *Court-Baron.* F. N. B. 158.

Secta facienda per illam quæ habet æniciam partem, Is a Writ to compel the Heir that hath the Elder's Part among Co-heirs, to perform Service for all the Coparceners. *Reg. Orig.* 177.

Secta Molendini, A Writ lying where a Man by Uſage Time out of Mind, *&c.* hath grinded his Corn at the Mill of a certain Perſon, and afterwards goeth to another Mill with his Corn, thereby withdrawing his Suit to the former: And this Writ lies eſpecially for the Lord againſt his Tenants, who hold of him to do Suit at his Mill. *Reg. Orig.* 153. *F. N. B.* 122. The Count in the Writ *Secta Molendini*, may be on the Tenure of the Land; or upon Preſcription, *viz.* That the Tenant, and all thoſe who held thoſe Lands, have uſed to do their Suit at the Plaintiff's Mill, *&c.* New Nat. Br. 272. *Secta ad Molendinum*, and *Aſſiſes of Nuſance* are now much turned into Actions of the Caſe.

Secta Regalis, A Suit by which all Perſons were bound twice in a Year to attend the *Sheriff's Tourn*; and was called *Regalis*, becauſe the Sheriff's Tourn was the King's Leet, wherein the People were to be obliged by Oath to bear true Allegiance to the King, *&c.*

Secta unica tantum facienda pro pluribus hæreditatibus, Is a Writ that lies for an Heir who is diſtrained by the Lord to do more Suits than one, in Reſpect of the Land of divers Heirs deſcended to him. *Reg. Orig.*

Sectis non faciendis, A Writ brought by a Woman, who for her Dower, *&c.* ought not to perform Suit of Court. *Reg. Orig.* 174.

Secunda Superoneratione Paſturæ, Is a Writ which lieth where Admeaſurement of Paſture hath been made, and he that firſt ſurcharged the Common doth it a ſecond Time, notwithſtanding the Admeaſurement. *Old Nat. Br.* 73.

Securitatem inveniendi quod ſe non divertat ad partes exteras ſine Licentia Regis, An ancient Writ lying for the King againſt any of his Subjects, to ſtay them from going out of this Kingdom to foreign Parts; the Ground whereof is, That every Man is bound to ſerve and defend the Commonwealth, as the King ſhall think fit. *F. N. B.* 85. See *Ne exeat Regnum.*

Securitatis Pacis, Is a Writ that lies for one who is threatned Death or bodily Harm by another, againſt him which ſo threatens; and is iſſued out of the *Chancery* directed to the Sheriff, *&c.* *Reg. Orig.* 88.

Se Defendendo, Is a Plea for him that is charged with the Death of another Perſon, by alledging that he was driven unto what he did *in his own Defence*; and the other ſo aſſaulting him, that if he had not done as he did, he muſt have been in Danger of his own Life; which Danger ought to be ſo great, as that it appears to have been otherwiſe inevitable. *Staundf. P. C. lib.* 1. *cap.* 7. Any Perſon in his Defence may kill another for the Safety of his Life; and where a Man is attacked, a Defence may be made without expecting the firſt Blow, which may render a Perſon incapable of making any Defence: But a Defence ought to be always unblamable, not to take Revenge. *Bac. Max.* 25. If a Man attack another Perſon on a ſudden falling out, and before a Mortal Wound is given, the other flies to the Wall, or ſome other unpaſſable Place, to ſave his Life, and being ſtill purſued kills the Perſon making the Aſſault; from the unavoidable Neceſſity of it, this is *Se Defendendo*; and ſo in the like Caſes. *Bract.* 3 *Ed.* 3. A Flight upon Neceſſity, to make Killing another *Se Defendendo*, muſt not be a feigned one to gain Breath, or Opportunity to fall on afreſh; but it muſt be a flying from the Danger, as far as the Party can, either by Reaſon of ſome Wall, Ditch, Company, or the Fierceneſs of the Aſſailant will permit. 1 *Hale's Hiſt. P. C.* 483. If *A.* aſſault the Maſter, who flies to avoid Death, and the Servant kills *A.* in his Maſter's Defence, it is *Homicide Defendendo* of the Maſter; though if he had not been driven to that Extremity, it would have been Manſlaughter. *Ibid.* 484. *Plowd.* 100. And if I have a Weapon in my Hand, and a Perſon aſſaults me, if he runs ſo haſtily after me, that he runneth on my Sword which I hold forth for the Defence of myſelf, and ſo is killed, it is *Se Defendendo*: But if there be any Malice in the Caſe, or one kill him before he need to do it, the Offence will be of a higher Nature. *Fitz. Coron.* 284, 286, 307. *Poult.* 119. There is no expreſs Judgment in *Chance-medley*, or *Se Defendendo*; but the Offender is let to Mainpriſe to ſue out his Pardon; and yet his Goods and Chattels are forfeited: Though where one kills another in his own Defence, upon the *Special Matter* found, it is ſaid he may be diſmiſſed without any Forfeiture, or Pardon purchaſed. 2 *Inſt.* 148. 3 *Inſt.* 220. 1 *Inſt.* 391. *H. P. C.* 138. See the Statute 4 *H.* 8. *c.* 5.

Sedgmore, In the County of *Somerſet*, an Act for Draining the ſame. 10 & 11 *W.* 3. *c.* 26.

Seditious Conventicles, To the Diſturbance of the Peace, *&c.* See *Conventicles* and *Hereſy.*

Seed-cod, (From the Sax. *Sæd*, Seed, and *Codde*, a Purſe, or ſuch like Continent) Is a Basket or other Veſſel of Wood, carried on one Arm of the Husbandman or Sower of Ground, to bear the Seed or Grain which he ſows, and ſpreads abroad with the other Hand. In *Weſtmorland* a Bolſter or Pillow is called a *Cod*; and in other *Northern Parts* a Pin-cuſhion is termed a *Pin-cod.*———Pro uno *Seed cod* empto 4 *d.* Paroch. Antiq. 549. Kennet's Gloſs.

Seeder, A Seedſman, or one who ſows the Land. *Blount.*

Seignior, (Fr. *Seignieur*, i. e. *Dominus*) Is in general Signification as much as Lord; but particularly uſed for the Lord of the Fee, or of a Manor, as *Seigneur* among the *Feudiſts* is he who grants a Fee or Benefit out of the Land to another; and the Reaſon is, becauſe having granted away the Uſe and Profit of the Land, the Property or *Dominium* he ſtill retains in himſelf. *Hotom. F. N. B.* 23.

Seigniory, (*Dominium*) Signifies a Manor or Lordſhip, and it often occurs in our old Books. *Kitch.* 80.

Seigniorage, Is a Royalty or Prerogative of the King, whereby he claims an Allowance of *Gold* and *Silver* brought in the Maſs, to be exchanged for Coin. As *Seigniorage*, out of every Pound-Weight of Gold, the King had for his Coin 5 *s.* of which he paid to the Maſter of the *Mint* for his Work ſometimes 1 *s.* and ſometimes 1 *s.* 6 *d.* Upon every Pound-Weight of Silver, the *Seigniorage* anſwered to the King in the Time of K. *Edw.* 3. was eighteen Penny-Weight, which then amounted to about 1 *s.* out of which he ſometimes paid 8 *d.* at others 9 *d.* to the Maſter: In the Reign of King *Hen.* 5. the King's *Seigniorage* of every Pound of Silver was 15 *d.* *&c.* Stat. 9 *Hen.* 5. *cap.* 1. *Hale's Sher. Acc. pag.* 3.

Seiſin, (*Seiſina*, Fr. *Seiſine*) In the Common Law ſignifies Poſſeſſion. To *ſeiſe* is to take Poſſeſſion of a Thing; and *primier Seiſin* is the firſt Poſſeſſion. *Co. Litt.* 152. There is a *Seiſin* in *Deed* or in *Fact*, and a *Seiſin* in Law; a *Seiſin* in Deed is when an actual Poſſeſſion is taken; and *Seiſin* in Law is where Lands deſcend, and one hath not actually entered on them, &c. 1 *Inſt.* 31. *Seiſin* in Law is a Right to Lands and Tenements, though the Owner is by Wrong diſſeiſed of them: And he who hath an Hour's actual Poſſeſſion quietly taken, hath *Seiſin de droit & de claime*, whereof no Man may diſſeiſe him, but muſt be driven to his Action. *Perk* 457, 458. A *Seiſin* in Law is ſufficient to avow upon; but to the bringing an *Aſſiſe* actual *Seiſin* is required, &c. 4 *Rep.* 9. *Seiſin* of a ſuperior Service, is *Seiſin* of all inferior Services which are incident thereto: And *Seiſin* of Homage is a *Seiſin* of all other Services, becauſe in the doing thereof the Tenant takes upon himſelf to do all Services. 4 *Rep.* 80. 1 *Danv. Abr.* 647. The *Seiſin* of Rent, or other annual Services, is a ſufficient *Seiſin* of caſual Services. 4 *Rep.* 80. But *Seiſin* of one annual Service is not *Seiſin* of another annual Service; as if there be Lord or Tenant by Fealty, ten Shillings Rent, and three Days Work in the Year; in this Caſe *Seiſin* of the Rent is no *Seiſin* of the Work, nor is *Seiſin* of the Rent *Seiſin* of the Suit of Court, which is annual. 4 *Rep.* 9. 1 *Danv. Abr.* 647. 2 *Lill.* 507. The *Seiſin* of the Father, is not ſufficient for the Heir: Though if a Fine be levied to one for Life, the Remainder to another in Tail, and the Tenant for Life takes *Seiſin* of the Services, this will be a good *Seiſin* for him in Remainder; and the *Seiſin* of a Leſſee for Years is ſufficient for him in Reverſion. 2 *H.* 6. 7. 45 *Ed.* 3. 26. 1 *Danv.* 805, 646. Where a Man is ſeiſed of a Reverſion, depending upon an Eſtate for Life, the Pleading of it is that he was ſeiſed of it *ut de feodo*, leaving out the Word *Dominico*; but if it be a Reverſion in Fee, expectant upon the Determination of a Leaſe for Years, there he may plead that he was ſeiſed of it *in Dominico ſuo ut de feodo*. Dyer 185, 257. Rep. 20, 27. 4 Rep. 62. *Seiſin* is never to be alledged, but where it is traverſable; and when a Defendant alledgeth a *Seiſin* in Fee in any one under whom he claims, the Plaintiff cannot alledge a *Seiſin* in another, without traverſing, confeſſing or avoiding of the *Seiſin* alledged by the Defendant. *Cro. Eliz.* 30. 1 *Brownl.* 170. If a *Seiſin* in Fee is alledged, it ſhall be intended a lawful *Seiſin* till the contrary appears. 2 *Lutw.* 1337. But the Party is to ſhew of what Eſtate he is ſeiſed, &c. 3 *Nelſ. Abr.* 215. See Stat. 32 *H.* 8. *c.* 2.

Seiſina habenda, quia Rex habuit Annum, Diem, & Vaſtum, Is a Writ that lies for Delivery of *Seiſin* to the Lord of Lands or Tenements, after the King in Right of his Prerogative hath had the *Year*, *Day* and Waſte, on a Felony committed, &c. *Reg. Orig.* 165.

Seiſure of Goods for Offences. No Goods of a Felon or other Offender can be ſeiſed to the Uſe of the King, before forfeited: And there are two *Seiſures*, one Verbal only, to make an Inventory, and charge the Town or Place, when the Owner is indicted of the Offence; and the other actual, which is the taking of them away afterwards on Conviction, &c. 3 *Inſt.* 103.

Sel, Denotes the Bigneſs of a Thing to which it is added; as *Selwood* is a great Wood.

Selda, (from the Sax. *Selde*, a Seat, or Stool) Is uſed for a Shop, Shed, or Stall in a Market. *Aſſiſ.* 9 *R.* 1. It is alſo made to ſignify a Wood of Sallows or Willows: And Sir *Edw. Coke* takes *Selda* for a Salt-pit. *Co. Lit.* 4.

Self-bane, (Sax. *Self-bana*) Is where a Man murders himſelf, called *Felo de ſe*.

Self-Preſervation. Every Creature has implanted in it by Nature a ſtrong Deſire of *Self-Preſervation*: And by our ancient Law, if a Man ſtole Victuals merely to ſatisfy his preſent Hunger, being for the Preſervation of Life, it was not Felony; but this Law is become obſolete. *Staundf. P. C.* See *Se Defendendo*.

Selion of Land, (*Selio Terræ*) Is derived from the Fr. *Seillon*, which ſignifies a Ridge of Ground riſing between two Furrows, and contains no certain Quantity, but ſometimes more and ſometimes leſs: Therefore *Crompton* ſays, That a *Selion of Land* cannot be in Demand, becauſe it is a Thing incertain. *Crompt. Juriſd.* 221.

Seme, (Sax. *Seam*, i. e. *Onus*) A Horſe-Load or eight Buſhels of Corn. *Blount.* A *Seme* of *Glaſs* is twenty-four Stone, each Stone five Pounds Weight.

Semebole, A Pipe, or Half a Tun of Wine. *Merch. Dict.*

Seminaries, Perſons are not to go or be ſent to *Popiſh Seminaries*, to be inſtructed or educated, under divers Penalties and Diſabilities, by Stat. 1 *Jac.* 1. *cap.* 4. And contributing to the Maintenance of a Popiſh *Seminary*, is made a *Præmunire*. Stat. 27 *Eliz. cap.* 2. See *Papiſt*.

Seminiverbius, A Preacher, or Sower of Words. *Pet. Bleſen.*

Senage, (*Senagium*, from *Senatus*, ſometimes uſed for *Synod*) Is Money paid for *Sinodals*.

Senator, (*Lat.*) As now taken is a Parliament Man. In the Laws of King *Edward the Confeſſor*, we are told that the *Britons* called thoſe *Senators* whom the *Saxons* afterwards termed *Aldermen*, and Boroughmaſters; though not for their Age, but their Wiſdom, for ſome of them were young Men, but very well skilled in the Laws. *Kenulph* King of the *Mercians* granted a Charter which ran thus, *viz.* *Conſilio & conſenſu Epiſcoporum &* Senatorum *gentis ſuæ largitus fuit dicto Monaſterio*, &c. Staundf. P. C. cap. 28.

Sendal, A Kind of thin fine Silk, mentioned in the Stat. 2 *R.* 2. *c.* 1.

Seneſchal, (*Seneſcallus*, derived from Germ. *Sein* a Houſe or Place, and *Schale*, an Officer) Is a Steward; and ſignifies one that hath the diſpenſing of Juſtice, in ſome particular Caſes: As the *High Seneſchal*, or Steward of *England*; *Seneſchal de le Hotel de Roy*, Steward of the King's Houſhold; *Seneſchal* or Steward of Courts, &c. *Co. Lit.* 61. *Croke's Juriſd.* 102. *Kitch.* 83. See *Steward*.

Seneſchallo & Mareſhallo quod non teneant placita de libero tenemento, A Writ directed to the *Steward* and *Marſhal* of *England*, inhibiting them to take Cogniſance of an Action in their Court that concerns Freehold. *Reg. Orig.* 185, 191.

Seneucia, A Word anciently uſed for Widowhood. *Plac. Trin.* 17 *Ed.* 3.

Seney-Days, Are Play-Days, or Times of Pleaſure and Diverſion.—— *Dies recreationis vocati Anglice* Seney-Days, &c. *Regiſt. Eccl. Ebor. Anno* 1562.

Separia, *Separaria*, Several, or ſevered and divided from other Ground. *Paroch. Antiq.* 336.

Separation, (*Separatio*) Is the Living aſunder of Man and Wife. See *Divorce*.

Septuageſima, The third *Sunday* before *Quadrageſima* Sunday in *Lent*, and is called *Septuageſima*, becauſe it is about the *ſeventieth* Day before *Eaſter*; as *Sexageſima* and *Quinquageſima* are thus denominated from their being, the one *ſixty*, the other *fifty* Days before the ſame Feaſt, which are all of them Days appropriated by the Church to Acts of Penance and Mortification, preparatory to the Devotion of *Lent*. From *Septuageſima* Sunday until the *Octaves* after *Eaſter*, the Solemnizing of Marriage is forbidden by the *Canon* Law; and the Laws of King *Canutus* ordained a Vacancy from Judicature, from *Septuageſima* to *Quindena Paſchæ*. See Stat. *Weſtm.* 1. *c.* 51.

Septuagint. The *Seventy* Interpreters of the *Bible*; who were in Truth ſeventy-two, *viz.* Six out of every one of the *Twelve Tribes.* Litt. Dict.

Septum, An Incloſure, ſo called by Reaſon it is encompaſſed *cum Sepe & Foſſa*, with a Hedge or a Ditch, at leaſt with a Hedge; and it ſignifies any Place paled in.

Sepulchre, (*Sepulchrum*) Is the Place where any *Body* lies *buried*; but a *Monument* is ſet up for the Memorial of the Deceaſed, though the Corps lie not there. *Cowel.*

Sepultura, An Offering made to the Prieſt for the Burial of a dead Body. *Domeſd.*

Sequatur ſub ſuo Periculo, Is a Writ that lies where a *Summons ad Warrantizand'* is awarded, and the Sheriff returns that the Party hath nothing whereby he may be ſummoned; then goes forth an *Alias* and a *Pluries*, and if he come not in on the *Pluries*, this Writ ſhall iſſue. *Old Nat. Br.* 163.

Sequela Cauſæ, The Proceſs and depending Iſſue of a Cauſe for Trial.

Sequela Curiæ, Is uſed for Suit of Court. —— *Et quod ſint liberi a* Sequela Curiæ. *Mon. Angl. Tom.* 2. *pag.* 253.

Sequela Villanorum, The Retinue and Appurtenances to the Goods and Chattels af *Villeins*, which were at the abſolute Diſpoſal of the Lord. In former Times, when any Lord ſold his Villein, it was ſaid *Dedi* B. *Nativum meum cum tota* Sequela *ſua*; which included all the Villein's Offspring. *Paroch. Antiq.* 216, 288.

Sequendum & Proſequendum, Signify to follow a Cauſe; as where a Guardian is admitted *ad proſequend'* for an Infant, &c. 1 *Vent.* 74.

Sequeſter, (*Sequeſtrare*) Is a Term uſed in the *Civil Law* for Renouncing; as when a Widow comes into Court, and diſclaims to have any thing to do, or to intermeddle with her Huſband's Eſtate who is deceaſed, ſhe is ſaid to *ſequeſter.*

Sequeſtration, (*Sequeſtratio*) Signifies the Separating or ſetting aſide of a Thing in Controverſy, from the Poſſeſſion of both the Parties that contend for it; and it is two-fold, *voluntary* and *neceſſary*; Voluntary, is that which is done by the Conſent of each Party: Neceſſary, is what the Judge of his Authority doth, whether the Party will or not. *Forteſcue, cap.* 50. *Dyer* 232, 256. And there is a *Sequeſtration* on a Perſon's ſtanding out all the Proceſſes of Contempt for Non appearance in *Chancery* upon a Bill exhibited; ſo where Obedience is not yielded to a Decree, the Court will grant a *Sequeſtration* of the Lands of the Party, &c. And a *Sequeſtration* is alſo a Kind of Execution for Debt; eſpecially in the Caſe of a *beneficed Clerk*, of the Profits of the Benefice, to be paid over to him that had the Judgment, till the Debt is ſatiſfied. 2 *Inſt.* 472. 2 *Roll. Abr.* 474. But the moſt uſual *Sequeſtration* of a Benefice, is upon a Vacancy, for the gathering up the Fruits of the Benefice to the Uſe of the next Incumbent; and the Profits of the Church being in Abeyance, are to be received by the Churchwardens by Appointment of the Biſhop, to make Proviſion for the Cure during the Vacancy, &c. Stat. 28 *H.* 8. *cap.* 11. *Sequeſtration* is further the Act of the *Ordinary*, diſpoſing of the Goods of one that is dead, whoſe Eſtate no Man will meddle with.

Sequeſtration in London, Is made upon an Action of Debt; and the Courſe of proceeding in it is thus: The Action being entered, the Officer goes to the Shop or Warehouſe of the Defendant, when there is no Body within, and takes a Padlock and hangs it upon the Door, &c. uſing theſe Words, *viz. I do ſequeſter this Warehouſe, and the Goods and Merchandizes therein of the Defendant in the Action, to the Uſe of the Plaintiff*, &c. and ſo puts on his Seal, and makes Return thereof at the *Compter*; then four Court-Days being paſt, the next Court after the Plaintiff may have Judgment to open the Doors of the Shop or Warehouſe, and to appraiſe the Goods therein by a Serjeant, who takes a Bill of Appraiſement, having two Freemen to appraiſe them, for which they are to be ſworn at the next Court holden for that *Compter*; and then the Officer puts his Hand to the Bill of Appraiſement, and the Court granteth Judgment: Though the Defendant in the Action may put in Bail before Satiſfaction, and ſo diſſolve the *Sequeſtration*; and after Satiſfaction, may put in Bail *ad diſproband' debitum*, &c. Pract. Solic. 429.

Sequeſtration of the Eſtates of *Peers* and *Members of Parliament*, not appearing to Actions, &c. Stat. 12 *W.* 3. See *Parliament.*

Sequeſtro habendo, Is a Writ judicial for the Diſcharging a *Sequeſtration* of the Profits of a Church Benefice granted by the Biſhop at the King's Commandment, thereby to compel the Parſon to appear at the Suit of another; and the Parſon upon his Appearance, may have this Writ for the Releaſe of the *Sequeſtration.* Reg. Judic. 36.

Serement, (Fr.) An Oath, which is to be taken before a Perſon who hath Power to adminiſter it, or ſhall be void. 2 *Keb.* 284. See *Oath.*

Serjeant or **Sergeant,** (*Lat. Serviens*) Is a Word diverſly uſed in our Law, and applied to ſundry Offices and Callings. Firſt a *Serjeant at Law*, (*Serviens ad Legem*) otherwiſe called *Serjeant Counter* or of the *Coif*, is the higheſt Degree in the *Common Law*, as a *Doctor* is in the *Civil Law*; but according to *Spelman*, a Doctor of Law is ſuperior to a *Serjeant*, for the very Name of a Doctor is Magiſterial, but that of a *Serjeant* is only Miniſterial. To theſe *Serjeants*, as Men beſt learned and experienced in the Law and Practice of the Courts, one Court is ſevered to plead in by themſelves, which is that of the *Common Pleas*, where the Common Law of *England* is moſt ſtrictly obſerved; yet they are not ſo limited as to be reſtrained from Pleading in any other Courts, where the Judges (who cannot be ſuch till they have taken the Degree of *Serjeant*) call them *Brothers*, and hear them with great Reſpect; and of which one or more are ſtiled the *King's Serjeants*, being commonly choſen out of the reſt in reſpect of their great Learning, to plead for the King in all his Cauſes, eſpecially upon Indictments for Treaſon, &c. In other Kingdoms the *King's Serjeant* is called *Advocatus Regius*; and here in *England*, in the Time of King *Edw.* 6th, *Serjeant Benloe* wrote himſelf *ſolus Serviens ad Legem*, there being for ſome Time none but himſelf; and in *Ireland* at this Day there is only a King's *Serjeant.* *Serjeants* at Law are made by the King's Writ directed unto ſuch as are called, commanding them to take upon them that Degree by a certain Day; and by the Writ or Patent of Creation, it appears that the Honour of *Serjeant* at Law, is a State and Dignity of great Reſpect: In conferring theſe Degrees, much Ceremony is uſed; and the *Serjeants* choſen hold a ſumptuous Feaſt, like that at a Coronation, which formerly continued ſeveral Days; alſo they make Preſents of Gold Rings, to a conſiderable Value, &c. *Forteſcue, cap.* 50. 3 *Cro.* 1. *Dyer* 72. 2 *Inſt.* 213, 214. Their Privilege of being impleaded in C. B. &c. Vide *Privilege.*

Serjeants at Arms, Their Office is to attend the Perſon of the King; to arreſt Perſons of Condition offending, and give Attendance on the Lord High Steward of *England*, ſitting in Judgment on any Traitor, &c. There may not be above thirty *Serjeants at Arms* in the Realm, who ſhall not oppreſs the People, in Pain to loſe their Offices, and be fined, by the Stat. 13 *R.* 2. *cap.* 6. And two of them by the King's Allowance, do attend on the two Houſes of Parliament; the Office of him in the Houſe of Commons is, the Keeping of the Doors, and the Execution of ſuch Commands touching the Apprehenſion and taking into Cuſtody of any Offender,

fender, as that Houſe ſhall enjoin him. Another of them attends on the Lord *Chancellor* in the *Chancery*; and one on the Lord *Treaſurer* of *England:* Alſo one upon the *Lord Mayor* of *London* on extraordinary Solemnities, *&c.* They are in the old Books called *Virgatores*, becauſe they carried Silver Rods gilt with Gold, as they now do *Maces*, before the King. Stat. 7 *Hen.* 7. *c.* 3. *Crompt. Jur.* 9. *Fleta*, *l.* 2. *c.* 38.

Serjeants of a more inferior Kind are *Serjeants of the Mace*, whereof there is a great Band in the City of *London*, and other *Corporate Towns*, that attend the Mayor or other head Officer, chiefly for Matters of Juſtice, *&c.* *Kitch.* 143. Formerly all the *Juſtices of Eyre* had certain Officers attending them called *Serjeants*, who were in the Nature of *Tipſtaves*. *Weſt.* 1. *cap.* 30. And the Word *Serjeant* is uſed in *Britton* for an Officer belonging to the *County*; which is the ſame with what *Bracton* calls *Serjeant of the Hundred*, being no more than Bailiff of the Hundred. *Bract. lib.* 5. *cap.* 4. And we read of *Serjeants* of *Manors*, of the *Peace*, &c.

Serjeants of the Houſhold, Are Officers who execute ſeveral Functions within the *King's Houſhold*; mentioned in the Stat. 33 *Hen.* 8. *cap.* 12.

Serjeanty, (*Serjeantia*) Signifies in Law a Service, that cannot be due from a Tenant to any Lord but to the King only; and this is either *Grand Serjeanty*, or *Petit*; the firſt is a Tenure whereby one holds his Lands of the King by ſuch Services as he ought to do in Perſon to the King at his Coronation; and may alſo concern Matters Military, or Services of Honour in Peace, as to be the King's Butler, Carver, *&c.* *Petit Serjeanty*, is where a Man holds Land of the King, to furniſh him yearly with ſome ſmall Thing towards his Wars; and in Effect payable as Rent. Though all Tenures are turned into *Socage* by the 12 *Car.* 2. *cap.* 24. Yet the honourary Services of *Grand Serjeanty* ſtill remain, being therein excepted. *Lit.* 153, 159. 1 *Inſt.* 105, 108. See *Chivalry*.

Sermonium, Was an Interlude or hiſtorical Play, acted by the inferior Orders of the Clergy, aſſiſted by Youths, in the Body of the Church, ſuitable to the Solemnity of ſome high Proceſſion Day, and before the Improvements of the Stage, theſe ruder Sorts of Performances were even a Part of the unreformed Religion. *Collect. Matt. Hutton, Ex Reg. Eccl. Lincoln. MS.*

Serples, A Mantle or upper Coat; from the Lat. *Superpellicium*. Blount.

Servage, Is when Tenants, beſides Payment of a certain Rent, find one or more Workmen for their Lord's Service. 1 *R.* 2. *cap.* 6. King *John* brought the Crown of *England* in *Servage* to the See of *Rome*. 2 Inſt. 274.

Servants, Are ſuch as Men of Trades and Profeſſions employ under them, to aſſiſt them in their particular Callings; or ſuch Perſons as others retain to perform the Work and Buſineſs of their Families, which comprehends both Men and Women: And *Servants* are *Menial*, or not ſo; *Menial*, being Domeſticks living within the Walls of the Houſe. *Wood's Inſt.* 51. Every Perſon under the Age of thirty Years, that has been brought up in Handicraft Trades, and hath not Lands of Inheritance, or for Life, of the yearly Value of forty Shillings, or is not worth ten Pounds in Goods, and ſo allowed by two Juſtices of Peace; and not being retained with any Perſon in Huſbandry, or in the ſaid Arts, not being lawfully hired as a *Servant* with any Nobleman or Gentleman, or having any Farm or other Holding whereupon he may employ his Labour; ſhall, upon Requeſt made by any Perſon uſing the Myſtery wherein ſuch Perſon hath been exerciſed, be obliged to *ſerve* him as a *Servant* therein, on Pain of Impriſonment. 5 *Eliz. cap.* 4. And by the ſame Statute, Perſons are compellable to *ſerve* in Huſbandry by the Year, with any Perſon that keepeth or uſeth Huſbandry, and who will require any proper Perſon to *ſerve*; and the Juſtices of Peace have Authority herein, and to aſſeſs the Wages of ſuch *Servants* in Huſbandry, order Payment, *&c.* Alſo two Juſtices, and Mayors or Head Officers of any City or Town, may appoint any poor Woman of the Age of twelve Years, and under forty unmarried, to go to *Service* by the Year, *&c.* for ſuch Wages and in ſuch Manner as they think fit; and if any ſuch Woman ſhall refuſe to go abroad as a *Servant*, then the ſaid Juſtices, *&c.* may commit ſuch Woman until ſhe is bound to *ſerve*. Stat. *Ibid.* If any Maſter ſhall give more Wages than aſſeſſed by the Juſtices; or any *Servant* takes more, or refuſing to *ſerve* for the Statute Wages, they are puniſhable; but a Maſter may reward his *Servant* as he pleaſes, ſo as it be not by way of Contract on the Retainer: And if a *Servant* depart before the End of the Term, being hired for a Year, without Cauſe allowed by a Juſtice; or after his Term is expired, without giving a Quarter's Warning, two Juſtices may commit him to Priſon till he give Security to ſerve out the Time; or one Juſtice of Peace may ſend him to the Houſe of Correction, there to be puniſhed as a diſorderly Perſon. 7 *Jac.* 1. *cap.* 4. A Maſter cannot put away a *Servant* before the End of his Term without ſome reaſonable Cauſe, to be allowed by one Juſtice; nor after the End of the Term without a Quarter's Warning given before Witneſſes; if a Maſter diſcharges a *Servant* otherwiſe, he is liable to a Penalty of forty Shillings. 5 *Eliz.* And where *Servants* quit their Services, *Teſtimonials* are to be given by Conſtables and two Houſholders, *&c.* declaring their lawful Departure; and a *Servant* not producing ſuch a *Teſtimonial* to the Conſtable where he deſigns to dwell, is to be impriſoned till he gets one; and in Default thereof be whipped as a Vagabond; Maſters retaining them without ſuch Teſtimonial, ſhall forfeit five Pounds. But the Teſtimonial concerns only *Servants* in Trades and Huſbandry. Stat. *Ibid.* No Perſon may retain a *Servant* for leſs than a Year, by the ancient Statutes; if one retains a *Servant* generally, without expreſſing any Time, the Law conſtrues it for a Year; and where a *Servant* is hired for a Year, according to the Statute, and the Maſter dieth within that Time, the Executor muſt pay the Wages. *Dalt.* 129. 1 *Inſt.* 42. If a Woman *Servant* marrieth, ſhe is obliged to *ſerve* out her Year; but if a ſingle Woman who is with Child procures herſelf to be retained with a Maſter, who knows nothing thereof, this is a good Cauſe to diſcharge her from her *Service*; and ſo if ſhe be gotten with Child during her *Service*. *Dalt.* 92. *Reſol. Ann.* 1633. A *Servant* retained for a Year, falling ſick, ought not to be diſcharged therefore, or for any Diſability by the Act of God; neither may his Wages be abated for thoſe Cauſes. *Dalt.* 129. Maſter and *Servant* may part by Conſent, and then the Allowance of the Diſcharge by a Juſtice of Peace is not neceſſary: And a Maſter's detaining Wages, not allowing ſufficient Meat, *&c.* or the Maſter's Wife beating him, are good Cauſes for a *Servant's* Departure; but they muſt be allowed by a Juſtice. *Dalt.* If a Maſter put away his *Servant*, he muſt pay him his Wages to the Time he *ſerved*; though if the *Servant* go away from his *Service* before the End of the Time agreed he ſhall forfeit all his Wages. *Dalt.* 129. A *Servant* is not to depart from his *Service*; and if he refuſeth to do his Buſineſs, this is a Departure in Law, although he go not away. *Noy's Max.* 90. Enticing away a *Servant*, or retaining and keeping one who departed from his Maſter without Licenſe, knowing him to be a *Servant* to another, the Maſter may have Action of the Caſe againſt the Perſon doing it. 2 *Lev.* 63. Stat. 23 *Ed.* 3. But if a Man do retain another's *Servant*, not knowing that he was in the *Service* of the other, he ſhall not be puniſhed for ſo doing, if he do not retain him after Notice of his firſt *Service*: And if a Perſon do retain one to *ſerve* him for forty Days, and another doth afterwards retain him to *ſerve* for a Year, the firſt Covenant is avoided, becauſe the Retainer was not according to the Statute. *New Nat. Br.* 374, 375. A Maſter is anſwerable for the Actions and Treſpaſſes of his *Servant* in many Caſes; but not for Treſpaſs of Battery, &c. and in criminal Caſes, unleſs done by his Commandment. *Noy's Max.* 99. And if the Maſter order his *Servant* to diſtrain another Man's Cattle, and after he hath diſtrained he kills or abuſes the Diſtreſs, the Maſter ſhall not anſwer it. *Noy* 111. If a Man has a *Servant* known to be ſuch, and he ſend him to Fairs and Markets to buy or ſell, his Maſter ſhall be charged if the Thing come to his Uſe; though if a *Servant* makes a Contract in his Maſter's Name, the Contract will not be binding, unleſs it were by the Maſter's Commandment or Aſſent; and where a *Servant* borrows Money in his Maſter's Name, without Order, that does not bind the Maſter. *Dr. & Stud. Dial.* 2. *c.* 42. A *Servant* buys Things in his own Name, the Maſter ſhall not be charged, except the Things bought come to his Uſe, and he have Notice of it. *Kitch.* 371. Where a Maſter always gives his *Servant* Money, he ſhall not anſwer for what the *Servant* buys on Truſt; but if he ſends ſometimes on Truſt, he muſt anſwer to his uſual Tradeſmen for what is ſo taken up upon Truſt by him. *Wood's Inſt.* 56. A Maſter uſed to give his *Servant* Money every *Saturday*, to defray the Charges of the foregoing Week, and the *Servant* kept the Money; *per Holt Ch. Juſt.* the Maſter is here chargeable; for the Maſter at his Peril ought to take Care what *Servant* he employs; and 'tis more reaſonable that he ſhould ſuffer for the Cheats of his *Servants*, than Strangers and Tradeſmen who do not employ them. 3 *Salk.* 234. It has been adjudg'd, that where a *Servant* uſually buys Goods for his Maſter upon Tick, and takes up Things in his Maſter's Name, but for his own Uſe, the Maſter is liable; but it is not ſo where the Maſter uſually gives him ready Money: That if the Maſter gives the *Servant* Money to buy Goods for him, and he converts the Money to his own Uſe, and buys the Goods upon Tick, yet the Maſter is anſwerable, as the Goods come to his Uſe; otherwiſe he is not: Alſo a Note under the Hand of an Apprentice ſhall bind his Maſter, where he is allowed to deliver out Notes, though the Money is never applied to the Maſter's Uſe; but if he is not allowed or accuſtomed to deliver out Notes, his Note ſhall not bind the Maſter, if the Money be not applied to the Uſe of the Maſter. 3 *Salk.* 234, 235. The Act of a *Servant* ſhall not bind the Maſter, unleſs he acts by Authority of his Maſter; and therefore if a Maſter ſends his *Servant* to receive Money, and the *Servant* inſtead of Money takes a Bill, and the Maſter as ſoon as told thereof diſagrees, he is not bound by this Payment: But Acquieſcence, or any ſmall Matter, will be Proof of his Maſter's Conſent, and that will make the Act of the *Servant* the Act of his Maſter. *Hill.* 2 *Ann. B. R.* 2 *Salk.* 442. For what is within the Compaſs of a *Servant*'s Buſineſs, the Maſter ſhall be generally chargeable; and alſo have Advantage of the ſame againſt others. *Noy's Max.* An *Aſſumpſit* of the *Servant*, by Order and Appointment of the Maſter, ſhall bind his Maſter; and a Promiſe to my *Servant* is good to me: If my Bailiff buy Cattle to ſtock my Ground, I ſhall be chargeable in Debt for the Money; and if he ſell Corn for me, I may have Action in my own Name againſt the Buyer. *Bro.* 24. *Godb.* 360. If one owe me Money, and I ſend my *Servant* for it, and he pay it to him; this is a good Payment and Diſcharge, though the *Servant* do not bring the ſame to me: But if I ſend him not, it is otherwiſe. *Doct. & Stud.* 138. A Maſter ſends his *Servant* with deceitful Wares to Market, and orders him to ſell them, but ſays not to whom, if he ſells them, no Action will lie againſt the Maſter: Though if he had bid the *Servant* ſell them to ſuch a Man in particular, and he had done ſo, the Maſter would be chargeable in Action of the Caſe. 11 *E.* 4. *Kitch.* 185. The Maſter is liable for the Neglects of his *Servant*; (tho' not the wilful Wrong) where a Carrier's *Servant* loſes Things delivered to him, the Maſter muſt anſwer it, and Action lies againſt him; and if Goods be undertaken to be carried ſafely for Hire, but by Negligence are ſpoiled, it has been held, that whoever employs another, is anſwerable for him, and undertakes for his Care to all that make uſe of him. 2 *Salk.* 440. If a Surgeon undertakes the Cure of a Perſon, and by ſending Medicines by his *Servant*, the Wound is hurt and made worſe, the Patient ſhall have Action againſt the Maſter, and not againſt the *Servant*. 18 *Hen.* 8. And where a Smith's *Servant* pricks a Horſe in ſhoeing him, the Maſter ſhall anſwer the Damages. *Wood's Inſt.* 56. A *Servant* caſting any Thing into the Highway to the Nuſance of the King's Subjects, the Maſter ſhall be charged, &c. *Noy's Max.* 94. A Maſter may maintain the Cauſe of his *Servants*: He may bring an Action for the Battery of a *Servant*, whereby he loſes his Service, which is to be alledged: And if a *Servant* is cozened of his Maſter's Money, the Maſter may have Action on the Caſe againſt the Perſon that cozened him. 9 *Rep.* 113. 10 *Rep.* 130. 1 *Roll Abr.* 98. And in Caſe a *Servant* give away his Maſter's Goods, the Maſter may have Action againſt the Receiver. *Noy's Max.* 94. Where a *Servant* damages Goods of his Maſter, Action lies againſt him; and being employed to ſell Goods in his Maſter's Shop, if the *Servant* carries away and converts them to his own Uſe, Action of Treſpaſs may be brought by the Maſter againſt the *Servant*; for the *Servant* cannot meddle with them in any other manner than to ſell them. 5 *Rep.* 14. 1 *Leon.* 88. *Moor* 244. But if a *Servant* be robbed, without his Default, &c. he ſhall be excuſed, and allowed it on his Account. 1 *Inſt.* 89. *Servants* going or making away with, imbezilling or purloining any of their Maſter's Goods, to the Value of 40*s.* are guilty of Felony, by the Stat. 21 *Hen.* 8. *cap.* 7. and 12 *Ann. cap.* 7. And aſſaulting their Maſters, they may be bound to the good Behaviour, or be committed to Priſon for a Year, &c. 5 *Eliz.*

An *Agreement* between a *Maſter* and *Servant.*

I*T is agreed this Day,* &c. *in the Year,* &c. *between* A. B. *of,* &c. *and* C. D. *in Manner following,* viz. *That he the ſaid* A. B. *ſhall and will receive the ſaid* C. D. *into his Houſe and Service, for the Term of one whole Year, from the Date hereof; and provide for the ſaid* C. D. *competent and ſufficient Meat, Drink, Waſhing and Lodging; and alſo pay and allow unto him the ſaid* C. D. *the Sum or Wages of five Pounds, he the ſaid* C. D. *continuing in the Service of him the ſaid* A. B. *during the ſaid Term:* And *the ſaid* C. D. *covenants and agrees with the ſaid* A. B. *That he the ſaid* C. D. *ſhall and will for the Conſiderations aforeſaid, faithfully ſerve him the ſaid* A. B. *in the Buſineſs and Service of,* &c. *for and during the ſaid Term of one Year, without abſenting from the ſame, or imbezilling any of the Money or Goods of the ſaid* A. B. *or any ways diſcloſing the Secrets of his ſaid Maſter.* In Witneſs, &c.

Servi, Were Bond-men; and *Servi Teſtamentales*, thoſe which we now call *Covenant Servants*. *Leg. Athelſt.* The proper *Servi* were of four Sorts, *viz.* ſuch as *ſold* themſelves for a Livelihood; *Debtors* that were to be ſold for being incapable to pay their Debts; *Captives* in War, employ'd as perfect Slaves; *Nativi*, ſuch as were born Servants, and by Deſcent belonged to the ſole Property of the Lord. And all theſe had their Perſons, their Children and Goods, at the Diſpoſal of their Lords; and were incapable of making any Wills, or giving away any Thing, *&c.*

Service, (*Servitium*) Is that Duty by which the Tenant, by Reaſon of his Fee or Eſtate, oweth unto the Lord: Our ancient Law Books make many Diviſions of it; as into *Perſonal*, and *Real*; *Free*, and *Baſe*; *Continual*, or *Annual*; *Caſual* and *Accidental*; *Intrinſick*, and *Extrinſick*, &c. *Bract. lib.* 2. *Brit. cap.* 66. 4 *Co. Rep.* 9. *Perſonal Service*, is where ſomething is to be done by the Perſon of the Tenant, as Homage and Fealty; and *Real*, was Wards and Marriages, when in Uſe: *Annual* and certain *Service* is Rent, Suit of Court to the Lord, *&c.* *Accidental Services*, are Heriots, Reliefs, and the like: And ſome *Services* are only for the Lord's Benefit; and ſome *pro bono publico.* Co. Copyhold 22. Co. Lit. 222. 22 E. 4. 3. Alſo *Services* are ſaid to be *intire*; of Chattels valuable, ſuch as an Ox, or Things pleaſurable, as a Hawk, *&c.* And ſo are thoſe *Perſonal*, and conſiſting of manual Work, or to exerciſe ſome Office, *&c.* The Statute of *Magna Charta* ordains, That no Freeman ſhall ſell ſo much of his Lands, but that of the Reſidue the Lord may have his *Services.* 9 *Hen.* 3. *cap.* 32. In Feoffments to a Man and his Heirs, the Feoffee ſhall hold the Land of the Lord by the ſame *Services* as the Feoffor, *&c. Stat.* 18 *Ed.* 1. And where *Services* are intire, and cannot be divided; upon the Alienation of Parcel of the Lands by the Tenant, the *Services* ſhall be *multiplied*, and every Alienee render the whole *Service*; though by the Purchaſe of Parcel by the Lord, the whole is extinct, except in Caſe of Fealty, and Heriot Cuſtom. 6 *Rep.* 1. *Wood's Inſt.* 133.

Service Secular, Signifies worldly Service, contrary to *Spiritual* and Eccleſiaſtical. *Stat.* 1 *Ed.* 4. *cap.* 1.

Servitium Forinſecum, A Service which did not belong to the chief Lord, but to the King: It was called *Forinſecum* and *Foraneum*, becauſe it was done *Foris, vel extra ſervitium quod ſit Domino Capitali:* And we find ſeveral Grants of Liberties with the Appurtenances, *Salvo forenſi ſervitio, &c.* in Mon. Ang. Tom. 2. pag. 48.

Servitium Intrinſecum, Is that Service which was due to the chief Lord alone from his Tenants within his Manor. *Bract. lib.* 2. *Fleta, lib.* 3.

Servitium Liberum, A Service to be done by feudatory Tenants, who were called *Liberi homines*, and diſtinguiſhed from *Vaſſals*, as was their Service; for they were not bound to any of the *baſe* Services of ploughing the Lord's Land, *&c.* but were to find a Man and a Horſe, or go with the Lord into the Army, or to attend his Court, *&c.* and ſometimes it was called *Servitium liberum armorum*; as in an old Rental of the Manor of *South Malling* in *Eſſex*, mentioned by *Somner* in his Treatiſe of *Gavelkind, pag.* 56.

Servitium Regale, *Royal* Service, or the Prerogatives that within a royal Manor belonged to the Lord of it; which were generally reckoned to be the following, *viz.* Power of Judicature in Matters of Property; and of Life and Death in Felonies and Murders; Right to Waifs and Eſtrays; Minting of Money; Aſſize of Bread and Beer; and Weights and Meaſures: All which Privileges 'tis ſaid were annexed to ſome Manors by Grant from the King. *Paroch. Antiq.* 60.

Servitiis Acquietandis, Is a Writ Judicial that lies for a Man diſtrained for Services to one, when he owes and performs them to another, for the Acquittal of ſuch Services. *Reg. Judic.* 27.

Servitor, (*Servulus*) Is a Serving-Man; particularly applied to *Scholars* in the Colleges of the Univerſities, who are upon the Foundation.

Servitors of Bills, Such Servants or Meſſengers of the *Marſhal* of the *King's Bench*, as were ſent abroad with *Bills* or Writs to ſummon Men to that Court. *Stat.* 2 *H.* 4. *c.* 23.

Seſſeur, Seems to ſignify the Aſſeſſing or Rating of Wages. 25 *Ed.* 3. *c.* 6.

Seſſion, (*Seſſio*) Is a *Sitting* of Juſtices in Court upon their Commiſſion; as the *Seſſions* of *Oyer and Terminer*, &c.

Seſſions of Parliament, (*Seſſio Parliamenti*) The Sitting of the *Parliament*; and the *Seſſion of Parliament* continues till it be prorogued or diſſolved, and breaks not off by Adjournment. 4 *Inſt.* 27. See *Parliament.*

Seſſions of the Peace, A Court of Record, held before two or more Juſtices of Peace, (*Quorum unus*) for the Execution of the Authority given them by their Commiſſion, and certain Acts of Parliament. And the Juſtices in *Seſſions* have Power to hear and determine Treſpaſſes againſt the publick *Peace*, &c. and many Offences by Statute: This Court is held four Times in the Year at ſome Place within the County, *&c.* Alſo beſides the *General Seſſions* of the Peace; there are private *Seſſions* held by the Juſtices, for divers particular Branches of the Buſineſs of their Offices. *Dalt. Juſt.* 573.

Seſſions for ordering Servants, called Statute Seſſions, held by High Conſtables of Hundreds, *&c.* 5 *Eliz.* See *Statutum Seſſionem.*

Seſſions for Weights and Meaſures. In *London* four Juſtices from among the Mayor, Recorder, and Aldermen, (of which the Mayor or Recorder to be one) may hold a *Seſſions* to inquire into Offences of ſelling by falſe *Weights and Meaſures*, contrary to the Statutes; and to receive Indictments, puniſh the Offenders, *&c. Chart. K. Cha.* 1.

Settlements of Poor, In Pariſhes, there are ſeveral Statutes relating to, *viz.* 43 *Eliz. cap.* 2. 13 & 14 *Car.* 2. *c.* 12. 3 & 4 *W.* & *M. c.* 11. 8 & 9 *W.* 3. *c.* 30. 12 *Ann. c.* 18. 9 *Geo.* 1. *c.* 7, *&c.* Vide *Poor.*

Several Action, Is where two or more Perſons are *ſeverally* charged in any *Action.*

Several Covenant, A *Covenant* by two or more *ſeverally:* And in a Deed where the *Covenants* are *ſeveral* between divers Perſons, they are as ſeveral Deeds, wrote in one Piece of Parchment. 5 *Rep.* 23.

Several Inheritance, An Inheritance conveyed, ſo as to deſcend, or come to two Perſons *ſeverally* by Moieties, *&c.* Vide *Inheritance.*

Several Tail, Is that whereby Land is given and intailed *ſeverally* to two. *Co. Litt.*

Several Tenancy, (*Tenura ſeparalis*) A Plea or Exception taken to a Writ that is laid againſt two Perſons as joint Tenants, who are *ſeveral.* Bro. 273.

Severance, Is the Singling or *Severing* of two or more joined in one Writ or Action. There is a *Severance* of the Tenants in an *Aſſiſe*, when one or two Diſſeiſees appear upon the Writ, and not the other. *Book Entr.* 81. A *Severance* in *Debt*, where two Executors, *&c.* are Plaintiffs, and one refuſeth to act or proſecute. *Ibid.* 220. *Severance* in *Quare Impedits*; in *Attaints*, &c. 5 *Rep.* 97. And it lies in Real, as well as Perſonal Actions; and on Writs of Error. *F. N. B.* 78. 10 *Rep.* 135. In Writ of Error, if three Defendants in the Action bring Error, and one releaſes the Errors, he may be ſummoned and ſevered, and then the other two ſhall proceed to reverſe the Judgment. 6 *Rep.* 26. And if in Error where there are ſeveral Plaintiffs, one only appears and aſſigns Errors; this is not good, without ſummoning and *ſevering* the reſt. *Cro. Eliz.* 893. It has been held, that Summons and *Severance* lies in Partition; yet he who was *ſevered* ſhall have his Part: For Partition muſt be made of the Whole. *Jenk Cent.* 211. And in the Caſe of Jointenants of Lands, by *Severance* the Proſecution of the Suit is *ſevered*, but not the Jointure; for where one alone recovers afterwards, the other may enter into the Moiety recovered. *Ibid.* 40. Summons and *Severance* is uſually before Appearance; as Nonſuit is after Appearance. 10 *Rep.* 134. But according to *Hale*, there are two Sorts of *Severances*, one when a Plaintiff will not appear; and the other when ſeveral Plaintiffs appear, but ſome will not proceed and proſecute. *Hard.* 317. 3 *Nelſ. Abr.* 255. If a Plaintiff or Defendant on a Writ of *Summons* and *Severance*, ſued out againſt him by another, doth not come in upon it, Judgment ſhall be had *ad Proſequendum ſolum*; and this hath been done in *B. R.* by giving a Rule to appear and come in. 2 *Lill. Abr.* 539.

Severance of Corn, The Cutting and Carrying it from off the Ground; and ſometimes the ſetting out the *Tithes* from the reſt of the Corn, is called *Severance*. 2 Cro. 325. And where Executors of Tenants for Life, &c. dying before *Severance*, ſhall have Corn ſown. See *Emblements.*

Severn, A Recompence for Robberies done on the River *Severn* in *Glouceſterſhire*, may be had by Action of Debt, according to the Statute of *Wincheſter*. 8 H. 6. None ſhall be diſturbed in his Paſſage over the *Severn*; nor any Diſorders committed upon the ſaid River. Stat. 9 *H.* 6. & 19 *H.* 7. Vide *Paſſage.*

Seward, A *Saxon* Word for him who *guards* the *Sea Coaſts*; it ſignifies *Cuſtos Maris.*

Sewer, (*Sewera*) Is a Freſh-water Trench, or little River, encompaſſed with Banks on both Sides, to carry the Water into the Sea, and thereby preſerve the Land againſt Inundations, &c. The Kings of *England* granted *Commiſſions of Sewers* long before any Statute was enacted in Parliament for it; and during the Reigns of King *Hen.* 6. *Ed.* 4. *Hen.* 7. ſeveral Statutes were made for appointing Commiſſions of *Sewers* in all Parts of the Realm where needful; ſome to endure ten Years, ſome fifteen Years, and others five Years, &c. with certain Powers to the Commiſſioners; which Commiſſions, by the 23 *Hen.* 8. are to be ſettled by the Lord Chancellor, Lord Treaſurer, and the two Chief Juſtices, or any three of them, whereof the Lord Chancellor to be one; and are to continue ten Years, unleſs repealed by a new Commiſſion: And by this Law, the Commiſſioners Oath is appointed; they are to be qualified as to Eſtates, by having Lands, Tenements or Hereditaments, in Fee or for Life, worth forty Marks *per Ann.* beſides Reprizes (except they are reſident in and free of a Corporation; and having Moveables worth 100 *l.*) and if they execute the Commiſſion not being thus qualified or before ſworn, they incur a Forfeiture of 40 *l.* Commiſſioners that may lawfully act, have an Allowance for their Pains of 4 *s. per Diem*, and their Clerks 2 *s.* a Day, out of the Taxes to be laid and levied. 23 *Hen.* 8. *cap.* 5. The Commiſſioners of *Sewers* have Power to make and ordain Laws, but not to continue in Force longer than their Commiſſion by this Statute; and may decree Lands to be ſold to levy Charges aſſeſſed, upon Non-payment, &c. *Stat. Ibid.* All Laws, and Ordinances of the Commiſſioners, are to remain in Force till repealed, notwithſtanding the Determination of their Commiſſion; and Clerks of Commiſſioners of *Sewers* are to eſtreat Fines and Penalties impoſed by the Commiſſioners, yearly into the *Exchequer*, by 13 *Eliz. cap.* 9. The Buſineſs of the Commiſſioners of *Sewers* is to repair Sea-Banks, and Walls, ſurvey Rivers, publick Streams, Ditches, &c. and make Orders for that Purpoſe: They have Authority grounded on the Statutes, to inquire of all Nuſances, and Offences committed by the Stopping of Rivers, erecting Mills, not repairing of Banks, and Bridges, &c. and to tax and aſſeſs all whom it may concern, for the Amending of Defaults, which tend to the Obſtruction or Hinderance of the free Paſſage of the Water through its ancient Courſes: And they may arreſt Carts and Horſes, and take Trees, paying a reaſonable Price for them, for Reparations; appoint Workmen, Bailiffs, Surveyors, and other Officers, &c. *Terms de Ley* 541. 4 *Inſt.* 275. *Laws Sew.* 86, 96. They proceed by Jury and View, in their Inquiries into Annoyances and Defects of Repairs; and the Jury may amerce for Neglects: Alſo the Commiſſioners may puniſh by Fine for Contempts, and where Officers are negligent in their Duty; though they may not impriſon Perſons for Diſobedience to their Orders. *Laws Sew.* But they cannot intermeddle where there is not a publick Prejudice; nor can they make a new River: Upon the Statute 23 *Hen.* 8. of *Sewers*, the Commiſſioners decreed, that a new River ſhould be made out of another large River; through the main Land for ſeven Miles, unto another Part of the old River, and in order to it they laid a Tax of a Sum in groſs upon ſeveral Towns; adjudged that the Commiſſioners have no Power to make a new River, or any new Invention to caſt out Water, &c. for ſuch Things are to be done in Parliament: But they may order an old Bank to be new made, or alter a *Sewer* upon any inevitable Neceſſity; and the Tax of a Sum in groſs is not warranted by their Commiſſion, they being to tax every Owner or Poſſeſſor of the Lands, according to the Quality of their Lands, Rents, and Number of Acres, and their reſpective Portions and Profits, whether of Paſture, Fiſhing, &c. 10 *Rep.* 141. Commiſſioners of *Sewers* are to tax all equally, who are in Danger to receive any Damage by the Waters, and not only thoſe whoſe Lands are next adjoining; becauſe the Rage of the Waters may be ſo great, that the Land contiguous may not be of the Value to make the Banks; and therefore the Stat. 6 *H.* 6. *cap.* 6. will have all that are in Danger to be contributory. 5 *Rep.* 100. The Commiſſioners having made a Rate, according to the Quantity and Quality of the Land, &c. may grant Warrants to diſtrain for it; or the Land may be decreed to be ſold to pay the Rate: But the Decrees of Commiſſioners of *Sewers* are to be certified into the *Chancery*, and have the King's Aſſent to be binding; and the Commiſſioners and their Proceedings, are ſubject to the Juriſdiction of the *King's Bench.* 23 *Hen.* 8. 1 *Vent.* 67. There are ſeveral Cauſes and Conſiderations for which Perſons may be obliged to repair and maintain *Sewers*; as *Frontagers* were bound to the Repairs of the Walls, and Banks, &c. by Reaſon of Frontage, by 37 *Lib. Aſſiſ. pl.* 10. The being *Owner* of a Bank, Wall, or other Defence, is a ſufficient Inducement to impoſe the Charge of the Repairs thereof upon ſuch Owner. 8 *Hen.* 7. *Preſcription* and *Cuſtom* are much of the ſame Nature, and the Law takes Notice of them in this Caſe; but Preſcription doth not bind a Man to the Repairs, except it be *Ratione Terræ.* 21 *Ed.* 4. 38. 19 *Hen.* 7. By *Tenure* of Land, a Perſon may be bound to repair a Wall, Bank, or Defence mentioned in the Statute of *Sewers.* 12 *H.* 4. A Man may bind himſelf and his Heirs by *Covenant* expreſly to repair a Bank, Wall or *Sewer*, and be good; yet this ſhall not bind the Heir after his Death, where Aſſets are not left from the Anceſtor, which entered into the Covenant. *Callis's Read.* The *Uſe* of Defences may tie a Man to the Reparation thereof; if one and his Anceſtors have had the Uſe of a River by ſailing up and down the ſame, or have uſed a Ferry on or over it, &c. *Laws Sew.* 57. If no Perſons or Grounds can be known, which ought to make Repairs by Tenure, Preſcription, Cuſtom or otherwiſe, then the Commiſſions are to tax the *Level:*

And by the *Laws and Statutes of Sewers*, all ſhall be charged, &c. *Ibid.* 67, 68. If it is found before Commiſſioners of *Sewers*, that ſuch a Perſon ought to repair a Bank; and this is removed into *B. R.* the Court will not quaſh the Inquiſition, or grant a new Trial, except he repair it; and if afterwards he is acquitted, he ſhall be reimburſed. *Sid.* 78. In Caſes of *Sewers*, the Court of King's Bench inquires into the Nature of the Fact, before they grant a *Certiorari* to remove Orders; that no Miſchief may happen by Inundations in the mean Time, which is a diſcretionary Execution of their Power. 1 *Salk.* 146. The Court commonly hears Counſel on both Sides, where Orders of Commiſſioners of *Sewers* are removed by *Certiorari*, before ſuch Orders are filed; for if good, the Court will grant a *Procedendo*, which cannot be done after they are filed: But now they will file them in any Caſe, where there is no Danger likely to enſue. 1 *Salk.* 145. If Commiſſioners of *Sewers* proceed after a *Certiorari* delivered out of *B. R.* Attachment will iſſue againſt them, and they may be fined. 3 *Nelſ. Abr.* 218.

The *Sea*, *Creeks* and *Bays*, on the Coaſts, are all within the *Statutes of Sewers*, in Point of Extent; but they and the Shores, and the relinquiſhed Grounds, are out of the Commiſſion of *Sewers*, to be determined thereby: But *Ports* and *Havens*, as well as the Walls and Banks of Waters, are within the Commiſſion of *Sewers*; and the Shore and Grounds left by the Sea, when they are put in Gainage and made profitable, are then within the Power of the Commiſſion of *Sewers*: And though before, the Ground left by the Sea, is not as to Defence, within the Commiſſion of *Sewers*; yet a Wall or Bank may be thereon raiſed, for the Succour of the Country, although not for any private Commodity, the Commiſſion of *Sewers* aiming at the general Good. *Callis's Read. Laws Sew.* 31, 32. The Stat. 3 *Jac.* 1. *cap.* 14. ordains, That all Ditches, Banks, Bridges, Streams, and Watercourſes, within two Miles of *London*, falling into the *Thames*, ſhall be ſubject to the Commiſſion of *Sewers*: And the Lord Mayor, &c. is to appoint Perſons who have Power of Commiſſioners of *Sewers*. 7 *Ann. cap.* 10. Repairs of Sea-Banks in *Norfolk*, by Order of Juſtices of Peace as Highways. See Stat. 27 *Eliz. c.* 24. Breaking down Sea-Banks, whereby Lands ſhall be damaged, is Felony, by the 6 *Geo.* 2. *c.* 35. And Perſons removing Piles, &c. uſed to prevent Inundations of Rivers, ſhall forfeit 20 *l.* or be ſent to the Houſe of Correction for ſix Months. Stat. 10 *Geo.* 2. *c.* 32.

Sexageſima *Sunday*, the ſixtieth Day before *Eaſter*. See *Septuageſima*.

Sexhindeni, (*Sax.*) The Middle *Thanes*, valued at 600 Shillings. *Vide* Hindeni Homines.

Sextary, (*Sextarius*) An antient Meaſure, containing about our Pint and a Half, tho' it hath been uſed for a much greater Quantity. *Mon. Angl. Tom.* 2, 136.

Sextery-Lands, Are Lands given to a Church, &c. for Maintenance of the *Sexton*. Baron. Engl. 324.

Shack, Is a Cuſtom in the County of *Norfolk*, to have Common for Hogs, from the End of Harveſt till Seed-Time, in all Men's Grounds without Controul: And in that County *to go at Shack*, is as much as to go as large. 7 *Co. Rep.* 5.

Sharping-Corn, A cuſtomary Gift of Corn, which at every *Chriſtmas*, the Farmers in ſome Parts of *England* give to their Smith, for *ſharping* their Plough Irons, Harrow-Tines, &c. *Blount.*

Shaw, Is a Grove of Trees, or a Wood, mentioned in 1 *Inſt.* 4.

Shawaldres, A Word unknown to *Somner*, who could not tell what it was, unleſs *Chevaliers*, which may agree with the Signification, but not with the Sound of the Word; for tis more like Soldiers than Chevaliers. *Knight Anno.* 1318.

Sheading, Signifies a Riding, Tithing, or Diviſion in the *Iſle of Man*, where the whole Iſland is divided into ſix *Sheadings*, in each of which there is a *Coroner* or chief *Conſtable* appointed by Delivery of a Rod at the *Tinewald* Court, or annual Convention. *King's Deſcrip. Iſl. Man.* 17.

Sheep. By an antient Statute, no Perſon ſhall keep at one Time above Two thouſand *Sheep*; but Lambs are not to be accounted as *Sheep* till they are a Year old. 25 *Hen.* 8. *cap.* 13. Perſons exporting *Sheep*, ſhall forfeit them, and 20 *s.* for every *Sheep*, &c. 12 *Car.* 2. *cap.* 32. And Perſons in the Counties of *Kent* and *Suſſex*, within ten Miles of the Sea, are to give an Account in Writing after *Sheep-ſhearing*, of the Number of Fleeces, to the next Officer of the Cuſtoms, &c. 9 & 10 *W.* 3. *c.* 40. By late Statutes, Perſons driving away, or ſtealing *Sheep*, or other Cattle, or killing them, with an Intent to ſteal the Carcaſes, or any Part thereof; and thoſe as aſſiſt any one therein, ſhall be adjudged guilty of Felony, without Benefit of Clergy: And a Reward of 10 *l.* is orderd to be paid by Sheriffs to any Perſon who ſhall apprehend and convict ſuch Offenders, &c. Stat. 14 *Geo.* 2. *cap.* 6. & 15 *Geo.* 2. *cap.* 34. See *Wool.*

Sheep-Silver, A Service turned into Money, which was paid in Reſpect that anciently the Tenants uſed to waſh the Lord's *Sheep*. *W. Jones Rep.* 280.

Shearman's Craft, Is a Craft or Occupation uſed at *Norwich*; the Artificers whereof do *ſhear* Worſteds, Fuſtians, and all Woollen Cloth. Stat. 19 *H.* 7. *c.* 17. and 22 & 23 *Car.* 2.

Sherffee, So the Body of the Lordſhip of *Cardiff* in *South Wales* is called, excluding the Members of it. *Powel's Hiſt. Wal.* 123.

Sheriff, Shiriff or **Shire-reve**, (*Vicecomes*) Sax. *Scire-geretha*, i. e. *Pagi vel Comitatus Præpoſitus*, or rather from the Sax. *Scyrian*, to divide; is the chief Officer under the King in every Shire or County, being ſo called from the firſt Diviſion of the Kingdom into Counties. *Camb. Brit.* 104. And the *Sheriff* was antiently choſen in the County-Court by the Suffrages of the People, as Knights of Parliament now are; but by Statute, *Sheriffs* are to be made by the King; and the Lord Chancellor, Treaſurer, and Barons of the Exchequer, &c. nominate three Perſons yearly for each County, out of which the King chooſes one; and he is created by Letters Patent, having beſides his Patent of Office, a Writ of Aſſiſtance directed to all Biſhops, Lords, Knights, Freemen, &c. to be *in omnibus quæ ad Officium pertinen. intendentes, auxiliantes*, &c. Forteſcue, *cap.* 24. 9 *Ed.* 2. It is ſaid the King may make and appoint *Sheriffs*, without an Aſſembly of the Judges in the Exchequer *Craſtino animarum*, notwithſtanding the Statute 9 *E.* 2. which is only affirmative. *Jenk. Cent.* 229. *Sheriffs* are appointed for a Year; but they may be conſtituted *durante beneplacito*, though the King cannot reſtrain any Part of the *Sheriff's* Power, as to any Town, &c. (unleſs he make it a County by itſelf, and appoint a *Sheriff* there) nor abridge the *Sheriff* in any Thing incident to his Office: And a *Sheriff* is a *Royal* Officer, and takes Place of every Nobleman in the County during the Time he is *Sheriff*. 4 *Rep.* 32. 1 *Roll. Rep.* 27. The *Lord Mayor* and Citizens of *London* have the *Shrievalty* of *London* and *Middleſex* in Fee, by Charter; and two *Sheriffs* are annually elected by them, for whom they are to be anſwerable: If one of theſe *Sheriffs* dies, the other cannot act till another is made, and there muſt be two *Sheriffs* of *London*, which is a City and County, though they make but one *Sheriff* of the County of *Middleſex*: They are ſeveral as to Plaints, in their reſpective Courts.

3 *Rep.* 72. *Show. Rep.* 289. A *Sheriff* at the Entrance into his Sheriffalty, is to go to the Remembrancer's Office in the Exchequer, and there enter into a Recognizance with Sureties, with Condition for Payment of his Proffers or Accounts: Then his Attorney, *&c.* will write him a Note, ſignifying that he is choſe *Sheriff* of ſuch a County, and hath entered into Recognizance; which he muſt deliver to one of the ſix Clerks in Chancery, to make his Patent by; with the Writ of Aſſiſtance, and Writ of Diſcharge to his Predeceſſor: And in the next Place the new *Sheriff* is to go to a Maſter of the Chancery, if he be in *London*; or if in the Country, to one of the Judges of Aſſiſe, or before two Juſtices of the Peace of the County, Commiſſioned for that Purpoſe, or any other Commiſſioners, and take the Oaths of Supremacy, *&c.* and alſo an Oath for the due Execution of his Office. *Dalt. Sher.* 291. When a *Sheriff* is choſen, the old *Sheriff* continues *Sheriff* of the County till the new one is ſworn, which compleats him in his Office: The new *Sheriff* being elected and ſworn, is to deliver the Writ of Diſcharge to the old *Sheriff*, who muſt deliver over all the Priſoners in the Gaol, with all the Writs, *&c.* by Indenture to the new *Sheriff*; and until that is done, the Priſoners remain in the Cuſtody of the the old *Sheriff*: But the Office of the old *Sheriff* ceaſes, and is at the End, when the writ of Diſcharge comes to him. *Wood's Inſt.* 70. *Poph.* 85. A Perſon in Execution in the Cuſtody of the old *Sheriff*, not being turned over to the new *Sheriff*, if he eſcapes, the old *Sheriff*, and not the new one, is chargeable: Though where a *Sheriff* dies in his Office, if any Priſoners eſcape before another is ſworn, this is no Eſcape againſt the *Sheriff*; the Priſoners on the *Sheriff*'s Death are all *in Cuſtodia Legis* till there is a new *Sheriff*; and in theſe Caſes when the new *Sheriff* is ſworn into his Office, he muſt take Notice of all Perſons in Execution, *&c.* as there is none to make a Delivery of them. 3 *Rep.* 72, 73. A *Sheriff* out of his Office may not be fined for any Miſdemeanor whilſt *Sheriff*; but the Court may ſend a Tipſtaff for him, or iſſue forth Proceſs of *Diſtringas nuper vic.* to make him appear and anſwer, *&c.* 2 *Lill. Abr.* 510. The *Sheriff* hath a *judicial* and *miniſterial* Power: His judicial Authority conſiſts in Hearing, Trying, and Determining Cauſes in his *Tourn* and *County Court*; and in preſerving the Peace of the County; for by the Common Law, he is the principal Conſervator of the Peace there; and he is to aſſiſt the Juſtices and raiſe the *Poſſe Comitatus* to keep the Peace, *&c.* He may impriſon any one for a Breach of the Peace, or making an Affray in his Preſence; and ſuch Perſons as he ſhall apprehend upon Suſpicion of Felony, on a Hue and Cry, he is to commit to Gaol. But of his own Authority, he ſhall not Arreſt any Man on Suſpicion of Felony; except there be a Felony actually done, and he himſelf have a Suſpicion of the Party, *&c.* And the judicial Authority of the *Sheriff* as Conſervator of the Peace, is ſeldom uſed; being commonly executed by the Juſtices of Peace. 1 *Inſt.* 174. 2 *Inſt.* 193. 2 *Roll.* 237. The miniſterial Power of a *Sheriff* conſiſteth in the Execution of Writs and Proceſſes out of the King's Courts; and no Proceſs is to be ſerved but by the *Sheriff*, wherein he ought not to diſpute the Validity of any Writ, but to execute it. 1 *Inſt.* 168. 2 *Inſt.* 452. 5 *Rep.* 64. He ſhall not let a Perſon eſcape, though taken on an erroneous Proceſs. *Cro. Jac.* 3. 289. In Caſes which concern the King, or where the King is Party, and in criminal Cauſes, the *Sheriff*'s Officers may break open a Door to execute the Proceſs, (after Demand to open it, ſignifying the Cauſe of coming, and Refuſal) though not in a Civil Cauſe at the Suit of the Subject; unleſs when an Execution, *&c.* is once lawfully begun, as where the Out-doors are open, the *Sheriff* entering may proceed and break open inner Doors. 5 *Rep.* 91. *Palm.* 53. A *Sheriff* may not break a Houſe, nor pull the Latch and open the Door, if it be ſhut, to execute a Writ; and yet if he ſo do, and Arreſt the Party, it is good: But the *Sheriff* may be puniſhed for the Abuſe of his Authority. *Hob.* 1. Upon an Arreſt, his Officers are to ſhew at whoſe Suit it is, and out of what Court the Writ iſſues, and for what Cauſe, *&c.* And if the *Sheriff* do not make a Return of the Writs, or if he imbezils them, or makes a falſe Return, the *Sheriff* may be amerced by the Court, or the Party may bring Action of the Caſe againſt the *Sheriff*; alſo Attachment may be had againſt him for undue Practices in Arreſts, *&c.* 5 *Rep.* 64. 9 *Rep.* 168. 10 *Rep.* 70. *Cro. Eliz.* 75. 2 *Hawk.* 142. Beſides their miniſterial Office to execute the Proceſs of the King's Courts, *Sheriffs* are to return Juries for Trials in civil and criminal Cauſes; but where there is Cauſe of Challenge againſt the *Sheriff*, the *Coroners* are to return Juries; though if there be two *Sheriffs*, and one of them is challenged, the *Venire* ſhall go to the other. 23 *Hen.* 6. *Show.* 329. They are to proclaim Statutes; and make Returns of Writs for electing Knights of the Shire, *&c.* and they ſhall preſerve the Rights of the King within their Counties; collect his Rents, ſeiſe Profits of Lands forfeited and Goods of Felons, levy the King's Debts, Fines, Amercements, *&c.* and be accountable to the King for the Iſſues and Profits of their Counties; for which they are to give up their Accounts in the *Exchequer*, &c. And they are to ſee that Criminals be executed, and obſerve the Order of Law in putting them to Death. 10 *Ed.* 1. *Doct. & Stud. Dial.* 2. *ch.* 41. The *Sheriff* hath under him an Under-*Sheriff* Bailiffs, Gaoler, *&c.* for he hath the Cuſtody, Rule, and Charge of common Gaols; and for all theſe he is anſwerable: But he may execute his Office himſelf, without an Under-*Sheriff*, if he pleaſes. 4 *Inſt.* 114. The Under-*Sheriff* is to take the Oaths before he enters on his Office; and then his Power is generally the ſame with that of the High *Sheriff*, he acting in his Stead; though all Returns of Writs by the Under-*Sheriff* are in the Name of the High *Sheriff*, and the High *Sheriff* only is ſworn to execute the Office of *Sheriff*, and therefore he muſt anſwer for all. 27 *Eliz. c.* 12. *Wood's Inſt.* 73. And in ſome particular Caſes the High *Sheriff* is to execute his Office in Perſon; as on a Writ of Partition, Waſte, *Rediſſeiſin*, *&c.* where the *Sheriff* is commanded to go himſelf in his own Perſon. *Dalt. Sher.* 514. But ſee Stat. 8 *&* 9 *W.* 3 An Under-*Sheriff* is removeable by the High *Sheriff* at Pleaſure; and is but in the Nature of a general Bailiff Errant to the *Sheriff* in the whole County, as other Bailiffs are over particular Diſtricts. 2 *Lill. Abr.* 511, 512. He ought always to have his Deputy attendant in Courts, to receive and execute their Commands, give Account of Buſineſs, *&c.* and is to file a Warrant of Attorney for his High *Sheriff* in all the Courts at *Weſtminſter*, by an Attorney of each Court, or Action will lie upon the Statute *Hen.* 6. againſt the High *Sheriff.* 2 *Lill.* 511. An Under-*Sheriff* may be made by Parol: And in making the Under-*Sheriff*, the High-*Sheriff* implicitly gives him Power to execute all the ordinary Offices of *Sheriff*; ſuch as ſerving Proceſs, Executions, *&c.* And as the common Offices of the *Sheriff*, are by Law transferred to the Under-*Sheriff*; if he be made, provided he ſhall not ſerve any Writ of Execution for above 40 *l.* this is repugnant and void. *Hob.* 13. For although a *Sheriff* may chuſe not to make an Under-*Sheriff*, or may appoint him at Will, *&c.* Yet he cannot abridge his Power; no more than the King can that of himſelf. *Ibid.* Upon every Default in the Execution of his Office, be it by Neglect or Fraud, the High *Sheriff* ſhall

be amerced in the *Exchequer*; but he may not be impriſoned or indicted, for the Act of his Under-*Sheriff*. Latch 181. *Sheriffs* are not to take any Money or Reward for the Places of Under-*Sheriff*, Gaoler, Bailiffs, *&c.* under Penalties. Stat. 5 *Ed.* 6. *cap.* 16. 3 *Geo.* 1. *c.* 15. And by Statutes, every *Sheriff* ſhall abide in proper Perſon within his Bailiwick; and a *Sheriff* ſhall not let his Bailiwick to Farm. 4 *Hen.* 4. *cap.* 4. *Sheriffs* muſt have ſufficient Lands, to anſwer the King and his People; and ſhall not continue in their Offices above one Year, on Pain of 200 *l.* which alſo extends to Under-*Sheriffs*; but they may act longer in other Men's Names; and the Under-*Sheriffs* of *London* are excepted. 4 *Ed.* 3. *cap.* 9. 14 *Ed.* 3. *cap.* 7. 23 *Hen.* 6. *cap.* 8. No *Sheriff* is to act as a Juſtice of Peace, during his Shrievalty: And no Under-*Sheriff* ſhall be Attorney in any of the King's Courts, ſo long as he bears the Office; though ſuch as are Attornies, may practice in the Name of others. 1 *M. cap.* 28. 1 *Hen.* 5. *cap.* 4. They are to let Perſons to Bail upon reaſonable Sureties; and take but 20 *d.* for an Arreſt, and the Bailiff 4 *d.* and they ſhall take no Bond of Perſons arreſted but for Appearance, *&c.* under the Penalty of 40 *l.* 23 *H.* 6. *cap.* 8. And no *Sheriff*, Under-*Sheriff*, &c. ſhall make out any Warrant before they have in their Cuſtody the Writs upon which ſuch Warrants ought to iſſue, on the Penalty of 10 *l.* 6 *Geo.* 1. *c.* 21. The Fees of *Sheriffs* are aſcertained, not to be above 1 *s.* in the Pound, where under 100 *l.* nor more than 6 *d.* in the Pound if above, for levying an Extent or Execution. But for all Debts, *&c.* (except Poſt-Fines due to the King) leviable by *Fieri facias*, &c. iſſuing out of the Exchequer, 1 *s.* 6 *d.* in the Pound, when the Sum is under 100 *l.* and 1 *s.* if above that Sum: And 1 *s. per* Pound of the yearly Value of Lands, for executing a Writ of *Habere facias Poſſeſſionem*, *&c.* where the Whole exceeds not 100 *l. per Annum*, and 6 *d.* in the Pound where above; in Pain of treble Damages to the Party grieved, and large Penalties taking more. 29 *Eliz. cap.* 4. 3 *Geo.* 1. *c.* 15. It has been adjudged, that the Statute 29 *Eliz.* never intended theſe Fees for executing Judgments in inferior Courts, only in the Courts at *Weſtminſter*. 5 *Mod.* 97. At Common Law, *Sheriffs*, &c. were bound to indorſe their Names of Office only to Returns of Writs, *&c.* but by Statute they are required to indorſe their Names, as well as Name of Office. *Moor* 578. A *Sheriff* may take an Appearance Bond, with one or more Sureties, or let the Defendant go without Sureties; for the Bond is only for the *Sheriff*'s Indemnity. *Cro. Eliz.* 808. And if a *Sheriff* take a Bail-Bond of two good Men of viſible Eſtates at the Time of taking it, and they afterwards become inſolvent, the Sheriff ſhall be excuſed; becauſe he is obliged to let to Bail on good Security; and if the *Sheriff* refuſe to take good Bail, Action lies againſt him. 2 *Lill. Abr.* 511. *Sid.* 22. *Cro. Eliz.* 76. The *Sheriff being* obliged to let a Defendant to Bail, and to return a *Cepi*, no Action lies againſt him for not having the Body at the Day; and the Return of *paratum habeo*, *&c.* is in Effect no more than that he had the Body to bring in when the Court ſhould command him ſo to do, and he is to be amerced till he doth it. 1 *Mod.* 239. A Plaintiff may direct the Officer to take a Bond of the Defendant in his the Plaintiff's Name, to give Security for the Payment of his Debt, or render his Body to Priſon, *&c.* but the *Sheriff* cannot take a Bond in another Man's Name, to elude the Statute. 2 *Mod.* 304. A Bond with a Condition, that a Man ſhall continue a true Priſoner, till he is lawfully diſcharged, is good. 1 *Sand.* 161. But in Action of Debt on a *Sheriff*'s Bond, conditioned that the Defendant ſhould be a true Priſoner; the Defendant pleaded that he was in Execution for Debt, and that the Bond was given for *Eaſe and Favour*, and to obtain his Liberty without ſatisfying the Plaintiff in that Action; and to this Plea the *Sheriff* demurred; and it was held, that the Plea was good, without pleading the Statute 23 *Hen.* 6. becauſe it is a general Law, of which the Court muſt take Notice; but if it was not, the Bond is void at Common Law. 2 *Lev.* 103. 3 *Nelſ. Abr.* 224. A Defendant was taken upon an Attachment for a Contempt, and the *Sheriff* took a Bail-Bond in 40 *l.* for his Appearance, but he did not appear; whereupon the *Sheriff* was amerced, and the Proſecutor refuſed to accept an Aſſignment of the Bail-Bond; and reſolved that he might refuſe it, and proceed againſt the *Sheriff*; and if the Bond was ſufficient, the *Sheriff* might put it in Suit, and reimburſe himſelf. 2 *Salk.* 608. Upon a *Fieri facias* the *Sheriff* took a Bond to pay the Money in Court at the Return of the Writ; and this was adjudged good; for the Statute extends only to ſuch Bonds which are made when the Defendant is in Cuſtody; and here he was not. 10 *Rep.* 99. 3 *Nelſ.* 223. Payment to the *Sheriff* upon a *Fi. fa.* is a good Plea by him, by reaſon he hath Authority to levy the Debt: Payment on a *Capias ad ſatisfac.* is not, becauſe he is only to detain the Body. 2 *Lev.* 203. If two Writs of Execution are brought to the *Sheriff* in one and the ſame Day; on the firſt whereof no Warrant is made out, but is on the laſt which is firſt executed, it ſhall take Place of the Firſt. 2 *Lill. Abr.* 516. But according to *Salkeld*, the *Sheriff* ſhall anſwer it to the Party which brought the firſt Writ. 1 *Salk.* 330. When two contradictory Writs are delivered to the *Sheriff* in a Cauſe, one at the Common Law, and the other out of Chancery; in this Caſe the *Sheriff* ought to execute the Writ at Common Law. *Jenk. Cent.* 65. Where a *Superſedeas* comes to a *Sheriff*, before he hath ſeiſed Goods in Execution, he ſhall ſtop; but after he hath ſeiſed, he may go on and ſell the Goods. *Cro. Eliz.* 597. A *Sheriff* is to take Goods in Execution, and ſell them in convenient Time; tho' he may not be amerced for not ſelling them: But if a *Diſtringas* upon his Return go againſt him to the Coroners, if he continues *Sheriff* and don't ſell between the *Teſte* and Return of the *Diſtringas*, he ſhall forfeit Iſſues: And after Goods are once ſeiſed, no Writ of Error or *Superſedeas* ſhall ſtay the Sale. *Mod. Caſ.* 300. If a *Sheriff* levies Money on a *Fieri facias*, and dies, Action may be brought againſt his Executor for the Money; but 'tis otherwiſe where the *Sheriff* is chargeable in his Life for a Perſonal Tort; there *Actio moritur cum Perſona*. *Cro. Car.* 539. And the *Sheriff* ſeiſing Goods in ſuch a Caſe, is anſwerable for the Value he hath returned; and the Defendant is diſcharged. 3 *Ann. B. R. Abr.* 236. He may bring Trover or Treſpaſs, *&c.* for taking his Goods levied in Execution. 1 *Lev.* 280. An Under-*Sheriff* procuring Goods taken in Execution to be appraiſed at an Under-value, and delivering them to the Plaintiff accordingly; for this Oppreſſion, Indictment will lie. *Cro. Jac.* 426. The *Sheriff* may have Action of Debt for his Fees; tho' the Statute doth not give any Remedy, but only ſaith, that he ſhall have and receive Twelve-pence *per* Pound, on Executions, *&c.* 3 *Nelſ. Abr.* 229. And a *Sheriff* ſhall take a Fee upon a *Ca. ſa.* for his Trouble in the Execution, though it be not an Execution with Satiſfaction; and ſo for a ſecond Execution. *Skinn.* 363. Upon an Extent of a Statute, and before the *Liberate* executed, the *Sheriff* took a Bond with a Penalty for the Payment of his Fees; and it was held, that he ought not before a compleat Execution, and that the taking this Bond was Extortion. *Winch* 21, 50. And a *Sheriff* refuſing to execute a *Capias ad ſatisfac.* till he had his Fees: On Motion againſt him to attend, it was ruled, that the Plaintiff might bring an Action againſt him for not doing his Duty, or pay him the Fees, and indict him for Extortion. 1 *Salk* 330. A *Sheriff* cannot detain in his own Hands his

Fees upon levying of Goods on a *Fi. fac.* but ought to bring his Action for them. 2 *Lill.* 575. The *Sheriff* took twenty Shillings for making a Warrant upon a *Capias utlagatum* before Judgment, for which he ought to take no Fee, it being at the Suit of the King, and therefore he was committed; but on ſuch a *Capias* after Judgment, he may take twenty Shillings and Four-pence, which is given by Statute. 2 *Brownl.* 283. *Sheriffs* are to have Allowance for executing the King's Writs, levying Eſtreats, Expences at the Aſſiſes, and the like; not exceeding a certain Sum, by Stat. 34 *H.* 8. *cap.* 16. But this was afterwards repealed; and where *Sheriffs* have no *Tallies of Reward*, they ſhall be allowed Expences on Petition. 2 & 3 *Ed.* 6. *c.* 4. A *Quietus* ſhall be a ſufficient Diſcharge for a *Sheriff*, his Heirs, Executors, &c. 21 *Jac.* 1. *c.* 3. No *Sheriff* at Aſſiſe-Time is to keep a Table for the Entertainment of any but thoſe of his own Retinue, or make any Preſent to a Judge; or have above forty Servants with Liveries, or under Twenty, attending him at the Aſſiſes, &c. ſo as not to extend to the *Sheriffs* of *London* and *Middleſex.* 13 & 14 *Car.* 2. *cap.* 21. and this Act is made perpetual by 1 *Jac.* 2. *cap.* 17. *Sheriff*'s Accounts are not to be delayed in the Exchequer; and 4000 *l.* yearly is to be ſet apart at the Exchequer, and allowed the *Sheriffs* of the ſeveral Counties of *England*, to help paſs their Accounts; alſo the Fees to be paid by *Sheriffs* on paſſing their Accounts are appointed, &c. 3 *Geo.* 1. *c.* 16. The *particular* Form of the *Oath* of *Sheriffs*, is ordained by this Statute, and is as ſollows, *viz.*

The *Sheriff's Oath*, enjoining his *Duty* by *Statute.*

I A. B. *do ſwear, That I will well and truly ſerve the King's Majeſty, in the Office of* Sheriff *of the County of*, &c. *and promote his Majeſty's Profit in all Things that belong to my Office, as far as I legally can or may; and I will truly preſerve the King's Rights, and all that belong to the Crown, and will not aſſent to decreaſe, leſſen, or conceal the King's Rights, or the Rights of his Franchiſes; and whenſoever I ſhall have Knowledge that the Rights of the Crown are concealed or withdrawn, be it in Lands, Rents, Franchiſes, Suits or Services, or in any other Matter or Thing, I will do my utmoſt to cauſe them to be reſtored to the Crown; and if I may not do it myſelf, I will certify and inform the King thereof, or ſome of his Judges; I will not reſpite or delay to levy the King's Debts for any Gift, Promiſe, Reward, or Favour, where I may raiſe the ſame without great Grievance to the Debtors; I will do Right, as well to Poor as to Rich, in all Things belonging to my Office; I will do no Wrong to any Man for any Gift, Reward or Promiſe, nor for Favour or Hatred; I will diſturb no Man's Right, and will truly and faithfully acquit at the* Exchequer *all thoſe of whom I receive any Debts or Duties belonging to the Crown; I will take nothing whereby the King may loſe, or whereby his Right may be diſturbed, injured, or delayed; I will truly ſerve and truly return all the King's Writs, according to the beſt of my Skill and Knowledge; I will take no Bailiffs into my Service, but ſuch as I will anſwer for, and will cauſe each of them to take ſuch Oaths as I my ſelf do, in what belongs to their Buſineſs and Occupation; I will truly ſet and return reaſonable and due Iſſues of them that be within my Bailiwick, according to their Eſtates and Circumſtances, and make due Panels on Juries of Perſons able and ſufficient, and not ſuſpected, or procured, as is appointed by the Statutes of this Realm; I have not ſold or let to Farm, nor contracted for, nor have I granted or promiſed for Reward or Benefit, nor will I ſell or let to Farm, or contract for, or grant for Reward or Benefit by my ſelf, or any other Perſon for me, or for my Uſe, directly or indirectly, my* Sheriffwick, *or any Bailiwick thereof, or any Office belonging thereunto, or the Profits of the ſame, to any Perſon or Perſons whatſoever; I will truly and diligently execute the Laws and Statutes of this Realm; and in all Things well and truly behave my ſelf in my Office, for the Honour of the King, and the Good of his Subjects, and diſcharge the ſame according to the beſt of my Skill and Power.*

A *Sheriff*'s Authority determines by the Death of the King; but in ſuch Caſe, new Patents are preſently iſſued out by the Succeſſor. 3 *Rep.* 72. And on the Deaths of *Sheriffs*, their Under-*Sheriffs* are to act in their Names and be anſwerable, &c. till others are appointed, by the Stat. 3 *Geo.* 1. If a *Sheriff* choſen for the City of *London*, by the Lord Mayor, &c. refuſe to take upon him the Office, by a By-Law of the City, he ſhall pay 400 *l.* Fine and if not paid in three Months 100 *l.* more, unleſs he make Oath he is not worth 10,000 *l.* 5 *Mod. Rep.* 438. A Subject cannot be exempted from the *Office of Sheriff*, but by Act of Parliament, or Grant from the King. 3 *Salk.* 134. See *Eſcape, Execution, Fieri facias*, &c.

Sheriffalty, (*Vicecomitatus*) Is the *Sheriff-ſhip*, or Time of a Man's being *Sheriff.* 14 Car. 1. c. 21.

Sheriffwick, The Extent of a *Sheriff*'s Authority. 13 *Eliz. c.* 22.

Sheriff-geld, A Rent formerly paid by the *Sheriff*; and it is prayed that the *Sheriff* in his Account may be diſcharged thereof. *Rot. Parl.* 50 *Ed.* 3.

Sheriff-tooth, Seems to be a Tenure by the Service of providing Entertainment for the *Sheriff* at his County-Courts. *Rot. Plac. in Itin. apud Ceſtr.* 14 *Hen.* 7. In *Derbyſhire* the King's Bailiffs anciently took 6 *d.* of every Bovate of Land, in the Name of *Sheriff-Tooth. Ryl. Plac. Parl.* 653. And it is ſaid to be a common Tax levied for the *Sheriff*'s Diet.

Shewing, (*Monſtratio*) Is ſpecially uſed to be quit of Attachment in a Court, in Plaints *ſhewed* and not avowed. *Shep. Epitom.* 1130. Vide *Monſtrans.*

Shield, (*Scutum*) An Inſtrument of Defence; (from the Sax. *Scyldan*) to cover, or the Greek σκύτος a Skin, anciently *Shields* being made with Skins.

Shilling, (Sax. *Scilling*, Lat. *Solidus*) Among the Engliſh *Saxons* paſſed but for 5 *d.* afterwards it contained 16 *d.* and often 20 *d.* In the Reign of King *Will.* 1. called the Conqueror, a *Shilling* was of the ſame Value as at this Day. *Leg. H.* 1. *Domeſd.*

Shilwite, *Eſt emenda pro Tranſgreſſione facta in Nativam, eam impregnando.* Monaſt. Rading. MS.

Ship-Money, Was an Impoſition charged upon the Ports, Towns, Cities, Boroughs and Counties of this Realm, in the Time of King *Char.* 1. by Writs commonly called *Ship-writs*, under the Great Seal of *England*, in the Years 1635 and 1636. for the Providing and Furniſhing certain *Ships* for the King's Service, &c. which was declared to be contrary to the Laws and Statutes of this Realm, the *Petition of Right*, and Liberty of the Subject, by Stat. 17 *Car.* 1. *cap.* 14.

Shipper, Is a *Dutch* Word ſignifying the Maſter of a *Ship*, mentioned in the Stat. 1 *Jac.* 1. *cap.* 3. We uſe it for any common Seaman; and commonly ſay *Skipper.*

Ships and Shipping. None of the King's Subjects are to export and import Merchandiſe in any *Ships* but *Engliſh*, on Pain of Forfeiture. 5 *R.* 2. *c.* 3. But Merchants had Power to hire other *Ships*, by 6 *R.* 2. *cap.* 8. and 4 *H.* 7. *cap.* 10. Goods imported or exported out of or to any Territories belonging to *England* in *Aſia*, *Africa* or *America*, ſhall be in *Ships* belonging to the *Engliſh*, and the Maſter and three Fourths of the Mariners to be alſo *Engliſh*, upon Pain to loſe ſuch Goods and the Veſſel, &c. 12 *Car.* 2. *c.* 18. A Duty of 5 *s. per* Ton is granted on foreign-built *Ships*, one Moiety for the Cheſt at *Chatham*, and the other for *Greenwich Hoſpital*, to relieve decayed Seamen. 1 *Jac.* 2. *c.* 18. *Ships* built of three Decks, containing 450 Tons, and mounted with thirty-two Pieces of Ordnance, for the three firſt Voyages the Owners ſhall receive a tenth Part of the Tonnage and Poundage Duties, payable for Merchandiſes imported or exported in ſuch *Ships*. Stat. 5 & 6 *W.* & *M. c.* 24. During the War with *France*, any Ships might be navigated by foreign Seamen; and Foreigners ſerving on Board any *Engliſh Ship* for two Years, were to be deemed natural born Subjects, &c. 3 & 4 *Ann. cap.* 13. If any Captain, Maſter or Mariner belonging to any *Ship*, ſhall wilfully deſtroy the *Ship*, or procure the ſame to be done, they ſhall ſuffer as Felons, without Benefit of Clergy. 1 *Ann. c.* 9. 4 *Geo.* 1. *c.* 12. And if any ſuch Offence be committed within the Body of any County, the Offenders ſhall be tried in the ſame Courts as other Felons; and if on the High Seas, before ſuch Court as is directed by the Stat. 28 *Hen.* 8. for trying of Pirates. Stat. 11 *Geo.* 1. *c.* 29. Merchant *Ships* in the River *Thames*, are not to have their Guns loaded with Shot, or fired after Sun-ſet, &c. Nor ſhall Pitch, or other combuſtible Matter, be melted by Fire in any *Ship*, on Pain of 5 *l.* Stat. 5 *Geo.* 2. *c.* 20. No Owner of a *Ship* ſhall be liable to anſwer Loſs, by reaſon of the imbezilling any Gold, Silver, Jewels, &c. taken in or put on Board, or for any Forfeiture incurred, without the Privity or Knowledge of ſuch Owner, further than the Value of the *Ship* and Freight due: But other Remedies againſt the Maſter and Seamen of ſuch *Ships*, are not taken away. 7 *Geo.* 2. *c.* 15. As a Maſter or Owners of a *Ship* may have an Action for the Freight; either the one or the other are anſwerable, where Goods are damaged in the *Ship*. But where there are ſeveral Owners, and one diſagrees to the Voyage, he ſhall not be liable to any Action after for a Miſcarriage, &c. *Comberb.* 116. *Ships* Ballaſt in the *Thames*, how raiſed and at what Prices to be delivered, &c. vide 6 *Geo.* 2. *cap.* 29. *Ships of War*, ſee *Navy*.

Shire, (*Comitatus*, from the Sax. *Scyre*, to part or divide) Is well known to be a Part or Portion of this Kingdom, called alſo County: The old *Latin* Word was *Scyra*; and *Scyræ*, *Provinciæ indicabantur. Brompt.* 956. King *Alfred* firſt divided this Land; and his Diviſion was *in Satrapias*, which we now call *Shires*, *in Centurias*, now called Hundreds, and *Decenias*, which we call Tithings. *Leg. Alfred.*

Shire-Clerk, He that keeps the County-Court; and his Office is ſo incident to that of the Sheriff, that the King cannot grant it away. 4 *Rep.*

Shireman, Was antiently the Judge of the *Shire*, by whom Trials for Land, &c. were determined. *Lamb. Peramb.* 442.

Shiremote, An Aſſembly of the County or *Shire* at the *Aſſiſes*, &c. See *Scyregemot.*

Shoemakers, Are to make their *Shoes* of ſufficient Leather, or forfeit 3 *s.* 4 *d.* 1 *Jac.* 1. *c.* 22. Journeymen *Shoemakers*, imbezilling Leather, ſhall make Satisfaction for Damage, or be ordered by Juſtices to be whipp'd, &c. Alſo Perſons buying or receiving ſuch Leather are to make reaſonable Recompence, to be levied by Diſtreſs, &c. and Search is to be made after the ſame. 9 *Geo.* 1. *cap.* 27. And all Journeymen employ'd in making Boots, *Shoes*, Slippers, or Gloves, &c. that neglect their Buſineſs, by working for any other Maſter, before they have done the Work firſt undertaken, may be committed to the Houſe of Correction for a Month, by 13 *Geo.* 2. *c.* 8. Vide *Leather.*

Shop, (*Shopa*) A Place where any Thing is openly ſold. ——— Johannem H. *ded:ſſ.* Rogero Smith *unam* Shopam *cum pertin. in*, &c. *ſituat. in le Market-place*, &c. Dat. 27 Feb. 9 Edw. 4.

Shoplifters, Are thoſe that ſteal Goods privately out of *Shops*; which being to the Value of 5 *s.* tho' no Perſon be in the *Shop*, is Felony excluded Clergy, by the 10 & 11 *W.* 3. *cap.* 23.

Shorling and morling, Are Words to diſtinguiſh *Fells* of Sheep; *Shorling* being the Fells after the Fleeces are ſhorn off the Sheep's Back; and *Morling*, the Fells flead off after they die or are killed: In ſome Parts of *England*, they underſtand by a *Shorling*, a Sheep whoſe Fleece is ſhorn off; and by a *Morling*, a Sheep that dies. Stat. 3 *Ed.* 4. *c.* 1. See *Morling.*

Shortford, The ancient Cuſtom of the City of *Exeter* is, when the Lord of the Fee cannot be anſwered Rent due to him out of his Tenement, and no Diſtreſs can be levied for the ſame, the Lord is to come to the Tenement, and there take a Stone or ſome other dead Thing of the ſaid Tenement, and bring it before the Mayor and Bailiffs, and thus he muſt do ſeven Quarter-Days ſucceſſively; and if on the ſeventh Quarter-Day, the Lord is not ſatisfied his Rent and Arrears, then the Tenement ſhall be adjudged to the Lord to hold the ſame a Year and a Day; and forthwith Proclamation is to be made in the Court, That if any Man claims any Title to the ſaid Tenement, he muſt appear within the Year and Day next following, and ſatisfy the Lord of the ſaid Rent and Arrears: But if no Appearance be made, and the Rent not paid, the Lord comes again to the Court, and prays that, according to the Cuſtom, the ſaid Tenement be adjudged to him in his Demeſne as of Fee, which is done accordingly; ſo as the Lord hath from thenceforth the ſaid Tenement with the Appurtenances to him and his Heirs: And this Cuſtom is called *Shortford*; being as much as in *French* to *foreclose.* Izack's Antiq. Exet. 48.

Shrived or **Shrieved**, (From Sax. *Scrifan*) A penitent Perſon *confeſſed* by a Prieſt. See *Confeſſor.*

Si Action', &c. Is the Concluſion of a *Plea to the Action*, when the Defendant demands Judgment *if the Plaintiff ought to have his Action*, &c.

Sib and **Som**, (Sax.) i. e. *Pax* & *Concordia.* Spelm.

Sica, **Sicha**, A Ditch from the Sax. *Sic*, *Lacuna.* Mon. Ang. Tom. 2. p. 130.

Sich, (*Sichetum* and *Sikettus*) Is a little Current of Water, which is dry in the Summer; a Water Furrow or Gutter. *Mon. Ang. Tom.* 2. *p.* 426.

Siclus, Was a Sort of Money current among the old *Engliſh*, of the Value of 2 *d.* We read of it in *Egbert, in Dialogo de Eccleſiaſtica inſtitutione*, pag. 98.

Sicut alias, Another Writ like the former; It runs *Præcipimus tibi* Sicut alias *præcipim'*, &c. 4 Co. Rep. 55. See *Alias.*

Sidelings, Are Meers betwixt or on the *Sides* of Ridges of arable Land. *Mon. Ang. Tom.* 2. *p.* 275.

Sidesmen, *Rectius* Synodſmen, is uſed for thoſe Perſons or Officers that are yearly choſen in great Pariſhes in *London* and other Cities, according to Cuſtom, to aſſiſt the Churchwardens in their Preſentments of ſuch Offenders and Offences to the Ordinary, as are puniſhable in the Spiritual Courts; And they are alſo called *Queſtmen.* They take an *Oath* for doing their Duty; and are to preſent Perſons that do not reſort to Church on *Sundays*, and there continue during the whole Time of Divine Service, &c. Can. 90. They ſhall not be cited by the Ordinary to appear but at uſual Times, unleſs they have wilfully omitted for Favour, to make Preſentment of notorious publick Crimes, &c. when they may be proceeded againſt for Breach of Oath, as for Perjury. *Canon* 117. Vide *Synodales Teſtes.*

Sigillum, A Seal for the Sealing of Deeds and Charters, &c. See *Seal.*

Sigla, (From the Sax. *Segel*) A Sail, mentioned in the Laws of King *Ethelred*, *cap.* 24.

Sign Manual, Is where any Bill or Writing is *ſigned* under the *Hand* of the *King*, and uſually in Order to the Paſſing of the King's Grants, &c. through the Offices of the *Keepers of the Seals.*

Signet, (Fr.) Is one of the King's Seals, uſed in ſealing his private Letters, and all ſuch Grants as paſs his Majeſty's Hand by Bill ſigned; which Seal is always in the Cuſtody of the King's Secretaries, and there are four Clerks of the *Signet Office* attending them. 2 *Inſt.* 556. The Law takes Notice of the *Sign Manual* and *Privy Signet*; and it is ſaid a *Ne Exeat Regno* may be iſſued by Commandment under the *Privy Signet*, as well as by the King's Writ under the Great Seal. *Wood's Inſt.* 457. See *Privy Seal.*

Significavit, A Writ iſſuing out of the *Chancery*, upon a Certificate given by the Ordinary of a Man's ſtanding *Excommunicate* by the Space of forty Days, for the laying him up in Priſon till he ſubmit himſelf to the Authority of the Church: And it is ſo called, becauſe *Significavit* is an emphatical Word in the Writ. *Reg. Orig.* There is alſo another Writ of this Name in the Regiſter, directed to the Juſtices of the *Bench*, commanding them to ſtay any Suit depending between ſuch and ſuch Parties, by reaſon of an Excommunication alledged againſt the Plaintiff, &c. *Reg. Orig.* 7. And in *Fitzherbert* we find Writs of *Significavit* in other Caſes; as *Significavit pro Corporis Deliberatione*, &c. *F. N. B.* 62, 66. Stat. 22 & 23 *Car.* 2. The common Writ of *Significavit* is the ſame with the Writ *De Excommunicato Capiendo.*

Signing of Deeds and Wills is neceſſary to make them binding; the *Signing* a Will by the Teſtator is an eſſential Circumſtance, without which 'tis not a Will; for this is expreſly required by the Stat. 29 *Car* 2. *c.* 3.

Signum, A Croſs prefixed as a Sign of Aſſent and Approbation to a Charter or Deed, uſed by the *Saxons.* Vide *Seal.*

Signs. The Citizens of *London* are to hang out *Signs* at their Houſes, for the better finding out their reſpective Dwellings, &c. Chart. K. *Char.* 1.

Silentarius, Signifies one of the Privy Council; and *Silentium* was formerly taken for *Conventus privatus. Matt. Pariſ. Anno* 1171. According to *Littleton*, it is an Uſher, who ſeeth good Rule and *Silence* kept in Court. *Litt. Dict.*

Silk-thrower, and **Throwſter**, Is a Trade or Myſtery that winds, twiſts, and ſpins or *throws Silk*, thereby fitting it for Uſe: They are incorporated by Statute, and Mention is made of *Silk-winders* and *Doublers*, which are Members of the ſame Trade. 14 *Car.* 2. *c.* 15. None ſhall exerciſe the *Silk-throwers* Trade, but ſuch as have ſerved ſeven Years Apprenticeſhip to it, on Pain of forfeiting 40 *s.* a Month. Stat. *Ibid.* *Silk-winders*, &c. imbezilling or detaining *Silk*, delivered by *Silk throwers*, ſhall pay ſuch Damage as a Juſtice ſhall order, or not doing it ſhall be whipt and ſet in the Stocks; and the Receivers are to be committed to Priſon by a Juſtice of Peace till Satisfaction is made the Party injured. 20 *Car.* 2. *c.* 6. 8 & 9 *W.* 3. *c.* 36. Fine *thrown Silk* of the Growth of *Italy* may be imported: And there are ſeveral Allowances paid for Exporting *Silk* Manufactures of *Great Britain.* 2 *W.* & *M.* *c.* 9. 1 *Ann. c.* 27. 8 *Geo.* 1. 11 *Geo.* 1. *c.* 29. For preventing Frauds in mixing *Silks* with Stuffs, to be exported, &c. ſee Stat. 9 *Geo.* 1. *c.* 8. and 8 *Geo.* 2. *c.* 18.

Silva Cædua, Wood under twenty Years Growth, or Coppice Wood. 45 *Ed.* 3. *c.* 3.

Simnel, (*Siminellus, vel Simnellus*) Is mentioned in the *Aſſiſe of Bread*, and is ſtill in Uſe, eſpecially in *Lent:* The *Engliſh Simnel* is *Panis purior*, or the pureſt white Bread. Stat. 51 *H.* 3.

Simony, (*Simonia*) Is a corrupt Contract for a Preſentation to any Benefice of the Church, for Money, Gift, or Reward: It is defined to be, *ſtudioſa voluntas emendi vel vendendi aliquid Spirituale aut Spirituali annexum opere ſubſecuto.*——Alſo *venditio rei Sacræ*; ſo called from *Simon Magus.* And ſome Authors mention *Simony per munus triplex*; as *per munus à manu, i. e.* by Bribery, where Money is paid down for a Benefice; *per munus à lingua*, by Favour and Flattery; *per munus ab obſequio, i. e.* by a ſordid Subjection to the Patron, or doing him Services: To which has been added, the making of Preſents, without taking any Notice of expecting a Benefice. Againſt the ſcandalous Corruption of *Simony* many Church *Canons* have been made; particularly in the Time of King *Henry* 2. a Provincial *Canon* was made againſt it by the then Archbiſhop of *Canterbury*; and among the *Canons* of *Othobonus*, *Anno* 53 *H.* 3. there is a ſevere one on this Head: There are ſome other general Canons of the Church, requiring an Oath to be adminiſtred to Clergymen againſt *Simony*; and whereby *Simony* is puniſhed with Deprivation, Diſability, &c. as was that of Dr. *Watſon*, Biſhop of *St. Davids*, for preſenting a Perſon to a Rectory in his Dioceſe for Money; and taking ſeveral Sums from Perſons to admit them into Orders, &c. This Crime of *Simony* is ſaid to be worſe than Felony; and the Abhorrence of the Law to it ſeems to have ariſen from the Canons that had been made againſt it; for it was not an Offence at Common Law. *Moor* 564. And it has been held by ſome of the Fathers to be Hereſy, if not the Sin of the Holy Ghoſt: But neither the Greatneſs of the Offence, nor the Severity of the Canons (as has been obſerved) were ſufficient to reſtrain this Evil in the Church; till the Parliament took it into their Care, and *Anno* 31 *Eliz.* enacted the following Law, *viz.* That if any Perſon for any Sum of Money, Reward, Gift, Profit, or Benefit, or by Reaſon of any Promiſe, Agreement, Grant, Bond, Covenant, or other Aſſurance for any Sum of Money, Reward, Gift, &c. ſhall preſent or collate any Perſon to any Benefice with Cure, Dignity, or Living Eccleſiaſtical; or give or beſtow the ſame in Reſpect of any ſuch corrupt Cauſe or Conſideration, every ſuch Preſentation, Collation, Gift, and Beſtowing, and every Admiſſion and Induction thereupon, ſhall be utterly void; and the Crown ſhall preſent for that Turn: And the Perſons that ſhall give or take any Sum of Money, or ſhall take or make any ſuch Promiſe, &c. ſhall forfeit and loſe double the Value of one Year's Profit of every ſuch Benefice; and the Perſon ſo corruptly taking any ſuch Benefice, ſhall from thenceforth be diſabled to have and enjoy the ſame. Stat. 31 *Eliz. c.* 6. 1 *Inſt.* 120. Generally any Covenant or Agreement, made under any manner of Conſideration whatſoever, to preſent a Clerk is *ſimoniacal:* If one promiſe to a Clerk, that in Conſideration he will marry his Daughter, Kinſwoman, &c. he will preſent him to ſuch a Living when void, or the next good Living that ſhall fall within his Gift, this has been adjudg'd a *ſimoniacal* Contract: But if a Father, upon the Marriage of his Daughter, covenants to pay a Portion, &c. and there is a diſtinct Covenant that he will procure the Son-in-Law to be admitted to ſuch a Benefice upon the next Avoidance, it ſhall not be intended to be *ſimoniacal*; becauſe the Covenant had no Dependance upon the Marriage, being an intire Covenant by itſelf, and not made in Conſideration of Marriage; for if it had, then it would have been *Simony*; and yet 'tis ſaid it may be made ſo, by a ſpecial Averment, ſhewing that it was *ſimoniacal. Cro. Car.* 425. A Feme Sole was ſeiſed of an Advowſon, and the Church becoming void, ſhe preſented a Parſon upon Condition that he would marry her, which he did accordingly; and this was held to be *Simony*, and that it made the Preſentation void; for it was for her Benefit, which is the very Word in the Statute: So if a Patron preſents one, on Condition that he ſhall be a Tutor to his Son, though this is not properly a Gift or Reward. *Noy* 148. If a Patron take Bond of his Preſentee to pay a yearly Sum to the Wife of the laſt Incumbent, for the Maintenance of her and her Children; or pay a yearly Sum to the Son of the laſt Incumbent, ſo long as he ſhall be a Student in the Univerſity unpreferred, no *Simony* will be committed; and this is by an equitable Conſtruction of the Statute againſt *Simony:* But if the Money were to be paid to the Son of the Patron, it would be otherwiſe. *Paſch.* 2 *Jac.* 1. *Noy* 142. A Man may buy the next Turn of a Church, when the Church is full of an Incumbent, who is well in Health, and be no *Simony:* And if a Father doth purchaſe the next Avoidance of a Church for his Son, when the Incumbent is ſick, with an Intent to preſent him after the Death of the Incumbent, it is not *Simony*; becauſe the Father is obliged by Nature to provide for the Son: And therefore it is, that tho' the Son may not contract for a Benefice, to the Intent that another ſhould preſent him; yet the Father may contract with an Intention of preſenting his Son. 3 *Cro.* 685. Contracts may be *ſimoniacal*, as well before as after the Church is void, in ſome Caſes; for notwithſtanding it be lawful for any Perſon to buy the next Turn of a Church, when it is full, generally ſpeaking, ſuch Contracts have been ſometimes adjudged unlawful: As if a Perſon ſeiſed of an Advowſon, grants the next Preſentation to another, who enters into Bond to pay him a Sum of Money for it, when the Church ſhall become void, this is *Simony:* And if a Church being full of an old ſickly Incumbent, a Clerk doth contract with the Patron of the Church for a certain Sum of Money, payable when the Church ſhall be void, to make a Grant of the next Turn to a Friend of his; and the Friend having ſuch Grant doth preſent the ſaid Clerk to the ſaid Church, it is *Simony. Hob.* 105. In a *Quare Impedit* it was held, that the Grant of the next Avoidance for Money, when the Incumbent was very ſick in his Bed and near Death, is *Simony. Winch* 63. One ſeiſed of an Advowſon granted the next Avoidance to his ſecond Son, who after his Death corruptly agreed with *J. S.* to procure him to be preſented to the Benefice, and to perfect this, it was agreed that the ſecond Brother ſhould ſurrender his Grant and Intereſt to the elder Brother, and he knowing nothing of the firſt Agreement preſented *J. S.* it was held to be *Simony*, and all void. *Lane* 73. But if a Patron of a Church contract with one for *Simony*, and preſent another without *Simony*; this is not within the Statute, for the King to preſent, &c. *Hob.* 167. Where a Man agrees to give a Sum of Money to procure him to be preſented to a Church, this is *Simony:* And if an Incumbent make a *ſimoniacl* Contract with the Friend, or Wife of the Patron, who knows nothing of it, it will be *Simony*; alſo if Strangers make Agreement by Compact betwixt them, without the Privity of the Incumbent or Patron; as if a Friend of the one, give Money to a Relation of the other to procure him to preſent ſuch a Clerk, it is *ſimoniacal:* Tho' this Judgment hath been oppoſed, becauſe thereby the Patron's Right may be defeated by Colluſion between Strangers. *Cro. Car.* 330. *Cro. Jac.* 386. *Sid.* 329. And if one that hath no Right to preſent, ſhall by means of a corrupt Agreement, preſent a Clerk, who is by his Preſentation admitted, inſtituted and inducted into a Church; this ſhall not be ſuch an Act of *Simony* to intitle the King to preſent: For though the Statute makes all void, an Uſurper cannot forfeit the Right of another, in whom there is no Fault. 2 *Brownl.* 7. 3 *Inſt.* 153. But on a Sale of an Advowſon with Covenant to preſent ſuch a Perſon as the Bargainee ſhould nominate, the Church at that Time being full by Uſurpation, and a *Quare Impedit* then pendant to remove the Uſurper, and by which he was afterwards removed, the Court held this to be *Simony*; for that the Preſentation by Uſurpation being avoided, the Church ſhall be now ſaid to be void from the Death of the laſt Incumbent. *Skinner's Rep.* 90. If any Perſon receives Reward, &c. for any Preſentation to a Benefice, although he who is preſented know nothing of the Matter, his Preſentation, Inſtitution and Induction are void by the Statute 31 *Eliz.* and the King ſhall preſent *pro hac Vice:* The Statute intends to inflict a Puniſhment upon the Patron, by the Loſs of the Preſentation, becauſe he was the Author of the Corruption; and likewiſe upon the Incumbent, by the Loſs of his Incumbency, becauſe he came in by ſuch a corrupt Patron. 12 *Rep.* 101. And it is the corrupt Agreement, by Colour of which the Clerk is inſtituted and inducted, which makes the *Simony*; and Notice in this Caſe is not material, becauſe of the Difficulty of Proving it. 3 *Lev.* 337. *Moor* 914. Tho' the Forfeiture of double Value of the Church is incurred by the corrupt Contract; the Preſentation is not forfeited to the King, unleſs the Clerk be *de facto* preſented or collated upon the ſame. *Count Parſ. Compan.* 175. The Clerk is diſabled to hold the Benefice made void by the *Simony*; and although he be neither Party nor privy to the *ſimoniacal* Contract, and obtain a new Preſentation from the King, it hath been reſolved, that he is diſabled during Life to hold that Living. *Cro. Jac.* 385. But by my Lord *Coke* it was adjudged otherwiſe, that the Clerk preſented, not being privy or conſenting to the corrupt Agreement, ſhall not be a diſabled Perſon; and though he loſes his Incumbency upon ſuch a Preſentation, he may be preſented again to the ſame Benefice. *Cro. Jac.* 385. 12 *Rep.* 101. 3 *Inſt.* 154. According to *Juſt. Dodderidge*, a *Simoniacus* is the Perſon who makes the *ſimoniacal* Contract, and he is incapable to hold that Benefice to which he was thus promoted, or to have any other; but *ſimoniace promotus* is where a Friend of the Parſon gives Money to the Patron or Ordinary for a Preſentation or Inſtitution, and the Parſon himſelf doth not know it, who is incapable to hold that Benefice upon the corrupt Promotion; though he may have any other, or even that very Benefice, if afterwards he come lawfully to it, ſo as the Right of the Patron be not diſturbed. 2 *Roll. Rep.* 465. It hath been held, that where two Parſons agreed to exchange their Livings, and the one promiſed his Patron, that if he would preſent the other, with whom he was to exchange his Living, he would make the Patron a Leaſe of his Tithes at ſuch a Rent; this ſhall be *Simony*, although the other be not privy to the Contract. *Parſ. Coun.* 50. And corrupt Reſignations of Livings are within the Statute againſt *Simony*, as well as Exchanges, &c. Though if a *ſimoniacal* Clerk reſign, and another is preſented and dies; the King hath loſt his Preſentment. *Hob.* 167. 1 *Brownl.* 164. If a Clerk that gets ordained by *Simony*, obtain any Benefice in ſeven Years after, it is declared void by the Statute. *Hob. Ibid.* A Preſentation upon a *ſimoniacal* Agreement is void to all manner of Perſons who have any Intereſt in the Benefice: 'Tis void as to the Patron, who is to loſe his Preſentation, for that is veſted in the King, and he may preſent; it is void as to the Ordinary, by Reaſon he is bound to admit the King's Preſentee; and no Lapſe can incur where the Right of Preſentation is in the Crown; 'tis void as to the Clerk, without a declaratory Sentence, though he was not privy to it, and he is diſabled, &c. And 'tis void as to the Pariſhioners; for if he ſue them for Tithes, they may plead him no Incumbent, and that he hath no Right to the Profits of the Church; all thoſe being due to the Clerk which the King ſhall preſent from the Time of the Avoidance. 1 *Roll. Rep.* 237. And if a Man be preſented to a Benefice by *Simony*, a general Pardon afterwards will not enure to the Settling of him in that Benefice, which was never full becauſe of the *Simony*; but it may diſcharge the Puniſhment of *Simony*, in Reſpect of the Forfeiting double Value of the Profits of one Year, &c. *Hob.* 168. 3 *Cro.* 685. By the 1 *W.* & *M. c.* 16. After the Death of a Perſon *ſimonically* promoted to any Benefice, the Offence or Contract of *Simony* ſhall not be alledged to the Prejudice of any other Patron innocent of *Simony*, or of his Clerk; unleſs the Perſon *ſimoniacally* preſented, or his Patron were convicted of ſuch Offence in the Life time of the *ſimoniack* Perſon: But if the guilty Patron doth preſent another Clerk upon the Deceaſe of the former, the *Simony* upon the firſt Preſentation may be alledged both againſt the guilty Patron, and his ſecond Clerk, though innocent. *Wood's Inſt.* 157. If any Perſon ſhall for any Reward, in his own Name, or the Name of any other Perſon, take or accept the next Avoidance of, or Preſentation to a Benefice with Cure of Souls, and ſhall be preſented thereto, the Preſentation ſhall be void, and ſuch Agreement deemed a *ſimoniacal* Contract; and the Crown may preſent for that Time, *&c.* by 12 *Ann. c.* 12. This Act reſtrains only thoſe, that are to be preſented to the Living on the next Avoidance upon Purchaſe, *&c.* not Laymen, or ſuch of the Clergy as are not to be preſented to the Church. *Wood's Inſt.* 150. It originally belongs to the Spiritual Court to determine *Simony*; and the Stat. 31 *Eliz.* does not abrogate the Eccleſiaſtical Laws concerning it, but only enacts particular Penalties, in more remarkable *ſimoniacal* Acts, relating to Benefices, *&c.* But in thoſe ſpecial Caſes mentioned in the Statute, they are to be determined in the Temporal Courts. *Gibſ. Codex* 839. The Statute againſt *Simony* may be recited in the Declaration againſt a *Simoniſt*; or it may be good without it. 2 *Lutw.* 1090.

Simplex, Signifies ſimple, or ſingle; as *Charta ſimplex* is a Deed Poll or ſingle Deed.

Simplex Beneficium, A minor Dignity in a Cathedral or Collegiate Church, or any other Eccleſiaſtical Benefice, oppoſed to a Cure of Souls; and which therefore is conſiſtent with any parochial Cure, without coming under the Name of Pluralities.

Simplex Juſticiarius, This Style was anciently uſed for any *Puiſne* Judge, that was not Chief in any Court: And there is a Writ in the *Regiſter*, beginning thus: —— I *John Wood*, a *ſimple Judge* of the Court of Common Pleas, *&c.*

Simul cum, Are Words uſed in Indictments, and Declarations of Treſpaſs againſt ſeveral Perſons, where ſome of them are known, and others not known: As the Plaintiff declares againſt *A. B.* the Defendant *ſimul cum C. D. E. F.* and *divers others* unknown, for that they committed ſuch a Treſpaſs, *&c.* 2 *Lill. Abr.* 469. If a Writ is generally againſt two or more Perſons, the Plaintiff may declare againſt one of them with a *ſimul cum*; but if a Man bring an original Writ againſt one only, and declares with a *ſimul cum*, he abates his own Writ. *Comber.* 260.

Sine aſſenſu Capitali, A Writ that lies where a Biſhop, Dean, Prebendary, or Maſter of an Hoſpital aliens the Lands holden in Right of his Biſhoprick, Deanery, Houſe, *&c.* without the Aſſent of the *Chapter* or Fraternity; in which Caſe, his Succeſſor ſhall have this Writ. *F. N. B.* 195. And if a Biſhop or Prebendary be diſſeiſed, and afterwards he releaſeth to the Diſſeiſor; this is an Alienation, upon which may be brought a Writ *De ſine aſſenſu Capitali*: But the Succeſſor may enter upon the Diſſeiſor, if he doth not die ſeiſed, notwithſtanding the Releaſe of his Predeceſſor; for by the Releaſe, no more paſſeth than he may rightfully releaſe. *New Nat. Br.* 432. A Perſon may have this Writ of Lands upon Demiſes of ſeveral Predeceſſors, *&c.*

Sine-cure, Is where a Rector of a Pariſh hath a Vicar under him endowed and charged with the Cure; ſo that the Rector is not obliged either to Duty or Reſidence. *Degg's Parſ. Counc.* 195. And when a Church is fallen down, and the Pariſh becomes deſtitute of Pariſhioners, it is ſaid to be a *Sine-Cure.* Wood's Inſt. 153.

Sine Die, *i. e.* Without Day: Before the Act for turning the Law into *Engliſh*, when Judgment was given againſt the Plaintiff in an Action, he was ſaid to be *in Miſericordia pro falſo clamore ſuo*; and for the Defendant, *eat inde ſine die*, and the Defendant was diſcharged, *&c.* 2 *Lill.* 220.

Si non omnes, Is a Writ on Aſſociation of Juſtices, by which if all in Commiſſion cannot meet at the Day aſſigned, it is allowed that two or more of them may finiſh the Buſineſs. *Reg. Orig.* 202. *F. N. B.* 185. And after the Writ of Aſſociation, it is uſual to make out a Writ of *Si non omnes*, directed to the firſt Juſtices, and alſo to thoſe who are ſo aſſociated to them, which reciting the Purport of the two former Commiſſions, commands the Juſtices, that if all of them cannot conveniently be preſent, ſuch a Number of them may proceed, *&c. F. N. B.* 111.

Sinking Fund, Is a Proviſion made by Parliament, conſiſting of Surpluſages of other *Funds*, appropriated for paying the publick Debts of the Nation: And many late Statutes have been made for applying the growing Produce thereof; alſo Money is often borrowed on the Credit of the *Sinking Fund*, uſually one Million a Year towards raiſing Supplies for publick Service. See Stat. 13 *Geo.* 1. *cap.* 3. 1 *Geo.* 2. *cap.* 13. 4 *Geo.* 2. *cap.* 5. 5 *Geo.* 2. *cap.* 17. 6 *Geo.* 2. *cap.* 25. 7 *Geo.* 2. *cap.* 12. 8 *Geo.* 2. *cap.* 11. 9 *Geo.* 2. *cap.* 34. 11 *Geo.* 2. *cap.* 27. 12 *Geo.* 2. *cap.* 19. 13 *Geo.* 2. *cap.* 23. 14 *Geo.* 2. *cap.* 41. 15 *Geo.* 2. *cap.* 3.

Sipeſſocna, Was what we now call a Hundred. *Leg. H.* 1. *c.* 6.

Si recognoſcant, A Writ that, according to the old Books, lies for a Creditor againſt his Debtor, who before the Sheriff in the County-Court has acknowledged to owe his Creditor ſuch a Sum received of him: The Form of which Writ is this: —— *Rex vicecom.* S. *Salutem. Præcip. tibi quod ſi* A. B. recognoſcat *ſe debere* C. D. *Quinq; lib. ſine ulteriori dilatione tunc ipſum Diſtringas ad prædict. debitum eidem* C. *ſine dilatione reddendum*, Teſte, *&c.* Old Nat. Br. 68.

Site of a Meſſuage or Manor houſe, *&c.* See *Scite.*

Sithcundman, (*Sax.*) Such a Man as had the Office to lead the Men of a Town or Pariſh. *Leg. Inæ, cap.* 56. *Dugdale* ſays that in *Warwickſhire* the Hundreds were formerly called *Sitheſoca*, and that *Sithſocundman* and *Sithcundman*, was the chief Officer within ſuch a Diviſion, *i. e.* The High Conſtable of the Hundred. *Dugd. Antiq. Warw.*

Sitheſoca, A *Saxon* Word for Franchiſe or Liberty, a Hundred. *Rot. Parl.* 16 *H.* 2.

Sixhindi, Were Servants of the ſame Nature with *Rod-Knights*, *viz.* Bound to attend their Lord wherever he went; but they were accounted among the *Engliſh Saxons* as Freemen, becauſe they had Lands in Fee, ſubject only to ſuch Tenure. *Leg. Inæ, c.* 26. See *Hindeni.*

Sizel, Is where Pieces of *Money* are cut out from the flat Bars of Silver, after drawn through a Mill, into the reſpective *Sizes* or Dimenſions of the Money to be made; the Reſidue is called by this Name, and is melted down again. *Lownd's Eſſ. upon Coin, pag.* 96.

Skarkalla, Seems to be an Engine for catching of Fiſh: It was eſpecially given in Charge by the Juſtices, that all Juries ſhould inquire *de hiis qui piſcantur cum Kiddellis &* Skarkallis. 2 *Inſt.* 38.

Skerda, A Scar or Wound. —— *Si oſſa extrahuntur a Capite &* Skerda *magna levetur, &c.* Bract. lib. 3.

Skinners. None ſhall retain any Servant, Journeyman, *&c.* to work in the Trade of a *Skinner*, unleſs he himſelf hath ſerved ſeven Years as an Apprentice in the ſame Trade, in Pain to forfeit double the Value of his Ware wrought. Stat. 3 *Jac.* 1. *c.* 9.

Skyvinage, Is uſed for the Precincts of *Calais.* Stat. 27 H. 6. c. 2.

Slade, (Sax. *Slæd*,) A long narrow Piece or Slip of Ground. *Paroch. Antiq.* 465.

Slander, Is the Defaming of a Man in his Reputation, Profeſſion, or Livelihood; which is actionable, &c. See *Action of the Caſe for Words*, and *Prohibition*.

Slaves. There are no *Slaves* in *England*; one may be a *Villein* here, but not a *Slave*. 2 Salk. 666.

Slippa, A Stirrup; and there is a Tenure of Land by holding the King's *Stirrup*, in *Cambridgeſhire*. Cart. 5 H. 7.

Slough-Silver, A Rent paid to the Caſtle of *Wigmore*, in Lieu of certain Days Work in Harveſt, heretofore reſerved to the Lord from his Tenants. *Pat.* 43 *Eliz.*

Sluice, (*Excluſa*) Is a Frame to keep or let Water out of a Ground.

Smaka, A Smack, or ſmall light Veſſel. *Cowel.*

Smalt, (Ital. *Smalto*) Is that of which Painters make their blue Colouring; mentioned in the Stat. 21 *Jac.* 1. *cap.* 3.

Smoke-Silver. Lands were held in ſome Places by the Payment of the Sum of 6 *d.* yearly to the Sheriff, called *Smoke-Silver*. Pat. 4 Ed. 6. *Smoke-Silver* and *Smoke-Penny* are to be paid to the Miniſters of divers Pariſhes, as a *Modus* in Lieu of Tithe-Wood: And in ſome Manors, formerly belonging to Religious Houſes, there is ſtill paid as appendant to the ſaid Manors, the antient *Peter-Pence* by the Name of *Smoke-Money*. Twiſd. Hiſt. Vindicat. 77. The Biſhop of *Lincoln*, *Anno* 1444, iſſued out his Commiſſion —— *Ad levandum le* Smoke-Farthings, &c.

Smuglers, Are thoſe Perſons that conceal prohibited Goods, and defraud the King of his Cuſtoms on the *Sea-Coaſts*, by Running of Goods and Merchandize. Stat. 8 *Geo.* 1. *cap.* 18. See *Cuſtoms*.

Snottering-Silver. There was a Cuſtom in the Village of *Wylegh*, that all the ſervile Tenants ſhould pay for their Tenements a ſmall Duty called *Snottering Silver*, to the Abbot of *Colcheſter*. Placit. 18 Edw. 1.

Snuff or **Snush**, Mixing and colouring it with *Oker*, *Umber*, or *Fuſtick*, *yellow Ebony*, *Tobacco* Duſt, *Sand*, &c. incurs a Penalty of 3 *l.* for every Pound-weight. Stat. 1 *Geo.* 1. *c.* 46. A Duty is granted of 2 *s.* 6 *d.* a Pound on *Snuff* imported from the *Spaniſh Weſt Indies*; and 5 *s.* for what is brought from *Spain* and *Portugal*, &c. except *France*, by the Stat. 12 *Geo.* 1. *c.* 26.

Soc, (*Sax.*) Signifies Power, or Liberty to miniſter Juſtice and execute Laws; alſo the Circuit or Territory wherein ſuch Power is exerciſed: Whence our Law *Latin* Word *Soca* is uſed for a Seigniory or Lordſhip enfranchiſed by the King, with the Liberty of holding or keeping a Court of his *Sockmen*: And this Kind of Liberty continues in divers Parts of *England* to this Day, and is known by the Names of *Soke* and *Soken*. Bract. lib. 3. Lamb. —— *Nullus* Socman *habet impune peccandi*; *i. e.* None hath Liberty of Sinning without Puniſhment. *Leg. Hen.* 1.

Socage, (*Socagium a Soca*, a Plough) A Tenure by which Tenants held their Lands, to plough the Land of their Lords with their own Ploughs, and do other inferior Services of Husbandry at their own Charge: Which ſlaviſh Tenure was afterwards, by the mutual Agreement of Lord and Tenant, turn'd into the Payment of a Sum of Money yearly, and from thence it was called *Liberum Socagium*; whereas the other was term'd *Villanum Socagium*. Bract. lib. 2. cap. 35. *Free Socage* was a Tenure of Freehold by a certain Rent for all Services, and to pay upon the Death of the Anceſtor a double Rent for a Relief, and to be free from Wardſhip, &c. And *Socage* was a Tenure of ſo large an Extent, that *Littleton* tells us, all the Lands in *England*, which were not held in *Knights Service*, were held in *Socage*: It ſeems the Land was divided between theſe two Tenures; and as they were of different Natures, ſo the Deſcent of theſe Lands was in a different Manner; for the Lands held in Knights Service deſcended to the eldeſt Son; but thoſe held *in Villano Socagio*, equally among all the Sons; and if there was but one Meſſuage, the eldeſt Son was to have it, paying the reſt of the Value, &c. *Litt.* 117. When the Tenant holdeth of the Lord by certain Service, for all manner of Services, it is *Socage*; if a Man holds by Fealty only, ſuch Service is Tenure in *Socage*: And Tenure by *Petit Serjeanty*, and in *Burgage*, are but *Socage* Tenures in Effect: But *Grand Serjeanty*, holden of the King, and *Frankalmoign*, which is a Spiritual Service, is not in *Socage*. *Litt.* 117, 118, 160. 1 *Inſt.* 86. The Tenure of *Free Socage* is likewiſe called *Common Socage*: And all Tenures are adjudged and taken to be for ever turned into *Free and Common Socage*. Stat. 12 Car. 2. cap. 24.

Socagers, Were thoſe Tenants whoſe Tenure was called *Socage*; otherwiſe ſtiled *Sockmen*.

Socmen, **Sokemen**, (*Socmanni*) Are ſuch Tenants as hold their Lands and Tenements in *Socage*; but the Tenants in *Antient Demeſne* ſeem moſt properly to be called *Socmans*. F. N. B. 14. Briton, cap. 66. After the Conqueſt, the *Socmanni* or *Sokemanni*, often mentioned in *Domeſday*, were Tenants who held by no ſervile Tenure, but commonly paid their Rent to the Lord as a *Soke* or Sign of Freedom; though they were ſometimes obliged to cuſtomary Duties for the Service and Honour of their Lord. *Spelm. of Feuds, cap.* 7.

Socna, (Sax. *Socne*) A Privilege, Liberty, or Franchiſe. *Chart. Canut. Reg.*

Socome, Signifieth a Cuſtom of grinding Corn at the Lord's Mill; and *Bond Socome* is where the Tenants are bound to it. *Blount.*

Sodomy, The Crime of, and how puniſhed, ſee *Buggery*.

Soke, *Significat Libertatem Curiæ Tenentium quam* Socam *appellamus*. Fleta, lib. 1. cap. 47. Stat. 32 H. 8. cap. 15.

Soke-reeve, The Lord's Rent-gatherer in the *Soke* or *Soken*. Fleta.

Solarium, A *Sollar*, upper Room, or Garret: *Unum* Solarium *vocat'* a Loft. *Chart. Antiq.*

Soldiers. The *Military State* of *England* includes the *Soldiery* by Land and Sea; and it is againſt our ancient Law to keep up an Army of *Soldiers* in the Time of Peace. In Time of War particular Orders are made for the Order and Diſcipline of Officers and *Soldiers*, which are to be conſulted upon all Emergencies; and therefore we are not to expect many ſtanding and perpetual Laws on that Account. *Wood's Inſt.* 45. The chief Statutes relating to the Army, and their Contents, are as follow, *viz.* By 18 *H.* 6. *Soldiers* retained, departing from their Colours, without Licence, are guilty of Felony. The 7 *H.* 7. *c.* 1. and 3 *H.* 8. *c.* 5. enact, That if a Captain ſhall not have the whole Number of his *Soldiers*, or not pay them their due Wages, within ſix Days after he hath received it, he ſhall forfeit all his Goods and Chattels, and ſuffer Impriſonment. By the 4 & 5 *Ph.* & *M.* *c.* 3. If any Perſon being commanded to muſter, doth abſent himſelf (having no lawful Excuſe) he ſhall ſuffer ten Days Impriſonment, or pay a Fine of 40 *s.* And if any one authorized to levy or muſter *Soldiers*, ſhall take any Reward to diſcharge or ſpare any from the ſaid Service, he ſhall forfeit ten Times as much as he ſhall take, &c. The Stat. 1 *Jac.* 1. *c.* 4. ordains, That if any Perſon go beyond Sea, to ſerve any foreign Prince, as a *Soldier*, and he do not take the Oath of Allegiance before he goes, it is Felony; and if he is a Gentleman or Officer, that is going to ſerve a foreign Prince, he is to be bound with two Sureties not to be reconciled to the See of *Rome*, &c. or it will be Felony. By 31 *Car.* 2. *c.* 1.

no *Soldiers* ſhall be quartered on any Perſons without their Conſent; and Inhabitants of Places may refuſe to quarter any *Soldier*, notwithſtanding any Order whatſoever. The 4 & 5 *W.* & *M.* &c. was made for puniſhing Mutiny and Deſertion, &c. And by 10 & 11 *W.* 3. Officers and *Soldiers* may exerciſe Trades. The 1, 4, 7, 9 & 10, &c. *Ann.* were made for puniſhing Mutiny and Deſertion of *Soldiers*, and falſe Muſters; and for better Payment of the Army and Quarters, &c. And the 2 & 3 *Ann.* gave Power to Juſtices of Pence to ſend Warrants for apprehending idle Perſons, and to deliver them to Officers to recruit the Army; and during the Wars 40 *s.* and 4 *l.* Advance-Money was given to *Soldiers* voluntarily liſting. By the 12 *Ann. c.* 11. liſting Men, or being inliſted for the Service of any foreign Prince as *Soldiers*, or procuring the ſame, without the King's Licence, is made High Treaſon. The 1 *Geo.* 1. *c.* 3. enacts, That every *Soldier* who ſhall cauſe a Mutiny, Deſert, &c. ſhall be puniſhed with Death, or otherwiſe by a Court Martial; and Perſons ſuſpected of Deſertion are to be taken up by Conſtables, for whom a Reward is ordered of 20 *s.* And concealing Deſerters, buying their Clothes, &c. incurs a Forfeiture of 5 *l.* Officers making falſe Certificates to excuſe the Abſence of *Soldiers* from Muſters, ſhall forfeit 50 *l.* and making falſe Muſters, be caſhiered and forfeit 100 *l.* Commiſſaries of the Forces are to give Notice to Mayors to be preſent at Muſters; and the Muſter-Rolls ſhall be ſigned by ſuch Mayors: *Soldiers* falſly muſtered ſhall be deemed liſted *Soldiers*; and Horſes lent to the Perſons ſo muſtered to be forfeited: If any Pay-maſter of the Army detains the Pay ordered for one Month; or any Officer ſhall refuſe to pay his *Soldiers*, they ſhall be diſcharged, and be liable to 100 *l.* Forfeiture: Officers receiving Subſiſtence-Money, are to give Notice to Inn keepers, and pay their Accounts; and Accounts ſhall be made up between the Pay-maſter General and Colonels of Regiments, &c. Conſtables ſhall quarter *Soldiers* in Inns, Ale-houſes, Victualling-houſes and thoſe ſelling Brandy, &c. by Retail, (Diſtillers excepted) and Officers taking Money for excuſing Quarterage, ſhall be caſhiered: Juſtices of Peace are to iſſue Warrants to Conſtables to provide Carriages for Baggage, where *Soldiers* are on the March, and Officers ſhall pay 1 *s. per* Mile for Waggons, and 9 *d.* for Carts; and forcing Horſes, &c. from the Owners, is liable to a Forfeiture of 5 *l.* *Soldiers* after three Years Service may demand their Diſcharges; and his Majeſty may eſtabliſh Articles of War, &c. By 1 *Geo.* 1. *c.* 34. no liſted *Soldier* is to be allowed to be abſent longer than twenty Days in ſix Months, by any Furlow, except ſign'd by the Officer in Chief; and *Soldiers* in *London* ſhall have no Protection unleſs they conſtantly do Duty: Perſuading and procuring *Soldiers* to deſert, incurs a Penalty of 40 *l.* and not paying it, the Offenders are to be committed to Gaol for ſix Months, and be ſet on the Pillory; Papiſts being *Soldiers* are to renounce their Religion, or be diſabled. The 3 *Geo.* 1. *c.* 2. and 4 *Geo.* 1. *c.* 4. ordain, That no *Soldier* ſhall be taken out of the Service, by any Proceſs, except it be for ſome criminal Matter, or for a real Debt amounting to 10 *l.* of which Affidavit is to be made; and if any *Soldier* be otherwiſe arreſted, a Juſtice of Peace by Warrant under his Hand ſhall diſcharge him: Yet the Plaintiff may file an Appearance, in an Action of Debt, upon Notice thereof given, and proceed to Judgment and Execution, other than againſt the Body of ſuch *Soldier*. By the 5 *Geo.* 1. *c.* 5. when an *Officer* or *Soldier* is accuſed of a capital Crime, the commanding Officer, on Application made to him, is to uſe his utmoſt Endeavours to deliver over the Criminal to the Civil Magiſtrate, and he is not to be try'd by a Court Martial in eight Days; within which Time, Application is to be made: But after that the Criminal may be try'd by a Court Martial. *Officers* of reduced Regiments are not entitled to *Half-pay*, if they did not actual Service, or having any Place of Profit, being under 16 Years old, &c. Stat. 7 *Geo.* 1. *c.* 6. Fictitious Names allowed by his Majeſty's Order, for Maintenance of Widows of Officers killed in the late War, &c. not to be a falſe Muſter; and the Pay-maſter General may make uſual Deductions for Cloathing, and 12 *d. per* Pound out of Officers and *Soldiers* Pay, to be diſpoſed of as the King thinks fit. Stat. 11 *Geo.* 1. *c.* 6. No Juſtice of Peace having a military Office, ſhall be concerned in Quartering of *Soldiers* in the Company, &c. under his Command: And Victuallers refuſing *Soldiers* Quartered, or Conſtables receiving Reward to excuſe them, are to forfeit not above 5 *l.* nor under 4 *s.* 3 *Geo.* 2. *c.* 2. By ſubſequent Acts, no Juſtice, Conſtable, &c. may direct more Billets for Quartering *Soldiers* than there are effective Men: And if any *Soldier* be Quartered on a private Houſe, without the Owner's Conſent, he may have his Remedy at Law; and Officers or Conſtables that quarter Wives, Children, or Maid-Servants of any Officer or *Soldier*, in ſuch Manner; the Officer ſhall be caſhiered, and Conſtable forfeit 20 *s.* Likewiſe where Perſons are grieved in Billeting *Soldiers*, by Conſtables, they may complain to the Juſtices of Peace, who ſhall order ſo many to be removed, as they ſee Cauſe. 13 *Geo.* 2. *c.* 10. It is alſo enacted, when Orders are iſſued to Quarter *Soldiers* in *Weſtminſter*, the High Conſtable there ſhall deliver his Precepts to the Petty Conſtables, &c. to Billet them properly in their Diſtricts, who muſt give, on Oath to the Juſtices in Seſſions, Liſts of the Houſes obliged to receive the Officers and *Soldiers*; alſo the Number quartered on each Houſe, &c. and if the Liſts are defective, ſhall forfeit 5 *l.* Officers or *Soldiers*, if they deſtroy Game on their Marches, or Poultry or Fiſh, being convicted before a Juſtice, are to forfeit 5 *l.* an Officer, and 20 *s.* a *Soldier*. *Ibid.* When any Perſon is inliſted a *Soldier*, he ſhall within four Days be carried before the next Juſtice of Peace, or chief Magiſtrate of a Town, and declare that he did it voluntarily; upon which the Juſtice is to certify it, and give him the Oath of Fidelity, &c. But if then he diſſents, on returning the Money received, and 20 *s.* for Charges, he ſhall be diſcharged: And military Officers acting contrary to this Act, to incur the like Penalty as for making a falſe Muſter. 8 *Geo.* 2. *c.* 2. If a Perſon abſconds, or refuſes to go before a Juſtice, in order to declare his Aſſent or Diſſent; he ſhall be deemed a liſted *Soldier*, and may be proceeded againſt as if he had taken his Oath directed by the Articles of War. Stat. 10 *Geo.* 2. And in caſe any Subject here or in *Ireland*, ſhall liſt or enter himſelf, or any one procure him, to go beyond the Seas, with an Intent to be inliſted as a *Soldier*, to ſerve any foreign Prince or State, without Leave of his Majeſty, he ſhall be guilty of Felony; but if ſuch Perſon liſted, in 14 Days after diſcover upon Oath before any Juſtice, &c. the Perſon by whom he was drawn in, ſo as he may be apprehended and convicted, the Party diſcovering is to be indemnified. 9 *Geo.* 2. *c.* 30. His Majeſty may form Articles of War, and conſtitute Courts Martial as well in *Great Britain* and *Ireland*, as in the Iſlands of *Minorca*, *Gibraltar*, &c. And if any Officer or *Soldier* deſert his Majeſty's Service beyond Sea, and eſcape into this Realm, or *Ireland*, he ſhall be tried here, as if the Offence had been committed within this Realm. Stat. 11 *Geo* 2. *c.* 2. and 15 *Geo.* 2. *cap.* 4. See *Court Martial*.

Solet & Debet, Words inſerted in Writs for Recovery of Rights, &c. Vide *Debet*.

Sole Tenant, (*Solus Tenens*) Is he that holds Land by his own Right only, without any other joined: And if a Man and his Wife hold Land for their

their Lives, with Remainder to their Son for Life; here the Man dying, the Lord ſhall not have a Heriot, becauſe he dies not *Sole Tenant.* Kitch. 134.

Solicitor, (*Solicitator*) A Perſon imployed to follow and take Care of Suits depending in *Courts of Law or Equity:* And *Solicitors* are within the late Statute, to be ſworn and admitted by the Judges, like unto Attornies, before they ſhall practice in our Courts; and Attornies may be admitted *Solicitors* in the Courts of Equity, *&c.* Stat. 2 *Geo.* 2. *c.* 23. There is alſo a *Solicitor General* to the King, who is a great Officer next the *Attorney General.* See *Attorney.*

Solidatum, Uſed in the *Neuter Gender* is taken for that abſolute Right or Property which a Man hath in any Thing. *Malmſb. Lib.* 1.

Solinus terræ, In the County of *Kent* is about One hundred and ſixty Acres: *In communi Terra Sancti* Martini *ſunt* 400 *Acr. & dim. quæ faciunt duos* Solinos *& dimid.* Domeſd.

Soller, Mentioned in Leaſes of Houſes in *London.* Vide *Solarium.*

Solvendo eſſe, Is a Term of Art, ſignifying that a Man hath wherewith to pay, or is a Perſon *ſolvent.*

Solvere pœnas, To pay the Penalty; or undergo the Puniſhment inflicted for Offences. 3 *Salk.* 32.

Solvit ad Diem, Is a Plea in Action of Debt on a Bond, Bill, *&c.* that the Money was *paid at the Day* limited. *Mod. Caſ.* 22. See *Payment.*

Solutione feodi Militis, & Burgen. Parliamenti, Are Writs whereby Knights of the Shire and Burgeſſes in Parliament might recover their ancient Allowance or Wages, if it were denied. 35 *H.* 8. *c.* 11.

Son Aſſault, Is a Juſtification in an Action of *Aſſault and Battery*; becauſe the Plaintiff made the firſt *Aſſault*, and what the Defendant did was in his own Defence. 2 *Lill Abr.* 523. But *Son Aſſault* cannot be pleaded by a Defendant for his outrageous Battery. *Ibid.*

Sontage, Was a Tax of forty Shillings laid upon every Knight's Fee, according to *Stow*, pag. 284.

Sope, A Duty granted on it for 32 Years, *&c.* And *Sope-makers* are to give Notice of the Time of making and working of *Sope* to Exciſe-Officers, on Pain of forfeiting 50 *l.* Stat. 10 *Ann. cap.* 19. and 11 *Geo.* 1. *c.* 30.

Sorcery, (*Sortilegium*) Witchcraft or Divination by Lots; which was made Felony by 1 *Jac.* 1. *c.* 12.

Sors, In Sums of Money lent upon *Uſury*, the *Principal* was anciently called *Sors*, to diſtinguiſh it from the *Intereſt.* Pryn's Collect. Tom. 2. pag. 161.

Sorus Accipiter, Is a *Sor* or *Soar-Hawk:* King *John* granted to *Robert de Hoſe*, Land in *Berton* of the Honour of *Nottingham*, to be held by the Service of Yielding the King yearly one *Soar-Hawk, &c.* Cartular. S. Edmund. MS.

Sothale, or **Sothail,** Is conceived to be miſtaken for *Scotale.* Bract. lib. 3.

Sothſaga, (From the Sax. *Sod*, i. e. *verum*, and *Saga*, *Teſtimonium*) An old Word which ſignifies Hiſtory, and all Hiſtories ſhould be true, or *true Sayings:* From hence we derive *Southſayer.*

Soveraign, Is a Chief, or ſupream Perſon, one higheſt of all; as a King, *&c.*

Sovereign, A Piece of Gold Coin, current at 22 *s.* in 1 *H.* 8. when by Indenture of the *Mint*, a Pound-weight of Gold of the old Standard, was to be coined into twenty four *Sovereigns.* In 34 *H.* 8. *Sovereigns* were coined at 20 *s.* a-piece, and Half *Sovereigns* at 10 *s.* But *Anno* 4 *Ed.* 6. the *Sovereign* of Gold paſs'd for 24 *s.* and in 6 *Ed.* 6. at 30 *s.*

Sound, Is a narrow Sea, as *Mare Balticum*, the *Sound*; and to *ſound* is to make Trial how many Fathom a Sea is deep. *Merch. Dict.*

Southampton. Any Man may pull down Wears, *&c.* in the Haven of *Southampton*, between *Calſhord* and *Redbridge*; and whoſoever levieth any other there, ſhall forfeit 100 *l.* Stat. 11 *H.* 7. *c.* 5. An Act was made for confirming ſome Part of the Charter granted to the Mayor, Bailiffs and Burgeſſes of *Southampton*, and for Relief of the Town. 4 *Jac.* 1. *c.* 10.

South-Sea Company, A Company of *Merchants* trading to the *South Sea.* They were incorporated, on lending the late Government ten Millions of Money, towards paying the Debts of the Army, *&c.* and may purchaſe Lands not exceeding 1000 *l. per Annum*; and beſides an Intereſt for the Money advanced the Government, 8000 *l.* a Year is to be paid them out of the Founds towards the Management of this Company: The Corporation ſhall have the ſole Trade from the River *Oroonoko* on the Eaſt Side of *America*, to the Southermoſt Part of *Terra del Fuego*, and from thence through the *South Sea*, &c. And the Company to be Owners of all Iſlands, Ports, *&c.* they can diſcover. Stat. 9 *Ann. cap.* 21. See 1, 6, 7 *&* 9 *Geo.* 1. 6 *Geo.* 2, *&c.* And Vide *Merchants.*

Southwark, King *Edward* 3d by Charter granted to the City of *London*, the Village of *Southwark*, paying at the Excheqner the Farms therefore due: Alſo the Manor and *Borough* were granted; except the Capital Meſſuage called *Southwark-place*, by Chart. *Ed* 6.

Sowlegrove, Is an old Name of the Month of *February*, ſo called by the Inhabitants of *South Wales.*

Sowne, From the Fr. *Souvenue, i. e.* remembred; is a Word of Art uſed in the *Exchequer*, where *Eſtreats that* Sowne *not*, are thoſe as the Sheriff cannot levy, *viz.* Such Eſtreats and Caſualties as are not to be remembred, and run not in Demand; and *Eſtreats that Sowne*, are ſuch as he may gather and are leviable. Stat. 4 *Hen.* 5. *cap.* 7. 4 *Inſt.* 107.

Spadarius, for *Spatharius*, Is a *Sword-bearer.* Blount.

Spatæ Placitum, A Court for the Speedy Execution of Juſtice on military Delinquents. *Brad. Append. Hiſt. Engl.* 45.

Spatularia, Is numbered among the Holy Veſtments, *&c.* in *Mon. Angl. Tom.* 3. *pag.* 331.

Speaker of the Parliament, The Chief Officer in that High and Auguſt Court, who is as it were the common Mouth of the Reſt: And as that Honourable Aſſembly contains two Houſes, the *Lords* and *Commons*; ſo there are two *Speakers*, the one term'd the *Lord Speaker of the Houſe of Peers*, and is moſt commonly the Lord Chancellor or Lord Keeper of the Great Seal of *England*; the other (being a Member of that Houſe) is called *The Speaker of the Houſe of Commons*, both whoſe Duties conſiſt in managing Debates, putting Queſtions, and thereby collecting the Senſe of the Houſes, the paſſing of Bills, ſeeing the Orders of each Houſe obſerved, *&c.* See *Parliament.*

Special Matter in Evidence, Is what is ſpecially alledged, and comes not into the *General Iſſue.*

Specialty, (*Specialitas*) A Bond, Bill, or ſuch like Inſtrument; a Writing or Deed, under the Hand and Seal of the Parties. *Litt.*

Speleum, The Cell of a Monk, mentioned in *Malmſb. lib.* 3.

Spices. Licences are to be granted for Importing of *Spices*; and the Cuſtom Duties thereon are leſſened, by Stat. 6 *&* 8 *Geo.* 1.

Spigurnel, (*Spigurnellus*) Is the Sealer of the King's Writs, from the Sax. *Spicurran*, to ſhut up or incloſe: But the following Original has been given of this Word, that *Galfridus Spigurnel* being by King *Hen.* 3. appointed to be Sealer of his Writs, was the firſt in that Office; and therefore in After-times the Perſons that enjoy'd the Office were called *Spigurnels. Pat.* 11 *H.* 3. 4 *Edw.* 1. This Office was alſo known by the Name of *Spicurnantia* or *Eſpicurnantia*; and *Oliver de Standford* held Lands in *Nettlebed in Com. Oxon. per Serjeantiam* Spicurnantiæ *in Cancellaria Domini Regis.* 27 Ed. 1.

Spinacium, A Sort of Veſſel which we now call a *Pinnace.* Knight Ann. 1338.

Spindulæ, Were thoſe three Golden Pins which were uſed about the Archiepiſcopal Pall; and from thence *Spindulatus* ſignified to be adorned with the Pall. *Du Cange.*

Spinſter, Is an Addition in Law-Proceedings uſually given to all unmarried Women; and it is a good Addition for the Eſtate and Degree of a Woman. But it is ſaid a Gentlewoman is to be named *Generoſa*, and not *Spinſter*, or will be ill. *Dyer* 46, 88. 2 *Co. Inſt.* 668.

Spiritual Courts, Have Juriſdiction in Cauſes matrimonial, and for Probate of Wills of Goods, and granting Adminiſtrations; and for Tithes, where there is no *Modus*; in Caſes of Defamation, *&c.* Their Juriſdictions are ſet forth in the Stat. *Articuli Cleri*, 9 *E.* 2. And in the Stat. *de Circumſpecte agatis*, the 23 *H.* 8. *c.* 9, *&c.* See *Courts Eccleſiaſtical.*

Spirituality, As containing the *Clergy* of *England*, Statutes made for preſerving their Privileges, *&c.* 4 *H.* 4. *c.* 2. *&* 3.

Spiritualities of a Biſhop, Are thoſe Profits which he receives as a *Biſhop*, and not as a Baron of Parliament; ſuch as the Duties of his Viſitation, Preſtation-Money, his Benefit growing from Ordinations and Inſtitutions of Prieſts, the Income of his Juriſdiction, *&c. Staundf.* P. C. 132. The Archbiſhop of the Province is *Guardian of the Spiritualities* when a See is vacant, and hath the Juriſdiction of Courts, *&c.* Vide *Cuſtos Spiritualitatis.*

Spittle-Houſe, Is a Corruption from *Hoſpital*, and ſignifies the ſame Thing; or it may be taken from the Teuton. *Spital*, an Hoſpital or Alms-houſe: It is mentioned in the 15 *Car.* 2. *c.* 9.

Spoliation, (*Spoliatio*) A Writ or Suit for the Fruits of a Church, or the Church itſelf, to be ſued in the Spiritual Court, and not in the Temporal, that lies for one Incumbent againſt another, where they both claim by one Patron, and the Right of Patronage doth not come in Queſtion: As if a Parſon be created a Biſhop, and hath Diſpenſation to hold his Benefice, and afterwards the Patron preſents another Incumbent, who is inſtituted and inducted; now the Biſhop may have a *Spoliation* in the Spiritual Court againſt the new Incumbent, becauſe they both claim by one Patron, and the Right of Patronage doth not come in Debate; and for that the other Incumbent came to the Poſſeſſion of the Benefice, by the Courſe of the Spiritual Law, *viz.* by Inſtitution and Induction; for otherwiſe, if he be not inſtituted and inducted, a *Spoliation* lies not againſt him, but Writ of Treſpaſs, or Aſſiſe of *Novel Diſſeiſin.* F. *N.* B. 36, 37. So it is where a Parſon that hath a Plurality accepts of another Benefice, by Reaſon whereof the Patron preſents another Clerk, who is inſtituted and inducted; in this Caſe one of them may have *Spoliation* againſt the other, and then ſhall come in Queſtion, whether he hath a ſufficient Plurality, or not: And it is the ſame of Deprivation, *&c. Terms de Ley* 547.

Sponte oblata, A free Gift or Preſent to the King anciently ſo called.

Sportula, Signifies Gifts and Gratuities, forbidden to be received by the Clergy: And St. *Cyprian* calls thoſe Clergymen *Sportulantes Fratres*, who accepted ſuch Gifts for their Maintenance. St. *Cyp. Epiſt.* 70, 71.

Spouſals, The Betrothing of a Man or Woman before full Marriage. *Litt. Dict.* See *Eſpouſals.*

Spouſe-breach, Is Adultery oppoſed to ſimple Fornication: The Lady *Katherine* was accuſed to the King of incontinent Living before her Marriage, and of *Spouſe-breach* after her Marriage. *Fox Act. Mon. Vol.* 2. *pag.* 540.

Spur-Royal, (*Spurarium aureum*) An ancient Gold Coin. —— *Pro hac Recognitione dedit* Johan. H. *unum* Spurarium aureum, *&c. Paroch. Antiq.* 321.

Spullers of Yarn, Are Perſons that work at the *Spolé* or Wheel; or Triers of *Yarn* to ſee that it be well ſpun, and fit for the Loom. 1 *Mar. c.* 7.

Squalley, Is a Note of Faultineſs in the Making of Cloth. 43 *Eliz. c.* 10. See *Rewey.*

Squibs, The Making, Selling, or Expoſing to Sale of *Squibs*, Serpents and other Fire-works; or Throwing, Caſting or Firing any *Squibs*, *&c.* is declared a common Nuſance: And ſuch Perſons who make or ſell *Squibs*, ſhall forfeit 5 *l.* Alſo the Perſons throwing them, or aſſiſting therein, incur a Forfeiture of 20 *s.* leviable by a Juſtice of Peace's Warrant; and not being paid, the Offender is to be ſent to the Houſe of Correction for any Time not exceeding a Month. Stat. 9 *&* 10 *W.* 3. *c.* 7. If any Perſons ſhall permit *Squibs* to be caſt or thrown from out of their Houſes into the Street, they ſhall forfeit 20 *s.* to be levied by Diſtreſs and Sale of Goods, *&c.*

Stabbing Of Perſons is made Felony without Benefit of Clergy, and puniſhed as Murder, by Stat. 1 *Jac.* 1. *c.* 8. See *Manſlaughter.*

Stabilia, A Writ called by that Name, on a Cuſtom in *Normandy*, that where a Man in Power claimed Lands in the Poſſeſſion of an Inferior, he petitioned the Prince that it might be put into his Hands 'till the Right was decided; whereupon he had this Writ, *Breve de Stabilia:* To this a Charter of King *Hen.* 1. alludes in *Pryn's Lib. Angl. Tom.* 1. *pag.* 1204.

Stabilitio venationis, The driving Deer to a *Stand. Omnes Burgenſes de* B. *debent invenire unum hominem ter per Annum ad* Stabilamentum *pro* venatione *capienda, &c. Lib. niger Heref.* And, *In* Venatione *ſi quis ad* Stabilitatem *non venit, i. e.* He who doth not come to the Place where he ought to ſtand. *Leg. H.* 1. *c.* 17.

Stable-ſtand, (*Stabilis ſtatio, vel Stans in Stabulo*) Is when a Man is found at his *Standing* in the Foreſt, with a Croſs or Long-bow bent, ready to ſhoot at any Deer; or ſtanding cloſe by a Tree, with Greyhounds in a Leaſh, ready to ſlip: And it is one of the four Evidences or Preſumptions, whereby a Perſon is convicted of intending to ſteal the King's Deer in the Foreſt; the other three are *Dog-draw*, *Back-bear*, and *Bloody hand.* Manwood, par. 2. cap. 18.

Stack, A Quantity of Wood three Foot long, as many Feet broad, and 12 Feet high. *Merch. Dict.*

Stadium, Is accounted a Furlong of Land; which is the eighth Part of a Mile. *Domeſday.*

Staff-herding, Is a Right to follow Cattle within a Foreſt: And where Perſons claim Common in any Foreſt, it muſt be inquired by the Miniſters whether they uſe *Staff-herding*, for it is not allowable of common Right; becauſe by that Means the Deer which would otherwiſe come and feed with the Cattle, are frighted away, and the Keeper or Follower will drive the Cattle into the beſt Grounds, ſo that the Deer ſhall only have their Leavings: Therefore if any Man who hath Right of Common, under Colour thereof uſe *Staff-herding*, it is a Cauſe of Seiſing his Common till he pay a Fine for the Abuſe. 1 *Jon. Rep.* 282.

Stagiarius, Signifies a Reſident; as J. B. *Canonicus &* Stagiarius *Sancti* Pauli, is a Canon Reſidentiary of St. *Paul*'s Church, *Hiſt. Eccl. S.* Paul. But this Diſtinction was made between *Reſidentiarius*, and *Stagiarius:* Every Canon inſtalled to the Privileges and Profits of Reſidence, was *Reſidentiarius*; and while he actually kept ſuch ſtated Reſidence, he was *Stagiarius. Statut. Eccleſ.* Paulin. *MS.* 44. *Stagiaria*, the Reſidence to which he was obliged; *Stagiari*, to keep Reſidence. Hence an old *Stager*.

Stagnes, (*Stagna*) Are Pools of ſtanding Water. 5 *Eliz. c.* 21. A Pool conſiſts of Water and Land; and therefore by the Name of *Stagnum*, the Water and Land ſhall paſs alſo. *Inſt* 5.

Stal-boat, Is a Kind of Fiſhing-boat, mentioned in the 27 *Eliz. c.* 21.

Stalkers, The going gently Step by Step, to take *Game:* None ſhall *ſtalk* with Buſh or Beaſt to any Deer, except in his own Foreſt or Park, under the Penalty of 10*l.* Stat. 19 *H.* 7. *c.* 11.

Stalkers, Certain Fiſhing-nets, by the Statute 13 *R.* 2. *c.* 20.

Stallage, (*Stallagium*, from the Sax. *Stal.* i e. *Stabulum*, *Statio*) The Liberty or Right of pitching and erecting *Stalls* in Fairs or Markets; or the Money paid for the ſame. *Kennet's Gloſſ.*

Stallarius, Is mentioned in our Hiſtorians, and ſignifies *Præfectum Stabuli*; it was the ſame Officer which we now call Maſter of the Horſe: —— Eadnothus *qui fuit* Haroldi *Regis* Stallarius, *&c. Spelm.* Sometimes it hath been uſed for him who hath a *Stall* in a Market. *Fleta*, *lib.* 4. *c.* 28.

Stamp-Duties. There are certain Duties impoſed by Parliament on all Vellum, Parchment and Paper, whereon Deeds, Grants, Commiſſions, or any Writings, or Proceſs in the Law are ingroſſed or written; which Duties are as follow, *viz.* For all Letters Patent, Grants of Offices, Preſentations, Diſpenſations, Admittances of Fellows of the College of Phyſicians, and of Attornies, Pardons of Crimes, *&c.* 40 *s.* All Conveyances Inrolled, Writs of Covenant for levying Fines, *Habeas Corpus's*, *&c.* Decrees in Chancery, Licences of Marriage, Probates of Wills, *&c.* 5 *s.* Warrants under the Sign Manual, Commiſſions out of Eccleſiaſtical Courts, Judgments, *&c.* 2 *s.* 6 *d.* For Admiſſions into any Company, Bills, Anſwers, *&c.* in Chancery 1 *s.* All Parchment and Paper, upon which common Deeds, Bonds, Writs, *&c.* are writ 6 *d.* And for every Sheet of any Declaration, or Pleading, *&c.* 1 *d.* Stat. 5 & 6 *W.* & *M. c.* 21. And by 9 & 10 *W.* 3. and 12 *Ann.* Theſe Duties are *doubled*, and *trebled*: The common *Stamp* is treble Six-penny, *&c.* Commiſſioners are appointed by Virtue of theſe Acts, to provide *Stamps* or Marks; and inferior Officers for the *ſtamping* of Parchment and Paper, and for Levying and Collecting the Duties: If any Commiſſioner or Officer, ſhall fix the Mark or *Stamp* to Parchment or Paper before the Duty thereon is paid or ſecured, he ſhall forfeit 100 *l.* And Perſons Ingroſſing or Writing upon any Paper, *&c.* any Thing for which the ſame is charged with the Duty, before it ſhall be *ſtamp'd*; or Writing upon any Paper or Parchment mark'd or *ſtamp'd*, for any lower Duty than what is required, ſhall incur a Forfeiture of 5 *l.* and no Deed or Writing ſhall be good in Law till the 5 *l.* is paid, and the ſame is *ſtamped.* Vide *Printing.*

Stand, Is a Weight from Two hundred and a Half to three hundred of Pitch. *Merch. Dict.*

Standard, (From the Fr. *Eſtandart*, *&c. Signum*, *Vexillum*) In the general Signification, is an *Enſign in War.* And it is uſed for the *ſtanding Meaſure* of the King, to the Scantling whereof all the Meaſures in the Land are or ought to be framed, by the Clerks of Markets, Aulnagers or other Officers, according to *Magna Charta* and divers other Statutes: And it is not without good Reaſon called a *Standard*, becauſe it ſtandeth conſtant and immoveable, having all Meaſures coming towards it for their Conformity; even as Soldiers in the Field have their *Standard* or Colours, for their Direction in their March, *&c.* to repair to. *Britton*, *cap.* 30. There is a *Standard* of *Money*; directing what Quantity of fine Silver and Gold, and how much Allay, are to be contained in Coin of old *Sterling*, *&c.* And *Standard* of *Plate* and Siver Manufactures. Stat. 6 *Geo.* 1. *c.* 11. See *Allay.*

Standardum Londini. *Vobis Mandamus quod* Standardum Londini *de hujuſmodi Menſuris diligenter aſſiſari & probari, ac alias Menſuras per dictum* Standardum *fieri ad ſingulos Comitatus Regni*, *&c.* Clauſ. 14 Edw. 2.

Standardus, True *Standard*, or legal Weight or Meaſure. *Cartular. S. Edmund. MS.* 268.

Standel, A young ſtore *Oak-tree*, which in Time may make Timber; and twelve ſuch young Trees are to be left ſtanding in every Acre of Wood, at the Felling thereof, by Stat. 35 *H.* 8.

Stanes. For maintaining the Bridge of *Stanes*, and *Egham* Cauſeway, a certain Toll is appointed, by an old Statute. 1 *H.* 8. *c.* 9. There is a *Turnpike* now erected croſs this Bridge; and Tolls are taken for all Coaches, Carts, Horſes, Cattle, *&c.* going over, and Lighters or Veſſels paſſing under the ſaid Bridge; but the Inhabitants of *Stanes* are free for their Horſes, *&c.* Stat. 13 *Geo.* 2. *cap.* 25.

Stanlaw, A Word anciently uſed for a Stony Hill. *Domeſd.*

Stannaries, (*Stannaria*, from the Lat. *Stannum*, *i. e.* Tin) Are the Mines and Works where *Tin* Metal is got and purified; as in *Cornwall* and *Devonſhire*, *&c. Camden Brit.* 199. The Tinners are called *Stannary-men*; who had great Liberties granted them by King *Edw.* 1. before they were abridg'd by the Stat. 50 *Ed.* 3. by which Statute the Privileges of the Tinners are limited and expounded; and the Juriſdiction of the *Stannary-Courts* is ſettled by the 16 & 17 *Car.* 1. *c.* 15. All Labourers in and about the *Stannaries*, are to have the Privilege of the *Stannary-Court* while they work there; and may not be impleaded in any other Court, for any Cauſe ariſing within the *Stannaries*; except for Pleas of Land, Life or Member: The Juriſdiction of this Court is guided by Special Laws and Cuſtoms, and by Preſcriptions; and no Writ of Error lieth upon a Judgment in the *Stannary Court*, but it ſhall be reverſed, where wrong, by Appeal to the Steward of the Court where the Matter lieth; or from the Steward to the Deputy-Warden of the *Stannaries*; from the Under-Warden to the Lord Warden of the *Stannaries*; and from him to the King's Privy Council. 4 *Inſt.* 230, 232. *Plowd.* 327. 12 *Rep.* 9. 1 *Roll. Abr.* 745. Tranſitory Actions between Tinner and Tinner, *&c.* though not concerning the *Stannaries*, or ariſing therein, if the Defendant be found within the *Stannaries*, may be brought into theſe Courts, or at Common Law; but if one Party alone is a Tinner, ſuch tranſitory Actions which concern not the *Stannaries*, nor ariſe therein, cannot be brought in the *Stannary Courts.* 4 Inſt. 231.

Stannarius, A Pewterer or Dealer in Tin; of or belonging to Tin. *Litt. Dict.*

Staple, (*Stapulum*) Comes from the Fr. *Eſtape*, i. e. *Forum Vinarium*, a Market or *Staple* for Wines, which are the principal Commodity of *France*; or rather from the Germ. *Stapulen*, which ſignifieth to gather, or heap any Thing together: In an old *French* Book, it is written *à* Calais Eſtape *de la Laine*, *&c. i. e.* The *Staple* for Wool: And with us, it hath been a *Publick Mart*, appointed by Law to be kept at the following Places, *viz. Weſtminſter*, *York*, *Lincoln*, *New Caſtle*, *Norwich*, *Canterbury*, *Chicheſter*, *Wincheſter*, *Exeter*, and *Briſtol*, *&c.* A *Staple Court* is held at the *Wool-Staple* in *Weſtminſter*, the Bounds whereof begin at *Temple-Bar* and reach to *Tuthill*;

in other Cities and Towns, the Bounds are within the Walls; and where there are no Walls, they extend thro' all the Towns: And the Court of the Mayor of the *Staple* is governed by the Law Merchant in a ſummary Way, which is the *Law of the Staple.* 4 *Inſt.* 237. See Stat. 27 *Ed* 3. The *Staple Goods of England* are Wool, Woolfels, Leather, Lead, Tin, Cloth, Butter, Cheeſe, &c. as appears by the State 14 *R.* 2. *c.* 1. Tho' ſome allow only the five firſt; and yet of late *Staple Goods* are generally underſtood to be ſuch as are vendible, and not ſubject to periſh, of any Kind. Vide *Statute Staple.*

Star, (*Starrum,* a Contraction from the Hebr. *Shetar,* a Deed or Contract) All the Deeds, Obligations, &c. of the *Jews* were anciently called *Stars,* and writ for the moſt Part in *Hebrew* alone, or in *Hebrew* or *Latin*; one of which yet remains in the Treaſury of the *Exchequer,* written in *Hebrew,* without Points, the Subſtance whereof is expreſſed in *Latin* juſt under it, like an *Engliſh* Condition under a *Latin* Obligation: This bears Date in the Reign of King *John*; and many *Stars,* as well of Grant and Releaſe, as Obligatory, and by Way of Mortgage, are pleaded and recited at large in the Plea-Rolls. *Paſch* 9. *Edw.* 1.

Star-Chamber, (*Camera Stellata, Chambre de Eſtoiels*) Was a Chamber at *Weſtminſter* ſo called, becauſe at firſt all the Roof thereof was decked with gilded *Stars.* Sir *Tho. Smith de Rep. Angl. lib.* 2. *c.* 2. It is written the *ſtarred Chamber.* Stat. 25 *H.* 8. *c.* 1. There was formerly a high *Court* call'd by this Name; long ſince taken away. 3 *H.* 7. 21 *H.* 8. 17 *Car.* 1. See *Court of Star-Chamber.*

Starch and **Starch-Powder.** By a late Act, *Starch-makers* are to make uſe of ſquare, or oblong Boxes only, for boxing and draining green *Starch,* before it is dried in the Stove, under the Penalty of 10 *l.* and ſhall give Notice to the Officers for the Duties, when they box and dry their *Starch*; and not remove the *Starch* made before it is weighed, and an Account taken thereof, on Pain of forfeiting 50 *l* Officers may ſearch for *Starch* concealed by Virtue of a Juſtice's Warrant, and ſeiſe the ſame, &c. A Penalty is likewiſe inflicted on Makers of Hair-Powder, Perfumers, Peruke-makers, Barbers, &c. mixing any Powder of Alabaſter, Chalk, Lime, &c. with *Starch-Powder,* or making Hair-Powder of any other Materials than Powder of *Starch.* And Makers of Powder for Hair, are to make Entries of their Workhouſes at the Office of *Exciſe*; and any Officer may enter Warehouſes and Shops, and examine the Powder, which being mix'd ſhall be forfeited, and the Sum of 20 *l.* Stat. 4 *Geo.* 2. *c.* 14.

Staticks, (*Statice, Scientia Ponderum*) Knowledge of Weights and Meaſures; or the Art of Balancing or Weighing in Scales. *Merch. Dict.*

Stationarius, (From *Statio,* Reſidence) Is the ſame with *Stagiarius.*

Statuarium, A Tomb adorned with Statues.—— *Ac ejus Sacro Corpore terræ illic inter multa alia Romana* Statuaria *commendato,* &c. Ingulph. 853.

Status de Manerio, The State of a Manor: All the Tenants within the Manor, met in the Court of their Lord, to do their cuſtomary Suit, and enjoy their Rights and Uſages; which was termed *omnis* Status de Manerio. *Paroch. Antiq.* 456.

Statute, (*Statutum*) Has divers Significations: *Firſt,* It ſignifies an Act of Parliament made by the King, and the three Eſtates of the Realm; and *Secondly,* it is a ſhort Writing called a *Statute-Merchant,* or *Statute-Staple,* which are in the Nature of Bonds, &c. and called *Statutes,* as they are made according to the Form expreſly provided in certain *Statutes.* 5 *H.* 4. *c.* 12. To *Statutes* enacted in Parliament, there muſt be the Aſſent of the King, Lords, and Commons, without which there can be no good Act of Parliament; but there are many Acts in Force, though theſe three Aſſents are not mentioned therein, as *Dominus Rex* ſtatuit *in Parliamento,* and *Dominus Rex in Parliamento ſuo* Statuta *edit,* and *de Communi Concilio* Statuit, &c. *Plowd.* 79. 2 *Bulſt.* 186. And Sir *Edw. Coke* ſays, that ſeveral *Statutes* are penned like Charters in the King's Name only; though they were made by lawful Authority. 4 *Inſt.* 25. Before the Invention of Printing, all *Statutes* were proclaimed by the Sheriff in every County, by Virtue of the King's Writ. 2 *Inſt.* 526, 644. Some *Statutes* are *General,* and ſome are *Special:* And they are called General from the *Genus,* and Special from the *Species*; as for Inſtance; The whole Body of the Spiritualty is the Genus, but a Biſhop, Dean, and Chapter, &c. is the Species: Therefore *Statutes* which concern all the Clergy, are general Laws; but thoſe which concern Biſhops only are ſpecial. 4 *Rep.* 76. The *Statute* 21 *H.* 8. *c.* 13. which makes the Acceptance of a ſecond Living by Clergymen, an Avoidance of the Firſt, is a general Law, becauſe it concerns all Spiritual Perſons. 5 *Rep.* All *Statutes* concerning Myſteries and Trades in general, are general or publick Acts; though an Act which relates to one particular Trade is a private *Statute.* *Dyer* 75. A *Statute* which concerns the King is a publick Act; and yet the Stat. 23 *H.* 8. concerning Sheriffs, &c. is a Private Act. *Plowd.* 38. *Dyer* 119. 'Tis a Rule in Law, that the Courts at *Weſtminſter* ought to take Notice of a General *Statute,* without Pleading it; but they are not bound to take Notice of particular or private *Statutes* unleſs they are pleaded. 1 *Inſt.* 98. *Statutes* againſt the Power of ſubſequent Parliaments are not binding; notwithſtanding the *Statute* 42 *Ed.* 3. *c.* 3. declares that any *Statute* made againſt *Magna Charta* ſhall be void: And this is evident, ſeeing many Parts of *Magna Charta* have been repealed and altered by ſubſequent Acts. *Read. on Statut. Vol.* 4. *pag.* 340. And the Law has been miſtaken in this Point; for the *Statutes* which intervene between the 9 *H.* 3. and 42 *E.* 3. are not repealed, though they vary from and are contrary to *Magna Charta.* Jenk. Cent. 2. *Statutes* continue in Force, although the Records of them are deſtroy'd, by the Injury of Time, &c. But if a *Statute* is againſt Reaſon, or impoſſible to be perform'd, it is void. 4 *Rep.* 76. 2 *Inſt.* 587. Old *Statutes* muſt give Place to new, where they are contrary; but when there is a ſeeming Variance between two *Statutes,* and no Clauſe of *Non obſtante* in the latter, ſuch Construction ſhall be made that both may ſtand. 11 *Rep.* 56. *Dyer* 347. By Repealing of a Repealing *Statute,* the firſt *Statute* is revived: And where one *Statute* is repealed by another, the Acts done in the mean Time are valid. 4 *Vol. Read. Stat.* *Jenk. Cent.* 233. *Statutes* conſiſt of two Parts, the Words, and the Senſe; and 'tis the Office of an Expoſitor, to put ſuch a Senſe on the Words of the *Statute,* as is agreeable to Equity and right Reaſon: Equity muſt neceſſarily take Place in the Expoſition of *Statutes*; but explanatory Acts are to be conſtrued according to the Words, and not by any Manner of Intendment; for 'tis incongruous for an Explanation to be explained. *Plowd.* 363, 465. *Cro. Car.* 23. The *Preamble* of a *Statute,* which is the Beginning thereof, going before, is as it were a Key to the Knowledge of it, and to open the Intent of the Makers of the Act; it ſhall be deem'd true, and therefore good Arguments may be drawn from the ſame. 1 *Inſt.* 11. It is the moſt natural and genuine Expoſition of a *Statute,* to conſtrue one Part by another Part of the ſame *Statute,* for that beſt expreſſes the Meaning of the Makers: The Words of an Act of Parliament are to be taken in a lawful and rightful Senſe, and the Conſtruction of *Statutes* in general muſt be made in Suppreſſion of the Miſchief, and for the Advancement of the Remedy intended by the *Statute*; but ſo that no innocent Perſon, by a literal Conſtruction ſhall receive any Damage. 1 *Inſt.* 381, 24. The beſt Way to expound a *Statute*, is to conſider what Anſwer the Law-givers would probably have given to the Queſtion made, if propoſed to them. *Plowd.* 465. 3 *Nelſ. Abr.* 245. In the uſual Expoſition of *Statutes*, theſe Things are to be obſerved, *viz.* 1. What was the Common Law before the making of the *Statute*? 2. The Miſchief and Defect which the Common Law did not provide againſt. 3. What Remedy the *Statute* hath appointed to cure this Miſchief? 4. The true Reaſon of the Remedy. 3 *Rep.* 7. Where a *Statute* gives a Remedy for any Thing, it ſhall be preſumed there was no Remedy before at Common Law: And the Rules to conſtrue Acts of Parliament, are different from the ſtrict Rules of Common Law; though in the Conſtruction of a *Statute*, the Reaſon of the Common Law gives great Light. *Raym.* 191, 355. 2 *Inſt.* 301. If an Act of Parliament is dubious, long Uſage may be good to expound it by; and the Meaning of Things ſpoken and written, muſt be as hath been conſtantly received; but where Uſage is againſt the obvious Meaning of a *Statute*, by the vulgar and common Acceptation of Words, then it is rather an Oppreſſion than an Expoſition of the *Statute*. *Vaugh* 169, 170. A *Statute* which alters the Common Law, ſhall not be ſtrained beyond the Words, except in Caſes of publick Utility, when the End and Deſign of the Act appears to be larger than the Words themſelves. *Ibid.* 179. Relative Words in any *Statute*, may make a Thing paſs as well as if particularly expreſs'd: And Caſes of the ſame Nature ſhall be within the ſame Remedy. *Raym.* 54. Such *Statutes* as are beneficial to the People, ſhall be expounded largely, and not with Reſtriction. *Styles* 302. The Expoſition of *Statutes* concerning the Eccleſiaſtical Courts, belongs to the Common Law Courts: And a *Statute* made in Imitation of the Common Law, is to be expounded by it. *Hob.* 83, 97. An Affirmative Act, does not repeal a precedent affirmative *Statute*. The Affirmative Words of *Statutes* do not change the Common Law, without Negative Words added therein: And the *Statute* of Wills, being in the Affirmative, doth not take away the Cuſtom to deviſe Land in Places where it is. *Jenk. Cent.* 212. *Dyer* 155. 1 *Inſt.* 111. If a *Statute* be made only in Affirmance of the ancient Common Law, and doth not enact any Thing new, but what was before provided for; it is nevertheleſs a *Statute*, and may be pleaded: But the Defendant hath a Plea at Common Law. *Styles Reg.* 301. An Act of Parliament in Affirmance of the Common Law, extends to all Times after, though it mentions only to give Remedy for the preſent; and where a Thing is granted by *Statute*, all neceſſary Incidents are granted with it. 1 *Inſt.* 235. Wherever a *Statute* gives or provides a Thing, the Common Law ſupplies all Manner of Requiſites. *Hardr.* 62. Every *Statute* made againſt an Injury, gives a Remedy by Action, expreſly or implicitly. 2 *Inſt.* 55, 74. And beſides an Action upon the *Statute*, as the Subject's private Remedy; the Offender may be puniſh'd for Contempt at the King's Suit, by Fine, &c. 2 *Co. Inſt.* 131, 163. Things for Neceſſity Sake, or to prevent Failure of Juſtice, are excepted out of *Statutes*. *Ibid.* 118. How *Statutes* are to be recited, and Indictments drawn on them, ſee *Indictment*.

Statute of Agreement between the King, Lords and Commons in Parliament. 51 *H.* 3. *Statutes of Limitation* of Actions, and of *Jeofails*, &c. Vide the *Heads*.

Statutes Merchant. A *Statute Merchant* is a Bond of Record, acknowledg'd before the *Clerk of the Statutes Merchant*, and Lord Mayor of the City of *London*, or two Merchants aſſign'd for that Purpoſe; and before the Mayors of other Cities and Towns, or the Bailiff of any Borough, &c. ſealed with the Seal of the Debtor and the King, upon Condition that if the Obligor pays not the Debt at the Day, Execution may be awarded againſt his Body, Lands, and Goods, and the Obligee ſhall hold the Lands to him, his Heirs and Aſſigns, till the Debt is levied. *Terms de Ley* 548. Stat. 13 *Ed.* 1. The Statute of *Acton Burnel*, 13 *Ed.* 1. enacts, That the Merchant is to cauſe his Debtor to come before the Mayor of *London*, &c. to acknowledge the Debt due, and Day of Payment; and the Recognizance is to be entered in a Roll: Then the Clerk is to make out a Bill Obligatory, whereunto the Seal of the Debtor ſhall be affix'd, together with the King's Seal, in the Cuſtody of the Mayor, &c. And if the Debtor fail in Payment at the Day, upon Notice thereof to the Mayor and Clerk, they are to cauſe his Goods and Chattels to be ſold by Appraiſement, to ſatisfy the Creditor what his Debt amounts unto, and the Money without Delay is to be paid to ſuch Creditor; or in Caſe they cannot ſell the Goods, they ſhall cauſe ſo much of the Goods to be delivered to the Creditor as will anſwer his Debt. If the Debtor have no Goods within the Mayor's Juriſdiction, the Recognizance is to be ſent to the *Lord Chancellor* under the King's Seal, and he ſhall thereupon direct a Writ to the Sheriff in whoſe Bailiwick the Goods of the Debtor are, who is to proceed therein as the Mayor might have done if the ſaid Goods had been in his Juriſdiction: And if the Debtor have no Goods whereupon the Debt may be levied, he ſhall be impriſoned, and there remain until he agree with the Creditor, &c. If the Debtor have Sureties, they ſhall be proceeded againſt in like Manner as the Debtor; but ſo long as the Debt may be levied of the Goods of the Debtor, the Sureties are to be without Damage. Alſo a Merchant Stranger, to whom a Debt is due by *Statute Merchant*, ſhall beſides the Payment of his Debt be ſatisfied for his Stay and Detainer from his Buſineſs. And by the *Statute de Mercatoribus*, 13 *Ed.* 1. the Merchant ſhall cauſe his Debtor to appear before the Mayor of the City of *London*, or other City or Town, and there acknowledge the Debt, &c. by *Recognizance*, which is to be inrolled, the Roll whereof muſt be double, one Part to remain with the Mayor, and the other with the Clerk appointed by the King; and then one of the Clerks is to write the Obligation, which ſhall be ſealed with the Debtor's Seal and that of the King, &c. If the Debt be not paid at the Day upon the Merchant's Account, the Mayor is to cauſe the Debtor to be impriſoned, if to be found, and in Priſon to remain until he hath agreed the Debt; and if the Debtor cannot be found, the Mayor ſhall ſend the Recognizance into the *Chancery*, from whence a Writ ſhall iſſue to the Sheriff of the County where the Debtor is, to arreſt his Body, and keep him in Priſon till he agree the Debt; and within a Quarter of a Year, his Lands and Goods ſhall be delivered to him to pay the Debt; but if the Debtor do not ſatisfy the Debt within that Time, all his Lands and Goods ſhall be delivered to the Merchant by a reaſonable *Extent*, to hold until the Debt is levied thereby; and in the mean Time he ſhall remain in Priſon; but when the Debt is ſatisfied, the Body of the Debtor is to be delivered, together with his Lands. If the Sheriff return a *Non eſt Inventus*, &c. the Merchant may have Writs to all the Sheriffs where he hath any Land; and they ſhall deliver all the Goods and Lands of the Debtor by Extent, and the Merchant ſhall be allowed his Damage, and all reaſonable Coſts, &c. All the Lands in the Hands of the Debtor, at the Time of the Recognizance acknowledged, are chargeable; though after the Debt is paid, they ſhall return to the Grantees, if any are granted away, as ſhall the reſt to the Debtor: The Debtor or his Sureties dying, the Merchant ſhall not take the Body of the Heir, &c. but ſhall have his Lands until the Debt is levied. In *London*, out of the Commonalty, two Merchants are to be choſen and ſworn by this Statute; and the Seal ſhall be opened before them, whereof one Piece is to be delivered to the ſaid Merchants, and the other remain with the Clerk; and before theſe Merchants, &c. *Recognizances* may be taken; a Fee of 1 *d.* *per* Pound is allowed to the Clerk for fixing the King's Seal; and a Seal is to be provided that ſhall ſerve for *Fairs*, &c. but the Statute extends not to *Jews.* Stat *ibid.* *Cro. Car.* 440, 457. *Statutes Merchant* were contrived for the Security of Merchants only, to provide a ſpeedy Remedy to recover their Debts; but at this Day they are uſed by others, who follow not Merchandize, and become one of the common Aſſurances of the Kingdom. *Bridg.* 21. *Owen* 82. And all Obligations made to the King, are of the Nature of theſe *Statutes Merchant.* 12 Rep. 2, 3. The Form of a *Statute Merchant* Bond, according to *Fleta*, is as follows, *viz.*——*Noverint univerſi per præſentes me* A. B. *de*, &c. *Teneri* C. D. *in centum libr. ſolvend. eidem* C. D. *ad feſtum*, &c. *Anno Regni Regis*, &c. *Et niſi fecero, concedo quod currant ſuper me & hæredes meos diſtrictio & pœna proviſa in* Statuto *Domini Regis edit. apud* Weſtm. *Datum* London, *tali die*, &c.

Statutes Staple, Are concerning Merchants and Merchandizes of the *Staple*; and of the ſame Nature with *Statutes Merchant*: They are for Debt acknowledged before the *Mayor of the Staple*, at our chief Cities, &c. in the Preſence of one or more of the Conſtables of the *Staple*, by Virtue of which the Creditor may forthwith have Execution of the Body, Lands, and Goods of the Debtor, on Non-payment. 4 *Inſt.* 238. The Mayor of the *Staple* may take *Recognizance* of a Debt in Preſence of the Conſtables of the *Staple*; and there ſhall be a Seal remaining with the Mayor, &c. with which every Obligation upon ſuch Recognizance ſhall be ſealed: And upon ſuch Obligation, after Default of Payment, the Mayor may impriſon the Debtor, and attach his Goods, and ſell them to ſatisfy the Creditor; but if the Debtor be not found within the *Staple*, the Mayor is to certify the Obligation into Chancery, and from thence a Proceſs ſhall go againſt the Debtor's Perſon, his Lands, Goods, and Chattels, as in Caſe of a *Statute Merchant.* In every *Staple* Town there is to be a Mayor and two Conſtables eſtabliſhed to take Recogniſances, &c. and when they die, or are changed, others ſhall be choſen in their Steads by the Commonalty of Merchants; though the Mayor is not to hold over a Year, unleſs he be again choſe, &c. 27 *Ed.* 3. *c.* 1. Mayors and Conſtables of the *Staple* are to have Conuſance of Debts and Contracts touching Merchandize: Officers of the *Staple* ſhall be ſworn firſt to the King, and then to the *Staple*; and the Mayor of the *Staple* taking a Recognizance contrary to the Statute, is to forfeit to the King Half the Sum recognized, &c. Perſons ſuing out a *Scire facias* in Chancery, to defeat an Execution upon a *Statute Staple*, muſt find Security both to the King and Recognizee to proſecute, &c. Stat. 36 *Ed.* 3. 14 & 15 *R.* 2. 11 *H* 6. A *Statute Staple* acknowledg'd before a Mayor only, and no others, was held good, being before the principal Officer; and where it is void as a *Statute*, it may be good as an Obligation. *Hill.* 22 *Jac.* 1. *Cro.* 461. Debt lies as well upon a *Statute Staple*, as upon a Bond: And a Statute acknowledged on Lands, is a preſent Duty, and ought to be ſatisfied before an Obligation; a Debt due on an Obligation being but a Choſe in Action, and recoverable by Law, and not a preſent Duty by Law, as a Debt upon a Statute, Judgment or Recognizance is, upon which preſent Execution is to be taken without further Suit. *Cro. Eliz.* 355, 461, 494. 2 *Lill. Abr.* 536. But a Judgment in a Court of Record, ſhall be preferred in Caſe of Execution before a *Statute*: Tho' if one acknowledge a *Statute*, and afterwards confeſs Judgment; if the Land be extended thereon, the Cogniſee ſhall have a *Scire facias* to avoid the Extent upon the Judgment. 6 *Rep.* 45. 1 *Brownl.* 37. It is otherwiſe as to Goods, for there he that comes firſt, ſhall be firſt ſerved. *Ibid.* The Cogniſor of a *Statute* grants his Eſtate to the Cogniſee; by this the Execution of the Statute will be ſuſpended. 2 *Cro.* 424. But if the Cogniſee before Execution of a *Statute*, Releaſe to the Cogniſor all his Right to the Land; it will not be a Diſcharge of the whole Execution: For notwithſtanding, he may ſue Execution of his Body and Goods. 3 *Shep. Abr.* 326. Upon a *Statute Staple*, a *Capias* and Extent of Lands, Goods, and Chattels are contained in one Writ; but it is not ſo on a *Statute Merchant.* Jenk. Cent. 163. In Chancery the Proceedings on a *Statute Staple*, are in the Petty-Bag-Office; and *Statutes Staple* are ſuable in the *King's Bench* or *Common Pleas*, as well as in *Chancery.* *Cro. Eliz.* 208. On a Statute's being ſatisfied, it is to be *vacated* by entering Satisfaction, &c. *Statutes Staple* and Statutes Merchant are to be entred within ſix Months, or ſhall not be good againſt Purchaſers. 27 *Eliz. cap.* 4. See the Stat. 16 & 17 *Car.* 2. for preventing Delays in extending *Statutes.* Vide *Recognizance.*

Statutes Merchant and Staple, Tenants thereby. He that is in Poſſeſſion of Lands on a *Statute Merchant* or *Staple*, is called *Tenant* by *Statute Merchant* and *Statute Staple*, during the Time of his Poſſeſſion: And Creditors ſhall have Freehold in the Lands of Debtors, and Recovery by *Novel Diſſeiſin*, if put out; but if Tenant by *Statute Merchant*, or *Statute Staple*, hold over his Term, he that hath Right may ſue out a *Venire facias ad computand'*, or enter, as upon an *Elegit.* 27 Edw. 3. &c.

Statuto Stapulæ, Is a Writ that lies to take the Body to Priſon, and ſeiſe upon the Lands and Goods of one who hath forfeited the Bond called *Statute Staple.* Reg. Orig. 151.

Statuto Mercatorio, The Writ for Impriſoning him that has forfeited a *Statute Merchant* Bond, until the Debt is ſatisfied: And of theſe Writs, there is one againſt Lay Perſons, and another againſt Perſons Eccleſiaſtical. *Reg. Orig.* 146, 148.

Statutum de Laborariis, An antient Writ for the apprehending of ſuch *Labourers* as refuſe to work according to the Statute. *Reg. Judic.* 27.

Statutum Seſſionem, The *Statute Seſſions*, A Meeting in every Hundred of Conſtables and Houſholders, by Cuſtom, for the Ordering of Servants, and debating of Differences between the Maſters and Servants, rating of Servants Wages, &c. 5 *Eliz. cap.* 4.

Staurum, Any Store, or ſtanding Stock of Cattle, Proviſion, &c. *Matt. Weſtm. Anno* 1259.

Steoreſman, The ſame with *Stiremannus*, or *Sturemannus.*

Sterling, (*Sterlingum*) Was the Epithet for Silver Money current within this Kingdom, and took Name from this; that there was a pure Coin ſtamped firſt in *England* by the *Eaſterlings*, or Merchants of *Eaſt Germany*, by the Command of King *John*; and *Hoveden* writes it *Eſterling.* Inſtead of the *Pound Sterling*, we now ſay ſo many *Pounds* of *lawful Engliſh Money*; but the Word is not wholly diſuſed, for tho' we ordinarily ſay lawful Money of *England*, yet in the *Mint* they call it *Sterling Money*; and when it was found convenient in the Fabrication of Monies, to have a certain Quantity of baſer Metal to be mixed with the pure Gold and Silver, the Word *Sterling* was then introduc'd; and it has ever ſince been uſed to denote the certain Proportion or Degree of Fineneſs, which ought to be retained in the reſpective Coins. *Lownd's Eſſay on Coins* 14.

Steward, (*Seveſcallus*, compounded of the Sax. *Steda*, *i. e.* Room, or *Stead*, and *Weard*, a Ward or Keeper)

Keeper) Is as much as to ſay a Man appointed in my Place or *Stead*, and hath many Applications, but always denotes an Officer of chief Account within his Juriſdiction. The greateſt of theſe Officers is, *The Lord High Steward of England*, who antiently had the Superviſing and Regulating, next under the King, the Adminiſtration of Juſtice, and all other Affairs of the Realm, whether Civil or Military; and the Office was Hereditary, belonging to the Earls of *Leiceſter*, till forfeited to King *Hen.* 3. But the Power of this Officer being very great, of late the Office of High *Steward* of *England* hath not been granted to any one, only *pro hac vice*, either for the Trial of a Peer of the Realm on an Indictment for a Capital Offence; or for the Determination of the Pretenſions of thoſe who claim to hold by Grand Serjeanty, to do certain honourable Services to the King at his Coronation, *&c.* for both which Purpoſes he holds a Court, and proceeds according to the Laws and Cuſtoms of *England*; and he to whom this Office is granted muſt be of Nobility and a Lord of Parliament. 4 *Inſt.* 58, 59. *Crompt. Juriſd.* 84. 13 *Hen.* 8. 11. 2 *Hawk. P. C.* 5. Of the nine great Officers of the Crown, the Lord High *Steward* is the firſt; but when the ſpecial Buſineſs for which he is appointed is once ended, his Commiſſion expires. The firſt Lord High *Steward* that was created for the Solemnizing of a Coronation, was *Thomas*, ſecond Son of *Hen.* 4th; and the firſt Lord *Steward* for the Trial of a Peer, was *Edward Earl of Devon*, on the Arraignment of *John Holderneſs* Earl of *Huntingdon* in the ſame Reign. *Lex Conſtitution.* 170. There is a *Lord Steward of the Houſhold*, mentioned Stat. 24 *H.* 8. *cap.* 13. whoſe Name was changed to that of *Great Maſter of the Houſhold*, Anno 32 *H.* 8. But this Statute was repealed by 1 *Mar. cap.* 4. and the Office of Lord *Steward* of the Houſhold revived. He is the chief Officer of the King's Court, to whom is committed the Care of the King's Houſe; he has Authority over all Officers and Servants of the Houſhold, except thoſe belonging to the Chapel, Chamber, and Stable; and the Palace Royal is exempted from all Juriſdiction of any Court, but only of the Lord Steward, or in his Abſence, of the Treaſurer and Comptroller of the Houſhold, with the *Steward* of the Marſhalſea, who by Virtue of their Offices, without any Commiſſion, hear and determine all Treaſons, Murders, Felonies, Breaches of the Peace, *&c.* committed in the King's Palace: Beſides the Treaſurer and Controller, the Lord *Steward* hath under him a Cofferer, ſeveral Clerks of the *Green Cloth*, &c. He attends the King's Perſon at the Beginning of Parliaments; and is a White-Staff-Officer, which he breaks over the Hearſe on the Death of the King, and thereby diſcharges all Officers under him: Of this Officer's antient Power, read *Fleta, lib.* 2. and *F. N. B.* 241. In the Liberty of *Weſtminſter*, an Officer is choſen and appointed, called *High Steward*; and there is a *Deputy Steward of Weſtminſter*; and the Word *Steward* is of ſo great Diverſity, that in moſt *Corporations*, and all *Houſes* of *Honour*, an Officer is found of this Name and Authority. *Stewards of Manors*, ſee *Copyhold*.

Stews, (From the Fr. *Eſtuves*, i. e. *Thermæ, Balneum*) Are thoſe Places which were permitted in *England* to Women of profeſs'd Incontinency, and that for Hire would proſtitute their Bodies to all Comers; ſo called, becauſe diſſolute Perſons are wont to prepare themſelves for venereous Acts by *Bathing*: And *Hot Baths* were by *Homer* reckon'd among the effeminate Sort of Pleaſures. Theſe *Stews* were ſuppreſs'd by King *Hen.* 8. about the Year 1546.

Stica, A Braſs *Saxon* Coin, of the Value of Half a Farthing, four of them making an *Helfing*.

Stick of Eels, A Quantity or Meaſure of twenty-five: A *Bind* of Eels contains ten *Sticks*, and each Stick 25 Eels. *Stat. of Weights and Meaſures.*

Stickler, An inferior Officer who cuts Wood within the King's Parks of *Clarendon*. Rot. Parl. 1 H. 6.

Stilyard, Steelyard, Otherwiſe called the *Stylehouſe*, in the Pariſh of *Alhallows* in *London*, was by Authority of Parliament aſſign'd to the Merchants of the *Hanſe* and *Almaine* or *Eaſterling* Merchants, to have their Abode in for ever, with other Tenements, rendering to the Mayor of *London* a certain yearly Rent. *Stat.* 14 *Ed.* 4. In ſome Records it is called *Guildhalda Teutonicorum*; and it was at firſt denominated *Stilyard*, of a broad Place or Court where *Steel* was ſold, upon which that Houſe was founded. See 19 *H.* 7. *cap.* 32. *&* 22 *H.* 8. *cap.* 8. 1 *Edw.* 6. *cap.* 13.

Stipula, Stubble left ſtanding in the Field after the Corn is reaped and carried away. —— *Dedi unam Carectatam foragii, & duas acras* Stipulæ, *&c.* *Cart.* 2 *Edw.* 2.

Stiremannus, *Sturemannus*, Sax. *Steor man*, A Pilot of a Ship, or *Steers man.* Domeſd.

Stoc and ſtovel, A Forfeiture where any one is taken carrying *Stipites & Pabulum* out of the Woods; for *Stoc* ſignifies Sticks, and *Stovel* Pabulum. *Antiq. Chart.*

Stock or **Stoke**, Syllables added to the Names of Places, from the Sax. *Stocce*, i. e. *Stipes*, Truncus; as *Woodſtock*, *Baſingſtoke*, *&c.*

Stock and Family. If Lands are deviſed generally to a *Stock*, or *Family*; it ſhall be underſtood of the Heir Principal, of the Houſe. *Hob.* 33. See *Tylwith.*

Stockjobbers and **Stocks**, in *Exchange* Alley. All *Stockjobbing* not authorized by Act of Parliament, or by Charter, or uſed by obſolete Charters, ſhall be void, and the Undertakings are declared Nuſances, *&c.* by Stat. 6 *Geo.* 1. *cap.* 18. All *Præmiums* to deliver or receive, accept or refuſe any *publick Stock*, or Share therein, and Contracts in Nature of Wagers, Putts and Refuſals relating to the Value of the *Stock*, ſhall be void; and the *Præmiums* returned, or may be recovered by Action with double Coſts; and the Perſons entering into or executing any ſuch Contract, ſhall forfeit 500*l.* No Money ſhall be given to compound any Difference, for not delivering or transferring *Stock*, or not performing Contracts; but the whole Money agreed, is to be paid, and the *Stock* transferred, on Pain of 100*l.* Perſons buying, on Refuſal or Neglect to transfer at the Day, may buy the like Quantity of *Stock*, of any other Perſon, and recover the Damage of the firſt Contractor: And Contracts for Sale of any *Stock*, where Contractors are not actually poſſeſſed of or intitled unto the ſame, to be void; and the Parties agreeing to ſell, *&c.* incur a Penalty of 500*l.* Brokers making Agreements, *&c.* and doing contrary, are alſo liable to Penalties: But this Act not to hinder lending Money on *Stocks*, or Contracts for redelivering or transferring thereon, ſo as no *Præmium* be paid for the Loan more than legal Intereſt. Stat. 7 *Geo.* 2. *cap.* 8. Made perpetual by 10 *Geo.* 2. As to *Stocks ſold*, it is held, that an actual Transfer is not neceſſary, unleſs the Perſon to whom it ought to be made, was at the Place and Time ready to accept it; and then, the Time of Tender is the laſt Hour of the Day on which the *Stock* was to be Transferred. *Mod. Caſ. in L. & E.* 106, 219. If the Plaintiff do not ſet forth in his Declaration that he was at the *South-Sea Houſe*, &c. on the Day, at ſuch a Time, and ſtaid till the laſt Hour, to transfer his *Stock*, he cannot maintain his Action. *Paſch.* 8 *Geo.* 1. In Equity it has been adjudg'd, if a Truſtee, or Executor, with the Truſt

Money buys *Stock*, and thereby gains conſiderably, he ſhall have the Advantage of it himſelf; in reſpect of the Hazard he run of being a Loſer by it, which he muſt have born, if able. *Abr. Caſ. Eq.* 398. But in a like Caſe, where Money laid out on *Stocks* was greatly improved; it was decreed, that as if the *Stock* had fallen, the Truſt muſt have ſuffered; ſo its accidental Riſe, ſhall be for the Benefit of it. 1 *P. Williams* 649. See *Brokers* and *Felony*.

Stocks, (*Cippus*) A Wooden Engine to put the Legs of Offenders in, for the ſecuring of diſorderly Perſons, and by Way of Puniſhment in divers Caſes ordained by Statute, *&c.* And it is ſaid that every Vill within the Precinct of a Torn is indictable for not having a Pair of *Stocks*, and ſhall forfeit 5*l.* *Kitch.* 13.

Stockland and Bondland. In the Manor of *Wadhurſt* in *Suſſex*, there are two Sorts of Copyhold Eſtates, *viz.* *Stockland* and *Bondland*, deſcendable by Cuſtom in ſeveral Manors: As if a Man be firſt admitted to *Stockland*, and afterwards to *Bondland*, and dies ſeiſed of both, his eldeſt Son and Heir ſhall inherit both Eſtates; but if he be admitted firſt to *Bondland*, and after to the other, and of theſe dieth ſeiſed, his youngeſt Son ſhall inherit: And *Bondland* held alone, deſcends to the youngeſt Son. 2 *Leon.* 55.

Stola, Was a Garment formerly worn by Prieſts, like unto thoſe which we now call Hoods. And ſometimes it is taken for the Archiepiſcopal Pall. *Eadmer. cap.* 188. Alſo a Veſtment which Matrons wore. *Cowel.*

Stone, A Weight of 14 Pounds, uſed for weighing of Wool, *&c.* The *Stone* of Wool ought to weigh 14 Pounds; but in ſome Places, by Cuſtom, it is leſs, as 12 Pounds and a Half: A *Stone* of Wax is 8 Pounds; and in *London* the *Stone* of Beef is no more. 11 *Hen.* 7. *cap.* 4. *Rot. Parl.* 17 *Ed.* 3.

Stores of War, Are not to be imbezilled; and none to make *Stores of War* with the King's Marks, but Contractors with the principal Officers or Commiſſioners of the Navy, *&c.* under the Penalty of 200*l.* Stat. 9 *&* 10 *W.* 3. Vide *Naval Stores.*

Stotarius, He who had the Care of the *Stud* or Breed of young Horſes. *Leg. Alfred. cap.* 9.

Stoth, *Nativi de W. ſolvit quilibet pro filiabus ſuis Maritandis Gerſon Domino, & Ourlop pro filiabus corruptis, &* Stoth, *& alia ſervitia, &c.* Petr. Bleſſ. contin. Hiſt. Croyl. pag. 115.

Stow, (Sax. i. e. *Locus*) A Place, and is often join'd to other Words; as *Godſtow* is a *Place* dedicated to *God*.

Stowage, Is the Room where Goods are laid, or 'tis the Money paid for ſuch Places. See *Houſage*.

Straits, A narrow Sea between two Lands, or an Arm of the Sea. Alſo there is a narrow coarſe Cloth antiently ſo called. 18 *Hen.* 6. *cap.* 16.

Strand, (*Sax.*) Any Shore or Bank of a Sea or great River. Hence the Street in the Weſt Suburbs of *London*, which lay next the Shore or Bank of the *Thames*, is called the *Strand*. An Immunity from Cuſtom, and all Impoſitions upon Goods or Veſſels, by Land or Water, was uſually expreſs'd by *Strand* and *Stream*; as King *Hen.* 2d. in his Charter to the Town of *Rocheſter.*——*Concedo & Confirmo in perpetuum cum* Socne *&* Soke, *&* Strand *&* Stream. *Mon. Angl. Tom.* 3. *pag.* 4.

Stranded, (from the Sax. *Strand*) Is when a Ship is by Tempeſt or ill Steerage run on Ground, and ſo periſhes. 17 *Car.* 1. *cap.* 14. Where a Veſſel is *ſtranded*, Juſtices of the Peace, *&c.* ſhall command Conſtables near the Sea-Coaſts to call Aſſiſtance for the Preſervation of the Ship; and Officers of Men of War are to be aiding and aſſiſting. 12 *Ann. cap.* 18.

Stranger, (derived from the Fr. *Eſtranger*, aliena) Signifies generally in our Language, a Man born out of the Realm, or unknown. In the Law it hath a ſpecial Signification, for him that is not *privy* to an Act: As a *Stranger* to a Judgment, is he to whom a Judgment doth not belong; and in this Senſe it is directly contrary to *Party* or *Privy*. Old Nat. Br. 128. *Strangers* to Deeds, ſhall not take Advantage of Conditions of Entry, *&c.* as Parties and Privies may; but they are not obliged to make their Claims on a Fine levied till five Years; whereas Privies, ſuch as the Heirs of the Party that paſſed the Fine, are barred preſently. 1 *Inſt.* 214. 2 *Inſt.* 516. 3 *Rep.* 79. *Strangers* have either a *preſent* or *future* Right; or an apparent *Poſſibility* of Right, growing afterwards, *&c.* *Wood's Inſt.* 245.

Stray, Or going *aſtray* of Beaſts and Cattle, ſee *Eſtray*.

Stream Works, A Kind of Works in the *Stannaries* mentioned in the Stat. 27 *H.* 8. *cap.* 23.

Streeman, (Sax.) *Robuſtus, vel potens vir.* Leland, Vol. 2. pag. 188.

Streets. If *Streets* in *London* are not well paved, the Mayor and Aldermen, or any three Juſtices there, may ſet Fines upon Perſons, to be levied by Diſtreſs or Action, *&c.* 32 *&* 35 *H.* 8. *cap.* 10. And for Nuſances, Diſturbances, Revelling, *&c.* in *Streets*, certain Penalties are inflicted by the *City* Laws. *Lex Lond.* 194. It is made Felony maliciouſly to aſſault Perſons in the *Streets*, with Intent to tear their Clothes, *&c.* Stat. 6 *Geo.* 1. *cap.* 22. See 10 *Geo.* 2. Vide *Robbery*.

Streetward, Was an Officer of the *Streets*, like our Surveyor of the Highways, or rather a Scavenger. *Mon. Angl. Tom.* 2. *pag.* 187.

Strip, (*Strepitus*) Deſtruction, Mutilation, from the Fr. *Eſtropier:* Strepitum *& vaſtum facere*, i. e. To make *Strip and Waſte*, or *Strop and Waſte*. See *Eſtrepment*.

Strond, An old *Saxon* Word ſignifying the ſame as *Strand*.

Strumpet, (*Meretrix*) A Whore, Harlot, or Courteſan: This Word was heretofore uſed for an Addition. *Plac. apud Ceſtr.* 6 *Hen.* 5.

Stryke, The eighth Part of a Seam, or Quarter of Corn; a *Strike* or Buſhel. *Cartular. Rading. M. S.* 116.

Stud of Mares, is a Company of Mares kept for Breeding of Colts; from the Sax. *Stodmyra*, i. e. *Equa ad fœtum*.

Style, (*Appello*) Is to call, name, or intitle one; as the *Style* of the *King* of *England* is *George* the Second, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* There is alſo an *Old* and *New Style*, us'd in the *Dates* of Things abroad; the latter being eleven Days before the former.

Subarrare, *Florence* of *Worceſter* tells us, That King *Alfred* Subarravit *& duxit* a Noblewoman of *Mercia*, *Anno* 868.

Sub-deacon, An antient Officer in the Church, made by the Delivery of an empty Platter and Cup by the Biſhop, and of a Pitcher, Baſon and Towel by the Archdeacon: His Office was to wait on the *Deacon* with the Linen on which the Body, *&c.* was conſecrated, and to receive and carry away the Plate with the Offerings at Sacraments, the Cup with the Wine and Water in it, *&c.* He is often mentioned by the *Monkiſh* Hiſtorians, and particularly in the *Apoſtolical Canons*, 42, 43.

Subjects, (*Subditos*) Are the Members of the Common-wealth *under* the King their Head. *Wood's Inſt.* 22.

Subjugalis, Is any Beaſt carrying the Yoke. *Matt. Pariſ.* 1249.

Sublegerius, (from the Sax. *Sybleger*, i. e. *Inceſtus*) One who is guilty of inceſtuous Whoredom.

Sub-marſhal, An Officer in the *Marſhalſea*, who is Deputy to the *Chief Marſhal* of the King's Houſe, commonly called the *Knight Marſhal*, and hath the Cuſtody of the Priſoners there. He is otherwiſe term'd *Under-Marſhal.* Cromp. Juriſ. 104.

Submiſſion, Of Matters to Arbitrament, by Bond or Covenant, *&c.* upon which an Action may be brought on Non-performance of the *Award*, if it is made for Payment of Money. 10 *Rep.* 131. See *Arbitrament.*

Subnervare, To cut the Sinews of the Legs or Thighs; to *Ham-ſtring:* And it was an old Cuſtom in *England*, *Meretrices & Impudicas mulieres* Subnervare.

Subornation, (*Subornatio*) A ſecret under-hand preparing, inſtructing, or bringing in a falſe Witneſs; and from hence *Subornation of Perjury* is the preparing or corrupt alluring to Perjury. *Subornation* of Witneſſes we read of in the 32 *H.* 8. *cap.* 9. And procuring or *ſuborning* a Witneſs to give falſe Teſtimony in any Court of Record concerning Lands or Goods, the Offender ſhall forfeit 40*l.* or ſuffer Impriſonment for Half a Year, ſtand on the Pillory, *&c.* by 6 *Eliz. cap.* 9. 3 *Inſt.* 167. See *Perjury.*

Subpœna, Is a Writ whereby common Perſons are called into *Chancery*, in ſuch Caſes where the Common Law hath provided no ordinary Remedy; and the Name of it proceeds from the Words therein, which charge the Party called to appear at the Day and Place aſſign'd, *ſub pœna Centum librarum*, *&c.* Weſt. ſymb. par. 2. Cromp. Juriſ. 33. The *Subpœna* is the leading Proceſs in *Courts of Equity*; and by Statute, when a Bill is filed againſt any Perſon, Proceſs of *Subpœna* ſhall be taken out to oblige the Defendant to appear and anſwer the Bill, *&c.* 4 & 5 *Ann. cap.* 16. Where a Defendant abſconds, or goes beyond Sea, to avoid being ſerved with Proceſs of *Subpœna* to appear, *&c.* See 5 *Geo.* 2. *cap.* 25. And there are ſeveral of theſe Writs in Chancery; as the *Subpœna ad Reſpondend'*, *Subpœna ad Replicand' & ad Rejungend'*, *Subpœna ad Teſtificand' & ad audiend. judicium*, *&c.* which Writs are to be made out by the proper Clerk of the *Subpœna Office*; and *Subpœna's to anſwer* muſt be perſonally ſerved by being left with the Defendant, or at his Houſe with one of the Family, on Affidavit whereof, if the Defendant do not anſwer, Attachment ſhall be had againſt him, *&c. Pract. Solic.* 5, 6. A *Subpœna ad Teſtificandum* lies for the calling in of Witneſſes to *teſtify* in any Cauſe, not only in *Chancery*, but in all *other Courts*; and in that Court, and in the *Exchequer*, it is made uſe of in Law and Equity. The two chief Writs of *Subpœna* are to *appear* and to *teſtify*; and the latter iſſues out of the Court where the Iſſue is joined, upon which the *Evidence* is to be given. 2 *Lill. Abr.* 536. In this Writ the 100*l.* Penalty is inſerted only *in Terrorem*, being never levied; tho' if a Witneſs ſerv'd with a *Subpœna*, refuſe to appear, on Tender of his Charges, the Party injured thereby may recover 10*l.* Damages, and other Recompence by Action of the Caſe. 5 *Eliz.*

Form of a Writ of Subpœna for Witneſſes at the Aſſiſes.

GEORGE *the Second*, &c. *To* A. B. C. D. E. F. *Greeting: We command you, and every of you, firmly injoining you, that laying aſide all manner of Buſineſſes and Excuſes whatſoever, you and every of you be in your proper Perſons before our Juſtices at the* Aſſiſes *appointed to be held at,* &c. *in the County of* S. *on the Day,* &c. *next following, to teſtify all and ſingular thoſe Things, which you or either of you ſhall know, in a certain Action now depending and undetermined in our Court before us,* &c. *between* T. B. *Plaintiff, and* R. D. *Defendant, in an Action of Treſpaſs upon the Caſe,* &c. *and on that Day to be tried by a Jury of the County; and this you and every of you are in no wiſe to omit, under the Penalty of One Hundred Pounds for every of you.* Witneſs, *&c.*

A *Subpœna Ticket* for a *Witneſs* to *appear and teſtify.*

MR. A. B. *By Virtue of a Writ of* Subpœna *to You and others directed, and herewith ſhewn unto You, You are required perſonally to be and appear before his Majeſty's Juſtices of Aſſiſe on the Day,* &c. *next at ten of the Clock in the Forenoon of the ſame Day, at the Court of Aſſiſes then to be holden at,* &c. *in the County of* S. *to teſtify the Truth according to your Knowledge in a certain Cauſe now depending, and then and there to be tried between* T. B. *Plaintiff, and* R. D. *Defendant, in an Action of Treſpaſs upon the Caſe,* &c. *on the Part of the Plaintiff; and herein you are not to fail, on Pain of* 100 l. *Dated the Day and Year,* &c.

In *London* or *Middleſex*, it muſt be perſonally to be and appear before either of the Lord Chief Juſtices, on, *&c.*

Subſidy, (*Subſidium*) Signifies an Aid, Tax, or Tribute, granted to the King for the urgent Occaſions of the Kingdom, to be levied of every Subject of Ability according to the Value of his Lands or Goods; and in ſome of our Statutes it is taken for Cuſtom. Some Perſons have held, that the *Subſidy* of Tonnage, *&c.* might be taken by the King, of his own Prerogative; eſpecially in a Caſe of Neceſſity, and for the Publick Good, as to make an Equality of Trade: And that the Precedents of the *Exchequer* make the Law herein. But the Law was adjudg'd otherwiſe, by both Houſes of Parliament. *Jenk. Cent.* 208. *Dyer* 165. *Lane* 24. *Cro. Car.* 601. Vide *Cuſtoms*, and *Tax.*

Subſtance. The *Subſtance* of Things is moſt to be regarded; and therefore our Law doth prefer Matter of *Subſtance*, before Matters of Circumſtance, *&c.* as in the Statutes 36 *E.* 3. *c.* 15. 33 *H.* 6. *c.* 10. 21 *H.* 7. *c.* 24. 23 *Eliz. c.* 4.

Subſtitute, (*Subſtitutus*) One plac'd under another Perſon to tranſact ſome Buſineſs, *&c.* See *Attorney.*

Suburbani, Are Husbandmen, according to the *Monaſticon.* Tom. 2. pag. 468.

Succeſſor, (*Lat.*) Is he that followeth, or cometh in another's Place. *Sole Corporations* may take a Fee-ſimple Eſtate to them and their *Succeſſors*; but not without the Word *Succeſſors:* And ſuch a Corporation cannot regularly take in *Succeſſion* Goods and Chattels; and therefore if a Leaſe for a Hundred Years be made to a Perſon and his *Succeſſors*, it hath been adjudged only an Eſtate for Life: Nor may a Sole Corporation bind the *Succeſſors.* 4 *Rep.* 65. 1 *Inſt.* 8, 46, 94. 4 *Inſt.* 249. An *Aggregate Corporation* may have a Fee-ſimple Eſtate in *Succeſſion*, without the Word *Succeſſors*; and take Goods and Chattels in Action or Poſſeſſion, and they ſhall go to the *Succeſſors. Wood's Inſt.* 111. Vide *Corporation.*

Succiſiones Arborum, The Cuttings and Croppings of Trees. *Chart.* 2 *Hen.* 5.

Sufferance. Tenant at *Sufferance*, is he who holdeth over his Term at firſt lawfully granted. *Terms de Ley.* A Perſon is Tenant at *Sufferance* that continues after his Eſtate is ended, and wrongfully holdeth againſt another, *&c.* 1 *Co. Inſt.* 57. See Stat. 4 *Geo.* 2. *c.* 28.

Sufferentia pacis, A Grant or Sufferance of Peace or Truce. —— *Pro quadam* Sufferentia pacis *cum illis habenda, per unum annum duratura.* Clauſ. 16 Ed. 3.

Suffragan, (*Suffraganeus*, *Chorepiſcopus*, *Epiſcopi vicarius*) Is a *Titular Biſhop*, ordained to aid and aſſiſt the Biſhop of the Dioceſe in his Spiritual Function; or one who ſupplieth the Place inſtead of the Biſhop. Some Writers call theſe *Suffragans* by the

Name of *Subſidiary Biſhops*, whoſe Number is limited by the Stat. 26 H. 8. *cap.* 14. By which Statute it was enacted, That it ſhould be lawful for every Biſhop, at his Pleaſure, to elect two honeſt and diſcreet Spiritual Perſons within his Dioceſe, and to preſent them to the King, that he might give to one of them ſuch Title, Stile and Dignity of ſuch of the Sees in the ſaid Statute mentioned, as he ſhould think fit: And that every ſuch Perſon ſhould be called *Biſhop Suffragan* of the ſame See, *&c.* This Act ſets forth at large for what Places ſuch *Suffragans* were to be nominated by the King; and if any one exerciſe the Juriſdiction of a *Suffragan*, without the Appointment of the Biſhop of the Dioceſe, *&c.* he ſhall be guilty of a *Præmunire.* Stat. *Ibid.* See *Chorepiſcopi.*

Suggeſtion, (*Suggeſtio*) Is in Law a Surmiſe, or Repreſenting of a Thing; and by *Magna Charta* no Perſon ſhall be put to his Law on the *Suggeſtion* of another, but by lawful Witneſſes. 9 *H.* 3. *c.* 28. *Suggeſtions* are Grounds to move for *Prohibitions* to Suits in the Spiritual Courts, *&c.* when they meddle with Matters out of their Juriſdictions. 2 *Lill. Abr.* 536. Tho' Matters of Record ought not to be ſtayed upon the bare *Suggeſtion* of the Party; there ought to be an Affidavit made of the Matter *ſuggeſted*, to induce the Court to grant a Rule for ſtaying the Proceedings upon the Record. 2 *Lill.* 537. There are *Suggeſtions* in *Replevin*, for a *Returno habendo*; which 'tis ſaid are not traverſable, as there are for Prohibitions to the Spiritual or Admiralty Courts. 1 *Plowd.* 76. Breaches of *Covenants* and Deaths of Perſons muſt be *ſuggeſted* upon Record, *&c.* 8 *&* 9 *W.* 3. *c.* 10.

Suit, (*Secta*, Fr. *Suite*, i. e. *Conſecutio*, *Sequela*) Signifies a Following another; but in divers Senſes. The *firſt* is a *Suit in Law*, and is divided into *Suit Real* and *Perſonal*; which is all one with *Action* Real and Perſonal. 2. *Suit of Court*, an Attendance which a Tenant owes to the Court of his Lord. 3. *Suit-Covenant*, when a Man hath covenanted to do *Suit* in the Lord's Court. 4. *Suit Cuſtom*, where I and my Anceſtors owe *Suit* Time out of Mind. 5. *Suit* is the following one in Chaſe, as *Freſh Suit*: And this Word is uſed for a *Petition* made to the King, or any great Perſonage. None enfeoffed by Deed ſhall be diſtrained to do *Suit* to his Lord's Court, unleſs he be bound thereto by the Form of his Deed, or he and his Anceſtors have uſed to do it, *&c.* And if the Lord diſtrain for *Suit* not due, the Party ſhall have an Attachment againſt the Lord to appear in the King's Court, *&c.* Likewiſe where *Suits* are withdrawn, the Lord may recover Seiſin and Damages, by Stat. 52 *H.* 3. *cap.* 9. See *Secta.*

Suits at Law, Are to be proſecuted in certain Times limited by the Statute 21 *Jac.* 1. *cap.* 16, *&c.* Thoſe Perſons who acted as Lieutenants, Deputy-Lieutenants, Juſtices of Peace, *&c.* not authorized, at the bringing in of King *William*, were indemnified from vexatious *Suits*, by 1 *W. & M. c.* 8. So Perſons that acted for Security of the Government, during the Rebellion in the late Reign. 1 *Geo.* 1. *c.* 39. Perſons deſiring to end any *Suits* or Controverſies, for which there is no Remedy but by perſonal Action or Bill in Equity, may agree that their Submiſſion to the Award of Arbitrators, ſhall be made a Rule of Court, *&c.* 9 *&* 10 *W.* 3. *c.* 15.

Suit of the King's Peace, Is the Purſuing a Man for Breach of the Peace. 6 *R.* 2. *c.* 1. 5 *H.* 4. *cap.* 15.

Suit-Silver, A ſmall Rent or Sum of Money paid in ſome Manors to excuſe the Appearance of Freeholders at the Courts of their Lords.

Sulcus Aquæ, A little Brook or Stream of Water; otherwiſe called *Sike*, and in *Eſſex* a *Doke.* Paroch. Antiq. 531.

Sullery, (from the Sax. *Sulth*, i. e. *Aratrum*) A Plough-Land. 1 *Inſt.* 5.

Sullinga, *Sullingata Terræ*, Is the ſame with *Swoling.* Thorn. pag. 1931.

Sumage, (*Sumagium & Summagium*) Toll for Carriage on Horſeback: *Pro uno equo portante* Summagium *per dimidium Ann. obolum.* Chart. de Foreſta, c. 14. Cromp. Juriſ. 191.

Summary, (*Summarium*) Or an Abridgment. *Law Lat. Dict.*

Summer-hus-Silver, A Payment to the Lords of the Wood in the *Wealds* of *Kent*, who uſed to viſit thoſe Places in *Summer-time*, when their Under Tenants were bound to prepare little *Summer-Houſes* for their Reception, or elſe pay a Compoſition in Money. *Cuſtum. de Sittingburn, MS.*

Summoneas, Is a Writ Judicial of great Diverſity, according to the divers Caſes wherein it is uſed. *Tabl. Red. Judic.*

Summoners, (*Summonitores*) Are Petty Officers that cite and warn Men to appear in any Court; and theſe ought to be *boni Homines*, *&c.* *Fleta*, *lib* 4. The *Summonitores* were properly the *Apparitors*, who warned in Delinquents at a certain Time and Place, to anſwer any Charge or Complaint exhibited againſt them: And in Citations from a Superior Court, they were to be Equals of the Party cited; at leaſt the Barons were to be ſummoned by none under the Degree of Knights. *Paroch. Antiq.* 177.

Summonitores Scaccarii, Officers who aſſiſted in collecting the King's Revenues, by citing the Defaulters therein into the Court of *Exchequer.*

Summons, (*Summonitio*) Is with us as much as *vocatio in jus*, or *Citatio* among the *Civilians.* Fleta, lib. 6. cap. 6. In general, it is a Writ to the Sheriff to *warn* one to appear at a Day; and muſt be by certain Summoners on the Tenant's Land, not his Goods, *&c.* And if againſt an Heir, ſhall be on the Lands that did deſcend; or making Default, at the *Grand Cape* he may wage his Law of *Non-Summons.* 6 Rep. 54. 37 H. 6. 26. There is a *Summons* in Writs of *Formedon*, *&c.* And on every *Summons* upon the Land in a *Real Action*, fourteen Days before the Return, Proclamation is to be made thereof on a *Sunday*, at or near the Door of the Church or Chapel of the Place where the Land lies, which muſt be returned with the Names of the Summoners: And if ſuch Proclamation ſhall not be had, then no *Grand Cape* ſhall iſſue, but an *Alias* and a *Pluries Summons*, until a *Summons* and Proclamation be duly made and returned. *Cro. Eliz.* 42. 2 *Lill. Abr.* 538. In a *Præcipe quod Reddat*, no Man ſhall loſe his Land without being *ſummoned.* Jenk. Cent. 98.

Summons & Severance, In Law Proceedings, ſee *Severance.*

Summons ad Warrantizandum, *Summoneas ad Warrantizand'*, The Proceſs whereby the Vouchee in a common Recovery is called. *Co. Litt.* 101.

Sumptuary Laws, (*Sumptuaria Lex*, from *Sumptuarius*, of or belonging to Expences) Are Laws made to reſtrain Exceſs in Apparel, and prohibit coſtly Clothes, of which heretofore we had many in *England*, but they are all repealed by 1 *Jac.* 1. 3 *Inſt.* 199.

Sunday, (*Dies Dominicus*) Is the Lord's Day ſet apart for the Service of God, to be kept religiouſly, and not be profaned. Perſons uſing Bull-baiting or Bear-beating, or ſuch like Sports on a *Sunday*, ſhall forfeit 3 *s.* 4 *d.* and 5 *s.* for Wreſtling, Bowling, *&c.* Stat. 1 *Car.* 1. And if any Butchers ſhall kill or ſell Meat on a *Sunday*, they are liable to a Penalty of 6 *s.* 8 *d.* Carriers, Drovers, *&c.* travelling on the Lord's Day, incur a Forfeiture of 20 *s.* Stat. 3 *Car.* 1. *c.* 1. No Perſon ſhall do any worldly Labour on a *Sunday*, (except Works of Neceſſity and Charity) on Pain of 5 *s.* And crying or expoſing to Sale any Wares or Goods on a *Sunday*, the Goods to be forfeited to the Poor, *&c.* on Conviction before a Juſtice of Peace, who may order the Penalties and Forfeitures to be levied by Diſtreſs: But this is not to extend to Dreſſing Meat in Families, Inns, Cook-Shops, or Victualling Houſes; nor to crying of Milk on a *Sunday* in the Morning and Evening. 29 *Car.* 2. *c.* 7. Law Proceſſes are not to be ſerved on a *Sunday*, unleſs it be in Caſes of Treaſon or Felony; or on an Eſcape, by Virtue of 5 *Ann.* *Sunday* is not a Day in Law for Proceedings, Contracts, *&c.* And hence it is, that a Sale of Goods on this Day in a Market overt is not good: And if any Part of the Proceedings of a Suit in any Court of Juſtice, be entered and recorded to be done on a *Sunday*, it makes it all void. 2 *Inſt* 264. 3 *Shep. Abr.* 181. The Service of a Citation on a *Sunday* is good, and not reſtrained by the Stat. 29 *Car.* 2. And by two Judges, the Delivery of a Declaration upon a *Sunday* may be well enough, it not being a Proceſs; but *Holt* C. J. thought it ill, becauſe the Act intended to reſtrain all Sorts of legal Proceedings. 1 *Ld. Raym.* 706.

Supercargo, A Perſon employed by Merchants to go a Voyage, and overſee their Cargo, and diſpoſe of it to the beſt Advantage. *Merch. Dict.*

Super-inſtitution, (*Super-Inſtitutio*) Is one *Inſtitution* upon another; as where *A. B.* is admitted and *inſtituted* to a Benefice upon one Title, and *C. D.* is admitted and *inſtituted* on the Title or Preſentment of another. 2 *Cro.* 463. See *Inſtitution.*

Super-jurare, A Term uſed in our ancient Law, when a Criminal endeavoured to excuſe himſelf by his own Oath, or the Oath of one or two Witneſſes, and the Crime objected againſt him was ſo plain and notorious, that he was convicted by the Oaths of many more Witneſſes: This was called *Super-jurare.* Leg. Hen. 1. c. 74. Leg. Athelſtan. c. 15.

Superoneratione Paſturæ, Is a Judicial Writ that lies againſt him who is impleaded in the County Court for the *Surcharging* or Overburthening a *Common* with his Cattle, in a Caſe where he was formerly impleaded for it in the ſame Court, and the Cauſe is removed into one of the Courts at *Weſtminſter.* Reg. Judic.

Super Prærogativa Regis, A Writ which formerly lay againſt the King's Widow for Marrying without his Licence. F. N. B. 173.

Superſedeas, Is a Writ that lies in a great many Caſes; and ſignifies in general a Command to ſtay ſome ordinary Proceedings, at Law, on good Cauſe ſhewn, which ought otherwiſe to proceed. *F. N. B.* 236. A *Superſedeas* is uſed for the ſtaying of an Execution, after a Writ of Error is allowed, and Bail put in: But no *Superſedeas* can be made out on bringing Writ of Error, till Bail is given, where there are Judgments upon Verdict, or by Default, in Debt, *&c.* though in Caſe and Treſpaſs, where Damages only are recovered, on the bringing and allowing of the Writ, the Clerk of the Errors will make out a *Superſedeas* without Bail. 2 *Lill. Abr.* 543. A *Writ of Error* is ſaid to be in Judgment of Law a *Superſedeas*, until the Errors are examined, *&c.* that is to the Execution; not to Action of Debt, on the Judgment at Law: From the Time of the Allowance, a Writ of Error is a *Superſedeas*; and if the Party had Notice of it before the Allowance, it is a *Superſedeas* from the Time of ſuch Notice; but this muſt be where Execution is not executed, or begun to be executed. *Cro. Jac.* 534. *Raym.* 100. *Mod. Ca.* 130. 1 *Salk.* 321. If before Execution, the Defendant bring a Writ of Error, and the Sheriff will execute a *Fieri fac.* and levy the Money, the Court will award a *Superſedeas, quia erronice emanavit*, and to have Reſtitution of the Money. *Stile* 414. After an Execution, there was a *Superſedeas, quia Executio improvide emanavit, &c.* iſſued; and there being no Clauſe of Reſtitution in the *Superſedeas*, it was inſiſted that the Execution was executed before the *Superſedeas* awarded, and that a faulty *Superſedeas* is no *Superſedeas*; but the Court ordered another *Superſedeas*, with a Clauſe of Reſtitution. *Moor* 466. 3 *Nelſ. Abr.* 256. The *Superſedeas, quia erronice emanavit*, lies to reſtore a Poſſeſſion, after an *Habere facias ſeiſinam*, when ſued out erroneouſly: So of a *Superſedeas* after Execution upon a *Capias ad ſatisfaciend.* if it be immediately delivered to the Sheriff. *Jenk. Cent.* 58, 92. It appearing upon Affidavit, that there were two Writs of Execution executed upon one Judgment: The Party moved for a *Superſedeas*, becauſe there cannot be two ſuch Executions, but where the Plaintiff is hindred either by the Death of the Defendant, or by ſome Act in Law, that he can have no Benefit of the firſt; and ſo it was adjudged. *Stile* 255. A *Superſedeas* is grantable to a Sheriff to ſtay the Return of an *Habeas Corpora*; and if he return it afterwards, and the Parties proceed to Trial 'tis Error; and ſo are all the Proceedings in an inferior Court, after an *Habeas Corpus* delivered, unleſs a *Procedendo* is awarded, in which Caſe a *Superſedeas* is not to be granted. *Cro. Car.* 43, 350. When a *Certiorari* is delivered, it is a *Superſedeas* to inferior Courts below; and being allowed, all their Proceedings afterwards are erroneous; and they may be puniſhed. The Juſtices, *&c.* to whom a *Certiorari* is ſent, are to iſſue a *Superſedeas* to the Sheriff to ſtop Execution of any Award, *&c.* 2 *Hawk. P. C.* 293. If a Sheriff holds Plea of 40 *s.* Debt in his County Court, the Defendant may ſue forth a *Superſedeas* that he do not proceed, *&c.* Or after Judgment he may have a *Superſedeas* directed to the Sheriff, requiring him not to award Execution upon ſuch Judgment; and upon that an *Alias*, a *Pluries*, and an *Attachment*, &c. *New Nat. Br.* 432. *Superſedeas* may be granted by the Court for ſetting aſide an erroneous judicial Proceſs, *&c.* Alſo a Priſoner may be diſcharged by *Superſedeas*; as a Perſon is impriſoned by the King's Writ, ſo he is to be ſet at Liberty; and a *Superſedeas* is as good a Cauſe to diſcharge a Perſon, as the firſt Proceſs is to arreſt him. *Finch* 453. *Cro. Jac.* 379. If a privileged Perſon is ſued in any Juriſdiction foreign to his Privilege, he may bring his *Superſedeas.* Vaugh. 155. But a Peer being arreſted by a Bill of *Middleſex*, was ordered to plead his Privilege; and not allowed a *Superſedeas.* Stile 177. It is falſe Impriſonment to detain a Man in Cuſtody after a *Superſedeas* delivered; for the *Superſedeas* is to be obeyed; and in ſuch Caſe it is a new Caption without any Cauſe. 2 *Cro* 379. 3 *Nelſ.* 256. There is a *Superſedeas* where an *Audita Querela* is ſued; and out of the *Chancery*, to ſet a Perſon at Liberty taken upon an *Exigent*, on giving Security to appear, *&c.* And in Caſes of Surety of the Peace and Good Behaviour, where a Perſon is already bound to the Peace in the Chancery, *&c.* *New Nat. Br.* 524, 529, 532.

Form of a Writ of *Superſedeas.*

GEORGE *the Second*, &c. *To the Sheriff of* M. *Greeting: Whereas we lately commanded you by our Writ, that you ſhould take* C. D. *late of*, &c. *in your County, if he ſhould be found in your Bailiwick, and ſafely keep him, ſo that you might have his Body before us at* Weſtminſter, *on the Day*, &c. *next after*, &c. *then to come, and now laſt paſt, to make Satisfaction to* A. B. *for fifty Pounds, which in our Court before us were awarded to the ſaid* A. *for his Damages that he had ſuſtained, by Reaſon of not performing certain Promiſes and Undertakings, made by the ſaid* C. *to the ſaid* A. *at*, &c. *in your ſaid County, whereof he is convicted: And becauſe it appears to us, that our Writ to take his Body to make Satisfaction, was unduly and clandeſtinely ſued out of our ſaid Court before us: Therefore we command*

mand you, that you altogether forbear taking, impriſoning, or any ways moleſting the ſaid C. by Reaſon of the Premiſſes, or in any manner executing the ſaid Writ and making a Return thereof to us, &c. *And if you ſhall have taken the ſaid C. upon that Occaſion, and no other, then do you without Delay diſcharge him, and permit him to go at large.* Witneſs, &c.

Super Statuto de Articulis Cleri, *Cap.* 6. A Writ lying againſt the Sheriff or other Officer that diſtrains in the King's Highway, or in the Lands anciently belonging to the Church. *F. N. B.* 173.

Super Statuto facto pour Seneſchal & Marſhal de Roy, &c. Is a Writ that lieth againſt the *Steward* or *Marſhal*, for holding Plea in his Court of Freehold, or for Treſpaſs or Contracts not made and ariſing within the King's Houſhold. *F. N. B.* 241.

Super Statuto verſus Servantes & Laboratores, A Writ againſt him who keeps *Servants* departed out of their Services contrary to Law. *F. N. B.* 167.

Super Statuto de York, quo null ſerra viteller, &c. Is a Writ lying againſt a Perſon that uſes Victualling, either in Groſs, or by Retail, in a City or Borough Town, during the Time he is Mayor, &c. *F. N. B.* 172.

Superſtitious Uſes, Cauſing Forfeiture of Lands and Goods to the King, by Stat. 1 *Ed.* 6. *cap.* 14. See *Uſes.*

Superviſor, (*Lat.*) A Surveyor or Overſeer: And it was formerly and ſtill is a Cuſtom among the better Sort of People, to make a *Superviſor of a Will*, to *ſuperviſe* and overſee the Executors that they punctually perform the Will of the Teſtator; but this Office is of late very careleſly executed, ſo as to be to little Purpoſe or Uſe. *Superviſor* (now Surveyor) of the *Highways*, is mentioned in the Stat. 5 *Eliz. cap.* 13.

Supplicavit, Is a Writ iſſuing out of *Chancery*, for taking Surety of the Peace, when one is in Danger of being hurt in his Body by another; it is directed to the Juſtices of Peace and Sheriff of the County, and is grounded upon the Stat. 1 *Ed.* 3. *cap.* 16. which ordains, That certain Perſons ſhall be aſſign'd by the *Chancellor* to take Care of the Peace, &c. *F. N. B.* 80, 81. When a Man hath purchaſed a Writ of *Supplicavit*, directed to the Juſtices of the Peace, againſt any Perſon, then he, againſt whom the Writ is ſued, may come into the Chancery, and there find Sureties that he will not do Hurt or Damage unto him that ſueth the Writ; and upon that he ſhall have a Writ of *Superſedeas* directed to the Juſtices, &c. reciting his having found Sureties in Chancery, according to the Writ of *Supplicavit*; and alſo reciting that Writ, and the Manner of the Security that he hath found, &c. commanding the Juſtices, that they ceaſe to arreſt him, or to compel him to find Sureties, &c. And if the Party who ought to find Sureties, cannot come into the Chancery to find Sureties, his Friend may ſue a *Superſedeas* in Chancery for him; reciting the Writ of *Supplicavit*, and that ſuch a one and ſuch a one are bound for him in the Chancery in ſuch a Sum, that he ſhall keep the Peace according to it; and the Writ ſhall be directed to the Juſtices, that they take Surety of the Party himſelf according to the *Supplicavit*, to keep the Peace, &c. and that they do not arreſt him; or if they have arreſted him for that Cauſe, that they deliver him. *New Nat. Br.* 180. Sometimes the Writ *Supplicavit* is made returnable into the Chancery at a certain Day; and if ſo, and the Juſtices do not certify the Writ, nor the Recognizance and the Security taken, the Party who ſued the *Supplicavit* ſhall have a Writ of *Certiorari* directed unto the Juſtices of Peace to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security found, &c. *Ibid.* If a Recognizance of the Peace be taken in Purſuance of a Writ of *Supplicavit*, it muſt be wholly governed by the Directions of ſuch Writ; but if it be taken before a Juſtice of Peace below, the Recognizance may be at the Diſcretion of ſuch Juſtice. *Lamb.* 100 *Dalt. c.* 70. To ſue the Writ of *Supplicavit*, the Party that deſires it muſt go before one of the Maſters in Chancery, and make Oath that he does not deſire the ſame through any Malice, but for his own Safety; upon which the Maſter makes out a Warrant, and the Writ is made by it by one of the Clerks in the Six Clerks Office; and when made, the *Supplicavit* is to be delivered to the Sheriff to have his Warrant thereupon for arreſting the Party, &c. and then having ſued out a *Certiorari*, it is to be delivered to them that took Bail thereon; and they are required to certify it, &c. *Pract. Solic.* 130.

Supremacy, Signifies Sovereign Dominion, Authority and Preheminence, the higheſt Eſtate. K. *Hen.* 8. was the firſt Prince that ſhook off the Yoke of *Rome* here in *England*, and ſettled the *Supremacy* in himſelf, after it had been long held by the *Pope*. Stat. 25 *Hen.* 8. *cap.* 12, 20. And by 1 *Eliz. cap.* 1. all Eccleſiaſtical Juriſdiction was annexed to the Crown; and it was ordained that no foreign Potentate ſhould exerciſe any Power or Authority in this Kingdom: Alſo the *Oath of Supremacy* was appointed, &c. By theſe Laws, the great Power of *Rome* was ſuppreſs'd; and the Act of 1 *Eliz.* Sir *Edward Coke* ſays, was an Act of Reſtitution of the ancient Juriſdiction Eccleſiaſtical, which always belonged of Right to the Crown of *England*; and that it was not introductory of a new Law, but declaratory of the old, and that which was or of Right ought to be by the fundamental Laws of this Realm, Parcel of the King's Juriſdiction; by which Laws, the King as *Supream Head*, had full and intire Power in all Cauſes Eccleſiaſtical as well as Temporal: And as in Temporal Cauſes, the King doth judge by his Judges in the Courts of Juſtice, by the Temporal Laws of *England*; ſo in Cauſes Eccleſiaſtical, they are to be determined by the Judges thereof, according to the King's Eccleſiaſtical Laws. 5 *Rep.* 9. *Cawdrey*'s Caſe. And in this Caſe it was reſolved by all the Judges, that by our ancient Laws, this Kingdom is an abſolute Empire and Monarchy; conſiſting of one Head, which is the King, and of a Body Politick, made up of many well agreeing Members, all which the Law divides into two ſeveral Parts, the Clergy and the Laity, both of them immediately under God, ſubject and obedient to the Head. And the Kingly Head of this Politick Body, is furniſh'd with Prerogative and Juriſdiction, to render Juſtice and Right to every Part and Member of this Body, of what Eſtate or Degree ſoever, otherwiſe he would not be at the Head of the Whole. 5 *Co. Rep.* 8. There are ſeveral Inſtances of Eccleſiaſtical Juriſdiction exerciſed by the King of *England* in former Ages; and in this Reſpect the King is ſaid to be *Perſona mixta & unita cum ſacerdotibus.* The King is the *ſupreme* Ordinary, and by the ancient Laws of the Land, might without any Act of Parliament, make Ordinances for the Government of the Clergy; and if there be a Controverſy between ſpiritual Perſons, concerning Juriſdiction, the King is Arbitrator, and 'tis a Right of his Crown to declare their Bounds, &c. *Moor* 755, 1043. *Hob.* 17. See *Appeals to* Rome, *Pope*, and *Præmunire.*

Surcharge, An Over-charge, beyond what is juſt and right. *Merch. Dict.*

Sur Cui in vita, Is a Writ that lies for the Heir of a Woman, whoſe Huſband hath aliened her Land in Fee, and ſhe neglected to bring the Writ *Cui in vita* for Recovery thereof; in this Caſe, her Heir may bring this Writ againſt the Tenant after her Deceaſe. *F. N. B.* 193.

Surety, (*Vas Vadis*) A Bail that undertakes for another Man in a criminal Caſe, or Action of Treſpaſs, &c. And there is a *Surety of the Peace*, ſo called, becauſe the Party that was in Fear is thereby *ſecured*, by Bond or Recognizance of the other, and his Bail bound for him. *Lamb. Eiren. lib.* 2. Vide *Good Behaviour.*

Surgeon, (*Chirurgus*) May be deduced from the Fr. *Chirurgeon*, ſignifying him that dealeth in the mechanical Part of Phyſick, and the outward Cures perform'd with the Hand; and therefore is compounded of the two *Greek* Words Χεὶρ, *manus*, Ἔργον, *opus*, and for this Cauſe *Surgeons* are not allowed to adminiſter any inward Medicine. By the Stat. 32 *H.* 8. *cap.* 42. the *Barbers* and *Surgeons* of *London* are incorporated and made one Company; and there ſhall be choſen yearly four Maſters for the ſaid Company, of which two muſt be expert in *Surgery*, and the other two in Barbery, whō ſhall have Power to puniſh and correct all Defaults; and the Company and their Succeſſors are to have the Overſight and Correction as well of Freemen as Foreigners, for ſuch Offences as they ſhall commit againſt the good Order of Barbery and *Surgery:* They ſhall be exempted from bearing of Arms, ſerving on Juries, and all manner of Pariſh Offices, &c. but are to pay Scot and Lot, and other Charges as formerly; and the ſaid Company ſhall have free Liberty to take four Perſons condemned for Felony, for Anatomies yearly. No Barber in *London*, or within one Mile thereof ſhall practiſe *Surgery*, letting of Blood, or any other Thing relating thereto, except Drawing of Teeth; nor ſhall any Perſon who practiſes *Surgery* within thoſe Limits, exerciſe the Craft of a Barber: Tho' any Man not being a Barber or *Surgeon*, may retain in his Houſe as a Servant, a Barber or *Surgeon*, who may exerciſe his Art in his Maſter's Houſe, or elſewhere, &c. All Perſons practiſing *Surgery* in *London*, ſhall have an open Sign in the Street where they dwell, that People may know where to reſort to them when wanted: And every Perſon offending in any of the Articles contained in this Statute ſhall forfeit 5 *l.* a Month, one Moiety to the King, and the other to him who will ſue for the ſame, &c. See *Phyſicians.*

Sur lui jur, *i. e.* Upon his Oath, according to ancient Laws. *Leg. W.* 1. *cap.* 16.

Surmiſe, Is ſomething offered to a Court to move it to grant a Prohibition, *Audita Querela*, or other Writ grantable thereon; and what ſhall be allowed to be a good *Surmiſe*, or not ſo, ſee 2 *Cro.* 669, 219, 501. Vide *Suggeſtion.*

Surpluſage, (Fr. *Surplus*, Lat. *Surpluſagium*, *Corollarium*) Is a Superfluity or Addition more than needful, which ſometimes is the Cauſe that a Writ abates; but in Pleading many Times it is abſolutely void, and the Reſidue of the Plea ſhall ſtand good. *Broke. Plowd.* 63. And on a Writ of Enquiry of Damages in Waſte, in which the Sheriff was commanded to go to the Place waſted, and there to inquire of the Waſte done and Damages, who returned the Inquiſition, without mentioning that he went to the Place waſted; this was held to be *Surpluſage* in the Writ that would not hurt, becauſe by the Plea in the Action the Waſte was acknowledged, ſo that he need not go to the Place waſted to view it. *Poph.* 24. A *Diſtringas* was returnable *Tres Trin. Niſi prius venerit* Matthæus Hale *Mil. Capital. Baro*, &c. on ſuch a Day *ejuſdem Menſis Junii*; whereas the Month of *June* was not mentioned before; and this was moved in Arreſt of Judgment as a Diſcontinuance; but adjudged that the Word *ejuſdem* ſhall be rejected as *Surpluſage* and void, and then the Word *Junii* ſhall be intended *June* next; as a Covenant to pay Money at *Michaelmas*, ſhall be intended *Michaelmas* next enſuing. *Hardr.* 330. In a Declaration for Debt, upon Demurrer, it was objected againſt the Declaration, for that the Plaintiff averred the Defendant had not paid *præd. ſexaginta Libras*, &c. when the Word *Sexaginta* was not before mentioned: And it was reſolved that it ſhall be *Surpluſage*, when 'tis that the Defendant had not paid *præd. Libras*, which muſt be the Pounds for which the Plaintiff had declared. 1 *Lutw.* 445. *Cro. Eliz.* 647. 3 *Nelſ. Abr.* 262. A Plaintiff being right named through all the Proceedings, but in the laſt Place, where it was ſaid that a *Capias Utlagatum* was proſecuted againſt *prædict. Johannem Fowler*, and his true Name was *George:* It was ruled that the Word *Johannes* ſhall be *Surpluſage* and be rejected; and then the Plea will be, that a *Capias Utlagatum* was proſecuted againſt *prædict. Fowler.* 2 *Lutw.* 919. 1 *Lev.* 428. If a Jury find the Subſtance of the Iſſue before them to be tried, other ſuperfluous Matter is but *Surpluſage.* 6 *Rep.* 46. And where a Verdict or Judgment is compleat, if there be any other Matter repugnant or uncertain, &c. it ſhall be rejected as *Surplus.* 3 *Nelſ.* 262. 2 *Hawk. P. C.* 441. See *Pleading.*

Surpluſage of Accounts, Signifies a greater Diſburſement than the Charge of the Accountant amounts unto. In another Senſe, *Surpluſage* is the Remainder or *Overplus* of Money left. *Litt. Dict.*

Surrebutter, A ſecond Rebutter; or more properly it is the Replication or Anſwer of the Plaintiff to the Defendant's *Rebutter.* See *Rebutter.*

Surrejoinder, Is a ſecond Defence of the Plaintiff's Declaration in a Cauſe, and anſwers the *Rejoinder* of the Defendant. *Weſt's Symb. par.* 2. As a *Rejoinder* is the Defendant's Anſwer to the *Replication* of the Plaintiff; ſo a *Surrejoinder* is the Plaintiff's Anſwer to the Defendant's *Rejoinder. Wood's Inſt.* 586. Where a Plaintiff in his *Surrejoinder*, is to conclude to the Country, and not with an Averment. See *Raym.* 94. After *Rejoinder* and *Surrejoinder*, and *Rebutter*, &c. there may be a Demurrer. *Pract. Attorn. Edit.* 1. *pag.* 86.

Surrender, (*Surſum-Redditio*) Is a Deed or Inſtrument teſtifying that the particular Tenant for Life or Years, of Lands and Tenements, doth yield up his Eſtate to him that hath the immediate Eſtate in Remainder or Reverſion, that he may have the preſent Poſſeſſion thereof; and wherein the Eſtate for Life or Years may merge or drown by the mutual Agreement of the Parties. *Co. Litt.* 337. And of *Surrenders* there are three Kinds; a *Surrender* properly taken at Common Law; a *Surrender* of Copyhold or Cuſtomary Eſtates; and a *Surrender* improperly taken, as of a Deed, a Patent, Rent newly created, &c. The *Surrender* at Common Law is the uſual *Surrender*, and is of two Sorts, *viz.* A *Surrender in Deed*, or by expreſs Words in Writing; where the Words of the Leſſee to the Leſſor prove a ſufficient Aſſent to give him his Eſtate back again: And a *Surrender in Law*, being that which is wrought by Operation of Law, and not actual; as if Leſſee for Life or Years, take a new Leaſe of the ſame Land during their Term; this will be a *Surrender* in Law of the firſt Leaſe. 1 *Inſt.* 338. 5 *Rep.* 11. *Perk.* 601. And in ſome Caſes a *Surrender* in Law is of greater Force than a *Surrender* in Deed; for if a Man makes a Leaſe for Years to begin at a Day to come, this future Intereſt cannot be *ſurrendered* by Deed, becauſe there is no Reverſion wherein it may drown; but if the Leſſee before the Day, take a new Leaſe of the ſame Land, it is a good *Surrender* in Law of the former Leaſe: And this *Surrender* in Law, by taking a new Leaſe, holds good, though the ſecond Leaſe is for a leſs Term than the Firſt; and 'tis ſaid, though the ſecond Leaſe is a voidable Leaſe, &c. 5 *Rep.* 11. 6 *Rep.* 69. 10 *Rep.* 67. 1 *Inſt.* 218. *Cro. Eliz.* 873. If Leſſee for Life do accept of a Leaſe for Years, this is a *Surrender* in Law of his Leaſe for Life; if it ſhould be otherwiſe, the Leaſe for Years would be made to no Purpoſe, and both the Leaſes cannot ſtand together in one Perſon. 2 *Lill. Abr.* 544.

544. Leſſee for twenty-one Years takes a Leaſe of the ſame Lands for forty Years, to commence after the Death of *A. B.* it is not any preſent *Surrender* of the firſt Term; but if *A. B.* dies within the Term, it is. 4 *Leon.* 83. A Leſſee for Years took a ſecond Leaſe to commence at *Michaelmas* next; adjudged this was an immediate *Surrender* in Law of the firſt, and that the Leſſor might enter and take the Profits from the Time of the Acceptance of the ſecond Leaſe, until *Michaelmas* following. *Cro. Eliz.* 605. If the Leſſor make, and Leſſee accept a new Leaſe, and it is but upon Condition; this ſhall be a *Surrender* in Law: And if an Aſſignee of Tenant for Years take a new Leaſe, *&c.* the firſt Leaſe will be by Law *ſurrendered.* 1 *Inſt.* 218, 338. If a Woman Leſſee for Years marries, and afterwards ſhe takes a new Leaſe for Life without her Husband, this is a *Surrender* and Extinguiſhment of the Term; but if the Husband diſagree, then 'tis revived: Though if the new Leaſe had been made to the Husband and Wife, then by the Acceptance thereof, the firſt Leaſe had been gone. *Hutt.* 7. A Leſſor takes the Leſſee to Wife, the Term is not drown'd or *ſurrendered*; but he is poſſeſſed of the Term in her Right, during the Coverture. *Wood's Inſt.* 285. A *Surrender* may be of any Thing grantable, either abſolute or conditional; and may be made to an Uſe, being a Conveyance tied and charged with the Limitation of a Uſe: But it may not be of an Eſtate in Fee; nor of Rights or Titles only to other Eſtates for Life or Years; or for Part of ſuch an Eſtate; nor may one Termor regularly *ſurrender* to another Termor; or can a Tenant at Will *ſurrender* any more than he can grant. *Perk.* 615. *Noy's Max.* 73. *Cro. Eliz.* 688. 1 *Leon.* 303. Where Things will not paſs by *Surrender*, the Deed may enure to other Purpoſes, and take Effect by way of Grant, having ſufficient Words. *Perk.* 624, 588. And a *Surrender* may be made by theſe Words: *Hath ſurrendered, granted, yielded up and confirmed,* &c. To the making of a good *Surrender* in Deed of Lands, the following Things are requiſite; the *Surrenderor* is to be a Perſon able to grant and make a *Surrender*, and the *Surrenderee* a Perſon able to receive and take it; the *Surrenderor* muſt have an Eſtate in Poſſeſſion of the Thing *ſurrendered*, and not a future Right; and the *Surrender* is to be made to him that hath the next Eſtate in Remainder or Reverſion, without any Eſtate coming between; the *Surrenderee* muſt have a higher or greater Eſtate in his own Right, and not in the Right of his Wife, *&c.* in the Thing *ſurrendered*, than the *Surrenderor* hath, ſo that the Eſtate of the *Surrenderor* may be drown'd therein; (for if Leſſee for Life *ſurrender* to him in Remainder for Years, *&c.* it is a void *Surrender*) there is to be a Privity of Eſtate between the *Surrenderor* and *Surrenderee*; and the *Surrenderee* muſt be ſole ſeiſed of his Eſtate in Remainder or Reverſion, and not in Jointenancy; and the *Surrenderee* agree to the *Surrender*, *&c.* 1 *Inſt.* 338. *Perk.* 584, 588. 2 *Roll. Abr.* 494. *Noy's Max.* 73. A Man who hath a Fee-ſimple Eſtate cannot *ſurrender* it, becauſe it can't be drown'd in another Eſtate. 12 *H.* 4. 21. And if a Leaſe be made for Life or Years to *A.* the Remainder for Life to *B.* Remainder in Fee-tail to *C.* and the firſt Tenant *ſurrenders* to *C.* this will not take Effect as a *Surrender*, by Reaſon of the intervening Eſtate. *Dyer* 112. The Leſſee for Life or Years, may *ſurrender* to him that is next in Remainder in Fee-ſimple or Fee-tail: And if Leſſee for Life *ſurrenders* his Eſtate to one in Remainder, that is Tenant for his own Life; it is a good *Surrender*, for a Man's Eſtate for his own Life in Judgment of Law, is greater than that for another's. And where an Eſtate is *ſurrender'd* for Life, there needs no Livery and Seiſin, as in a Grant. 1 *Inſt.* 338. *Dyer* 251, 280. Yet in ſome Caſes an Eſtate, *&c.* may have Continuance, though it be *ſurrendered*; as where Leſſee for Life makes a Leaſe for Years, and after doth *ſurrender*, the Term for Years doth continue; and ſo of a Rent-Charge granted by ſuch Leſſee, *&c.* *Bro.* 47. 1 *Inſt.* 338. If the Leſſee for Years rendring Rent, *ſurrenders* his Eſtate to the Leſſor, hereby the Rent is extinct: But if the Rent were granted away before the *Surrender*, it would be otherwiſe. 8 *Rep.* 145. *Bro. Surrend.* 42. Tenant for Life is diſſeiſed, or for Years ouſted, and before Entry, or Poſſeſſion gain'd, he *ſurrenders* to him in Reverſion; this *Surrender* is void: And yet if Leſſee for Years, after his Term is begun, before he Enters, and when no body doth keep from him the Profits, *ſurrenders*, it will be good. *Perk. Sect.* 600. If there be Leſſee for Years, the Remainder for Life, Remainder in Fee; the Leſſee for Years may *ſurrender* to the Leſſee during Life, and ſo may he to him in the Remainder in Fee: But if there is Tenant for Life, the Remainder for Life, and ſuch Remainder in Fee; here the ſecond Tenant for Life cannot *ſurrender* to him in Remainder. *Ibid.* 605. In caſe of Tenant for Life, Remainder for Life, Reverſion in Fee; it was a Queſtion formerly, whether the Remainder-man for Life, by and with the Conſent of the Tenant for Life could *ſurrender* to him in Reverſion without Deed, only by coming on the Land and ſaying, that he did *ſurrender* to him in Reverſion; the Court were divided, but two Judges held, that if Tenant for Life and he in Remainder for Life, *ſurrendered* to the Reverſioner, it ſhould paſs as ſeveral *Surrenders*, *viz.* Firſt of him in Remainder to the Tenant for Life, and then by the Tenant for Life to him in Reverſion. *Poph.* 137. If Tenant for Life grant his Eſtate to him in Reverſion, this is a *Surrender*; and it muſt be pleaded according to the Operation he hath in Law, or it will not be good. 4 *Mod.* 151. Though if Leſſee for Life or Years, grant their Eſtates to him in Remainder or Reverſion and a Stranger; it ſhall enure as a *Surrrender* of the one Half to him in Reverſion, and as a Grant of the other Moiety to the Stranger. 1 *Inſt.* 335. And by Statute, no Eſtates of Freehold, or of Terms for Years, ſhall be granted or *ſurrendered* but by Deed in Writing, ſigned by the Parties, or unleſs by Operation of Law, *&c.* 29 *Car.* 2. *c.* 2. See *Leaſes*, and 4 *Geo.* 2. *Surrenders of Copyhold Eſtates,* ſee *Copyhold.*

Form *of a* Surrender of Lands *held for Term of Years.*

TO all People *to whom theſe Preſents ſhall come,* A. B. *of,* &c. *ſendeth Greeting:* Whereas *the ſaid* A. B. *is poſſeſſed of and intereſted in one Meſſuage or Tenement called* D. *and all thoſe Lands containing,* &c. *ſituate, lying and being in,* &c. *for the Remainder of a certain Term of twenty-one Years, the Reverſion whereof doth belong to* C. D. *of,* &c. Now know ye, *That the ſaid* A. B. *for and in Conſideration of the Sum of,* &c. *to him in Hand paid by the ſaid* C. D. *the Receipt whereof the ſaid* A. B. *doth hereby confeſs and acknowledge: He the ſaid* A. B. *hath ſurrendered and yielded up, and by theſe Preſents doth ſurrender and yield up unto the ſaid* C. D. *his Heirs and Aſſigns for ever, all the ſaid Meſſuage or Tenement, Lands and Premiſſes above-mentioned, and all the Eſtate, Right, Title, Intereſt, Term of Years, Claim and Demand whatſoever of him the ſaid* A. B. *of, in and to the ſaid Premiſſes, and every Part thereof, with the Appurtenances; ſo that neither he the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, or any of them, ſhall or may have, claim, challenge or demand the ſaid Premiſſes, or any Part thereof, or any Eſtate, Right, Title or Intereſt, of in and to the ſame, but ſhall at all Times hereafter, of and from all Right, Title and Intereſt, of and in the ſaid Premiſſes, and every Part thereof, be barred and for ever excluded by theſe Preſents: And the ſaid* A. B. *for himſelf, his*

Executors, Adminiſtrators and Aſſigns, doth covenant and grant to and with the ſaid C. D. *his Heirs and Aſſigns, that he the ſaid* C. D. *his Heirs and Aſſigns, ſhall and may at all Times hereafter peaceably and quietly enter into, have, hold, occupy, poſſeſs, and enjoy, all and ſingular the ſaid Meſſuage or Tenement, Lands and Premiſſes abovementioned, and every Part thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Moleſtation, Interruption or Denial of him the ſaid* A. B. *his Executors, Adminiſtrators or Aſſigns, or of any other Perſon or Perſons whatſoever, claiming, or to claim, by from, or under him.* In Witneſs, *&c.*

Surrender of Letters Patent, and Offices. A *Surrender* may be made of Letters Patent to the King, to the End he may grant the Eſtate to whom he pleaſes, *&c.* And a ſecond Patent for Years, to the ſame Perſon, for the ſame Thing, is a *Surrender* in Law of the firſt Patent. 10 *Rep.* 66. Letters Patent for Years were delivered into the Chancery to be cancelled, and new Letters Patent made for Years; but the firſt were not cancelled: It was held that the ſecond were good, becauſe they were a *Surrender* in Law of the firſt, and the not cancelling was the Fault of the Chancery, which ought to have done it. 10 *Rep.* 66, 67. 2 *Lill. Abr.* 545. If an Officer for Life accepts of another Grant of the ſame Office, it is in Law a *Surrender* of the firſt Grant: But if ſuch an Officer takes another Grant of the ſame Office to himſelf and another, it may be otherwiſe. 1 *Ventr.* 297. 3 *Cro.* 198. See *Dyer* 167, 198. *Godb.* 415.

Surrogate, (*Surrogatus*) Is one that is ſubſtituted or appointed in the Room of another; as the Biſhop or Chancellor's *Surrogate*, &c.

Surſiſe, (*Superſiſa*) A Word ſpecially uſed in the Caſtle of *Dover*, for Penalties and Forfeitures laid upon thoſe that pay not the Duties or Rent of *Caſtleward*, at their Days limited. Stat. 32 *H.* 8. *cap.* 40. It probably comes from the Fr. *Surſiſt*, *i. e.* forbore or neglected. *Brit.* 52. And *Bracton* hath it ſo in a general Signification. *Bract. lib.* 5.

Survey, Is to meaſure, lay out, or particularly deſcribe a *Manor*, or Eſtate in Lands; and to aſcertain not only the Bounds and Royalties thereof, but the Tenure of the reſpective Tenants, the Rent and Value of the ſame, *&c.* In this laſt Signification, which is according to our Law, it is alſo underſtood to be a *Court*; for on the Falling of an Eſtate to a new Lord, conſiſting of Manors, where there are Tenants by Leaſe, and Copyholders, a *Court of Survey* is generally held; and ſometimes at other Times, to appriſe the Lord of the preſent Terms and Intereſts of the Tenants, and as a Direction on making further Grants, as well as in Order to Improvements, *&c.* See my *Comp. Court-Keep.*

A Survey of the Manor of *D.* in the County of G. belonging to the Honourable *W. B.* Eſq; Taken this Day of, *&c.* in the Year, *&c.*

A. B. *of*, &c. *holds by Leaſe for his Life, and the Lives of* T. B. *and* C. B. *his Son, one Meſſuage, and twenty Acres of Land, Meadow and Paſture, ſituate in*, &c. *within the ſaid Manor, under the yearly Rent of* 20 s.——20 l. per Ann.

C. D. *holds by Copy of Court-Roll for his own Life and the Lives of* M. *his Wife and* C. *his Son* (*all of them living*) *one Meſſuage or Tenement with the Appurtenances within the ſaid Manor, called*, &c. *Quit-Rent* 30 s. *Heriot* 3 l.——30 l. per Ann.

E. F. *holds by Copy for the Lives of* K. *his Wife and* T. *his Son, one Tenement within the ſaid Manor, Rent* 10 s. *Heriot*, &c.——15 l. per Ann.

G. H. *holds for the Term of his own Life, one Cottage with the Appurtenances, Quit-Rent* 5 s.—— 10 l. per Ann.

J. K. *holds for her Widowhood, a Piece of Ground called*, &c.

L. M. *holds*, &c.

Examined by G. *J.* Gent.
Steward of the ſaid Manor.

Surveyor, (Compounded of two *Fr.* Words, *Sur*, i. e. *Super & Voir*, *Cernere*) Signifies one that hath the Overſeeing or Care of ſome great Perſon's *Lands* or *Works*: And there was a *Court of Surveyors* erected by 33 *Hen.* 8. *c.* 39.

Surveyor of the King's Exchange, An ancient Officer belonging to the Mint and Coinage, mentioned in the Statute 9 *Hen.* 5. *cap.* 4.

Surveyor General of the King's Manors and Lands, We read of in *Cromp. Juriſd.* 106.

Surveyor of the Navy, An Officer appointed over all Stores; and to Survey Hulls and Maſts of Ships, *&c.* *Chamberl.*

Surveyor of the King's Ordinance, This Officer ſurveys the Ordinance and Proviſions of War, allows Bills of Debt, and keeps the Checks on Labourers Works, *&c.*

Surveyor of the Wards and Liveries, Taken away with the Court of Wards and Liveries. 12 *Car.* 2. *c.* 24.

Survivor, (From the Fr. *Survivre*, and Lat. *Supervivo*) Is the longer Liver of two Jointenants, or of any two Perſons joined in the Right of a Thing: He that remaineth alive, after others be dead, *&c.* *Broke* 33. Where there are Jointenants in any Thing when one dies, (if but two only) the Whole goes to the *Survivor*; but if there be more than two, then the Part of him who is dead goes amongſt all the *Survivors*. 2 Lill. Abr. 546. Jointenants take by *Survivorſhip*, unleſs they do any Act whereby the Jointure is ſevered; for then there can be no *Survivorſhip*. Wood's Inſt. 147. See *Jointenant.*

Suſana Terræ, Is ſaid to be Land worn out with Ploughing. *Thorn.*

Suſceptor, (*Lat.*) An Undertaker or Godfather, alſo a Receiver of Tribute in the *Roman* Provinces. *Litt. Dict.*

Suſpenſe, (*Suſpenſio*) Is a temporal Stop, or hanging up, as it were, of a Man's Right, for a Time; and in legal Underſtanding, is taken to be where a Rent, or other Profit out of Land, by reaſon of the Unity of Poſſeſſion of the Rent, *&c.* and the Land out of which it iſſues, is not *in eſſe* for a certain Time, *Et tunc dormiunt*, but may be revived or awaked: And it differs from *Extinguiſhment*, which is when it dies or is gone for ever. *Co. Lit.* 213. A *Suſpenſion* of Rent is, when either the Rent or Land are ſo conveyed, not abſolutely and finally, but for a Time, after which the Rent will be revived again. *Vaugh.* 109. A Rent may be *ſuſpended* by Unity for a Time; and if a Leſſor doth any Thing which amounts to an Entry on the Land, tho' he preſently depart, yet the Poſſeſſion is in him ſufficient to *ſuſpend* the Rent, until the Leſſee do ſome Act which amounts to a Re-entry. *Vaugh.* 39. 1 *Leon.* 110. As Rent is not iſſuing out of a Common, the Leſſor's Incloſing the Common cannot *ſuſpend* his Rent. *Cro. Jac.* 679. If Part of a Condition is *ſuſpended*, the whole Condition, as well for Payment of the Rent, as doing a collateral Act, is *ſuſpended.* 4 Rep. 52. And a Thing or Action perſonal once *ſuſpended*, is for ever *ſuſpended*, &c. *Cro. Car.* 373. See *Extinguiſhment.*

Suſpenſion, A Cenſure whereby *Eccleſiaſtical Perſons* are forbidden to exerciſe their Office, or to take the Profits of their Benefices; or where they are prohibited for a certain Time in both of them, in the Whole or in Part: Hence is *ſuſpenſio ab Officio*, or *ſuſpenſio à Beneficio*, and *ab officio & Beneficio.* *Wood's Inſt.* 510. There is likewiſe a *Suſpenſion* which relates to the *Laity*, i. e. *ſuſpenſio ab Ingreſſu Eccleſiæ*, or from the Hearing of divine Service, *&c.*

&c. In which Caſe it is uſed as in the *Canon Law, pro minori Excommunicatione.* Stat. 24 Hen. 8. cap. 12.

Suſpicion, A Perſon may be taken up on *Suſpicion*, where a Felony is done, &c. but thoſe who are impriſon'd for a light *Suſpicion* of Larceny or Robbery, are bailable by Statute. 2 *Hawk. P. C.* 101. And the Party being a private Perſon, that takes up one on *Suſpicion* of Felony, muſt do it of his own *Suſpicion*, not upon that of another; and he muſt have reaſonable Cauſes of it, &c. 2 *Hale's Hiſt.* P. C. 78.

Suſpiral, (From the Lat. *Suſpirare*, i. e. *ducere Suſpiria*) Is uſed for a Spring of Water, paſſing under Ground towards a Conduit or Ciſtern. 35 *H.* 8. *cap.* 10.

Suthdure, (*Sax.*) *i. e.* The *South Door* of a Church; it was the Place where Canonical Purgation was perform'd, that is, where the Fact charged upon a Perſon could not be proved by ſufficient Evidence, and the Party accuſed came to the *South* Door of the Church, and there in the Preſence of the People made Oath, that he was innocent: And Plaints, &c. were heard and determined at the *Suthdure*; for which Reaſon large Porches were antiently built at the *South* Doors of Churches. *Gervaſ. Dorob. de Reparation. Eccleſiæ Cantuar.*

Swan, (*Cygnus*) Is a noble Bird of Game; and a Perſon may preſcribe to have Game of *Swans* within his Manor, as well as a Warren, or Park. 7 *Rep.* 17, 18. A *Swan* is a Bird Royal; and all white *Swans* not marked, which have gain'd their natural Liberty, and are ſwimming in an open and common River, may be ſeiſed to the Uſe of the King, by his Prerogative: But a Subject may have a Property in white *Swans* not mark'd; as any Man may have ſuch *Swans* in his private Waters, and the Property of them belongs to him, and not the King; and if they eſcape out of his private Waters, into an open and common River, he may retake them; though it is otherwiſe if they have gain'd their natural Liberty and ſwim in open Rivers, without ſuch Purſuit. *Game Law, par.* 2. *p.* 152. Stealing *Swans* mark'd and pinion'd, or unmark'd, if kept in a Mote, Pond, or private River, and reduc'd to Tameneſs, is Felony. *H. P. C.* 68. And he that ſteals the Eggs of *Swans* out of their Neſts, ſhall be impriſon'd a Year and a Day, and be fined at the King's Pleaſure. 11 *Hen.* 7. *cap.* 17. No Fowl can be a Stray, but a *Swan.* 4 Inſt. 280.

Swanherd, The King's *Swanherd*, Magiſter deductus Cygnorum. *Pat.* 16 *R.* 2.

Swan-mark, No Perſon may have a *Swan mark*, except he have Lands of the yearly Value of five Marks, and unleſs it be by Grant of the King or his Officers lawfully authorized, or by Preſcription. Stat. 22 *Ed* 4. *c.* 6.

Swanimote or **Swainmote**, (*Swainmotus*, from the Sax. *Swang.* i. e. a Country *Swain*, and *Gemote*, i. *Conventus*) Signifies a Court touching Matters of the *Foreſt*, held by the Charter of the Foreſt thrice in the Year, before the Verderors as Judges. *Cromp. Juriſd.* 108. 3 *Hen.* 8. *c.* 18. The *Swainmote* is a Court unto which all the Freeholders in the Foreſt do owe Suit and Service; and all the Officers of the Foreſt are to appear at every *Swainmote*, alſo out of every Town and Village in the Foreſt four Men and a Reeve; or on Default, ſhall be amerced and diſtrained. *Game Law, par.* 2. 19, 20. A Court of *Swainmote* is incident to a Foreſt, as the Court of Piepowder to a Fair, &c. *Chart. Foreſt. Hen.* 3. See *Foreſt.*

Swarff-Money, Is mentioned among Cuſtoms and Services: And this *Swarff Money* is one Half peny, paid before the Riſing of the Sun; the Party muſt go three Times about the Croſs, and ſay the *Swarff Money*, and then take Witneſs and lay it in the Hole; and he is to look well that his Witneſs do not deceive him; for if it be not ſo paid, he ſhall pay a great Forfeiture, *viz.* xxx *s.* and a White Bull: This Account was found in an old *MS.* containing the Rents due to the *Catesby's* in *Lodbroke*, and other Places in *Warwickſhire.* See *Warth-Money.*

Swath, (Sax. *Swatha*) A *Swathe*, or as in *Kent* a *Sweath*, and in ſome Parts a *Swarth*, is a ſtrait Row of cut Graſs or Corn, as it lies after the Scithe at the firſt Mowing of it. *Paroch. Antiq.* 399.

Swearing, (*Imprecatio*) Is an Offence againſt God and Religion, and a Sin of all others the moſt extravagant and unaccountable, as having no Benefit or Advantage attending it. There are ſeveral good Laws and Statutes for puniſhing this Crime: the 21 *Jac.* 1. *cap.* 20. enacts, That if any Perſon ſhall profanely ſwear or curſe in the Preſence of a Juſtice of Peace, or the ſame ſhall be prov'd before a Juſtice, he ſhall forfeit 1 *s.* for every Offence, to the Uſe of the Poor, to be levied by Diſtreſs; and for Want of a Diſtreſs, the Offender to be ſet in the Stocks, &c. This Law is altered by the Stat. 6 & 7 *W.* 3. *cap.* 11. which confines the Forfeiture of 1 *s.* to Servants, Labourers, common Soldiers and Seamen; and by this latter Law the Penalty is 1 *s.* for the firſt Offence, for the Second double, and for the third Offence treble; and every Perſon, not being a Servant, Labourer, &c. ſwearing and curſing, ſhall forfeit for the firſt Offence 2 *s.* for the Second and Third, double and treble, &c. to be levied by Diſtreſs and Sale of Goods; and if there be no Diſtreſs, the Offender ſhall be put in the Stocks one Hour, or two Hours if for more Offences than one, provided he be above ſixteen Years of Age; for if he is under that Age, he ſhall be puniſhed with Whipping: The Proſecution is to be in ten Days after the Offence; and Conviction before a Juſtice by Confeſſion, or Oath of one Witneſs, &c. The Juſtice is to regiſter in his Book all Convictions upon this Statute, and certify them to the Quarter-Seſſions; and neglecting his Duty in putting the Act in Execution, he ſhall forfeit 5*l.* And Parſons are to read this Act in their Churches the next *Sunday* after every Quarter-day yearly, immediately after Morning Prayer, under the Penalty of 20*s.* *Mod. Juſt.* 432. A Conviction on the Statute 6 & 7 *W.* 3. againſt profane *Swearing*, not ſetting forth that the Defendant was not a Servant, Labourer, &c. and the Oaths, that the Court might judge of the Nature of them, for theſe Reaſons the ſame was Quaſhed; tho' the Counſel for the Plaintiff inſiſted that the Information was good; for if the Defendant was a Servant, &c. he ought to have given it in Evidence at the Trial. *Mich.* 8 *Geo.* 1. *Mod. Caſ. in L. & E.* 58, 59.

Sweets, Made in *Great Britain* for Sale, are liable to a Duty of Exciſe, &c. See *Exciſe.*

Swepage, Or the *Swepe*, is the Crop of Hay got in from a Meadow. *Co. Litt.* 4.

Swoling of Land, (*Solinga*, *vel Swolinga Terræ*, in Sax. *Sulung*, from *Sul*, *aratrum*, as to this Day in the Weſt Country a Plow is called a *Sul*) Is as much as one Plough can Till in a Year: A Hide of Land; though ſome Writers ſay it is an uncertain Quantity.——*Terram Trium Aratrorum, quam Cantiani* Anglice *dicunt* Three *Swolings.* Chart. Eccleſ. Cantuar.

Sworn Brothers, (*Fratres Jurati*) Perſons who by mutual Oath, covenanted to ſhare each other's Fortune: And formerly in any notable Expedition, to invade and conquer an Enemy's Country, it was the Cuſtom for the more eminent Soldiers to ingage themſelves by reciprocal Oaths to ſhare the Reward of their Service; ſo in the Expedition of *William* Duke of *Normandy* into *England*, *Robert de Oily*, and *Roger de Ivery* were ſworn Brothers and Coparteners in the Eſtate, which the Conqueror allotted them.

——Robertus de Oileio & Rogerus de Iverio *Fratres jurati, & per Fidem & Sacramentum Confœderati venerunt ad Conqueſtum Angliæ. Paroch. Antiq.* 57. This Practice gave Occaſion to our *Proverb* of *Sworn Brothers*, or *Brethren in Iniquity*; becauſe of their dividing Plunder and Spoil.

Sylva cædua, Underwood, otherwiſe called *Subbois.* 2 Inſt. 642. See *Silva Cædua.*

Symbolum, Is a *Symbol*, or Sign in the Sacrament; and the Creed of the Apoſtles, is often called by this Name by our *Hiſtorians.*

Syncopare, A Word uſed in ſeveral Eccleſiaſtical Councils and Synods, ſignifying to cut ſhort or pronounce Things ſo as not to be underſtood. *Synod. Wigorn. cap.* 10.

Syndicus, An Advocate, or Patron; a Burgeſs or Recorder of a Town, &c. *Matt. Pariſ. Anno* 1245.

Syngraph, (*Syngraphus*) A Deed, Bond or Writing, under the Hand and Seal of all the Parties; and it was the Cuſtom for both the Debtor and Creditor, in Writings Obligatory, to write their Names and the Sum borrowed on a Piece of Paper, with the Word *Syngraphus* in large Letters in the Middle; which being cut through, one Part of the Paper was delivered to each Party, for their better Security, &c. See *Chirograph.*

Synod, (*Synodus*) A Meeting or Aſſembly of Eccleſiaſtical Perſons concerning Religion; being the ſame Thing in *Greek*, as *Convocation* in *Latin*: And of *Synods* there are four Kinds, 1ſt, A *General* or *Univerſal Synod* or Council, where Biſhops of all Nations meet. 2dly, A *National Synod*, of the Clergy of one Nation only. 3dly, A *Provincial Synod*, where Eccleſiaſtical Perſons of a Province only aſſemble. 4thly, A *Dioceſan Synod*, of thoſe of one Dioceſe, &c. And our *Saxon* Kings uſually called a *Synod* or mix'd Council, conſiſting of Eccleſiaſticks and the Nobility, three Times a Year; which is ſaid to have been the ſame with our *Parliament.*

Synodal, (*Synodale*) Is a Tribute or Payment in Money, paid to the Biſhop or Archdeacon, by the inferior Clergy, at *Eaſter* Viſitation; and it is called *Synodale* or *Synodaticum, quia in* Synodo *frequentius dabatur. Right. Clerg.* 59. They are likewiſe termed *Synodies*, in the Stat. 34 *Hen.* 8. *cap.* 16. And ſometimes *Synodale* is uſed for the *Synod* it ſelf; and *Synodals Provincial*, the Canons or Conſtitutions of a Provincial *Synod.* 25 Hen. 8. cap. 19.

Synodales Teſtes, Were the urban and rural Deans, whoſe Office at firſt was to inform of and atteſt the Diſorders of the Clergy and People in the Epiſcopal *Synod*; and for which a ſolemn Oath was given them to make their Preſentments, &c. But when they ſunk in their Authority, the *Synodical* Witneſſes were a Sort of impanelled Grand Jury, compoſed of a Prieſt and two or three Laymen of every Pariſh, for the Informing of or Preſenting Offenders; and at length two principal Perſons for each Dioceſe were annually choſen, till by Degrees this Office of Inqueſt and Information was devolved upon the *Church-wardens.* Paroch. Antiq. 649.

Synonymous, A Thing of the ſame Name; or of the like Signification. *Litt. Dict.*

T.

TAbacum, *Herba ab Inſula* Tabaco, *ubi copioſe provenit; qui primus eam ex* India *ad nos adduxit*, ſee *Tobacco.*

Tabard, Tabarder, The *Bachelor Scholars* on the Foundation of *Queen's* College *Oxford*, are called *Tabiters* or *Tabarders*; and theſe Scholars were named *Tabiters*, from a Gown wore by them, called a *Tabert, Tabarr*, or *Tabard*: For *Verſtegan* tells us, that *Tabert* antiently ſignified a ſhort Gown that reached not farther than the Middle of the Leg; and it remains for the Name of ſuch in *Germany* and other Countries, which with the *Teutonick* and *Saxon Tabaer*, ſignify all a Kind of Garment, &c.

Tabardum, A Garment like a Gown; and uſed for a Herald's Coat, but generally taken for the Gown of Eccleſiaſticks.——*Fratres ſacerdotes de, &c. habeant unam Robam integram, Tunicam, ſupertunicam*, Tabardum & *capucium nigri Coloris.* Matt. Pariſ. 164.

Tabellion, (*Tabellio*) A Notary Publick or Scrivener, allowed by Authority, to ingroſs and regiſter Writings, &c. His Office in ſome Countries did formerly differ from that of *Notary*, but now they are grown or made one. *Matt. Pariſ. Anno* 1236.

Table-Rents, (*Redditus ad Menſam*) Were Rents paid to Biſhops, &c. reſerved and appropriated to their *Table* or Houſe-keeping. See *Bord-land.*

Tabling of Fines, Is the Making a *Table* for every County, containing the Subſtance of Fines paſſed; as the Name of the County, Town or Place where the Lands or Tenements lie, the Name of the Demandant and Deforceant, and of the particular Lands, &c. mentioned in the Fine: This is properly to be done by the *Chirographer* of Fines of the *Common Pleas*, who every Day of the next Term after the Ingroſſing any ſuch Fine, doth fix the ſaid *Tables* in ſome open Place of the ſaid Court during its Sitting; and he alſo delivers to the Sheriff of each County, his Under-Sheriff or Deputy, fair written in Parchment, a perfect Content of the *Table* ſo made for that Shire, in the Term next before the Aſſiſes, or between the Term and Aſſiſes, to be ſet up at the Aſſiſes in an open Place of that Court, and continue there ſo long as the Juſtices ſhall ſit, &c. And if either the Chirographer or Sheriff fail herein, they ſhall be liable to the Penalty of 5 *l.* Stat. 23 *Eliz. c.* 3.

Tabula, and *Intabulati* of Perſons, &c. in Cathedral Churches. Vide *Ebdomadarius.*

Tac or **Tak**, *Cuſtumarius in* Bosbury *debet quaſdam Conſuetudines, viz.* Tak & Toll, &c. *Blount's Ten.* 155.

Tacfree, Is uſed in old Charters, as an Exemption from Payments, &c.——*Cum* Housbold & Haybold & Tacfree *de omnibus propriis Porcis ſuis infra omnes metas de* C. that is, they paid nothing for their Hogs running within that Limit.

Tactare, For *Confirmare.* Fleta, lib. 2. c. 61.

Tail, (Fr. *Taille*, from *Tailler*, to cut or limit, Lat. *Feodum Taliatum*) Is a limited Fee, oppoſed to Fee-ſimple: It is that Inheritance whereof a Man is ſeiſed to him and the Heirs of his Body, begotten or to be begotten: And he that giveth the Lands in *Tail*, is called the *Donor*, and he to whom the Gift is made, the *Donee. Litt.* 18. All Eſtates of Inheritance were originally *Fee-ſimple* by the Common Law; but by the Statute *de Donis Conditionalibus* the Inheritance was divided, and a particular Eſtate created by Statute in the Donee, which is what is called an *Eſtate-tail*, i. e. an Eſtate cut and divided from the Fee-ſimple; which Eſtate is to return to the Donor or his Heirs, after the Determination of the *Tail.* 3 *Nelſ. Abr.* 266. Before the Statute of *Weſtm.* 2. 13 *Ed.* 1. If Lands were given to a Man and the Heirs of his Body, it was interpreted to be a Fee-ſimple preſently by the Gift, upon Condition that he had Iſſue; and if he had Iſſue, the Condition was ſuppoſed to be perform'd for three Purpoſes, *viz.* to alien and diſinherit the Iſſue, and by the Alienation to bar the Donor or his Heirs of all Poſſibility of the Reverſion; to forfeit the Eſtate for Treaſon or Felony; and to charge it with Rent, &c. But by this Statute, the Will and Intention of the Donor is to be obſerv'd; as that the Tenant in *Tail* ſhall not alien after Iſſue had or before, or forfeit

feit or charge the Lands longer than for his own Life, *&c.* and the Eſtate ſhall remain to the Iſſue of the Donee, or to the Donor or his Heirs where there is no Iſſue; ſo that whereas the Donee had a Fee-ſimple before, now he had but an Eſtate-*tail*, and the Donor a Reverſion in Fee expectant upon that Eſtate-*tail. Co. Litt.* 19. In this Manner it continued ſome Time, though daily Experience ſhewed that much Miſchief had crept into the Law by intail'd Inheritances, as Frauds to Creditors, *&c.* and Sons became diſobedient when they found they could not be diſinherited; wherefore the Judges found out a Way to bar an Eſtate-*tail*, with Remainders over, by a feigned Recovery. *Ann.* 12 *Ed.* 4. And ſince by a Fine to bar the Iſſue, by 4 *Hen.* 7. *cap.* 20. and 32 *Hen.* 8. *cap.* 36. And for that Owners of Land held in *Tail* were leſs fearful to commit Treaſon on Account of the eaſy Forfeiture; therefore the Stat. 26 *Hen.* 8. *cap.* 13. was made; and becauſe Men that had intailed Lands, could not make Improvements, their Eſtate being only for Life; for this Reaſon the Stat. 32 *Hen.* 8. *cap.* 18. gave them Power to make Leaſes for twenty-one Years, or three Lives, *&c.* And notwithſtanding the many Miſchiefs and Inconveniencies ariſing from intailed Eſtates, and the Statutes before mentioned, and Fines and Recoveries to dock Intails; there are Methods obſerved in Settlements to limit Eſtates, that no Law or Statute, can reach or alter them, except a particular Act is made for that Purpoſe. *Wood's Inſt.* 122. The Statute *de bonis* creates no Intail, but of ſuch an Eſtate which was a Fee-ſimple at the Common Law; and deſcendible as a Fee-ſimple. 1 *Inſt.* 19. Lands of Inheritance, and all Inheritances ſavouring of the Realty, may be intailed; ſo Rents, Profits, Offices, Dignities, *&c.* which concern Lands, or certain Places: But if the Grant of an Inheritance be merely perſonal, or exerciſed with Chattels only; it cannot be intailed. 4 *Inſt.* 87. 7 *Rep.* A Grant of an Annuity, to a Man and the Heirs of his Body, is void: And a Leaſe for Years to a Perſon and the Heirs of his Body, is alſo void; though an Aſſignment may be made of a Leaſe for Years, in Truſt to permit the Iſſue in *Tail* to receive the Profits; which is in Effect an Eſtate-*tail.* 10 *Rep.* 87. Eſtates-*tail* of Lands, are *General*, or *Special*; General *Tail* is where Lands or Tenements are given to a Man and the Heirs of his Body begotten; or to a Woman and the Heirs of her Body begotten: In this Caſe, it is called a general *Tail*, becauſe whatever Woman the Man taketh to Wife, the Iſſue may inherit the Lands; and whatſoever Man the Woman takes to Husband, the Iſſue may inherit; or if ſhe have divers Husbands, and have Iſſue by every of them, they ſhall inherit one after another, as Heir of her Body: Special *Tail* is when Lands and Tenements are given to a Man and his Wife, and to the Heirs of their two Bodies begotten; in which Caſe, no other Perſons can inherit but the Iſſue that are begotten by him on that particular Wife; and it is called Special *Tail*, for that if the Wife die, and the Husband marries a ſecond Wife, by whom he hath Iſſue, ſuch Iſſue has no Benefit, as they have by the general *Tail. Litt.* 14, 16. *Co. Litt.* 19, 20. If Lands are given to the Husband and Wife, and to the Heirs of their Bodies, both of them have an Eſtate in ſpecial *Tail*; by Reaſon of the Word *Heirs*, for the Inheritance, is not limited to one more than the other: Where Lands and Tenements are given to a Man and his Wife, and to the Heirs of the Body of the Man, the Husband hath an Eſtate in general *Tail*, and the Wife an Eſtate for Life; as the Word *Heirs* relates generally to the Body of the Husband: And if the Eſtate is made to the Husband and Wife, and to the Heirs of the Body of the Wife by the Husband begotten; there the Wife hath an Eſtate in ſpecial *Tail*, and the Husband for Term of Life only; becauſe the Word *Heirs* hath Relation to the Body of the Wife, to be begotten by that particular Husband: If an Eſtate be limited to a Man's Heirs which he ſhall beget on his Wife, it creates a ſpecial *Tail* in the Husband; but the Wife will be intitled to nothing, *&c. Litt.* 26, 28. *Co. Litt.* 22, 26. Lands given to a Man and Woman unmarried, and to the Heirs of their Bodies, will be an Eſtate in ſpecial *Tail*; for they may marry. 1 *Inſt.* 25. 10 *Rep.* 50. And tho' Lands are given to a married Man and another Man's Wife, and the Heirs of their two Bodies, it may be a good Eſtate *tail*, for the Poſſibility of their Intermarrying. 15 *Hen.* 7. A general *Tail*, and a ſpecial *Tail*, may not be created at one and the ſame Time; if they are, the General, which is greater, will fruſtrate the Special. 1 *Inſt.* 28. There are other Eſtates-*tail* within the Equity of the Statute; as if Lands are given to a Man and his Heirs Males or Females, of his Body begotten, the Iſſue Male or Female ſhall only inherit according to the Limitation: By Virtue of the Statute, here the Daughter may be Heir by Deſcent, though there be a Son: But in Caſe of a Purchaſe, there cannot be an Heir Female, where there is a Son, who is right Heir at Law. 1 *Inſt* 24, 164. And whoever will make Claim, as Heir *per formam doni* to an Eſtate-*tail*, muſt make his Diſcent by ſuch Heirs to whom it is limited; if it is to Heirs Males of the Body, there the Pedigree is to be derived by Heirs Males; and if it be to Heirs Females he muſt derive it by Heirs Females one after another. 1 *Inſt.* 376. If a Gift is to one, and the Heirs Males of his Body, and he hath Iſſue a Daughter, who hath a Son, and dies; in this Caſe the Son ſhall not inherit the Eſtate *tail*, for he cannot make his Diſcent by Heirs Males. *Ibid.* And where there is no Heir to take according to the Gift; as when Iſſues fail, the Land ſhall revert to the Donor or deſcend to him that is to have it after the Eſtate-*tail* is ſpent. 1 *Inſt.* 25. It is the Word *Body*, or other Words amounting to it, make the Entail: And a Gift to the Heirs Males, or Heirs Females, without any Thing further, is a Fee-ſimple Eſtate, becauſe it is not limited of what Body: And hence a Corporation cannot be ſeiſed in *Tail.* 1 *Inſt.* 13, 20, 27. In a Deviſe or laſt Will, an Eſtate-*tail* may be created without the Word *Body*; alſo begotten ſhall be ſupply'd and neceſſarily intended. *Noy's Max.* 101. 1 *Inſt.* 26. If one gives Lands to a Man and his Iſſue, or Children of his Body, without the Words, *his Heirs*, to convey the Inheritance, he has but an Eſtate for Life: Though ſuch Words may be good enough to convey the Inheritance in a Will; as Eſtates-*tail* by Deviſe are always more favour'd in Law, than Eſtates-*tail* created by Deeds. 1 *Inſt.* 20. It has been held, that if the Word *Iſſue* is a Limitation, 'tis an *Intail*; but if 'tis by Way of Deſcription who ſhall take, 'tis only an Eſtate for Life. *Mod. Caſ. in L. & E.* 263. The Word *Heirs* is neceſſary to create an Eſtate-*tail* and Inheritance by Deed; and where an Uſe was limited to *A. B.* and to his Heirs Males, lawfully to be begotten; theſe laſt Words imply that it muſt be Heirs Males of his Body, becauſe no other Heir Male can inherit by Virtue of this Grant, but ſuch who are lawfully begotten by the Grantor. 7 *Rep.* 41. If a Man makes a Feoffment to the Uſe of himſelf for Life, Remainder to the Heirs Males of his Body, this is an *Eſtate-tail executed* in him; and ſo it is if he covenanted to ſtand ſeiſed in the ſame Manner. 1 *Mod.* 159. By a Marriage Settlement and Fine levied, *&c.* to the Uſe of Husband and Wife, for their joint Lives; Remainder to the Heirs of the Body of the Wife by the Husband to be begotten, Remainder (the Wife ſurviving the Husband) to her for Life, Remainder to the right Heirs of the Husband; this was held to be an Eſtate-*tail*, executed in the Wife. *Raym.* 127. 3 *Salk.* 338. Land is convey'd to the Uſe of a Man and his Wife for their Lives, and after to their next Iſſue Male in *Tail*, then to the Uſe of the Husband and Wife, and of the Heirs of their Bodies begotten, they having no Male Iſſue; by this Husband and Wife are Tenants in *Special Tail* executed, and when they have Iſſue Male, they will be Tenants for Life, Remainder to their Son in *Tail*, the Remainder to them in Special *Tail*. 1 *Inſt*. 28. Where a Perſon having an Eſtate in Fee, conveys it by Leaſe and Releaſe to the Uſe of himſelf for Life, with Remainder to Truſtees for their Lives, and Remainder to the Heirs of his Body; he hath an Eſtate-*tail* in him; but he is only Tenant for Life in Poſſeſſion: It would be otherwiſe, if there had been no intermediate Eſtate in the Truſtees for their Lives. 2 *Ld. Raym*. 855. A Man ſeiſed of Land in Fee, makes a Gift of it in *Tail*, or Leaſe for Life, Remainder to the right Heirs Males of the Body of the Donor; this Remainder it is ſaid will be a Fee-ſimple, and not an Eſtate-*tail*. *Dyer* 156. If the Gift or Grant of the Land be to *J. S.* and his Heirs, To hold to him and the Heirs of his Body, *&c.* here he will have an Eſtate in *Tail*, and a Fee ſimple upon it. *Litt. ch.* 2. 1 *Inſt*. 21. Lands are given to two Brothers, *&c.* and to the Heirs of their Bodies begotten; during their Lives they ſhall have joint Eſtates, ſo that the Survivor will have all for his Life; and after their Deaths, their Heirs have Eſtates in general *Tail*, by Moieties in common one with another. 1 *Inſt*. 25. 1 *Rep*. 140. When a *Remainder* is limited to two, and the Heirs Male of their Bodies, they have not joint but ſeveral Eſtates-*tail*: And between Baron and Feme, 'tis ſaid ſeveral Moieties may be of an Eſtate-*tail*, as well as of a Fee-ſimple. *Cro. Eliz*. 220. *Moor* 228. 2 *Lill. Abr*. 551. A Feoffment was made to the Uſe of the Feoffor for Life, Remainder to *W. R.* his Son and his Heirs; and for Want of Iſſue of him, Remainder to the right Heirs of the Feoffor; adjudged *W. R.* hath only an Eſtate in *Tail*; for though the firſt Words of the Sentence, *viz.* to his Son and his Heirs, make a Fee-ſimple, the ſubſequent Words in the ſame Sentence, *i. e.* and for Want of Iſſue of him, make an Eſtate-*tail* by qualifying and abridging the ſame. 5 *Mod*. 266. 3 *Salk*. 337. Feoffment to the Uſe of a Man's Self; and afterwards he made his Will, by which he deviſed that the Feoffees ſhould make an Eſtate to all his Sons, except to *Henry*; and if all his Sons died without Iſſue, Remainder to a Stranger: It was held, that becauſe *Henry* was not excepted in this laſt Clauſe, he had an Eſtate-*tail*. *Hetl*. 57. Though an Eſtate-*tail* is created by the Words Dying without Iſſue, *&c.* yet where the Limitation is to a Son upon a Dying without Iſſue, in the Life-time of another, there it will be otherwiſe. *Dyer* 334. If a Perſon gives Lands to *A.* for Life, and after his Death without Iſſue, then to another Perſon; tho' here is an expreſs Eſtate for Life given to *A.* the ſubſequent Words make an Eſtate *tail*: But where Lands are deviſed to *A.* during Life, the Remainder to Truſtees, Remainder to his firſt Son, *&c.* and if *A.* dies without Iſſue, then, *&c.* The Limitation upon the Deviſee's Death, 'tis ſaid will not give an Eſtate in *Tail* to *A.* but it ſhall be here intended, that if he died without having a Son. 1 *P. Williams* 605. A Father having two Sons, deviſed his Lands to his youngeſt Son, and if he died without Heirs, then to his eldeſt Son and his Heirs; the youngeſt Son had an Eſtate-*tail*, becauſe the Deviſe to him, and if he died without Heirs, is the ſame as if the Teſtator had deviſed it in theſe Words, (*viz.*) If he die without Heirs of his Body; for otherwiſe the Remainder limited to the eldeſt Son had been void, as the Youngeſt cannot die without Heirs, ſo long as the Eldeſt is living. 1 *Roll Abr*. 836. In Ejectment the Caſe was, the Father having three Sons, deviſed his Lands to his ſecond Son, and his Heirs for ever; and for Want of ſuch Heirs, then to the right Heirs of the Father; then the Father died, and his ſecond Son enter'd, and died without Iſſue, living the eldeſt Son: It was reſolv'd, that the ſecond Son had but an Eſtate-*tail*, and that the Deviſe over by theſe Words, and for want of ſuch Heirs, is void in Point of Limitation, for the Teſtator's Intent was that the Lands ſhould deſcend from himſelf, and not from his ſecond Son; and the Words, Want of ſuch Heirs, could import no other than Want of Iſſue, *&c.* ſo that the eldeſt Son takes by Diſcent in this Caſe, and not by the Will. 1 *Salk*. 233. A Perſon deviſed Land to his Wife for Life, Remainder to his Son, and his Heirs for ever; and if he died without Heirs, the ſame to remain to his two Daughters: In this Caſe it was held in *Equity*, that the Rule is, where a Remainder over is to one, who may be the Deviſee's Heir at Law, ſuch Limitation will be good, and the firſt conſtrued an Eſtate-*tail*; for the Generality of the Word *Heirs*, ſhall be reſtrained to Heirs of the Body, ſince the Teſtator could not but know that the Deviſee would not die without an Heir, while the Remainder Man, or any of his Iſſue continued: But where the ſecond Limitation is to a Stranger, 'tis meerly void, and the firſt is a Fee-Simple. *Talbot's Chan. Caſ*. 2. An Eſtate-*tail* cannot merge by the Acceſſion of the Fee ſimple to it: But it has been adjudged, that two Fees immediately expectant upon one another, (as where a Man is Tenant in *Tail*, and Remainder in Fee to the Tenant in *Tail*) cannot ſubſiſt in the ſame Perſon; and the Statute of *Weſtm.* having made Eſtates-tail a Kind of particular Eſtates, they muſt like all other ſuch Eſtates be ſubject to Merger and Extinguiſhment, when united with the abſolute Fee. 8 *Rep*. 74. 1 *Salk* 338. If there be Tenant in *Tail*, Remainder in *Tail*, and Tenant in *Tail* enfeoffs the Reverſioner in Fee; it is a *Diſcontinuance*: And Tenants in *Tail* can make no greater Eſtate than for their own Lives; unleſs it be by Leaſe, *&c.* according to the Stat. 32 *H.* 8. 1 *Rep*. 140. If Tenant in *Tail* Bargain and Sell Lands to another and his Heirs, or make a Leaſe and Releaſe to the Uſe of himſelf for Life, with Remainder over to another, *&c.* Theſe Eſtates may be avoided by Entry of the Iſſue in *Tail*. *Farreſt. Mod. Ca*. 23, 28. Eſtates-*tail* are uſually created upon Settlements: Though an Agreement to intail, is no Intail; for no Agreement ſhall bind the Iſſue in *Tail*, where there is a firſt Intail, without a Fine. *Chanc. Rep*. 236. It is incident to an Eſtate-*tail*, to be diſpuniſhable of *Waſte*; that the Wife of the Donee ſhall be *endowed*; and the Husband of a Feme Donee, be *Tenant* by the *Curteſy*; and that the Tenant in *Tail* may ſuffer a common *Recovery*, &c. and therefore Conditions to reſtrain any of theſe, are void. 1 *Inſt*. 224. 10 *Rep*. 38. As by Statute it is incident to Eſtates-*tail*, to make *Leaſes*; ſo by Cuſtom, it is to grant Lands by Copy of Court-Roll, *&c.* See *Recovery*.

Tail after Poſſibility of Iſſue extinct, Is where Lands and Tenements are given to a Man and his Wife in ſpecial *Tail*, and either of them dies without Iſſue had between them; the Survivor hath an *Eſtate in Tail after Poſſibility of Iſſue*, &c. Alſo if they have Iſſue, and the Iſſue dies without Iſſue, whereby there is none left which may inherit by Force of the Intail, the Survivor of the Donees hath an Eſtate-*tail* after Poſſibility. *Litt*. 32. The Eſtate of this Tenant muſt be created by the Act of God, *viz.* by the Death of either Party without Iſſue; none can have this Eſtate but one of the Donees, or a Donee in ſpecial *Tail*; for a Donee in general *Tail* may by Poſſibility have Iſſue. *Litt*. 34. 1 *Inſt*. 28. 11 *Rep*. 80. And if one gives Lands to a Man and his Wife, and the Heirs of their two Bodies in ſpecial *Tail*, and they live till each of them are one hundred Years old, and have no Iſſue; yet doth the

Law ſee no Impoſſibility of having Children, and they continue Tenant in Tail: But if the Wife die without Iſſue, there the Law ſeeth an apparent Impoſſibility. 1 *Inſt.* 28. Tenants in *Tail* after Poſſibility of Iſſue extinct, are not puniſhable for Waſte; as are Tenants for Life: But ſuch Tenants, or Tenants by the Curteſy, &c. may not ſuffer a *Recovery.* And though they have more Privileges than Tenant for Life hath; as if they alien the Land, he in Reverſion cannot have a Writ of *Entry in Caſu Conſimili*; and they need not require Aid, &c. Yet as to the Quantity of their Eſtates, they have no Privilege above Eſtates for Life: For if ſuch Tenant in *Tail* after Poſſibility, make a Feoffment of his Land, he in Reverſion may enter for the Forfeiture, &c. 1 *Inſt.* 27, 28. 9 *Rep.* 139. *Litt. Sect.* 34. A Tenant in *Tail* cannot be ſeiſed to any Uſe expreſs'd; for his Eſtate is ſo fixed, that none can execute the Uſe: And where Tenants in *Tail* general or ſpecial, &c. die without Iſſue, the Donor or his Heirs may enter. *Jenk. Cent.* 195. *Litt.* 18. If Tenant in *Tail* in Remainder, be attainted of Treaſon, &c. the King ſhall have the Land; for it may not be in Abeyance, nor in any other, he not being dead, but in Law: The Chief Lord cannot have it, by reaſon the Tenant for Life is alive; ſo neither he that is in Reverſion, &c. and it cannot Revert, before the Tenant in *Tail* die without Iſſue. 2 *Leon.* 123. Vide Stat. 10 *Geo.* 2. *c.* 26.

Taint, (Fr. *Teinct*, i. e. *Infectus, Tinctus*) Is taken ſubſtantively for a Conviction; or adjectively for a Perſon convicted of Treaſon or Felony. See *Attaint.*

Talent, A Weight of Sixty-two Pounds; alſo a Sum of Money among the *Greeks*, of about 100 *l.* Value. *Merch. Dict.*

Tales, (*Lat.*) Is uſed in the Law for a Supply of Men impanelled on a Jury and not appearing, or on their Appearance challenged as not indifferent; when the Judge upon Motion orders a Supply to be made by the Sheriff, &c. of one or more *ſuch* Perſons preſent in Court, equal in Reputation to thoſe that were impanelled, to make up a full Jury, which he could not do by the Common Law; and this is by the Statutes 35 *H.* 8. *c.* 6. 2 & 3 *Ed.* 6. *c.* 32. 14 *Eliz. c.* 9. 7 & 8 *W.* 3. *c.* 32, &c. *Tales* are of two Sorts, *i. e. Tales de Circumſtantibus*, and a *Decem Tales*; a *Tales de Circumſtantibus* is where a full Jury do not appear at the *Niſi prius*, or ſo many are challenged that there is not a full Jury; then on the Prayer of the Plaintiff's Counſel or Attorney, the Judge will grant this *Tales*, which the Sheriff returns immediately in Court: A *Decem Tales* is when a full Jury doth not appear at a *Trial at Bar*, and is a Writ to the Sheriff *apponere* Decem Tales. 10 *Rep.* 102. *Finch* 414. 2 *Roll. Abr.* 67. Upon a Trial at Bar, if the Jury do not appear full, the Court cannot grant a *Tales de Circumſtantibus*, but will grant a *Decem Tales*, returnable in ſome convenient Time the ſame Term, to try the Cauſe. 2 *Lill. Abr.* 552. And a *Tales de Circumſtantibus* ought not to be in an *Aſſiſe*, only a *Niſi prius*; the *Decem Tales* muſt be awarded in an Aſſiſe. *Cro. Car.* 341. A Plaintiff or Defendant may have a *Tales de Circumſtantibus*; and the Statutes which authoriſe Juſtices of *Niſi prius* to award a *Tales de Circumſtantibus*, extend as well to capital Caſes as to others; but ſuch a *Tales* cannot be prayed for the King upon an Indictment, or criminal Information, without a Warrant from the Attorney General, or an expreſs Aſſignment from the Court before which the Inqueſt is taken: Though it may be awarded on an Information *qui tam*, &c. becauſe of the Intereſt which the Proſecutor hath in ſuch Proſecutions. 2 *Hawk. P. C.* 409. 3 *Salk.* 339. A *Tales* is not to be granted where the whole Jury is challenged, &c. but the whole Panel, if the Challenge be made good, is to be quaſhed, and a new Jury returned; for a *Tales* conſiſts but of ſome Perſons to ſupply the Places of ſuch of the Jurors as were wanting of the Number of Twelve, and is not to make a new Jury. 2 *Lill. Abr.* 252. If but one Juror appears on the Principal Panel, the Court may order a *Tales* by the Statute 35 *H.* 8. 10 *Rep.* 102. And if upon a *Habeas Corpora*, or a *Diſtringas Jur.* none of the Jury appear, it is ſaid a *Decem Tales* ſhall be awarded: But it ſhall not be had upon a *Venire fac.* *Cro. Eliz.* 502. *Moor* 528. See *Dyer* 245. 2 *Roll. Rep.* 75. At the Aſſiſes, one of the Principal Panel appeared, and no more, and a *Tales* was awarded, the Title whereof was *Nomina Decem Talium*, and under it Eleven were return'd; this was notwithſtanding held good; for it is only a Miſpriſion of the Clerk, and *Decem* was ſtruck out, and then the Title was *Nomina Talium*, &c. And it was adjudg'd, that if after a *Tales* granted, the Principal Panel ſhould be quaſhed, the *Tales* ſhould ſtand good, and more be added, &c. 4 *Rep.* 103. 2 *Cro.* 316. 3 *Nelſ. Abr.* 275. A Day being appointed for a Trial at Bar, the Sheriff of the County by Order of the Plaintiff countermanded the Jurymen; but the Defendant did not know it; whereupon he and Three of the Jury appear'd on the Day, and the Defendant pray'd a *Tales* that the Trial might go on; though the Court would not grant it, but offer'd to nonſuit the Plaintiff on Record, and directed that the Defendant ſhould contribute to ſatisfy the three Jurors who appear'd, and referred it to the Secondary to tax Coſts for the Defendant in Satisfaction of his Trouble and Expences. 2 *Sid.* 77. No Perſon ſhall take any Reward or Fee, upon the Account of any *Tales* return'd; on Pain of forfeiting 10 *l.* one Moiety to the Informer, and the other to the King. 4 & 5 *W. & M.* And by this Act, the Qualification of *Taleſmen* is to be 5 *l. per Annum* Freehold Eſtate, &c. The *Tales de Circumſtantibus*, is in ſome Meaſure taken away, or rendered uſeleſs, by the late Statute for regulating of Juries. 3 *Geo.* 2. *c.* 25.

Tales, Is alſo the Name of a *Book* in the *King's Bench* Office, of ſuch Perſons as were admitted of the *Tales*. 4 Inſt. 93.

Tallage, (*Tallagium*) from the Fr. *Taille*) Is metaphorically uſed for a Part or Share of a Man's Subſtance, carv'd out of the Whole, paid by Way of Tribute, Toll or Tax. *Stat. de* Tallagio *non concedendo temp. Edw.* 1. *Stow's Ann* 445. And according to Sir *Edw. Coke*, *Tallage* is a general Word for all Taxes. 2 *Inſt.* 532.

Tallagers, Are Tax or Toll Gatherers, mentioned by *Chaucer.*

Tallagium facere, To give up Accounts in the *Exchequer*, where the Method of Accounting is by *Talleys*. Mem. in Scacc. Mich. 6 Ed. 1.

Talley, (*Tallea*, Fr. *Taille*, Ital. *Tagliare*, i. e. *Scindere*) Is a Stick cut in two Parts, on each whereof is mark'd with Notches, or otherwiſe, what is due between Debtor and Creditor; as now uſed by Brewers, &c. And this was the ancient Way of Keeping all Accounts, one Part being kept by the Creditor, the other by the Debtor, &c. Hence the *Tallier* of the *Exchequer*, whom we now call the *Teller*. But there are two Kinds of *Tallies* mentioned in our Statutes to have been long uſed in the *Exchequer*; the one is termed *Tallies of Debt*, which are in the Nature of an Acquittance for Debts paid to the King, on the Payment whereof theſe *Tallies* are delivered to the Debtors, who carrying them to the Clerk of the Pipe-Office, have there an Acquittance in Parchment for their full Diſcharge. 1 *R.* 2. *c.* 5. The other are *Tallies of Reward* or Allowance, being made to Sheriffs of Counties as a Recompence for ſuch Matters as they have perform'd to their Charge, or ſuch Money as is caſt upon them in their Accounts of Courſe, but not leviable, &c. 27 *Hen.* 8. *c.* 11. 33 & 34 *H.* 8. 2 & 3 *Ed.* 6. In the *Exchequer* there is a *Talley Court*, where attend the two Deputy Chamberlains of the *Exchequer*, and the *Talley-cutter:* And a *Talley* is generally the King's Acquittance for Money paid or lent, and has written on it Words proper to expreſs on what Occaſion the Money is received. *Lex Conſtitut.* 205.

Tallia, Every Canon and Prebendary in our old Cathedral Churches, had a ſtated Allowance of Proviſions delivered to him *per modum Talliæ*; and thence their Commons in Meat and Drink were called *Tallia*. Stat. St. Paul. Ann. 1295.

Tallyman, A Perſon that ſells, or lets Goods, Clothes, &c. to be paid by ſo much a Week. *Merch. Dict.*

Talwood, (*Taliatura*) Fire-wood cleft and cut into Billets of a certain Length; otherwiſe written *Talghwood*, and *Talſhide* in ancient Statutes. 34 & 35 *H.* 8. *c.* 3. 7 *Ed.* 6. *c.* 7. 43 *Eliz. c.* 14.

Tam Quam, Is in Nature of a *Qui tam*, being where a Man proſecutes as well for the King as for himſelf, on an Information for Breach of ſome Penal Law, whereby any Penalty is given to the Party that ſues. *Terms de Ley* 556. In every Caſe where a Statute prohibits a Thing, and doth not annex a Penalty to the Committing thereof, the Party offending may be indicted for a Contempt againſt the Statute; or Action lies againſt him for Breach of it, which muſt be brought *Tam pro Domino Rege, quam pro ſeipſo*, as there is a Fine to be paid to the King. 2 *Inſt.* 118. *Cro. Eliz.* 655. *Cro. Jac.* 134. In Action popular, brought *Tam quam*, the King can diſcharge but his own Part, and not the Informer's; but before Action brought, the King may diſcharge the Whole. 3 *Inſt.* 238. See *Information.*

Tangier, An ancient City of *Barbary*, formerly Part of the Dominions of the Crown of *England*, as *Gibraltar* is at preſent; mentioned in the Statute 15 *Car.* 2. *c.* 7.

Taniſtry, Seems to be derived from *Thanis*; and is a Law or Cuſtom in ſome Parts of *Ireland* of which Sir *John Davis* ſays thus; —— *Quant aſcun Perſon moruſt ſeiſie des aſcuns Caſtles, Manors, Terres ou Tenements del Tenure de* Taniſtry; *que donques meſme les Caſtles, &c. dont deſcender, & de Temps dont Memory ne Court ont uſe de Deſcender*, Seniori & Digniſſimo viro Sanguinis & cognominis, *de tiel Perſon iſſint morant ſeiſie, & que le file ou les files de tiel Perſon iſſint morant ſeiſie de touts temps avant dit, ne fueront inheritabiles de tiels Terres ou Tenements, ou de aſcun parte de eux.* Dav. Rep. 28. Antiq. Hibern. pag. 38.

Tannare, Is a Word uſed for to dreſs or tan Leather. *Plac. Parliam.* 18 *Ed.* 1.

Tanners. No Perſon ſhall tan Leather unleſs he hath been an Apprentice for ſeven Years with a *Tanner*, or he be the Son of a *Tanner*, &c. on Pain of forfeiting the Leather tanned or the Value. Stat. 1 *Jac.* 1 *c.* 22. *Tanners* over-liming Hides, or uſing in Tanning any Thing but Oak-bark, Aſh-bark, Culver-dung, &c. incur a Forfeiture of the Leather; and haſtening the Tanning of their Leather by unkind Heats, &c. are liable to a Penalty of 10*l.* and to ſtand in the Pillory. And Hides for Sole-Leather are to lie in the Wooze twelve Months, and Upper Leather nine Months, or ſhall be forfeited, &c. Stat. *Ibid.*

Tantamount, Is where one Thing doth amount to another, and then 'tis all one as if it was the ſame: As a Leaſe and Releaſe amount to a Feoffment; and a Licence to occupy Land for Years, to a Leaſe for the Term, &c. 14 *H.* 8. 13. *Shep. Epit.* 1130.

Tare and Tret. The firſt is an Allowance in Merchandize, made the Buyer for the Weight of the Box, Bag, or Casks wherein Goods are packed: And the laſt is a Conſideration in the Weight, for Waſte in emptying and reſelling the Goods, by Duſt, Dirt, Breaking, &c. *Book Rates.*

Target, (From the Lat. *Tergus*) A Shield, originally made of Leather, wrought out of the Back of an Ox. *Blount.*

Targia, (*Tarida*) Was a Ship of Burden, ſince called a *Tartan*, and *Tarrita*. Knighton, Anno 1385.

Tarpaulin, or **Tarpawling**, A tarred Canvas to keep the Weather out of *Ships*; but it is commonly uſed for a Mariner, or Drudge in a Ship that does the vileſt Service. *Merch. Dict.*

Tartaron, A Sort of fine Cloth or Silk. Stat. 4 *Hen.* 8. *c.* 6.

Tas, (Fr.) Is a Cock, Heap, Stack or Rick of Hay or Corn. *Law Fr. Dict.*

Taſſale for *Caſula*, A Prieſt's Garment covering him over.

Taſſum, A Mow of Corn or Hay, from the Fr. *Taſſer*, to pile up: *Taſſare*, to mow or heap up; and *ad Taſſam furcare* is to pitch to the Mow. *Rot. Hill.* 25 *Ed.* 3.

Tath, In the Counties of *Norfolk* and *Suffolk*, the Lords of Manors claim'd the Privilege of having their Tenants Flocks of Sheep brought at Night upon their own Demeſne Lands, there to be folded for the Improvement of the Ground; which Liberty was called by the Name of *Tath*. Spelm.

Tavern, The King may licence any *Tavern* for Selling of Wine, &c. 16 *Car.* 1. *c.* 21. But Perſons who inordinately haunt *Taverns*, are indictable by the Common Law, and continuing drinking and tipling, &c. is liable to Penalties, by the Statutes 1 *Jac.* 1. *c.* 9. 21 *Jac.* 1. *c.* 7.

Tau, By *Selden* in his Notes upon *Eadmerus*, ſignifies a Croſs. *Mon. Angl. Tom.* 3. *pag.* 121.

Tauri liberi Libertas, In ancient Charters is uſed for a common Bull; ſo called, becauſe he is free and common to all the Tenants within ſuch a Manor or Liberty, &c.

Tawers. It is ordained, that Collar-makers, Glovers, Bridle-cutters, and others who Dreſs *Skins* in Allom, &c. and cut the ſame into Wares, ſhall be accounted *Tawers*, and ſubject to the Penalties, for Frauds and Concealments relating to the Duty on *Leather*, by Stat. 9 *Ann. c.* 11.

Tax, (*Taxa*, from the Gr. Τάξις, i. e. *Ordo, Tributum*) A Tribute or Impoſition laid upon the Subject, which being certainly and orderly rated, was wont to be yearly paid into the King's Exchequer: And it differs from what is commonly called a *Subſidy*, in this, That it is always certain as it is ſet down in the Exchequer-Book, and levied in general of every Town, and not particularly of every Man, &c. No Hiſtory mentions that the *Saxon* Kings had any *Taxes* after the Manner of ours at preſent; but they had Levies of Money and perſonal Services towards Repairing of Cities, Caſtles and Bridges, and for military Expeditions, which they called *Burghbote*, *Brigbote* and *Heregeld*; and when the *Danes* invaded this Kingdom, great Sums of Money were raiſed yearly, by a *Tax* on every *Hide* of Land, the Lands of the Church only excepted; and thence it was afterwards called *Hydagium*, which Name remain'd and was uſed for all *Taxes* and *Subſidies* impoſed on Lands; though ſometimes it was laid upon Cattle, and then was termed *Horngeld:* The *Normans* called theſe ſometimes *Taxes*, other Times *Tallages*; and made a Law for the particular Manner of their Levying; but many Years after the Conqueſt, they were levied otherwiſe than now, as every ninth Fleece, and every ninth Sheaf, &c. *Raſtal's Abr.* 4 *Inſt.* 26, 33. It is ſaid that in ancient Times, *Taxes* were impoſed by the King at his Pleaſure; but King *Edw.* 1. bound himſelf and his Succeſſors, in the 25th Year of his Reign, that from that Time forward no *Tax* ſhould be laid upon the Subject, without the Aſſent of the Lords and Commons in Parliament. Stat. 25 *Edw.* 1. *c.* 5. But altho' *Taxes* which are for the Defence of the Realm, cannot be impoſed but by Act of Parliament; yet the Crown has a Right to aſk them, upon any Emergency, and therefore 'tis held they have a virtual Exiſtence always, tho' no actual one. In the 14th Year of *Ed.* 3. an Aid was granted to the King by the Parliament; and *Anno* 5 *R.* 2. a *Royal Aid* for keeping the Sea, and preſerving of Rights: Alſo a *Subſidy* of 1 *s.* in 20 *s.* on Goods, and Aliens to pay 2 *s.* &c. was granted by 3 & 4 *Ed.* 6. Beſides *Fifteenths* and *Tenths*, payable by the Temporality and Clergy in two or three Years, &c. And the Way of *Taxing* was formerly by *Tenths* and *Fifteenths*; then by *Subſidies*, afterwards by *Royal Aids*, and at laſt by a *Pound Rate*; the former were all upon the Perſon and Perſonal Eſtate, and were much the ſame; but the Pound-Rate was on Lands and Rents. *Anno* 18 *Ed.* 3. a Valuation was made of all the Towns in *England*; and returned into the *Exchequer*, and this became the ſtanding Rule for *Taxing* every Town, (*viz.*) When a *Tax* was given, the Officers of the *Exchequer* preſently knew to how much it amounted for every Town, and the Inhabitants *taxed* the Landholders, and Occupiers of Lands, and they were charged and paid their Proportion, &c. A Subſidy was granted *Anno* 32 *Hen.* 8. and this was a *Tax* upon the Perſon, both for Land and Goods, and payable where the Perſons lived; and this continued till the 15 *Car.* 1. and about two Years afterwards the firſt Aſſeſſment was made upon Land and Rents, according to a Pound-Rate. 2 *Inſt.* 76, 77. 3 *Salk.* 340. In the 16 & 17 *Car.* 1. *Taxes* were granted for Relief of, and disbanding the Army, &c. And 13 *Car.* 2. *cap.* 3 & 4. the Sum of 1,260,000 *l.* was granted for eighteen Months at 70,000 *l. per* Month, charged on the ſeveral Counties by Lieutenants, for Ammunition for the Militia, and ſeveral Aids were granted, one of 2,477,000 *l.* for fitting out a Navy and Maintenance of Wars, &c. in the Years 16, 17, 18, 19 & 25 *Car.* 2. Alſo a free and voluntary Preſent was granted to King *Car.* 2. but it was ordained that the ſame ſhould not be drawn into Example. King *James* 2. had Aids and *Taxes* granted him by Parliament; and after the *Revolution*, heavy *Taxes* were neceſſarily laid on Lands and Perſonal Eſtate, in the Reigns of King *Will.* 3. and Queen *Anne*, to defend the Crown and Kingdom againſt the Efforts of the King of *France*, in Favour of the pretended *Prince of Wales*, and ſecure the Proteſtant Succeſſion in the Line of his preſent Majeſty King *George*. Since this Neceſſity, join'd to others, Land *Taxes* have been annually granted of 1 *s.* 2 *s.* 3 *s.* and 4 *s.* in the Pound, as the preſent Exigencies have required; enacted to be levied by Commiſſioners on the ſeveral Counties, Cities, Towns, &c. And in Reſpect of this Tax, it is not the Quantity but the yearly Value of Lands that muſt be obſerved; the Farmers or Occupiers of the Land, are to be charged, and deduct it out of their Rents to the Landlords; and a Man may be rated for Goods, as well as Lands, but not for both; and in Caſe of a Rate on Goods, the Charge muſt be on the Perſon: The Commiſſioners are to aſcertain the ſeveral Proportions of the *Tax*, to be charged upon every Hundred or Diviſion; and appoint fit Perſons to be Aſſeſſors and Collectors in every Pariſh to aſſeſs and levy the Money, which when received is to be paid to Receivers General, and by them returned to the Exchequer, &c. If any Perſons refuſe to pay the *Tax*, the Collectors may levy it by Diſtreſs and Sale of their Goods; but if they are over-rated, they ſhall be relieved on Appeal to the Commiſſioners, who have Power to charge the ſame on others, as they ſhall ſee Cauſe, and in Caſe of Deficiency to make a Re-aſſeſſment; Aſſeſſors neglecting their Duty, are to be fined not exceeding 40 *l.* And Collectors detaining the Money, ſhall be impriſoned, and their Eſtates ſeiſed and ſold, &c. If a General Receiver neglects to return the Money by him received, he is liable to the Penalty of 500 *l.* And where there is any Failure in raiſing and paying the Sums of Money charged on any County, Proceſs may iſſue againſt the Commiſſioners for their Neglect, &c. By other later Statutes, when Lands, &c. are aſſeſſed at more than an equal *Pound-Rate*, the Commiſſioners upon Complaint made in twenty Days, ſhall abate it, and re-aſſeſs ſuch Abatements within the whole Hundred, &c. or on Perſons under-rated, ſo as the Sum charged be fully paid. And where Aſſeſſors have omitted to charge themſelves to the Land *Tax* for their own Eſtates, Commiſſioners by Statute have been empowered to ſummon and examine them or others on Oath, and upon Diſcovery thereof, to award Satisfaction to be made to the Collectors. If Lands or Houſes are unoccupied, whereby the Pariſh is obliged to make good the *Tax*, the Collectors, at any Time after, may enter and Diſtrain, and ſell the Diſtreſs in four Days, and the Money ſhall be diſtributed proportionably to the Parties who paid for ſuch Lands, &c. In caſe any Perſons by changing their Reſidence, eſcape the *Taxation*, on Proof before two of the Commiſſioners, or a Juſtice of Peace, within one Year, they are to be charged at treble the Value, to be levied by Diſtreſs, &c. And in the taking theſe Diſtreſſes, Collectors may break open Houſes, Cheſts, &c. in the Day-time, upon a Warrant under the Hands of two Commiſſioners, and calling Conſtables to their Aſſiſtance: Alſo if any Perſon refuſe to pay the *Tax*, by the Space of ten Days after Demand, or convey away his Goods, &c. the Commiſſioners may commit him to the common Gaol, till Payment. *Papiſts* are doubly *taxed*; but the *Colleges* in the Univerſities are exempted from paying any Thing to this *Tax*: There is a Poundage Fee for collecting the *Tax*, of 3 *d. per* Pound to the Collectors, 2 *d. per* Pound to the General Receiver, and 1 *d.* Half-penny *per* Pound to the Commiſſioners Clerks. Stat. 1 *Geo.* 1, &c. See 12, 13, & 15 *Geo.* 2. The above *Statutes*, or *Land Tax* Acts, where 2 *s.* in the Pound is granted, have generally Clauſes of *Loan* of One Million, and when the *Tax* is 4 *s.* a Pound, Two Millions for publick Uſes; likewiſe in the *Malt-Tax* Acts, there is ſuch Clauſe of *Loan* for 750,000 *l.* at 3 or 4 *per Cent.* Intereſt, the *Loans* to be allowed by the Commiſſioners of the Treaſury, &c.

Taxatio Bladorum, is a Tax or Impoſition laid upon Corn, according to *Cowel.*

Taxers, Are two Officers yearly choſen in *Cambridge* to ſee the true Gauge of all Weights and Meaſures; though the Name took Riſe from *Taxing* or Rating the Rents of Houſes, which was antiently the Duty of their Offices.

Taylors, Shall not make or ſet upon Clothes any Buttons or Button-holes of Cloth, Stuff, &c. nor ſhall any Perſon wear Clothes with ſuch Buttons, &c. on Pain of forfeiting 40 *s. per* Dozen. 4 *Geo.* 1. Contracts entered into with *Journeymen Taylors*, for advancing their Wages, are declared void; and *Taylors* giving greater Wages than allowed, ſhall forfeit 5 *l.* and Journeymen accepting the ſame, or refuſing to work for the ſettled ſtated Wages the Hours appointed, may be ſent to the Houſe of Correction for two Months, &c. by Stat. 7 *Geo.* 1 *cap.* 13.

Tea, Is a pleaſant Sort of Liquor, of late much uſed in *England*, and introduced from *China* and the *Eaſt-Indies*, being made of the Product of a Shrub growing in thoſe Parts: It is mentioned in the Stat. 12 *Car.* 2. *c.* 15. And Perſons mixing with *Tea* Leaves, the Leaves of other Trees and Shrubs, are liable to a Penalty of 10 *l.* &c. by 4 *Geo.* 2. *c.* 14. The *Eaſt India* Company are to have Allowance and Drawback, on exporting *Tea*. Stat. 6 *Geo.* 2. *c.* 38.

Team and Theame, (From the Sax. *Tyman*, i. e. *propagare*, to *Teem* or bring forth) Signifies a Royalty or Privilege granted by the King's Charter to the Lord of a Manor, for the having, reſtraining and judging of Bondmen and Villeins, with their Children, Goods and Chattels, *&c. Glanvil, Lib.* 5. *c.* 2.

Teding-penny, *Tething penny, Tithing-penny*, A ſmall Duty or Payment to the Sheriff from each *Tithing*, towards the Charge of keeping Courts, *&c.* from which ſome of the Religious were exempted by Charter from the King. *Chart. Hen.* 1.

Teenage, From the Sax. *Tynan* to encloſe or ſhut is uſed in many Parts of *England* for Wood for Fences and Encloſures.

Teinland, *Tainland*, or *Thainland*, The Land of a *Thaine* or Noble Perſon. See *Thane-Land.*

Teller, Is a conſiderable Officer in the *Exchequer*, of which Officers there are Four; whoſe Office is to receive all Money due to the King, and to give the *Clerk of the Pells* a Bill to charge him therewith: They alſo pay to all Perſons any Money payable by the King, by Warrant from the *Auditor of the Receipt*; and make weekly and yearly Books of their Receipts and Payments, which they deliver to the *Lord Treaſurer.*

Telligraphiæ, (From the Sax. *Tellan*, i. e. *dicere*, and the Gr. Γράφω, *Scribo, quaſi* a Telling any Thing by Writing) Are written Evidences of Things paſt. *Blount.*

Tellwore, Is that Work or Labour which the Tenant was bound to do for his Lord, for a certain Number of Days; from the *Saxon* Word *Tallan*, numerare, & *Worc.* opus. *Thorn. Ann.* 1364.

Temple, *Dugdale* and *Stow* both tell us that the *Temple* in *London* is a Place of *Privilege* from Arreſts, by the Grant of the King; but this hath been denied by the Court of *B. R. Dugd.* 317, 320. 3 *Salk. Rep.* 45. In the *Middle Temple* the King's Treaſure was antiently kept.

Templers, (*Templarii*) *Knights of the Temple*, having their Reſidence in Part of the Buildings belonging to the *Temple of Jeruſalem*; we read of them in the Reign of *Hen.* 2. They had in every Kingdom a Governor, whom *Bracton* calls *Magiſtrum Militiæ Templi*; and the *Maſter* of the *Temple* here, was ſummoned to Parliament 49 *Hen.* 3. *Bract. lib.* 1. *cap.* 10. The Chief Miniſter of the *Temple Church* is ſtill called *Maſter of the Temple.* See *Knights Templers.*

Temporalities of Biſhops, Are the Revenues, Lands, Tenements, and Lay-Fees, belonging to Biſhops, as they are Barons and Lords of Parliament; all Things as a Biſhop hath by Livery from the King, as Manors, Lands, Tithes, *&c.* 1 *Roll. Abr.* 881. It was a Cuſtom formerly, that when Biſhops received from the King their *Temporalities*, they did by a ſolemn Form in Writing renounce all Right to the ſame by Virtue of any Proviſion from the *Pope*, and acknowledged the Receipt of them only from the King; which Cuſtom continued from the Reign of *Edw.* 1. to the Time of the Reformation: And this Practice began by Occaſion of a *Bull* of *Pope Gregory* 8. wherein he conferred the See of *Worceſter* on a certain Biſhop, and committed to him *Adminiſtrationem Spiritualium & Temporalium Epiſcopatus prædict'. Anno* 31 *Edw.* 1. The Cuſtody of the *Temporalities* of every Biſhop and Archbiſhop, during the Vacancy of the Sees, belongs to the King; and no Subject can claim them by Grant or Preſcription. *F. N. B.* 32, 34. 2 *Inſt.* 15. And the King may commit the *Temporalities* during the Vacation of the See; alſo he may preſent to a void Advowſon, when the *Temporalities* are in his Hands. 1 *Inſt.* 90, 388. *Mag. Chart. c.* 5. 14 *Edw.* 3. *c.* 14.

Temptatio, or **Tentatio**, Is uſed in antient Records for a Trial, or Proof. *Chart.* 20 *Edw.* 1.

Tempus Peſſonis, Maſt-Time in the *Foreſt*, which is from about *Michaelmas* to St. *Martin's Day.* Novemb. 11.

Tempus pinguedinis & firmationis; The Seaſon of Killing the *Buck* and the *Doe.* MS. Temp. H. 3.

Tena, Was that which we now call a *Coif*, worn by Eccleſiaſticks:———Tena *coronas abſcondunt quaſi Cœleſtes radios repellentes, &c.* Counc. Lambeth, Anno 1281.

Tenancies, Are Houſes or Places for Habitation, held of another. 23 *Eliz. c.* 4.

Tenant, (*Tenens à tenendo*, from holding) Is one that holds or occupies Lands or Tenements, by any Kind of Right, of ſome Lord or Landlord, by Rent, Fealty, *&c.* Alſo the Word *Tenant* is uſed with divers Additions; as *Tenant* in Fee-ſimple, Fee-tail, for Life, Years, or at Will; *Tenant* in Dower, by the Curteſy, by Copy of Court-Roll; *Tenant* in Mortgage, by Statute-Merchant, and Statute-Staple, *Elegit, &c.* Co. Litt.

Tenants in Common, Are ſuch as hold Lands for Life or Years, by ſeveral Titles, or by one Title and ſeveral Rights; and as *Jointenants* have one joint Freehold, ſo Tenants in Common have divers Freeholds. 1 *Inſt.* 188. If a Conveyance is made to two Perſons, *Habendum* the one Moiety to one and his Heirs, and the other Moiety to the other, *&c.* it is a *Tenancy in Common*, and the Heirs and Executors of *Tenants in Common*, ſhall have their Parts or Shares, and not the Survivors, as in Caſe of *Jointenants.* 2 *Lill. Abr.* 559. *Tenants in Common* know not their own Part, but take the Profits in Common: One *Tenant in Common* cannot bring Action of Treſpaſs againſt another *Tenant in Common*, but one ſuch *Tenant* may bring Waſte againſt his Partner, *&c.* 3 *Leon.* 307. 2 *Lill.* 561. At Common Law *Tenants in Common* were not compellable to make Partition; though they are by the Stat. 31 *H.* 8. See *Jointenant.*

Tenant to the Præcipe, Is he againſt whom the Writ of *Præcipe* is to be brought in ſuing out a *Recovery.* 3 Rep.

Tend, Seems to ſignify as much as *Tender*, or Offer; it is mentioned in our old Books, as to *tend* a Traverſe, an Averment, *&c. Briton, c.* 76. *Staundf. Prærog.* 16.

Tender, (Fr. *Tendre*) Is the Offering of Money, or any other Thing in Satisfaction, or circumſpectly to endeavour the Performance of a Thing; as a *Tender of Rent* is to offer it at the Time and Place when and where it ought to be paid: And it is an Act done to ſave the Penalty of a Bond, before Action brought, *&c. Terms de Ley* 557. *Tender* of Rent on any Part of the Land, or at any Time of the laſt Day of Payment, will ſave the Condition for that Time, though the Landlord refuſe it: But when Rent is *tendered*, the Leſſor may after bring Debt; though he cannot recover any Damages; the Leſſee's being ready to pay excuſes the Damages, but doth not debar the other of his Rent. 1 *Inſt.* 200. *Litt. Rep.* 33, 34. 3 *Salk.* 344. A *Tender* of Rent to ſave the Forfeiture muſt be of the whole Rent due, without any Deduction of Taxes or other Payments; unleſs it be ſo agreed, *&c.* Stoppage being no Payment. 1 *Inſt.* 202. *Tender* of Money on a Bond, is to be made to the Perſon of the Obligee at the Day appointed, to ſave the Penalty and Forfeiture of the Bond, and it ought to be done before Witneſſes; though if the Obligor be ſued afterwards, he muſt ſtill pay it: But if the Obligor be to do any collateral Thing, or which is not Part of the Obligation, as to deliver a Horſe, *&c.* and the Obligor offers to do his Part, and the Obligee refuſeth it, the Condition is perform'd, and the Obligation diſcharged for ever. 1 *Inſt.* 207, 208. A Sum awarded by an Award, was loſt by the *Tender*; it being a collateral Thing. 3 *Lev.* 277. On Award, that the Defendant ſhould pay Money on ſuch a Day, and at ſuch a Place; the Defendant pleaded, that he *tendered* the Money at the Day and Place, and becauſe he did not ſet forth that he continued there ready to pay it at the laſt Inſtant of the Day till after Sun ſetting, &c. it was held ill. 2 *Cro.* 243. Where Time and Place of doing an Act is made certain by Agreement of the Parties, and they both meet accordingly; he who pleads a *Tender*, muſt alſo plead a Refuſal of the other Party to accept; otherwiſe ſuch Plea will be ill upon a Demurrer, but not after Verdict; and if the Plaintiff be abſent, that is to be ſet forth, and that the Defendant was at the Time and Place, & *obtulit ſolvere*, &c. 2 *Salk.* 623. A *Tender* and Refuſal being pleaded, 'tis the Refuſal which is traverſable, and not the *Tender*, for 'tis that makes it a Payment in Law; and wherever the Demand is certain, there a *Tender and Refuſal* is a good Plea; and a *Tender* is not well pleaded without a Refuſal. 3 *Salk.* 341. In Action of Debt, *Tender* and Refuſal may be pleaded in Bar of the Damages; though not in Bar of the Action, as the Debt ſtill remains: There is a Difference in Pleading a *Tender* in Action of Debt, and in Action on the Caſe; in Debt, the Damages are but Acceſſary, ſo that in Pleading a *Tender* to ſuch Action, the Defendant muſt pray Judgment *de Damnis*; but in *Aſſumpſit*, the Damages are Principal, and he is to plead *ſemper paratus*, with a *Profert hic in Curia*, and pray Judgment *de ulterioribus Damnis.* 2 *Salk.* 622. 3 *Salk.* 344, 345. A Man pleads a *Tender* of a Debt at the Day, he need not plead *Semper paratus*; but *uncore Priſt*, and bring the Money into Court. 2 *Lill. Abr.* 564. And *Tender* and Refuſal, on Covenant to pay Money, where Damages only are to be recovered, is a good Plea without *uncore Priſt. Show.* 129. *Tender* may be of Money in Bags, without ſhewing or telling it, if it can be proved there was the Sum to be *tendered*; it being the Duty of him that is to receive the Money, to put out and tell it. 5 *Rep.* 115. Though where a Perſon held the Money on his Arm in a Bag, at the Time of Offering it; this was adjudged no good *Tender*, for it might be Counters or baſe Money. *Noy* 74. 3 *Nelſ. Abr.* 281. If a *Tender* is made of more than is due, it is good; and the Party to whom *tender'd* ought to take out what belongs to him. 5 *Rep.* 114. *Tender* of the Money is requiſite on Contracts for Goods ſold, &c. to intitle Action of Trover: And a *Tender* of Stock ſold for ſo much Money, if it be well made tho' not accepted, will intitle the Party to the Sum agreed to be paid. 3 *Salk.* 343. See *Bond*, &c.

Tenement, (*Tenementum*) Signifies properly a Houſe or Home-ſtall; but more largely it comprehends not only a Houſe, but all Corporeal Inheritances which are holden of another, and all Inheritances iſſuing out of, or exerciſable with the ſame. *Co. Litt.* 6, 19, 154. A *Tenement* may be ſaid to be any Houſe, Land, Rent, or other ſuch like Thing, that is any Way held or poſſeſſed; but being a Word of a large and ambiguous Meaning, and not ſo certain as Meſſuage, therefore it is not fit to be uſed to expreſs any Thing which requires a particular Deſcription. 2 *Lill. Abr.* 566. The Word *Tenement* is join'd with the adjective *Frank*, to denote an Eſtate in Lands, Offices, &c. for Life or in Fee. *Kitch.* 41.

Tenementary Land, Was the *outland* of Manors granted out to Tenants by the *Saxon Thanes*, under arbitrary Rents and Services. *Spelm.*

Tenementis Legatis, An antient Writ lying to the City of *London*, or any other Corporation; (where the old Cuſtom was, that Men might deviſe by Will, Lands and Tenements as well as Goods and Chattels) for the Hearing and Determining any Controverſy touching the ſame. *Reg. Orig.* 244.

Tenendum, In *Deeds*, Where the Fee-ſimple of Lands paſſeth, muſt be of the *Chief Lord* of the Fee, by the ſame Cuſtoms and Services as the *Feoffor* held; and not of the Feoffor only and his Heirs, whereby the Lords would loſe their Eſcheats, &c. 1 *Inſt.* 6. 2 *Inſt.* 66. Stat. 18 *Ed.* 1.

Tenentibus in Aſſiſa non Onerandis, Is a Writ that lies for him to whom a Diſſeiſor hath alienated the Land whereof he diſſeiſed another, that he be not moleſted in *Aſſiſe* for the Damages, if the Diſſeiſor have wherewith to ſatisfy them. *Reg. Orig.* 214.

Tenheved, or **Tienheofed**, A *Saxon* Word ſignifying *Decanus, Caput vel Princeps Decaniæ ſive Decuriæ.* Leg. Edw. Conf. cap. 29.

Tenmentale, (Sax. *Tienmantale*, i. e. *decem virorum numerus*) *Decennaria, Tithinga. Leg. Edw. Conf.* Alſo an antient Tax or Tribute paid to the King. *Hoveden* 737.

Tenor, (*Lat.*) Of Writs, Records, &c. is the Subſtance or Purport of them; or a Tranſcript or Copy. *Tenor* of a Libel hath been held to be a Tranſcript, which it cannot be if it differs from the Libel; and *juxta Tenorem* imports it, but not *ad Effectum*, &c. for that may import an Identity in Senſe, but not in Words. 2 *Salk.* 417. In Action of Debt brought upon a Judgment in an inferior Court, if the Defendant pleads *Nul tiel Record*, a *Tenorem Recordi* only ſhall be certified; and by *Hale* Ch. Juſt. it may be the ſame on *Certiorari's.* 3 *Salk.* 296. A Return of the *Tenor* of an Indictment from *London*, on a *Certiorari* to remove the Indictment, is good by the City Charter; but in other Caſes it is uſual to certify the Record itſelf. 2 *Hawk. P. C.* 295.

Tenore Indictamenti mittendo, Is a Writ whereby the Record of an *Indictment*, and the Proceſs thereupon, is called out of another Court into the *King's Bench.* Reg. Orig. 69.

Tenore Præſentium, The *Tenor of theſe Preſents*, is the Matter contain'd therein, or rather the Intent and Meaning thereof; as to do ſuch a Thing according to the *Tenor*, is to do the ſame according to the true Intent of the Deed or Writing.

Tentates Panis, The Eſſay or Aſſay of Bread. *Blount*

Tenter, A Stretcher, or Trier of Cloth, uſed by Dyers and Clothiers, &c. mentioned in the Statutes 1 *R.* 3. *cap.* 8. 39 *Eliz. cap.* 20.

Tenths, (*Decimæ*) Are the *Tenth* Part of the annual Value of every Spiritual Benefice, being that yearly Portion or Tribute which all Eccleſiaſtical Livings pay to the King. They were antiently claimed by the *Pope*, to be due to him *Jure divino*, as High Prieſt, by the Example of the High Prieſt among the *Jews*, who had *Tenths* from the *Levites*: But they have been often granted to the King by the Pope upon divers Occaſions, ſometimes for one Year, and ſometimes for more; and were annexed perpetually to the Crown by Stat. 26 *H.* 8. 1 *Eliz. cap.* 4. And at laſt granted with the *Firſt Fruits*, towards the Augmentaion of the Maintenance of Poor Clergymen. 1 *Ann. c.* 11. Collectors of this Revenue are to be appointed by the King by Letters Patent, inſtead of the Biſhops; and an Office is to be kept for Management of the ſame, in ſome Part of *London* or *Weſtminſter*, &c. 3 *Geo.* 1. *c.* 10. *Tenths* ſignify likewiſe a *Tax* on the *Temporalty*. See the Statutes of King *Edw.* 6. Q. *Eliz.* and K. *James*. And *vide* Tax.

Tents, Robbing of, in Fairs and Markets, is Felony, and puniſhed as Burglary. 5 & 6 *Ed.* 6. *cap.* 9.

Tenure, (*Tenura*, from the Lat. *Tenere*) Is the Manner whereby Lands or Tenements are holden; or the Service that the Tenant owes to his Lord: And there can be no *Tenure* without ſome Service, becauſe the Service makes the *Tenure.* 1 *Inſt.* 1, 93. A *Tenure* may be of Houſes, and Land or Tenements; but not of a Rent, Common, *&c.* All Lands in the Hands of a Subject are held of ſome Lord or Landlord, by *Tenure* or Service; And all the Lands and Tenements in *England* are ſaid to be holden either mediately or immediately of the King; and therefore he is *Summus Dominus ſupra omnes.* 2 Inſt. 531. *Tenure* ſignifies the Eſtate in the Land; and *Tenures* were antiently divided into the following, *viz. Eſcuage*, which was Land held by the Service of the Shield, and by which the Tenant was obliged to follow his Lord into the Wars at his own Charge. *Knight's Service* and *Chivalry*, where Lands were held of the King or meſne Lord, to perform Service in War, and which drew after it Homage, Eſcuage, Wardſhip, *&c. Burgage* Tenure, where Land was holden of the Lord of the Borough, at a certain Rent. *Villenage*, a baſe Tenure of Lands, whereby the Tenant was bound to do all inferior villanous Services commanded by the Lord. *Grand Serjeanty*, a Tenure of Lands by Honourary Services at the King's Coronation, *&c.* And *Petit Serjeanty*, where Lands were held of the King to contribute yearly ſome ſmall Thing towards his Wars. *Frankalmoigne*, a Tenure by which Land is held by Eccleſiaſtical Perſons in free and perpetual Alms. And *Socage* Tenure, where Lands are holden by Tenants to plough the Land of their Lord, and do other Services of Husbandry at their own Expence; but this hath been turned into an yearly Rent, for all manner of Services, when it is called *Free Socage.* Of theſe general antient *Tenures*, Knights Service, Chivalry, Eſcuage, Petit Serjeanty, Villenage, *&c.* are taken away by Statute 12 *Car.* 2. The common *Tenures* at this Day, are *Fee-ſimple*, which is an abſolute Tenure of Lands, to a Man and his Heirs for ever. *Fee-tail*, a limited Fee to a Perſon and the Heirs of his Body begotten, *&c.* By the *Curteſy*, where a Man marries a Woman ſeiſed of Lands in Fee-ſimple, *&c.* and hath Iſſue by her born alive, after her Death he ſhall hold the Land during Life. In *Dower*, where a Widow holds for her Life the Third Part of her Husband's Land, whereof he was ſeized in Fee. For *Life* and *Years*, where Lands are held by Tenants for thoſe Terms, on Rents reſerved. And *Copyhold* Tenure, a holding for Lives or in Fee, at the Will of the Lord, according to the Cuſtom of the Manor, under divers Services, *&c. Vide* the *Heads*, and ſee *Fee* and *Socage.*

Term, (*Terminus*) Signifies commonly the Limitation of Time or Eſtate; as a Leaſe for *Term* of Life, or Years, *&c. Bract. lib.* 2.

Termor, (*Tenens ex Termino*) Is he that holds Lands or Tenements for *Term* of Years or Life. *Litt.* 100. A *Termor* for Years, cannot plead in *Aſſiſe* like Tenant of the Freehold; but the ſpecial Matter, *viz.* his Leaſe for Years, the Reverſion in the Plaintiff, and that he is in Poſſeſſion, *&c. Dyer* 246. *Jenk. Cent.* 142.

Terms, Are thoſe Spaces of Time, wherein the Courts of Juſtice are open, for all that complain of Wrongs or Injuries, and ſeek their Rights by Courſe of Law or Action, in order to their Redreſs; and during which, the *Courts in Weſtminſter Hall* ſit and give Judgments, *&c.* But the High Court of *Parliament*, the *Chancery*, and *inferior* Courts, do not obſerve the *Terms*; only the Courts of *King's Bench*, the *Common Pleas*, and *Exchequer*, the higheſt Courts at *Common Law.* Of theſe *Terms* there are Four in every Year, *viz. Hillary-Term*, which begins the 23d of *January*, and ends the 12th of *February*; *Eaſter Term*, that begins the Wedneſday Fortnight after *Eaſter-Day*, and ends the Monday next after *Aſcenſion*-Day; *Trinity-Term*, which begins the Friday after *Trinity* Sunday, and ends the Wedneſday Fortnight after; and *Michaelmas-Term*, that begins the 23d of *October*, and ends the 28th of *November.* Each *Term* has certain *Returns*; as *Hillary-Term* has Four, *Eaſter* hath Five, *Trinity* Four, and *Michaelmas* Six: And by Statute, *Trinity-Term* was abridged four Returns; and *Michaelmas-Term* two Returns; for thoſe *Terms* were formerly longer than now, till contracted by the Statutes 32 *H.* 8. *c.* 21. and 16 *Car.* 1. *c.* 16. There are four Days in *Term*, called the *Eſſoin-Day*; the Day of *Exceptions*; the Day of *Returns* of Writs; and Day of *Appearance*, called the *Quarto die poſt*: The *Term* is ſaid to begin on the *Eſſoin-Day*, when one Judge ſits in each Court of Law at *Weſtminſter*, to take and enter Eſſoins; but the third Day afterwards is the firſt Day of the *Term*, at which Time the Judges in all the Courts ſit to do the Buſineſs of the *Term.* 2 *Lill. Abr.* 569. All the *Term* in Conſtruction of Law is accounted but as one Day to many Purpoſes; for a Plea that is put in the laſt Day of a *Term*, is a Plea of the firſt Day of the *Term*; and a Judgment on the laſt Day of *Term* is as effectual as on the firſt Day. *Trin.* 23 *Car. B. R.* And for this Reaſon, the Judges may alter and amend their Judgments in the ſame *Term*, *&c.* It has been held, that the Courts ſit not but in *Term*, as to giving of Judgments: And the Judges of *B. R.* and *C. B.* before *Trinity Term.* 1651. did not ſit longer in Court than till one a-Clock upon the laſt Day of *Term*; becauſe they would not encourage Attornies to neglect their Client's Buſineſs to the laſt Day of *Term*, as too commonly they do, to the Toil of the Court, and too much Hurry in Diſpatch. *Mich.* 22 *Car.* 2 *Lill.* 91. *Terms* have been *adjourned*, and Returns of Writs and Proceſſes confirmed. 1 *W. & M. Seſſ.* 1. *c.* 4. Where there is a *Term* intervening between the *Teſte* and Return of a Writ of *Capias*, *&c.* or when the *Term* to which a Suit is continued is adjourned, and the Suit is not adjourn'd, it is a Diſcontinuance, *&c.* 2 *Hawk.* 298. The *iſſuable Terms* are *Hillary* and *Trinity Terms* only; ſo called, becauſe in them the Iſſues are joined and Records made up of Cauſes, to be tried at the *Lent* and Summer *Aſſiſes*, which immediately follow. 2 *Lill. Abr.* 568.

The *Terms* in *Scotland* are *Martinmas*, *Candlemas*, *Whitſontide* and *Lammas*, at which Times the Court of *Exchequer*, *&c.* there is to be kept. Stat. 6. *Ann. c.* 6. And the *Terms* of our *Univerſities* for Students, are different in Time from the *Terms of the Courts of Law.*

Terms of the Law, Are artificial or technical Words and *Terms of Art*, particularly uſed in and adapted to the Profeſſion of the *Law.* 2 Hawk. P. C. 239.

Terms for Payment of Rent, Or *Rent Terms*, the Four Quarterly Feaſts, upon which Rent is uſually paid. *Cartular. St. Edmund.* 238.

Terra, In all the Surveys in *Domeſday* Regiſter, is taken for *arable Land*, and always ſo diſtinguiſhed from the *Pratum*, *&c.* Kennet's Gloſſ.

Terra affirmata, Signifies Land let to Farm.

Terra Boſcalis, Woody Lands, according to an Inquiſition, 8 *Car.* 1.

Terra culta, Land that is tilled or manured; as *Terra Inculta* is the contrary. *Mon. Angl. Tom.* 1. *pag.* 500.

Terra debilis, Weak or barren Ground. *Inq.* 22 *R.* 2.

Terra Excultabilis, Such Land as may be ploughed. *Mon. Ang. Tom.* 1. *pag.* 426.

Terra Fruſca, Is freſh Land, or that hath not been lately tilled; likewiſe written *Terra Friſca.*

Terra Hydata, Was Land ſubject to the Payment of *Hydage.* Selden.

Terra Lucrabilis, Land that may be gained from the Sea, or incloſed out of a Waſte, to a particular Uſe. *Mon. Angl. Tom.* 1. *pag.* 406.

Terra Nova, Is Land newly aſſarted and converted from Wood-Ground to arable; *vel Terra noviter Conceſſa*, &c. Spelm.

Terra Putura, Land in *Foreſts* held by the Tenure of furniſhing Man's Meat, Horſe-meat, &c. to the Keepers therein. See *Putura*.

Terra Sabuloſa, Gravelly or ſandy Ground. *Inquiſ.* 10 *Ed.* 3.

Terra Veſtita, Is uſed in old Charters for Land ſown with Corn.

Terra Wainabilis, Signifies tillable Land. *M.S.*

Terra Warrennata, Land that hath the Liberty of a free *Warren*. Rot. Parl. 21 Edw. 1.

Terrage, Seems to be an Exemption from Ploughing of Land, Reaping, &c. mentioned in a Charter of K. *Ed.* 3.

Terrar, or *Terrier*, (*Terrarium, catalogus Terrarum*) Is a Land-Roll, or Survey of Lands, either of a ſingle Perſon, or of a Town; containing the Quantity of Acres, Tenants Names, and ſuch like; and in the *Exchequer*, there is a *Terrar* of all the Glebe Lands in *England*, made about 11 *E.* 3. Stat. 18 *Eliz. c.* 17.

Terrarius, A Land-holder, or one who poſſeſſes many Farms of Land. *Leg. W.* 1.

Terrarius Cœnobialis, An Officer in Religious Houſes, whoſe Office was to keep a *Terrier* of all their Eſtates, and to have the Lands belonging to the Houſes exactly ſurveyed and regiſtred; and one Part of his Office was to entertain the better Sort of Convent-Tenants, when they come to pay their Rents, &c. *Hiſt. Dunelm.*

Terre-tenant, Tertenant, (*Terræ Tenens*) Is he who hath the actual Poſſeſſion of the Land: For Example, a Lord of a Manor has a Freeholder, who letteth out his Freehold to another, to be poſſeſſed and occupied by him, ſuch other is called the *Tertenant*. *Weſt. Symb. par.* 2. *Briton, cap.* 29. In the Caſe of a Recognizance, Statute or Judgment, the Heir is chargeable as *Tertenant*, and not as Heir; becauſe by the Recognizance or Judgment, the Heir is not bound, but the Anceſtor *concedit* that the Money *de Terris*, &c. *levetur*. 3 *Rep.* 12. Plea of *Tertenancy*, in a *Scire fac.* &c. Vide *Cro. Eliz.* 872. *Cro. Jac.* 506. See *Scire facias*.

Terris Bonis & Catallis rehabendis poſt Purgationem, A Writ for a Clerk to recover his Lands, Goods and Chattels formerly ſeiſed, after he had cleared himſelf of the Felony of which he was accuſed, and delivered to his Ordinary to be purged. *Reg. Orig.* 68.

Terris & Catallis tentis ultra debitum levatum, Is a judicial Writ for the Reſtoring of Lands or Goods to a Debtor, that is diſtrained above the Quantity of the Debt. *Reg. Judic.* 38.

Terris liberandis, A Writ lying for a Man convicted by *Attaint*, to bring the Record and Proceſs before the King, and take a Fine for his Impriſonment, and then to deliver him his Lands and Tenements again, and releaſe him of the *Strip* and *Waſte*. *Reg. Orig.* 232. It is alſo a Writ for the Delivery of Lands to the Heir, after Homage and Relief performed; or upon Security taken that he ſhall perform them. *Ibid.* 293, 313.

Tertian, A Meaſure of Eighty-four Gallons; ſo called, becauſe it is a *third* Part of a Tun. 1 *R.* 3. *c.* 13. 2 *H.* 6. *c.* 11.

Teſt, As to bring one to the *Teſt*, is to bring him to Trial and Examination, &c. By the Act of King *Car.* 2. commonly called the *Teſt-Act*, all Officers Civil and Military are to take the Oaths and *Teſt*; and if they neglect it, and execute any Office within the Words of that Statute, being legally convicted thereof upon Information, Preſentment, or Indictment, in any of the Courts at *Weſtminſter*, or at the Aſſiſes, they ſhall forfeit 500*l.* to be recovered by him who will ſue for the ſame in any Action of Debt, &c. 25 *Car.* 2. *c.* 2.

Teſta de Nevil, Is an ancient Record in the Cuſtody of the King's Remembrancer in the *Exchequer*, compiled by *John de Nevil*, a Juſtice Itinerant in the 18 and 24 of King *H.* 3. containing an Account of Lands held in Grand Serjeanty, with Fees and Eſcheats to the King, &c.

Teſtament, (*Teſtamentum*, i. e. *Teſtatio mentis*) Is a Witneſs of the Mind: And is thus particularly defined, Teſtamentum *eſt ultimæ voluntatis juſta Sententia, eo quod quis poſt mortem ſuam fieri vult*, &c. And of *Teſtaments* there are two Sorts, *viz.* a *Teſtament in Writing*; and a *Teſtament in Words*, which is called a *Nuncupative Teſtament. Co. Lit.* See *Will*.

Teſtator, (*Lat.*) He that makes a *Teſtament* or Will. *Swinb. of Wills.*

Teſtatum, Is a Writ in perſonal Actions, where the Defendant cannot be arreſted upon a *Capias* in the County where the Action is laid, but is returned *Non eſt Inventus* by the Sheriff; then this Writ ſhall be ſent out into any other County where ſuch Perſon is thought to be, or to have wherewith to ſatiſfy: And this is termed a *Teſtatum*, by Reaſon the Sheriff hath *teſtified* that the Defendant was not to be found in his Bailiwick. *Kitch. Ret. Writs* 287.

Teſte, A Word generally uſed in the laſt Part of all Writs, wherein the Date is contained; which begin with theſe Words, *Teſte meipſo*, &c. if it be an original Writ; or *Teſte* the *Lord Chief Juſtice*, &c. if judicial. There muſt be at leaſt Fifteen Days between the *Teſte* and Return of every Proceſs awarded from the *King's Bench* into any foreign County. *Co. Litt.* 134. See *Writs*.

Teſtimonial, Is a Certificate under the Hand of a Juſtice of Peace, *Teſtifying* the Place and Time, when and where a *Soldier* or *Mariner* landed, and the Place of his Dwelling and Birth, unto which he is to paſs. 39 *Eliz. c.* 17. And formerly *Teſtimonials* were to be given by Mayors and Conſtables to *Servants* quitting their Services, &c. 5 *Eliz. c.* 4.

Teſtimonials of Clergy, Are neceſſary to be made by Perſons preſent, that a Clergyman inducted to a Benefice hath performed all Things according to the *Act of Uniformity*; to evidence that the Clerk hath complied with what the Law requires on his Inſtitution and Induction, which in ſome Caſes he ſhall be put to do. *Count. Parſ. Compan.* 24, 26.

Teſtmoignes, Is *French* for Witneſſes, and *Teſtmoignage*, Teſtimony. *Law. Fr. Dict.*

Teſton or **Teſtoon**, Commonly called *Teſter*, a Sort of Money which among the *French* did bear the Value of 18*d.* But being made of Braſs lightly gilt with Silver, in the Reign of K. *Hen.* 8. it was reduced to 12*d.* and afterwards to 6*d. Lownds's Eſſ. on Coins, pag.* 22.

Textus, A *Text* or Subject of a Diſcourſe, and is mentioned by ſeveral Authors to ſignify the *New Teſtament*; it was written in golden Letters, and carefully preſerved in the *Churches*.

Textus magni Altaris, We read of in *Domeſday* and *Cartular. S. Edmund.*

Textus Roffenſis, An antient Manuſcript, containing the Rights, Cuſtoms and Tenures, &c. of the Church of *Rocheſter*, drawn up by the Biſhop of that *See*, Anno 1114.

Thames. If any Perſon procure any Thing to be done to the Annoyance of the *Thames*, in making of Shelves, digging, &c. or ſhall take away any Boards or Stakes, undermine Banks, &c. therein, he ſhall forfeit 5*l.* Stat. 27 *Hen.* 8. And no Fiſherman ſhall caſt any Soil, Gravel or Rubbiſh in the *Thames*; nor drive any Piles in the ſaid River whereby the common Paſſage may be hindered, on the Penalty of 10*l. Ord.* 10 *July* 1673. And there are ſeveral Ordinances of the Lord Mayor of *London*, &c. for regulating the Fiſhing in the River *Thames*. *Cit. Lib.* 148. See *Watermen*, &c.

Thane, (From the Sax. *Thenian, miniſtrare*) Was the Title of thoſe Perſons as attended the *Engliſh Saxon* Kings in their Courts, and who held Lands immediately of them; and therefore in *Domeſday* they were promiſcuouſly called *Thaini*, and *Servientes Regis*. This Appellation was in uſe among us after the *Norman* Conqueſt, as appears by a certain Writ of K. *Will.* 1. which runs thus: Willielmus *Rex Salutat* Hermannum *Epiſcopum, & omnes* Thanos, *&c.* though not long afterwards the Word was diſuſed, and inſtead thereof theſe Men were called *Barones Regis:* And there were alſo *Thaini Minores*, likewiſe ſtiled Barons; they were Lords of Manors, and had a particular Juriſdiction within their Limits, and over their own Tenants in their Courts, which to this Day are called Courts-Baron: But this Word ſignifies ſometimes a Nobleman; ſometimes a Freeman; and ſometimes a Magiſtrate; and more properly an Officer of the King. *Skene* ſaith, that it was a Name of Dignity, equal with the Son of an Earl: And *Thainus Regis* is taken for a Baron, by Sir *Edw. Coke.*

Thane-Lands, Such Lands as were granted by Charter of the *Saxon* Kings to their *Thanes*; which were held with all Immunities, except the threefold Neceſſity of Expeditions, Repairs of Caſtles, and mending of Bridges.——— *Thanage* ſignified alſo Land under the Government of a *Thane.* Skene.

Thaſcia, A certain Sum of Money or Tribute impoſed by the *Romans* on the *Britons* and their Lands. *Leg. H.* 1. *c.* 78.

Theft, (*Furtum*) Is an unlawful felonious Taking away of another Man's moveable and perſonal Goods, againſt the Will of the Owner: And this is divided into *Theft* ſimply ſo called, and *Petit Theft*; whereof the one is of Goods above the Value of Twelve-pence, and is Felony; and the other under that Value, called *Larceny. Theft* is alſo from the *Perſon*, and in *the Preſence* of the Owner, or in his *Abſence*, and either *open* or *private Theft*; the *Civil Law* judges open *Theft* to be ſatisfied in its Puniſhment by the Recompence of Four-fold; and privy *Theft* by the Recompence of double: But the Law of *England* adjudges both theſe Offences Felony. *Weſt Symb. par.* 2. Vide *Larceny.*

Theft-bote, (From the Sax. *Theof*, i. e. *Fur, &* Bote, *compenſatio*) Is the Receiving of a Man's Goods again from a *Thief*, after ſtolen, or other Amends not to proſecute the Felon, and to the Intent the *Thief* may eſcape; which is an Offence puniſhable with Fine and Impriſonment, *&c. H. P. C.* 130. See *Miſpriſion of Felony.*

Thelonium, Signifies *Toll*; to be exempt from which, there is a Writ called *Breve eſſendi quieti de Thelonio.* F. N. B.

Thelonmannus, The Toll-man, or Officer who received Toll. *Cartular. Abbat. Glaſton. MS.* 446.

Themmagium, A Duty or Acknowledgment paid by inferior Tenants to be free from *Theme* or *Team. Ibid.* 88.

Thenicium, *Thenicii agrorum, i. e. Arborum creſcentium circa agros Clauſura eorum*, vulgarly called *Hedge-rows*, or *Dike-rows.* Lindwode.

Theoden, Was an Husbandman or Tenant, an *Under-Thane*, in the Degrees or Diſtinctions of Perſons among the *Saxons.* Spelm.

Theſaurus, Was ſometimes taken in old Charters for *Theſaurarium*, the *Treaſury*; and hence the *Domeſday* Regiſter preſerved in the *Treaſury* or *Exchequer* when kept at *Wincheſter*, hath been often called *Liber Theſauri.* Chart. Q. Maud, Wife of King *Henry* 1.

Thethinga, A Word ſignifying a Tithing: *Thethingmannus*, a Tithingman. *Sax.*

Thew, or **Theowe**, (*Sax.*) A Slave or Captive; Bondmen among the *Saxons* were called *Theowes* and *Eſnes*, who were not accounted Members of the Common-wealth, but Parcels of their Maſters Goods and Subſtance. *Spelm. Feuds, c.* 5.

Thief-taker. Vide *Felony.*

Things, in *general.* The chief Part of every *Thing*, is the Beginning of it; but the End thereof, though it be laſt in Execution, is firſt in Intention, and therefore favoured in Law. 1 *Inſt.* 298. 10 *Rep.* 25. *Things* which are more worthy, are ever preferred before thoſe leſs worthy; and draw the others after them. *Plowd.* 169. 1 *Inſt.* 44. But *Things* may be deſtroyed by the ſame Way or Manner they were made. 6 *Rep.* 15. 2 *Rep.* 53.

Thingus, The ſame with *Thanus*; a Nobleman, Knight or Freeman. *Crompt. Juriſd.* 197.

Thirdborow, Is uſed for a Conſtable, by *Lambard* in his *Duty of Conſtables, pag.* 6. And in the Stat. 28 *H.* 8. *c.* 10.

Thirdings, *i. e.* The *third* Part of the Corn growing on the Ground, due to the Lord for a Heriot on the Death of his Tenant, within the Manor of *Turfat*, in *Com. Hereford.* Blount. Ten.

Third Night Awn-hinde, (*Trium noctium Hoſpes*) By the Laws of *St. Edward the Confeſſor*, if any Man lay a *Third Night* in an *Inn*, he was called a *Third Night Awn-hinde*, for whom his *Hoſt* was anſwerable, if he committed any Offence: The *firſt* Night, *Forman-night*, or *Uncuth*, he was reckoned a Stranger; the *Second* Night, *Twa-night*, a Gueſt; and the *Third* Night, an *Agen-hinde* or *Awn-hinde*, a Domeſtick. *Bract. lib.* 3.

Third-peny, (*Denarius Tertius*) See *Denarius Tertius Comitatus.*

Thiſtle-take, In the Manor of *Halton* in the County Palatine of *Cheſter*, there was a Cuſtom, that if in Driving Beaſts over the Common the Driver permitted them to graze or take but a *Thiſtle*, he ſhould pay a Half-penny a Beaſt to the Lord of the Fee. *Reg. Priorat. de Thurgarton.*

Thokes, Fiſh with broken Bellies, forbid by Statute to be mixed or packed with *Tale-fiſh.* 22 Ed. 4. c. 2.

Thorp, Trop, (Sax. *Villa, Vicus*) In the Beginning or End of Names of Places, ſignifies a Street or Village; as *Adelſtrop, &c.*

Thrave of Corn, (*Trava Bladi*, from the Sax. *Threav, i. e.* a Bundle) Is a Quantity of twenty-four *Sheaves*, or four *Shocks*; but in ſome Counties they reckon only twelve Sheaves to the *Thrave.* 2 *Hen.* 6. *c.* 2. King *Athelſtan* gave to *St. John of Beverley*'s Church, four *Thraves* of Corn from every Plough-land in the *Eaſt* Riding of *Yorkſhire*, by Charter, *Anno* 923.

Threngus, A Name anciently applied to certain Vaſſals or Tenants. See *Drenches.*

Thrimſa, (Sax. *Thrim*, Three) Was an old Piece of Money of three Shillings, according to *Lambard*; or the third Part of a Shilling, being a *German* Coin paſſing for 4 *d. Selden's Tit. Hon. pag.* 604.

Thrithing, (*Thrithingum*) A Court conſiſting of *Three* or Four Hundreds. *Stat. Merton.* 2 *Inſt.* 99.

Thude Weald, (*Sax.*) A Woodward, or Perſon that looks after the Woods.

Thwertnick, A *Saxon* Word, which in ſome old Writers is taken for the Cuſtom of giving Entertainment to the Sheriff, *&c.* for *Three Nights.* Rot. 11 & 12 Ric. 2.

Tical, A Piece of Money in *China* of two Pounds ſixteen Shillings and three Pence Value. *Merch. Dict.*

Tideſmen, Are certain Officers of the *Cuſtom-houſe* appointed to watch or attend upon Ships, till the Cuſtoms are paid; and they are ſo called, becauſe they go aboard the Ships at their Arrival in the Mouth of the *Thames*, and come up with the *Tide.*

Tierce, (Fr. *Tiers*, i. e. a Third) Is a Meaſure of Wine, Oil, *&c.* containing the *third* Part of a Pipe, or forty-two Gallons. Stat. 32 *H.* 8. *c.* 14.

Tigh, (Sax. *Teag*) A Cloſe or Incloſure, mentioned in ancient Charters; which Word is ſtill uſed in *Kent* in the ſame Senſe. *Chart. Eccl. Cant.*

Tihla, (*Sax.*) Signifies an Accuſation, in the Laws of K. *Canutus*.

Tiles, The Earth for *Tiles* is to be digged and caſt up before the firſt of *November* yearly, and to be ſtirred and turned before the firſt of *February* following, and be wrought before the firſt of *March*: And every common *Tile* muſt be in Length ten Inches and a Half, in Breadth ſix Inches and a Quarter, and Thickneſs Half an Inch and Half a Quarter: *Roof-Tiles* are to be thirteen Inches in Length, and of the ſame Thickneſs as the common *Tiles*, &c. And if any Perſons put to Sale any *Tiles* contrary hereto, they ſhall forfeit double Value and be fined. Stat. 17 *Ed.* 4. *c.* 4. By a late Statute, *Pan-Tiles* muſt be thirteen Inches and a Half long, nine Inches and a Half broad, and Half an Inch thick, &c. and the Penalty for making faulty Bricks and *Tiles* is 20 *s.* for every thouſand ſo made. Stat. 12 *Geo.* 1. *c.* 35. See *Bricks*.

Tillage, (*Agricultura*) Is of great Account in Law, as being very profitable to the Commonwealth; and therefore Arable Land hath the Preference before Meadows, Paſtures, and all other Ground whatſoever: And ſo careful is our Law to preſerve it, that a Bond or Condition to reſtrain *Tillage* or Sowing of Lands, &c. is void. 11 *Rep.* 53. There are divers ancient Statutes for Encouragement of *Tillage* and Husbandry, as the 4 *Hen.* 7. 25 *Hen.* 8. 33 *Hen.* 8. 5 & 35 *Eliz.* 21 *Jac.* 1. 15 *Car.* 2.

Tilting. Where one kills another in Fighting at *Tilting*, by the King's Command, the Accident is excuſable: But if it be by *Tilting* without the Command of the King; or by Parrying with naked Swords, covered with Buttons at the Points, &c. which cannot be uſed without manifeſt Hazard of Life, it will be Felony of Manſlaughter. *H. P. C.* 31.

Timber, Is Wood fitted for Building, or other ſuch like Uſe; and in a legal Senſe extends to Oak, Aſh and Elm, &c. 1 *Rol. Abr.* 649. Leſſees of Land, may not take *Timber-Trees* felled by the Wind, for thereby their ſpecial Property ceaſes. 1 *Keb.* 691. *Timber*, &c. ſtolen is to be ſevered from the Soil, to make it criminal. See *Yelv.* 152.

Timber for the Navy. An Act for the Increaſe and Preſervation of *Timber*, within the Foreſt of *Dean*. 20 *Car.* 2. *c.* 3. And two Thouſand Acres of Land in the *New Foreſt* were ordained to be incloſed, for preſerving *Timber* for the *Navy Royal*, by Stat. 9 & 10 *W.* 3.

Timberlode, A Service by which Tenants were to carry Timber felled from the Woods to the Lord's Houſe. *Thorn's Chron.*

Time and *Place*, Are to be ſet forth with Certainty in a Declaration; but *Time* may be only a Circumſtance when a Thing was done, and not be made Part of the Iſſue, &c. 5 *Mod.* 286. It has been held, that an impoſſible *Time* is no *Time*; and where a Day or *Time* is appointed for the Payment of Money, and there is no ſuch, the Money may be due preſently. *Hob.* 189. 5 *Rep.* 22. If no certain *Time* is implied by Law for the Doing of any Thing, and there is no *Time* agreed upon by the Parties, then the Law doth allow a convenient *Time* to the Party for the Doing thereof, *i. e.* as much as ſhall be adjudged reaſonable, without Prejudice to the Doer of it. 2 *Lill. Abr.* 572. In ſome Caſes one hath *Time* during his Life for the Performance of a Thing agreed, if he be not haſtened to do it by Requeſt of the Party for whom it is to be done; but if in ſuch Caſe he be haſtened by Requeſt, he is obliged to do it in convenient *Time*, after ſuch Requeſt made. *Hill.* 22 *Car.* 1. *B. R.* *Time* taken generally, hath alſo its *Time*: And what is done in the *Time of Peace*, the Law doth more countenance than in *Time of War*; in Caſe of Bar of an Entry, or Claim by Fine, and of Deſcents, &c. 1 *Inſt.* 249. 10 *Rep.* 82. 4 *Shep. Abr.* 6. See *Bond*, *Month*, &c.

Time limited, For the Proſecution of Actions. Vide *Limitation*.

Tinel le Roy, (*Fr.*) the King's Hall, wherein his Servants uſed to dine and ſup. 13 *R.* 2. *c.* 3.

Tineman, Was a Petty Officer in the Foreſt who had the nocturnal Care of Vert and Veniſon, and other Imployments in the Foreſt. *Leg. Canut. Reg.*

Tinet, (*Tinettum*) Is uſed for Bruſhwood and Thorns to make and repair Hedges: In *Herefordſhire*, to *tine* a Gap in a Hedge is to fill it up with Thorns, that Cattle may not paſs thro' it. *Chart.* 21 *Hen.* 6.

Tinewald, The Parliament or annual Convention of the People of the *Iſle of Man*, of which this Account is given: The Governor and Officers of that Iſland, do uſually call the twenty-four *Keys*, being the chief Commons thereof, eſpecially once every Year, *viz.* upon *Midſummer-Day* at St. *John's Chapel* to the Court kept there, called the *Tinewald Court*; where, upon a Hill near the ſaid Chapel, all the Inhabitants of the Iſland ſtand round about, and in the Plain adjoining, and hear the Laws and Ordinances agreed upon in the Chapel of *St. John*, which are publiſhed and declared unto them; and at this Solemnity the Lord of the Iſland ſits in a Chair of State with a Royal Canopy over his Head, and a Sword held before him, attended by the ſeveral Degrees of the People, who ſit on each Side of him, &c. *King's Deſcript. Iſl. Man.*

Tinpeny, A Tribute ſo called, uſually paid for the Liberty of Digging in *Tin* Mines, from the Sax. *Tinnen*, *Stanneus*, & Penig, *Denarius*, according to *Du Freſne*: But ſome Writers ſay, it is a cuſtomary Payment to the *Tithingman* from the ſeveral *Friburghs*, as *Tedingpeny* ſignified the Money paid the Sheriff by the ſeveral Tithings; for that *Tin* is only a Contraction of *Teon*, and means the the Number *Ten*. It is mentioned in ſeveral Places in the *Monaſticon*.——*Non Tributa, non* Tethingpeny, *non* Tinpeny, *exigat.* Mon. Angl. Tom. 1. pag. 419.

Tipſtaffs, Officers appointed by the *Marſhal* of the *King's Bench*, to attend upon the Judges with a Kind of Rod or *Staff tipt* with Silver, who take into their Cuſtody all Priſoners either commited, or turned over by the Judges at their Chambers, &c. See *Baſton*. Stat. 1 *R.* 2.

Tithes, (*Decimæ*, from the Sax. *Teotha*, *i. e.* Tenth) Are the Tenth Part of the Increaſe yearly ariſing from the Profits of Lands, and Induſtry of the Pariſhioners of any Pariſh payable to the Clergy for their Maintenance: They are an Eccleſiaſtical Inheritance, callateral to the State of the Land; and a Spiritual Duty, not releaſed by a Releaſe of all Demands of a Pariſhioner out of his Lands. 11 *Rep.* 13. 1 *Cro.* 293, 814. The Eccleſiaſtical Courts do hold, That *Tithes* are due for every Thing; tho' by the Common Law it is otherwiſe, for they are due only for ſuch Things which ariſe by annual Profits. 4 *Mod.* 344. *Tithes* muſt be paid of all Things as yield an yearly Increaſe by the Act of God; but are not due to be paid *Jure Divino*, but *per Legem Terræ*. *Selden*. Theſe *Tithes* are of very early Account with us; being mentioned in the Laws of King *Athelſtan*: Though the Prieſts, and Miniſters of the Altar, lived at firſt wholly on *Oblations*; in after Times, the Laity gave a certain Portion of their Revenues to the Clergy, but this was voluntarily without any Conſtraint; which Gift was called *Tithe*, tho' not a tenth Part of their Income, or near ſo much. Then in a following Age, the Prelates in their Councils, in Concert with the Princes, made an expreſs Law, by which they obliged the Laity to give a full Tenth of their Revenues and Fruits, &c. to the Eccleſiaſticks. *Chamb.*

Dict. But no Man had a Property in *Tithes* until the *Council of Lateran*, which was held in the Reign of our K. *John*; for till that Time there were no Pariſhes diſtinct from one another, and by Conſequence no Pariſh-Prieſts who could claim any Right to the *Tithes*: By a Canon made in the *Lateran* Council, every Perſon is compellable to pay *Tithes* to the Parſon or Vicar of that Pariſh where they ariſe; whereas before, the Biſhop of every Dioceſe made a general Diſtribution of *Tithes* to Spiritual Perſons for their Subſiſtence, to charitable Uſes, and for Repairs of the Church. *Hob.* 296. At Common Law none had Capacity to take *Tithes*, but only a Spiritual Perſon, or mixt Perſon, as the King; but a Layman was by the Common Law capable of a Diſcharge of *Tithes*. 2 *Rep.* Since the Statutes of Diſſolution of Abbies, *&c.* which were made *Anno* 27 & 31 *H.* 8. *Tithes* and other Eccleſiaſtical Revenues have been transferred to Laymen, who were not capable to take them at Common Law; and Spiritual Profits being by thoſe Statutes made Lay-Fees in the Hands of Temporal Men, if thoſe Men were wrongfully kept out of their Poſſeſſions, a ſubſequent Statute, made the 32 *Hen.* 8. gave them Remedy to recover in the King's Temporal Courts; though that Act did not take away the Force of the Eccleſiaſtical Law concerning *Tithes*; but all Spiritual Perſons who had any Right to *Tithes* before the Statute, might ſue for the ſame as formerly. 11 *Rep.* 8, 9, 10. An *Aſſiſe* for *Tithes* is given by the Statute 32 *H.* 8. *cap.* 7. And the Statute of Limitations doth not extend to an Action of Debt for *Tithes*. *Cro. Eliz.* 559. *Cro. Car.* 513. Anciently many Men were ſo ſcrupulouſly careful in their Payment of *Tithes*, as they at their Deaths bequeathed Legacies, and ordered *Mortuaries* to be given to the Prieſt, in Lieu and Recompence of any *Tithes* which might be forgotten: But it was obſerved by Sir *Edward Coke*, that in later Times, Laymen taking Occaſion to withdraw their *Tithes*, the Statutes 27 & 32 *Hen.* 8. and other Laws were made, to inforce the Payment thereof. 2 *Inſt.* 648. By the 27 *Hen.* 8. *c.* 20. On Complaint, by a Judge of the Eccleſiaſtical Court, to two Juſtices of the Peace (one of the *Quorum*) of any Contumacy or Miſdemeanour committed by a Defendant in any Suit depending for *Tithes*, and other Dues of the Church, the Juſtices may commit ſuch Defendant to Priſon, there to remain without Bail till he find ſufficient Surety to give due Obedience to the Proceſs, Decrees and Sentences of the Eccleſiaſtical Courts. The Stat. 32 *H.* 8. *c.* 7. requires, That all Perſons do duly ſet forth, and pay *Tithes*; and if they are not ſet out and paid, the Party grieved may convene thoſe as detain them before the Eccleſiaſtical Judge, who has Power to hear and determine, *&c.* And Perſons refuſing Payment after Sentence are to be committed to Priſon by two Juſtices of Peace, on Certificate from the Judge; and if any Perſons are diſſeiſed of a Parſonage or *Tithes*, made Temporal, they may have like Remedy in the Temporal Courts as for other Lands, *&c.* By 2 & 3 *Ed.* 6. *c.* 13. No Perſon ſhall carry away his Corn before he hath juſtly divided and ſet forth the Tenth Part, or agreed for the *Tithes* with the Parſon or other Proprietor, on Pain of forfeiting treble the Value of the *Tithes* taken away; and the Owner claiming ſuch *Tithes* may depute his Servant to view the ſaid *Tithes*, and ſee that they are truly ſet out and ſevered from the Nine Parts, and the ſame to take away; and if any Perſon ſhall carry his Corn or Hay, before the *Tithe* is ſet forth, or withdraw his *Tithes*, ſtop the Owner, *&c.* from viewing or carrying away the ſame, upon due Proof before a Spiritual Judge, the Party ſhall pay double Value of the *Tithes*, beſides Coſts of Suit: And in Suits for ſubſtracting or withdrawing of *Tithes*, the Eccleſiaſtical Judge may excommunicate Perſons diſobeying his Sentence, *&c.* The treble Damages are recoverable in the Temporal Courts, by Action of Debt; for they are given generally, not limiting where to be recovered; and the Forfeiture is to the Party grieved, tho' it is not given to any Perſon in certain by the Statute; but it cannot be demanded of Executors, becauſe the Wrong was Perſonal, and it was a perſonal Contempt of the Statute: As for the double Value, it may be recovered in the Eccleſiaſtical Court; and it is equivalent to the treble Forfeiture to be recovered in the Temporal Courts, becauſe one may ſue in the Spiritual Court for the *Tithes* themſelves, or a Recompence for them, and have alſo the double Value. 1 *Inſt.* 159. 2 *Inſt.* 612, 650. If the *Tithes* are ſet out and ſevered from the Nine Parts by the Owner, they are become Lay Chattels; ſo that if after the Severance they are carried away by a Stranger, the Remedy is in the Temporal Courts for treble the Value: And if the Owner of the Land carries them away after Severance, this is no ſetting forth. 1 *Cro.* 607. 2 *Inſt.* 613. The Laws of the *Church* oblige the Owners of Corn, Hay, *&c.* to give Notice to the Parſon of the Setting forth the *Tithes*; but by the Common Law ſuch Notice is not neceſſary; and the Statute gives the Parſon only a Right of ſeeing the *Tithes* ſet out, but doth not oblige to Notice. 2 *Ventr.* 48. 2 *Danv. Abr.* 595. If a Perſon ſows his Land, and before Severance the Parſon of the Pariſh dies, the *Tithes* ſhall be paid to the Succeſſor; but if the Corn is cut down, the Parſon's Executors ſhall have the *Tithes*. 1 *Cro.* And if a Pariſhioner die before he pay his *Tithes*, his Executors or Adminiſtrators may be ſued for them; and if they have Aſſets to do it, muſt pay the ſame. *Lee* 69. 4 *Shep. Abr.* 111. If a Man lets his Ground or Herbage, it is ſaid the Parſon may ſue either the Owner of the Ground, or of the Cattle for his *Tithe*; if the Cuſtom of the Place be not againſt it: And if to evade the Statute, the Owner of Corn, *&c.* ſell it before Severance to another, who doth reap and carry away all the Corn; in this Caſe the Parſon may ſue the Vendor, who ſhall be charged with the treble Damages on the Statute. 13 *Rep.* 24. 2 *Bulſt.* 184. A Leſſee for Years agrees with the Parſon to pay him 10 *l. per Annum* for his *Tithes*, and that for this he ſhall be *Tithe* free; it is good to ground a Prohibition upon, if the Parſon ſue for the *Tithes*. 1 Leon. ca. 208. The Statute 13 *Eliz.* enacts, That Compoſition for *Tithes* may be made by the concurrent Conſent of the Parſon, Patron, and Ordinary; and a *Modus Decimandi* may ariſe by Preſcription from a real Compoſition, beyond the Memory of Man, *&c.* Where there is a Cuſtom alledged for the Payment of *Tithes*, a *Prohibition* ſhall go to the Eccleſiaſtical Court, which may not try Cuſtoms, but the Temporal Courts; and ſo it is of a Preſcription to pay Money in lieu of *Tithes*; but in a Preſcription, except it concerns a Layman, or a Preſcription meerly Spiritual, *&c.* it is otherwiſe 2 *Lev.* 103. By the 7 & 8 *Will.* 3. *cap.* 6. Small *Tithes* of or under the Value of 40 *s.* may be recovered before two Juſtices of the Peace not intereſted in the *Tithes*, within twenty Days after Demand, and two Years after due; and the ſaid Juſtices are impowered to adminiſter an Oath to Witneſſes, to ſummon the Party, and after Appearance, or in Default thereof, to determine the Caſe in Writing, with Coſts not exceeding 10 *s.* but with Liberty of Appeal to the Quarter-Seſſions, whoſe Judgment ſhall be final, unleſs the Title of ſuch *Tithes* come in Queſtion: The Juſtices may levy the Money adjudged by Diſtreſs, upon Refuſal, ten Days after Notice, *&c.* And this Judgment being inrolled by the Complainant, ſhall not be removed by *Certiorari*; though if the Defendant inſiſts on a *Modus*, and gives Security to pay Coſts and Damages in the Courts above, which ſhall be given againſt him upon a Trial at Law, the Juſtices ſhall not proceed; but the Complainant is put to his Remedy by ſuing for his *Tithes* in the Courts at *Weſtminſter*. This Statute doth not extend to the City of *London*, or any other Corporation, where the *Tithes* are particularly ſettled by Act of Parliament. The 7 & 8 *Will.* 3. *cap.* 34 ordains, That if any *Quaker* refuſe to pay or componnd for great or ſmall *Tithes*, &c. the two next Juſtices of Peace may, upon Complaint, convene him before them, and examine upon Oath the Matter of Complaint, and thereupon determine what is due to the Perſon complaining; and by Order under their Hands and Seals, direct the Payment in all Caſes of or under 10 *l.* And if after the Order ſuch Quaker ſhall refuſe to comply, one of the Juſtices may by Warrant order the ſame to be levied by Diſtreſs, &c. ſubject to Appeal to the Quarter-Seſſions, in which Caſe no Warrant for Diſtreſs may be granted till the Appeal is determined. By 1 *Geo.* 1. *c.* 6. the Act 7 & 8 *W.* 3. *cap.* 34. is made perpetual; and that Statute is extended to the Recovery of any *Tithes* or Right belonging to the Church, with 10 *s.* Coſts, &c. But notwithſtanding all theſe Statutes, *Tithes*, if of any conſiderable Value, are commonly ſued for in the *Exchequer* by *Engliſh Bill*; except it be upon the Statute of 2 & 3 *Ed.* 6. for treble and double Value, &c. And the Manner of Payment of *Tithes* is for the moſt part governed by Cuſtom; it is the Cuſtom of Pariſhes which generally determine what are the Dues of the Parſon, eſpecially of ſmall *Tithes.* 11 *Rep.* 16. And Cuſtom may make that *Titheable*, which of itſelf is not ſo. *March* 65. An ancient Statute obliged the *Citizens of London* to pay yearly to their Parſons, for every 20 *s.* Rent of all Houſes, Shops, or Warehouſes, 2 *s.* 9 *d.* and ſo in Proportion for greater and leſſer Rents: But by an Act of *Cha.* 2. after the Fire of *London*, the whole *Tithes* of the Pariſhes in *London* were reduced to a Certainty, from 200 *l. per Annum*, the greateſt Incomes of Rectors, to 100 *l. per Ann.* the loweſt, over and above Perquiſites, Gifts, &c. to be levied by Rate and Aſſeſſment on the Inhabitants, made by the ſeveral Aldermen of Wards, Common Council-Men and Churchwardens; and in Default of Payment, by Diſtreſs and Sale of Goods, by Virtue of the Lord Mayor's Warrant; and to be paid Quarterly, &c. The Sums aſſeſſed are appointed in lieu of *Tithes*, for the Maintenance of the reſpective Parſons, Vicars, &c. of the Pariſhes in the Act mentioned; and in Pariſhes where there are Impropriations, the Impropriators ſhall pay and allow what they formerly uſed and ought to pay to the ſeveral Incumbents, as Part of the Maintenance of the Parſons; and no Court or Judge Eccleſiaſtical or Temporal, ſhall have Cognizance of or determine any Controverſy relating to the Sums ordained for thoſe *Tithes*, but the Perſons mentioned in the Statute 22 & 23 *Car.* 2. *cap.* 15.

Tithes are due of common Right to the Parſon or Rector of the Pariſh; and are of three Kinds, *viz.* *Predial*, *Perſonal*, or *Mixt*: *Predial*, ſuch as immediately ariſe from the Land, either by Manurance, or of its own Nature, as *Corn*, *Grain*, *Hay*, *Wood*, *Fruit* and *Herbs*; and theſe are due without deducting the Coſts. *Perſonal Tithes* are thoſe as ariſe from the Labour and Induſtry of Man only, being the tenth Part of his clear Gains in Trade, &c. after Charges deducted; which are paid when due by Cuſtom, though but ſeldom in *England*, and payable where the Party dwells, and hears Divine Service, &c. But ſee the Statute 2 & 3 *Ed.* 6. *Mix'd*, ſuch as ariſe not immediately from the Ground, but proceed from Cattle and other Things that receive their Nouriſhment from, and are maintained out of the Land; as *Colts*, *Calves*, *Pigs*, *Wool*, *Lambs*, *Milk*, *Cheeſe*, &c. and are paid where they ariſe. 2 *Inſt*, 490, 649, 656. And *Tithes* as to their Value, are likewiſe divided into *Great* and *Small*: Great *Tithes* are *Corn*, *Hay*, and *Wood*; ſmall *Tithes* comprehend all other *Predial Tithes* beſides Corn and Hay, &c. as alſo thoſe *Tithes* which are *Perſonal* and *Mix'd*: Some Things may be great or ſmall *Tithes*, in Regard of the Place; as *Hops* in Gardens are ſmall *Tithes*, and in Fields may be great *Tithes*; and 'tis ſaid the Quantity will turn a ſmall *Tithe* into a great one, if the Pariſh is generally ſown with it. 1 *Roll. Abr.* 643. 1 *Cro.* 578. *Wood's Inſt.* 162. According to the Opinion of *Holt*, *Ch. Juſt.* where *Flax* or *Hemp* grow in Gardens, they ſhall be accounted ſmall *Tithes*; but when ſowed in large Quantities in Fields, that alters the Nature of thoſe Things, and then they become great *Tithes*: But the other Judges held, that the Quantity did not alter the Nature of the Flax; for let that be as much or as little as it will, it is ſtill ſmall *Tithes.* 3 *Lev.* 365. 4 *Mod.* 183. 3 *Nelſ. Abr.* 313. Great *Tithes* generally belong to the Rector; and ſmall *Tithes* to the Vicar.. *Cro. Car.* 20. The *particular Things* for which *Tithes* are paid, and for which not, according to our Law, are the following, *viz.* *Acorns*, as they yearly increaſe, are liable to the Payment of *Tithes*; but this is where they are gathered and ſold, and reduc'd to a certain Profit; not when they drop, and the Hogs eat them. 2 *Inſt.* 643. *Hetl.* 27. *After-math*, or *After-paſture* pays no *Tithes*, except by Cuſtom; being the Remains of what was before *tithed.* 2 Inſt. 652. 2 Danv. Abr. 589. Tit. *Diſmes.* *Agiſtment* of Cattle upon Paſture Land, which hath paid no other *Tithes* that Year, pay, *Tithe* for the Cattle; and if a Man breeds or buys barren uprofitable Cattle and ſells them, he ſhall pay for the *Agiſtment*; but if he depaſtures his Land with his own Saddle Horſes, he ſhall pay no *Tithes.* If Ground is eat up with unprofitable Cattle of a Man's own, or others, a tenth Part of the yearly Value of the Rent of the Land, *i. e.* the Sum of 2 *s. per* Pound, is payable by the Owner of the Land, or his Tenant; though the twentieth Part is uſually accepted. 1 *Roll. Abr.* 646. *Hardr.* 184. *Alder* Trees pay *Tithes*, notwithſtanding they are above twenty Years Growth, not being Timber. *Aſh* is Timber, and therefore if theſe Trees are above twenty Years Growth they are *Tithe* free. *Aſp* or *Aſpin* Trees are exempted, if beyond that Growth, in Places where they are uſed for Timber. 2 *Cro.* 199. 2 *Inſt.* 643. *Bark* of Trees is not *Titheable*, if the Trees whereon produc'd were Timber. 11 *Rep.* 49. *Barren Land*, which is ſo of its own Nature, pays no *Tithe*; where Land is barren, and not manurable without ſome extraordinary Charge, in reſpect of ſuch Charge, and for the Advancement of Husbandry, ſuch Land being converted to Tillage, ſhall for the firſt ſeven Years after the Improvement, be diſcharged from *Tithes* by the Act 2 & 3 *Ed.* 6. *cap.* 13. But the barren Land, during the ſeven Years of Improvement, ſhall pay ſuch ſmall *Tithes* as have been accuſtomably paid before; and afterwards is to pay the full *Tithe* according to the Improvement: And if Land is over-run with Buſhes, or become unprofitable by bad Husbandry, it cannot properly be called barren Land; for if it be grubbed, or plough'd and ſow'd, it immediately pays *Tithes.* 2 Inſt. 656. Cro. Eliz. 475. *Beech* Trees, where Timber is ſcarce, and theſe Trees are uſed for Building, if above twenty Years Growth to be Timber, are privileged from *Tithes*, by the Stat. 45 *Ed.* 3. *c.* 3. though this Tree is not naturally Timber, for 'tis Neceſſity makes it ſo. 2 *Danv. Abr.* 589. *Bees* are *titheable* for their Honey and Wax, by the tenth Meaſure, and tenth Pound: It hath been a Queſtion whether the tenth Swarm can be demanded for *Tithes* of Bees, becauſe Bees are *Feræ Naturæ*;

Naturæ; but when the Bees are gathered into Hives, they are then under Cuſtody, and may pay *Tithe* by the Hive or Swarm; but the *Tithe* is generally paid in the tenth Part of the Honey or Wax. 1 *Roll. Abr.* 651. 3 *Cro.* 404, 559. *Birch* Wood is *titheable*, though of above twenty Years Growth. 2 *Inſt.* 643. *Bricks* pay not *Tithes*, for they are made of Parcel of the Freehold, and are of the Subſtance of the Earth, not an annual Increaſe. 1 *Cro.* 1. *Broom* ſhall pay *Tithe*; but it may be diſcharged by Cuſtom, if burnt in the Owner's Houſe, or kept for Husbandry. 2 *Danv. Abr.* 597. *Calves* are *titheable*, and the tenth Calf is due to the Parſon when weaned, and he is not obliged to take it before; but if in one Year a Perſon hath not the Number of ten Calves, the Parſon is not intitled to *Tithes* in Kind for that Year, without a ſpecial Cuſtom for it, though he may take it the next Year, throwing both Years together; and it is a good Cuſtom to pay one Calf in ſeven, where there hath been no more in one Year; and where a Man ſells a Calf, to pay the Tenth of the Value, or for the Parſon to have the right Shoulder, *&c.* 1 *Roll. Abr.* 648. *Raym.* 277. *Cattle* ſold pay *Tithe*; but not Cattle kept for the Plough or Pail, which ſhall pay no *Tithe* for their Paſture, by Reaſon the Parſon hath the Benefit of the Labour of Plough Cattle in tilling the Ground, by the *Tithe* of Corn, and *Tithe* Milk for thoſe kept for the Pail; yet if ſuch Cattle bought are ſold before uſed, or if being paſt their Labour, the Cows are barren, and afterwards fatted in order to ſell, *Tithes* ſhall be paid for them; though if the Owner kill and ſpend the Cattle in his own Houſe, no *Tithe* is due for them, being for his Proviſion to ſupport him in his Labour about other Affairs, for which the Parſon hath *Tithes*. Cattle feeding on large Commons, where the Bounds of the Pariſh are not certainly known, ſhall pay *Tithes* to the Parſon of the Pariſh where the Owner lives; and if fed in ſeveral Pariſhes, and they continue above a Month in each Pariſh, *Tithes* ſhall be paid the two Parſons proportionably. 1 *Roll. Abr.* 646, 647, 635. *Hardr.* 35. *Chalk* and Chalk-pits are not *titheable*; nor is *Clay* or *Coal*, as they are Part of the Freehold, and not annual, to pay *Tithes*. 2 *Inſt.* 651. *Cheeſe* pays *Tithe* by Cuſtom, where *Tithe* is not paid for the Milk; but if the Milk pays a *Tithe* the Cheeſe pays none: And it may be a good Cuſtom to pay the tenth Cheeſe made in ſuch a Month, for all *Tithe* Milk in that Year. 1 *Roll. Abr.* 651. *Chickens* are not *titheable*, becauſe *Tithe* is paid for the Eggs. 1 *Roll. Abr.* 642. *Colts* pay *Tithes* in the ſame Manner as Calves. *Ibid.* *Conies* are *titheable* only by Cuſtom, for thoſe that are ſold, not for ſuch as are ſpent in the Houſe. 2 *Danv. Abr.* 583. *Corn* pays a *Predial Tithe*; it is *tithed* by the tenth Cock, Heap, or Sheaf, which if the Owner do not ſet out, he may be ſued in an Action upon the Statute 2 & 3 *Ed.* 6. And if the Pariſhioner will not ſow his Land uſually ſown, the Parſon may bring his Action againſt him. When *Tithe* Corn is ſet forth, the Law gives the Parſon a reaſonable Time to carry it away; and if he ſuffer the ſame to lie too long on the Land to the Prejudice of the Owner thereof, he may be liable to an Action: But the Parſon may not ſet out the *Tithes* himſelf, or take them away without Leave. 1 *Roll. Abr.* 644. 1 *Sid.* 283. 2 *Vent.* 48. *Ley* 70. *Deer* are not *titheable*, for they are *Feræ Naturæ*; though in Parks, *&c.* they pay *Tithes* by Cuſtom. 2 *Inſt.* 651. *Doves* kept in a Dove-houſe if they are not ſpent in the Owner's Houſe are *titheable*. 1 Vent. 5. *Eggs* pay *Tithe* when *Tithes* are not paid for the Young. 1 *Roll. Abr.* 642. *Elm* Trees being Timber are diſcharged from the Payment of *Tithes*, but not if under twenty Years Growth. 2 *Inſt.* 643. *Fallow Ground* is not *titheable* for the Paſture in that Year in which it lies fallow, unleſs it remain beyond the Courſe of Husbandry; becauſe it improves and renders the Land more fertile by lying freſh. 1 *Roll Abr.* 642. *Fenns* being drain'd and made manurable, or converted into Paſture, are ſubject to the Payment of *Tithes*. 1 Roll. Rep. 354. *Fiſh* taken in the Sea or common Rivers, are *titheable* only by Cuſtom, and the *Tithe* is to be paid in Money, and not the tenth Fiſh; but Fiſh in Ponds and Rivers inclos'd, ought to be ſet forth as a *Tithe* in Kind. 2 *Danv. Abr.* 583, 584. *Flax* pays *Tithe*; every Acre of Flax or Hemp ſown ſhall pay yearly 5*s.* for *Tithe*, and no more. 11 & 12 *W.* 3. *cap.* 16. *Foreſt* Lands ſhall pay no *Tithes* while in the Hands of the King, though ſuch Lands in the Hands of a Subject ſhall pay Tithes; and if a *Foreſt* ſhall be diſafforeſted, and within a Pariſh, it ſhall pay *Tithes* 1 Roll. Abr. 655. 3 Cro. 94. *Fowls*, as Hens, Geeſe, Ducks, are to pay *Tithes*, either in Eggs or the Young, according to Cuſtom, but not in both: Turkies are ſaid to be exempt from *Tithes*. 2 *Danv. Abr.* 583. *Fruit*, Apples, Pears, Plums, Cherries, *&c.* pay *Tithes* in Kind when gathered; and ought to be ſet out according to the Statute. 2 *Inſt.* 621. *Fruit-Trees* cut down and ſold, are not *titheable*, if they have paid *Tithe* Fruit that Year before cut. *Ibid.* 652. *Furzes*, if ſold, pay *Tithe*, not if uſed for Fuel in the Houſe, or to make Pens for Sheep, *&c.* *Wood's Inſt.* 166. *Gardens* are *titheable* as Lands, and therefore *Tithes* in Kind are due for all Herbs, Plants, and Seeds ſowed in them; but Money is generally paid by Cuſtom or Agreement. *Ibid.* *Graſs* mowed is *titheable* by Payment of the tenth Cock, or according to Cuſtom; but for Graſs cut in Swarths for Suſtenance of Plough Cattle only, not made into Hay, no *Tithe* is to be paid. Graſs or Corn, *&c.* when ſold ſtanding, the Buyer ſhall pay the *Tithes*; and if ſold after cut and ſevered, the Seller muſt pay it. 1 *Roll. Abr.* 644, 645. *Wood's Inſt.* 166. *Hazle*, *Holly*, and *Maple* Trees, *&c.* are regularly *titheable*, although of 20 Years Growth. 2 *Danv. Abr.* 589. *Hay* pays a *Predial Tithe*; the tenth Cock is to be ſet out and paid, after made into Hay, by the Cuſtom of moſt Places, and the Pariſhioners ſhall make the Graſs Cocks into Hay for the Parſon's *Tithe*; but if they are not obliged to make the *Tithe* into Hay, they may leave it in Cocks, and the Parſon muſt take it, for which Purpoſe he may come on the Ground, *&c.* A Preſcription to meaſure out and pay the tenth Acre, or Part of Graſs ſtanding, in lieu of all *Tithe* Hay, may be good: And if Meadow Ground is ſo rich, that there are two Crops of Hay in one Year, the Parſon by ſpecial Cuſtom may have *Tithe* of both. 1 *Roll. Abr.* 643, 647, 950. *Headlands* are not *Titheable*, if only large enough for turning the Plough; but if larger, *Tithe* may be payable. 2 *Inſt.* 65. *Herbage* of Ground is *Titheable* for barren Cattle kept for Sale, which yield no Profit to the Parſon. *Wood's Inſt.* 167. *Honey* pays a *Tithe*, as under *Bees*. *Hops* are *Titheable*, and the Tenth Part may be ſet out after they are picked: There are ſeveral Ways of *titheing* Hops, *viz.* by the Hills, Pole, or Pound; in ſome Places they ſet forth the tenth Pole for *Tithes*; but my Lord *Chief Juſt. Roll* tells us, they ought not to be *tithed* before dried. 1 *Roll. Abr.* 644. *Horſes* kept to ſell, and afterwards ſold, *Tithes* ſhall be paid for their Paſture; though not where Horſes are kept for Work and Labour. *Hutt.* 77. *Houſes* for Dwelling are not properly *titheable*: A *Modus* may be paid for Houſes in lieu of *Tithes* of the Land upon which they are built, and a great many Cities and Boroughs have a Cuſtom to pay a *Modus* for their Houſes; as it may be reaſonably ſuppoſed that it was uſual to pay ſo much for the Land, before the Houſes were erected on it. 11 *Rep.* 16. 2 *Inſt.* 659. *Kids* pay a *Tithe* as Calves, the tenth is due to the Parſon. *Wood* 167. *Lambs* are *titheable* in like Manner as Calves; but if they are yeaned in one Pariſh, and do not tarry there thirty Days, no *Tithe* is due to the Parſon of that Place: If there be a Cuſtom that the Pariſhioner having ſix Lambs or under, ſhall pay ſo much for every Lamb; and if he have above that Number, then to pay the Seventh, it is good. 3 *Cro.* 403. *Lead* may pay *Tithe* by Cuſtom, as it does in ſome Counties; but it doth not without it. 2 *Inſt.* 651. By Cuſtom only, *Lime* and *Lime-Kilns* are *titheable.* 1 Roll. Abr. 642. *Maſt* of Oak and Beech pays *Tithe*, as under *Acorns.* *Milk* is *titheable* when no *Tithes* are paid for Cheeſe, all the year round, except Cuſtom over-rules; and it is payable by every tenth Meal, not tenth Quart or Part of every Meal; and is to be brought to the Houſe of the Parſon, *&c.* by Cuſtom, in which Particular this *Tithe* differs from all others, which muſt be fetched by the Receiver. In ſome Places they pay *Tithe* Cheeſe for Milk, and in others ſome ſmall Rate according to Cuſtom. *Cro Eliz.* 609. 2 *Danv. Abr.* 596. *Mills*, as there are ſeveral Sorts of them, the *Tithes* are different; the *Tithes* of Corn Mills driven by Wind or Water, are paid in Kind, every tenth Toll-Diſh of Corn to the Parſon of the Pariſh wherein the Mills are ſtanding: But ancient Corn-Mills are *Tithe* free, being ſuggeſted that they are very ancient, and never paid *Tithes, &c.* And it is queſtioned whether *Tithe* is due for any Corn-Mills, unleſs by Cuſtom, becauſe the Corn hath before paid *Tithe*; and it ſeems rather a *Perſonal Tithe* where due: The *Tithes* of Fulling-Mills, Paper-Mills, Powder-Mills, *&c* are Perſonal, charged in reſpect to the Labour of Men, by Cuſtom only; and are regarded more as Engines of ſeveral Trades than as Mills. 1 *Roll. Abr.* 656. 2 *Inſt.* 621. *Mines* pay no *Tithes* but by Cuſtom, being of the Subſtance of the Earth, and not annually increaſing. 2 *Inſt* 651. *Nurſeries of Trees* ſhall pay *Tithes*, if the Owner digs them up and makes Profit of them by ſelling. 2 *Danv. Abr.* 585. *Oak* Trees are privileged as Timber from the Payment of *Tithes* by the Statute of *Sylva Cædua* 45 *Edw.* 3. if of or above 20 Years Growth; and if Oaks are under that Age, it is the ſame when they are apt for Timber. *Moor* 541. *Offerings, &c.* are in the Nature of *Perſonal Tithes.* 2 *Inſt.* 659, 661. *Orchards* pay *Tithes* both for the Fruit they produce, and the Graſs or Grain, if any be ſown or cut therein. 2 *Inſt.* 652. *Parks* are *titheable* by Cuſtom, for the Deer and the Herbage; and when diſparked and converted into Tillage, they ſhall pay *Tithes* in Kind: The *Tithes* of Parks may be in part certain, and part caſual; and 2*s.* a Year, and a Shoulder of every Third Deer, hath been paid as *Tithe* for a Park. 1 *Roll. Rep.* 176. *Hob.* 37, 40. *Partridges* and *Pheaſants, &c.* as they are *Feræ Naturæ*, yield no *Tithes* of Eggs or Young. 1 *Roll. Abr.* 636. *Peaſe*, if gathered for Sale, or to feed Hogs, pay *Tithes*; but not Green Peaſe ſpent in the Houſe. 1 *Roll. Abr.* 647. *Pigeons* ought to pay *Tithes* when ſold; and this holds good if they lodge in Holes about an Houſe, as well as in a Dove-houſe; and by Cuſtom if ſpent in the Houſe, they may be *titheable*, though not of common Right. 2 *Danv. Abr.* 583, 597. *Pigs* are *titheable*, as Calves. *Ibid.* *Pollard Trees*, ſuch as are uſually lopped, and diſtinguiſhed from Timber-Trees, pay *Tithes.* Plowd. 470. *Quarries* of Stone, *&c.* are not ſubject to pay *Tithes*, becauſe they are Part of the Inheritance, and *Tithes* ought to be collateral to the Land, and diſtinct from it. 1 *Roll.* 644. *Rakings* of Corn are not *titheable*, for they are left for the Poor, and are properly the Scattering of the Corn whereof the *Tithes* have been paid, left after the Cocks ſet out are taken away. *Cro. Eliz.* 660. *Saffron* pays a *predial* and ſmall *Tithe,* 1 *Cro.* 467. *Salt* is not *titheable*, but by Cuſtom only. 2 *Danv. Abr.* *Sheep*, a *Tithe* is paid for of Lambs and Wool, and therefore they pay no *Tithe* for their Feeding. If Sheep are in the Pariſh all the Year, they are to pay *Tithe* Wool to the Parſon; but if removed from one Pariſh to another, the Parſons of each Pariſh to have *Tithe pro Rata*, where they remain thirty Days in a Pariſh; and if they are fed in one Pariſh, and brought into another to be ſhorn, the ſame *Titheing* is to be obſerved. 1 *Roll. Abr.* 642, 647. 3 *Cro.* 237. *Stubble* pays no *Tithe* under Aftermath. 2 *Inſt.* 652. *Tares*, Vetches, *&c.* are *titheable*; but if they are cut down green, and given to the Cattle of the Plough, where there is not ſufficient Paſture in the Pariſh, no *Tithe* ſhall be paid for them. 1 *Cro.* 139. *Tiles* are no yearly increaſe, and not *titheable.* 2 *Inſt.* 651. *Timber-Trees*, ſuch as Oaks, Aſhes, and Elms, and in ſome Places Beech, *&c.* above the Age of twenty Years, were diſcharged of *Tithes* by the Common Law, before the Statute 45 *Ed.* 3. and the Reaſon of it is, becauſe ſuch Trees are employed to build Houſes, and Houſes when built are not only fixed to, but Part of the Freehold; and if thoſe Trees ſtand ſo long till they become rotten and fit for Firing only, no *Tithe* is due for them, becauſe they were once privileged; and Loppings of Timber-Trees, above 20 Years Growth, pay no *Tithes*, for the Branch is privileged as well as the Body of the Tree; and the Roots of ſuch Trees are exempted as Parcel of the Inheritance. *Trees* cut for Plough-boot, Cart-boot, *&c.* ſhall not pay *Tithes*, although they are no Timber; but all Trees not fit for Timber, and not put to thoſe Uſes, pay *Tithes.* 1 *Roll. Abr.* 650. *Cro. Eliz.* 477, 499. *Turfs* uſed for Fuel are Part of the Soil, and *Tithe free.* 2 Inſt. 651. *Underwood* is *titheable*, though the *Tithe* is not of annual Payment; and is ſet out while ſtanding, by the tenth Acre, Pole, or Perch, or when cut down, by the tenth Faggot or Billet, as Cuſtom directs; and if he that ſells the Wood doth not ſet out the *Tithe*, he is liable to the treble Damages by 2 *Ed.* 6. *cap.* 13. But if the Underwood is uſed for Firing in a Houſe of Huſbandry, or to burn Brick to repair the Houſe, or for Hedging and Fencing the Lands in the ſame Pariſh, it may be diſcharged from *Tithe.* 2 Inſt. 642, 643, 652. Hob. 250. 2 Danv. Abr. 597. *Warrens* where *Titheable*, ſee Conies. *Waſte* Ground, whereon Cattle feed, is liable to the Payment of *Tithes.* 2 *Danv. Abr.* Woad growing in Nature of an Herb is a Predial and ſmall *Tithe.* 2 *Danv.* 594. *Wood* is generally eſteemed to be a great *Tithe*: If Wood-Grounds have likewiſe Timber-Trees growing on them, and conſiſt for the moſt part of ſuch Trees, the Timber-Trees ſhall privilege the other Wood; but if the Wood is the greateſt Part, then it muſt pay *Tithes* for the Whole. 13 *Rep.* 13. If Wood be cut to make Hop-Poles, where the Parſon hath *Tithe* Hops, no *Tithe* ſhall be paid for it. *Hughes's Abr.* 689. *Wool* is a mixed ſmall *Tithe*, paid when clipped; one Fleece in Ten, or in ſome Places one in ſeven is given to the Parſon. If there is under ten Pounds of Wool at the Shearing, a reaſonable Conſideration ſhall be paid, becauſe the *Tithes* are due of common Right; and if leſs than ten Fleeces, they ſhall be divided into ten Parts, or an Allowance be otherwiſe made. All Sheep killed, and Sheep which die, pay *Tithe* Wool; and Neck-Wool cut off for the Benefit of the Wool, but not if it is to preſerve the Sheep from Vermin, *&c.* Alſo the Wool of Lambs ſhorn at *Midſummer*, though *Tithe* was paid for the Lambs at *Mark-tide*, is *titheable.* 1 *Roll. Abr.* 646, 647. 2 *Inſt.* 652. Vide *Tithe of Sheep.* When any Thing is *titheable* only by *Cuſtom*, it may be exempted from *Tithe* by Cuſtom; but Cuſtom to exempt Corn, *&c.* from *Tithe*, will not be allowed, becauſe for that *Tithes* are due *de jure.* *Count. Parſ. Compan.* 155. See *Modus* and *Preſcription.*

Tithes Extraparockial, which do not lie in any Pariſh, belong to the King. 2 *Rep.* 2, 44.

Tithing, (*Tithinga*, from the Sax. *Teothunge*, i. e. *Decuriam*) Is in its firſt Appointment the Number or Company of ten Men with their Families, held together in a Society, all being bound for the peaceable Behaviour of each other: And of theſe Companies there was one chief Perſon who was called *Teothung-man*, at this Day *Tithing-man*; but the old Diſcipline of *Tithingi* is long ſince left off. In the *Saxon* Times, for the better Conſervation of the Peace, and more eaſy Adminiſtration of Juſtice, every Hundred was divided into ten Diſtricts or *Tithings*; and within every *Tithing*, the *Tithing-men* were to examine and determine all leſſer Cauſes between Villages and Neighbours; but to refer greater Matters to the then Superior Courts, which had a Juriſdiction over the whole Hundred. *Paroch. Antiq.* 633.

Tithing-men, Are now a Kind of Petty Conſtables, elected by Pariſhes, and ſworn in their Offices in the Court-Leet, and ſometimes by Juſtices of Peace, *&c.* There is frequently a *Tithing-man* in the ſame Town with a Conſtable, who is as it were a Deputy to execute the Office in the Conſtable's Abſence; but there are ſome Things which a Conſtable has Power to do, that *Tithing-men* and Headboroughs cannot intermeddle with. *Dalt.* 3. When there is no *Conſtable* of a Pariſh, the Office and Authority of a *Tithing-man* ſeems to be all one under another Name. Stat. 13 & 14 *Car.* 2. *cap.* 12. See *Conſtable.*

Title, (*Titulus*) Is when a Man hath lawful Cauſe of Entry into Lands whereof another is ſeiſed; and it ſignifies alſo the Means whereby a Man comes to Lands or Tenements, as by Feoffment, Fine, Laſt Will and Teſtament, *&c.* The Word *Title*, includeth a *Right*; but is the more general Word: Every Right is a *Title*, though every *Title* is not ſuch a *Right* for which an Action lies; ſo that *Titulus eſt juſta Cauſa poſſidendi quod noſtrum eſt*, and is the Means of holding the Lands. *Co. Litt.* 345. A Man may plead in Treſpaſs, *&c.* without particularly ſetting forth his *Title*, where his Juſtification is collateral to the *Title* of the Land; ſo if Damages are to be recovered, and the *Title* of the Land is not in Queſtion; and in Actions on real Contracts, where the Plaintiff ſhews enough to intitle him to the Action, *&c.* 2 *Mod.* 70. 1 *Roll. Rep.* 13. *Cro. Car.* 571. 3 *Nelſ. Abr.* 325. But in Treſpaſs for cutting Corn on Lands, the Party muſt ſet forth the *Title* which he hath to the Corn, or on Demurrer it will be judged ill; for the ſhewing that he is poſſeſſed thereof, is not ſufficient without a *Title*, becauſe the Property ſhall be intended to be in the Owner of the Soil. 2 *Sand.* 401. 3 *Salk.* 361. When a Perſon will recover any Thing from another, he muſt make out and prove a better *Title* than the other hath; or it will not be enough to deſtroy his *Title*, *&c. Hob.* 103. It is not allowed for the Party to forſake his own *Title*, and fly upon the other's; for he muſt recover by his own Strength, not the other's Weakneſs. *Ibid.* 104. If by the Record it appears that the Plaintiff in the Cauſe hath no *Title*, he ſhall not have Judgment. *Lutw.* 1631. The Law will not permit *Titles* and Things in Entry, *&c.* to be granted over; and the Buying or Selling any pretended Rights or *Titles* to Lands, is prohibited by Statute as *Maintenance.* 32 H. 8. c. 9.

Titles of Clergymen, Signify ſome certain Place where they may exerciſe their Functions. A *Title* in this Senſe, is the Church to which a Prieſt was ordained and conſtantly to reſide: And there are many Reaſons why a Church is called *Titulus*, one is becauſe in former Days the Name of the Saint to whom the Church was dedicated was engraved on the Porch, as a Sign that the Saint had a *Title* to that Church; from whence the Church itſelf was afterwards denominated *Titulus. Concil. London*, *Anno* 1125. No Perſons ſhall be *ordained* without a *Title*; and this is required to keep out thoſe from the Miniſtry who might otherwiſe for Want of Maintenance bring Diſgrace upon the Church. And if a Biſhop ſhall admit any Perſon into the Miniſtry without any *Title*, he ſhall maintain him till he prefers him to ſome Eccleſiaſtical Living; or if he refuſes ſo to do, he ſhall be ſuſpended from giving Orders for one Year. *Can.* 31. Anciently a *Title* of Clergy was no more than entering their Names in the Biſhop's Roll, and then they had not only Authority to aſſiſt in the Miniſterial Functions, but had a Right to the Share of the common Stock or Treaſury of the Church; but ſince a *Title* is an Aſſurance of being preferred to ſome Eccleſiaſtical Benefice, a Certificate that the Clerk is provided of ſome Church, or Place, *&c.* or where the Biſhop who ordains him, intends ſhortly afterwards to admit him to a Benefice or Curacy then void. *Count. Parſ. Compan.* 2, 3.

Titinylks, An old Word for Tale-bearers. ——— In all Realms the *Popiſh* Practice hath had Confederacy of falſe, forſworn, factious, and traiterous *Titinylks*, untrue to their Sovereign, *&c.* Letter Secr. State, 28 *H.* 8. to *James* 5. King of *Scotland.*

Toalia, A Towel; and there is a Tenure of Lands by the Service of Waiting with a Towel at the King's Coronation: —— *Petrus Picote tenet unum Meſuag. &c. per Serjeantiam ſerviendi cum una* Toalia *ad Coronationem Regis.* Inq. Ann. 12, 13 K. *John.*

Tobacco, Is not to be planted in *England*, on Pain of forfeiting 40 *s.* for every Rod of Ground thus planted; but this ſhall not extend to hinder the Planting of *Tobacco* in Phyſick Gardens. 12 *Car.* 2. *cap.* 34. And Juſtices of Peace have Power to iſſue Warrants to Conſtables, to ſearch after and examine whether any *Tobacco* be ſown or planted, and to deſtroy the ſame; which they are to do under Penalties, *&c.* 22 & 23 *Car.* 2. *cap.* 26. The 4 & 5 *W. & M.* continues the Statute 22 & 23 *Car.* 2. And by a late Act, if any Perſon ſhall cut Walnut-Tree Leaves, or other Leaves, (not being *Tobacco* Leaves) or colour them ſo as to reſemble *Tobacco*; or ſhall ſell the ſame mixed with *Tobacco* they ſhall forfeit 5 *s. per* Pound: And the like Penalty is inflicted for exporting ſuch Leaves, or Engines for cutting, which may be ſeiſed by the Officers of the Cuſtoms, *&c.* Alſo Servants employed therein may be committed to Gaol, or the Houſe of Correction, for any Time not exceeding ſix Months, *&c.* 1 *Geo.* 1. *cap.* 46.

Tod of Wool, Contains twenty-eight Pounds, or two Stone; mentioned in the Statute 12 *Car.* 2. *cap.* 32.

Toft, (*Toftum*) A Meſſuage, or rather a Place or Piece of Ground where an Houſe formerly ſtood, but is decayed or caſually burnt, and not re-edified; it is a Word much uſed in Fines, wherein we often read *Toftum* and *Croftum*, *&c.* Weſt's Symb. par. 2. Stat. 22 & 23 Car. 2.

Toftman, (*Toftmannus*) The Owner or Poſſeſſor of a *Toft.* Reg. Priorat. Lew. pag. 18.

Toile, (*Fr.* i. e. *Tela*) A Net to encompaſs or take *Deer*, which is forbid to be uſed unlawfully in Parks, on Pain of 20 *l.* for every Deer taken therewith. 3 & 4 *W. & M. c.* 10.

Tokens Falſe, to get Money or Goods by from others, *&c.* See *Falſe Tokens.*

Toll, (*Tollere*) Signifies to defeat or take away; as to *Toll an Entry* is to take away the Right of Entry. 8 *Hen.* 6.

Toll, (*Tolnetum, vel Theolonium*) Is a *Saxon* Word, and properly a Payment in Towns, Markets, and Fairs, for Goods and Cattle bought and ſold. It is a reaſonable Sum of Money due to the Owner of the

the Fair or Market, upon Sale of Things *tollable* within the ſame. 2 *Inſt.* 220. And it is uſed for a Liberty as well to *take*, as to be *free* from *Toll*; of which Freedom from *Toll* the City of *Coventry* boaſts an ancient Charter granted by *Leofrick* Earl of the *Mercians*, in the Time of King *Edw. the Confeſſor*, who at the Importunity of *Godeva*, his virtuous Lady, granted this Freedom to that City. By the ancient Law of this Land, the Buyers of Corn or Cattle in Fairs or Markets ought to pay *Toll* to the Lord of the Market, in Teſtimony of the Contract there lawfully made; for *Toll* was firſt invented that Contracts in Markets ſhould be openly made before Witneſſes; and privy Contracts were held unlawful. But the King ſhall pay no *Toll* for any of his Goods; and a Man may be diſcharged from the Payment of *Toll*, by the King's Grant. Alſo Tenants in Ancient Demeſne are diſcharged of *Toll* throughout the Kingdom, for Things which ariſe out of their Lands, or bought for Manurance thereof, *&c.* not for Merchandizes. *Horn's Mir. lib.* 1. 2 *Inſt.* 221. 2 *Roll. Abr.* 198. *Toll* doth not of common Right belong to a Fair; though it hath been held, that ſome *Toll* is due of common Right, as appears from the Immunities of ſeveral Perſons not to pay *Toll*, which proves that if it was not for thoſe Privileges, they ought to pay *Toll* of common Right; therefore where the King grants a Market, *Toll* is due, although it is not expreſſed in the Grant what *Toll* is to be paid; and this from the Neceſſity of it, becauſe the Property of Things ſold in a Market is not altered without paying *Toll*. *Palm.* 76. 2 *Lutw.* 1377. 3 *Nelſ Abr.* 326. But it is ſaid, if the King grants to a Man a Fair or Market, and grants no *Toll*, the Patentee ſhall have no *Toll*; for *Toll* being a Matter of private Right for the Benefit of the Lord, is not incident to a Fair or Market, as a Court of Piepowders is, which is for the Benefit of the Publick and Advancement of Juſtice, *&c.* Such a Fair or Market *is free from Toll*; and after the Grant made, the King cannot grant a *Toll* to ſuch free Fair or Market, without ſome proportionable Benefit to the Subject: And if the *Toll* granted with the Fair or Market be outragious, the Grant of the *Toll* is void, and the ſame is a free *Market*, *&c.* 2 *Inſt.* 220. *Cro. Eliz.* 559. When the King grants a Fair, he may likewiſe grant that *Toll* ſhall be paid, though it be a Charge upon the Subjects; but then it muſt be of a very ſmall Sum. *Toll* is to be reaſonable, for the King cannot grant a burthenſome *Toll*; and one may have *Toll* by Preſcription for ſome reaſonable Cauſe, but ſuch a Preſcription to charge the Subject with a Duty of *Toll*, muſt import a Benefit or Recompence for it, or ſome Reaſon muſt be ſhewn why it is claimed. *Cro. Eliz.* 559. 3 *Lev.* 424. 2 *Mod.* 143. 4 *Mod.* 323. The *Toll* in Fairs is generally taken upon the Sale of Cattle, as Horſes, *&c.* but in Markets for Grain only; and the Lord may ſeiſe until Satisfaction is made him: It is always to be paid by the Buyer, unleſs there be a Cuſtom to the contrary; and nothing is *Tollable* before the Sale, except it be by Cuſtom Time out of Mind; which Cuſtom none can challenge that claim the Fair or Market by Grant ſince the Reign of King *Richard* 2d; ſo that it is better to have a Market or Fair by Preſcription, than Grant. 2 *Inſt.* 220, 221. At this Day there is not any one certain *Toll* to be taken in Markets; but if that which is taken be unreaſonable, it is puniſhable by the Stat. 3 *Ed.* 1. *cap.* 31. And what ſhall be deemed reaſonable is to be determined by the Judges of the Law, when it comes judicially before them: *Toll* may be ſaid to be unreaſonable and outragious, where a reaſonable *Toll* is due, and exceſſive *Toll* is taken; or when no *Toll* is due, and *Toll* is unjuſtly uſurp'd, *&c.* 2 *Inſt.* 222. If exceſſive *Toll* be taken in a Market-Town, by the Lord's Conſent, the Franchiſe ſhall be ſeiſed; and if by other Officers, they ſhall pay double Damages, and ſuffer Impriſonment, *&c.* Stat. *Weſtm.* 1. 3 *Edw.* 1. Owners of Markets and Fairs are to appoint *Toll-takers*, where *Toll* is to be taken under Penalties, by the 2 & 3 *Ph. & M. cap.* 7. And he that hath the *Toll*, or Profit of the Market where no *Toll* is, ought to provide a lawful Meaſure of Braſs, and chain it in the publick Market-place, or ſhall forfeit 5 *l.* 22 *Car.* 2. *cap.* 8. See *Market*.

Port-Toll. A Preſcription to have *Port-Toll* for all Goods coming into a Man's *Port* may be good; and this 'tis ſaid without any Conſideration. 2 *Lev.* 96. 2 *Lut.* 1519. And it hath been adjudged, that the Liberty of bringing Goods into a Port for Safety, implies a Conſideration in itſelf. 3 *Lev.* 37. Preſcription of *Toll* for Goods landed in a Manor, or to have *Port-Toll* for all Goods coming into *Port*, is a good Preſcription; but not to have *Toll* of Goods brought into a River, *&c.* 2 *Lev.* 96, 97. *Toll* may be appurtenant to a Manor. 2 *Mod.* 144.

Toll-Travers, Is where one claimeth to have *Toll* for every Beaſt driven over his Ground; for which a Man may preſcribe, and diſtrain for it *in via Regia*. *Cro. Eliz.* 710. They who claim theſe *Tolls* by Grant, ought to aver the Certainty of the Sum mentioned in the Grant, *&c.* *Palm.* 76 *Toll-Travers* being to paſs a nearer Way, he that hath it is to repair the Way, becauſe he receives Money for it. 2 *Lill. Abr.* 585.

Thorough-Toll, Is when a Town preſcribes to have *Toll* for ſuch a Number of Beaſts, or for every Beaſt that goeth *through* their Town; or over a Bridge or Ferry, maintained at their Coſt, which is reaſonable, though it be for paſſing *through* the King's Highway, where every Man may lawfully go, as it is for the Eaſe of Travellers that go that Way. *Terms de Ley* 561, 562. Perſons may have this *Toll* by Preſcription or Grant; but it muſt be for a treaſonable Cauſe, which muſt be ſhewn, *viz.* that they are to repair and maintain a Cauſeway, or a Bridge, or ſuch like. *Cro. Eliz.* 711. The King granted to a Man, to take ſuch *Toll* of Perſons that paſſed over certain Bridges with their Cattle, as was taken there and elſewhere in *England*, *&c.* and it was held void for Incertainty. *Bridgm.* 88.

Turn-Toll, A *Toll* paid for Beaſts that are driven to Market to be ſold, and do *return* unſold. 8 *Rep.* 46. There is alſo *In-toll*; and *Out toll*, mentioned in *ancient Charters*: But if any one take *Toll* where he ought not, the Party grieved ſhall have an Action on the Caſe, or Action of Treſpaſs, *&c.* 3 *Nelſ. Abr.* 325, 326. Of *Toll*, and Grants, Cuſtoms and Preſcriptions for *Tolls*, good, and not ſo, ſee 4 *Mod.* 319. 5 *Mod.* 361. *Lutw.* 1380, 1518.

Tollage, Is the ſame with *Tallage*; ſignifying generally any Manner of Cuſtom, or Impoſition. This Word occurs in the Statute 17 *Car.* 1. *cap.* 15.

Toll-Booth, The Place where Goods are weighed, *&c.*

Toll-corn, Is *Corn* taken for *Toll* Ground at a *Mill*: And an Indictment lies againſt a Miller for taking too great *Toll*. 5 *Mod.* 13.

Toll-hop, A ſmall Diſh or Meaſure by which *Toll* is taken in a Market, *&c.*

Tolſeſter, (*Takeſtrum*) An old Exciſe, or Duty paid by the Tenants of ſome Manors to the Lord, for Liberty to brew and ſell Ale. *Cartular. Rading.* 221. *Chart.* 51 *Hen.* 3.

Tolſey, (from the Sax. *Tol.* i. e. *Tributum*, & *See*, *Sedes*,) Is the Place where Merchants meet, in a City or Town of Trade.

Tolt, A Writ whereby a Cauſe depending in a Court Baron, is removed into the County Court. *Old. Nat. Br.* 4 And as this Writ removes the Cauſe to the *County Court*; ſo the Writ *Pone* removeth a Cauſe from thence into the Court of *Common Pleas*, &c.

Tolta, Signifies Extortion, any Thing exacted or impos'd contrary to Right and Juſtice. *Brad. Hiſt. Engl. Append. pag.* 235.

Tombs, Defacing of in Churches. See *Monument.*

Tomin, A Weight of 12 Grains uſed by *Goldſmiths* and *Jewellers.*

Tonnage, (*Tonnagium*) Is a Cuſtom paid to the King. Vide *Tunnage.*

Torra, (Sax. *Tor*) A Mount or Hill; as Glaſtenbury *Torre.* Chart. Abbat. Glaſton. MS. pag. 114.

Tort, (from the Lat. *Tortus*) Is a *French* Word for Injury or Wrong; and Wrong is properly called *Tort*, becauſe it is wreſted or crooked. *Co. Litt.* 158. See *De ſon tort*, &c.

Tortfeaſor, (Fr. *Tortfaiſeur*) A Wrong doer, or Treſpaſſer. 2 *Coke's Rep.* 383.

Toties quoties, As often as a Thing ſhall happen, *&c.* uſed in Deeds and Conveyances. 19 *Car.* 2. *cap.* 4.

Totted. A good Debt to the King, is by the *foreign Appoſer* or other Officer in the *Exchequer* noted for ſuch by writing the Word *Tot* to it: And that which is paid ſhall be *totted*———Tot *Pecuniæ Regi debetur.* Stat. 42 Ed. 3. cap. 9. 1 Ed. 6. cap. 15.

Tourn, The Sheriff's Court ſo called. See *Turn.*

Tournaments, Martial Exerciſes frequent in former Ages, wherein the Combatants fought with blunt Weapons, and in great Companies; the Intent of them was to enure Men to the Wars. Vide *Juſts.*

Tout temps priſt & uncore eſt, i. e. Always was, and is at preſent ready; and is a Kind of Plea by Way of Excuſe for him that is ſued for any Debt or Duty. *Broke* 258.

Towage, (*Towagium*, Fr. *Touage*) Is the Rowing or Drawing a Ship or Barge along the Water by another Ship or Boat faſtened to her; or by Men or Beaſts on Land; It is alſo Money which is given By Bargemen to the Owner of Ground next a River where they *tow* a Barge or other Veſſel. *Plac. Parl.* 18 *Ed.* 1.

Town, (*Oppidum, Villa*) A wall'd Place or Borough: The old Boroughs were firſt of all *Towns*; and upland *Towns*, which are not ruled and governed as Boroughs, are but *Towns*, though incloſed with Walls. *Finch* 80. There ought to be in every *Town* a Conſtable, or Tithingman; and it cannot be a *Town* unleſs it hath or had a Church, with Celebration of Sacraments and Burials, *&c.* But if a *Town* is decayed ſo that it hath no Houſes left, yet it is a *Town* in Law. 1 *Inſt.* 115. Under the Name of a *Town*, or Village, Boroughs, and 'tis ſaid Cities are contained; for every Borough or City is a Town. Where a Murderer eſcapes untaken in a *Town*, in the Day-time, the *Town* ſhall be amerced. 3 *Hen.* 7. *cap.* 1. And a *Townſhip* is anſwerable for Felons Goods to the King, which may be ſeiſed by them. 1 *R.* 3. *c.* 3. But ſee 31 *Ed.* 3. *cap.* 3. A Cuſtom may be alledged in a *Town*, *&c.*

Trabariæ, Were little Boats, ſo called from their being made out of ſingle Beams, or Pieces of Timber cut hollow. *Florence of Worceſter, pag.* 618.

Trabes in Churches, was that we now call *Branches*, made uſually with Braſs, but formerly with Iron. *Cowel,*

Tractus, A *Trace* by which Horſes in their Gears draw a Cart, Plough, or Waggon. *Paroch. Antiq.* 549.

Trade, In general Signification is Traffick or Merchandize: Alſo a private Art, and Way of Living. All the King's Subjects were to have a free *Trade* with *France, Spain,* &c. Stat. 3 *Jac.* 1. *cap.* 6. But by 1 *W. & M. cap.* 34. all *Trade* with *France* was prohibited during the *War*, and importing Goods was declared a common Nuſance, and the Commodities were to be ſeiſed and burnt; the Veſſels with their Furniture, *&c.* to be forfeited; and landing Goods, or aſſiſting therein, incurr'd a Penalty of 500 *l.* Though the Prohibition of *Trade* to *France* was taken off and repealed by 9 *Ann. cap.* 8. The King was enabled to prohibit all *Trade* with *Sweden*, on the intended Invaſion of this Kingdom, by the late King of *Sweden.* 3 *Geo.* 1. *cap.* 1. All *Trade* with *Spain*, during the preſent War, is prohibited; and no Goods of the Growth or Manafacture of *Old Spain*, ſhall be imported into *Great Britain* or *Ireland*, &c. from any Place, mixt or unmix'd with Commodities of any other Nation, on Pain of forfeiting the Goods and treble Value; and alſo the Ship or Veſſel, with all her Furniture, *&c.* Stat. 13 *Geo.* 2. *c.* 27. None of the King's Subjects may *trade* to and with a Nation of *Infidels* without the King's Leave, becauſe of the Danger of relinquiſhing Chriſtianity; and Sir *Edw. Coke* ſaid, That he had ſeen a Licenſe from one of our Kings, reciting, That he having a ſpecial Truſt and Confidence that ſuch a one, his Subject, would not decline his Faith and Religion, licenſed him to *trade* with Infidels, *&c.* 3 *Nelſ. Abr.* 331. As to *private Trades*, at Common Law none was prohibited to exerciſe any particular *Trade*, wherein he had any Skill or Knowledge; and if he uſed it unskilfully, the Party grieved might have his Remedy againſt him by Action on the Caſe, *&c.* By the 5 *Eliz.* a Man muſt ſerve ſeven Years Apprenticeſhip, before he can ſet up any *Trade*; tho' it hath been reſolv'd that the Statute doth not prohibit the Uſe of a *Trade* for a Family, but the publick Uſe of it in general. 11 *Rep.* 53. If a Bond or Promiſe reſtrains the Exerciſe of a *Trade*, tho' it be to a particular Place only, if there was no Conſideration for it, it is void; if there be a Conſideration, in ſuch Caſe, it may be good: But if the Reſtraint be general throughout *England*, although there be a Conſideration, it will be void. 2 *Lill. Abr.* 179. Hence we ſee how the Law favours *Trade*, &c.

Trade, *Companies of*, and their Privileges and Advantages, ſee *Merchant.*

Traga, A Waggon without Wheels; mentioned in *Mon. Angl. Tom.* 1. *pag.* 851.

Trait, Bread of *Trait* was formerly what we now call White-bread.

Tranſcript, Is the Copy of any Original Writing, or Deed, *&c.* where it is written over again, or exemplified. Stat. 34 *&* 35 *Hen.* 8. *cap.* 14.

Tranſcripto pedes finis levati mittendo in Cancellarium, A Writ for certifying the *Foot* of a *Fine* levied before Juſtices in Eyre, *&c.* into the Chancery. *Reg. Orig.* 669.

Tranſcripto Recognitionis factæ coram Juſticiariis itinerantibus, *&c.* Is an old Writ to certify a Recognizance taken by Juſtices in Eyre. *Reg. Orig.* 152.

Tranſgreſſione, A Writ or Action of *Treſpaſs*, according to *Fitzherbet.*

Tranſire, (from *Tranſeo*) Is uſed for a Warrant from the Cuſtom-Houſe, to let paſs. 14 *Car.* 2. *cap.* 11.

Tranſitory, Is the Oppoſite to *Local*: *Tranſitory* Actions are thoſe as may be laid in any County, or Place; ſuch as Perſonal Action of Treſpaſs, *&c.* See *Local.*

Tranſlation, (*Tranſlatio*) In a common Senſe of the Word ſignifies a Verſion out of one Language into another; but in a more confined Acceptation, it denotes the Setting from one Place to another, and the Removal of a Biſhop to another Dioceſe, *&c.* which is called *Tranſlating*: And ſuch a Biſhop writes not *Anno* Conſecrationis, but *Anno* Tranſlationis *noſtræ*, *&c.* A Biſhop *tranſlated*, is not conſecrated *de novo*; for a Conſecration is like an *Ordina-*

tion, 'tis an indelible Character, and holds good for ever. 3 *Salk.* 72. But the Biſhop is to be a-new elected, *&c.* 1 *Salk.* 137. See *Poſtulation.*

Tranſportation, Is the Baniſhing or Sending away a Criminal into another Country. And by Statute, if any one convicted of Felony, ſhall in open Court pray to be *tranſported*, it may be done if the Court thinks fit. 31 *Car.* 2. *cap.* 2. The 4 *Geo.* 1. *cap.* 11. was made for the more effectual *Tranſportation* of Offenders convict of Felony, or Larceny, within the Benefit of Clergy, *&c.* And all Charges in tranſporting Felons, are to be born by the Place for which the Court was held, *&c.* By the 5 *Geo.* 1. *cap.* 28. Deer-Stealers may be *tranſported* to the Plantations, *&c.* And if any Perſons forcibly hinder Officers of the Cuſtoms, in executing their Office, being arm'd with Weapons, and eight in Company, they ſhall be tranſported, by 6 *Geo.* 1. So three Perſons aſſembled near the Sea-Coaſts, with Fire-Arms, *&c.* to run uncuſtomed Goods. Stat. 9 *Geo.* 2. *c.* 35.

Tranſportation, Of *Goods* and *Merchandize*, is allowed and not allowed, in many Caſes by Statute, for the Advantage of Trade. See *Merchant*, &c.

Tranſubſtantiation, (*Tranſubſtantiatio*) Is a Converting into another Subſtance: To *tranſubſtantiate*, i. e. *Quidpiam in aliam Subſtantiam converto.* Litt. Dict. A *Declaration* againſt the Doctrine of *Tranſubſtantiation* uſed in the Church of *Rome*, is required by the Stat. 30 *Car.* 2. *cap.* 1.

Travellers. Inn-keepers are to receive *Travellers*, and find them Lodging, Victuals, *&c.* And on Refuſal, a reaſonable Price being tendered, they may be indicted and fined; or Action of the Caſe lies againſt them. 2 *Hawk.* 225.

Traverſe, (from the Fr. *Traverſer*) Is uſed in the Law for the denying of ſome Matter of Fact, alledged to be done in a Declaration or Pleadings; upon which the other Side comes and affirms that it was done; and this makes a ſingle and good Iſſue for the Cauſe to proceed to Trial: And the formal Words of a *Traverſe* are in our French *Sans ceo*, in Latin *Abſque hoc*, and in Engliſh *without that*, that ſuch a Thing was done, or not, *&c.* *Kitch.* 227. *Weſt. Symb. part.* 2. A Plea will be ill, which neither *traverſeth* nor confeſſeth the Plaintiff's Title, *&c.* And every Matter in Fact, alledged by the Plaintiff, may be *traverſed* by the Defendant; but not Matter of Law, or where it is Part Matter of Law and Part Matter of Fact; nor may a Record be *traverſed* which is not to be tried by a Jury. And if a Matter be expreſly pleaded in the *Affirmative*, which is expreſly anſwered in the *Negative*, no *Traverſe* is neceſſary, there being a ſufficient Iſſue join'd; alſo where the Defendant hath given a particular Anſwer in his Plea, to all the material Matters contained in the Declaration, he need not take a *Traverſe;* for when the Thing is anſwered, there needs no further Denial. *Cro. Eliz.* 755. *Yelv.* 173, 193, 195. 2 *Mod.* 54. If a *Traverſe* contain no more than the Party hath pleaded before, it will not be good: No *Traverſe* ought to be taken but where the Thing *traverſed* is iſſuable: And where one will make a *Traverſe* to a Declaration, he ought to *traverſe* that Part of it, the doing whereof will make an End of the Matter, when the Point is determined by the Jury. 2 *Roll. Rep.* 37. 2 *Lill. Abr.* 587. 3 *Nelſ. Abr.* 355. As one *Traverſe* is enough to make a perfect Iſſue, a *Traverſe* cannot regularly be taken upon a *Traverſe*, if 'tis well taken to the material Point, and goes to the Subſtance of the Action; but where the firſt *Traverſe* is not well taken, nor pertinent to the Matter, there to that which was ſufficiently confeſſed and avoided before, the other Party may well take a *Traverſe* after ſuch immaterial *Traverſe* taken before: And if ſpecial Matter alledged in a foreign County in the Defendant's Plea be falſe, the Plaintiff may maintain his Action, and *traverſe* that ſpecial Matter; and in ſuch Caſe a *Traverſe* on a *Traverſe* hath been adjudged good. 1 *Saund.* 32. *Poph.* 101. Theſe Rules are to be obſerved in *Traverſes:* 1. The *Traverſe* of a Thing immediately alledged, vitiates a good Bar. 2. Nothing muſt be *traverſed* but what is expreſly alledged. 3. Surpluſage in a Plea doth not inforce a *Traverſe.* 4. It muſt be always made to the ſubſtantial Part of the Title. 5. Where an Act may indifferently be intended to be at one Day or another, there the Day is not *traverſable.* 6. In Action of Treſpaſs generally the Day is not material; though if a Matter be to be done upon a particular Day, there it is material and *traverſable.* 2 *Roll. Rep.* 37. 1 *Roll. Rep.* 235. *Yelv.* 122. 2 *Lill. Abr.* 313. If the Parties have agreed on the Day for a Thing to be done, the *Traverſe* of the Day is material; but where they are not agreed on the Day, it is otherwiſe; and though 'tis proved to be done on another Day, 'tis ſufficient. *Palm.* 280. Per *Holt Ch. Juſt.* Where a *Traverſe* goes to the Matter of a Plea, *&c.* all that went before is waved by the *Traverſe*; and if the *Traverſe* goes to the Time only, it is not waved. 2 *Salk.* 642. In Action of Treſpaſs, a particular Place and Time, were laid in the Declaration, and in the Plea there was a *Traverſe* as to the Place, but not as to the Time: On Averment that it was *eadem Tranſgreſſio*, the Plea was held good. 3 *Lev* 227. 2 *Lutw.* 1452. Where a Plea in Juſtification of a Thing is not local, a *Traverſe* of the Place is wrong. 2 *Mod.* 270. The Subſtance and Body of a Plea muſt be *traverſed. Hob.* 232. But a *Traverſe*, that a Perſon died ſeiſed of Land in Fee *modo & forma* as the Defendant had declared, was adjudged good *Hutt.* 123. A Lord and Tenant differ in the Services, there the Tenure and not the Seiſin ſhall be *traverſed*; but if they agree in the Services, the Seiſin and not the Tenure is *traverſable*; and it is a general Rule, that the Tenant ſhall never *traverſe* the Seiſin of the Services without admitting the Tenure. *March* 116. 3 *Nelſ. Abr.* 361. That which is not material nor *traverſable*, is not admitted when it is alledged, and not *traverſed.* 2 *Salk.* 561. But the Omitting a *Traverſe* where it is neceſſary, is Matter of Subſtance. 2 *Mod.* 60. And a *Traverſe* of a Debt is ill when a Promiſe is the Ground of the Action; which ought to be *traverſed*, and not the Debt. *Leon.* 252. A *Traverſe* ſhould have an *Inducement* to make it relate to the foregoing Matter. And 'tis no good Plea for the Plaintiff to reply, that a Man is alive who is alledged to be dead, without *traverſing* that he is not dead. 2 *Lill.* 3 *Salk.* 357. It is ſaid that where a *Traverſe abſque hoc* comprizes the whole Matter generally, it may conclude *& de hoc pon. ſe ſuper Patriam*; but when it *traverſes* a particular Matter, the Concluſion ought to be with an *Averment*, *&c.* 1 Salk. 4. *Traverſe* in an *Anſwer* in Chancery, Replication, &c. See *Chancery.*

Traverſe of an Inditment or Preſentment, Is to take Iſſue upon, and contradict or deny ſome chief Point of it: As in a *Preſentment* againſt a Perſon for a Highway overflow'd with Water, for Default of ſcouring a Ditch, *&c.* he may *traverſe* the Matter, that there is no Highway, or that the Ditch is ſufficiently ſcoured; or otherwiſe *traverſe* the Cauſe, *viz.* That he hath not the Land, or he and they whoſe Eſtate, *&c.* have not uſed to ſcour the Ditch. *Lamb. Eiren.* 521. *Book Entr.*

Traverſe of an Office, Is to prove that an Inquiſition made of Lands or Goods by the Eſcheator, is defective and untruly made. No Perſon ſhall *traverſe* an Office, unleſs he can make to himſelf a good Right and Title: And if one be admitted to *traverſe* an Office, this Admiſſion of the Party to the *Traverſe*, doth ſuppoſe the Title to be in him, or elſe he had no Cauſe of *Traverſe.* Vaugh. 64. 2 Lill. Abr. 590, 591.

Traverſum, Signifies a Ferry: It is mentioned in the *Monaſticon*. Tom. 2. pag. 1002.

Trawlermen, A Kind of Fiſhermen on the River *Thames*, who uſed unlawful Arts and Engines to deſtroy Fiſh, of which ſome were termed *Tinckermen*, others *Hebbermen*, and *Trawlermen*, &c. And hence comes to *trowl* or *trawl* for Pikes. *Stow's Surv. Lond. pag.* 19.

Traylbaſton, Commiſſions of in the Reign of K. *Edw.* 1. See *Juſtices of Traylbaſton.*

Traytor, (*Traditor*, *Proditor*) A State-Offender, Betrayer, *&c.*

Trayterous, (*Perfidioſus*) Treacherous, or full of Diſloyalty. *Law Lat. Dict.*

Trayterous Poſition, Of taking *Arms* by the *King's Authority againſt his Perſon*, and thoſe that are commiſſioned by him, is condemned by the Statute 14 *Car.* 2. *cap.* 3.

Treaſon, (From the Fr. *Trahir*, to betray, and *Trahiſon* Betraying, contracted into *Treaſon*) is the Crime of Treachery and Infidelity to our lawful Sovereign; the *Latin* Word for which uſed in Law is *Proditio*, and is divided into High Treaſon, *Alta Proditio*, and Petit Treaſon, *Proditio parva:* And there is Mention of *Accumulative* and *Conſtructive Treaſon* in ſome of our Statutes. *High Treaſon* is defined to be an Offence committed againſt the Security of the King and Kingdom; and as all *Treaſons* include Felony, the Word *Proditorie* muſt be uſed in the Indictment for *Treaſon*, to diſtinguiſh it. 3 *Inſt.* 4, 15 The Greatneſs of this Offence of *Treaſon*, and Severity of the Puniſhment thereof, is upon two Reaſons; becauſe the Safety, Peace and Tranquility of the Kingdom, is highly concerned in the Preſervation of the Perſon and Government of the King; and therefore the Laws have given all poſſible Security thereto, under the ſevereſt Penalties: And as the Subjects have Protection from the King and his Laws; ſo they are bound by their Allegiance to be true and faithful to him. 1 *Hale's Hiſt. P. C.* 59. At *Common Law* there were different Opinions concerning High *Treaſon*; and before the Statute 25 *Ed.* 3. *Treaſon* was a very uncertain Crime; for the Killing of the King's Brother, or even of his Meſſenger, was taken to be included in it; ſo when Acts tended to diminiſh the Dignity of the Crown, and where a Man grew popular, this was conſtrued to be incroaching Royal Power, and held to be *Treaſon*; ſo that by the Exceſs of the Times, any Crime by aggravating the Circumſtances of it, was heightened into *Treaſon:* Wherefore this Statute was made to determine what ſhould be *Treaſon*; and ſince the Making thereof, there can be no conſtructive *Treaſon*, *i. e.* Nothing can be conſtrued to be *Treaſon*, which is not literally ſpecified in that Act; nor may the Statute be conſtrued by Equity, becauſe it is a declarative Law, and one Declaration ought not to be a Declaration of another; beſides it was made to ſecure the Subject in his Life, Liberty and Eſtate, which by admitting Conſtructions to be made of it, might deſtroy all. 1 *Hawk. P. C.* 34. 3 *Salk.* 358. The Statute 25 *Ed.* 3. *cap.* 2. (reciting that divers Opinions having been, what Caſes ſhould amount to High *Treaſon*) enacts and declares, That if a Perſon doth compaſs or imagine the Death of the King, Queen, or their eldeſt Son and Heir; or if he do violate and deflower the King's Wife or Companion, or his eldeſt Daughter unmarried, or the Wife of the King's eldeſt Son; or if he levy War againſt the King in his Realm, or adhere to his Enemies, give them Aid and Comfort in the Realm, or elſewhere, and thereof be provably attainted of open Deed; and if a Man counterfeit the King's Great or Privy Seal, or his Money, or bring falſe Money into the Kingdom, like to the Money of *England*, to make Payment therewith in Deceit of the King and his People; or if he kill the Chancellor, Treaſurer, or any of the King's Juſtices of either Bench, Juſtices of Aſſiſe, *&c.* being in their Places doing their Offices; theſe Caſes are to be adjudged *Treaſon:* And if any other Caſe happen before the Juſtices, ſuppoſed to be *Treaſon*, they ſhall not proceed to Judgment till it be declared by the King and Parliament whether it ought to be judged *Treaſon*, or not. 25 *Ed.* 3. It was made High *Treaſon* to wiſh or deſire, by Words or Writing, or to imagine the Death of the King, Queen, or their Heir apparent; or to publiſh, that the King was an Heretick, Schiſmatick, Infidel, *&c.* by 26 *H.* 8. *c.* 13. And to endeavour to depoſe the King, or affirm by Writing that he is an Uſurper, Tyrant, *&c.* was declared *Treaſon* by the 1 *Ed.* 6. *c.* 12. But theſe are repealed by 1 *Mar.* which enacts, That no Act, Deed or Offence, ſhall be deemed or adjudged *Treaſon*, but ſuch as are declared and expreſs'd to be ſo by the 25 *Ed.* 3. concerning *Treaſons.* 1 *Mar. Seſſ.* 1. *c.* 1. All *Treaſons* were ſettled by the Stat. 25 *Ed.* 3. *c.* 2. And by 1 *Mar. c.* 1. that Act was re-inforced and confirmed and made the only Standard of *Treaſon*; the 1 *Mar.* takes away the Power of the King and Parliament to adjudge any Thing elſe to be *Treaſon*, than what is declared to be ſuch therein: So as no Crime is at this Day High *Treaſon*, Petit *Treaſon*, or Miſpriſion of *Treaſon*, unleſs it be declared by 25 *Ed.* 3. or by ſome Statute ſince the 1 *Mar. cap.* 1. All other Statutes made between thoſe two Acts concerning High *Treaſon* are abrogated; but ſince 1 *Mar.* many Offences are made High *Treaſon* by Statute, which were not ſo before; as relating to the *Pope*, *Popiſh Prieſts* and *Papiſts*, the *Proteſtant Succeſſion*, *&c.* And to ſay that the King is a Papiſt, or that he intends to introduce Popery; intending Death or bodily Harm, or a Reſtraint of the King's Perſon; or to incite an Invaſion, *&c.* and ſuch Intentions declared by Printing, Writing or Speaking, the Offenders ſhall be adjudged Traitors. 13 *Car.* 2. *c.* 1. It was declared *Treaſon* for Perſons to ſend any Arms, Powder, Maſts, Cordage, *&c.* to *France*, during the late War, by 3 *&* 4 *W. & M. c.* 13. Correſponding with the pretended *Prince of Wales*, or remitting him Money, is made High *Treaſon.* 13 *W.* 3. *c.* 3. And if any one ſhall maliciouſly by Writing or Printing, declare that the King is not lawful King, or that the *Pretender* hath any Title to the Crown, he ſhall be guilty of *Treaſon.* 4 *&* 5 *Ann. c.* 3. Officers or Soldiers of this Realm, holding Correſpondence with any Rebel, or Enemy to the King, or giving them any Advice, Information by Letter, Meſſuage, *&c.* is declared *Treaſon* by the 2 & 3 *Ann.* And if a Subject of *Great Britain* or *Ireland* ſhall inliſt himſelf a Soldier, with Intent to go beyond Sea, to ſerve any Foreign Prince or State, he ſhall ſuffer and forfeit as in *Treaſon.* 12 *Ann. &c.* Theſe are the chief of our Statutes antient and modern, declaring what Offences ſhall be *Treaſon*; and *Treaſons* committed *out of the Realm* may be *tried* in B. R. as if the Offence had been done in the County of *Middleſex*; alſo they may be inquired of and tried in ſuch County as the King thinks fit, *&c.* A Party within one Year after Outlawry for *Treaſon*, may ſurrender himſelf to the Chief Juſtice of *England*, and traverſe the Indictment; and none ſhall be attainted of *Treaſon* but by the Teſtimony of Two Witneſſes, *&c.* by Stat. 35 *H.* 8. *c.* 2. 5 *&* 6 *E.* 6. *c.* 11. All Trials for High *Treaſon* ſhall be according to the Courſe of the Common Law, and not otherwiſe. 1 *&* 2 *Ph. & Mar. cap.* 10. And Perſons indicted for *Treaſon* are to have a Copy of the Indictment five Days before Trial, to adviſe with Counſel; and ſhall be admitted to make a full Defence by Counſel learned in the Law, and by lawful Witneſſes, *&c.* and there muſt be two Witneſſes to the ſame Overt-Act, or two Acts of the ſame *Treaſon*, produced Face to Face, to make out the *Treaſon* againſt them. 7 *W.* 3. *cap.* 3. If one Witneſs in High

Treaſon be poſitive, and the other is only by Hear ſay; theſe are not two lawful Accuſers, within the Statutes: But two Witneſſes are not required either upon the Indictment or Trial of *Treaſons* for Counterfeiting Money, by the Proviſo of the Statute. 1 & 2 *P.* & *M.* Offenders guilty of High *Treaſon* by being concerned in the Rebellion in the firſt Year of K. *Geo.* 1. were to be tried before ſuch Commiſſioners of *Oyer* and *Terminer* and Gaol-Delivery, and in ſuch County as his Majeſty by any Commiſſion under the Great Seal ſhould appoint, by lawful Men of the ſame County, as if the Fact had been there committed: This extended only to Perſons actually in Arms. 1 *Geo.* 1. *c.* 33. All are Principals in High *Treaſon*; and on Attainder of *Treaſon*, the Blood of the Criminal is corrupted; he ſhall be drawn, hang'd and quarter'd; and forfeit his Lands and Goods to the King, *&c.*

Treaſon by the Stat. 25 *Ed.* 3. in *compaſſing and imagining the Death of the King*, muſt be manifeſted by ſome Overt-Act; as by providing Arms to do it, conſulting to levy War againſt him, writing Letters to excite others to join in it, aſſembling Perſons in order to impriſon or depoſe the King, or to get him into their Power, *&c.* theſe Acts are ſufficient to prove that one compaſſed or imagined the Death of the King, and to make a Man guilty of High *Treaſon.* 3 *Inſt.* 6, 12. It has been a very great Queſtion whether Words ſpoken can amount to High *Treaſon:* But it was reſolved in the Trial of the *Regicides*, that though a Man cannot be indicted of High *Treaſon* for Words only; yet if he be indicted for compaſſing the King's Death, there Words may be laid as an Overt-Act, to prove that he compaſſed the Death of the King; and to ſupport this Opinion, the Caſe of a Perſon was cited who was indicted of *Treaſon, Anno* 9 *Car.* 1. for that he being the King's Subject at *Liſbon* uſed theſe Words; *I will kill the King*, (*innuendo* King *Charles*) *if I may come to him*; and afterwards he came into *England* for that Purpoſe; and two Merchants proving that he ſpoke the Words, for that his traiterous Intent and the wicked Imagination of his Heart was declared by theſe Words, it was held to be High *Treaſon* by the Common Law, and within the Statute of the 25 *Ed.* 3. *cap.* 2. *Cro. Car.* 242. 1 *Lev.* 57. Deliberate Words, which ſhew a direct Purpoſe againſt the King's Life, will amount to an Overt-Act of compaſſing or imagining the King's Death; as the Compaſſing or Imagining the Death of the King is the *Treaſon*, Words are the moſt natural Way of expreſſing the Imagination of the Heart, and may be good Evidence of it: And any external Act which may be a Manifeſtation of ſuch Imagination, is an Overt-Act; but altho' Words may be an Overt-Act of *Treaſon*, they muſt be ſo certain and poſitive, as plainly to denote the Intention of the Speaker, and be laid with an Averment that they were ſpoken *de Rege*, *&c.* 1 *Hawk. P. C.* 40. 2 *Salk.* 631. 3 *Mod.* 52. The Maxim, That no Words can amount to *Treaſon*, at this Day, is not generally true; and notwithſtanding the Objection made againſt Words being High *Treaſon*, from the Stat. 1 *M. cap.* 1. wherein it is ſaid, that many honourable Perſons, and others of good Reputation, had then of late for Words only ſuffered ſhameful Death, that the Severity of ſuch like dangerous and painful Laws ſhould be aboliſhed: It was enacted, That no Offence made *Treaſon* by Words, Writing, Cyphering, *&c.* ſhould be adjudged *Treaſon:* It appears from the next Part of the Preamble of the ſaid Statute, that it is applicable only to the Statutes in the Time of King *Hen.* 8. which made bare Words High *Treaſon.* And in the firſt Edition of *Hale's Pleas of the Crown* it is twice ſaid, that it hath been adjudged that Words are an Overt Act; though in the latter Edition it is ſaid, that Compaſſing by bare Words is not an Overt-Act, *&c.* 1 *Hawk.* 41. Ever ſince the Revolution, it has been the conſtant Practice, where a Perſon, by *treaſonable* Diſcourſes, has manifeſted a Deſign to murder or depoſe the King, to convict him upon ſuch Evidence: And Chief Juſtice *Holt* was of Opinion, That expreſs Words were not neceſſary to convict a Man of High *Treaſon*; but if from the Tenor of his Diſcourſe, the Jury were ſatisfied he was ingaged in a Deſign againſt the King's Life; this was ſufficient to convict the Priſoner. *State Trials, Vol.* 4. *pag.* 172. Words of Perſuaſion to kill the King, are Overt-Acts of compaſſing his Death; and it hath been adjudged, that he who intended by Force to preſcribe Laws to the King, and to reſtrain him of his Power, doth intend to deprive him of his Crown and Life; that if a Man be ignorant of the Intention of thoſe who take up Arms againſt the King, if he join in any Action with them, he is guilty of *Treaſon*; and that the Law conſtrueth every Rebellion to be a Plot againſt the King's Life, and a Depoſing him, becauſe a Rebel would not ſuffer that King to reign and live, who will puniſh him for Rebellion. *Moor* 620. 2 *Salk.* 63. 3 *Nelſ. Abr.* 365. It is ſaid, that Words ſpoken to draw away the Affection of the People from the King, and to ſtir them up againſt him, tend to his Death and Deſtruction, and are *Treaſon:* But the Imagination in High *Treaſon*, without Act or Word, is not puniſhable. *Dyer* 128. 1 *Rep. Jenk. Cent.* 88. If Words are ſet down in Writing, and kept privately in one's Cloſet, they are not an Overt-Act of *Treaſon*, except the Words are publiſhed. *Kel.* 20. But it has been held, that *treaſonable* Matter put in Writing, *Scribere eſt agere*; and though it was not publiſhed, but ſent in a Box to the King, it ſhewed the Intent of the Party to be High *Treaſon.* 2 *Roll. Rep.* 88. Under the Head of compaſſing and imagining the King's Death, Intention of *Treaſon* proved by Circumſtances, is High *Treaſon:* The Law takes Notice of Intentions to commit *Treaſon*, and Mens Actions are governed by their Intentions, *&c.* 1 *Inſt.* 140. 5 *Mod.* 206. For a Man to ſay, That he will be King after the King's Death, hath been adjudged *Treaſon:* And ſo to propheſy when the King ſhall die; for this may imply a Knowledge of a Conſpiracy. *Roll. Rep.* 88. There muſt be a Compaſſing, Intent or Imagination to kill the King, to make the Offence *Treaſon*; the Killing him *per infortunium*, as Sir *Wa. Tyrrel* killed King *Will.* 2. by the Glance of an Arrow in *New Foreſt*, is not *Treaſon:* And though by the antient Law, if a Madman killed, or offered to kill the King, it was held to be *Treaſon*; by the Stat. 25 *Ed.* 3. by Force of the Words *Compaſs or Imagine*, he that is *Non Compos Mentis*, and totally deprived of all Compaſſings and Imaginations, cannot commit High *Treaſon*; but it muſt be an abſolute Madneſs, and total Deprivation of Memory. 3 *Inſt.* 6. If the Huſband of a Queen Regent conſpire her Death; or a Queen Conſort ſhall conſpire the King's Death, either of theſe Acts are *Treaſon*; And though the *Compaſſing the Death of the Queen Conſort* be *Treaſon*, by the 25 *Ed.* 3. this muſt be intended during the Marriage; and it doth not extend to a Queen Dowager. 3 *Inſt.* 8. And the *eldeſt Son and Heir of the King*, that is living, is intended by the ſaid Act, though he was not the firſt Son; but if the Heir apparent to the Crown be a collateral Heir, he is not within the Statute; nor is a Conſpiracy againſt ſuch collateral Heir, *Treaſon* by this Act. *Ibid.* Alſo *Violating the Queen Conſort* is High *Treaſon*, and her yielding and conſenting to it is *Treaſon*; but this doth not affect a Dowager Queen: So likewiſe Violating the *Wife of the Prince* is *Treaſon* only during the Coverture. 3 *Inſt.* 9. And the *eldeſt Daughter of the King* is ſuch a Daughter as is eldeſt not married, at the Time of the Violation, which will be *Treaſon*, although there was an elder Daughter than her, who died without Iſſue; for now the

Elder alive has a Right to the Inheritance of the Crown, upon Failure of Iſſue Male: And violating the Queen's Perſon, &c. was High *Treaſon* at Common Law, by Reaſon it deſtroyed the Certainty of the King's Iſſue, and conſequently raiſed Contention about the Succeſſion. *H. P. C.* 16. A *Queen Dowager* after the Death of her Husband, is not a Queen within the Statute; for though ſhe bears the Title, and hath many Prerogatives anſwering the Dignity of her Perſon, yet ſhe is not the King's Wife or Companion: And a Queen divorced from the King *a vinculo Matrimonii*, is no Queen within this Act, altho' the King be living; which was the Caſe of Q. *Katharine*, who after twenty Years Marriage with King *Hen.* 8. was divorced *cauſa affinitatis.* 1 *Hale's Hiſt. P. C.* 124. At Common Law Compaſſing the Death of any of the *King's Children*, and declaring it by Overt-Act, was taken to be *Treaſon*; though by this Statute it is reſtrained to the eldeſt Son and Heir. *Ibid.* 125. By the Common Law, *Levying War againſt the King* was *Treaſon*: But, as in Caſes of High *Treaſon*, there muſt be an Overt-Act; a Conſpiracy or Compaſſing to levy War is no Overt-Act, unleſs a War is actually levied; tho' if a War is actually levied, then the Conſpirators are all Traitors, altho' they are not in Arms: And a Conſpiracy to levy War will be Evidence of an Overt-Act to maintain an Indictment for Compaſſing the King's Death; but if the Indictment be for levying War only, Proof muſt be made that a War was levied, to bring the Offender under this Clauſe of the Statute 25 *Ed.* 3. 3 *Inſt.* 8, 9. *H. P. C.* 14. If two or more conſpire to levy War, and one of them alone raiſes Forces; this ſhall be adjudged *Treaſon* in all. *Dyer* 98. And Perſons raiſing Forces for any publick End or Purpoſe, and putting themſelves in a Poſture of War, by chuſing Leaders, and oppoſing Conſtables or Guards, &c. is High *Treaſon*: Some Time ago there was a great Riot in *London* by the Apprentices there, ſome whereof being impriſoned, the Reſt conſpired to kill the Lord Mayor, and releaſe their Comrades; and in order to it, to provide themſelves with Armour, by Breaking open two Houſes near the *Tower*; they marched with a Cloke on a Pole, inſtead of an Enſign, towards the Lord Mayor's Houſe; and in the Way meeting with Oppoſition from the Sheriffs, reſiſted them; this was held Levying of War and *Treaſon*. *Trin.* 37 *Eliz.* *Sid.* 358. Thoſe who make an Inſurrection in order to redreſs a publick Grievance, whether it be a real or pretended One, are ſaid to levy War againſt the King, altho' they have no direct Deſign againſt his Perſon; as they are for doing that by private Authority, which he by publick Juſtice ought to do, which manifeſtly tends to a Rebellion: For Example; Where great Numbers by Force endeavour to remove certain Perſons from the King, or to lay violent Hands on a Privy Counſellor, or revenge themſelves againſt a Magiſtrate for executing his Office, or to deliver Men out of Priſon, expel Foreigners, or to reform the Law or Religion, to pull down all Bawdy-houſes, or throw down all Incloſures in general, &c. But where a Number of Men riſe to remove a Grievance to their private Intereſt, as to pull down a particular Incloſure, they are only Rioters; for there is a Difference between a Pretence that is publick and general and one that is private or particular. 3 *Inſt.* 9. *H. P. C.* 14. *Kel.* 75. 1 *Hawk. P. C.* 37. It was reſolved by all the Judges of *England* in the Reign of King *Hen.* 8. That an Inſurrection againſt the Statute of Labourers, for raiſing their Wages, was a Levying of War againſt the King; becauſe it was generally againſt the King's Law, and the Offenders took upon them the Reformation thereof. *Read. Statutes, Vol.* 5. *pag.* 150. Not only ſuch as directly rebel and take up Arms againſt the King; but alſo thoſe who in a violent Manner withſtand his lawful Authority, or attempt to reform his Government, do levy War againſt him; and therefore to hold a Fort or Caſtle againſt the King's Forces, or keep together armed Men in great Numbers againſt the King's expreſs Command, have been adjudged a levying War and *Treaſon*: But thoſe who join themſelves to Rebels, &c. for fear of Death, and return the firſt Opportunity, are not guilty of this Offence. 3 *Inſt.* 10. *Kel.* 76. A Perſon in Arms was ſent for by ſome of the Council from the King, and to give in the Names of thoſe that were armed with him; but he refuſed, and continued in Arms in his Houſe, and it was held *Treaſon*: Alſo where he went with a Troop of Captains and others into *London* to pray Help of the City to ſave his Life, and bring him to Court to the Queen, tho' there was no Intent of Hurt to her, was adjudged *Treaſon*; and in them who joined with him, tho' they knew nothing but only a Difference between him and ſome Courtiers: So if any Man ſhall attempt to Strengthen himſelf ſo far, that the Prince cannot Reſiſt him. *Earl of Eſſex's Caſe, Moor* 620. To *ſuccour or adhere to the King's Enemies*, give them Comfort or Relief, or for any Perſon to be in Council with others to levy any ſeditious Wars, are High *Treaſon*: And the Delivery or Surrender of the King's Caſtles or Forts, by the Captains thereof, to the King's Enemy, within the Realm or without, for Reward, &c. is an Adhering to the King's Enemies, and *Treaſon* by the 25 *Ed.* 3. A Lieutenant of *Ireland* let ſeveral Rebels out of *Dublin Caſtle*, and diſcharged ſome *Iriſh* Hoſtages which had been given for Securing the Peace; and for this he was attainted of High *Treaſon* in adhering to the King's Enemies. 33 *H.* 8. 1 *Leon.* Adhering to the King's Enemies out of the Realm is *Treaſon*; and one who was beyond Sea having ſolicited a foreign Prince to invade the Kingdom, was held guilty of High *Treaſon*, and triable by the Statute 35 *Hen.* 8. But Adherence out of the Realm muſt be alledged in ſome Place in *England*. 3 *Inſt.* 10. *H. P. C.* 14. *Dyer* 298, 310. If there be War between the King of *England* and *France*, thoſe *Engliſhmen* that live in *France* before the War, and continue there after, are not meerly upon that Account Adherents to the King's Enemies, to be guilty of *Treaſon*, unleſs they actually aſſiſt in ſuch War; or at leaſt refuſe to return into *England*, upon a Privy Seal, or on Proclamation and Notice thereof; and this Refuſal is but Evidence of an Adherence and not ſo in it ſelf. 1 *Hale's Hiſt. P. C.* 165. It has been adjudg'd, that Adhering to the King's Enemies is an Adhering againſt him; and that *Engliſh* Subjects joining with Rebel Subjects of the King's Allies, and fighting with them under the Command of an Alien Enemy Prince, is *Treaſon*, in Adhering to the King's Enemies; and Cruiſing in a Ship with Intent to deſtroy the King's Ships, without doing any Act of Hoſtility, is an Overt-Act of Adhering, Comforting and Aiding; for where an *Engliſhman* liſts himſelf and marches, this is *Treaſon* without coming to Battle, or actual Fighting. 2 *Salk.* 634. An Indictment for Levying of War, or Adhering to the King's Enemies generally, without ſhewing ſome particular Inſtances, is not good; becauſe of theſe Words, *viz. And thereof ſhall be proveably attainted by Overt-Deed*, which follow and are connected to the *Treaſons* of Compaſſing the King's Death, Levying War, and Adhering to the King's Enemies; and as theſe *Treaſons* are ſeveral and diſtinct *Treaſons*, one of them cannot be made an Overt-Act of another. *Ibid.* There is no Neceſſity expreſly to alledge that Adherence was againſt the King; but the Special Manner of Adherence muſt be ſet forth: And it is ſaid, that the Succouring a Rebel, fled into another Realm, is not within the Statute; for a Rebel is not properly an Enemy, and the Statute is ſtrictly taken. 1 *Hawk.* 38. Subjects of the King, in open War or Rebellion, are not the King's Enemies, but Traitors; and if a Subject join with a foreign Enemy, and come into *England* with him, if he be taken Priſoner, he ſhall not be ranſomed or proceeded againſt as an Enemy, but as a Traitor to the King: On the other Hand, an Enemy coming in open Hoſtility into *England*, and taken, ſhall be either executed by Martial Law, or ranſomed; for he cannot be indicted of *Treaſon*, becauſe he never was within the Ligeance of the King. 3 *Inſt.* 11. By the Word *Proveably*, a Perſon ought to be convicted of the *Treaſon* on direct and manifeſt Proofs, and not upon Preſumptions or Inferences; and the Word *Attainted*, neceſſarily implies, That the Priſoner be proceeded againſt and attainted according to due Courſe of Law; wherefore if a Man be killed in open War againſt the King, or be put to Death arbitrarily, or by Martial Law, and be not attainted of *Treaſon* according to the Common Law, he forfeits nothing; for which Cauſe ſome Perſons kill'd in open Rebellion againſt the King, have been attainted by Act of Parliament. *Ibid.* 12. If a Perſon be indicted of *Treaſon*, and will not anſwer, or if he anſwers impertinently, Judgment ſhall be given againſt him as taken *pro Confeſſo* that he is Guilty. *Styles* 104. On a Judgment for High *Treaſon*, Error was brought, for that the Indictment did not conclude *contra Ligeantiæ*, &c. Now though all the particular Facts of the *Treaſon* were fully expreſſed, ſo that it appeared that it muſt be *contra Ligeantiæ ſuæ debitum*, yet the Judgment was reverſed. 3 *Lev.* 396. Upon a Writ of Error to reverſe an Attainder in *Treaſon*, becauſe the Party convicted was not asked what he had to ſay why Judgment ſhould not be given againſt him, the Attainder was reverſed; for he might have a Pardon, or ſome Matter to move in Arreſt of Judgment, 2 *Salk.* 630. 3 *Mod.* 265. And the Omiſſion of any neceſſary Part of the Judgment for *Treaſon*, is Error ſufficient to reverſe an Attainder, as it is more ſevere and formidable in *Treaſon*, than for any other Crime. 2 *Salk.* 632. As to the *Counterfeiting the King's Seal*, this was *Treaſon* by the Common Law; and the Statute 25 *Ed.* 3. mentions only the Great Seal and Privy Seal; for the Counterfeiting of the Sign Manual or Privy Signet, is not *Treaſon* within that Act, but by 1 & 2 *P.* & *M. c.* 6. Thoſe who aid and conſent to the Counterfeiting of the King's Seal are equally guilty with the Actors: But an Intent or Compaſſing to counterfeit the Great Seal, if it be not actually done, is not *Treaſon*; there muſt be an actual Counterfeiting, and it is to be like the King's Great Seal. 3 *Inſt.* 15. *S. P. C.* 3. *H. P. C.* 18. And this Branch of the Statute does not extend to the Affixing the Great Seal to a Patent, without a Warrant for ſo doing; nor to the Raſing any Thing out of a Patent, and Adding new Matter therein; or to the Taking off the Wax impreſſed by the Great Seal from one Patent, and fixing it to another; yet this, though it be not a Counterfeiting, has been adjudged a Miſpriſion of the higheſt Degree: And a Perſon guilty of an Act of this Nature, with Relation to a Commiſſion for levying Money, &c. had Judgment to be drawn and hang'd. 2 *H.* 4. 3 *Inſt* 16. *Kel.* 80. 'Till a new Great Seal is made, the old one of a late King, being uſed and employed as ſuch, is the King's Seal within the Statute; notwithſtanding its Variance in the Inſcription, Portraiture, and other Subſtantials: And when an old Great Seal is broken, the Counterfeiting of that Seal, and applying it to an Inſtrument of that Date wherein it ſtood, or to any Patent, &c. without Date, is *Treaſon*. 1 *Hale's Hiſt. P. C.* 177. The adding a Crown in a Counterfeit Privy Signet, which was not in the true; and omitting ſome Words of the Inſcription, and inſerting others, done purpoſely to make a little Difference, alters not the Caſe, but 'tis High *Treaſon*; being publiſhed on a feigned Patent to be true, &c. *Ibid.* 184. At Common Law *Forging of the King's Money* was *Treaſon*, as *Counterfeiting* it is by the Stat. 25 *Ed.* 3. Forging or Counterfeiting foreign Money made current here by Proclamation, is likewiſe High *Treaſon*, by 1 *Mar. c.* 6. And if not current here, it is Miſpriſion of *Treaſon*. Counterfeiting the King's Coin, or impairing or lightening it by Clipping, &c. is *Treaſon*; but it ſhall work no Corruption of Blood. 18 *El. cap.* 1. And as thoſe who coin Money without the King's Authority are guilty of *Treaſon*; ſo are thoſe that have Authority to do it, if they make it of greater Alloy, or leſs Weight than they ought. 3 *Inſt.* 17. 2 *Inſt.* 577. *H. P. C.* 20. If *A.* Counterfeit Money, and another vent the ſame for his own Benefit, he is not guilty of *Treaſon*; for it is only a Cheat and Miſdemeanor in him, puniſhable by Fine and Impriſonment: But if one Counterfeits the King's Money, tho' he never vents it, this is a Counterfeiting and *Treaſon* within the Statute. And if any Man doth Counterfeit the lawful Coin of this Kingdom in a great Meaſure, but with ſome Variation in the Impreſſion, &c. yet it is Counterfeiting of the King's Money; and ſhall not evade the Statute. 1 *Hale's Hiſt. P. C* 214, 215 *Treaſon* in making Stamps, Dyes, &c. for coining and colouring Metal, &c. See 8 & 9 *W.* 3. and *Coin. Bringing Falſe Money into this Kingdom*, counterfeited like the Money of *England*, knowing it to be falſe, is *Treaſon* by the 25 *Ed.* 3. In this Caſe it muſt be counterfeited, according to the Likeneſs of *Engliſh* Money, and is to be knowingly brought over from ſome foreign Nation, not from any Place ſubject to the Crown of *England*; and muſt be uttered in Payment. 3 *Inſt.* 18. The *Killing of the King's Chancellor*, *Treaſurer*, *Juſtices of either Bench*, &c. declared to be *Treaſon*, relates to no other Officers of State beſides thoſe expreſly named; and to them only when they are in actual Execution of their Offices, repreſenting the Perſon of the King; and it doth not extend to any Attempt to kill, or wounding them, &c. 3 *Inſt.* 18, 38. *H. P. C.* 17. The Places for the Juſtices to do their Offices, are the Courts themſelves, where they uſually or by Adjournment ſit, for Diſpatch of the Buſineſs of their Courts. 1 *Hale's Hiſt. P. C.* 232. See *Miſpriſion.*

Petit Treaſon, Is where one, out of Malice, takes away the Life of a Subject, to whom he owes ſpecial Obedience: And is called *Petit Treaſon*, in reſpect to *High Treaſon*, which is againſt the King. 3 *Inſt.* 20. It may be committed where a Servant kills his Maſter, a Wife her Husband, or a Secular or Religious Perſon killeth his Prelate or a Superior. 25 *Ed.* 3. *c.* 2. And Aiders, Abettors, and Procurers, are within the Act; but if the Killing is upon a ſudden falling out, or *Se Defendendo*, &c. it is not *Petit Treaſon*; for Perſons accuſed of *Petit Treaſon* ſhall be adjudged Not guilty, or Principal and Acceſſary, according to the Rules of Law in other Caſes. *H. P. C.* 24. *Petit Treaſon* is committed againſt the Head, though not againſt the ſupream Head; and if a Servant kills his Miſtreſs, or the Wife of his Maſter, ſhe is Maſter within the Letter of the Statute, and it is *Petit Treaſon*: But this Statute is ſo ſtrictly conſtrued, that no Caſe which cannot be brought within the Meaning of the Words of it, ſhall be puniſhed by it; and therefore if a Son kill his Father, he ſhall not be tried for *Petit Treaſon*, except he ſerved his Father for Wages, &c. in which Caſe he ſhall be indicted by the Name of a Servant; and yet the Offence is more heinous by far in a Child than a Servant. 3 *Inſt.* 20. *H. P. C.* 23. 11 *Rep.* 34. A Servant procured another to kill his Maſter, who killed him in the Servant's Preſence; this was *Petit Treaſon* in the Servant, and Murder in the other; if the Servant had been abſent, the Crime would not have been *Petit Treaſon*, but Murder, to which he would have been acceſſary. 3 *Inſt.* 20. *Moor* 91. Where a Servant intended to kill his Maſter, and laid in Wait for that Purpoſe while he was his Servant, but did not do it till he had been a Year out of his Service; it was adjudged *Petit Treaſon. H. P. C.* 23. A Maid-Servant and a Stranger conſpired to rob the Miſtreſs, and in the Night the Servant opened the Door and let in the Stranger into the Houſe, who killed her Miſtreſs, ſhe lighting him to her Bed, but neither ſaying or doing any Thing, only holding the Candle; and this was held Murder in the Stranger, and *Petit Treaſon* in the Servant. *Dyer* 128. If a Wife and a Stranger kill the Huſband, it is *Petit Treaſon* in the Wife, and Murder in the Stranger: And ſo it is of an Eccleſiaſtick Perſon, killing his Prelate, &c. *Dalt.* 337. If a Wife and her Servant conſpire to kill the Husband, and appoint Time and Place for it, but the Servant alone in the Abſence of the Wife killeth him; it ſhall be *Petit Treaſon* in both: And if the Wife procure a Servant to kill the Husband, both are guilty of *Petit Treaſon*; alſo if a Stranger procures a Wife or Servant to kill the Husband or Maſter, he may be indicted as acceſſary to *Petit Treaſon Dyer* 128, 332. *Crompt.* 41. Where the Wife and another who was not her Servant, conſpired the Death of the Husband, the Indictment was that the Wife *Proditorie*, and the other Perſon *Felonice* gave him Poiſon, &c. whereof he died: And the Wife being acquitted on the Indictment, ſhe brought an Action againſt her Son-in-Law for a malicious Proſecution, and recovered Damages; but afterwards he brought an Appeal of Murder againſt her, upon which ſhe was convicted in *B. R.* and carried down into the County where the Fact was done, and there executed. *Cro. Car.* 331, 382. *Mod. Ca.* 217. 3 *Nelſ. Abr.* 372. On Divorce from the Husband for Adultery, a Woman is a Wife within the Statute to be guilty of *Petit Treaſon* againſt her Huſband; for they may cohabit again: But where a Man marries a ſecond Wife, the former being alive, ſhe is not within this Law. 1 *Hale's Hiſt. P. C.* 381. If a Clergyman be ordained by the Biſhop of *A.* and he kills that Biſhop, it is *Petit Treaſon*, for he hath profeſſed Canonical Obedience to him: And where a Parſon hath Benefices in two Dioceſes, if he kill the Biſhop of either, 'tis *Petit Treaſon*; but in Caſe he killeth a Biſhop, out of the Dioceſe where he is Beneficed, it is only Murder. 1 *Hale's Hiſt. P. C.* 381. A Parſon kills the Metropolitan of his Province, this will be *Petit Treaſon*, though he be not his immediate Superior. *Ibid.* In *Petit Treaſon*, it is ſaid that there muſt be two Witneſſes to the Indictment; and need not be to the Trial of it, for it is not within the Stat. 7 *W.* 3. 2 *Hawk. P. C.* 258. All *Petit Treaſon* implies Murder, and is the higheſt Degree thereof: And an Attempt by a Wife to kill her Husband; Piracy by a Subject, &c. were *Petit Treaſon* by the Common Law. 1 *Hawk.* 87, 88. This Kind of *Treaſon* gives Forfeiture of Lands by Eſcheat to the Lord of the Fee, &c. and a Man is drawn and hanged for it; and a Woman burned. 1 *Inſt.* 37.

An *Indictment* for *Petit Treaſon.*

Wilts, ſſ. THE *Jurors*, &c. *That* A. B. *late of* M. *in the County aforeſaid, Labourer, Servant of* C. D. *late of* M. *aforeſaid in the ſaid County, Gentleman, on the Day of,* &c. *in the Year of the Reign,* &c. *in the Houſe of the ſaid* C. D. *ſituate at* M. *in the County aforeſaid, with Force and Arms, that is to ſay, with a certain Knife of the Value of four Pence, which he the ſaid* A. B. *then and there held in his Right Hand, wilfully, and of his Malice forethought, made an Aſſault upon the ſaid* C. D. *being then his Maſter, and in the Peace of God, and of our ſaid Lord the King; and did feloniouſly and traiterouſly at* M. *aforeſaid in the ſaid County, ſtrike and wound with the ſaid Knife the ſaid* C. D. *then his Maſter, and feloniouſly and traiterouſly, and of Malice forethought, at* M. *aforeſaid in the ſaid County, did give to the ſaid* C. D. *one Mortal Wound with the ſaid Knife, upon the Right Part of his Belly, of the Length of two Inches, and of the Depth of one Inch, of which ſaid Mortal Wound the ſaid* C. D. *at* M. *aforeſaid in the ſaid County languiſhed, and languiſhing lived from the ſaid Day of,* &c. *in the Year abovementioned, to the Day,* &c. *next enſuing, on which ſaid Day of,* &c. *in the ſame Year above mentioned, the ſaid* C. D. *at* M. *aforeſaid in the ſaid County died of that Mortal Wound; and ſo the Jurors aforeſaid upon their ſaid Oath ſay, that the ſaid* A. B. *on the Day,* &c. *aforeſaid in the ſaid,* &c. *Year above-mentioned, at* M. *aforeſaid in the ſaid County, did wilfully, feloniouſly, traiterouſly, and of his Malice forethought, kill and murder the ſaid* C. D. *in Manner and Form aforeſaid, againſt the Peace,* &c.

Treaſure, (*Theſaurus*) Signifies Riches and Wealth; and as the *King's Treaſure* is the Honour and Safety of the King, for this Reaſon Mines of Gold and Silver belong to the King.

Treaſurer, (*Theſaurarius*) Is an Officer to whom the *Treaſure* of another is committed to be kept, and truly diſpoſed of: The Chief of theſe with us is the *Lord Treaſurer of England*, who is a Lord by his Office, and one of the greateſt Men of the Kingdom. This great Officer holds his Place *Durante beneplacito*, and is inſtituted by the Delivery of a White Staff to him by the King; and in former Times he received his Office by Delivery of the Golden Keys of the *Treaſury*: He is alſo *Treaſurer* of the *Exchequer*, by Letters Patent. And by 31 *Ed.* 3. in Writs of Error the Lord Chancellor and Lord *Treaſurer* ſhall cauſe the Record and Proceſs of the Exchequer to be brought before them, who are Judges; but the Writ is to be directed to the *Treaſurer* and Barons, who have the Keeping of the Records. Under the Charge and Government of the Lord *Treaſurer*, is all the King's Wealth contained in the Exchequer; he has the Check of all the Officers employed in Collecting the Cuſtoms and Royal Revenues; all the Offices of the Cuſtoms in all Ports of *England* are in his Gift and Diſpoſition; Eſcheators in every County are nominated by him; and he makes Leaſes of all the Lands belonging to the Crown, &c. But the high and important Poſt of Lord *Treaſurer* has of late Years, like ſome other great Offices, been eſteemed too great a Task for one Perſon, and been generally executed by Commiſſioners. And ſee more belonging to this Office, Stat. 20 *Ed.* 3. *c.* 6. 31 *H.* 6. *c.* 5. 4 *Ed.* 4 *c.* 1. 17 *Ed.* 4. *c.* 5. 21 *H.* 8. *c.* 20. and 1 *Ed.* 6. *c.* 13. 4 *Inſt.* 104 Beſides the *Lord Treaſurer*, there is a *Treaſurer of the King's Houſhold*, who is of the Privy Council, and with the Controller, &c. has great Power. Stat. *Weſtm.* 2. *c.* 1. A *Treaſurer of the Navy* or *War.* 35 Eliz. c. 4. *Treaſurer of the King's Chamber.* 33 H. 8. c. 39. A *Treaſurer of the Wardrobe.* 25 Ed. 3. c. 21. And there are *Treaſurers of Corporations*, &c.

Treaſurer in Cathedral Churches, An Officer whoſe Charge was to take Care of the Veſtments, Plate, Jewels, Relicks, and other *Treaſure* belonging to the ſaid Churches; and at the Time of the Reformation, the Office was extinguiſhed as needleſs in moſt *Cathedral Churches*; but it is ſtill remaining in thoſe of *Saliſbury*, *London*, &c.

Treaſurer of the County, Is he that keeps the *County Stock*: There are Two of them in each County, choſen by the major Part of the Juſtices of the Peace, &c. at *Eaſter*-Seſſions; they muſt have 10 *l.* a Year in Land, or 150 *l.* in Perſonal

Eſtate, and ſhall not continue in their Office above a Year; and they are to account yearly at *Eaſter*-Seſſions, or within ten Days after to their Succeſſors, under Penalties: The County Stock, of which this Officer hath the Keeping, is raiſed by Rating every Pariſh yearly; and is diſpoſed of to Charitable Uſes, for the Relief of maimed Soldiers and Mariners, Priſoners in the County Gaols, paying the Salaries of Governors of Houſes of Correction, and Relieving poor Alms-houſes, &c. And the Duty of thoſe *Treaſurers*, with the Manner of raiſing the Stock, &c. is particularly in the Statutes of 43 *El. c.* 2. 7 *Jac.* 1. *c.* 4. 11 & 12 *W.* 3. *c.* 18. 5 *Ann. c.* 32. 6 *Geo.* 1. *c.* 23.

Treaſure-trove, (*Theſaurus inventus*) Is where any Money is found hid in the Earth, but not lying upon the Ground, and no Man knows to whom it belongs; then the Property thereof belongs to the King, or the Lord of the Manor by ſpecial Grant or Preſcription: But if the Owner may any ways be known, it doth not belong to the King or Lord of the Liberty, but ſuch Owner: By the *Civil Law*, *Treaſure trove* is given to the Finder; but the Law of *England* gives it to the King by his Prerogative, or ſome other claiming under him, &c. *Bract. lib* 3. 3 *Inſt.* 132. *Kitch.* 80. Nothing is ſaid to be *Treaſure-trove*, but Gold and Silver; and it is every Subject's Part as ſoon as he has found any *Treaſure* in the Earth, to make it known to the Coroners of the County, &c. and concealing Treaſure found is puniſhed by Fine and Impriſonment. *Briton. cap.* 17. *S. P. C.* 25. Coroners ought to inquire of *Treaſure trove*, being certified thereof by the King's Bailiffs or others, and of who were the Finders, &c. 4 *Ed.* 1. And Seiſures of *Treaſure trove*, may be inquired of in the Sheriff's Turn. 2 *Hawk. P. C.* 67.

Trebuchet, Tribuch, A Tumbrel or Cucking-ſtool; alſo a great Engine to caſt Stones to batter Walls. 3 *Inſt.* 319.

Treet, (*Triticum*) Fine Wheat, mentioned in the Statute 51 *H.* 3.

Tremagium, Tremeſſum, Tremiſſum, The Seaſon or Time for ſowing Summer-Corn, being about *March*, the third Month, to which the Word may allude; and Corn ſowed in *March* is by the *French* called *Tremes* and *Tremois*: *Tremeſium* was the Seaſon for Summer-Corn, Barley, Oats, Beans, &c. oppoſed to the Seaſon for Winter-Corn, Wheat and Rye, called *Hibernagium*, and is thus diſtinguiſhed in old Charters. *Cartular. Glaſton. MS.* 91.

Tremellum, A Word uſed for Granary, in *Mon. Angl. Tom.* 1. *pag.* 470.

Trencheator, (From the Fr. *Trancher*, to cut) A Carver of Meat at a Table; as in the Patent Rolls Mention is made of a Penſion granted by the King to *A. B uni* Trencheatorum *noſtrorum*, &c.

Trenchia, A Trench, or Dike newly cut. *Peramb.* 33 *H.* 3.

Trental, (Fr. *Trentale*) An Office for the Dead, that continued thirty Days, or conſiſting of thirty Maſſes; from the Ital. *Trenta*, i. e. *Triginta.* Stat. 1 *Ed.* 6. *c.* 14.

Treſpaſs, (*Tranſgreſſio*) Is any Tranſgreſſion of the Law under Treaſon, Felony, or Miſpriſion of either: But it is moſt commonly uſed for that Wrong or Damage, which is done by one private Man to another; or to the King in his Foreſt, &c. In which Signification it is of two Sorts; *Treſpaſs general*, otherwiſe term'd *Treſpaſs Vi & Armis*, and *Treſpaſs ſpecial*, or upon the *Caſe*. *Bro. Treſpaſs. Bract. lib.* 4. *Treſpaſs* ſuppoſes a Wrong to be done with Force; and *Treſpaſſes* againſt the Perſon of a Man are of ſeveral Kinds, *viz.* By Menacing or Threatening to hurt him; aſſaulting or ſetting upon one to beat him; Battery being the actual Beating of another; maiming of a Perſon ſo that he loſes the Uſe of his Limbs; by Impriſonment, or reſtraining him of his lawful Liberty, &c. *Treſpaſſes* againſt a Man's Property may be committed in divers Caſes; as againſt his Wife, Children, or Servants, or his Houſe and Goods, &c. and againſt his Land, by carrying away Deeds and Evidences concerning it, Cutting the Trees, or ſpoiling the Graſs therein, &c. *F. N. B.* 86, 87. *Finch* 198, 201. 2 *Roll. Abr.* 545. Action of Treſpaſs lies where a Man makes an Entry on the Lands of another, and does Damage: And *Treſpaſs Vi & Armis* may be brought by him that hath the Poſſeſſion of Goods, or of a Houſe, or Land, if he be diſturb'd in his Poſſeſſion; for the Diſturbance, beſides the private Damage, is alſo a Breach of the Publick Peace. 1 *Inſt.* 57. 2 *Roll. Abr.* 572. 2 *Lill. Abr.* 596. There is this Difference between an Action of Treſpaſs *Vi & Armis*, and Treſpaſs on the Caſe: The one lies where the original Act was a Wrong in itſelf, and the other where an Injury is conſequential to a lawful Act; as for Inſtance, 'tis lawful for a Man to make a Dam on his own Ground; but if by making it, the Water overflows his Neighbour's Land, an Action on the Caſe lies againſt him. *Mod. Caſ. in L. & E.* 275. Entry into a Houſe againſt a Man's Will is *Treſpaſs*; but a Man may lawfully come into the Houſe of another Perſon, to demand or pay Money; and if *Treſpaſs* be brought he may plead it ſpecially. 2 *Lill. Abr.* *Treſpaſs* lies generally for Breaking a Man's Cloſe; for chaſing Cattle, whereby they die or are injured; Taking away Pales, and Breaking of Fences, or of Doors or Windows of a Houſe; for Driving a Cart and Horſes over the Ground of another, where there is no Way for it; Fiſhing in another Perſon's Pond, and for Breaking the Pond; for Eating the Corn of another with Cattle, and Digging in any Man's Coal Mines, and carrying away Coals; for Taking away ſo much of the Plaintiff's Money; Tearing a Bond, &c. 1 *Bro.* 338. 1 *Saund.* 220. 2 *Cro.* 463. *Latch* 144. And where a Perſon has only the Crop and Veſture, or Paſture of Land, he may maintain *Treſpaſs*. *Moor* 456. 2 *Lutw.* In Treſpaſs for taking Goods, the Plaintiff muſt alledge a Property in himſelf; becauſe in ſuch Caſe there may be two Intendments, one that they were the Defendant's own Goods, and then the Taking is lawful; and the other that they were the Goods of the Plaintiff, when the Taking will be wrongful; but wherever the Conſtruction is indifferent, it ſhall always be moſt ſtrong againſt the Plaintiff. 2 *Lev.* 20. *Yelv.* 36. If the Defendant makes the Place where the *Treſpaſs* was done material by his Plea, he muſt ſhew it with great Certainty; but if it be a *Treſpaſs Quare clauſum fregit* in B. and the Defendant pleads that the Place where is his Freehold, which is the common Bar in this Caſe, and ſo juſtifies as in his Freehold, &c. if Iſſue be taken thereon, the Defendant may give in Evidence any Cloſe in which he hath a Freehold; though if the Plaintiff had replied and given the Cloſe a Name, the Defendant muſt have a Freehold in that very Cloſe. 2 *Salk.* 453. *Carthew*'s *Rep.* 176. A Plaintiff may make a *New Aſſignment* of the Place where, &c. and then the Defendant may vary from his firſt Juſtification: As for Inſtance; In Action of *Treſpaſs* aſſign'd to be done generally in *D.* the Defendant juſtified the Taking Damage feaſant; and the Plaintiff in his Replication made a new Aſſignment, upon which the Defendant juſtified for a Heriot; and it was adjudg'd good. *Moor* 540. 3 *Nelſ. Abr.* 381. The Defendant in his Plea may put the Plaintiff to the new Aſſignment; and every new Aſſignment is a new Declaration, to which the Defendant is to give a new Anſwer, and he may not traverſe it, but muſt either plead or demur; yet where *Treſpaſſes* are alledged to be done in ſeveral Places, and the Defendant pleads to ſome, and agrees to the Places wherein the Plaintiff alledged the *Treſpaſſes* to be done, there the Plaintiff may anſwer that Part of the Plea by a Traverſe, and ſhew a new Aſſignment as to the Reſt. *Cro. Eliz.* 492, 812. One Action of *Treſpaſs* may be brought for a *Treſpaſs* committed in Lands which lie in ſeveral Towns or Vills, if they are in one and the ſame County; for elſe they cannot receive one Trial, as they are local Cauſes of Action triable in the County where done. 2 *Lill. Abr.* 595. A Man may have one Action of *Treſpaſs* for ſeveral *Treſpaſſes*: And if divers Actions of *Treſpaſs* are brought for one and the ſame Cauſe, the Defendant may get them joined into one, if brought to vex him; but the *Treſpaſſes* muſt not be of ſeveral Natures, which may not be tried in one Action. *Mich.* 24 *Car. B. R.* All Perſons that are acceſſary to any *Treſpaſs*, may be charged as Principals; and *Treſpaſſes* continued may be laid with a *Continuando diverſis diebus & vicibus*; but Things muſt lie in Continuance, and not terminate in themſelves, or it will not be good: And where a *Treſpaſs* is alledged with a Continuance, that cannot be continued, the Evidence ought only to be to the firſt Act. 2 *Salk.* 638, 639. The beſt Way to declare for ſuch *Treſpaſſes* which lie in Continuance, is for the Plaintiff to ſet forth in his Declaration, that the Defendant, between ſuch a Day and ſuch a Days, cut ſeveral Trees, &c. and not lay a *Continuando Tranſgreſſiones* from ſuch a Day to ſuch a Day; and upon ſuch Declaration, the Plaintiff may give in Evidence a Cutting on any Day within thoſe Days. 3 *Salk.* 360. When a *Treſpaſs* is done before the Day mentioned in the Declaration, it is good enough; becauſe being once a *Treſpaſs*, it is always a *Treſpaſs*. *Cro. Eliz.* 32. In all *Treſpaſſes* there ought to be a voluntary Act, and alſo a Damage; and though in Detinue and Trover, where the Thing it ſelf is in Demand, it ſhould be particularly named; 'tis not ſo in *Treſpaſs* where Damages only are to be recovered: But if *Treſpaſs* be laid in a Declaration for Taking of Goods, without expreſſing the Quantity and Quality of them, or the Value, &c. it is bad upon a general Demurrer; though as to the Omiſſion of the Value, it hath been held to be good after Verdict. *Latch* 13. *Style* 170. 2 *Lev.* 230. *Lutw.* 1384. *Sid.* 39. If the Defendant in *Treſpaſs Quare clauſum fregit*, diſclaim any Title to the Land, and the *Treſpaſs* is involuntary or by Negligence, he may be admitted to plead a Diſclaimer and Tender of Amends before the Action brought, &c. And if it be found for the Defendant, the Plaintiff ſhall be barred. 21 *Jac. c.* 16. Where a Defendant juſtifies for a *Treſpaſs*, he muſt confeſs it, or it will be ill: And a Defendant ſhall never be excuſed in *Treſpaſs*, unleſs upon an inevitable Neceſſity. 3 *Nelſ. Abr.* 379. In a *Treſpaſs Quare clauſum fregit*, where there is only a Force in Law; as if one enters into the Ground of another, the Party muſt be required to go out before Hands may be laid on him; for every Impoſition of Hands is an Aſſault which cannot be juſtified upon the Account of a Force or Breaking a Cloſe in Law, without Requeſt to be gone; but 'tis otherwiſe where there is an actual Force. 2 *Salk.* 644. For any the leaſt Beating of a Man's Wife, the Huſband and Wife together may bring Action of *Treſpaſs*: And if it be ſuch a Beating, as he thereby loſes her Company, or Service, he alone may have this Action. 3 *Rep.* 113. 10 *Rep.* 130. *Treſpaſs* for Breaking the Plaintiff's Cloſe, and Beating his Servant; the Plaintiff had a Verdict, but could never get Judgment, becauſe he did not declare *per quod Servitium amiſit*: The Servant himſelf may have an Action of *Treſpaſs* for the Beating, though his Maſter cannot, unleſs it be ſo great that he loſes his Service; without which, it is no Damage to the Maſter. 5 *Rep.* 10. 9 *Rep.* 111. Action of *Treſpaſs* may be brought for Taking away a Man's Servant; but not for the Taking away of a Man generally. 5 *Mod.* 191. *Treſpaſs quod cepit & abduxit* lies not for the Father for Taking and carrying away any of his Children, except for Taking of a Son or Daughter who is Heir. *Cro. Eliz.* 769. A Man committed Adultery with a Woman in *Southwark*, where they both dwelt, and the Woman went to *Ratcliff* in *Middleſex*, from whence the Man brought her to *Richmond* in *Surrey*; the Huſband brought an Action of *Treſpaſs de Uxore Rapta & abducta cum bonis Viri*; and it was a Doubt, whether upon this Matter given in Evidence, the Defendant could be found guilty in *London*; but the Jury found him guilty generally, and gave the Plaintiff 300 *l.* Damages. *Dyer* 256. Executors may bring *Treſpaſs* for Goods taken out of their Poſſeſſion, or for Goods and Chattels taken in the Life of the Teſtator; alſo Adminiſtrators ſhall have it for Goods of Inteſtates; and an Ordinary may bring Action of *Treſpaſs* for Goods in his own Poſſeſſion to adminiſter as Ordinary, &c. If a Man voluntarily take away my Goods or Cattle, and keep them till I pay him Money, on Pretence that they are his Heriot, &c. when they are not ſo, I may have Action of *Treſpaſs*. *Bro. Treſp.* 354. And if the Sheriff have a Writ againſt the Lands and Goods of one Man, and he by Miſtake execute it upon my Lands or Goods; this Action lies againſt him, and it will be no Excuſe that the Plaintiff or any other informed him they were the Goods, &c. of the Defendant. *Dyer* 295. *Kelw.* 119, 129. He that is poſſeſſed of Lands, tho' he hath no good Title, ſhall have this Action for a *Treſpaſs* againſt one who hath no Right to the Lands; but not againſt him that hath Right: And yet a Man having Right or Title to Land only, by Deſcent, Leaſe, &c. may not bring *Treſpaſs*, before Entry made thereon. *Plowd.* 431, 546. *Kelw.* 163. The Leſſee for Years after his Leaſe is expired, may have Action for a *Treſpaſs* done on the Land before his Leaſe was ended. *Bro. Treſp.* 456. An Action of *Treſpaſs* was brought by the Lord of a Manor, for *Treſpaſs* done in the Highway, by a Tenant's Beaſts breaking out of his Cloſe into the Waſte, and it was adjudged it would not lie. 1 *Bulſt.* 157. If *A.* is bound to Fence his Cloſe againſt *B.* and he againſt *C.* a Neighbour; and neither of them incloſe againſt one another, ſo that the Beaſts of *C.* for Want of Incloſure go out of the Ground, to that of *B.* and thence to *A.*'s Ground: In this Caſe *A.* ſhall have *Treſpaſs* againſt *C.* for he is bound only to Fence againſt *B.* and every one ought to keep his Cattle as well in open Grounds, not incloſed, as in ſeveral Grounds where there is Incloſure. *Dyer* 366. *Jenk. Cent.* 161. One drives my Cattle into another Man's Land, I may go on the Land and fetch them out; yet by this I am a *Treſpaſſer* to the Owner of the Ground, and he may have his Action againſt me for it, and I muſt take my Counter Remedy againſt him that drove them in. 21 *H.* 7. 27. 1 *Rep.* 54. If another Man have a Horſe, or other Goods in my Houſe or Ground, and he enter to take it away, without my Leave, Action of *Treſpaſs* lies againſt him: But if I drive the Cattle or carry the Goods of another into my Land, he may come upon the Land and take them, and no Action lieth. 4 *Shep. Abr.* 135, 136. Where a Man's Corn is in Danger of ſpoiling, in the Harveſt, &c. and his Neighbour brings it home to ſave it; or if ſtrange Cattle be in my Corn, and he drive them out, without Leave, *Treſpaſs* may be brought againſt him: But if my own Cattle in my Corn, are driven out by another, it is otherwiſe. *Kelw.* 88. If a Man hunt my Beaſts, in Ground belonging to me, or ſome other Perſon; he is liable to this Action: Though the Owner of the Land wherein Cattle are doing this *Treſpaſs*, may gently by himſelf, or his Dogs, chaſe them out, and juſtify the ſame. *Hill.* 16 *Jac. B. R. Bro. Treſp.* 421. 8 *Rep.* 67. If any Perſon ſhall maliciouſly maim, or hurt any Cattle, or deſtroy any Plantation of Trees, or throw down Incloſures, he ſhall forfeit treble Damages in *Action* of *Treſpaſs*. 22 & 23 *Car.* 2. *c.* 7. But in Action of *Treſpaſs*, if the Jury give not 40 *s.* Damages, the Plaintiff ſhall have no more Coſts than Damages, except the Freehold or Title of Land come in Queſtion, or ſomething of the Plaintiff's be carried away, *&c.* Stat. 23 *Car.* 2. *c.* 9. Though the Plaintiff, where the *Treſpaſs* is wilful and malicious, upon Certificate thereof by the Judge on the Back of the Record, ſhall recover Damages and full Coſts, by 8 & 9 *W.* 3. *c.* 11. And Damages being ſmall under 40 *s.* in *Treſpaſs*, on Motion full Coſts have been allow'd; where Entry was made on the Freehold, *&c.* *Skin.* 100. *Carthew* 225. A Court, which is not a Court of Record, cannot hold Plea of *Treſpaſs Vi & Armis.* F. N. B. 85. *Writs of Treſpaſs* lie either to the Sheriff to determine the Matter in the County-Court, or returnable in *B. R.* or *C. B.* And the Words *Vi & Armis* ſhall be in the returnable Writs, but not in the others: Though in Writs of *Treſpaſs* upon the Caſe, thoſe Words muſt not be inſerted, if returnable in *B. R.* *&c.* F. N. B. 86, 190. *Treſpaſs quare Vi & Armis clauſum fregit* was brought, wherein the Plaintiff laid Damage to the Value of 20 *s.* and the Defendant demurred for that Cauſe, alledging that *B. R.* could have no Cognizance at Common Law, or by the Statute of *Glouceſter*, to hold Plea in an Action where the Damages are under 40 *s.* But it was adjudg'd, that *Treſpaſs Quare Vi & Armis* will lie in this Court, be the Damages what they will. 3 *Mod.* 275. At Common Law, in *Treſpaſs Vi & Armis*, if the Defendant was convicted, he was to be fined and impriſoned; but in other *Treſpaſſes* only amerced. *Jenk. Cent.* 185. In Action of *Treſpaſs* againſt two Perſons for carrying away Goods, *&c.* one lets Judgment go by Default, and the other juſtifies under a Licence from the Plaintiff, and has a Verdict; this goes to the whole, and Judgment ſhall be arreſted as to the other Defendant. 2 *Ld. Raym.* 1372, 1374. The Proceſs in Writ of *Treſpaſs* is an Attachment and *Diſtringas*, and upon a Return of a *Nihil* by the Sheriff, a *Capias*, *Alias*, and *Pluries* ſhall iſſue; and then Exigent and Proceſs of Outlawry, *&c.* *New Nat. Br.* 193, 203. See *Action on the Caſe*, and *Traverſe.*

Form of a common *Writ of Treſpaſs.*

GEORGE *the Second*, &c. *To the Sheriff of* S. *Greeting: If* A. B. *ſhall make you ſe ure*, &c. *then put by good and ſafe Pledges* C. D. *that he be before our Juſtices at* Weſtminſter, *on the Octave of* St. Hillary, *to ſhew why with Force and Arms, upon him* A. *at*, &c. *he made an Aſſault, and him beat, wounded, and evil treated, and other Wrongs to him did, to the grievous Damage of the ſaid* A. *and againſt our Peace; and have you there the Names of the Pledges and this Writ*, &c. ———Or, *why with Force and Arms, the Cloſe of him* A. *at* N. *he did break, and in it without his Leave, ſo many Cows, of ſuch Price, he took and carried away*, &c.———Or, *why the Graſs or Corn of him* A. *at*, &c. *lately growing, to the Value of*, &c. *with certain Beaſts, he eat up, trod down and conſumed; and other Wrongs*, &c.

Treſpaſſer, Is one who commits a *Treſpaſs*; and tho' the Law allows a Man to enter a Tavern, a Landlord to diſtrain on Land, *&c.* yet if he doth abuſe it by Committing a *Treſpaſs*, the Law will adjudge him a *Treſpaſſer ab initio.* 8 Rep. 146. But where Perſons for any Irregularity in taking a Diſtreſs, *&c.* ſhall not be *Treſpaſſers ab initio*; ſo as they make Satisfaction for any ſpecial Damage, *vide* Stat. 11 *Geo.* 2. *c.* 19. and *Diſtreſs.*

Treſpaſſants, (*Fr.*) Is uſed for Paſſengers, by *Britton*, *cap.* 29.

Treſturnare, To turn or divert another Way; as to turn a Road, *&c.* *Chart. K. John.*

Treyts, (*Fr.*) Signifies taken out or withdrawn, and is applied to a Juror removed or diſcharged. *F. N. B.* 159.

Trial, (*Triatio*) Is the Examination of a Cauſe, Civil or Criminal, before a Judge who has Juriſdiction of it, according to the Laws of the Land: It is the *Trial* and Examination of the Point in Iſſue, and of the Queſtion between the Parties, whereupon Judgment may be given. 1 *Inſt.* 124. *Finch* 56. Alſo 'tis taken for the Manner and Order of Proceeding, in the hearing and determining of Matters in Difference, being diverſly uſed, according to the Nature of the Thing to be *tried. Ibid.* And there are many Kinds of *Trials*; as of Matters of Fact, which ſhall be *tried* by a Jury; Matters of Law, that are *triable* by the Court; and Matters of Record *tried* by the Records themſelves; alſo ſome Things ſhall be *tried* by the Biſhop's Certificate; and ſome by Inſpection, *&c.* 2 *Lill. Abr.* 602. Nothing that is *triable* by an Iſſue; can be directed to be *tried* otherwiſe: Irregularities in ſuing out a Judgment or Execution, are *tried* by Reference, *&c.* But other Matters ſubſequent to the Judgment, by an *Audita Querela.* Comber. 8, 14. In criminal Caſes, it is uſual to ask the Criminal how he will be *tried*; which was formerly a very ſignificant Queſtion, though it is not ſo now, becauſe anciently there were *Trial by Battle*, by *Ordeals*, and by *Jury*; and when the Offender anſwered the Queſtion, *By God and his Country*, it ſhewed that he made Choice to be *tried* by a *Jury*: But now there is no other Way of *Trial* of Criminals. *Blount's Dict.* It is ordained by *Magna Charta*, that no Perſon ſhall be condemn'd on any Accuſation without *Trial* by lawful Judgment of his Peers, or by the Law. 9 *Hen.* 3. *cap.* 29. And the moſt general Rule has been, that every *Trial* ſhall be out of that Town, Precinct, *&c.* within which the Matter of Fact *triable* is alledg'd, or the neareſt thereunto, for the better Cogniſance of the Fact committed; and not to have Things *tried* in Foreign Counties, where the Jury are Strangers to the Parties, to the Witneſſes, and the Point in Iſſue. 1 *Inſt.* 125. But when an Indictment is found againſt a Perſon in the proper County, it may be heard and determined in another County by ſpecial Commiſſion, *&c.* 3 *Inſt.* 27. If a Subject of *England* be killed in a *Foreign Kingdom*, by an *Engliſhman*, he may be tried by the Conſtable and Marſhal; or by Commiſſioners in any County. Stat. 33 *H.* 8. If any Man die here in one County, of a Wound received in another; he ſhall be tried by a Jury of the County where his Death was: In Appeal in ſuch Caſe, it is to be there brought, and *Trial* be by both Counties. Stat. 3 *Ed.* 6. *cap.* 24. 3 *H.* 7. *c.* 12. And if one be wounded on the Sea, or out of *England*, and die of the ſame here; or ſhall be wounded in *England*, and die on the Sea, or at any Place abroad; an Indictment may be found by Jurors of the County in which the Death, or Stroke, *&c.* happen'd, and the Judges proceed in the *Trial* againſt the Offenders, as if the Felony were there done, *&c.* by Stat 2 *Geo.* 2. *c.* 21. An Iſſue being joined in *B. R.* of a Matter *triable* in *Ireland*; this ſhall be ſent into *Ireland* to be *tried*, and after *Trial* be remanded: Though if an Iſſue be thus joined of a Thing in *Wales*, the Record ſhall not be ſent there to be *tried*; but it ſhall be *tried* in the next County of *England* adjoining thereto. 1 *Danv. Abr.* 248. If a Foreign Iſſue which is local, ſhould happen, it may be *tried* where the Action is laid; and for that Purpoſe the Plaintiff may enter a Suggeſtion on the Roll, that ſuch a Place in ſuch a County is next adjacent; and it may be *tried* in *B. R.* by a Jury from that Place, according to the Laws of that Country, which may be given in Evidence: Adjudged in Action of Debt for Rent, upon a Leaſe made in *London* of Lands in *Jamaica*; and it was held, that where the Leſſor declares upon the Privity of Eſtate, the Action muſt be brought where the Lands are; but 'tis otherwiſe when the Action is founded on the Privity of Contract, the one being local, and the other tranſitory, as in this Caſe. 2 *Salk.* 651. In Covenant, the Action was laid in *London*, and Iſſue joined upon a Feoffment in *Oxfordſhire*, of Lands in that County, and the Cauſe was *tried* in *London*; after Verdict it was objected that the *Trial* ought to have been in *Oxfordſhire*, but reſolved that by the Stat. 17 *Car.* 2. it was well *tried* in the County where the Action was brought: But though the Words of that Statute are, that it ſhall be good, if *tried* by the County where the Action is laid, it hath been adjudged, that muſt be underſtood of a *Trial* by the County where the Matter in Iſſue doth ariſe; for otherwiſe it would deſtroy the whole Law concerning *Trials* by Juries. 3 *Salk.* 364. In the *Trial* of a Grant of Lands, if the Iſſue be whether ſuch Grant was made or not, the *Viſne* ſhall be from that Place where that is alledged; ſo upon *Dimiſit*: But 'tis otherwiſe of a Feoffment or Leaſe for Life, when Livery is made; for there it ſhould be *tried* where the Land lieth. *Jenk. Cent.* 338. In Ejectment the *Venue* ought to come always from the Place where the Lands lie, and not from the Place where the Demiſe is laid to be made: But that Fault is help'd after Verdict. *Mod. Ca.* 265. And by the Statute 4 & 5 *Ann.* the *Venire* for the *Trial* of any Iſſue in a civil Cauſe, ſhall be awarded of the Body of the County where the Iſſue is. On civil Cauſes grown to Iſſue, if they are to be *tried* in *London* or *Middleſex*, and the Defendant live not forty Miles from *London*, eight Days Notice of *Trial* is to be given; and if the Defendant lives that Diſtance or further, he muſt have fourteen Days Notice from the Plaintiff, before he *tries* his Cauſe; but eight Days Notice of *Trial* is good at the Aſſiſes, let the Defendant live where he will, except on an old Iſſue; where a Cauſe hath remained four Terms without Proſecution, in which Caſe a Term's Notice is to be given: Upon due Notice of *Trial*, the Defendant muſt generally go to *Trial*, or Judgment will paſs againſt him by Default; and where the Plaintiff proceeds not to *Trial* after Notice, and there is no Countermand, the Defendant ſhall have Coſts for Attendance, &c. or the Defendant may give a Rule to try the Cauſe by *Proviſo*, and on Notice given the Plaintiff bring it to *Trial*, that he may diſcharge himſelf of the Action, and herein he may recover Coſts. 2 *Lill. Abr.* 609, 613. 23 *Hen.* 8. *cap.* 15. A late Statute ordains, that where any Iſſue is joined in the Courts at *Weſtminſter*, &c. if the Plaintiff neglects bringing it to be *tried*, according to the uſual Practice, the Judges on Motion made, and due Notice given, ſhall paſs the like Judgment for the Defendant in the Action, as in Caſe of a Nonſuit, and award him Coſts; unleſs a Judge find Cauſe to allow further Time for the *Trial*: And no Cauſe ſhall be try'd before any Juſtice of Aſſiſe or *Niſi prius*, or at the Sittings in *London* or *Weſtminſter*, without ten Days Notice at leaſt, if the Defendant lives above 40 Miles from the ſaid Cities; and when any Party gives ſuch Notice of *Trial*, if he does not countermand it in Writing ſix Days before, he ſhall pay Coſts to the Defendant, &c. Stat. 14 *Geo.* 2. *c.* 17. If a Cauſe to be *tried*, be not enter'd in the Judge's Book, two Days before the Time of *Trial*, a *Ne Recipiatur* may be enter'd, that it be not ſet down to be *tried* that Time; but this will not be admitted in Sittings after the Term. *Hill.* 22 *Car. B. R.* To *proceed to Trial*, in the *Courts at Weſtminſter*, when the Declaration is drawn, and the Appearance of the Defendant made, it muſt be delivered with an Imparlance to the Defendant's Attorney; then it is to be entered upon the Prothonotaries Roll and docquetted that Term, and the Term following Rule muſt be given with the Secondary for the Defendant to plead by ſuch a Day, or the Plaintiff to have Judgment: The Defendant having pleaded, a Copy of the Iſſue is to be made out and delivered to the Defendant's Attorney, giving him Notice of *Trial*; in order to which, the *Venire facias* muſt be had and return'd by the Sheriff, and then is ſued out the *Habeas Corpora*, to bring in the Jury, the Record is made up, and the Parties go to *Trial*: But if the Defendant neglects to plead, and lets it go by Default, on entring Judgment, a Writ of Inquiry of Damages is to be awarded, returnable the next Term, of the Execution whereof the Defendant's Attorney ſhall have Notice; which being executed, and the Damage inſerted in a Schedule annexed to the Writ returned by the Sheriff, a Rule is to be given upon it, and Coſts are taxed by the Prothonotary; and laſtly, it is carried to the Clerk of the Judgments, who on giving him the Number-Roll and Term, when the Judgment was enter'd, he will make out a Writ of Execution, either a *Capias ad ſatisfaciend.* or *Fieri facias*, for the Damages and Coſts, &c. *Practiſ. Attorn. Edit.* 1. *pag.* 99. At the *Aſſiſes*, when a Cauſe comes on to *Trial*, firſt a *Diſtringas* of the Jury is to be return'd by the Sheriff, and then the Record muſt be delivered to the Judge's Marſhal; and the Record being put into the Hands of the Marſhal, Briefs prepared for the Counſel, and all Parties ready, the Marſhal delivers the Record to the Judge, and the Crier calls over the Jury: The Jury are now to be Ballotted and ſworn, and bid to ſtand together and hear their Charge; after which, the Counſel on both Sides open the Caſe, firſt of the Plaintiff, the Proof lying on his Side, and looking over their *Breviates* argue the Matter in Conteſt according to Law, producing Witneſſes to prove the Facts alledged; and when the Counſel have done, the Judge ſums up the Evidence, and gives it in Charge to the Jury to do impartially, and the Clerk of Aſſiſe, or his Aſſociate, delivers a Copy of the Jury's Names, and the Iſſue they are to *try*, to the Jury; and a Bailiff being ſworn to keep them without Meat, Drink, &c. till they are agreed, they depart from the Bar; and when they are all agreed, they return to give in their Verdict: Then the Plaintiff is called, and if he do not appear, a Nonſuit ſhall be recorded; but if he appears, the Clerk asks the Jury who they find for, and what Coſts and Damages, and ſo enters it on the Back of the Panel, and repeats it to the Jury, which finiſhes the *Trial*: And after the *Trial* is over, the Aſſociate delivers to the Party recovering the Record with the *Diſtringas*, and the Names of the Jury annexed, on the Back of which he indorſes the Subſtance of the Verdict, and the Coſts given by the Jury; and then upon the Back of the Record is ingroſſed the *Poſtea*, which is delivered to the Clerk of the Rules, and he makes out a Four Days Rule for Judgment; and when the Rule is out, if Judgment be not arreſted, further Coſts are taxed, and the Judgment is fit to be entered: But in *Trials* at the Aſſiſes, the Record and *Diſtringas* are uſually kept by the Aſſociate till the next Term, when he is to be called upon for the *Poſtea*, and you proceed to have it marked, make out a Rule, and ſign Judgment; and Judgment being entered, Execution is thereupon awarded, and Writs of *Ca. ſa. Fieri fac. Elegit*, &c. *Ibid.* 100, 101. If a *Trial* be had the laſt Day of Term, or at the Sittings after the Term, or the Aſſiſes, Judgment cannot be given thereon, till the firſt Day of the next *Term*. When a Defendant is not prepared to *try* his Cauſe, upon Petition and Affidavit of the Reaſons, the Judge will order the Cauſe to be ſtayed till another Day the ſame Aſſiſes; or in *London* till the next Term, on Payment of Coſts: And in Caſe at a *Trial*, the Court ſees that one of the Parties is ſurpriſed, through ſome Caſualty, and not by any Fault of his own, they may in their Diſcretion put off the *Trial* to another Time, until ſuch Party is better prepared. 2 *Lill* 609, 610. If the Matters conteſted are of great Value, or the Title in Queſtion is difficult or intricate, on Motion the Judges will order a *Trial at Bar*, for the better Satisfaction of the Parties; though it is not uſual to grant *Trials* at Bar the ſame Term moved for: And theſe *Trials* are appointed by the Statute of *Weſtm.* 2. where the Cauſe requires *Magnam Examinationem*; alſo Officers of the Court, and Barriſters at Law, may inſiſt upon a *Trial* at Bar; after which, a new *Trial* is not to be granted. 2 *Salk.* 648, 651, 653. It hath been laid down as a Rule, that after a *Trial* at Bar, no new *Trial* ſhall be had in any Caſe, except it appear that there hath been ſome Corruption in the Jury. *Carthew* 507. *New Trials* may be granted generally in ſeveral Caſes, *viz.* where the Defendant had not ſufficient Notice given him of the former *Trial*; if exceſſive Damages are given; a Verdict is againſt Evidence; there was any Fraud, *&c.* But a new *Trial* ought not to be allowed for Want of Evidence at the former *Trial*, which the Party might then have produced: And it hath been denied, where the Defendant forgot to bring a Settlement at the *Trial*; ſo likewiſe where very large Damages were given, on the Report and Opinion of the Judge who *tried* the Cauſe, that he believed the Jury gave a Verdict according to their Conſciences: And no new *Trial* ſhall be granted for too ſmall Damages; unleſs where Action of Covenant is brought for a Sum certain, and the Jury give Damages under the ſame, *&c.* The Reaſon of granting new *Trials* upon Verdicts againſt Evidence at the Aſſiſes is, becauſe the *Trials* are ſubordinate to the Courts; and ſuch new *Trials* have been anciently granted, as appears from this; that it is a good Challenge to a Juryman to ſay that he hath been a Juror before in the ſame Cauſe; Adjudged that a new *Trial* cannot be granted in an inferiour Court. 2 *Salk.* 647, 648, 649, 650. 3 *Nelſ. Abr.* 414, 417. After a Motion in Arreſt of Judgment, the Party ſhall not move for a new *Trial*; but after Motion for a new *Trial*, he may move in Arreſt of Judgment. 2 *Salk.* 647. A new *Trial* is never granted in criminal Caſes, where the Defendant is acquitted, if ſome Fraud or Trick be not proved in the Caſe: *Ibid.* But on Conviction, a new *Trial* may be granted upon Cauſe; ſo if a *Trial* on Indictment be by a wrong *Venue*; and in Caſes where Appeal may be brought. 2 *Lill.* 606, 613. If the Iſſue *tried* in any Cauſe is not joined, it is not a good *Trial*; except it be an Iſſue in *Chancery* in the Petty Bag Side, which is to be ſent from thence to be *tried* in *B. R. Hill* 22 *Car.* It is a *Miſ-trial* for a Thing to be *tried* before a Judge, who hath Intereſt in the Thing in Queſtion; and if a Cauſe is *tried* by a Jury out of a wrong County, or there be any Error in the Proceſs againſt the Jurors, or it is directed to a wrong Officer, *&c.* it is a *Miſ-trial*; likewiſe where Matter of Record is *tried* by a Jury, it will be a *Miſ-trial*; but if the Matter of Record be mixed with Matter of Fact, *Trial* by Jury is good. *Hob.* 124. On a *Miſ-trial*, Judgment may not be given; but ſhall be arreſted, *&c.* But a *Miſ-trial* is helped by the Statute of *Jeofails.* See *Iſſue*, *Niſi prius*, *&c.*

A Record *of a* Trial *and* Judgment *in Action of Debt.*

Pleas before the Lord the King at *Weſtminſter*, of *Hillary* Term in the Sixth Year of the Reign of our Sovereign Lord *GEORGE* the Second, King of *Great Britain*, *&c.* Roll 20.

Somerſet, ſſ. I*T is to be remembred, that heretofore, to wit, in* Michaelmas *Term laſt, came before the Lord the King at* Weſtminſter, A. B. *by* C. D. *his Attorney, and brought here into the Court of the ſaid Lord the now King, then there held, his certain Bill againſt* E. F. *in Cuſtody of the Marſhal,* &c. *of a Plea of Debt, and there are Pledges of Proſecuting, to wit,* John Doe *and* Richard Roe; *which ſaid Bill follows in theſe Words, that is to ſay:* Somerſet, ſſ. A. B. *complains of* E. F. *otherwiſe called,* &c. *in the Cuſtody of the Marſhal of the* Marſhalſea *of our Sovereign Lord the King, being before the King himſelf, of a Plea, that he render unto the ſaid* A. *Forty Pounds of good and lawful Money of* Great Britain, *which he owes to him, and unjuſtly detains; For that, whereas the aforeſaid* E. *the fifth Day of* June *in the Fourth Year of the Reign of the Lord* George *the Second, now King of* Great Britain, &c. *at* Bridgewater *in the County of* Somerſet *aforeſaid, by his Writing Obligatory, ſealed with the Seal of the ſaid* E. *and now here ſhewn to the Court of the ſaid Lord the King, the Date whereof is the ſame Day and Year above, acknowledged himſelf to be held and firmly bound to the aforeſaid* A. *in the aforeſaid Forty Pounds, to be paid to the ſaid* A. *when he ſhould afterwards be thereunto required: Yet the ſaid* E. *although thereto often required, hath not paid the ſaid Forty Pounds to the ſaid* E. *but hitherto hath altogether denied, and ſtill doth deny to pay the ſame to him; to the Damage of the ſaid* A. *Twenty Pounds, and thereupon he brings his Suit,* &c. And *now at this Day, to wit, on the Day,* &c. *in this ſame Term, to which Day the aforeſaid* E. *had Licence of Imparling, and then to Anſwer,* &c. *before the Lord the King at* Weſtminſter, *came as well the aforeſaid* A. *by his Attorney aforeſaid, as the aforeſaid* E. *by* G. H. *his Attorney; and the ſaid* E. *defends the Force and Injury, when,* &c. *and ſaith, That he by Virtue of the aforeſaid Writing Obligatory, ought not be charged with the Debt aforeſaid, becauſe he ſaith, that the Writing Obligatory aforeſaid, is not his Deed; and of this he puts himſelf upon the Country, and the aforeſaid* A. *likewiſe,* &c. *Therefore let there come a Jury thereof before our Lord the King at* Weſtminſter, *on,* &c. (*ſuch a Return-Day*) *and who are neither,* &c. *to recognize,* &c. *becauſe as well,* &c. *The ſame Day is given to the ſaid Parties here,* &c. *And afterwards the Proceeding thereof was continued between the Parties aforeſaid, of the Plea aforeſaid, by Jurors put thereof between them reſpited before our ſaid Lord the King at* Weſtminſter, *until the Day,* &c. *unleſs the Juſtices of the Lord the King, aſſigned to hold the* Aſſiſes *in the County aforeſaid, ſhould on the Day of,* &c. *at,* &c, *according to the Form of the Statute in ſuch Caſe made and provided, come before for Default of the Jurors; therefore let the Sheriff have their Bodies,* &c. *The ſame Day is given to the Parties aforeſaid there,* &c. *And be it known, that the Writ of the ſaid Lord the King thereof, on the Day,* &c. (*the Day of the Return of the* Venire) *in the ſame Term, before the Lord the King at* Weſtminſter, *was delivered of Record to the Deputy Sheriff of the County aforeſaid, in due Form of Law to be executed,* &c. Afterwards, (*that is to ſay*) *on the Day, and at the Place within contained, came as well the within named* A. B. *as the within written* E. F. *by their ſaid Attornies within mentioned, before Sir* R. E. *Knight, Chief Juſtice of the Lord the King of his Court of Common Pleas, and* R. J. *Eſq;* (*aſſociated to him for this Purpoſe*) *and* A. D. *Eſq; another of the Juſtices of the ſaid Lord the King, of his ſaid Court of Common Pleas, appointed to hold the Aſſizes in the County of* Somerſet, *by Virtue of the Writ of the Lord the King, directing the ſaid Aſſiſes to be held before any two of the Perſons therein named, if all named therein ſhould not come there,* (*the Preſence of the ſaid* A. D. *not being expected*) *and the Jurors of the Jury, being Summoned and Ballotted, according to the Form of the Statute in that Caſe made and provided, and tried and ſworn to declare the Truth of what is within contained, ſay upon their Oath, that the Writing Obligatory in the Declaration within mentioned, is the Deed of the ſaid* E. *as the ſaid* A. *hath within declared againſt him; and they*

they aſſeſs the Damages of the ſaid A. *on that Occaſion, beſides the Expences and Coſts by him laid out in the Proſecution of this Cauſe, to one Shilling, and his Expences and Coſts to Fifty-three Shillings and Four-pence.* Therefore *it is conſidered, that the ſaid* A. *do recover againſt the ſaid* E. *his ſaid Debt, and the Damages aſſeſſed by the ſaid Jury by Reaſon of detaining the ſame, and alſo Fourteen Pounds for his Expences and Coſts awarded by this Court to the ſaid* A. *with his Conſent, by way of Increaſe; which ſaid Damages, Expences and Coſts, amount in the whole to Sixteen Pounds Fourteen Shillings and Four-pence, and the ſaid* E. *is in Mercy*, &c.

Trials in Criminal Caſes. Firſt the Bill of Indictment againſt an Offender is prepared; and the Party Proſecutor and others bound over to give Evidence, being ordered to attend, the Grand Jury retire to conſider of the Bill; and on Examination of the Witneſſes, either they find the Bill of Indictment, or bring it in *Ignoramus:* If the Jury find the Bill, the Priſoner is brought to the Bar of the Court; and the Cryer ſays to him, *A. B.* hold up thy Hand, Thou ſtandeſt indicted by the Name of *A. B.* for ſuch a Felony, *&c.* (reciting the Crime laid in the Indictment) How ſayeſt thou, art thou Guilty of this Felony, *&c.* whereof thou ſtandeſt indicted, or Not Guilty? To which the Priſoner anſwers, Not Guilty; whereupon the Clerk of the Peace ſays *Cul. prit.* How wilt thou be tried? And the Offender anſwers, By God and his Country: When the Priſoner has pleaded Not guilty, (which is the common Plea) it is to be recorded; and then the Petty Jury are called upon the Panel, and a full Jury appearing, the Priſoner is told they are to paſs upon his Life and Death, and that he may Challenge any of them before they are ſworn; for not being indifferent, but partial, or other Defect, *&c.* Then the Jury are ſworn well and truly to try the Priſoner, and to bring in a true Verdict: This being done, the Indictment is recited, and the Jury are acquainted with the particular Crimes of which the Priſoner ſtands indicted; and the Clerk of the Peace ſays, To which Indictment he hath pleaded Not guilty, and for his *Trial* hath put himſelf upon God and his Country; ſo that you (the Jury) are to inquire whether he be guilty of the Felony, *&c.* whereof he ſtands indicted, or not? If you find him Guilty, you are to make Enquiry into what Goods and Chattels he had at the Time that the ſaid Felony, *&c.* was committed, or at any Time ſince: And if you find him Not Guilty, you ſhall inquire whether he did fly for it; and if he fled for it, what Goods, *&c.* he had at the Time of his Flight; but if you find him Not Guilty, and that he did not fly, you ſhall then ſay no more. Then the Clerk of the Peace ſwears the Witneſſes to give true Evidence; to ſpeak the whole Truth, and nothing but the Truth; and when the Evidence is given to the Jury concerning the Priſoner, the Jury are to be kept in a Room, by a ſworn Bailiff appointed, without Meat, Drink, Fire or Candle, and without any Perſons ſpeaking to them, till they bring in their Verdict. All Things being given in Charge, the Jury go to their Room and conſider of the Matter; when they are all agreed, and returned within or near the Bar, the Priſoner is brought forth, and the Jury are called over; who all appearing, and the Priſoner ſet to the Bar, the Clerk of the Peace ſays to them, Look upon the Priſoner, you Gentlemen of the Jury; How ſay you, is *A. B.* Guilty of the Felony, *&c.* of which he ſtands indicted, or Not guilty? If the Jury ſay Guilty, it is recorded, and the Priſoner taken away; if they ſay Not Guilty, he is bid to down upon his Knees, *&c.* and then the Clerk of the Peace ſays, My Maſters of the Jury, hearken to your Verdict as the Court hath recorded it; You ſay *A. B.* is guilty of the Felony, *&c.* whereof he ſtands indicted: To which they anſwer Yes: Then Proclamation is made for all Perſons to keep Silence, on which the Priſoner is ſet to the Bar, and Sentence paſſed upon him; after which an Order or Warrant is made for his Execution. This is the Manner of Proceeding againſt common Criminals; and the Priſoner is firſt to ſay what he can himſelf, then all that can ſay any Thing againſt him are to be heard upon Oath, and then others may be heard for him; and the Court is to be of Counſel with the Priſoner, and ought to adviſe him for his Good, not taking Advantage too ſtrictly againſt him. *Mod. Juſt. Edit.* 3. *pag.* 402, 403. 2 *Hawk. P. C.* 9 *Co. Rep.* 9. And a great Author obſerves, that through the Punctuality required by Law in the *Trial* of Cauſes, there is as much as Art and Conſcience can contrive againſt Corruption, and in Favour of Right, Liberty, Life and Reputation: And the greateſt Criminals here, have Privileges which they cannot be debarred of. See *Forteſcue's Laud. Leg. Angl.* 59, 60.

Form *of a* Record *of a* Trial *and* Judgment *in a Criminal Caſe.*

THE *Inquiſition taken at the Seſſions of the Peace of the Lord the King for the City of* London, *at* &c. *Hall of the ſaid City, on the Day of,* &c. *in the Year of the Reign of the Lord* George *the Second,* &c. *before Sir* F. C. *Knight, Lord Mayor of the City of* London *aforeſaid, Sir* R. B. H. P. *Eſq;* &c. *and* J. U. *one of the Serjeants at Law of the Lord the King, and Deputy Recorder of the ſaid City, Juſtices of the ſaid Lord the King, aſſigned to ſee the Peace kept in the City aforeſaid, and alſo divers Felonies, Treſpaſſes and Miſdemeanors in the ſaid City committed, to hear and determine; by the Oaths of* A. B. C. D. E. F. G. H. J. K. *&c. (the Jury) good and lawful Men of the Body of the City aforeſaid, who ſay upon their Oath aforeſaid, That* T. W. *late of* London, *Yeoman, and* J. R. *late of* London *aforeſaid, Yeoman, not having God before their Eyes, but moved and ſeduced by the Inſtigation of the Devil, the Day of,* &c. *in the Year of the Reign of our Lord* George, *&c.* *at* London *aforeſaid, that is to ſay, in the Pariſh of* St. Dunſtan in the Weſt, *in the Ward of* Farringdon without, *with Force and Arms,* &c. *feloniouſly and of their Malice forethought, in and upon one* L. T. *then and there being in the Peace of God, and of the ſaid Lord the King, made an Aſſault and Affray; and the aforeſaid* T. W. *a certain Gun called,* &c. *of the Value of Five Shillings, then and there charged with Gunpowder, and one Leaden Bullet, which Gun, the ſaid* T. W. *in his Right Hand then and there had and held, in and upon the aforeſaid* L. T. *then and there feloniouſly, voluntarily, and of his fore-thought Malice did ſhoot off and diſcharge, and the aforeſaid* T. W. *with the Leaden Bullet aforeſaid, from the Gun aforeſaid then and there diſcharged and ſent out, the ſaid* L. T. *in and upon the Left Part of the Body of him the ſaid* L. T. *near the Left Pap of the ſaid* L. T. *then and there feloniouſly ſtruck, giving to the ſaid* L. T. *with the Leaden Bullet aforeſaid, out of the Gun aforeſaid then and there ſent out, in and upon the aforeſaid Left Part of the Body of the ſaid* L. T. *near the aforeſaid Left Pap of the ſaid* L. T. *one mortal Wound, of the Breadth of half an Inch and in Depth five Inches, of which mortal Wound, the ſaid* L. T. *at* London *aforeſaid, in the Pariſh and Ward aforeſaid, inſtantly died; and that the aforeſaid* J. R. *feloniouſly, and of his fore-thought Malice, then and there was preſent, aiding, aſſiſting, abetting, comforting, and maintaining the aforeſaid* T. W. *the Felony and Murder aforeſaid, in Manner aforeſaid, to do and commit: And ſo the Jurors aforeſaid, upon their Oath aforeſaid ſay, That the ſaid* T. W. *and* J. R. *the aforeſaid* L. T. *at* London *aforeſaid, in the Pariſh and Ward aforeſaid, in Manner and Form aforeſaid, feloniouſly, voluntarily,*

luntarily, and of their fore-thought Malice did kill and murder, againſt the Peace of the Lord the King that now is, his Crown and Dignity, &c. And *afterwards, that is to ſay, at the Gaol Delivery of the Lord the King at* Newgate, *held for the City of* London *aforeſaid, at* Juſtice Hall *in the* Old Baily, *in the Pariſh of* St. Sepulchres, *in the Ward of* Farrington without *aforeſaid, the Day of,* &c. *in the Year of the Reign of our ſaid Lord* George *the Second,* &c. *before Sir* F. C. *Knight, Lord Mayor of the City of* London *aforeſaid, Sir* R. R. *Knight, Lord Chief Juſtice of the Lord the King,* &c. *Sir* E. P. *one of the Juſtices of the ſaid Lord the King,* &c. *Sir* R. B. *Knight,* H. P. *Eſq;* &c. *and* J. U. *one of the King's Serjeants at Law, and Deputy Recorder of the City of* London *aforeſaid, and other their Fellows Juſtices of the Lord the King, his Gaol aforeſaid of Priſoners in the ſame being to deliver aſſigned, The aforeſaid* T. W. *and* J. R. *under the Cuſtody of* S. R. *and* T. P. *Eſqrs; Sheriffs of the City of* London *aforeſaid, to the Bar aforeſaid brought, in their proper Perſons came, and being ſeverally asked, how of the Felony and Murder aforeſaid they would acquit themſelves; the ſaid* T. W. *ſaith, That he cannot deny, but that he is guilty of the Felony and Murder aforeſaid, to him in Form aforeſaid impoſed, and the ſaid Felony and Murder expreſly confeſſeth, and thereof putteth himſelf upon the Mercy of the King; and the ſaid* J. R. *ſaith, That he of the Felony and Murder aforeſaid, to him in Form aforeſaid impoſed or charged is Not guilty, and thereof for Good and Ill puts himſelf upon the Country: Therefore immediately cauſe a Jury thereof to come,* &c. *And the Jurors of the Jury aforeſaid, by the aforeſaid Sheriffs of the City of* London, *to this impanelled being called, that is to ſay,* L. M. N. O. P. R. S. T. &c. *came; who to ſay the Truth of and upon the Premiſſes, to the ſaid* J. R. *impoſed, choſen, tried and ſworn, ſay upon their Oath, that the aforeſaid* J. R. *is Guilty of the Felony and Murder, to him in Form aforeſaid impoſed, in Manner and Form as by the Indictment aforeſaid it is ſuppoſed; and that he at the Time of the Felony and Murder aforeſaid, in Form aforeſaid committed, or ever after had no Goods or Chattels, Lands or Tenements, to the Knowledge of the Jurors aforeſaid: Upon which the ſaid* T. W. *and* J. R. *being ſeverally ſpoken unto, If they had any Thing for themſelves to offer, or could ſay, why the Court aforeſaid, to Judgment and Execution of them and either of them for the Premiſſes ought not to proceed, and they ſay nothing but what at firſt they had ſaid; upon this, then and there, It is conſidered by the ſaid Juſtices, that the aforeſaid* T. W. *and* J. R. *to the Gaol of* Newgate *aforeſaid from whence they came, ſhall be ſent back, and thence be led, and either of them be led unto the Place of Execution, and there be hanged, and either of them be hanged, until,* &c.

Tricennale, Is the ſame with *Trental.* 1 Ed. 6.

Triceſima, An ancient Cuſtom in a Borough in the County of *Hereford,* ſo called, becauſe *Thirty Burgeſſes* paid 1 *d.* Rent for their Houſes to the Biſhop, who is Lord of the Manor. *Lib. Niger Heref.*

Tridingmote, The Court held for a *Triding* or *Trithing.* Chart. King *Hen.* 1.

Trihing or **Trithing,** (Sax. *Trithinga*) Contains the *third* Part of a County, or three or four Hundreds: Alſo it was a Court held within that Circuit of the Nature of the Court-Leet, but inferior to the County-Court. *Camd.* 102. *Magn. Chart. cap.* 36. The *Ridings* in *Yorkſhire* are corruptly called by that Name, from *Tridings* or *Trithings:* And thoſe who anciently governed thoſe *Trithings,* were termed *Trithing-Reves,* before whom were brought all Cauſes which could not be decided in the Hundreds; for from the Hundred-Court Suits might be removed to the *Trithing,* and thence to the County-Court. *Spelm.* See *Lath-reve.*

Trilion, A Word uſed by Merchants in Accounts, to ſhew that the Word Million is thrice mentioned. *Merch. Dict.*

Trimilchi. The *Engliſh Saxons* denominated the Month of *May Trimilchi;* becauſe they milk'd their Cattle three Times every Day in that Month. *Beda.*

Trinity, (*Trinitas*) The Number of three Perſons in the Godhead or Deity; and denying any one of the Perſons in the *Trinity* to be God, is ſubject to divers Penalties, and Incapacities, by the Stat. 9 & 10 *W.* 3. See *Religion.*

Trinity-Houſe, Is a Kind of College at *Deptford,* belonging to a Company or Corporation of Seamen, who have Authority by the King's Charter to take Knowledge of thoſe that deſtroy Sea marks; alſo to redreſs the Faults of Sailors, and divers other Things belonging to Navigation. 8 *Eliz. c.* 13. By a late Statute, Pilots of Ships coming up the *Thames,* are to be examined and approved by the *Maſter* and *Wardens* of *Trinity-Houſe,* &c. 3 *Geo.* 1. *c.* 13. See 5 *Geo.* 2. *c.* 20.

Trink, A Fiſhing Net, or Engine to catch Fiſh. 2 *Hen.* 6. *c.* 15.

Trinobantes, The Inhabitants of *Middleſex, Eſſex, Hertfordſhire,* &c.

Trinoda Neceſſitas, Signified a *threefold neceſſary Tax,* to which all Lands were liable in the *Saxon* Times, *i. e.* for repairing of Bridges; the maintaining of Caſtles or Garriſons; and for Expeditions to repel Invaſions: And in the King's Grants, and Conveyances of Lands, theſe three Things were excepted in the Immunities from other Services, *&c.* ——*Exceptis his tribus, Expeditione, Pontis & Arcis conſtructione.* Paroch. Antiq. 46.

Triours or **Triers,** Are ſuch as are choſen by the Court to examine whether a *Challenge* made to the Panel of *Jurors,* or any of them, be juſt or not. *Broke* 122.

Triroda terræ, A Quantity of Land, containing, three Rods or Perches. *MS. Eliam. Aſhmole Ar.*

Triſta, A Poſt or Station in Hunting. *Cowel.*

Triſtis, (From the Fr. *Traiſt,* i. e. *Truſt*) Is an Immunity, whereby a Man is freed from Attendance on the Lord of a Foreſt when he is diſpoſed to chaſe within the Foreſt; and by this Privilege, he ſhall not be compelled to hold a Dog, to follow the Chaſe, or ſtand at any Place appointed, which otherwiſe he is obliged to, on Pain of Amerciament. *Manwood, par.* 1. *pag.* 86

Trithing and **Trithing-Reve.** See *Trihing.*

Triumvir, A Trithing-Man, or Conſtable of *three Hundreds.* Hiſt. Elienſ.

Tronage, (*Tronagium*) Is a cuſtomary Duty or Toll for weighing of Wool: According to *Fleta, Trona* is a Beam to weigh with, mentioned in the Stat. *Weſt.* 2. *c.* 25. And *Tronage* was uſed for the weighing Wool in a Staple or publick Mart, by a common *Trona* or Beam; which for the *Tronage* of Wool in *London,* was fixed at *Leaden-Hall.* Fleta, lib. 2. c. 12. The Mayor and Commonalty of *London,* are ordained Keepers of the Beams and Weights for weighing Merchants Commodities, with Power to aſſign Clerks, and Porters, *&c.* of the Great *Beam and Balance;* which weighing of Goods and Wares is called *Tronage:* And no Stranger ſhall buy any Goods in *London,* before they are weighed at the King's Beam, on Pain of Forfeiture. Chart. K. *Hen.* 8

Tronator, (From *Trona,* i. e. *Statera*) An Officer in the City of *London,* who weighs the Wool brought thither.

Trope, (*Tropus*) A Rhetorical Way of Speech. *Litt. Dict.*

Troper, (*Troperium*) Is a Book of alternate Turns or Reſponſes in ſinging Maſs; called *Liber ſequentiarum,* by *Lindewode.* Hoved. Hiſt. p. 283.

Trophy Money, Signifies Money yearly raiſed and collected in the ſeveral Counties of *England,* towards providing Harneſs and Maintenance for the

the *Militia*, &c. Stat. 15 *Car.* 2. 1 *Geo.* 1. See *Militia.*

Trover, (From the Fr. *Trouver*, i. e. *invenire*) Is an Action which a Man hath againſt one, that having found any of his Goods, refuſeth to deliver them upon Demand: Or if another hath in his Poſſeſſion my Goods, by Delivery to him, or otherwiſe, and he ſells or makes Uſe of them without my Conſent, this is a *Converſion* for which *Trover* lies; ſo if he doth not actually convert them, but doth not deliver them to me on Demand. 2 *Lill. Abr.* 618. It is called *Trover and Converſion*, and is a ſpecial Action of the Caſe, brought to recover Damages to the Value of the Goods, *&c.* In this Action, the Plaintiff ſurmiſeth that he loſt ſuch and ſuch Goods, and that the Defendant hath found them, and converted them to his own Uſe at ſuch a Place; but the Loſing is but a mere Suggeſtion, and not material: For if the Plaintiff delivered the Goods to the Defendant; or if the Defendant take the Goods in his Preſence, *&c.* this Action lies againſt him, if there be a Converſion; which is the Point of the Action, and therefore muſt be particularly alledged: If a Man finds Goods, he may take Poſſeſſion of them, and no Action lies; but he ought not to abuſe or uſe them, for therein lies the Offence: And where a Man finds my Goods, and refuſeth to deliver them upon Demand, it is a Converſion in Law; but if he anſwers that he knows not whether I am the true Owner or not, and therefore denies to deliver them; this is no Converſion if he keeps them for me. 1 *Danv. Abr.* 21, 22, 23. A Perſon finds the Goods of another, and uſes or wilfully abuſes them; as if it be Paper, and he put it into Water, or the like, this Action of *Trover* lies againſt him: But not for any Negligence in the keeping of them; as where one finds another's Garment, and ſuffers it to be Moth-eaten, *&c.* here no Action will lie. 1 *Cro.* 219. If in *Trover*, an actual Converſion cannot be proved, then Proof is to be had of a Demand made, before the Action brought, of the Thing for which the Action is commenced, and that the Thing demanded was not delivered; and in this Caſe, though an actual Converſion may not be proved, a Demand, and Refuſing to deliver the Things demanded, is a ſufficient Evidence to the Jury that he converted the ſame, till it appears to the contrary. 10 *Rep.* 56, 491. 2 *Lill.* 619. Where a Defendant comes to the Poſſeſſion by finding, Denial is a Converſion; but if he had the Goods, *&c.* by Delivery, there Denial is no Converſion, but Evidence of a Converſion: And in both Caſes, the Defendant hath a lawful Poſſeſſion, either by Finding or by Delivery; and where the Poſſeſſion is lawful, the Plaintiff muſt ſhew a Demand and a Refuſal, to make a Converſion: Though if the Poſſeſſion was tortious, as if the Defendant takes away the Plaintiff's Hat, the very Taking is a ſufficient Proof of the Converſion, without proving a Demand and Refuſal. *Sid.* 264. 3 *Salk.* 365. By *Holt Chief Juſtice*, the Denial of Goods to him, who hath a Right to demand them, is a Converſion; and after a Demand and Refuſal, if the Defendant tender the Goods, and the Plaintiff refuſe to receive them, that will go only in Mitigation of Damages; not to the Right of the Action of *Trover*, for the Plaintiff may have that ſtill. *Mod. Caſ.* 212. 3 *Nelſ. Abr.* 424, 425. An Action of *Trover* and Converſion may be brought for Goods, although the Goods come into the Poſſeſſion of the Plaintiff before the Action is brought; which doth not purge the Wrong, or make Satisfaction for that which was done to the Plaintiff by detaining the Goods: If a Man takes my Horſe and rides him, and afterwards delivers him to me, *Trover* lies againſt him; for this is a Converſion, and, the Re-delivery is no Bar to the Action. 1 *Danv. Abr.* 21. 2 *Lill.* 618. If Goods are delivered to one to deliver over to another, and he to whom they were firſt delivered do afterwards refuſe to deliver them over, and converts them to his own Uſe; he is liable to Action of *Trover*, not only by him who firſt delivered them, but alſo by him to whom they were to be delivered: And a Plaintiff may chuſe to have his Action of *Trover* againſt the firſt Finder of Goods; or any other who gets them afterwards by Sale, *&c.* 1 *Bulſt.* 68. 1 *Leon.* 183. If a common Carrier has Goods deliver'd to him to carry to a certain Place, and a Stranger takes them out of his Poſſeſſion, and converts the Goods to his own Uſe; Action of *Trover* and Converſion lies for the Carrier againſt him. 1 *Mod.* 31. *Trover* doth not lie againſt a Common Carrier for Negligence in loſing Goods; though it doth for an actual Wrong: And if Goods are ſtolen from a Carrier, he may not be charged in *Trover* and Converſion; but Action upon the Caſe on the Cuſtom of the Realm, *&c.* 2 *Salk.* 655. It has been held, that where Goods are ſtolen, and before Proſecution of the Offender by Indictment the Party robbed brings Action of *Trover*, it lies not; for ſo Felonies might be compounded: But where *A.* ſteals the Goods or Money of *B.* and is convicted and hath his Clergy, upon the Proſecution of *B.* If he brings *Trover* and Converſion for the Money, and on Not Guilty pleaded this ſpecial Matter is found, the Plaintiff ſhall recover. 1 *Hale's Hiſt. P. C.* 546 If upon a *Fieri facias* the Sheriff takes Goods in Execution, and before the Sale of them, a Stranger takes them away and converts them to his own Uſe; the Sheriff may have an Action of *Trover* and Converſion, as he had a lawful Poſſeſſion, and is anſwerable for them. 2 *Sand.* 47. And an Executor may have *Trover* for the Goods of the Teſtator; the Law gives him a Property, which draweth the Poſſeſſion to it, though there be not an actual Poſſeſſion. *Latch* 214 There muſt be a Right or Property in the Goods, or a lawful Poſſeſſion, *&c.* which is to be proved by the Plaintiff in *Trover*, before the Goods came to the Defendant's Hands: And if a Man finds his Goods loſt in the Hands of another, if he bought them in open Fair or Market; this alters the Property, and he cannot recover them. 1 *Inſt.* 498. 1 *Danv.* 23. The Plaintiff declared on a Converſion of his own Goods; the Defendant juſtified, for that the Property of the Goods was in *A. B.* who ſold them to him; adjudged this was no good Title to juſtify the Converſion without a Traverſe, unleſs the Goods had been ſold in a Market. 1 *Leon.* 221. In *Trover*, the Plaintiff may declare upon a *Devenerunt ad manus* generally; or ſpecially *per Inventionem devenerunt:* And the Plea on the Defendant's Part is commonly Not guilty, on which the ſpecial Matter may be given in Evidence, to prove the Plaintiff hath no Cauſe of Action; or to intitle the Defendant to the Thing in Controverſy: If the Defendant pleads a ſpecial Plea, he muſt confeſs and avoid, or traverſe the Title of the Plaintiff. 2 *Bulſt.* 313. *Wood's Inſt.* 540. The Defendant in *Trover* may plead Not guilty, and give in Evidence, that he diſtrained the Goods, and detained them till he was paid; but he cannot plead ſpecially that he took the Goods by Diſtreſs, or that he detained them as a Hoſt till paid for Horſes ſtanding, *&c.* for the Detainer being lawful, no Converſion is confeſs'd; though if he pleads a Matter which confeſſes a Converſion, and avoids it, 'tis good. *Yelv.* 198. 2 *Salk.* 654. A Man puts out Cattle to paſture at ſo much *per* Week; and then ſells them to the Plaintiff, who demands the Cattle, but the Defendant refuſes to let them go till paid for; *Trover* well lies, and the Defendant's Remedy muſt be by Action for the Money due to him for depaſturing the Cows; and he may not detain them for the Money, as in Caſe of an Inn-keeper, or a Taylor, of Things in their Cuſtody. *Cro. Car.* 27. 2 *Lill.* 622.

622. In *Trover* for a Bond, the Plaintiff need not ſhew the Date; for the Bond being loſt or converted, he may not know the Date; and if he ſhould ſet out the Date, and miſtake it, he would fail in his Action. *Cro. Car.* 262. If the Defendant find the Bond, and receive the Money, Action of Account lieth againſt the Receiver, and not *Trover. Cro. Eliz.* 723. The Plaintiff in Action of *Trover* alledged, that ſuch a Day and Year he required the Defendant to deliver the Goods, but he refuſed and converted them to his own Uſe; though he ſhewed no Day or Place of the Converſion, as the Day and Place were alledged of the Requeſt and Refuſal, it was held ſufficient. *Cro. Car.* 262. But the Place of Converſion muſt be generally mentioned in *Trover*, or it will be naught. *Cro. Eliz.* 78, 97. And yet where the *Trover* of Goods is in one County, and the Converſion in another County, the Action brought for theſe Goods may be laid in the County were the Converſion was, or in any other County, as it is only a tranſitory Action; and neither the Place of *Trover*, nor Converſion, are traverſable *Paſch.* 23 *Car. B. R.* If there be *Trover* before the Marriage of a Female Plaintiff, and a Converſion afterwards; the Husband and Wife may join, and it will be good. 2 *Lev.* 107. *Trover* lies againſt Baron and Feme, ſetting forth that they converted the Goods to the Uſe of the Husband; for the Feme may be a Treſpaſſer, and convert them to the Husband's Uſe, or the Uſe of a Stranger, but not to her own Uſe; and if the Converſion be laid *ad uſum* of her ſelf and Husband, or *ad uſum proprium, &c.* it will not be good. *Cro. Car.* 494. In *Trover* the Plaintiff may lay a Converſion here, and prove it in *Ireland*; 'tis otherwiſe in Treſpaſs *quare Clauſum fregit*, for there the Party cannot prove the Treſpaſs but where it lies, nor lay it in any other Place than where it is. *Stile* 331. 1 *Mod. Entr. Engl.* 393. Action of *Trover*, or *Detinue*, at the Plaintiff's Election, may be brought for Goods detained; for it is but Juſtice that the Party ſhould have his Goods detained if they may be had, or elſe Damages to the Value for the Detaining and Converſion of them. 2 *Lill. Abr.* 618. And Treſpaſs or *Trover*, lies for the ſame Thing; though they cannot be brought in one Declaration: And the Allegation of the Converſion of the Goods in Treſpaſs, is for Aggravation of the Damages, *&c. Cro. Jac.* 50. *Lutw.* 1526. *Detinue* doth not lie for Money numbered; but *Trover* and Converſion lies for it: For though in the Finding and Converting generally, the Money of one Perſon can't be diſtinguiſhed from that of another, all Money being alike; yet the Proof that the Plaintiff loſt, and Defendant converted ſo much, maintains the Action, if the Verdict finds it. *Jenk. Cent.* 208. Where Money is given to a Perſon to keep, though it be not in Bags, Action of *Trover* will lie; becauſe this Action is not to recover the Money, but Damages. *Poph.* 91. 3 *Salk.* 365. In Caſe a Maſter delivers Corn to his Servant to ſell, who does ſo and converts the Money, the Maſter may bring *Trover* againſt the Servant. 2 *Bulſt.* 307. 1 *Rolls Rep.* 59. And where an Apprentice goes into the Sea-Service, his Maſter ſhall have an Action of *Trover* for what Money he earns, if the ſame be refuſed Payment, *&c. Mod. Caſ.* 69. There is no proper Plea in Action of *Trover*, where it lies, but the General Iſſue Not Guilty; on which the Defendant may give in Evidence that the Goods or Money were not the Plaintiff's. *Bro.* 109. *Trover* lieth not for any Part of a Freehold; but if Doors fix'd are removed and converted, it will lie. *Wood's Inſt.* 540. In *Trover*, the Defendant may not wage his Law, as he may in Detinue; wherefore it often takes Place of that Action. See *Detinue*.

Troy-Weight, (*Pondus Trojæ*) A Weight of twelve Ounces to the Pound, having its Name from *Troyes*, a City in *Champaign*, whence it firſt came to be uſed here.

Truce, (*Treuga*) A League or Ceſſation of Arms; and anciently there were Keepers of *Truces* appointed; as King *Edw.* 3. conſtituted by Commiſſion two Keepers of the *Truce* between him and the King of *Scots*, with this Clauſe, *Nos volentes* Treugam *prædictam quantum ad nos pertinet obſervari, &c.* Rot. Scot. 10 Ed. 3. Vide *Conſervators of the Truce.*

Trug-Corn, (*Truga frumenti*) Is a Meaſure of Corn; and at *Leominſter*, at this Day the Vicar hath *Trug-Corn* allowed him for officiating at ſome Chapels of Eaſe within that Pariſh. *Liber Niger Heref.*

Truncus, A Trunk ſet in *Churches*, to receive the Oblations of pious People; of which, in the Times of *Popery*, there were many at ſeveral Altars and Images, like the Boxes which ſince the Reformation have been placed near the Doors of Churches for receiving all voluntary Contributions for the Poor: And the cuſtomary Free-will Offerings that were dropt into thoſe Trunks, made up a good Part of the Endowment of Vicars, and thereby oftentimes render'd their Condition better than in later Times.——*Vicarius habebit Oblationes quaſcunque ad* Truncos *tam in dicta Eccleſia de, &c. quam alibi infra Parochiam ipſius Eccleſiæ factas.* Ordin. Vic. Lancaſt. Anno 1430.

Truſſa, A Truſs or Bundle of Corn; mentioned among the cuſtomary Services done by Tenants. *Cartular. S. Edmund. MS.*

Truſt, (*Fiducia, Confidentia*) Is a Confidence which one Man repoſes in another; and if a Perſon in whom a Truſt is repoſed, breaks or doth not perform the ſame, the Remedy is by Bill in *Chancery*, the Common Law generally taking no Notice of Truſts. 2 *Lill. Abr.* 624. A *Truſt* and a *Uſe* were all one at Common Law, till the Stat. 27 *H.* 8. which diſtinguiſhed them: The Method of making Conveyances by Way of *Truſt*, was invented to evade the Statute of Uſes; and theſe Conveyances are not ſo much favoured in Law, as plain and direct Conveyances of Eſtates. *Paſch.* 23 *Car. B. R.* Declarations and Creations of *Truſts*, of Lands, Tenements or Hereditaments, are to be in Writing, ſign'd by the Party empowered to declare ſuch *Truſt*, &c. 29 *Car.* 2. *c.* 3. In the Explanation of this Statute, it is provided, That this ſhall not extend to *reſulting Truſts*, or *Truſts* ariſing by Implication or Conſtruction of Law; which ſhall be of like Force as before that Act. 4 & 5 *Ann.* And there is a Statute by which Infants ſeiſed of Eſtates in Fee in *Truſt*, may make Conveyances of ſuch Eſtates, by Order of the Chancery. 7 *Ann.* If a Man buys Land in another Perſon's Name, and pays the Money for the Lands, this will be a *Truſt* for him that paid the Money, tho' there be no Deed declaring the *Truſt*; becauſe the Statute of Frauds extends not to Truſts raiſed by Implication of Law: And a bare Declaration by Parol, on a Deed aſſigned, may prevent any reſulting *Truſt* to the Aſſignor. 2 *Ventr. Rep.* 361. 2 *Vern.* 294. Where there has been Fraud in gaining a Conveyance from another, that is a Reaſon of making the Grantee conſidered as a *Truſtee*: But the Statute 29 *Car.* 2. relates only to *equitable Truſts* and Intereſts, and not an Uſe, which is a legal Eſtate. 1 *P. Williams* 113. There are only two Kinds of *Truſts* by *Operation of Law*; either where the Deed or Conveyance has been taken in the Name of one Man, and the Purchaſe-Money paid by another; or where the Owner of an Eſtate has made a voluntary Conveyance of it, and declared the *Truſt* with Regard to one Part to be for another Perſon, but hath been ſilent as to the other Part; in which caſe he himſelf ought to have the Benefit of that, it being plainly his Intent. *Barnardiſt.* 388. *Truſt* Eſtates are generally governed by the like Rules, and within the ſame Reaſon, as legal Eſtates; for there ought to be a like Rule of

Property in all Courts, to avoid Uncertainty: There ſhall be a Tenancy by the Curteſy, *&c.* of a Truſt Eſtate; but of ſuch an Eſtate, a Woman ſhall not be endowed. 1 *P. Williams* 109. *Talbot's Caſ.* 139. See 2 *P. Williams* 147. A Fine and Recovery of *Ceſtui que Truſt* ſhall bar and transfer a *Truſt*, as it ſhould an Eſtate at Law, if it were upon a Conſideration. *Chanc. Rep.* 49. In Equity *Truſts* are ſo regarded, that no Act of a *Truſtee* will prejudice the *Ceſtui que Truſt*; for tho' a Purchaſer, for valuable Conſideration, without Notice, ſhall not have his Title any Ways impeached, yet the *Truſtee* muſt make good the *Truſt:* But if he purchaſes, having Notice, then he is the *Truſtee* himſelf, and ſhall be accountable. *Abr. Caſ. Eq.* 384 Where *Truſtees* in a Settlement, join with Tenant for Life in any Conveyance, to defeat a Remainder, before it comes *in eſſe*; this is a plain Breach of *Truſt*; and thoſe as claim under ſuch Deed, having Notice of the Truſt, will be liable to make good the Eſtates. 2 *Salk* 680. Yet in caſe a *Truſtee* joins with *Ceſtui que Truſt* in Tail, in a Deed to bar the Intail; as it is no more than what he may be compelled to, 'tis no Breach of his *Truſt*. 1 *Chan. Caſ.* 49, 213. It has been decreed, that a *Truſt* for a Son, *&c.* ſhall paſs with the Lands, into whoſe Hands ſoever they come, and cannot be defeated by any Act of the Father or Truſtees. And tho' a Husband and Wife, have no Children in many Years, and they and the *Truſtees* agree to ſell the Land ſettled, *&c.* it will not be permitted in Chancery. *Abr. Caſ. Eq.* 391. 1 *Vern.* 181. A Termor grants his Lands in *Truſt* for himſelf for Life, and to his Wife for Life, and after to his Children for their Lives, and then to *A. B.* This *Truſt* to *A. B.* is good; though if it had been to the Heirs of their Bodies, it would be otherwiſe: And a remote *Truſt* of a Term, which tends to a Perpetuity, has been decreed a void Limitation. *Chanc. Rep.* 230, 239. If a Husband makes a Leaſe for Years, in *Truſt* for his Wife, he may ſell it, and it will bind her: But when a *Truſt* is firſt created for a Wife *bona fide*, he cannot ſell it, unleſs ſhe join in a Fine. *Ibid.* 307, 308. It hath been adjudged, where a Term is ſettled in *Truſt* for a Jointure on a Wife, or in Purſuance of Marriage Articles, or if the Term of the Wife be aſſigned by her before Marriage; the Husband can neither charge or ſell it, *&c.* though if the Aſſignment is made after Marriage in *Truſt* for the Wife, it is then voluntary and fraudulent. *Ibid.* 225. A *Truſt* to pay Portions, Legacies, *&c.* out of the Rents and Profits of the Lands, at a Day prefix'd, gives the Truſtees Power to ſell; if the annual Profits will not do it within that Time, then they may ſell the Land, being within the Intention of the *Truſt:* And they cannot ſell to raiſe the Money, except it be to be paid at a certain Time. *Ibid.* 176. A Truſtee for Sale of Lands for Payment of Debts, paying Debts to the Value of the Land, thereby becomes a Purchaſer himſelf. *Ibid.* 199. Where a Truſtee for paying Portions, pays one Child his full Share, and the *Truſt* Eſtate decays, he ſhall not be allowed ſuch Payment. 2 *Chan. Ca.* 132. If one deviſes Lands to *Truſtees* until his Debts are paid, with Remainder over, and the *Truſtees* miſapply the Profits, they ſhall hold the Land only 'till they might have paid the Debts, if the Rents had been duly applied; and after that the Land is to be diſcharged, and the *Truſtees* are only anſwerable. 1 *P. Williams* 519. And a Perſon having granted a Leaſe of Land to Truſtees, in *Truſt* to pay all the Debts which he ſhould owe at his Death, in a juſt Proportion, without any Preference; it was here decreed, that the Simple Contract Debts became as Debts due by Mortgage, and ſhould carry Intereſt. *Ibid.* 229. *Truſt* of a Fee-ſimple Eſtate, or Fee-tail, is forfeited by Treaſon, but not by Felony; for ſuch Forfeiture is by Way of Eſcheat, and an Eſcheat cannot be but where there is a Defect of a Tenant; and here is a Tenant. *Hard.* 495. See *Jenk. Cent.* 245. A *Truſt* for a Term is forfeited to the King in Caſe of Treaſon or Felony; and the Truſtees in Equity ſhall be compelled to aſſign to the King. *Cro. Jac.* 513. If a Bond be taken in another's Name, or a Leaſe be made to another in *Truſt* for a Perſon, who is afterwards convicted of Treaſon or Felony, they are as much liable to be forfeited as a Bond or Leaſe made in his own Name, or in his Poſſeſſion. 2 *Hawk.* 450. Execution may be ſued, and Lands held in *Truſt* delivered, where any Perſon is ſeiſed or poſſeſſed in *Truſt* for another; by the Statute of Frauds, 29 *Car.* 2. *Truſtees* being obliged to join in Receipts, one is not chargeable for Money received by the other: In the Caſe of Executors 'tis otherwiſe. 1 *Salk.* 318. 2 *Vern. Rep.* 515. A Truſtee robbed by his own Servant, ſhall be diſcharged of it on Account; tho' great Negligence may charge him with more than he hath received, in the *Truſt*. 2 *Chan. Ca.* 2. 1 *Vern.* 144. There is a *Breach* of *Truſt* in Servants, going away with their Maſters Goods delivered them, *&c.*

Truſtees of Papiſts, Are diſabled to make Preſentations to Churches. Stat. 12 *Ann.*

Tub, A Meaſure containing ſixty Pounds Weight of *Tea*; and from Fifty-ſix to Eighty-ſix Pounds of *Camphire*; &c. *Merch. Dict.*

Tumbrell, (*Tumbrellum*) An Engine for Puniſhment and Correction of Scolds. *Kitch.* 13. See *Cuckingſtool.*

Tun, (Sax.) In the End of Words ſignifies a Town, or Dwelling Place.

Tun, (Lat. *Tunellum*) A Veſſel of *Wine* and *Oil*, being four Hogſheads. 1 *R.* 3. *c.* 12. A *Tun* of *Timber* is a Meaſure of forty ſolid Feet, cut to a Square. 12 *Car.* 2. *c.* 14. And a *Tun* is twenty Hundred Weight, of *Coals*, &c. by Stat. 9 *&* 10 *W.* 3. *c.* 13.

Tunnage, (*Tunnagium*) Is a Cuſtom or Impoſt granted to the Crown for Merchandize imported or exported, payable after a certain Rate for every *Tun* thereof. Stat. 12 *Hen.* 4. *c.* 3. 6 *Hen.* 8. *c.* 14 1 *Ed.* 6. *c.* 13. 12 *Car.* 2. *c.* 4. See *Cuſtoms.*

Turbagium, The Liberty of digging Turfs. *Mon. Angl. Tom.* 1. *p.* 632.

Turbary, (*Turbaria*, from *Turba*, an obſolete *Latin* Word for Turf) Is a Right to dig *Turfs* on a Common or in another Man's Ground *Kitch.* 94. Alſo it is taken for the Place where Turfs are digged: And *Turbus* hath been uſed for the *Turfs*; and *Turbarius* for the *Turfary.*

Turky Company of Merchants, having divers Factories abroad, and which carry on great Trade to *Turky*, &c. created in the Time of Queen *Elizabeth.* See *Merchant.*

Turkins, A Kind of Sky-colour'd Cloth, mentioned in the Stat. 1 *R.* 2. *c.* 8.

Turn, Is the King's Leet through all the County; of which the Sheriff is Judge, and this Court is incident to his Office; wherefore it is called the *Sheriffs Tourn:* And it had its Name originally from the Sheriff's taking a *Turn* or Circuit about his Shire, and holding this Court in ſeveral Places; for the Word *Turn* properly taken, doth not ſignify the Court of the Sheriff, but his Perambulation. *Crompt. Juriſd.* 230. 4 *Inſt.* 260. 2 *Hawk. P. C.* 55. The *Turn* is a Court of Record; and by the Common Law, every Sheriff ought to make his *Turn* or Circuit throughout all the Hundreds in his County, in order to hold a Court in every Hundred for the Redreſſing of Common Grievances, and Preſervation of the Peace; and this Court might be holden at any Place within the Hundred, and as often as the Sheriff thought fit: But this having been found to give the Sheriff too great Power of oppreſſing the People, by holding his Court at ſuch

Times and Places, at which they could not conveniently attend, and thereby increaſe the Number of his Amercements; by the Stat. of *Magna Charta, cap.* 35. it was enacted, That no Sheriff ſhall make his *Turn* through a Hundred but twice in a Year, *viz.* once after *Eaſter*, and once after the Feaſt of St. *Michael*; and at the Place accuſtomed: Alſo a ſubſequent Statute ordain'd, That every Sheriff ſhall make his *Turn* yearly, one Time within the Month after *Eaſter*, and another Time within the Month after *Michaelmas*; and if they hold them in any other Manner, they ſhall loſe their *Turn* for that Time. 37 *Ed.* 3. *cap.* 15. Since theſe Statutes, the Sheriff is indictable for holding this Court at another Time, than what is therein limited, or at an unuſual Place: And it hath been held, that an Indictment found at a Sheriff's *Turn*, appearing to have been holden at another Time, is void. *Dalt. Sher.* 390, 391. *Dyer* 151. 38 *Hen.* 6. At Common Law the Sheriff might proceed to hear and determine any Offence within his Juriſdiction, being indicted before him, and requiring a Trial, till Sheriffs were reſtrained from holding Pleas of the Crown by *Magna Charta, c.* 17. But that Statute doth not reſtrain the Sheriff's *Turn*, from taking Indictments or Preſentments, or awarding Proceſs thereon; though the Power of awarding ſuch Proceſs being abuſed, was taken from all the Sheriffs (except thoſe of *London*) by the 1 *Ed.* 4. *c.* 2. and lodged in the Juſtices of Peace at their Seſſions, who are to award Proceſs on ſuch Indictments delivered to them by the Sheriffs, as if they had been taken before themſelves, &c. 2 *Hawk* 57, 70, 71. The Sheriff's Power in this Court is ſtill the ſame as anciently it was, in all Caſes not within the Statutes above-mentioned; he continues a Judge of Record, and may inquire in his *Turn* of Treaſons and Felonies, by the Common Law; as well as the loweſt Offences againſt the King, ſuch as Purpreſtures, Seiſures of Treaſure-Trove, of Waifs, Eſtrays, Goods wreck'd, &c. All common Nuſances and Annoyances, and other ſuch like Offences; as ſelling corrupt Victuals, breaking the Aſſiſe of Beer and Ale, or keeping falſe Weights or Meaſures, are here indictable; alſo all common Diſturbers of the Peace, Barretors, and common Oppreſſors; and all dangerous and ſuſpicious Perſons, &c. And the Sheriff in his *Turn* may impoſe a Fine on all ſuch as are guilty of Contempts in the Face of the Court; and upon a Suitor to the Court making Default, or refuſing to be ſworn on the Jury; or on a Bailiff not making a Panel; on a Tithing-man neglecting to make his Preſentment; or a Perſon choſe Conſtable refuſing to be ſworn, &c. And he may amerce for Offences; which Fines and Amercements are leviable and recoverable by Diſtreſs, &c. *Ibid.* 58, 60, 67. But notwithſtanding this it has been obſerved, that great Part of the Buſineſs of the *Turn* and *Leet*, hath for ſeveral Years paſt, through the Negligence of Sheriffs and Stewards, devolved on the *Quarter-Seſſions*. *Wood's Inſt.* See *County-Court* and *Court-Leet*.

Turno Vicecomitum, Is a Writ that lieth for thoſe that are called to the *Sheriff's Turn* out of their own Hundred. *Reg. Orig.* 173.

Turnpikes, There are *Statutes* continually made for erecting *Turnpikes* for Repairing of Ways; empowering Juſtices of Peace and other Commiſſioners to appoint Surveyors of the Roads to amend the ſame; and alſo Collectors of the Toll at the Places where the *Turnpikes* are ſet up; which Toll is generally 1 *s.* or 6*d.* for a Coach or Waggon, and 1 *d.* for every Horſe, &c. and the Money collected is to be paid weekly to the Surveyors, who are to account to the Juſtices, &c. Perſons driving Horſes or other Cattle through any Grounds adjoining to the Ways, to avoid the Toll, ſhall forfeit 10 *s.* And if any Perſon wilfully and maliciouſly break down or deſtroy any *Turnpike* Gate, &c. he ſhall be ſent to the common Gaol for three Months; and for a ſecond Offence, the Offender ſhall be tranſported as a Felon. Stat. 8 *Geo.* 1. *c.* 5. 1 *Geo.* 2. *c.* 23. Perſons maliciouſly pulling down, plucking up, or otherwiſe deſtroying any *Turnpike* Gate, Poſts, Rails, Walls, Chains, Bars, &c. or Houſe erected for the Uſe of ſuch *Turnpike*, or who ſhall reſcue any Perſons in Cuſtody for ſuch Offences, ſhall be guilty of Felony, without Benefit of Clergy: And the Inhabitants of the Hundred are to make Satisfaction for Damages, &c. but to be made good to them, if any of the Offenders are convicted in twelve Months. If any Perſon aſſault any Collector of the Toll, or by Force paſs through a *Turnpike* Gate, without paying, he ſhall forfeit 5 *l.* leviable by Juſtices; and the like Penalty is inflicted on Conſtables, refuſing to execute Warrants of Commiſſioners, &c. 8 *Geo.* 2. *c.* 20. Where any Perſon having paid Toll, at a *Turnpike*, gives his Ticket to another, that he may avoid paying the ſame, both the Perſon giving and receiving it, are liable to a Forfeiture of 10 *s.* on Conviction before the Commiſſioners, or a Juſtice of Peace. 13 *Geo.* 2. *c.* 25. And by a late Statute, the Truſtees or Commiſſioners are to cauſe Engines to be erected, for weighing all Carriages that paſs through any *Turnpike* with their Loading, and take over and above the Toll 20 *s.* for every Hundred they weigh above 6000 Pound Weight; the Money to go towards mending the Ways, and be levied by Diſtreſs in like Manner as for any Toll, &c. Perſons hindering the weighing, ſhall be impriſoned three Months, and forfeit 10 *l.* upon Oath made thereof by one Witneſs, before the next Juſtice, &c. Stat. 14 *Geo.* 2. *c.* 42.

Turny, (Fr. *Tourney*) Mentioned in the Stat. 24 *H.* 8. *c.* 13. See *Tournament.*

Tutors, The Statute relating to, 13 & 14 *Car.* 2. *c.* 4. Vide *Schoolmaſter.*

Twaite, Signifies a Wood grubbed up, and converted to arable Land. *Co. Lit.* 4.

Twanight Geſte, (*Hoſpes duarum Noctium*) Was a Gueſt at an Inn a *ſecond Night*; and if he did any Injury to any Perſon, he was to anſwer for it himſelf; and not his Hoſt, as in Caſe of a *Third Night's Awn-hinde.* Sax. Lex.

Twelfhindi, (*Sax.*) The higheſt Rank of Men, in the *Saxon* Government, who were valued at 1200 Shillings; and if an Injury were done to ſuch Perſons, Satisfaction was to be made according to their Worth. Leg. K. *Alfred, cap.* 12, 13, &c. and of K. *H.* 1. *c.* 76.

Twelve Men, (*Duodecim homines legales*) Is a Number of *twelve* Perſons or upwards, by whom and whoſe Oath as to Matter of Fact all Trials paſs, both in Civil and Criminal Cauſes, thro' all Courts of the Common Law in this Realm: They are otherwiſe called the *Jury* or *Inqueſt*. See *Jury*.

Twyhindi, (*Sax.*) Were the lower Order of *Saxons*, valued at 200*s.* as to pecuniary Mulcts inflicted for Crimes, &c. *Leg. Alfred. c.* 12.

Tyhtlan, An Accuſation, Impeachment, or Charge of any Treſpaſs or Offence. *Leg. Ethelred. c.* 2.

Tylwith, (Brit. derived from *Tyle*, i. e. *locus ubi ſtetit Domus vel locus ædificandæ Domui aptus*, or from *Tylath, Trabs, tignus*) Signifies a Place whereon to build a Houſe, or a Beam in the Building: And it is applied to *Familia*, a Tribe or Family branching forth of another, which in the old *Engliſh Heraldry* is called *Second or third Houſes*; ſo that in caſe the great paternal Stock brancheth itſelf into ſeveral *Tylwiths* or Houſes, they carry no ſecond or younger Houſe farther; and the Uſe of theſe *Tylwiths* was to ſhew not only the Originals of Families as to Pedigree, but the ſeveral Diſtinctions and Diſtances of Birth, that in caſe any Line ſhould make a Failure, the next in any Degree may claim their Intereſt according to the Rules of Deſcent, &c.

Tynmouth. There is a cuſtomary Diſcent of Lands in the Honour of *Tynmouth*, that if any Tenant have Iſſue two or more Daughters, and die ſeiſed in Fee, the Land ſhall go to the eldeſt Daughter for Life only, and after to the Couſins of the Male Line; and for Default thereof, to eſcheat. 2 *Keb.* 111, 114.

Type, (*Typus*) A Figure, Example, or Likeneſs of a Thing. *Litt. Dict.*

Typographia, The Trade of Printing. *Ibid.*

Tythes, (*Decimæ.*) See *Tithes.*

V.

VAcans, Vacant, Free, that is at leiſure; alſo void. *Litt. Dict.*

Vacaria, A void Place, or waſte Ground: ——— *Dedimus omnia Dominica noſtra* Vacariis, *& Foreſtis, &c.* Mem. in Scacc. Mich. 9 Edw. 1.

Vacation (*Vacatio*) Is all the Time betwixt the End of one Term and the Beginning of another; and it begins the laſt Day of every Term as ſoon as the Court riſes. The Time from the Death of a Biſhop, or other ſpiritual Perſon, till the Biſhoprick or Dignity is ſupplied with another, is alſo called *Vacation.* Stat. Weſtm. 1. c. 21. 14 Ed. 3. c. 4.

Vacatura, An Avoidance of an Eccleſiaſtical Benefice; as *prima Vacatura*, the firſt Voidance, &c.

Vaccary, (*Vaccaria*) Is a Houſe or Place to keep Cows in; a Dairy-Houſe, or Cow-Paſture. *Fleta, lib.* 2.

Vaccarius, The Cow-herd, who looks after the common Herd of Cows. *Ibid.*

Vadiare Duellum, To wage a Combat, where two contending Parties on a Challenge give and take a mutual Pledge of Fighting. *Cowel.*

Vadium ponere, Is to take Security, Bail, or Pledges for the Appearance of a Defendant in a Court of Juſtice. ——— *Præcipimus tibi, &c. quod ponas per* Vadium *& ſalvos Plegios Johannem de B. &c.* Reg. Orig.

Vadium Mortuum, A Mortgage or Pawn of Lands ſo engaged to the Creditor, that he hath a Right to the mean Profits for the Uſe of his Debt. *Glanvil, lib.* 10. *cap.* 8.

Vagabond, (*Vagabundus*) One that wanders about, and has no certain Dwelling; an idle Fellow: And Rogues, *Vagabonds*, and ſturdy Beggars, are mentioned in divers Statutes. See *Vagrants.*

Vagrants, (*Vagantes*) And other idle Perſons, are particularly deſcribed by a late *Statute:* Thoſe that threaten to leave their Wives and Children to the Pariſh, or return to any Place from whence removed, without Certificate from the Pariſh to which they belong; ſuch as live idly, and refuſe to work for common Wages, or beg from Door to Door, or who place themſelves in Streets, &c. for begging Alms in the Pariſh where they dwell, ſhall be adjudged idle and diſorderly Perſons. And a Juſtice of Peace may commit them to the Houſe of Correction, to be ſet to hard Labour a Month; alſo any Perſon may apprehend People going from Door to Door, or begging at Pariſhes wherein they live, and 5 *s.* is to be paid by the Overſeers for every Offender apprehended. And all Parent Gatherers, or Gatherers of Alms, under falſe Pretences of Loſs by Fire, Collectors for Priſons, Fencers and Bearwards, Players of Interludes, &c. (having no Settlement where they act, or Licence from the Lord Chamberlain) all Minſtrels, Juglers, Gypſies, Pretenders to Phyſiognomy, or Palmeſtry, Fortune-Tellers, Perſons that play at unlawful Games, or who run away from their Wives and Families, whereby they become chargeable to the Pariſh; and alſo all petty Chapmen, or Pedlars without Licence, Wanderers lodging in Barns or Outhouſes, or that pretend to be Soldiers or Mariners, or to go to work in Harveſt, and all wandering Beggars, ſhall be deemed Rogues and *Vagabonds.* Pariſh Officers or others apprehending any ſuch Vagabond or *Vagrant*, and cauſing him to be conveyed to ſome Juſtice, he may make an Order for the Conſtable, &c. to pay 10 *s.* to the Perſon that apprehends the Offender, which is to be repaid by the High Conſtable, and who ſhall be allowed it in his Account by the Treaſurer of the County, &c. And when *Vagrants* are apprehended and taken before a Juſtice of Peace, they ſhall be examined on Oath by the Juſtice concerning the Pariſh to which they belong, and be ſent away by *Paſs* to their Places of legal Settlement, or of Birth, &c. The Conſtable or other Officer having ſuch Paſs, and a Certificate how they are to be conveyed, and what Recompence he is to have, ſhall convey the Perſons, according to the Directions therein, the neareſt Way to the Place where they are ordered, if in the ſame County, or next adjoining, and there deliver them to the Overſeer of the Poor, &c. But if it be in ſome diſtant County, the Conſtable is to carry them to the Maſter of the next Houſe of Correction, together with the Paſs and Certificate, taking his Receipt for the ſame; and ſo they ſhall be carried from the Houſe of Correction in one County, to that in another, till they come to a Houſe of Correction of the County wherein the Place is, to which they ſhall be ſo ordered, there to be kept to hard Labour, not exceeding one Month, and then delivered to the Officer of ſuch Place to be provided for; who ſhall employ them in ſome Workhouſe, &c. till they betake themſelves to other Employment. And the Juſtices of Peace at their General Quarter-Seſſions, are to direct what Rates *per* Mile or otherwiſe, ſhall be paid for Paſſing *Vagabonds*; and make Orders for the more regular Acting in it. If any High Conſtable refuſes to pay the Petty Conſtables the Rates appointed for conveying of *Vagrants*, a Juſtice of Peace may by Warrant levy double the Sum on his Goods, and thereout allow the petty Conſtable the Sum certified and his Expences, &c. And in Places where there is no High Conſtable, Petty Conſtables are to be allowed what they expend by the Treaſurer of the County; which ſaid Treaſurer, ſhall pay out of the publick Money in his Hands, to the Maſter of the Houſe of Correction within the ſame County, all his Expences in paſſing ſuch *Vagabonds*, he bringing the Certificate, with a Receipt from the Maſter of the Houſe of Correction, or Churchwarden or Overſeer of the Poor to whom ſuch Perſons are by him delivered, &c. Conſtables that counterfeit any Certificate, or Receipt, or alter the ſame, ſhall forfeit 50 *l.* and if they do not convey the Perſons to the Place where they ought to be; or ſhall refuſe to receive any Perſon ſent to them, they are liable to 20 *l.* Penalty: And if any Conſtable, or other Pariſh Officer, or Maſter of any Houſe of Correction, refuſes to apprehend or paſs *Vagrants*; or if any Perſons hinder the Execution of this Act, or reſcue any Perſon apprehended, &c. they ſhall forfeit not exceeding 5 *l.* nor leſs than 10 *s.* to the Uſe of the Poor, leviable by Juſtices Warrant by Diſtreſs, or for Want thereof, be committed for two Months. In caſe any Maſter of a Ship, ſhall bring into this Kingdom from *Ireland*, or the *Plantations*, any *Vagrant*, or Perſons like to live by Begging, they are to be apprehended by Conſtables, &c. when found wandering and begging here, and be openly whipt and reconvey'd back, &c. at ſo much a Head, as the Juſtices in Seſſions ſhall appoint; and the Maſters of Ships importing *Vagrants*, or refuſing to tranſport them, on a Juſtice's Warrant or Order, forfeit 5 *l.* leviable by Diſtreſs, &c. And where any

Perſons permit *Vagabonds* to lodge in their Houſes, Barns, *&c.* and do not carry them before the next Juſtice, or give Notice to ſome Conſtable ſo to do, they are to forfeit not above 40 *s.* or under 10 *s.* on Conviction before two or more Juſtices: Alſo if any Charge be brought upon any Place by Reaſon thereof, the ſame may be levied by Diſtreſs and Sale of the Offender's Goods; for want of which, he ſhall be ſent to the Houſe of Correction, and there kept to hard Labour three Months. And all other Acts relating to *Vagrants*, *Vagabonds*, &c. are repealed by this Act. Stat. 13 *Geo.* 2. *cap.* 24. See *Rogue.*

Valet, Valect, or Vadelet, (*Valettus vel Valecta*) Was anciently a Name ſpecially denoting young Gentlemen, though of great Deſcent or Quality; but afterwards attributed to thoſe of lower Rank, and now a Servitor, or Gentleman of the Chamber. *Camd. Selden's Tit. Hon. Bract. lib.* 3. In the Accounts of the *Inner Temple*, it is uſed for a Bencher's Clerk, or Servant; and the Butlers of the Houſe corruptly call them *Varlets.*

Valentia, The Value or Price of any Thing. See *Value.*

Valeſheria, Signifies the Kindred of the Slain, one on the Father's Side, and another on the Side of the Mother, to prove that a Man was a *Welſhman:* It is mentioned in Stat. *Walliæ* 12 *Ed.* 1. *cap.* 4.

Value, (*Valentia*, *Valor*) Is a known Word; and the *Value* of thoſe Things in which Offences are committed, is uſually compriſed in Indictments; which ſeems neceſſary in *Theft* to make a Difference from *Petit Larceny*, and in Treſpaſs to aggravate the Fault, *&c.* But in other Caſes a Diſtinction has been made between *Value* and *Price.* If a Plaintiff declares in an Action of Treſpaſs for the Taking away of live Cattle, or one particular Thing, he ought to ſay that the Defendant took them away, *Pretii* ſo much; if the Declaration be for taking of Things without Life, it muſt be alledg'd *ad valentiam*, *&c.* ſo that live Cattle are to be prized at ſuch a Price, as the Owner of them did eſteem them to be worth; and dead Things to be reckon'd at the *Value* of the Market, which may be certainly known. Of Coin not current it ſhall be *Pretii*; but of common Coin current, it ſhall be neither ſaid *Pretii* nor *ad valentiam*, for the *Value* and Price thereof is certain: The Difference between *Pretii* and *ad valentiam* may proceed from the Rule in the *Regiſter of Writs*, which ſhews it to be according to the antient Forms uſed in the Law. *Weſt. Symb. part* 2. 2 *Lill. Abr.* 629. A Jewel 'tis ſaid is not *valuable* in Law, but only according to the *Valuation* of the Owner of it, and is very uncertain: But there ſeems to be a certain *Value* for Diamonds among the Merchant Jewellers, according to their Weight and Luſtre, *&c. Hill.* 21 *Car. B. R.* 2 *Lill.* 628. A Man cannot ſay that another owes him ſo much, when the *Value* of the Thing owing is uncertain; for which Reaſon Actions in theſe Caſes are always brought in the *Detinet*, and the Declaration *ad valentiam*, *&c.* 1 Lutw. 484. See *Money*

Value of Land, May be intended ſuch as it was antiently, and not adjudged according to its improved *Value.* 2 *Leon.* 117. *Lutw.* 1304. Vide *Purchaſe.*

Value of Marriage, (*Valore Maritagii*) Was a Writ that lay for the Lord, having offered *Marriage* to an Infant without Diſparagement, if the Man refuſed to take the Lord's Offer, and married another Woman, to recover the *Value* of the Marriage. *Reg. Orig.* 164. This is alſo called Forfeiture of Marriage, *Foriſfactura Maritagii.* See the Statute 12 *Car.* 2. *cap.* 24.

Vang, (*Sax.*) He *vanged* for me at the *Vant*, *i. e.* ſtood for me at the Font. *Blount.*

Vannus, A Vane, *Venti Index*; and *Vannus* a Fan to winnow Corn with. *Litt. Dict.*

Vantarius, (*Præcurſor*) As *Vantarius Regis*, the King's Fore-footman. ——— *Richardus R. Miles ten. Terras per Serjeantiam eſſe* Vantarium Regis, *&c. Rot. de finibus.* Term. Mich. 2 Edw. 2.

Variance, (*Variantia*, from the Fr. *Varier*, i. e. *Alterare*) Signifies any Alteration of a Thing formerly laid in a Plea, or where the Declaration in a Cauſe differs from the Writ, or from the Deed upon which it is grounded, *&c.* 2 *Lill. Abr.* 629. If there is a *Variance* between the Declaration and the Writ, it is Error; and the Writ ſhall abate. And if there appear to be a material *Variance* between the Matter pleaded and the Manner of the Pleading it, this is not a good Plea; for the Manner and Matter of Pleading ought to agree in Subſtance, or there will be no Certainty in it. *Cro. Jac.* 479. 2 *Lill.* 629. But when the Pleading is good in Subſtance, a ſmall *Variance* ſhall not hurt. 3 *Mod.* 227. Where the Original Writ *varies* from the Declaration, 'tis not remedied by any Statute of *Jeofails.* 5 *Rep.* 37. There was a *Variance* between the Writ and Declaration, in Action of the Caſe, the one being for more than the other, and tho' the Plaintiff had a Verdict, he could not get Judgment: It was held, that it was not help'd by the Stat. 18 *Eliz.* for that Statute helps when there is no Writ, not where there is one that *varies* in Subſtance from the Declaration. 2 *Cro.* 829. In Ejectment, the Original was *Teſte* 24 *Jan.* And the Ejectment ſuppoſed to be 31 *Jan.* in the ſame Year; the Plaintiff had a Verdict, and this was aſſign'd for Error, *viz.* That the Original was taken out before there was any Cauſe of Action, and being certified to be between the ſame Parties, and of the ſame Land, in the ſame Term, it was adjudged ill, and not to warrant the Declaration; and thereupon the Judgment was reverſed. *Cro. Car.* 98, 205. Though a Verdict in Ejectment was for a Meſſuage next the Meſſuage of *A. B.* and the Judgment for a Meſſuage next another Meſſuage in the Occupation of *A. B.* This is no material *Variance*, but is amendable by the Statute 16 *&* 17 *Car.* 2. *cap.* 8. which enacts, That all Omiſſions, *Variances*, &c. not being againſt the Right of the Matter of the Suit, ſhall be amended. *Raym.* 398. 3 *Salk.* 368. The Original Writ in *C. B.* concluded *ad damnum* 40 *l.* and the Declaration was *ad damnum* 100 *l.* The Jury gave 12 *l.* Damages; and on a Writ of Error brought this *Variance* was aſſign'd; it was held that this had been a good Objection in the Original Action on a Demurrer to the Declaration; but it is not ſo after Verdict, not being Matter in Point of Judgment, eſpecially as the Jury found only 12 *l.* Damages; but if the Verdict had found more Damages than what was mentioned in the Writ, tho' leſs than what was ſet forth in the Declaration, it had been ill, becauſe there was no Writ to warrant ſuch Damages. 2 *Cro.* 629. 1 *Bulſt.* 49. If a Defendant pleads a *Variance* between the Writ and Declaration, he is to crave *Oyer* of the Writ before he ſhall have any Advantage of the *Variance*, becauſe the Writ and Declaration are not upon the ſame Roll; and therefore if the Defendant plead to it without demanding *Oyer*, on Demurrer Judgment may be for him to anſwer over, *&c.* 2 *Salk.* 658. If in the Imparlance Roll the Declaration is in Debt, and in the Plea Roll 'tis in Treſpaſs; this is ſuch a *Variance*, that if the Plaintiff hath Judgment it ſhall be reverſed. 3 *Bulſt.* 229. When a Contract is intire, an Action of Debt cannot be brought for Part of the Money, without ſhewing how the other is ſatisfied; if it be, this *Variance* from the true Debt will make it ill. 3 *Nelſ. Abr.* 440. In Writ of Error in the Exchequer-Chamber to remove a Record out of B. *R.* of a certain Treſpaſs the Husband and Wife had done, the Record certified was of a Treſpaſs done by the Woman alone, and for this *Variance* the Writ was abated, and the Record judged not removed. *Sid* 269. 3 *Salk.* 369. If a Leaſe be alledged to be made by two Perſons, and it appears on Evidence they were Tenants in Common, and ſo ſeveral Leaſes; it is a material *Variance:* But on its appearing that the two Leſſors were Coparceners, it will be otherwiſe, for it is there a Leaſe of them both. 2 *Roll. Abr.* 719. On *Variance* in the Perſons or Number of Acres, &c. between a Fine and an Indenture to lead the Uſes; if the Party avers, there was not any other Conſideration, or new Agreement, but that the Fine was levied according to the Uſes and Intents mentioned in the Indenture, it is good. 5 *Rep.* 25. *Variance* in Names, &c. how ſupplied by Averment, that a Man is the ſame Perſon, and Inqueſt of Office, &c. ſee *Averment* and *Pardon.* Vide *Amendment.*

Vaſſal, (*Vaſſallus*) In our ancient Cuſtoms ſignified a Tenant or Feudatary; or Perſon who vowed Fidelity and Homage to a Lord, on Account of ſome Land, &c. held of him in Fee; alſo a Slave or Servant, and eſpecially a Domeſtick of a Prince. *Du Cange.* *Vaſſallus* is ſaid to be *quaſi inferior Socius*, as the *Vaſſal* is inferior to his Maſter, and muſt ſerve him; and yet he is in a Manner his Companion, becauſe each of them is obliged to the other. *Skene.*

Vaſſalage, Signifies the State of a *Vaſſal*, or Servitude and Dependency on a ſuperior Lord: *Liege Vaſſalage* only belonged to the *King.*

Vaſſeleria, Was the Tenure or holding of Vaſſals. *Cowel.*

Vaſto, Is a Writ that lies againſt Tenants for Term of Life or Years, committing *Waſte. F. N. B.* 55. *Reg. Orig.* 72. See *Waſte.*

Vaſtum, A *Waſte* or Common lying open to the Cattle of all Tenants who have a Right of Commoning. *Paroch. Antiq.* 171.

Vavaſor, Is one who was in Dignity next to a Baron. *Camd. Brit.* 109. ——— *Sunt & alii Potentes Regni, qui dicuntur Barones, hoc eſt, Robur Belli: Et alii ſunt qui dicuntur* Vavaſores, *Viri Magnæ Dignitatis,* &c. Bract. lib. 1. cap. 8. Spelm. Gloſſ.

Vavaſory, (*Vavaſoria*) The Lands that a *Vavaſor* held. *Bract. lib.* 2.

Veal-money, The Tenants within the Manor of *Bradford* in the County of *Wilts*, pay a yearly Rent by this Name to their Lord, in lieu of *Veal* paid formerly in *Kind.* *Blount's Ten.*

Vectigal Judiciarum, Is applied to Money or *Fines* paid to the King, to defray the Charge he is at in maintaining the Courts of Juſtice, and Protection of the People. 3 *Salk.* 33.

Vejours, (*Viſores*, from the Fr. *Veoir*, i. e. *Cernere*) Are ſuch Perſons as are ſent by the Court to take a View of any Place in Queſtion, for the better Deciſion of the Right thereto: And it is uſed for thoſe that are appointed to view an Offence; as a Man murdered, a Woman raviſhed, &c. *Old Nat. Br.* 112. *Bract. lib.* 5.

Veltrarius, One who leads Greyhounds, which Dogs in *Germany* are called *Welters*, in *Italy Veltres*, &c. And Lands are held *per ſervitium inveniend. unum* veltrarium *Canes ducere*, &c. Blount's Tenures, pag. 9.

Velum quadrageſimale, A Veil or Piece of Hangings, drawn before the *Altar* in *Lent*, as a Token of Mourning and Sorrow ——————— *Item ad quodlibet Altare*, &c. Velum quadrageſimale, *Velum Nuptiale, Palla Mortuorum*, &c. Synod. Exon. Anno 1217.

Venaria, Are thoſe Beaſts which are caught in the Woods by hunting. *Leg. Canut. c.* 108.

Venatio, In the Statute of *Charta de Foreſta* ſignifies *Veniſon*, in Fr. *Venaiſon:* It is called *Venaiſon*, of the Means whereby the Beaſts are taken, *quoniam ex* Venatione *capiuntur*, and being hunted are moſt wholeſome: And they are termed Beaſts of *Venary*, (not *Venery*) becauſe they are gotten in Hunting. 4 *Inſt.* 316.

Venditioni exponas, Is a judicial Writ, directed to the Sheriff, commanding him to ſell Goods which he hath formerly taken into his Hands, for the Satiſfying a Judgment given in the King's Court. *Reg. Judic.* 33. Stat. 14 *Car.* 2. *cap.* 21. The Sheriff upon a *Fieri facias* takes Goods in Execution, and returns that he hath ſo done, and cannot find Buyers; or if he delay to deliver them to the Party, &c. then the Writ *Venditioni exponas* ſhall iſſue to the Sheriff, to make Sale of the Goods, and bring in the Money. 13 *H.* 7. 1. *Dyer* 363. If a *Superſedeas* be not delivered to the Sheriff till he hath in part executed a Writ of Execution, he may afterwards be authoriſed to go through with it by a *Venditioni exponas*; as he may alſo in the like Caſe after a Writ of Error. *Dyer* 98. *Cro. Eliz.* 597. 1 *Roll. Abr* 894.

Venditor Regis, The King's Saleſman; being the Perſon who expoſed to Sale Goods and Chattels ſeiſed or diſtrained to anſwer any Debt due to the King: This Office was granted by King *Ed.* 1. to *Philip de Lardimer*, in the County of *York*; *Ita quod ipſe vel certus ſuus Attornatus ibit ad Mandatum Vicecomitis de loco in locum infra Com. præd. ſumptibus ſuis ad prædict' Venditiones faciendas, & capiat de unaquaque Venditione pro Feodo ſuo* xxxii. *den.* But the Office was ſeiſed in the King's Hands for the Abuſe thereof. *Anno* 2 *Ed.* 2.

Venia, Is uſed for a Kneeling or low Proſtration on the Ground, by Penitents. *Walſing.* 196.

Venire facias, A Writ judicial awarded to the Sheriff to cauſe a Jury of the Neighbourhood to appear, when a Cauſe is brought to Iſſue, to try the ſame; and if the Jury come not at the Day of this Writ, then there ſhall go a *Habeas Corpora*, and after a *Diſtreſs* until they appear. *Old Nat. Br.* 157. But where a *Venire* omits Part of the Iſſue to be tried, or any of the Parties; if a Juror is named in the *Habeas Corpora*, by a Name different from that in the *Venire*; or a Juror return'd on ſuch a Panel is omitted in the *Habeas Corpora*; or a *Venire* or *Diſtringas* are iſſued without any Award on the Roll to warrant them; it will be ill, and is ſaid to be a Diſcontinuance. 2 *Hawk. P. C.* 298, 299. A *Venire facias* ought to be *de aliquo Vicineto*; and *Venire de Vicineto Civitatis*, is good without naming of the Pariſh within the City out of which the Jurors are ſummoned. 2 *Lill.* 633, 636. Tho' it hath been held, that the *Venire facias* may be of a Town, Pariſh, Manor, or any Place known, called a *Lieu Conus*; but not of a City, or County. *Cro. Eliz.* 260. And yet where a *Venue* cannot come from a Vill, Hamlet, &c. there it might be *de Corpore Comitatus*, to prevent Failure of Juſtice, before the Statute 4 & 5 *Ann.* By which Act a *Venire facias* may be from the Body of the County, &c. In an Information againſt a County for not repairing a Bridge, it was held, that the Attorney General might take a *Venire* to any adjacent County; and that it might be *Corpore* of the Whole, or *de Vicineto* of ſome particular Place therein next adjoining. *Trin.* 3 *Ann.* 3 *Salk.* 381. The Plaintiff in *Aſſumpſit* declared upon a Promiſe made at *Maidſtone* in *Kent*; and upon *Non Aſſumpſit* pleaded, the *Venire facias* was *de Vicineto Villæ & Parochiæ de Maidſtone*, and a Trial was had: But it was reſolved to be an inſufficient Trial, becauſe the *Venire* ought not to be of a larger Precinct, than the Plaintiff himſelf had alledged in his Declaration. *Yelo.* 104. And it will be Error if the *Venire* be ſhort; as a Defendant in Treſpaſs preſcribed for a Foot-way leading from *Hinton* ſo far as the Foot-way of *Horn-Caſtle*, &c. Iſſue was taken upon this Preſcription, and the *Venire facias* awarded *de Vicineto de Hinton* only, when it ſhould have been of *Hinton* and *Horn-Caſtle*; and the Judgment was reverſed. *Moor* 257, 412. So if in Ejectment Lands are laid in *A. B.* and *C.* and tried for the Plaintiff by a *Viſne* out of *A.* only; this is inſufficient. 5 *Rep.* 36. Though in Action of Treſpaſs, *&c.* for reſcuing a Diſtreſs for Rent, ſetting forth that the Plaintiff made a Leaſe of Lands to the Defendant lying in three ſeveral Places; the Plaintiff having a Verdict, it was moved in Arreſt of Judgment that the Trial was inſufficient, becauſe the *Venire* was from one Place, when it ought to be from all three Places where the Lands lie; but adjudged, that this Action being brought againſt a wrong Doer, and not upon the Leaſe it ſelf, the *Venue* may be laid in that very Place where the Wrong was done. *Lutw.* 213. One *Venire facias* is ſufficient to try ſeveral Iſſues, between the ſame Parties, and in the ſame County. 2 *Cro.* 550. And where an Action was brought againſt two, they both joined Iſſue, and one died; and after the *Venire facias* was awarded to try the Iſſue between both, which was done; and held to be no Error, though it iſſued againſt a dead Perſon, becauſe one of the Defendants was living. *Cro. Car.* 308. 3 *Nelſ. Abr.* 444. If a *Venire facias* is return'd by the Coroner, for Defect of the Sheriff, *&c.* when it ought to be returned by the Sheriff, the Trial is wrong, and not remedied by any Statute of Jeofails. 5 *Rep.* 36. In all Caſes, where there is to be a ſpecial Jury, the *Venire* muſt be *ſpecial:* If the Matter to be tried be within divers Places, in one and the ſame County, the *Venire facias* ſhall be general; and if in ſeveral Counties, it ſhall be ſpecial. 2 *Lill. Abr.* 635. If a Matter of Law be depending in Court undetermined, and an Iſſue alſo joined in the Cauſe, there is to be a ſpecial *Venire* awarded, *tam ad Triandum Exitum*, *quam ad Inquirendum de Dampnis*, *&c.* as well to try the Iſſue, as to find the Damages both upon the Iſſue and the Matter put in Judgment of the Court. *Ibid.* 636. The Plaintiff's Attorney ought to give a Copy of the Jury return'd upon a *Venire facias* to the Defendant's Attorney, before the Trial; and it is to be filed. *Paſch.* 24 *Car. B. R.* At a Trial at *Niſi prius*, the Plaintiff changed the *Venire facias*, and Panels, and had a Jury the Defendant knew not of; and ruled, that the Defendant cannot be aided, if the firſt *Venue* was not filed: And a Difference was taken when the firſt *Venire* was not filed, that he cannot be aided, becauſe he may reſort to the Sheriff, and have a View of the Panel, to be prepared for his Challenges; but if the firſt *Venire* was filed, then the Defendant ſhall have a new Trial. *Raym.* 79. A *Venire facias* after filed, cannot be altered without Conſent of Parties: Tho' where a Verdict in a Cauſe is imperfect, ſo that Judgment cannot be given upon it, there ſhall be a *new Venire facias* to try the Cauſe, and find a new Verdict. 2 *Lill.* 634, 635. And if a Plaintiff be nonſuit on a Miſtake in the *Niſi prius* Record, and the Paper-Book and Roll are right; the Nonſuit may be ſet aſide, and a *Venire facias de novo* awarded, and the Iſſue tried, *&c.* *Cro. Jac.* 669. A *Venire facias* may be amended by the Iſſue-Roll, when that is right, in ſome Caſes. 3 *Nelſ.* 446.

Venire facias, Is alſo the common Proceſs upon any *Preſentment*, being in Nature of a Summons for the Party to appear; and is a proper Proceſs to be firſt awarded on an Indictment for any Crime, under the Degree of Treaſon, Felony, or Maihem, except in ſuch Caſes wherein other Proceſs is directed by Statute: And if it appears by the Return to ſuch *Venire*, that the Party has Lands in the County whereby he may be diſtrained, the Diſtreſs infinite ſhall be awarded till he do appear; and he ſhall forfeit on every Default, ſo much as the Sheriff returns upon him in Iſſues: But if a *Nihil* be return'd, a *Capias*, *Alias*, and *Pluries*, ſhall iſſue, *&c.* 2 *Hawk.* 283. The *Venire facias ad Reſpondendum* may be without a Day certain, becauſe by an Appearance the Fault in this Proceſs is cured; but a *Venire facias ad triand. exitum* muſt be returnable on a Day certain, *&c.* 3 *Salk.* 371.

Venire facias tot Matronas, Is mentioned in *Lambard's Eiren. lib.* 4. See *Ventr. inſpiciendo.*

Venitare, Is the Book of *Eccleſiaſticus*; ſo called, becauſe of the *Venite Exultemus Domino*, *Jubilate Deo*, *&c.* writ in the Hymn Book or Pſalter as it is appointed to be ſung, *&c.* It often occurs in the Hiſtory of our *Engliſh* Synods; and is called *Venitarium.* Mon. Ang. Tom. 3. pag. 332.

Venter, Signifies the Belly; but is alſo uſed for the Children by a Woman of one Marriage: There is in Law a *firſt and ſecond Venter*, &c. where a Man hath Children by ſeveral Wives; and how they ſhall take in Diſcents of Lands, vide *Diſcent.*

Ventre inſpiciendo, Is a Writ to ſearch a Woman that ſaith ſhe is with Child, and thereby withholdeth Lands from the next Heir: The *Trial* whereof is by a *Jury of Women. Reg. Orig.* 227. The Law hath provided this Writ for the Benefit of right Heirs, *contra Partus ſuppoſititios*; and it is ſued out of *Chancery*, and returnable in the *Common Pleas*, &c. And if a Man having Lands in Fee-ſimple, or Fee-tail, dieth, and his Wife ſoon after marries again, and feigns herſelf with Child by her former Huſband; in this Caſe, though ſhe be married, the Writ *de Ventre inſpiciendo* doth lie for the Heir againſt her. 2 *Lill. Abr.* 631. *Thomas de Aldham* of *Surry*, Brother of *Adam de Aldham*, *Anno* 4 *Hen.* 3. claimed his Brother's Eſtate; but *Joan*, Widow of the ſaid *Adam*, pleaded ſhe was with Child; whereupon the ſaid *Thomas* obtained the Writ *Ventre inſpiciendo* directed to the Sheriff. —— *Quod aſſumptis tecum diſcretis & legalibus militibus & diſcretis & legalibus mulieribus de Comitatu tuo in propria Perſona accedas ad ipſam* Joannam, *& ipſam a prædictis mulieribus coram præfatis militibus videri facias, & diligenter tractari per ubera & per* Ventrem, *& Inquiſitionem factam Certificari facias ſub ſigillo tuo & ſigillo duorum militum Juſticiariis noſtris apud* Weſtm. *&c.* And in *Eaſter* Term 29 *Eliz.* this Writ was ſued out of the Chancery into *C. B.* at the Proſecution of *Percival Willoughby*, who had married the Eldeſt of the five Daughters of Sir *Francis Willoughby*, who died without any Son, but left a Wife named *Dorothy*, that at the Time of his Death pretended herſelf to be with Child by Sir *Francis*; which if it were a Son, all the five Siſters would thereby loſe the Inheritance deſcended unto them; which Writ was directed to the Sheriffs of *London*, and they were commanded to cauſe the ſaid *Dorothy* to be viewed by 12 Knights, and ſearched by 12 Women, in the Preſence of the 12 Knights, *Et ad tractandum per ubera & ad ventrem inſpiciendum*, whether ſhe were with Child, and to certify the ſame to the Court of Common Pleas; and if ſhe were with Child, to certify for how long, in their Judgments, *Et quando ſit paritura*; upon which the Sheriffs accordingly cauſed her to be ſearched, and returned that ſhe was twenty Weeks gone with Child, and that within twenty Weeks more, *fuit paritura:* Thereupon another Writ iſſued out of *C. B.* requiring the Sheriffs ſafely to keep her in ſuch a Houſe, and that the Doors ſhould be well guarded; and that every Day they ſhould cauſe her to be viewed by ſome of the Women named in the Writ, and when ſhe ſhould be delivered, that ſome of them ſhould be with her to view her Birth, whether it be Male or Female, to the Intent that there ſhould be no Falſity: And upon this Writ the Sheriffs return'd, That they had cauſed her accordingly to be kept and view'd, and that ſuch a Day ſhe was delivered of a Daughter. *Cro. Eliz.* 566. In the 22d Year of K. *James* I. the Widow of one *Duncomb* married within a Week after the

Death of her firſt Husband, and his Couſin and Heir brought the Writ *Ventre inſpiciendo* directed to the Sheriff of *L.* who returned that he had cauſed her to be ſearched by ſuch Matrons who found her with Child, *Et quod paritura fuit* within ſuch a Time; and thereon it was prayed that the Sheriff might take her into his Cuſtody, and keep her till ſhe was delivered, but becauſe ſhe ought to live with her Husband, they would not take her from him; but he was ordered to enter into a Recognizance not to remove her from his Dwelling houſe, and a Writ was awarded to the Sheriff to cauſe her to be inſpected every Day, by Two of the Women which he had returned had ſearched her, and that Three of them ſhould be preſent at her Delivery, *&c. Cro. Jac.* 685. Theſe two laſt Caſes are notable Precedents of the Form of Proſecuting theſe Writs: And where Women condemn'd for Crimes, who plead their Bellies, pretending to be with Child, are to be viewed and tried by a Jury of Matrons, ſee *Reprieve.*

Venue, (*Vicinetum*, or *Viſnetum*) Is taken for a neighbouring Place, *Locus quem* Vicini *habitant:* It is the Place from whence a Jury are to come for Trial of Cauſes. *F. N. B.* 115. In Actions of Treſpaſs and Ejectment, the *Venue* is to be from the Vill or Hamlet, where the Lands in Queſtion do lie: And in all real Actions, the *Venue* muſt be laid in that County where the Thing is for which the Action is brought. 2 *Lill. Abr.* 634, 635. But the Judges may, in all tranſitory Actions, alter the *Venue* from the Place where by the Law it otherwiſe ſhould be, if they believe through any juſt Cauſe there cannot be an indifferent Trial in the County the *Venue* was firſt laid in; though if a Defendant will move to change the *Venue*, he muſt make *Affidavit* that the Cauſe of Action (if any be) did ariſe in the County where he would have the *Venue* to be, or elſewhere, and not in the County where the Plaintiff hath laid his Action: And if upon a Motion the Court orders the *Venue* to be altered, the Plaintiff is to alter his Declaration, and lay his Action in the other County, *&c. Mich.* 22 *Car. B. R.* Motion to change a *Venue* muſt be within eight Days after the Declaration delivered; but this Rule is not ſtrictly obſerved: It is never granted after the Rules for Pleading are out; and 'tis a Rule not to change a *Venue*, where neceſſary Evidence ariſes in two Counties to ſupport the Action, if the Plaintiff will be bound to give ſome material Evidence in the County where he laid his Action. 2 *Salk.* 668, 669. If the Defendant is a Barriſter or Attorney, on Motion the *Venue* ſhall be changed into *Middleſex*; and where an Attorney is Plaintiff, and lays his Action in *Middleſex*, there the *Venue* ſhall continue. *Ibid.* The Want of a *Venue* is only curable by ſuch a Plea which admits the Fact, for the Trial whereof it was required to lay a *Venue.* 3 Salk. 381. Vide *Venire facias.*

Verderor, (*Viridarius*, from the Fr. *Verdeur*, i. e. *Cuſtos Nemoris*) Is an Officer in the King's *Foreſt*, whoſe Office is properly to look to the *Vert*, and ſee it well maintained; and he is ſworn to keep the Aſſiſes of the Foreſt, and view, receive, and inrol the Attachments and Preſentments of Treſpaſſes of Vert and Veniſon, *&c. Manwood, par.* 1. *pag.* 332.

Verdict, (*Veredictum, quaſi dictum Veritatis*) Is the Anſwer of a Jury given to the Court, concerning the Matter of Fact in any Cauſe committed to their Trial; wherein every one of the Twelve Jurors muſt agree, or it cannot be a *Verdict:* And the Jurors are to try the Fact, and the Judges to adjudge according to the Law that ariſeth upon it. 1 *Inſt.* 226. *Verdicts* are either *General*, or *Special:* A *General Verdict* is that which is brought into the Court in like general Terms to the General Iſſue; as if a Defendant pleads Not guilty, or no Wrong, then the Iſſue is general, whether he be guilty, or the Fact be a Wrong, or not; which being committed to the Jury, they, upon Conſideration of the Evidence, ſay for the Plaintiff, that the Defendant is guilty of a Wrong, or for the Defendant, that it is no Wrong, *&c.* A *Special Verdict* is where they find the Matter at large, according to the Evidence given, that ſuch a Thing is done by the Defendant; and declaring the Courſe of the Fact, as in their Opinions it is proved, pray the Judgment of the Court as to what the Law is in ſuch a Caſe. *S. P. C.* 1 *Inſt.* 227. And a *Fact* may be found *Specially, viz.* Where a Perſon is indicted of Murder; the Jury may bring him in guilty of Manſlaughter, *&c.* Or they may leave the Matter to the Judges, in which Caſes ſometimes it is referred to the Lord Chief Juſtice of *B. R.* and all the Judges, to determine it; wherein 'tis ſaid a Recorder of *London* who tried a Priſoner hath given his Opinion; and the King himſelf, to whom the Matter was reported. 3 *Lev.* 255. 2 *Nelſ. Abr.* 97. There are likewiſe *Publick* and *Privy Verdicts:* Publick, when given in open Court; and Privy, when given out of the Court, before any of the Judges thereof; and is called Privy, being to be kept ſecret from the Parties 'till affirmed in Court. 1 *Inſt.* 227. But a Privy *Verdict* is in Strictneſs no *Verdict*; for it is only a Favour which is allowed by the Court to the Jury for their Eaſe: The Jury may vary from it, and when come into Court give a contrary *Verdict*; but this muſt be before the Privy *Verdict* is recorded. 5 *Mod.* 351. 1 *Inſt.* No Privy *Verdict* can be given in criminal Matters, which concern Life, as Felony, *&c.* but it muſt be openly in Court; becauſe the Jury are commanded to look upon the Priſoner, when they give their *Verdict*, and ſo the Priſoner is to be there preſent: But in criminal Cauſes, where the Defendant is not to be perſonally preſent at the Time of the *Verdict*, and in Informations, a Privy *Verdict* may be given. *Raym.* 193. 1 *Ventr.* 97. A Special *Verdict* may be given in criminal, or civil Caſes; and where the Court directs the Jury to find a Special *Verdict* in a civil Cauſe, one of the Counſel on each Side agree upon Notes for it, and draw them up and ſet their Hands to them; and then they are to be delivered to the Jury in convenient Time, or the Court will take a General *Verdict:* If at the Prayer of the Plaintiff or Defendant, a Special *Verdict* is ordered to be found, the Party praying it is to proſecute the Special *Verdict*, that the Matter in Law may be determined; and if either Party delay to join in drawing it up, and pay his Part of the Charges, or if the Counſel for the Defendant refuſes to ſubſcribe the Special *Verdict*, the Party deſiring it ſhall draw it up and enter it *Ex parte.* 2 *Lill. Abr.* 645, 653. Where the Parties diſagree, or the Special *Verdict* is drawn contrary to the Notes agreed upon, the Court on Motion will rectify it; and the Court may amend a Special *Verdict*, to bring the Special Matter in Queſtion: Though if a Matter of Fact be left out in the Notes of the Special *Verdict* drawn by Counſel, this cannot be amended afterwards. *Ibid.* 646. The Plaintiff and Defendant are both of them to appear in Court to hear a Special *Verdict*, and the Jury is to be called and to have the Special *Verdict* read unto them by the Secondary; and upon the Reading of it, if there be any Miſtake in the Drawing it up, the Counſel on either Side may except againſt it; and when the Counſel is agreed, then the Secondary demands of the Jury, whether they agree to find it ſo; and if they anſwer they do, the *Verdict* is found; and it is to be afterwards entered, *&c. Paſch.* 23 *Car. B. R.* 2 *Lill.* 646. A Special *Verdict*, though agreed to by the Counſel, *&c.* is not a Special *Verdict* 'till allowed by the Court. *Ibid.* In all Caſes and all Actions, the Jury may give

give a General or Special *Verdict*; and the Court is bound to receive it, if pertinent to the Point in Iſſue; and if the Jury doubt, they may refer themſelves to the Court, but are not bound ſo to do. 3 *Salk.* 373. Though the Plaintiff and Defendant in a Cauſe conſent to have the Jury find a Special *Verdict*, yet they may find a General *Verdict*; but this is not uſual: And if the Jury will take upon them to find, againſt the Directions of the Court, any Thing in Matter of Law, the Court will receive the *Verdict*; but if they give a falſe *Verdict*, they are liable to Attaint. *Paſch.* 23 *Car.* The ancient Courſe of laying a Fine on Jurors, barely for giving a *Verdict* contrary to the Directions of the Court, is condemn'd as illegal, and diſuſed: And it is the ſame if the *Verdict* be given againſt Evidence; for the Jury may give it againſt Evidence, if they know the Fact themſelves. ***Kel.*** 50, 58. If Jurors eat or drink any Thing at the Charge of him for whom they give their *Verdict*, before they are agreed; or if by Caſting of Lots they find for the Plaintiff or Defendant; if any Writing, Letter, &c. be delivered by the Plaintiff, or in his Behalf to the Jury, concerning the Matter in Iſſue, after the Jury are gone from the Bar, and the *Verdict* is found for the Plaintiff; or if either of the Parties, their Attornies or Solicitors, ſpeak any Thing to the Jury before agreed on their *Verdict*, which relates to the Cauſe; as that 'tis a clear Cauſe, or I hope you will find for ſuch a Perſon; or if any Witneſs be ſent for by the Jury, after gone from the Bar, and he repeats his Evidence again, &c. In theſe Caſes the *Verdict* ſhall be void and ſet aſide: But though where the Jury eat and drink at the Charge of the Plaintiff, and the *Verdict* being found for him, it is void; it is not ſo if given for the Defendant: And if the Plaintiff, after the Jury are gone from the Bar, deliver any Writing to any of the Jurors, altho' the *Verdict* ſhall be void if given for the Plaintiff; it is otherwiſe if given for the Defendant, and *ſic è converſo*, &c. Alſo if the Jury have eat or drank after they went from the Bar, and before they gave their *Verdict*, this ought to be ſhewed before the *Verdict* is given. 1 *Inſt.* 227. 1 *Ventr.* 125. 2 ***Lev.*** 140. *Moor* 17. 3 *Nelſ. Abr.* 454. A Juryman withdrawing from his Fellows, or keeping them from giving their *Verdict*, without giving good Reaſon for it, ſhall be fined; but if he differ from them in Judgment, he ſhall not: And although Jurymen are puniſhable for Miſdemeanors, every Miſdemeanor of the Jury before they give their *Verdict*, is not a ſufficient Cauſe to make void the *Verdict*. *Dyer* 53. 2 *Lill. Abr.* 647. If one of a Jury that found a *Verdict*, were outlawed at the Time of the *Verdict*, it is not good: And where a *Verdict* is given by thirteen Jurors, it is ſaid to be a void *Verdict*; becauſe no Attaint will lie. 2 *Lill.* 644, 650. If there be eleven Jurors agreed, and but one diſſenting, the *Verdict* ſhall not be taken, nor the Refuſer fined, &c. Though 'tis ſaid anciently it was not neceſſary, that all twelve ſhould agree in Civil Cauſes. 2 *Hale's Hiſt. P. C.* 297. In capital Caſes, a *Verdict* muſt be actually given; and if the Jury don't all agree upon it, they may be carried in Carts after the Judges, round the Circuit till they agree; and in ſuch Caſe they may give their *Verdict* in another County. 1 *Inſt.* 227, 281. 1 *Vent.* 97. The Court may ſet aſide a *Verdict* that convicts a Man contrary to Evidence in a criminal Cauſe; but they cannot ſet aſide a *Verdict* which acquits him. *Wood's Inſt.* 648. If the Jury acquit a Perſon of an Indictment of Felony againſt Evidence, the Court, before the *Verdict* is recorded, may order them to go out again and re-conſider the Matter; but this hath been thought hard, and of late Years is not ſo frequently practiſed as formerly: There are Inſtances where Defendants acquitted of Crimes contrary to Evidence, have been bound to the good Behaviour. 2 *Hawk. P. C.* 442. In Caſe a Jury acquits a Man upon Trial againſt full Evidence, and being ſent back to conſider better of it, are peremptory in and ſtand to their *Verdict*, the Court muſt take it, but may reſpite Judgment upon the Acquittal: And here the King may have an Attaint. And if the Jury will by *Verdict* convict a Perſon againſt or without Evidence, and againſt the Opinion of the Court; they may reprieve him before Judgment, and certify for his Pardon. 2 *Hale's Hiſt. P. C.* 310. When a *Verdict* in a Civil Action is given againſt Evidence, it ſhall be ſet aſide, and a new Trial had, &c. If the Fact upon which the Court was to judge, be not found by the *Verdict*, a new *Venire facias* may be granted. 1 *Roll. Abr.* 693. A *Verdict* being given where no Iſſue is joined, there can be no Judgment upon it; but a *Repleader* is to be had. *Mod. Ca.* 4. And if a *Verdict* be ambiguous, inſufficient, repugnant, imperfect, or uncertain, Judgment ſhall not paſs upon it. 1 *Saund.* 154, 155. *Verdicts* muſt in all Things directly anſwer the Iſſue, or they will not be good; and if a *Verdict* finds only Part of the Iſſue, it may be ill for the Whole. 3 *Salk.* 374. But there is a Difference between Actions founded on a Wrong, and on a Contract; for where 'tis founded on a Wrong, as on a Treſpaſs, or Eſcape, &c. 'tis maintainable if any Part of it is found: So in Debt for Rent, a leſs Sum than demanded may be found by the *Verdict*, becauſe it may be apportioned; but where an Action is founded on a Contract, there 'tis intire, and otherwiſe. 2 *Cro.* 380 If ſeveral Perſons are indicted, or jointly charged in an Information, a *Verdict* may find ſome of the Defendants guilty, and not others. And if the Subſtance of an Iſſue be found, or ſo much as will ſerve the Plaintiff's Turn, although not directly according to the Iſſue, the *Verdict* is good. 1 ***Lev.*** 142. *Hob.* 73. 1 *Mod.* 4. According to *Glyn*, Ch. Juſt. if an Action be brought for 500*l.* the Jury may find Part paid againſt the Plaintiff, and Part unpaid againſt the Defendant, and ſo divide the *Verdict*. *Trin.* 1658. 2 *Lill. Abr.* 649. If the Jury find the Iſſue and more, it is good for the Iſſue, and void for the Reſidue: And where a Jury find a Point in Iſſue, and a ſuperfluous Matter over and above, that ſhall not vitiate the *Verdict*. 2 ***Lev*** 253. Yet if a Man brings an Action of Debt, and declares for 20*l.* and the Jury upon ***Nil debet*** pleaded, find that the Defendant owed 40*l.* this *Verdict* is ill; for the Plaintiff cannot recover more than he demands; and in this Caſe he may not recover what he demands, becauſe the Court cannot ſever their Judgment from the *Verdict*. 3 *Salk.* 376. A Plaintiff failing to prove his Iſſue, the *Verdict* ought to be found for the Defendant; and the Court will give Judgment for the Defendant, where it appears that the Plaintiff hath recovered by *Verdict* without Cauſe of Action. 2 *Lill.* 644, 651. A *Verdict* found againſt a Record, which is of a higher Nature than any *Verdict*, is not good: But where a *Verdict* may be any Ways conſtrued to make it good, it ſhall be ſo taken, and not to make it void. *Ibid.* Upon a General Iſſue, a *Verdict* which is contrary to another Record, may be allowed; but not where the *Verdict* found is againſt the ſame Record upon which it is given. *Dyer* 300. A *Verdict* againſt the Confeſſion of the Party, is void: But it has been held, that the *Verdict* may be good in the Disjunctive, though it be not formal; but if it find a Thing merely out of the Iſſue, 'tis not good. *Jenk. Cent.* 257. *Hob.* 53, 54. And where the Jury begin with a direct *Verdict*, and end with ſpecial Matter, &c. that ſhall make the *Verdict*: Alſo if they begin with any Special Matter, and after make a general Concluſion upon it, contrary to Law; the Judges will judge of the *Verdict*, according to the Special Matter. *Ibid.* 53. No *Verdict* will make that good, which is not ſo by Law, of which the Court is to judge; Judgment is to be given on *Verdicts*, that ſtand with Law; and what both Parties have agreed in the Pleading, muſt be admitted ſo to be, though the Jury find it otherwiſe, it being a Rule in Law. *Hob.* 112. 2 *Cro.* 678. 2 *Mod.* 4. The Statute of Jeofails helps after *Verdict*; as it ſuppoſes the Matter left out was given in Evidence, and that the Judge directed accordingly. 1 *Mod.* 292. If there be no original Writ, it is help'd by a *Verdict* by the Statute of Jeofails; but not if there be a bad Writ: A Declaration that is not good, is in many Caſes help'd after *Verdict*; but not where the Declaration doth not make it appear that the Plaintiff had ſome Cauſe of Action, to warrant his Declaration, &c. A *Verdict* may make an ill Plea good, by Intendment, &c. But a *Verdict* will not help, where there is no Iſſue: And what is good after *Verdict*, would be ill on Demurrer; alſo in criminal Caſes, Real Actions, or Actions *Qui tam*, if there be any Errors in the Proceedings, they are not help'd after *Verdict*, by the Stat. of Jeofails. 2 *Lill. Abr.* 644, 647. 2 *Bulſt.* 41. 2 *Salk.* 664. 3 *Mod.* 161. Where a *Verdict* is found for the Plaintiff, and he will not enter it, the Defendant may compel him to do it, on Motion; or the Defendant may enter it himſelf. 2 *Lill.* After a *Verdict* is returned in Court, it cannot be altered, but if there be any Miſpriſion, it is to be ſuggeſted before: And a Miſtake of the Clerk of the Aſſiſes appearing to the Court, was ordered to be amended. *Cro. Eliz.* 112, 150. On Return of *Verdicts*, in Civil Cauſes, given at the Aſſiſes, to the Courts at *Weſtminſter*, Judgment is had thereon; and generally if the Judgment differ from the *Verdict*, it may be reverſed, &c. See *Iſſue* and *Judgment*.

Verecundium, Is ſpecially uſed for Injury done to any one. *Somner of Gavelkind, pag.* 174.

Verge, (*Virgata*) The Compaſs of the King's Court, which bounds the Juriſdiction of the *Lord Steward* of the *Houſhold*; and that ſeems to have been twelve Miles about. Stat. 13 *R.* 2. *cap.* 3. *Briton* 68. *F. N. B.* 24. There is alſo a *Verge of Land*; which is an uncertain Quantity directed by the Cuſtom of the Country, from fifteen to 30 Acres, as appears under *Yard-Land*. 28 *Ed.* 1. And the Word *Verge* hath another Signification, of a Stick or Rod, whereby one is admitted Tenant to a Copyhold Eſtate. *Old Nat. Br.* 17.

Vergers, (*Virgatores*) Are ſuch as carry White Wands before the Judges, &c. *Fleta, lib.* 2. *cap.* 38.

Veronica, A Word mentioned by our *Hiſtorians*, having its Original from this, That as our Saviour was led towards the Croſs, the Likeneſs of his Face was formed on his Handkerchief in a miraculous Manner, which is ſtill preſerved in St. *Peter*'s Church at *Rome*, and called *Veronica*. Mat. Pariſ. Anno 1216. pag. 514. Bromp. 121.

Vert, (Fr. *Verd*, i. e. *Viridis*, otherwiſe called *Green-hue*) In the *Foreſt* Laws ſignifies every Thing that beareth a *Green* Leaf within a Foreſt, that may cover a Deer; but eſpecially great and thick Coverts. Of *Vert* there are divers Kinds; ſome that bear Fruit, which may ſerve for Food, as Cheſnut-trees, Service-Trees, Nut-Trees, Crab-Trees, &c. And for the Shelter of the Game, ſome called Haut-boys, ſerving both for Food and Browze; alſo for the Defence of them, as Oaks, Beeches, &c. and for Shelter and Defence, ſuch as Aſhes, Poplars, Maples, Alder, &c. Of Sub boys, ſome for Browze and Food of the Game; of Buſhes and other Vegetables, ſome are for Food and Shelter, as the Haw-thorn, Black-thorn, &c. And ſome for Hiding and Shelter, ſuch as Brakes, Gorſe, Heath, &c. But Herbs and Weeds, although they be Green, our legal *Vert* extendeth not to them. 4 *Inſt.* 327. *Manwood* divides *Vert* into *Overt vert* and *Nether-vert*; the *Overt vert* is that which the Law-Books term Haut-boys; and *Nether-vert*, what they call Sub-boys: And into *Special Vert*, which is all Trees growing within the Foreſt that bear Fruit to feed Deer; called Special, becauſe the Deſtroying it is more grievouſly puniſhed than of any other *Vert*. *Manw. par.* 2. *pag.* 33. And *Vert* is ſometimes taken for that Power which a Man hath by the King's Grant to cut *green* Wood in the Foreſt.

Verbiſe, A Kind of Cloth, mentioned in the Statute 1 *R.* 3. *c.* 8. See *Plonkets*.

Very Lord and very Tenant, (*Verus Dominus, & Verus Tenens*) Are they that are immediate Lord and Tenant one to another. *Broke*. In the Taking of Leaſes there is to be a *very Lord and very Tenant*; and a Man is not a *very Tenant*, until he hath attorned to the Lord by ſome Service, &c. *Old Nat Br.* 19 *H.* 7. *c.* 15.

Veſſels, for Beer, Ale, and Sope, &c. their Contents and how to be made. 23 *H.* 8. See *Coopers*.

Veſted, If an Eſtate in *Remainder* is limited to a Child before born, when a Child is born the *Eſtate* in *Remainder* is *veſted*, &c. 2 *Leon.* 219.

Veſtry, A Place adjoining to a Church, where the *Veſtments* of the Miniſter are kept; alſo a Meeting at ſuch Place: And ſometimes the Biſhop and Prieſts ſat together in *Veſtries*, to conſult of the Affairs of the Church; in Reſemblance of which antient Cuſtom, the Miniſter, Churchwardens and Chief Men of moſt Pariſhes, do at this Day make a *Pariſh Veſtry*. By Cuſtom there may be ſelect *Veſtries*, or a certain Number of Perſons choſen to have the Government of the Pariſh, make Rates, and take the Accounts of Church-wardens, &c. And when Rates are made, the Pariſhioners muſt have Notice of a *Veſtry* held for that Purpoſe; and then all that are abſent ſhall be concluded by a Majority of thoſe that be preſent, who in Conſtruction of Law are the whole Pariſh. *Wood's Inſt.* 90. And if a Pariſhioner be ſhut out of the *Veſtry* Room by the Clerk of the *Veſtry*; and he makes it appear that he hath a Right to come into the Room, and to be preſent and vote in the *Veſtry*, &c. Action of the Caſe lies, as a Remedy. *Mod. Ca. in L. & E.* 52, 354. *Veſtry-men* in *London* are a ſelect Number of the chief Pariſhioners in every Pariſh within the City and Suburbs, who yearly chuſe Officers for the Pariſh, and take Care of its Concernments, &c. by Statute 15 *Car.* 2. *c.* 5. On erecting Pariſhes for the new Churches to be built in or near *London* and *Weſtminſter*, the Commiſſioners for building the Churches are impowered to name a ſufficient Number of the Inhabitants of each new Pariſh to be *Veſtry-men*; and on their Deaths or Removal, the Majority of the Pariſhioners to chuſe others, &c. And the Pariſh-Officers, with the *Veſtry* or principal Inhabitants of the new Pariſhes, are in *Eaſter* Week to aſſeſs the Rates for the Poor, &c. 9 *Ann. c.* 22. *Veſtries* of Pariſhes are to be conſulted by Pariſh-Officers, and to give their Aſſent on hiring of Houſes for the better Employing and Maintaining of the Poor. 9 *Geo* 1.

Veſtura, A Crop of Graſs or Corn; and Mention is made of *Prima Veſtura*, and *Secunda Veſtura*, &c. Cartular. Abb. St. Edmund. MS. fol. 182.

Veſture, (*Veſtura*) Signifies a Garment; but in the Law it is metaphorically applied to a Poſſeſſion or Seiſin. *Stat. Weſtm.* 2. *cap.* 5. And in this Signification it is borrowed of the *Feudiſts*, with whom *Inveſtitura* imports a Delivery of Poſſeſſion, and *Veſtura* Poſſeſſion itſelf. *Hotom. Veſture of an Acre of Land* is the Profit of it; and it ſhall be inquired how much the *Veſture* of an Acre of Ground is worth, and how much the Land, &c. 4 *Ed.* 1. 14 *Ed.* 3. By Grant of *Veſtura terræ*, the Soil will paſs; and the *Veſture* being the Profit of Land, 'tis generally all one to have that, as the Land itſelf. 1 *Vent.* 393. 2 *Roll. Abr.* 2.

Vetitum namium, Is where the Bailiff of a Lord diſtrains Beaſts or Goods of another, and the Lord forbids his Bailiff to deliver them when the Sheriff comes to make Replevin: The Word *Namium* ſignifying a Taking or Diſtreſs, and *Vetitum* forbidden; and the Owner of the Cattle may demand Satisfaction for the Injury, which is called *Placitum de vetito Namio.* Divers Lords of Hundreds and Courts-Baron, had Power to hold Plea *de vetito Namio:* Matilda de Morton *clamat in Manerio de* M. *duos* Law-Days, *&c.* Placito de Namio vetito, *ſine Brevi Domini Regis, &c.* 2 Inſt. 140. Record. in Theſaur. Scacc'. See *Naam.*

Uffingi, The Kings of the *Eaſt Angles* were ſo termed from King *Uffa,* who lived in the Year 578. *Matt. Weſtm.*

Via Regia, Is the Highway or common Road, called the King's Way, becauſe authoriſed by him, and under his Protection: It is alſo denominated *Via Militaris.* Leg. Hen. 1. c. 80. Bract. lib. 4.

Vicar, (*Vicarius, quaſi vice fungens Rectoris*) The Prieſt of every Pariſh is called *Rector,* unleſs the Predial Tithes are appropriated, and then he is ſtiled *Vicar*; and when Rectories are apropriated, *Vicars* are to ſupply the Rectors Places. At firſt a *Vicar* was a meer Curate to the Impropriator of the Church, temporary, and removable at Pleaſure; as thoſe who are now Pariſh-Prieſts, in antient Times when there were no particular Pariſhes, were only Curates to the Biſhops; but by Degrees the Vicars got a ſettled Maintenance of Glebe, and ſome Kind of Tithes, and now claim their Dues either by Endowment or by Preſcription: And where the *Vicar* is endowed, and comes in by Inſtitution and Induction, he hath *Curam Animarum actualiter,* and is not to be removed at the Pleaſure of the Rector, who in this Caſe hath only *Curam animarum habitualiter*; but where the *Vicar* is not endowed, nor comes in by Inſtitution and Induction, the Rector hath *Curam animarum actualiter,* and may remove the *Vicar.* 1 *Vent.* 15. 3 *Salk.* 378. In every Church appropiated, one is to be ordained perpetual *Vicar,* and to be canonically inſtituted and inducted, and alſo endowed at the Diſcretion of the Ordinary; which Endowment is a Part of the Rectory, ſet out by the Patron, Parſon, and Ordinary, for Maintaining the *Vicar:* The Inſtitution and Induction, *&c.* of *Vicars* is done in the ſame Manner as that of Rectors; and over and above they are to take an Oath of perpetual Reſidency, but this the Biſhop may diſpenſe with; the Statutes concerning Pluralities, Dilapidations, *&c.* relate to them as well as to Parſons. 4 *H.* 4. 2 *Roll. Abr.* 337. Upon Endowment, the *Vicar* hath an Equal, though not ſo great an Intereſt in the Church as a Rector; the Freehold of the Church, Church-yard and Glebe is in him; and as he hath the Freehold of the Glebe, he may preſcribe to have all the Tithes in the Pariſh, except thoſe of Corn, *&c.* Many *Vicars* have a good Part of the great Tithes; and ſome Benefices, that were formerly ſevered by Impropriation, have, by being united, had all the Glebe and Tithes given to the *Vicar:* But Tithes can no other Way belong to the *Vicar* than by Gift, Compoſition or Preſcription; for all Tithes *de jure* appertain to the Parſon; and yet generally *Vicars* are endowed with Glebe and Tithes, eſpecially ſmall Tithes, *&c.* If a *Vicar* be endowed of ſmall Tithes by Preſcription, and afterwards Land, which had been arable Time out of Mind, is altered, and there are growing ſmall Tithes thereon, the *Vicar* ſhall have them; for his Endowment goes to ſuch Tithes, in any Place within the Pariſh. *Cro. Eliz.* 467. *Hob.* 39. But where the *Vicar* is endow'd out of the Parſonage, he ſhall not have Tithes of the Parſon's Glebe, or of Land that was Part thereof at the Time of the Endowment, but now ſevered from it: Yet it ſeems to be otherwiſe, if the Glebe Lands are in the Hands of the Parſon's Leſſee. *Cro. Eliz.* 479. *Maller. Q. Imped.* 4. The Endowment of *Vicarages* hath been always favour'd in Law, the *Vicars* for the moſt part having the Cure of Souls. 2 *Roll.* 335. *Comp. Incumb.* 347. *March Rep.* 11.

Vicarage, (*Vicaria*) Of Places did originally belong to the Parſonage or Rectory, being derived out of it: The Rector of common Right is Patron of the *Vicarage*; but it may be ſettled otherwiſe; for if he makes a Leaſe of his Parſonage, the Patronage of the *Vicarage* paſſes as incident to it. 2 *Roll. Abr.* 59. And if a *Vicarage* become void, during the Vacancy of the Parſonage, the Patron of the Parſonage ſhall preſent to ſuch *Vicarage.* 19 *Ed.* 2. 41. If the Profits of the Parſonage or *Vicarage* fall into Decay, that either of them by itſelf is not ſufficient to maintain a Parſon and *Vicar,* they ought again to be re-united: Alſo if the *Vicarage* be not ſufficient to maintain a *Vicar,* the Biſhop may compel the Rector to augment the *Vicarage.* 2 *Roll.* 337. *Parſ. Counſell.* 195, 196. *Stat.* 29 *Car.* 2. *c.* 8. Upon the Appropriation of a Church, and Endowment of a *Vicar* out of the ſame, the Parſonage and *Vicarage* are two diſtinct Eccleſiaſtical Benefices: And it hath been held, That where there is a Parſonage and *Vicarage* endowed, that the Biſhop in the Vacation may diſſolve the *Vicarage*; but if the Parſonage be impropriated, he cannot do it; for on a Diſſolution the Cure muſt revert, which it cannot into Lay Hands. *Comp. Incumb.* 2 *Cro.* 518. *Palm* 219. For the moſt part *Vicarages* were endow'd upon Appropriations; but ſometimes *Vicarages* have been endowed without any Appropriation of the Parſonage; and there are ſeveral Churches, where the Tithes are wholly impropriated, and no *Vicarage* endowed; and there the Impropriators are bound to maintain Curates to perform Divine Service, *&c.* The Parſon, Patron and Ordinary, may create a *Vicarage,* and endow it: And in Time of Vacancy of the Church, the Patron and Ordinary may do it; but the Ordinary alone cannot create a *Vicarage,* without the Patron's Aſſent. 17 *Ed.* 3. 51. *Cro. Jac.* 516. Where there is a *Vicarage* and Parſonage, and both are vacant, and in one Perſon's Patronage; if he preſents his Clerk as Parſon, who is thereupon inducted, this ſhall unite the Parſonage and *Vicarage* again. 11 *H.* 6. 32. *Vicarage* or not, is to be tried in the Spiritual Court, becauſe it could not begin to be created but by the Ordinary. 3 *Salk.* 378.

Vicario deliberando occaſione cujusdam Recognitionis, &c. Is an antient Writ that lies for a Spiritual Perſon impriſon'd, upon Forfeiture of a Recognizance, *&c.* mentioned in *Reg. Orig.* 147.

Vice-Admiral, An under Admiral at Sea; or Admiral on the Coaſts, *&c.*

Vice-Chamberlain, A great Officer next under the *Lord Chamberlain:* And in his Abſence hath the Rule and Controul of all Officers appertaining to that Part of his Majeſty's Houſhold, which is called the *Chamber* above Stairs. 13 *R.* 2. *c.* 1.

Vice-Conſtable of England, An Officer whoſe Office is ſet forth in *Pat.* 22 *Ed.* 4.

Vice-Dominus, The ſame with *Vicecomes* —— Vice-Dominus *Dictus eſt Præfectus Provinciæ.* Leg. Hen. c. 7. Selden's Tit. Hon. par. 2. Ingulphus.

Vice-Dominus Epiſcopi, Is the Vicar General, or Commiſſary of a Biſhop. *Blount.*

Vice-gerent, A Deputy or Lieutenant. Stat. 31 *Hen.* 8. *c.* 10.

Vice-Marſhal, Is mentioned with *Vice-Conſtable.* Pryn's Animad. on 4 Inſt. 71.

Vice-Roy, (*Pro Rex*) The King's Lord Lieutenant over a Kingdom. *Litt.*

Vice-Treaſurer, An Officer under the *Lord Treaſurer* in the Reign of *H.* 7. See *Under-Treaſurer of England.*

Vicinage, (Fr. *Voiſinage, Vicinetum*) Neighbourhood, or near Dwelling. *Magn. Chart. c.* 14. See *Viſne.*

Vicis & Venellis mundandis, Is a Writ which lieth againſt a Mayor or Bailiff of a Town, &c. for the clean Keeping of their Streets. *Reg. Orig.* 267.

Vicount, Signifies as much as Sheriff; alſo a Degree of Nobility. *Camd. Britain.* 170. See *Viſcount*.

Vicountiel, or Vicontiel, Is an Adjective from *Vicount*, ſignifieth any Thing that belongeth to the Sheriff: as Writs *Vicontiel* are ſuch Writs as are triable in the County or Sheriff's Court, of which Kinds there are divers Writs of Nuſance, &c. mentioned by *Fitzherbert*. Old Nat. Br. 109. F. N. B. 184. *Vicontiels* are certain Farms, for which the Sheriff pays a Rent to the King, and he makes what Profit he can of them: And *Vicontiel Rents* uſually come under the Title of *Firma Comitatus*; and the Sheriff hath a particular Roll of them given in to him, which he delivers back with his Accounts. 33 & 34 *H.* 8. *c.* 16. 3 *Ed.* 6. *c.* 4. 22 *Car.* 2. *c.* 6.

Vicountiel Juriſdiction, Is that Juriſdiction which belongs to the Officers of a County; as to Sheriffs, Coroners, Eſcheators, &c.

Victuals, (*Victus*) Suſtenance, and Things neceſſary to live by, as Meat and Proviſions; *Victuallers*, are thoſe that ſell *Victuals*; and we call now all common Alehouſe-keepers by the Name of *Victuallers*. *Victuallers* ſhall ſell their *Victuals* at reaſonable Prices, or forfeit double Value: And *Victuallers*, Fiſhmongers, Poulterers, &c. coming with their *Victuals* to *London*, ſhall be under the Governance of the Lord Mayor and Aldermen; and ſell their *Victuals* at Prices appointed by Juſtices, &c. 23 & 31 *Ed.* 3. *c.* 6. 7 *R.* 2. 13 *R.* 2. No Perſon during the Time that he is a Mayor, or in Office in any Town, ſhall ſell *Victuals*, on Pain of Forfeiture, &c. But if a *Victualler* be choſen Mayor, whereby he is to keep the Aſſiſe by Statute, two diſcreet Perſons of the ſame Place who are not *Victuallers*, are to be ſworn to aſſiſe Bread, Wine, and *Victuals*, during the Time that he is in Office; and then, after the Price aſſeſſed by ſuch Perſons, it ſhall be lawful for the Mayor to ſell *Victuals*, &c. 6 *R.* 2. *c.* 9. 3 *H.* 8. *c.* 8. If any one offend againſt theſe Statutes, the Party grieved may ſue a Writ directed to the Juſtices of Aſſiſe, commanding them to ſend for the Parties, and to do Right; or an Attachment may be had againſt the Mayor, Officer, &c. to appear in *B. R.* Selling of corrupt *Victuals*, or expoſing them to Sale, is puniſhable by Statute 1 *R.* 3. *c.* 1. And in ſome Manors they chuſe yearly two Surveyors of *Victuals*, to ſee that no unwholſome *Victuals* be ſold, and deſtroy ſuch as are corrupt. 1 *Mod.* 202. If any *Victuallers*, Butchers, Brewers, Poulterers, Cooks, &c. conſpire and agree together not to ſell their *Victuals* but at ſuch Prices; they ſhall forfeit for the firſt Offence 10*l.* for the ſecond 20*l.* and for the third 40*l.* Stat. 2 & 3 *Ed.* 6. *c.* 15. The Rates of *Victuals* in all Places, except Corporations, ſhall be aſſeſſed by the King's Juſtices, &c. And *Victuals* is not to be tranſported, by 25 *Hen.* 8. *c.* 2. See *Foreſtallers*.

Vidame, Was the ſame as *Vice-Dominus*, the Biſhop's Deputy in Temporal Matters.

Videlicet. A *Videlicet* in a Deed may make a Separation, as well as an *Habendum*: And if there be a ſeveral *Habend.* of an Annuity of 20*l.* to one, and ſo to four others; it will be to the ſame Effect, tho' it ſays *Habendum* 100*l.* to them, to be equally divided, (*viz.*) 20*l.* to one, and ſo to the reſt, &c. 5 *Mod. Rep.* 29.

Viduitatis Profeſſio. The Making a ſolemn Profeſſion to live a ſole and chaſte Widow; which was heretofore a Cuſtom in *England*. Dugd. Warwickſh. pag. 313, 654.

Vidimus, Mentioned in the 15 *Hen.* 6. *cap.* 3. See *Innoteſcimus*.

Vi & Armis, Are Words uſed in Indictments, &c. to expreſs the Charge of a forcible and violent Committing any Crime or Treſpaſs: But in Appeal of Death, on a Killing with a Weapon, the Words *Vi & Armis* are not neceſſary, becauſe they are implied; ſo in an Indictment of Forcible Entry, alledged to have been made *Manu forti*, &c. 2 *Hawk.* P. C. 179. 1 *Hawk.* 150, 220. And where the Omiſſion of *vi & Armis*, &c. is help'd in Indictments, *vide* the Stat. 4 & 5 *Ann.*

View, (Fr. *Veue*, i. e. *Viſus*) Is generally where a Real Action is brought, and the Tenant doth not know certainly what is in Demand; in ſuch Caſe he may pray that the Jury may *view* it. *Briton, cap.* 45. *F. N. B.* 178. This *View* is for a Jury to ſee the Land or Thing claim'd, and in Controverſy; and lies in Ejectment, Waſte, Aſſiſes of *Novel Diſſeiſin*, where at leaſt Six of the *Recognitors* muſt have the *View* before the Aſſiſes. 2 *Lill. Abr.* 655. Stat. 13 *Ed.* 1. *c.* 48. 12 *Ed.* 2. And though formerly there could not have been a *View* in a Perſonal Action, but upon withdrawing of a Juror after they were ſworn, and Conſent of the Parties by a Rule of Court; now by the *Act for the Amendment of the Law*, it may be granted in any Action brought in the Courts at *Weſtminſter*, where neceſſary the better to underſtand the Evidence upon the Trial; in which Caſe the Courts may order ſpecial Writs of *Diſtringas* or *Habeas Corpora* to the Sheriff, requiring him to have ſix of the Jurors, or a greater Number of them, at the Place in Queſtion, ſome convenient Time before the Trial; who ſhall have the Matters ſhewn to them by two Perſons named in the Writ of *Diſtringas*, and appointed by the Court; and the ſaid Sheriff executing the Writ is ſpecially to return the *View* made accordingly, &c. 4 & 5 *Ann. cap.* 16. Upon a *View*, the Thing in Queſtion is only to be ſhewn to the Jury; and no Evidence can be given on either Side. 2 *Lill.* 656. But where in Action of Waſte, ſeveral Places are aſſigned, and the Jury hath not the View of ſome of them, they may find no Waſte done in that Part which they did not *view*: In Waſte for waſting a Wood, if the Jury *view* the Wood without entering into it, it is good; alſo Waſte being aſſigned in every Room of an Houſe, the *View* of the Houſe generally is ſufficient. 1 *Leon.* 259, 267. If a Rent or Common is demanded, the Land out of which it iſſues muſt be put in *View*. 1 *Leon.* 56. And if a *View* be denied, where it ought to be granted; or granted, where it ought not to be, &c. it is Error. 2 *Lev.* 217. See *Vejours*, or *Viewers*, *Aſſiſe*, &c.

View of Frank-pledge, (*Viſus Franci plegii*) Signifies the Office which the Sheriff in his *County-Court* performs in looking to the King's Peace, and *ſeeing* that every Man be in ſome *Pledge*, &c. Or it is a Power of Holding a *Court-Leet*, in which Court formerly all Perſons at the Age of Fourteen were bound with Sureties or *Pledges* for their Truth to the King, and the Steward was to certify on *View*. *Bract. lib.* 2. And there is a Writ to exempt a Perſon from coming to the *View of Frank-pledge*, who is not reſident within the Hundred; as Men are bound to this *View* by Reaſon of their Habitation only, and not of Lands held where they dwell not: Which *Writ* is called *Viſus Franci plegii*. Reg. Orig. 175. See *Frank-pledge*.

Vigil, (*Vigilia*) Is the Eve, or next Day before any ſolemn Feaſt; becauſe then Chriſtians were wont to watch, faſt, and pray in their Churches. *Stat.* 2 & 3 *Ed.* 6. *c.* 19.

Vi Laica Removenda, A Writ that lies where two Parſons contend for a Church, and one of them enters into it with a great Number of *Laymen*, and holds out the other *Vi & Armis*; then he that is holden out ſhall have this Writ directed to the Sheriff, that he *remove the Force*: But the Sheriff ought not to remove the Incumbent out of the Church, whether he is there by Right or Wrong, but only the Force. *F. N. B.* 54. 3 *Inſt.* 161. and ſee 5 *R.* 2. *c.* 2. And the Writ *Vi Laica removenda* ought not to be granted, until the Biſhop of the Dioceſe where ſuch Church is, hath certified into the Chancery ſuch Reſiſting and Force, *&c.* Though it is ſaid in the *New Natura Brevium*, it lieth upon a Surmiſe made by the Incumbent, or by him that is grieved, without any ſuch Certificate of the Biſhop. *New Nat. Br.* 121. A Reſtitution was awarded to one who was put out of Poſſeſſion by the Sheriff upon a *Vi laica amovenda.* Cro. Eliz. 466. 5 Mod. 443.

Vill, or Village, (*Villa*) Is ſometimes taken for a Manor, and ſometimes for a Pariſh, or Part of it: But a *Vill* is moſt commonly the Out-part of a Pariſh, conſiſting of a few Houſes, as it were ſeparate from it.——Villa *eſt ex pluribus Manſionibus vicinata, & collata ex pluribus Vicinis.* 1 Inſt. 115. *Fleta* mentions the Difference between a Manſion, a Village, and a Manor, *viz.* a Manſion may be of One or more Houſes, but it muſt be but one Dwelling-place, and none near it; for if other Houſes are contiguous, it is a *Village*; and a Manor may conſiſt of ſeveral *Villages*, or of one alone. *Flet. lib.* 6. *cap.* 51. And according to *Forteſcue*, the Boundaries of *Villages*, are not by Houſes or Streets; but by a Circuit of Ground, within which there may be Hamlets, Woods, and Waſte-Ground, *&c.* *Forteſc. in Laud. Leg. Ang. cap.* 24. When a Place is named generally, in legal Proceedings, it is intended to be a *Vill*, becauſe as to civil Purpoſes the Kingdom was firſt divided into *Vills*; and it is never intended a Pariſh, that being an Eccleſiaſtical Diviſion of the Kingdom to Spiritual Purpoſes, tho' in many Caſes the Law takes Notice of Pariſhes as to Civil Purpoſes. 1 *Mod.* 250. 3 *Nelſ. Abr.* 57. If no *Vill, &c.* is alledged, where a Meſſuage and Lands lie, no Trial can be had concerning it: But ſome Counties in the North of *England*, and in *Wales*, have no *Vills* but Pariſhes; where in both Real and Perſonal Actions, a Jury of the Pariſh will ſerve. *Jenk. Cent.* 328, 33. A *Vill* and a Pariſh by Intendment ſhall be all one; and in Proceſs of Appeal, a Pariſh may be intended a *Vill.* *Cro. Jac.* 263. 3 *Salk.* 380. If a *Venue* be laid in *Gray's Inn*, which is no Pariſh or *Vill*; the Defendant muſt plead there is no ſuch *Vill* as *Gray's Inn*, or it ſhall be intended a *Vill* after Verdict, *&c.* 3 *Salk.* 381. See *Pariſh*, and *Venire facias*.

Villa Regia, A Title given to thoſe Country *Villages*, where the Kings of *England* had a Royal Seat, and held the Manor in their own Demeſne, having there commonly a free Chapel, not ſubject to Eccleſiaſtical Juriſdiction. *Paroch. Antiq.* 53.

Villain, (*Villanus*, Fr. *Vilain*, i. e. *Vilis*) Signifies a Man of ſervile or baſe Condition, a Bondman, or Servant. Of thoſe Bondmen or *Villains* there were two Sorts in *England*; one termed a *Villain in groſs*, who was immediately bound to the Perſon of the Lord, and his Heirs: The other, a *Villain regardant* to a Manor, being bound to his Lord as a Member belonging and annexed to a Manor, whereof the Lord was Owner. And he was properly a *pure Villain*, of whom the Lord took Redemption to marry his Daughter, and to make him free; and whom the Lord might put out of his Lands and Tenements, Goods and Chattels at his Will, and chaſtiſe, but not maim him: For if he maimed his *Villain*, he might have Appeal of Maihem againſt the Lord; as he could bring Appeal of the Death of an Anceſtor againſt his Lord, or Appeal of Rape done to his Wife. *Bract. lib.* 1. *cap.* 6. *Old Nat. Br.* 8. *Terms de Ley* 574, 575. Some were *Villains* by Title or Preſcription, that is to ſay, that all their *Blood* have been *Villains* regardant to the Manor of the Lord Time out of Mind: And ſome were made *Villains* by their Confeſſion in a Court of Record, *&c.* Though the Lord might make a *Manumiſſion* to his *Villain*, and thereby infranchiſe him: And if the *Villain* brought any Action againſt his Lord, other than an Appeal of Maihem, *&c.* And the Lord, without Proteſtation, made Anſwer to it, by this the *Villain* was made free. *Terms de Ley* 576. *Villain Eſtate* was contradiſtinguiſhed to free Eſtate, by the Statute 8 *H.* 6. *c.* 11. And the *Villani* were ſuch as dwelt in *Villages*, and of that ſervile Condition, that they were uſually ſold with the Farm to which they reſpectively belonged; ſo that they were a Kind of Slaves, and uſed as ſuch: And *Villenage* or Bondage, it is ſaid, had Beginning among the *Hebrews*, and its Original of *Canaan* the Son of *Cham*, who becauſe he had mocked his Father *Noe* to Scorn, was puniſhed in his Son *Canaan* with Penalty of Bondage. *Ibid.* 455. *Villenage* cometh of *Villain*, and was a baſe Tenure of Lands or Tenements, whereby the Tenant was bound to do all ſuch Services as the Lord commanded, or were fit for a *Villain* to perform: The Diviſion of *Villenage*, by *Bracton*, was into *Purum* Villenagium *à quo præſtatur Servitium incertum & indeterminatum*, & Villenagium *Socagium*; which was to carry the Lord's Dung into his Fields, to plough his Ground at certain Days, ſow and reap his Corn, *&c.* and even to empty his Jakes, as the Inhabitants of ſome Places were bound to do, though afterwards turn'd into a Rent, and that *villanous* Service excuſed. Every one that held in *Villenage*, was not a *Villain* or Bondman; for Tenure in *Villenage* could make no Freeman *Villain*, unleſs it were continued Time out of Mind; nor could free Land make a *Villain* free. *Bract. lib.* 2. *c.* 8. *Copyhold* Tenures ſeem to be ſprung from *Villenage.* *F. N. B.* 28. And the Slavery of this Cuſtom hath been long ago taken off; for we have hardly heard of any Caſe in *Villenage* ſince *Crouche*'s Caſe in *Dyer*'s *Rep.* There are not properly any *Villains* now; and the Title and Tenure of *Villenage* are aboliſh'd by the Stat. of *Car.* 2. See *Neif.*

Villanous Judgment, (*Villanum Judicium*) Is that which caſts the Reproach of *Villany* and Shame upon him againſt whom it is given, as a Conſpirator, *&c.* And the Judgment in ſuch a Caſe ſhall be like the ancient Judgment in *Attaint*, *viz.* That the Offender ſhall not be of any Credit afterwards; nor ſhall it be lawful for him to approach the King's Court; and his Lands and Goods ſhall be ſeized into the King's Hands, his Trees rooted up, and Body impriſoned, *&c.* *Staundf. P. C.* 157. *Lamb. Eiren.* 63. Stat. 4 *H.* 5. And the Puniſhment at this Day appointed for *Perjury*, may partake of the Name of *Villanous Judgment*; as it hath ſomewhat more in it than corporal, or pecuniary Pain, *i. e.* the diſcrediting the Teſtimony of the Offender for ever.

Villein Fleeces, Are bad *Fleeces* of Wool, ſhorn from ſcabbed Sheep. 31 *Edw.* 3. *cap.* 8.

Villenage, (*Villenagium*) The Tenure of. See *Villain.*

Vinagium, (*Tributum a Vino*) A Payment of a certain Quantity of *Wine* in lieu of Rent, to the Chief Lord of a *Vineyard.* Mon. Ang. Tom. 2. pag. 980.

Vineyards, The Owners of *Vineyards* may make Wine of *Britiſh* Grapes only growing there, free from any Duty. Stat. 10 *Geo.* 2.

Vinnet, A Flower or Border which Printers uſe to ornament printed Leaves of Books; mentioned in the Statute 14 *Car.* 2. *cap.* 33.

Vintners. The *Vintners* Company of *London* were incorporated *Anno* 7 *Jac.* 1. with certain Privileges for ſelling Wine in the City, by all Freemen within the ſame, *&c.* 2 *Keb.* 372. See *Wine.*

Violence, (*Violentia*) All *Violence* is unlawful: If a Man aſſault another with an Intention of beating him only, and he dieth, it is Felony. And where a Perſon knocks another in the Head who is breaking his Hedges, *&c.* this will be Murder, becauſe it is a *violent* Act beyond the Provocation. *Kel. Rep.* 64, 131. There is a *Violence* in committing Riots, *&c.*

Virgata terræ, A Yard-Land, *ex* 24 *Acris conſtat, quatuor* Virgatæ *Hidam faciunt, & quinque Hidæ feodum Militis.* Kennet's Gloſſ.

Viridario eligendo, Is a Writ that lies for the Choice of a *Verderor* in the Foreſt. *Reg. Orig.* 177.

Viridis Roba, A Coat of many Colours; for in the old Books *Viridis* is uſed for *Varius.* Bract. lib. 3.

Virilia, The Privy Members of a Man; to cut off which was Felony by the Common Law, though the Party conſented to it. *Bract. lib.* 3. *pag.* 144.

Vis, (*Lat.*) Is any Kind of Force, Violence, or Diſturbance relating to a Man's Perſon, or his Goods, Right in Lands, *&c.* See *Force.*

Viſcount, (*Vicecomes*) A Degree of Nobility next to an Earl; which *Camden* ſays is an old Name of Office, but a new one of Dignity, being never heard of among us till the Reign of King *Hen.* 6th, who in his eighteenth Year in Parliament created *John* Lord *Beaumont, Viſcount Beaumont.* Camb. Britan. 170. Selden's Tit. Hon. 761. *Viſcounts* had their Name from being formerly Governors of Counties; and they are now made by Patent, as an Earl; but their Number is ſmall in this Kingdom, in Compariſon with the other Degrees of Peerage.

Viſitation, (*Viſitatio*) Is that Office which is perform'd by the Biſhop of every Dioceſe once every three Years, or by the Archdeacon once a Year, by *viſiting* the Churches and their Rectors throughout the whole Dioceſe; *Ut populus illorum curæ commiſſus ſalubriter a Paſtoribus & Ordine gubernetur: Et ne quid detrimenti capiat Eccleſia, &c.* Reform. Leg. Eccl. pag. 124. And when a *Viſitation* is made by the Archbiſhop, all Acts of the Biſhop are ſuſpended by *Inhibition, &c.* A Commiſſary at his *Court of Viſitation,* cannot cite Lay Pariſhioners, unleſs it be Churchwardens and Sides-men; and to thoſe he may give his Articles, and inquire by them. *Noy* 123. 3 *Salk.* 379. *Proxies* and *Procurations* are paid by the Parſons whoſe Churches are *viſited, &c. Ibid.*

Viſitor, Is an Inſpector of the Government of a Corporation, *&c.* The Ordinary is *Viſitor* of Spiritual Corporations; but Corporations inſtituted for private Charity, if they are Lay, are *viſitable* by the Founder, or whom he ſhall appoint, and from the Sentence of ſuch *Viſiter* there lies no Appeal. 3 *Salk.* 381. By Implication of Law, the Founder and his Heirs are *Viſitors* of Lay Foundations, if no particular Perſon is appointed by him to ſee that the Charity is not perverted. *Ibid.* And where Founders are *Viſitors* of Hoſpitals, *&c.* See Stat. 39 *Eliz. c.* 5 43 *Eliz. c.* 4.

Viſitor of Manners, In ancient Time was wont to be the Name of the *Regarder*'s Office in the Foreſt. *Manwood, par.* 1. *pag.* 195.

Viſne, (*Viſnetum*) Signifies a Neighbour place, or Place near at Hand. 19 *R* 2. *cap.* 6. See *Venue.*

Viſus, View, or Inſpection; as Wood is to be taken *per* Viſum *Foreſtarii, &c.* Hoved. 784.

Vita Juſtitiæ & Legis, A Sheriff of the County is ſaid to be the *Life of Juſtice,* as no Suit begins, and no Proceſs is ſerv'd but by him; and after Suits are ended, he hath the making Execution, which is the *Life of the Law.* Co. Litt.

Vivary, (*Vivarium*) A Place by Land or Water, where living Creatures are kept: And in Law it is moſt commonly uſed for a Park, Warren, Piſcary, *&c.* 2 *Inſt.* 100.

Viva voce, Is where a Witneſs is examined perſonally in open Court. See *Depoſition.*

Ulcus, A Hulk or Ship of Burden. *Leg. Ethelred.*

Ullage, Is when there is a Want of Meaſure in a Cask, *&c.*

Ulnage, The ſame with *Alnage.* Vide *Alnage.*

Ulna ferrea, Is the Standard *Ell of Iron,* kept in the *Exchequer* for the Rule of Meaſure. *Mon. Angl. Tom.* 2. *pag.* 383.

Umpire, (*Arbiter*) One choſen by Compromiſe to deal indifferently between both Parties. *Litt.*

Umpirage, Is where there is but one Arbitrator of Matters ſubmitted to Award; and is uſually when the Parties ſubmit themſelves to the Arbitrament of certain Perſons; and if they cannot agree, or are not ready to deliver their Award in Writing before ſuch a Time, then to the Judgment of another as *Umpire:* And this is often the Effect of Bonds of Submiſſion to Arbitration. 1 *Roll. Abr.* 261, 262. See *Arbitration.*

Una cum Omnibus aliis, In the Grant of a Deed, is a new Addition of other Things than were granted before; and hath its own Concluſion attending it. *Hob.* 175.

Unceaſath, (From the Sax. *Un,* a Negative Particle, *i. e. Sine,* Ceas, *litis,* and *Ath* Oath) Is an obſolete Word uſed where one killed a Thief, and made Oath that he did it as he was flying for the Fact, and thereupon *Parentibus ipſius occiſi juret* unceaſath, *viz.* That his Kindred would not revenge his Death; or they ſwore that there ſhould be no Contention about it. *Leg. Inæ, cap.* 37.

Uncia terræ, Often occurs in the Charters of the *Britiſh* Kings for ſome Meaſure or Quantity of Land: It was the Quantity of 12 *Modii,* and each *Modius* poſſibly 100 Foot ſquare. *Mon. Angl. Tom.* 3. *pag* 198, 205.

Uncore priſt, Is a Plea of a Defendant in Nature of a Plea in Bar, where being ſued for a Debt due on Bond at a Day paſt, to ſave the Forfeiture of the Bond, he ſays that he tendered the Money at the Day and Place, and that there was none there to receive it; and that he is alſo ſtill ready to pay the ſame. This will ſave the Defendant from the Penalty of his Obligation; and if the Plaintiff now refuſeth to receive the Money, but takes Iſſue upon the Tender, and it is found againſt him, he loſeth his Money for ever. 7 *Ed.* 6 6. 9 *Rep.* 79. *Pract. Attorn. Edit.* 1*ſt. pag.* 82, 83.

Uncuth, A *Saxon* Word, ſignifying as much as *Incognitus, i. e.* unknown; and is uſed in the old *Saxon* Laws for him that cometh to an Inn Gueſtwiſe, and lies there but one Night. *Bract. lib.* 3.

Unde nihil habet, A Writ of Dower, for which ſee *Dote unde nihil habet.*

Under-Chamberlain of the Exchequer, Vide *Exchequer.*

Under-Sheriff, (*Sub-Vicecomes*) See *Sheriff.*

Undertakers, Are ſuch as the *King's Purveyors* employ'd as their Deputies: And thoſe that *undertake* any great Work; as draining of Fens, *&c.* Stat. 2 & 3 *P. & M. cap.* 6. 43 *Eliz. cap.* 11. 12 *Car.* 2. *cap.* 24.

Under-Treaſurer of England, (*Vice-Theſaurarius Angliæ*) An Officer firſt created in the Time of King *Hen.* 7th, but ſome think he was of an antienter Original: His Buſineſs was to cheſt up the King's Treaſure at the End of every Term, to note the Content of Money in each Cheſt, and ſee it carried into the King's Treaſury for the Eaſe of the *Lord Treaſurer,* as being a Thing too mean for him, but fit to be perform'd by a Man of great Truſt and Secrecy: And in the Vacancy of the Lord Treaſurer's Office, he did all Things in the Receipt, *&c.* This Officer is mentioned in ſeveral Statutes; and named *Treaſurer of the Exchequer* till the Reign of Queen *Eliz.* when he was termed *Under Treaſurer of England.* 39 Eliz. cap. 7.

Un Dieu, & Un Roy, Was the learned Judge *Littleton*'s Motto.

Undres, A Word uſed for Minors, or Perſons under Age; not capable to bear Arms, *&c. Fleta, lib.* 1. *cap.* 9.

Unfrid, One that hath no Quiet or Peace. *Sax.*

Ungeld, A Perſon out of the Protection of the Law, ſo that if he were murdered, no *Geld* or Fine ſhould be paid, or Compoſition made by him that kill'd him. *Leg. Æthelred.*

Uniformity, (*Uniformitas*) One Form of publick Prayers and Adminiſtration of Sacraments, and other Rites and Ceremonies of the Church of *England*, preſcribed by Statutes, to which all muſt ſubmit. 1 *Eliz. cap.* 2. 14 *Car.* 2. *cap.* 4. But ſee *Diſſenters.*

Union, (*Unio*) Is a Combining or Conſolidating of two *Churches* into one: Alſo it is when one Church is made ſubject to another, and one Man is Rector of both; and where a Conventual Church is made a Cathedral. *Lyndwode.* In the firſt Signification, if two Churches were ſo mean that the Tithes would not afford a competent Proviſion for each Incumbent, the Ordinary, Patron, and Incumbents might *unite* them at Common Law, before any Statute was made for that Purpoſe; and in ſuch Caſe it was agreed which Patron ſhould preſent firſt, *&c.* for though by the *Union* the Incumbency of one Church was loſt, yet the Patronage remain'd, and each Patron might have a *Quare Impedit* upon a Diſturbance to preſent in his Turn. 3 *Nelſ. Abr.* 480. The Biſhop, Patron, and Incumbent may *unite* Churches, without Licenſe from the King, by the Statute 37 *H.* 8. The Licenſe of the King is not neceſſary to an *Union*, as 'tis to the *Appropriation* of Advowſons; for an Appropriation cannot be made by them without the King's Licenſe, becauſe that is a Mortmain, and the Patronage of the Advowſon is loſt, and by Conſequence all Tenths and Firſt Fruits. *Dyer* 259. *Moor* 409, 661. By Aſſent of the Ordinary, Patron, and Incumbent, two Churches lying not above a Mile diſtant from the other, and whereof the Value of the one is not above ſix Pounds a Year in the King's Books of Firſt Fruits, may be *united* into one. Stat. 37 *H.* 8. *cap.* 21. And by another Statute, in Cities and Corporation Towns, it ſhall be lawful for the Biſhop, Patrons, and Mayors, or Chief Magiſtrates of the Place, *&c.* to *unite* Churches therein; but where the Income of the Churches *united* exceeds 100 *l.* a Year, the major Part of the Pariſhioners are to conſent to the ſame; and after the *Union* made, the Patrons of the Churches *united* ſhall preſent by Turns, to that Church only which ſhall be Preſentative, in ſuch Order as agreed; and notwithſtanding the *Union*, each of the Pariſhes *united* ſhall continue diſtinct as to Rates, Charges, *&c.* though the Tithes are to be paid to the Incumbent of the *united* Church. 17 *Car.* 2. *c.* 3. A *Union* where made of Churches of greater yearly Value than mentioned in the Statute 37 *H.* 8. was held good at Common Law; and by the Canon Law, the Ordinary with Conſent of the Patron, might make an *Union* of Churches, of what Value ſoever: So by Statute, with the Aſſent of the King. *Dyer* 259. 2 *Roll. Abr.* 778. And when two parochial Churches were thus *united*, the Reparations continued ſeveral as before; and therefore the Inhabitants of the Pariſh where any ſuch Church was demoliſhed, were not obliged to contribute to the Repairs of the remaining Church to which it was *united.* Hob. 67. And this occaſion'd the Statute 4 & 5 *W.* & *M.* by which it is ordain'd, That where any Churches have been *united*, by Virtue of the Statute 17 *Car.* 2. and one of them is demoliſhed; when the other Church ſhall be out of Repair, the Pariſhioners of the Pariſh whoſe Church is down, ſhall pay in Proportion towards the Charge of ſuch Repairs, *&c.* Stat. 4 & 5 *W.* & *M. c.* 12.

Union of England and Scotland, When and how brought about, and the Laws relating to it, ſee *Scotland.*

Unity of Poſſeſſion, (*Unitas Poſſeſſionis*) Is where a Man hath a Right to two Eſtates, and holds them together jointly in his own Hands; as if a Man take a Leaſe of Lands from another at a certain Rent and after he buys the Fee-ſimple, this is an *Unity of Poſſeſſion*, by which the Leaſe is extinguiſhed, becauſe that he who had before the Occupation only for his Rent, is now become Lord and Owner of the Land. *Terms de Ley.* A Leſſee for Years of an Advowſon, on the Church becoming void, was preſented by the Leſſor, and inſtituted and inducted; and it was held, that this was a Surrender of his Leaſe; for they cannot ſtand together in one Perſon, and by the *Unity of Poſſeſſion* one of them is extinguiſhed. *Hutt.* 105. No *Unity* will extinct or ſuſpend Tithes; but notwithſtanding any *Unity* they remain, *&c.* 11 *Rep.* 14. 2 *Lill.* 658. *Unity of Poſſeſſion* extinguiſheth all Privileges not expreſly neceſſary; but not a Way to a Cloſe, or Water to a Mill, *&c.* becauſe they are thus neceſſary. A Way of Eaſe is deſtroy'd by *Unity of Poſſeſſion*; and a Rent, or Eaſement, do not exiſt during the *Unity*, wherefore they are gone. *Latch* 153, 154. 1 *Vent.* 95. *Trin.* 7 *W.*

Univerſity, (*Univerſitas*) Is a Place where all Kinds of Literature are *univerſally* taught: It is likewiſe uſed by *Civilians* for any Corporation, or Body Politick. The *Univerſities* with us are taken for thoſe Two Bodies which are the Nurſeries of Learning and Liberal Sciences in this Kingdom, *viz. Oxford* and *Cambridge*; endowed with great Privileges. And by the 13 *Eliz.* it is enacted, That each of the *Univerſities* ſhall be incorporated by a certain Name, though they were ancient Corporations before; and that all Letters Patent and Charters granted to the *Univerſities*, ſhall be good and effectual in Law: That the Chancellor, Maſters, and Scholars of either of the ſaid *Univerſities*, ſhall enjoy all Manors, Lands, Liberties, Franchiſes, and Privileges, and all other Things which the ſaid corporated Bodies have enjoyed, or of Right ought to enjoy, according to the Intent of the ſaid Letters Patent; and all Letters Patent, and Liberties, Franchiſes, *&c.* ſhall be eſtabliſh'd and confirm'd, any Law, Uſage, *&c.* to the contrary notwithſtanding. The *Univerſities* have the Keeping the Aſſiſe of Bread and Beer, and are to puniſh Offences concerning it: Alſo they have the Aſſiſe of Wine and Ale, *&c.* And the Chancellor, his Commiſſary, and Deputy, are Juſtices of Peace for the Vill of *Oxon*, County of *Oxon*, and *Berks*, by Virtue of their Offices; ſee the Stat. 51 *H.* 3. 31 *Ed.* 1. 7 *Ed.* 6. 2 & 3 *P.* & *M.* and the Chart. 29 *Ed.* 3. 14 *H.* 8. *&c.* By Letters Patent, *Anno* 11 *Car.* 1. granted to the *Univerſity* of *Oxford*, the old Privileges are explained, and larger granted: And the Privilege of the *Univerſity* is allowed to Scholars, and Servants, *&c.* 14 *Car.* 2. *c.* 4. Perſons acting Theatrical Performances within the Precincts of either *Univerſity*, or five Miles thereof, ſhall be deemed Vagrants; and the Chancellor, *&c.* may commit them to the Houſe of Correction, or common Gaol for one Month. Stat. 10 *Geo.* 2. *c.* 19. See *Courts of the Univerſities.*

Unlage, A *Saxon* Word, denoting an unjuſt Law; in which Senſe it is uſed in *Leg. Hen.* 1. *cap.* 34.

Unlawful Aſſembly, (*Illicita Congregatio*) The Meeting of three Perſons or more together, by Force, to commit ſome unlawful Act. *Lamb.* Vide *Aſſembly.*

Unnatural, (*Præternaturalis*) That which is not of or by Nature: And what is *unnatural* to Man generally, muſt be the ſame to all Men, and at all Times; but what is *unnatural* to this or that Perſon, is to him only, and but for the Time 'tis ſo. Argument on *inceſtuous* Marriages. *Vaugh.* 224.

Unques priſt, Always ready to perform a Thing: Uſed in Pleading to an Action, which if the Plaintiff cannot prove to the contrary, he ſhall recover no Damages. *Kitch.* 243.

Vociferatio, An Out-cry, or Hue and Cry. *Leg. Hen.* 1. *cap.* 12.

Voidance, (*Vacati.*) Is a Want of an Incumbent upon an Eccleſiaſtical Benefice. Vide *Avoidance.*

Void and Voidable. In the Law ſome Things are abſolutely *void*, and ſome are *voidable.* A Thing is *void* which is done againſt Law at the very Time of the Doing of it, and it ſhall bind no Perſon: But a Thing which is only *voidable*, and not *void*, although it be what he that did it ought not to have done, yet when it is done the Doer cannot *avoid* the ſame; though by ſome Act in Law it may be made *void* by his Heir, *&c.* 2 *Lill. Abr.* 653. Where a Grant is *void* at the Commencement, no Act afterwards can make it good: If a Leaſe is abſolutely *void*, Acceptance of Rent will not affirm it; it is otherwiſe when a Leaſe is *voidable*, there it will make it good. 3 *Rep.* 64. A Leaſe for Life, which is *voidable* only, muſt be made *void* by Re-entry, *&c. Ibid.* 'Tis generally held that Covenants made in a *void* Leaſe or Deed, are alſo *void. Yelv.* 18. See *Owen* 136. A Deed of Exchange, entered into by an Infant, or one *Non ſanæ memoriæ*, is not *void*; but may be *avoided* by the Infant when arrived of Age, or by the Heir of him who is *Non ſanæ memoriæ.* Perk. 281. But it hath been adjudg'd, that a Bond of an Infant, or of one *Non Compos*, is *void*, becauſe the Law hath not appointed any thing to be done to *avoid* ſuch Bonds; for the Party cannot plead *Non eſt factum*, as the Cauſe of Nullity doth not appear upon the Face of the Deed. 2 *Salk.* 675. 3 *Nelſ. Abr.* 486. Where the Condition of a Bond is *void*, in Part by *Statute*, it may be *void* totally; tho' it is otherwiſe if *void* in Part by the *Common Law*, for there it ſhall be good for the Reſidue. *Moor* 856. 1 *Brownl.* 64. A Deed being *voidable*, is to be *avoided* by Special Pleading; and where an Act of Parliament ſays, that a Deed, *&c.* ſhall be *void*, it is intended that it ſhall be by Pleading, ſo as 'tis *voidable*, but not actually vacated. 5 *Rep.* 119. A Judgment given by Perſons who had no good Commiſſion to do it, is *void*, without Writ of Error: But an erroneous Attainder is not *void*, but *voidable* by Writ of Error, *&c.* 2 *Hawk. P. C.* 459, 521.

Voire, A *French* Word ſignifying truly. *Law Fr. Dict.*

Voire dire, (Fr. *Veritatem dicere*) Is when it is pray'd upon a Trial at Law, that a Witneſs may be ſworn upon a *Voire dire*; which is, that he ſhall on his Oath ſpeak the *Truth*, whether he ſhall get or loſe by the Matter in Controverſy; and if it appears that he is unconcern'd, his Teſtimony is allow'd, otherwiſe not. *Blount.* On a *Voire dire*, a Witneſs may be examin'd by the Court, if he be not a Party intereſted in the Cauſe, as well as the Perſon for whom he is a Witneſs; and this has been often done, where a buſy Evidence, not otherwiſe to be excepted againſt, is ſuſpected of Partiality. *Terms de Ley* 581.

Volumus, Is the firſt Word of a Clauſe in the King's Writs of Protection and Letters Patent; of Protections, ſome are *cum clauſula Volumus.* 13 R. 2. cap. 16. Co. Litt. 199.

Voluntary, As applied to a *Deed*, is where any Conveyance is made without a Conſideration, either of Money, or Marriage, *&c.* And Remainders limited in Settlements, to a Man's right Heirs, *&c.* are deemed *Voluntary* in Equity, and the Perſons claiming under them called *Volunteers. Abr. Caſ. Eq.* 385. 3 *Salk.* 174. See *Fraud.*

Voluntas, Is when a Tenant by Leaſe holds Lands at the *Will* of the Leſſor; or a Copyholder holdeth his Lands at the Will of the Lord, by Copy of Court-Roll, according to the Cuſtom of the Manor, *&c.*

Votum, A Vow or Promiſe, uſed by *Fleta* for *Nuptiæ*; ſo *Dies Votorum*, is the Wedding-Day. *Fleta, lib.* 4.

Vouche, (Fr. in Latin *Voco*) Signifies to call one to warrant Lands, *&c.*

Voucher, Is a Word of Art, when the Tenant in a Writ of Right calls another into the Court, who is bound to him to Warranty; and is either to defend the Right againſt the Demandant, or yield him other Lands to the Value, *&c.* And it extends to Lands or Tenements of Freehold or Inheritance, and not to any Chattel, Real, Perſonal, or Mixt: He that *voucheth* is called the *Voucher*, (*vocans*) and he that is *vouched* is called the *Vouchee*, (*warrantatus*) and the Proceſs whereby the *Vouchee* is called, is a *Summoneas ad Warrantizandum*; on which Writ, if the Sheriff return that the Party hath nothing whereby he may be ſummoned, then goes out another Writ called *ſequatur ſub ſuo periculo*, *&c.* Co. Litt. 101. There is alſo a *foreign Voucher*, when the Tenant being impleaded within a particular Juriſdiction, as in *London*, *voucheth* one to Warranty in ſome other County out of the Juriſdiction of that Court, and prays that he may be ſummoned, *&c.* 2 *Rep.* 50. On a Suit in *England*, a *Voucher* doth not lie in *Ireland:* But it lies in *Wales*, and the Tenant ſhall be ſummoned in the next County to it. A *Vouchee* by entering into Warranty, becomes Tenant in Law of the Lands; and when the Demandant Counts againſt him, he may Plead a Releaſe, *&c. Jenk. Cent.* 41, 100. In a Writ of Entry in the Degrees, none ſhall *vouch* out of the Line: And in Writs of Right and Poſſeſſion, it is a good Counterplea, that neither the *Vouchee* nor his Anceſtors had ever Seiſin of the Land. Stat. 3 *Ed.* 1. *c.* 40. And the Demandant may aver a *Vouchee* to be dead, and that there is no ſuch Perſon, where the Tenant *voucheth* a Perſon deceaſed to Warranty. 14 *Ed.* 3. *c.* 18. *Single, double* and *treble Voucher.* See *Recovery.* And vide *Warranty.*

Voucher, Is alſo uſed for a *Leiger Book*, or Book of *Accounts*, wherein are enter'd the Acquittances or *Warrants* for the Accountant's Diſcharge. Stat. 19 *Car.* 2. *cap.* 1.

Vox, *Vocem non habere*, A Phraſe made uſe of by *Bracton*, ſignifying an infamous Perſon, one who is not admitted to be a Witneſs. *Bract. lib.* 3.

Upholſters, None ſhall put to Sale any Beds, Bolſters, *&c.* except ſuch as are ſtuff'd with one Sort of dry pulled Feathers, or clean Down; and not mix'd with ſcalded Feathers, Fen-down, Thiſtle-Down, Sand, *&c.* on Pain to forfeit the ſame, or the Value: And they are to ſtuff Quilts, Mattreſſes and Cuſhions, with clean Wool, and Flocks; without uſing Horſe-hair, *&c.* therein, under the like Forfeiture. Stat. 11 *H.* 7. *c.* 19. and 5 *&* 6 *Ed.* 6. *c.* 23.

Upland, High Ground, or *Terra firma*, as it is called by ſome, contrary to marſhy and low Ground. *Ingulph.*

Uſa, Is the River *Iſis*; which River was term'd *Iſis* from the Goddeſs of that Name; for it was cuſtomary among the *Pagans* to dedicate Hills, Woods, and Rivers, to favourite Goddeſſes, and to call them after their Names; and the *Britons* having the greateſt Reverence for *Ceres* and *Proſerpina*, who was alſo called *Iſis*, did for that Reaſon name this River *Iſis:* And ſhe being the Goddeſs of the *Night*, from thence they computed Days by Nights; as *Seven Night*, *&c.* Blount.

Uſage, Differs from *Cuſtom*, and *Preſcription:* No Man may claim a Rent, Common, or other Inheritance by *Uſage*; though he may by Preſcription 6 *Rep.* 65. See *Preſcription.*

Uſance, A Calendar Month, as from *May* 20 to *June* 20, and *double Uſance*, is two ſuch Months; Words uſed in *Bills of Exchange.* Merch. Dict.

Uſe, (*Uſus*) Is in Application of Law, the Profit or Benefit of Lands and Tenements; or a Truſt and Confidence repos'd in a Man for the holding of Lands, That he to whoſe *Uſe* the Truſt is made ſhall take the Profits thereof. *Weſt. Symb. par.* 1. 1 *Inſt.* 272. An *Uſe* is only a Truſt or Confidence which one Man puts in another; and therefore 'tis not a Thing iſſuing out of the Land, but collateral to it, and annexed to the Privity of Eſtate between them, (*viz.*) That he to whom the *Uſe* is made ſhall have the Profits; and that the Tenant of the Land ſhall make an Eſtate as he ſhall direct: But the *Ceſtui que uſe* hath neither *jus in Re* or *ad Rem*, his only Remedy being in Chancery to compel the *Ceſtui que Truſt* to execute the *Uſe.* 3 *Nelſ. Abr.* 487. The Limitation of an *Uſe*, was at the Common Law but a Matter of Equity: But now Feoffments to *Uſes*, &c. have the ſame Acceptation as Deeds at Common Law; and *Uſes* limited by any Conveyance, are govern'd and directed according to the Rules of the Law. 2 *Lill. Abr.* 664. There were two Inventors of *Uſes*; Fear in the Time of Trouble and Civil War, for the ſaving of Inheritances from Forfeiture; and Fraud in Time of Peace, to defeat Debts, Eſcheats, &c. And it is ſaid, the Original of *Uſes* was the Statute of *Mortmain*, which cramp'd the Clergy ſo much that they were forced to take Shelter under the Laity, and make *uſe* of them to purchaſe Lands in Truſt for them and to their *Uſe:* Afterwards the Wars between the Houſes of *York* and *Lancaſter* coming on, Truſts and *Uſes* increas'd more than ever; and although the Common Law could take no Cogniſance of them, yet there were always, until King *Hen.* 8th's Reign, Clergymen Chancellors, who were ready upon all Occaſions to decree the Performance of the Truſt and *Uſe.* 2 *Lill.* 662, 663. It hath been obſerved by ſome Writers, that there were no ſuch Things as *Uſes* at Common Law; the Reaſon was, becauſe the Feoffee was always taken as the Owner of the Land; and it was very inconvenient and abſurd that there ſhould be two ſeveral Fees, and Owners of the ſame Land *ſimul & ſemel*; therefore by the Common Law the Feoffees to *Uſes* were the very Tenants, &c. But the Statute of *Uſes* hath united the Eſtate to the *Uſe*, ſo that now the Feoffees to *Uſes* have no Eſtate or Intereſt at all, but in Reſpect of the contingent Eſtate and *Uſes* limited in the Deed. 3 *Salk.* 386. Becauſe in Time many Deceits were invented, by ſettling the Poſſeſſion in one Man, and the *Uſe* in another, inſomuch that the Poſſeſſion and the *Uſe* were divided, which opened a Gap for Frauds: To avoid theſe Inconveniences, the Statute of 27 *H.* 8. gives the Poſſeſſion to him who has the *Uſe*, and as before the Statute the Poſſeſſion ruled the *Uſe*, ſo now the *Uſe* governs the Poſſeſſion; for this Reaſon in Conveyances it is ſet down in the *Habendum* to whoſe *Uſe* the Lands are conveyed, and whatever Eſtate a Man hath in the *Uſe*, the ſame he has in the Poſſeſſion at this Day. 1 *Rep.* 121. 2 *Leon. cap.* 25. The Stat. 27 *H.* 8. *cap.* 10. enacts, That where any are or ſhall be ſeiſed of Lands, to the *Uſe* of any other, by reaſon of any Bargain and Sale, Feoffment, Fine, Recovery, Contract, Agreement or Will, &c. he to whoſe *Uſe* the Lands are ſettled in Fee-ſimple, Fee-tail, for Life, or otherwiſe, ſhall be eſteemed in Poſſeſſion of the Land to all Intents and Purpoſes: And where one is ſeiſed of Lands to the *Uſe* or Intent that another ſhall have an yearly Rent out of the ſame, *Ceſtui que Uſe* ſhall be deemed in Poſſeſſion and Seiſin of the ſaid Rent, and of like Eſtate as in the *Uſe*, &c. And if there are any *Uſes* limited in a new Manner, they are void. 1 *Rep.* 129, 138. But there are *Uſes* that are not executed by this Statute; as if Lands are granted to others in Truſt, that the Feoffees ſhall take the Profits, and deliver them to the Feoffor and his Heirs; alſo Leaſes for Years of Lands in *Uſe*, (which Leaſes had their being before, and are granted over in *Uſe* and Truſt) where the Leſſee is poſſeſſed only of his Term, and not ſeiſed of any Freehold, &c. and there ſtill remains an *Uſe* of Goods and Chattels Perſonal, which is properly a *Chancery* Truſt, wherein the *Uſe* and Poſſeſſion are divided; though in other Caſes the Statute executes Agreements as the Chancery would have done before. *Wood's Inſt.* 256, 257. All Lands of Inheritance, Liberties, Franchiſes, viſible or local, may be conveyed by Way of *Uſe:* But Inheritances Perſonal, which have no Relation to Lands or local Hereditaments, cannot be conveyed by Way of *Uſe.* And ſome Queſtions having been made, out of what an *Uſe* ſhall ariſe, it hath been held, That *Uſes* ſhall be raiſed only out of a Freehold; that they cannot be raiſed out of a Chattel, nor out of an *Uſe*, or a bare Right or Power, nor out of an intended Purpoſe, &c. *Moor* 509. 1 *Leon.* 148. 3 *Salk.* 386. In *Uſes* there ought to be Privity of Eſtate to erect the *Uſe* upon: And there are four Things required to the Execution of a *Uſe* within the Statute, *viz.* There muſt be a Perſon ſeiſed; but the King or a Corporation, an Alien, &c. cannot be ſeiſed to the Uſe of another: There is to be a *Ceſtui que Uſe* in Being; for the Words of the Act are, Stand and be ſeiſed to the *Uſe* of any Perſon or Perſons: There muſt be a *Uſe in Eſſe*, in Poſſeſſion, Remainder, or Reverſion; and the Eſtate of the Feoffees, &c. out of which the Uſes ariſe, is to be veſted or transferred to *Ceſtui que Uſe*; and if any of theſe fail, the *Uſe* will not be executed. 1 *Rep.* 126. 1 *Inſt.* 19. 2 *Cro.* 50, 401. *Uſes* are *in Eſſe*, either in Poſſeſſion, Remainder, or Reverſion; or in *Contingency*, which by Poſſibility may fall into Poſſeſſion, or in Reverſion, &c. Contingent *Uſes in poſſe*, may be created though they are not executed by the Statute, but remain at Common Law: But when they come *in Eſſe*, then the Statute executes them; and before that, they may be deſtroyed, diſcontinued or ſuſpended. 1 *Rep.* 135. A *Uſe* is alſo expreſs, or implied; Expreſs, as when a Feoffment is made of Land to *A. B.* and his Heirs, to the *Uſe* of *C. D.* and the Heirs of his Body, &c. Implied, where the *Uſe* is not declared between the Parties, but is left to the Conſtruction of the Law: And if a Man ſeiſed of Lands makes a Feoffment in Fee without any Conſideration, and it is not declared to whoſe *Uſe*, by Implication of Law it ſhall be to the *Uſe* of the Feoffor, &c. It hath been adjudg'd, that if by Feoffment, or Leaſe and Releaſe, a Man conveys any particular Eſtate mediate or immediate to another Perſon, there the Reſidue of the Eſtate ſhall by Implication remain to the *Uſe* of the Party himſelf: But where no Eſtate is limited to another, the whole Conveyance is to no Purpoſe, if the Party be conſtrued to have the *reſulting Uſe* in him; indeed upon a Fine or Recovery Perſons may have their particular Eſtates in other Reſpects, as barring upon Nonclaims, &c. 1 *Rep.* 121. 2 *Roll. Abr.* 781, 782. 2 *Salk.* 678. 3 *Salk.* 387. An *Uſe* may be raiſed two Manner of Ways, 1ſt, By Tranſmutation, or departing with the Poſſeſſion of the Eſtate. 2dly, Without Tranſmutation of the Eſtate, by keeping the Land in a Man's own Hands, and making the Poſſeſſion be to the *Uſe* of another: Thoſe *Uſes* that ariſe by Tranſmutation of Eſtate, are by Feoffment, Fine, Recovery, &c. And thoſe which ariſe without Tranſmutation, being by Bargain and Sale inrolled, and Covenant to ſtand ſeiſed to *Uſes.* 1 *Plowd.* 301. 1 *Inſt.* 271. Conveyances to *Uſes* are of three Sorts; a Covenant to ſtand ſeiſed; a Feoffment, Fine, or Recovery to *Uſes*, and a Bargain and Sale; by which laſt a contingent *Uſe* cannot be ſupported, though by the two Firſt it may; and there is a Difference between a Feoffment to *Uſes*, and a Covenant to ſtand ſeiſed, becauſe the Feoffor, departs with his whole Eſtate, but the Covenantor departs with no more than what is actually veſted in the *Ceſtui que Uſe.* 2 *Sid.* 64, 129. In Bargains and Sales, and Covenants to ſtand ſeiſed, ſome Conſideration is neceſſary to make thoſe Deeds operate to *Uſes*; the Conſideration of Money in a Bargain and Sale, and natural Affection, Blood, Affinity, Marriage, *&c.* in the Covenant to ſtand ſeiſed: And they may be good to a Man's Wife or Family, without any Conſideration; but not to others. *Plow.* 301. *Dyer* 169. 3 *Lev.* 306. The Conſideration, or a Reſervation of 12*d.* a Penny, or a Pepper-Corn, are ſufficient Conſiderations to raiſe an *Uſe.* 2 *Mod.* 251. 3 *Salk.* 387. If a Man covenants in Conſideration of Marriage, or of a Sum of Money paid to him, that the Covenantee ſhall have ſuch Lands; the ſame ſhall change the *Uſe* immediately, for theſe are good Conſiderations either to change or raiſe *Uſes. Dyer* 6. But a Perſon covenanteth to make an Eſtate to certain Perſons to certain *Uſes*, in Conſideration of Marriage; no *Uſe* ariſes by ſuch bare Covenant, unleſs the Eſtate be made accordingly: So where upon Marriage there is a Covenant to levy a Fine, except the Fine be levied; but if a Fine be levied, it ſhall be to the *Uſes. Daliſ.* 112. 3 *Lev.* 306. *Cro. Eliz.* 401. An *Uſe* ariſes when declared by Eſtate executed, which needs no Conſideration: A Fine it ſelf without any Conſideration, doth raiſe *Uſes*, where a Marriage is intended; but in other Conveyances, the Conſideration of Marriage will not raiſe an *Uſe*, if the Marriage take not Effect; becauſe the Conſideration muſt be executed before the *Uſe* ſhall ariſe. 1 *Leon.* 138. A Conſideration of Money given by one, may extend to all the Eſtates; but if it be of Blood, *&c.* it is Singular, and will raiſe the *Uſe* of that only to which it goeth: Tho' if I Covenant with *B.* in Conſideration of the Marriage of my Son with his Daughter, to be ſeiſed to the *Uſe* of a Stranger for Life, and after to my Son and his Wife in Tail; here the *Uſe* ſhall ariſe to the Stranger, to bear up the Remainder, which is not good without a particular Eſtate. *Plowd.* 307. *Dyer* 174. 11 *Rep.* 24. Yet if ſuch Covenant be to ſtand ſeiſed to the *Uſe* of my ſelf for Life, and after to *C.* a Stranger for the Term of Twenty Years, and after that to my Son in Tail; in this Caſe the *Uſe* limited to *C.* is void, and my Son after my Death ſhall have the Land. 1 *Rep.* 155. *A.* Covenanted for natural Affection, to be ſeiſed to the *Uſe* of himſelf for Life, and after his Death that the Land ſhould deſcend or remain to his Couſin *B.* in Fee; reſolv'd by all the Judges, that no *Uſe* is raiſed to *B.* by Reaſon of the Disjunctive, remain or deſcend. *Jenk. Cent* 267. An *Uſe* cannot be raiſed by any Covenant, Proviſo, or Bargain and Sale, upon a general Conſideration, without ſpecial Averment: And altho' he that hath the Fee-ſimple of Land, may make what *Uſes* he will of it in Fee, for Life, or Years; yet Tenant in Tail may not. 4 *Shep. Abr.* 180. 2 *Cro.* 400, 401. *Uſes* may be made to a Man and the Wife he ſhall marry, or to his firſt, ſecond, or third Wife, *&c.* And if Parties to a Deed declare, that one of them ſhall make a Feoffment, or levy a Fine to the *Uſe* and Intent that one ſhall hold the Land for Life, and after his Death another in Tail, and after that a Third in Fee-ſimple, *&c.* the Eſtate ſettleth according to the *Uſes* declared by the Deed. 1 *Rep.* 13, 121. A Deviſe may be to an *Uſe*, and be ſo executed: A Man makes a Feoffment to the *Uſe* of his Will, he hath the *Uſe* in the mean Time; and when the Feoffor by Will limits the Eſtate purſuant to his Power, the Eſtate takes Effect by the Feoffment, and the *Uſe* is directed by the Will. *Lutw.* 823. 6 *Rep.* 17, 18. If *Uſes* are ſettled upon Condition, the Condition muſt firſt be performed; and a future *Uſe* may well ariſe on the Non-performance of a Condition. 2 *Lill. Abr.* 668. There may be a future *ſpringing Uſe*, without a precedent Eſtate made to ſupport it, as a Man covenants to ſtand ſeiſed after his Death to the *Uſe* of his Kinſman and his Heirs, the Eſtate in the mean Time is in him; for it cannot paſs out of him during his Life, and therefore in Caſe of Covenant he hath ſuch Eſtate. 1 *Rep.* 154. 2 *Lev.* 77. An *Uſe* is conſtrued as favourably as may be, to comply with the Intent of the Party: Intention is the Foundation of *Uſes*, but it ought to be out of the Words of the Deed, to be agreeable to Law, and collected and taken from the intire Deed. 1 *Mod.* 98. *Lutw.* 700, 790. If the Meaning of the Party doth appear, that he intended to paſs his Eſtate by Way of raiſing an *Uſe*; there the Words, *Give, Grant,* &c. ſhall enure as a Covenant to ſtand ſeiſed: But where it doth not appear, that he intended to paſs it by way of *Uſe*, but by Conveyance at Common Law, no *Uſe* is raiſed. *March* 50. Lands being once ſold and ſettled to *Uſes*, the Party that makes the *Uſe* may not create any farther *Uſes*: Where the Eſtate out of which an *Uſe* ariſeth is gone, the *Uſe* is gone likewiſe; and *Uſes* may be made void by Releaſe, or Power of *Revocation. Dyer* 186. 1 *Inſt.* 237. Deeds of Gift of Goods, *&c.* made in Truſt to the *Uſe* of the Grantor, ſhall be void. 3 *H.* 7. *c.* 4. And no *Uſe* will prevent Dower of a Woman after her Husband's Death, *&c.* See *Covenant to ſtand ſeiſed.*

Superſtitious Uſes. By Statute, a Deviſe of Lands or Goods to *Superſtitious Uſes*, is where 'tis to find or maintain a Chaplain or Prieſt to pray for the Souls of the Dead, or Lamp in a Chapel, a Stipendiary Prieſt, *&c.* Theſe, and ſuch like, are declared to be *Superſtitious Uſes*; and the Lands and Goods ſo deviſed are forfeited to the King. 1 *Ed.* 6. *c.* 14. But a Man deviſed Lands to Truſtees and their Heirs, to find a Prieſt, to pray for his Soul, ſo long as the Laws of the Land would permit; and if the Laws would not permit it, then to apply the Profits to the Poor, with Power to convert the Profits to either of the ſaid *Uſes*; adjudged, this was not a Deviſe to any *Superſtitious Uſe.* 3 *Nelſ. Abr.* 259. And where certain Profits ariſing out of Lands are given to *Superſtitious Uſes*, the King ſhall have only ſo much of the yearly Profits, which were to be applied to the *Superſtitious Uſe*; though when the Land itſelf is given by the Teſtator, declaring that the Profits, without ſaying how much, ſhall be employed for ſuch *Uſes*, in this Caſe the King ſhall have the Land itſelf. *Moor* 129. If a Sum certain is given to a Prieſt, and other Goods which depend upon the *Superſtitious Uſe*, all is forfeited to the King; yet if Land, *&c.* is given to find an *Obit* or Anniverſary, and for an other good *Uſe*; and there is no Certainty how much ſhall be employ'd to the *Superſtitious Uſe*, the Gift to the good *Uſe*, ſhall preſerve the Whole from Forfeiture. 4 *Rep.* 104. 2 *Roll.* 205. It has been held, where a *Superſtitious Uſe* was void, ſo that the King could not have it; that it was not ſo far void, as to reſult to the Heir at Law; and therefore the King may apply it to Charity. 1 *Salk.* 163. See the Stat. 23 *Hen.* 8. under *Mortmain*; and the 1 *Geo.* 1. Title *Forfeiture.*

Uſer de Action, Is the Purſuing or bringing an Action, in the proper County, *&c. Broke* 64.

Uſher, (Fr. *Huiſſier*, a Door-keeper) Is an Officer in the King's Houſe, as of the Privy-Chamber, *&c.* And there are *Uſhers* of the Courts of *Chancery* and *Exchequer.*

Uſucaption, (*Uſucaptio*) Signifies the Enjoying by Continuance of Time; a long Poſſeſſion, or Preſcription. *Terms de Ley.*

Uſufructuary, (*Uſufructuarius*) One that hath the Uſe, and reaps the Profit of a Thing.

Uſurpation, (*Uſurpatio*) Is the uſing that which is another's; an Interruption or Diſturbing a Man in his Right and Poſſeſſion, *&c.* And *Uſurpations* in the Civil and Canon Law are called Intruſions; and ſuch Intruders having not any Right ſhall ſubmit, or be excommunicated and deprived, *&c.* by *Boniface's Conſtit. Gibſ. Codex* 817. The *Uſurpation* of a *Church Benefice* is, when one that hath no Right, preſenteth to the Church, and his Clerk is admitted and inſtituted into it, and hath quiet Poſſeſſion ſix Months after Inſtitution before a *Quare Impedit* brought: It muſt commence upon a Preſentation, not a Collation; becauſe by a Collation the Church is not full, but the right Patron may bring his Writ at any Time to remove the Uſurper. 1 *Inſt.* 227. 6 *Rep.* 30. And by *Uſurpation*, the Fee of an Advowſon may be gained, as well as the Avoidance upon which the *Uſurpation* is made: And the true Patron cannot remove the Incumbent to regain the Poſſeſſion, without a Writ of Right of Advowſon, which he is driven to for Recovery of the Inheritance. 6 *Rep.* 49. It has been formerly held, that upon an *Uſurpation* the Uſurper gains a Fee-ſimple in the Advowſon; in like Manner as he who enters into Land during a Vacation, and claims the ſame as his Inheritance by Wrong: But as the Dying ſeiſed of Lands in that Caſe, will not take away the Entry of the Succeſſor; no more ſhall the *Uſurpation* on a Vacancy, take away his Right of Preſentation when the Church becomes void. 2 *Co. Inſt.* 360. 17 *Ed.* 3. 37. At Common Law the Patron in Fee was put out of Poſſeſſion by an *Uſurpation*, and to recover the Advowſon it ſelf by a Writ of Right; but he hath no Remedy for the Preſentation *hac vice*, nor if another Avoidance happen, unleſs he bring his Writ of Right of Advowſon, and recontinue the Advowſon: If the Patron had the Advowſon in Tail, or for Life, this Turn and alſo his whole Advowſon was gone. 3 *Salk.* 388. An *Uſurpation* upon a Leſſee for Years, gains the Fee-ſimple, and puts the true Patron out of Poſſeſſion; and though by the Stat. *Weſtm.* 2. he in Reverſion after the Determination of the Leaſe for Years, may have a *Quare Impedit* when the Church is void, or may preſent; and if his Clerk is inſtituted and inducted, then he is remitted to his former Title; yet till that is done, the *Uſurper* hath the Fee, and the Writ of Right of Advowſon lies againſt him. *Hutt.* 66. 3 *Salk.* 389. Upon the Statute 1 *Eliz.* if an *Uſurpation* be on a Biſhop, it ſhall bind him; but his Succeſſor may preſent to the next Avoidance, or bring a *Quare Impedit*, although he is out of Poſſeſſion: All *Uſurpations* ſhall bind the Biſhop who ſuffers them; not their Succeſſors. 1 *Leon.* 80. 2 *Cro.* 673. No one can *uſurp* upon the King; but an *Uſurpation* may diſpoſſeſs him of his Preſentation; ſo as he ſhall be obliged to bring a *Quare Impedit*; though it will not ſo deveſt his Eſtate in an Advowſon, as to bind his Inheritance, and put him to a Writ of Right. 3 *Salk.* 389. One Coparcener or Jointenant, *&c.* cannot *uſurp* upon the other: But where there are two Patrons of Churches united, if one preſents in the other's Turn, it is an *Uſurpation*; for they are not as Coparceners, who are privy in Blood. *Dyer* 259. 17 *Ed.* 3. If one preſents to a Church in Time of War, the Preſentment ſhall not put the rightful Patron out of Poſſeſſion: And a Preſentation which is void in Law, as in Caſe of Simony, or to a Church that is full, *&c.* makes no *Uſurpation.* 2 *Rep.* 93. *Wood*'s *Inſt.* 160. Alſo by a late Statute, no *Uſurpation* on any Avoidance, ſhall diſplace the Eſtate or Intereſt of any Perſon intitled to an Advowſon; or hinder him to preſent upon the next Avoidance, or to maintain a *Quare Impedit* to recover Poſſeſſion, *&c.* 7 *Ann. c.* 18. This Statute hath quite altered the Law concerning *Uſurpations* of Churches. *Mallor. Q. Imped.* 146.

Uſurpation of Franchiſes and Liberties, Is when a Subject unjuſtly uſes any Royal Franchiſes, *&c.* And it is ſaid to be an *Uſurpation* upon the *King*, who ſhall have the Writ of *Quo Warranto* againſt the *Uſurpers.* See *Quo Warranto.*

Uſurious Contract, Is any Bargain or Contract, whereby a Man is obliged to pay more Intereſt for Money than the Law allows. Vide *Uſury.*

Uſury, (*Uſura*) Is Money given for the *Uſe* of Money; and is particularly defined to be the Gain of any Thing by Contract above the Principal, or that which was lent, exacted in Conſideration of the *Loan* thereof, whether it be of Money, or any other Thing. 3 *Inſt.* 151. Some make *Uſury* to be the Profit exacted for a Loan made to a Perſon in Want and Diſtreſs; but properly it conſiſts in extorting an unreaſonable Rate for Money, beyond what is allowed by *Statute.* The Letting Money out at *Intereſt*, or upon *Uſury*, was againſt the Common Law; and in former Times, if any one after his Death had been found to be a *Uſurer*, all his Goods and Chattels were forfeited to the King, *&c.* And according to ſeveral antient Statutes, all *Uſury* is unlawful; but at this Time neither the Common or Statute Law, abſolutely prohibit *Uſury.* 3 *Inſt.* 151, 152. Though exceſſive *Uſury* is liable to the Forfeiture of treble Value of the Money taken, by Statute; and if Judgment cannot be given on the Statute, if it be found that a Perſon took Money for Forbearance by corrupt Agreement, Judgment may be given againſt him at Common Law, which is Fine and Impriſonment. 3 *Salk.* 391. Reaſonable Intereſt may be taken for the Uſe of Money at this Day: The Stat. 27 *Hen.* 8. *cap.* 9. allowed 10*l.* *per Cent.* for Money lent on Mortgages, *&c.* The 13 *Eliz. c.* 8. ordained 8*l.* *per Cent.* And the 21 *Jac.* 1. *c.* 17. the like Intereſt. The 12 *Car.* 2. *c.* 13. lowered the Intereſt of Money to 6 *l.* *per Cent.* And the 12 *Ann. cap.* 16. to 5 *l.* *per Centum per Annum.* But it is ſaid, that the Statutes 13 *Eliz.* and 21 *Jac.* 1. allow not *Uſury*, but puniſh the Exceſs of it; and the 12 *Ann.* is called the Statute againſt *Exceſſive Uſury.* By the Stat. 12 *Ann. c.* 16. no Perſon ſhall take directly or indirectly, for Loan of any Money, or any Thing, above the Value of 5*l.* for the Forbearance of 100*l.* for a Year, and ſo proportionably for a greater or leſs Sum; and all Bonds, Contracts, and Aſſurances made for Payment of any principal Sum to be lent on *Uſury*, above the Rate of 5*l.* *per Cent.* ſhall be void: And whoever ſhall take, accept or receive by way of corrupt Bargain, Loan, *&c.* a greater Intereſt, ſhall forfeit treble the Value of the Money lent; and Scriveners, Solicitors and Drivers of Bargains, are not to take above 5*s.* for the Procuring the Loan of 100*l.* a Year, on Pain of forfeiting 20*l.* *&c.* It hath been adjudg'd on this Statute, that a Contract for 6*l.* *per Cent.* made before the Statute, is not within the Meaning of it; and therefore that it was ſtill lawful to receive ſuch Intereſt, in reſpect of any ſuch Contract: And if a Man, when Intereſt was at 6*l.* *per Cent.* lent Money at that Rate, and after the Statute comes and ſinks the Intereſt to 5*l.* *per Cent.* if he continues the old Intereſt on that Bond, the Bond ſhall not be void as *uſurious*; but it is ſaid the Party ſhall be liable to forfeit treble Value. 1 *Hawk.* 246. 1 *Mod.* 69. The Receipt of higher Intereſt than is allowed by the Statute, by Virtue of an Agreement ſubſequent to the firſt Contract, doth not avoid an Aſſurance fairly made; and a Bond made to ſecure a juſt Debt, payable with lawful Intereſt, ſhall not be avoided by a corrupt *uſurious* Agreement between others, to which the Obligee was no ways privy: Nor ſhall Miſtakes in drawing Writings make void a fair Agreement. *Ibid.* If the original Contract be not *uſurious*, nothing done afterwards can make it ſo: And a Counter-Bond to ſave one harmleſs againſt a Bond made upon a corrupt Agreement, will not be void by the Statutes. But if the original Agreement be corrupt between all the Parties, and ſo within the Statute, no Colour will exempt it from the Danger of the Statutes againſt *Uſury.* 1 *Brownl.* 73. 2 *And.* 428. 4 *Shep. Abr.* 170. A Fine levied, or Judgment ſuffered as a Security for Money, in

Purſuance of an *uſurious* Contract, may be avoided by an Averment of the corrupt Agreement; as well as any common Specialty, or parol Contract: And it is not material, whether the Payment of the Principal and the *uſurious* Intereſt, be ſecured by the ſame, or by different Conveyances, for all Writings whatſoever for the Strengthning ſuch a Contract are void; alſo a Contract reſerving to the Lender a greater Advantage than allowed, is *uſurious*, if the Whole is reſerv'd by way of Intereſt, or in Part only under that Name, and in Part by way of Rent for a Houſe, let at a Rate plainly exceeding the known Value; ſo where Part is taken before the End of the Time, that the Borrower hath not the Profit of the whole principal Money, *&c.* 1 *Hawk. P. C.* 248. 3 *Nelſ. Abr.* 509. By *Holt* Ch. Juſt. If *A.* owes *B.* 100 *l.* who demands his Money, and *A.* acquaints him, that he hath not the Money ready, but is deſirous to pay it if *B.* can procure it to be lent by any other Perſon; and thereupon *B.* having preſent Occaſion for his Money, contracts with *C.* That if he will lend *A.* 100 *l.* he will give him 10 *l.* on which *C.* lends the Money, and the Debt is paid to *B.* this is a good and lawful Contract, and not *uſurious* between B. and C. *Carthew's Rep.* 252. It is not *Uſury*, if there be not a corrupt Agreement, for more than Statute Intereſt; and the Defendant ſhall not be puniſh'd, unleſs he receive ſome Part of the Money in Affirmance of the *uſurious* Agreement. 3 *Salk.* 390. There can be no *Uſury*, without a Loan; and the Court hath diſtinguiſhed between a Bargain and a Loan. 1 *Lutw.* 273. *Sid.* 27. If a Man lend another 100 *l.* for two Years, to pay for the Loan 30 *l.* and if he pays the Principal at the Year's End, he ſhall pay nothing for Intereſt; this is not *Uſury*, becauſe the Party may pay it at the Year's End, and ſo diſcharge himſelf. *Cro. Jac.* 509. 5 *Rep.* 69. And it is the ſame where a Perſon by ſpecial Agreement, is to pay double the Sum borrowed, *&c.* by way of Penalty, for Nonpayment of the principal Debt; the Penalty being in Lieu of Damages, and the Borrower might repay the Principal at the Time agreed, and avoid the Penalty. 2 *Inſt.* 89. 2 *Roll. Abr.* 801. A Man ſurrenders a Copyhold Eſtate to another upon Condition that if he pays 80 *l.* at a certain Day, then the Surrender to be void; and after it is agreed between them that the Money ſhall not be paid, but that the Surrenderor ſhall forfeit, *&c.* In Conſideration whereof, the Surrendree promiſes to pay to the Surrenderor on a certain Day 60 *l.* or 6 *l. per Annum* from the ſaid Day *pro uſu & intereſſe* of the ſaid 60 *l.* till that Sum is paid: This 6 *l* ſhall be taken to be *Intereſſe Damnorum*, and not *Lucri*, and but limited as a Penalty for Nonpayment of the 60 *l.* as a *Nomine pœnæ*, *&c.* 2 *Roll. Rep.* 469. 1 *Danv. Abr.* 44. On a Loan of 100 *l.* or other Sum of Money for a Year, the Lender may agree to take his Intereſt Half-Yearly, or Quarterly; or to receive the Profits of a Manor or Lands, *&c.* and be no *Uſury*, tho' ſuch Profits are rendered every Day. *Cro. Jac.* 26. If a Grant of Rent, or Leaſe for 20 *l.* a Year of Land which is worth 100 *l. per Annum* be made for One hundred Pounds, 'tis not *uſurious*; if there be not an Agreement, that this Grant or Leaſe ſhall be void, upon Payment of the Principal and Arrears, *&c.* *Jenk. Cent.* 249. But if two Men ſpeak together, and one deſires the other to lend him an hundred Pounds, and for the Loan of it, he will give more than legal Intereſt; and to evade the Statute, he grants to him 30 *l. per Ann.* out of his Land for ten Years, or makes a Leaſe for one hundred Years to him, and the Leſſee regrants it upon Condition that he ſhall pay 30 *l.* yearly for the ten Years: In this Caſe it is *Uſury*, though the Lender never have his own hundred Pounds again. 1 *Cro.* 27. See 1 *Leon.* 119. A Man granted a large Rent for Years, for a ſmall Sum of Money: The Statute of *Uſury* was pleaded; and it was adjudg'd, that if it had been laid to be upon a Loan of Money, it had been *uſurious*; though 'tis otherwiſe if it be a Contract for an Annuity. 4 *Shep. Abr.* 170. If one hath a Rent-charge of 30 *l.* a Year, and another asketh what he ſhall give for it, and they agree for 100 *l.* this is a plain Contract for the Rent-Charge, and no *Uſury*. 3 *Nelſ.* 510. The Grant of an Annuity for Lives, not only exceeding the Rate allowed for Intereſt, but alſo the Proportion for Contracts of this Kind, in Conſideration of a certain Sum of Money, is not within the Statutes againſt *Uſury*: and ſo of a Grant of an Annuity, on Condition, *&c.* *Cro. Jac.* 253. 2 *Lev.* 7. See 1 *Sid.* 182. Where Intereſt exceeds 5 *l. per Cent. per Annum* on a Bond, if poſſibly the Principal and Intereſt are in Hazard, upon a Contingency, or Caſualty; or if there is a Hazard that one may have leſs than his Principal, as when a Bond is to pay Money upon the Return of a Ship from Sea, *&c.* theſe are not *Uſury*. 2 *Cro.* 208, 508. 1 *Cro.* 27. *Show.* 8. Though where *B.* lends to *D.* three hundred Pounds on Bond, upon an Adventure during the Life of *E.* for ſuch a Time; If therefore *D.* pays to *B.* twenty Pounds in three Months, and at the End of ſix Months, the Principal Sum, with a further *Premium*, at the Rate of 6 *d. per* Pound a Month; or if before the Times mentioned *E.* dies, then the Bond to be void: This differing from the Hazard on a *Bottomry* Bond, was adjudged an *uſurious* Contract. *Carthew* 67, 68. *Comberb.* 125. One hundred Pounds is lent to have 120 *l.* at the Year's End, upon a Caſualty; if the Caſualty goes to the Intereſt only, and not the Principal, it is *Uſury*: The Difference in the Books is, that where the Principal and Intereſt are both in Danger of being loſt, there the Contract for extraordinary Intereſt is not *uſurious*; but when the Principal is well ſecur'd, 'tis otherwiſe. 3 *Salk.* 391. A Perſon ſecures the Intereſt and Principal, if it be at the Will of the Party who is to pay, it is no *Uſury*. 2 *Cro.* 509. And a Lender accepting a voluntary Gratuity from the Borrower, on Payment of Principal and Intereſt; or receiving the Intereſt before due, *&c.* without any corrupt Agreement, ſhall not be within the Statutes againſt *Uſury*. 2 *Cro.* 677. 3 *Cro.* 501. Alſo if one gives an *uſurious* Bond, and tenders the whole Money; yet if the Party will take only legal Intereſt, he ſhall not forfeit the treble Value by Statute. 4 *Leon.* 43. On an Information upon the Statute of *Uſury*, he who borrows the Money may be a Witneſs, after he hath paid the Money. *Raym.* 191. In Action for *Uſury*, the Statute againſt *Uſury* muſt be pleaded, and a corrupt Agreement ſet forth: It is not ſufficient to plead the Statute, and ſay that for the Lending of 20 *l.* the Defendant took more than 5 *l. per Cent.* without ſetting forth a *corrupt* Agreement or *Contract*. *Lutw.* 466 2 *Lill.* 672. 3 *Nelſ.* 514. And in pleading an *uſurious* Contract by way of Bar to an Action, the whole Matter is to be ſet forth ſpecially, becauſe it lay within the Party's own Privity; but in an Information on the Statute for making ſuch a Contract, it is enough to mention the corrupt Bargain generally, by Reaſon Matters of this Kind are ſuppoſed to be privily tranſacted; and ſuch Information may be brought by a Stranger. 1 *Hawk.* 248. In Caſe of *Uſury*, &c. an Obligor is admitted to aver againſt the Condition of a Bond, or againſt the Bond it ſelf, for Neceſſity's Sake. *Paſch.* 6 *W. & M. B. R.* The Word *Corruptive* is neceſſary in a Declaration for *Uſury*, &c.

Utas, *Octava*, Is the eighth Day following any Term or Feaſt; as the *Utas* of St. *Michael*, &c. And any Day between the Feaſt and the *Octave* is ſaid to be within the *Utas*: The Uſe of this is in the Return of Writs; as appears by the Stat. 51 *H.* 3.

Utenſil, Is any Thing neceſſary for *Uſe* and Occupation; Houſhold-ſtuff. *Cowel.*

Utfangthef, (*Fur extra captus*) A Liberty to puniſh Offenders. See *Outfangthef*.

Utlagh, (*Uthlagus*, i. e. *Bannitum extra Legem*) An *Outlaw*. Fleta, lib.

Utlagato capiendo quando Utlagatur in uno Comitatu & poſtea fugit in alium, An ancient Writ, the Nature whereof is expreſſed in the Words of the Name. *Reg. Orig.* 133.

Utlawry, (*Utlagaria, vel Utlagatio*) See *Outlawry*.

Utlepe, (*Sax.*) Signifies an Eſcape of a Felon out of Priſon. *Fleta, lib.* 1. *c.* 47.

Utrum, A Writ now of little Uſe, *Terms de Ley*. See *Aſſiſe de Utrum*.

Utter Barriſters, (*Juris conſulti*) Are Barriſters at Law, newly called, who plead without the Bar, &c. Vide *Barriſter*.

Vultiva, A Wound in the Face. —— *Vultivam* 50 *ſol. componat.* Leg. Sax.

Vultus de Luca, The Image of our crucified Saviour kept at *Lucca* in the Church of Holy Croſs: And *Will.* 1. called the Conqueror, often ſwore *per Sanctum vultum de Luca.* Eadmer. lib. 1. Malmsb. lib. 4.

Uxorium, A Mulct or Fine paid for not marrying. *Litt. Dict.*

W.

WAde, (*Vado*) To *wade* or ford over a River. *Litt.*

Waftors, (*Waftores*) Are Conductors of Veſſels at Sea; King *Edw.* 4. conſtituted certain Officers with naval Power, whom he ſtiled *Cuſtodes, Conductores* and *Waftores*, to guard our Fiſhing Veſſels on the Coaſts of *Norfolk* and *Suffolk*. Pat. 22 Edw. 4.

Wage, (*Vadiare*, from Fr. *Gage*) Signifies the Giving of Security for Performance of any Thing; as to *wage* or *gage Deliverance*, to *wage Law*, &c. *Co. Litt.* 294.

Wager of Law, (*Vadiare Legem*) Is where an Action of Debt is brought againſt a Man upon a ſimple Contract between the Parties, without Deed or Record; and the Defendant ſwears in Court in the Preſence of his Compurgators, that he oweth the Plaintiff nothing in Manner and Form as he hath declared: And the Reaſon of *Waging of Law* is, becauſe the Defendant may pay the Plaintiff his Debt in private, or before Witneſſes which may be all dead, and therefore the Law allows him to *wage* his Law in his Diſcharge; and his Oath ſhall rather be accepted to diſcharge himſelf, than the Law will ſuffer him to be charged upon the bare Allegation of the Plaintiff. 2 *Inſt.* 45. *Wager of Law* is uſed in Actions of Debt without Specialty; and alſo in Action of Detinue, for Goods or Chattels lent or left with the Defendant, who may ſwear on a Book, and certain Perſons with him, that he detaineth not the Goods in Manner as the Plaintiff has declared, and his Compurgators are to be ſix, eight or twelve of his Neighbours, as the Court ſhall aſſign him. *Terms de Ley* 196. The Manner of *Waging Law* is thus: He that is to do it, muſt bring ſix Compurgators with him into Court, and ſtand at the End of the Bar towards the Right-hand of the Chief Juſtice; and the Secondary asks him, whether he will *wage his Law?* If he anſwers that he will, the Judges admoniſh him to be well adviſed, and tell him the Danger of taking a falſe Oath; and if he ſtill perſiſts, the Secondary ſays, and he that *Wageth his Law* repeats after him: *Hear this ye Juſtices, That I* A. B. *do not owe to* C. D. *the Sum of*, &c. *nor any Penny thereof in Manner and Form as the ſaid* C. D. *hath declared againſt me: So help me God.* Though before he takes the Oath, the Plaintiff is called by the Crier thrice; and if he do not appear he becomes nonſuited, and then the Defendant goes quit without taking his Oath; and if he appear, and the Defendant ſwears that he owes the Plaintiff nothing, and the Compurgators do give it upon Oath that they believe he ſwears true, the Plaintiff is barred for ever; for when a Perſon has *waged his Law*, it is as much as if a Verdict has paſſed againſt the Plaintiff: If the Plaintiff do not appear to hear the Defendant perform his Law, ſo that he is nonſuit; he is not barred, but may bring a new Action. 1 *Inſt.* 155. 2 *Lill. Abr.* 674. In an Action of Debt on a By-Law, the Defendant *waged Law*; a Day being given on the Roll for him to come and make his Law, he was ſet on the right Corner of the Bar, and the Secondary ask'd him if he was ready to *wage his Law*; who anſwering that he was, he laid his Hand on the Book, and then the Plaintiff was called: Then the Judges admoniſhed him and his Compurgators not to ſwear raſhly; and thereupon he made Oath, That he did not owe the Money *modo & forma* as the Plaintiff had declared; and then his Compurgators, who were ſtanding behind him, were called, and each of them laying his Right-hand upon the Book, made Oath that they believed what the Defendant had ſworn was true. 2 *Ventr.* 171. 2 *Salk.* 682. The Defendant cannot *wage his Law* in any Action, but perſonal Actions, where the Cauſe is ſecret; and *Wager of Law* has been denied, on hearing the Caſe, and the Defendant been adviſed to plead to Iſſue, &c. Alſo this *Wager of Law* being, it is ſaid, abuſed by the Iniquity of the Times, the Law was forced to find another Way to do Juſtice, and that was by turning Actions of Debt on ſimple Contract, &c. into Action upon the Caſe by *Indebitat. Aſſumpſit*, which hath ouſted the Defendant of his *Ley Gager.* 2 Lill. 675, 676.

Wagers, By Statute, all *Wagers* laid upon a Contingency relating to the late War with *France*, and all Securities, &c. therefore, were declared to be void; and Perſons concerned to forfeit double the Sums laid. 7 *Ann. cap.* 17.

Wages, Is what is agreed upon by a Maſter to be paid to a Servant, or any other Perſon which he hires to do Buſineſs for him. 2 *Lill. Abr.* 677. The *Wages* of Servants, Labourers, &c. is to be aſſeſſed by Juſtices. 5 *Eliz. cap.* 4. 1 *Jac.* 1. *cap.* 6. And Juſtices of Peace may order Payment of *Wages* for Husbandry, &c. but not in other Caſes. *Mod. Caſ.* 204, 205. The *Statute* of Labourers *Wages*, extends to Covenant Servants in Husbandry; tho' an Order of *Juſtices* was quaſhed in B. R. becauſe made upon the Servant's Oath, without other Evidence. 2 *Ld. Raym.* 1305. See *Servants*. *Wages* of Seamen, vide Stat. 4 & 5 *Ann.* 1 *Geo.* 1. *c.* 25.

Waggons. The 22 *Car.* 2. enacted, That *Waggons* ſhould not be drawn with more than five Horſes in Length, under certain Penalties. By the 6 *Ann. cap.* 29. *Waggons* were to be drawn with ſix Horſes, and no more, on Pain of 5 *l.* But Carriages for drawing Hay, Straw, Coal, Timber, Ammunition, &c. were excepted out of the Statute. And by 5 *Geo.* 1. *c.* 12. *Waggons* travelling in Highways for Hire, ſhall not be drawn with more than ſix Horſes; and no Cart with above three Horſes, on Pain of forfeiting all ſupernumerary Horſes; alſo travelling *Waggons* are to have their Wheels bound with Iron, two Inches and a Half broad, at leaſt, or all the Horſes ſhall be forfeited above the Number of Three, &c. In *London*, &c. *Waggons* having their Wheels bound with Iron, are not to carry more than 12 Sacks of Meal, one Chalder of Coals, &c. on Pain of forfeiting one of the Horſes with the Furniture, &c. Stat. 6 *Geo.* 1. *c.* 6. By a late Act, Carts may be drawn with four Horſes, for the Convenience of

Farmers, and others going to Markets, &c. Stat. 16 *Geo.* 2. *cap.* 29.

Waifs, (From the Sax. *Wafian*, Fr. *Choſe guaive*, Lat. *Bona Waviata*) Are Goods which are ſtolen and *waved*, or left by the Felon, on his being purſued, for fear of being apprehended; which are forfeited to the King or Lord of the Manor. *Kitch.* 81. If a Felon in Purſuit *waves* the Goods, or having them in his Cuſtody, and thinking that Purſuit was made, for his own Eaſe and more ſpeedy Flight, flies away and leaves the Goods behind him; then the King's Officer or the Bailiff of the Lord of the Manor, within whoſe Juriſdiction they are left, who hath the Franchiſe of *Waif*, may ſeiſe the Goods to the King or Lord's Uſe and keep them; except the Owner makes freſh Purſuit after the Felon, and ſue an Appeal of Robbery within a Year and a Day, or give Evidence againſt him whereby he is attainted, &c. In which Caſe, the Owner ſhall have Reſtitution of his Goods ſo ſtolen and *waved*. 21 *H.* 8. *cap.* 11. 5 *Rep.* 109. Goods *waved* by a Felon, in his Flight from thoſe who purſue him, ſhall be forfeited: And though *Waif* is generally ſpoken of Goods ſtolen; yet if a Man be purſued with *Hue and Cry* as a Felon, and he flies and leaves his own Goods, theſe will be forfeited as Goods ſtolen; but they are properly *Fugitives Goods*, and not forfeited till it be found before the Coroner, or otherwiſe of Record, that he fled for the Felony. 2 *Hawk.* 450. 5 *Rep.* The Law makes a Forfeiture of Goods *waved*, as a Puniſhment to the Owner of the Goods, for not bringing the Felon to Juſtice: But if the Thief had not the Goods in his Poſſeſſion, when he fled, there is no Forfeiture: If a Felon ſteals Goods and hide them, and afterwards flies, theſe Goods are not forfeited; ſo where he leaves ſtolen Goods any where, with an Intent to fetch them at another Time, they are not *waved*; and in theſe Caſes the Owner may take his Goods where he finds them, without freſh Suit, &c. *Cro. Eliz.* 694. 5 *Rep.* 109. *Moor* 785. *Waifs* and *Strays* are ſaid to be *Nullius in bonis*; and therefore they belong to the Lord of the Franchiſe where found. *Briton, cap.* 17. We read of *Placita Coronæ & Waif*, in the Manor of *Upton*, &c. *in Com. Salop.*

Wain, (*Plauſtrum*) A Cart, Waggon, or Plough to till Land.

Wainable, *i. e.* That may be ploughed or manured; Land tillable. *Chart. ſine dat.*

Wainage, (*Wainagium*) According to Sir *Edw. Coke*, ſignifies the Contenement of a Villain; or the Furniture of his Cart or *Wain.* 2 *Inſt.* 28. And the Villain of any other, if he fall into our Mercy, ſhall be amerced ſaving his *Wainage.* Magn. Chart. c. 14. *Wainage* has been alſo uſed for Tillage. *Mon. Ang. Tom.* 2. *pag.* 612. See *Gainage.*

Waive, (*Waiviare*) In the general Signification, is to forſake; but is ſpecially applied to a Woman, who for any Crime, for which a Man may be *outlawed*, is termed *Waive.* Reg. Orig. 132.

Waiver, Signifies the paſſing by of a Thing, or a Refuſal to accept it: Sometimes it is applied to an Eſtate, or ſomething convey'd to a Man, and ſometimes to a Plea, &c. And a *Waiver* or Diſagreement as to Goods and Chattels, in Caſe of a Gift, will be effectual. *Litt. Sect.* 710. If a Jointure of Lands be made to a Woman after Marriage, ſhe may *waive* this after her Husband's Death. 3 *Rep.* 27. And an Infant, or if he die, his Heir may by *Waiver* avoid an Eſtate made to him during his Minority. 1 *Inſt.* 23, 348. But where a particular Eſtate is given with a Remainder over, there regularly he that hath it may not *waive* it, to the Damage of him in Remainder: Though it is otherwiſe where one hath a Reverſion; for that ſhall not be hurt by ſuch *Waiver.* 4 *Shep. Abr.* 192. After Special Iſſue joined in any Action, the Parties cannot *waive* it, without Motion of Court. 1 *Keb.* 225. Aſſignment of Error by Attorney on an Outlawry, ordered to be *waived*, and the Party to aſſign in Perſon, after Demurrer for this Cauſe. See 2 *Keb* 15.

Wake, The Eve-Feaſt of the *Dedication* of *Churches*; which in many Country Places, is obſerved with Feaſting and rural Diverſions, &c. *Paroch. Antiq.* 609.

Wakeman, (*Quaſi* Watchman) The chief Magiſtrate of the Town of *Rippon* in *Yorkſhire*, is ſo called. *Camd.*

Wales, (*Wallia*) Is Part of *England* on the Weſtſide formerly divided into three Provinces, *North-Wales*, *South-Wales*, and *Weſt-Wales*, and inhabited by the Off-ſpring of the antient *Britains*, chaſed thither by the *Saxons*, called in to aſſiſt them againſt the *Picts* and *Scots.* Lamb. Stat. Wallia, 12 Edw. 1. *England* and *Wales* were originally but one Nation, and ſo they continued till the Time of the *Roman* Conqueſt: But when the *Romans* came, thoſe *Britains* who would not ſubmit to their Yoke, betook themſelves to the Mountains of *Wales*, from whence they came again ſoon after the *Romans* were drove away by their Diſſentions here: After this came the *Saxons*, and gave them another Diſturbance, and then the Kingdom was divided into an *Heptarchy*; and then alſo began the *Welſh* to be diſtinguiſhed from the *Engliſh:* Yet 'tis obſervable, that tho' *Wales* had Princes of their own, the King of *England* had Superiority over them, for to him they paid Homage. *Camd.* 67. 2 *Mod.* 11. The Stat. 28 *Ed.* 3. *c.* 2. annexed the *Marches of Wales* perpetually to the Crown of *England*; ſo as not to be of the Principality of *Wales.* And by the 27 *Hen.* 8. *c.* 26. *Wales* was incorporated to and united with *England*; and all Perſons born in *Wales* ſhall enjoy the like Liberties as thoſe born in *England*, and Lands deſcend there according to the *Engliſh* Laws: The Laws of *England* are to be executed in *Wales*; and the King to have a *Chancery* and *Exchequer* at *Brecknock* and *Denbigh:* Officers of Law and Miniſters ſhall keep Courts in the *Engliſh* Tongue; and the *Welſh* Laws and Cuſtoms to be inquired into by Commiſſion, and ſuch of them as ſhall be thought fit continued; but the Laws and Cuſtoms of *North Wales* are ſaved. By 34 & 35 *Hen.* 8. *cap.* 26. A Diviſion of *Wales* was made into twelve Counties; and a Preſident and Council ſhall remain in *Wales* and the Marches thereof, with Officers, &c. Two Juſtices are to be aſſign'd to hold a Seſſions twice every Year, and determine Pleas of the Crown, and Aſſiſes, and all other Actions; and Juſtices of Peace ſhall be appointed as in *England*, &c. The 18 *Eliz. cap.* 8. enacts, That the King may appoint two other Perſons learned in the Laws, to be Judges in each of the *Welſh* Circuits, which had but one Juſtice before; or grant Commiſſions of Aſſociation, &c. An Office for Inrolments was erected, and the Fees and Proceedings regulated in paſſing Fines and Recoveries in *Wales*, by 27 *Eliz. cap.* 9. Perſons living in *Wales*, may give and diſpoſe of their Goods and Chattels by Will, in like Manner as may be done within any Part of the Province of *Canterbury* or elſewhere. 7 & 8 *W.* 3. *c.* 38. Jurors returned to try Iſſues in *Wales*, are to have 6 *l.* a Year of Freehold or Copyhold, above Repriſes: And none ſhall be held to Bail in *Wales*, unleſs Affidavit be made that the Cauſe of Action is 20 *l.* or upwards. 11 & 12 *W.* 3. *cap.* 9. In Actions where the Debt, &c. amounts not to 10 *l.* in the Court of Great Seſſions in *Wales*, the Plaintiff ſhall ſue out a Writ or Proceſs, and ſerve the Defendant with a Copy eight Days before holding of the ſaid Court, &c. who ſhall appear at the Return, or before the Third Court; or the Plaintiff may enter an Appearance, and proceed. 6 *Geo.* 2. *c.* 14. Of Proceſs into *Wales*, Judgments, and

Courts there, *&c.* ſee 3 *Nelſ. Abr.* 519, 520, 522. *and Courts of Wales. Prince of Wales*, vide *Prince.*

Waleſheria, The learned *Spelman* ſays ſignifies *Walliæ pars:* But by others it is interpreted *Parentela Hominis interfecti*; the ſame with *Valeſheria.*

Waliſcus, (i. e. *Servus*) A Servant, or any miniſterial Officer. *Leg. Inæ, c.* 34.

Walkers, Are *Foreſters* within a certain Space of Ground, aſſign'd to their Care in Foreſts, *&c. Crompt. Juriſd.* 145.

Wall, Sea-Wall, A Bank of Earth. See *Watergage.*

Walſingham, The Demeſne Lands in *Walſingham* may be Let by Copy, and ſhall be Copyholds. 35 *H* 8. *c.* 13.

Waltham Blacks. In the Reign of K. *Geo.* 1. there ſprung up a Set of deſperate Villains called *Waltham Blacks*, headed by one whom they ſtiled *K. John*; who *blacking* their Faces, and uſing other Diſguiſes, robb'd Foreſts, Parks, and Warrens, deſtroy'd Cattle, levied Money on their Neighbours, by Threats and Menaces to fire their Houſes, and committed divers other Violences and Outrages, to the great Terror of the People; but they were ſuppreſſed, and declared *Felons*, by Stat. 9 *Geo.* 1. *c.* 22.

Wang, (*Sax.*) We uſe for the Cheek, or Jaw wherein the Teeth are ſet: Hence *Chaucer* called the Cheek-Teeth or Grinders, *Wangs* or *Wang-Teeth*; which is recorded in this old Way of ſealing Writings:

And in Witneſs that this is ſooth,
I bite the Wax with my Wang-tooth.

Wanga, An Iron Inſtrument with Teeth. *Conſuetud. Dom. de Farend. MS.* 18.

Wanlaſs, Or *driving* the *Wanlaſs*, is to drive Deer to a *Stand*, that the Lord may have a Shoot; which is one of our ancient cuſtomary Tenures of Lands. *Blount's Ten.* 140.

Wapentake, (From the Sax. *Weapen*, i. e. *Armatura*, *&* *tac*, *tactus*) Is all one with what we call a Hundred; ſpecially uſed in the *North* Counties beyond the River *Trent*. *Bract. lib.* 3. *Lamb.* The Words ſeem to be of *Daniſh* Original, and to be called ſo for this Reaſon; when firſt this Kingdom, or Part thereof, was divided into *Wapentakes*, he who was the Chief of the *Wapentake* or Hundred, and whom we now call a High Conſtable, as ſoon as he entered upon his Office, appeared in the Field on a certain Day on Horſe-back with a Pike in his Hand, and all the chief Men of the Hundred met him there with their Lances, and touch'd his Pike; which was a Sign that they were firmly united to each other, by the *Touching their Weapons. Hoveden. Fleta, lib.* 2. But Sir *Thomas Smith* ſays, That anciently Muſters were made of the Armour and *Weapons* of the ſeveral Inhabitants of every *Wapentake*; and from thoſe that could not find ſufficient Pledges for their good Abearing, their *Weapons* were *taken* away, and given to others; from whence he derives this Word. *Rep. Angl. lib.* 2. *cap.* 16. *Camd. Brit.* 159. 2 *Inſt.* 99. Stat. 3 *Hen.* 5. *c.* 2. 9 *Hen.* 6. *cap.* 10. 15 *Hen.* 6. *cap.* 7.———Wapentak *hoc eſt quietancia de ſectis & Hundredis quod dicitur* Wapentake. *MS. in Bibl. Cotton.*

Wapping, An Act was made for the Partition of *Wapping* Marſh. Stat. 35 *H.* 8. *c.* 9. And Perſons ſheltring themſelves from Debts, and obſtructing the Execution of Writs in *Wapping*, *Stepney*, &c. to be guilty of Felony, by 11 *Geo.* 1. *c.* 22.

War, (*Bellum*) A Fighting between two Kings, Princes or Parties, in Vindication of their juſt Rights; alſo the State of *War*, or all the Time it laſts. By our Law, when the Courts of Juſtice are open, ſo that the King's Judges diſtribute Juſtice to all, and protect Men from Wrong and Violence, it is ſaid to be a Time of *Peace:* But when by Invaſion, Rebellion, *&c.* the peaceable Courſe of Juſtice is ſtopt, then it is adjudged to be a Time of *War:* And this ſhall be tried by the Records and Judges, whether Juſtice at ſuch a Time had her equal Courſe of Proceeding or no? For *Time of War* gives *Privilege* to them that are in *War*, and all others within the Kingdom. 1 *Inſt.* 249. In the *Civil Wars* of King *Char.* 1. it was computed that there were not fewer than 200,000 Foot and 50,000 Horſe in Arms on both Sides; which was an extraordinary Hoſt, conſidering it compoſed of *Britains* ſufficient to have ſhaken *Europe*, tho' it was otherwiſe fatally imployed. And in antient Times, when the Kings of *England* were to be ſerved with Soldiers in their *Wars*, a Knight or Squire that had Revenues, Farmers and Tenants, would covenant with the King by Indenture inrolled in the *Exchequer*, to furniſh him with ſuch a Number of military Men; and thoſe Men were to ſerve under him, whom they knew and honoured, and with whom they muſt live at their Return. 1 *Inſt.* 71. This was an excellent Inſtitution; but we have had many Statutes which have alter'd this Method of recruiting the Army, by introducing the Liſting of Soldiers, and retaining them by Virtue of Money paid and advanced, *&c.* The Statute 25 *E.* 3. enacted, That none ſhould be conſtrain'd to find Men of Arms but by Tenure of Land, or Grant in Parliament. And what Perſons are obliged to attend upon the King, when he goes himſelf in Perſon to the *Wars*, &c. Vide 11 *H.* 7. *c.* 18. See *Law of Arms*, and *Soldiers.*

Wara, A certain Quantity or Meaſure of Ground. *Mon. Ang. Tom.* 2. *p.* 128.

Ward, (*Cuſtodia*) Is variouſly uſed in our old Books: A *Ward* in *London* is a Diſtrict or Diviſion of the City, committed to the ſpecial Charge of one of the Aldermen; and in *London* there are Twenty-ſix *Wards*, according to the Number of the Mayor and Aldermen, of which every one has his *Ward* for his proper Guard and Juriſdiction. *Stow's Surv.* A *Foreſt* is divided into *Wards*. *Manwood, par.* 1. *p.* 97. And a Priſon is called a *Ward.* Laſtly, The Heir of the King's Tenant, that held *in Capite*, was term'd a *Ward*, during his Nonage: But this *Wardſhip* is taken away by the Stat. 12 *Car.* 2. *c.* 24.

Warda, The Cuſtody of a Town or Caſtle, which the Inhabitants were bound to keep at their own Charge. *Mon. Ang. Tom.* 1. *p.* 372.

Wardage, (*Wardagium*) Seems to be the ſame with *Wardpeny.*

Warden, (*Gardianus*, Fr. *Gardein*) Is he that hath the Keeping or Charge of any Perſons or Things by Office; as the *Wardens* of the Fellowſhips or Companies in *London.* 14 H. 8. c. 2. *Wardens* of the Marches of *Wales*, &c. 14 *Hen.* 7. *cap.* 8. *Wardens* of the Peace. 2 *Ed.* 3. *c.* 3. *Wardens* of the Tables of the King's Exchange. 2 *Ed.* 3. *cap.* 7. *Warden* of the Armour in the *Tower.* 1 Ed. 4. c. 1. *Wardens* of the Rolls of the Chancery. 1 *Ed.* 4. *c.* 5. *Warden* of the King's Writs and Records of his Court of Common Bench. *Ibid. Warden* of the Lands for repairing *Rocheſter* Bridge. 18 *Eliz. c.* 7. *Warden* of the Stannaries. 14 *Car.* 2. *c.* 3. *Warden* and minor Canons of St. *Paul*'s Church. 22 & 23 *Car.* 2. *Warden* of the *Fleet* Priſon. 8 & 9 *W.* 3. *&c.* See *Guardian.*

Wardmote, (*Wardmotus*) Is a Court kept in every *Ward* in *London*; ordinarily called the *Wardmote Court:* And the *Wardmote* Inqueſt, hath Power every Year to inquire into and preſent all Defaults concerning the Watch, and Conſtables doing their Duty; that Engines, *&c.* are provided againſt Fire; Perſons ſelling Ale and Beer be honeſt, and ſuffer no Diſorders, nor permit Gaming, *&c.* that they ſell in lawful Meaſures; and Searches to be made for Vagrants, Beggars, and idle Perſons, *&c.* who ſhall be puniſhed. *Chart. K. Hen.* 2. *Lex Lond.* 185.

Wardpeny, Money paid and contributed to Watch and *Ward*. Domeſday.

Wardwit, Is to be quit of giving Money for keeping of *Wards*. Terms de Ley.

Wards, Was a Court firſt erected in the Reign of King *Hen.* 8. and afterwards augmented by him with the Office of *Liveries*; wherefore it was ſtiled the *Court of Wards and Liveries*, now diſcharged by the 12 *Car.* 2.

Ward-Staff, The Conſtable or Watchman's *Staff:* And the Manor of *Lambourn* in *Eſſex* is held by the Service of the *Ward Staff*, and watching the ſame in an extraordinary Manner, when it is brought to the Town of *Aibridge.* Camd.

Warectare, To plough up Land deſign'd for Wheat in the Spring, in order to let it lie fallow for better Improvement; which in *Kent* is called *Summer Land:* Hence *Warectabilis campus*, a Fallow Field; *Campus ad Warectam, Terra Warectata, &c.*

Wares, Certain *Wares* not to be brought into this Realm from abroad, to be ſold or exchanged here, on Pain of Forfeiture. See Stat. 5 *Eliz. cap.* 7.

Wargus, A baniſhed Rogue. *Leg. Hen.* 1. *cap.* 83.

Warniſtura, Is uſed for Garniture, Furniture, Proviſion, *&c. Pat.* 9 *Hen.* 3.

Warnoth, It is an antient Cuſtom, if any Tenant holding of the Caſtle of *Dover* failed in paying his *Rent* at the Day, that he ſhould forfeit double, and for the ſecond Failure treble: And the Lands ſo held are called *Terris Cultis & Terris de* Warnoth. *Mon. Angl. Tom.* 2. *p.* 589.

Warrant, A Precept under Hand and Seal to ſome Officer to bring an Offender before the Perſon granting it: And *Warrants* of Commitment are iſſued by the Privy Council, a Secretary of State, or a Juſtice of Peace, *&c.* where there hath been a private Information, or a Witneſs has depoſed againſt an Offender. *Wood's Inſt.* 614. Any one under the Degree of Nobility, may be arreſted for a Miſdemeanor, or any Thing done againſt the Peace of the Kingdom, by *Warrant* from a Juſtice of Peace; though if the Perſon be a Peer of the Realm, he muſt be apprehended for a Breach of the Peace by Proceſs out of *B. R.* &c. *Dalt. Juſt.* 263. A Conſtable ought not to execute a Juſtice's *Warrant*, where the *Warrant* is unlawful, or the Juſtice hath no Juriſdiction; if he doth, he may be puniſhed. *Plowd.* 394. But if any Perſon abuſe by throwing in the Dirt, *&c.* or refuſe to execute a lawful *Warrant*; it is a Contempt of the King's Proceſs, for which the Offender may be indicted and fined. *Cromp.* 149. See *Conſtable.*

Warrant of Attorney, Is an Authority and Power given by a Client to his *Attorney*, to appear and plead for him; or to ſuffer Judgment to paſs againſt him by confeſſing the Action, by *Nil dicit, Non ſum Informatus, &c.* And although a *Warrant of Attorney* given by a Man in Cuſtody to confeſs a Judgment, no Attorney being preſent, is void as to the Entry of a Judgment; yet it may be a good *Warrant* to appear and file Common Bail. 2 *Lill. Abr.* 682. A *Warrant of Attorney* which *warrants* the Action, is of Courſe put in by the Attornies for the Plaintiff and Defendant; ſo that it differs from a *Letter of Attorney*, which paſſes ordinarily under the Hand and Seal of him that makes it, and is made before Witneſſes, *&c.* Though a *Warrant of Attorney* to ſuffer a *common Recovery* by the Tenant, is acknowledged before ſuch Perſons as a Commiſſion for the Doing thereof directs. *Weſt's Symb. par.* 2. Vide Stat. 4 & 5 *Ann.*

Warranty, (*Warrantia*) Is a Promiſe or Covenant by Deed made by the Bargainor, for himſelf and his Heirs, to *warrant* or ſecure the Bargainee and his Heirs, againſt all Men for the Enjoying of the Thing granted. *Bract. lib.* 2. & 5. *Weſt's Symb. par.* 1. A *Warranty* is *Real* or *Perſonal*; *Real*, when it concerns Lands or Tenements, granted in Fee, or for Life, *&c.* And real *Warranties* are either *in Deed*, as by the Word *Warrantizo* or *Warrant* expreſly; or *in Law*, by the Word *Dedi, &c.* And a Deed of Gift and Exchange, have a *Warranty* in Law implied. *Litt.* 697. Sir *Edw. Coke* defines a *real Warranty* to be a Covenant Real annex'd to Lands, whereby a Man and his Heirs are bound to *warrant* the ſame to ſome other and his Heirs; and that they ſhall quietly hold and enjoy the Lands, and upon Voucher, or by Writ of *Warrantia Chartæ*, to yield other Lands and Tenements to the Value of thoſe that ſhall be evicted by elder Title: And *Warranty* being a Covenant real, bindeth to yield Lands in Recompence. 1 *Inſt.* 365, 384. *Warranty* is alſo of three Sorts, *viz. Warranty Lineal, Warranty Collateral*, and *Warranty* that commences by *Diſſeiſin: Warranty lineal* is where a Man ſeiſed in Fee makes a Feoffment, and binds himſelf and his Heirs by the Deed to *Warranty*, and hath Iſſue a Son and dies, and the *Warranty* deſcends to his Son and Heir; for if no Deed with *Warranty* had been made, then the Right of the Lands ſhould have deſcended to the Son as Heir to his Father, and he would have conveyed the Deſcent from Father to Son: This *Warranty* binds the Right of Fee-ſimple; but not the Right of an Eſtate-tail, unleſs the lineal *Warranty* be with Aſſets in Fee-ſimple. *Litt.* 697, 703. 1 *Inſt.* 370. *Collateral Warranty* is when the Party upon whom the *Warranty* deſcends, cannot convey the Title which he hath in the Land from him that made the *Warranty*, or ſhew that he is his Heir, *&c.* As if Tenant in Tail diſcontinues the Tail, or alienates the Land, and then dieth, leaving Iſſue, and the Uncle of the Iſſue releaſes to the Diſcontinuee with *Warranty*, and dies without Iſſue; this is a collateral *Warranty* to the Iſſue in Tail, and bindeth his Right, without Aſſets, it deſcending upon him, and he can't make a Title to the Intail from his Uncle. *Litt.* 704. 1 *Inſt.* 373, 376. *Warranty by Diſſeiſin*, is where one that hath no Right to the Freehold of another, entereth and conveyeth it away with *Warranty*; which ſhall not bind or bar the Perſon diſſeiſed, or the right Heir that ought to have the Land: And if where Tenant for Life, Remainder in Tail, leaſes for Years with Agreement with the Leſſee, that he ſhall make a Feoffment of the Land, and then he will releaſe with *Warranty*, which is done accordingly; adjudged that this collateral *Warranty* commencing by Diſſeiſin, ſhall not bind the Heir in Tail, upon whom it deſcended. *Litt.* 698. 1 *Inſt.* 366, 367. *Cro. Car.* 483. *Accomp. Conv.* 1 *Vol.* 56. He that makes a *Warranty*, may make it as large, or ſtrait as he pleaſes; as for himſelf and his Heirs, and what Heirs, *&c.* And if the *Warranty* be made for Life, or in Tail, 'tis good, and ſhall bind for ſo long only. 1 *Inſt.* 387. 1 *And.* 262, 305. But no *Warranty* can inlarge an Eſtate granted; for if the Leſſor by Deed doth Releaſe to his Leſſee for Life, and *warrant* the Land to him and his Heirs, it ſhall not make his Eſtate greater. 1 *Inſt.* 389. And where one binds him and his Heirs to *Warranty*; by this they are not bound to *warrant* new Titles, or any Right that commences after *Warranty* made, but ſuch as were *in eſſe* at that Time. *Bridgm.* 77. If one make an Eſtate, and grant to *warrant* the Land, but doth not ſay for how long; it ſhall be taken for ſo long as the Eſtate to which the *Warranty* is knit doth laſt: A Man grants to *warrant* Lands to another, and ſays not againſt what Perſons; here it will be held a general *Warranty* againſt all Men. 1 *Rep.* 1. A *Warranty* may be annexed to Eſtates of Inheritance or Freehold, and that not only to Houſes and Lands, but alſo Rents, Advowſons, Commons, *&c.* which iſſue out of Lands or Tenements. 1 *Inſt.* 366, 389. And to every good *Warranty* in Deed, to make it binding; the Perſon that doth *warrant* muſt be a Perſon able; it is neceſſary that there be ſome Eſtate to which the *Warranty* is annexed, to ſupport it; that the *Warranty* deſcend upon him who is Heir of the whole Blood by the Common Law, to him that made it, and not upon another; and that the Heir claim by the ſame Right as the Anceſtor; that it take Effect in the Life-time of ſuch Anceſtor; and he be bound thereby; and the Eſtate of Freehold, which is to be barred, be put to a Right before, or at the Time of the *Warranty*; and that he to whom the *Warranty* deſcends, have then but a Right to the Land. 1 *Inſt.* 367, 370, 384, 388. 10 *Rep.* 96, 97. If one be a Succeſſor only in Caſe of a Corporation, he ſhall not be bound by the *Warranty* of his Natural Anceſtor: And he that comes into Land meerly by Act of Law, as the Lord by Eſcheat, *&c.* ſhall never take Advantage of a *Warranty*; but it is otherwiſe where the Eſtate ariſes by Limitation of Uſe, or a common Recovery, which is the Act of the Party. 1 *Inſt.* 370. 3 *Rep.* 62. Tho' if the Eſtate the *Warranty* is annexed to be ſpent, the *Warranty* is gone: So if a Feoffment with *Warranty* be made to two or more, and they being Jointenants, do after by Deed make Partition. But where one enfeoffs two Men and their Heirs, and a Feoffment is made in Fee by one of them; the other may notwithſtanding have the Benefit of the *Warranty.* 10 *Rep.* 96. 6 *Rep.* 12. 1 *Inſt.* 385. Two Perſons make a Feoffment with *Warranty*, the Survivor ſhall not be charged alone, without the Heir of the other; and if both die, the Heirs of both ſhall be equally bound. 3 *Rep.* 14. All *Warranties* before the *Statute* of *Glouceſter*, which deſcended to thoſe who were Heirs to the *Warrantors*, were Bars to the ſame Heirs to demand any of the Lands; except the *Warranty* began by Diſſeiſin: That Statute hath ordained, that the *Warranty* of the Father ſhall be no Bar to his Son for the Lands which come by the Heritage of the Mother; nor the *Warranty* of the Mother be binding to the Son for the Lands which come by the Heritage of the Father; but neither the Statute 11 *Hen.* 7. *c.* 20. or any other Statute hath provided any Remedy againſt a collateral *Warranty*; therefore ſuch *Warranty* is yet in Force, and ſhall be a Bar to the Iſſue in Tail. *Litt. Terms de Ley* 370, 371. But by the 4 & 5 *Ann.* for *Amendment of the Law*, *Warranties* made by Tenant for Life, of any Lands, coming or deſcending on him in Reverſion or Remainder, ſhall be void; and all collateral *Warranties* made of any Lands, *&c.* by any Anceſtor, who hath not an Eſtate of Inheritance in Poſſeſſion therein, ſhall be alſo void againſt the Heir. If Lands are held of a Man and his Heirs, by certain Service, without any Clauſe of *Warranty*, they are bound to *Warranty*: But when the Deed is *Dedi & conceſſi*, *&c.* to be holden of the Chief Lord of the Fee, or of others, and not the Feoffors and their Heirs, reſerving no Service, and without the aforeſaid Clauſe; here the Heirs of the Feoffor ſhall not be bound to *Warranty*. Stat. 4 *Ed.* 1. A *Warranty* according to Law is intire, and extends to all the Lands, and is a Bar to every Perſon on whom it deſcends; and where ſeveral have a Right, jointly or ſeverally, every one of them are barred: Though there is this Difference as to *Warranties*; where the Entry is gone, and only a Right of Action is left, there a *Warranty* deſcending upon the Heir at Law, ſhall bind: And where there is a Right of Entry, it ſhall not bind. 8 *Rep.* 54. 2 *Lill. Abr.* 684. And if any Perſon make a Deed with *Warranty*, by which his Heir ſhould be barred, and after the *Warrantor* is attainted of Felony; his Heir ſhall not be bound by ſuch *Warranty*, for it cannot deſcend upon him, the Blood being corrupted. *Litt.* If a *Warranty* deſcend upon an Infant, it ſhall not bind him, in Caſe his Entry into the Lands be lawful; but he muſt take Care not to ſuffer a Deſcent after his full Age, before he hath made his Re-entry. 1 *Rep.* 140. *Poph.* 71. *Warranty* may be added to any Conveyance of Lands, Tenements, or Hereditaments; as upon Fines, Feoffments, Gifts, Releaſe and Confirmation, *&c.* And the antient Form of a *Warranty* is in this Manner —— *Et Ego præfatus* A. B. *& hæredes mei prædict. Meſſuag. & decem acras terræ cùm pertinentiis ſuis, præfato* C. D. *hæredibus & aſſignatis ſuis contra omnes gentes* Warrantizabimus *in perpetuum per præſentes, &c.*

Warranty of Goods ſold, vide *Action on the Caſe*, and *Sale.*

Warrantia Chartæ, Is a Writ that lieth where a Man is infeoffed of Lands with *Warranty*, and then he is ſued or impleaded. And if the Feoffee be impleaded in *Aſſiſe*, or other Action, in which he cannot vouch or call to *Warranty*, he ſhall have this Writ againſt the Feoffor, or his Heirs, to compel them to *warrant* the Land unto him; and if the Land be recovered from him, he ſhall recover as much Lands in Value againſt the *Warrantor*, *&c.* But the *Warrantia Chartæ* ought to be brought by the Feoffee depending the firſt Writ againſt him, or he hath loſt his Advantage. *F. N. B.* 134. *Terms de Ley* 372, 588. And if a Perſon doth infeoff another of Lands by Deed with *Warranty*, and the Feoffee maketh a Feoffment over, and taketh back an Eſtate in Fee, the *Warranty* is determined; and he ſhall not have the Writ *Warrantia Chartæ*, becauſe he is in of another Eſtate: Alſo where one makes a Feoffment in Fee with *Warranty* againſt him and his Heirs, the Feoffee ſhall not have a *Warrantia Chartæ* upon this *Warranty* againſt the Feoffor or his Heirs, if he be impleaded by them; but the Nature of it is to *rebut* againſt the Feoffor and his Heirs. *Dalt.* 48. 2 *Lill. Abr.* 684. This Writ may be ſued forth before a Man is impleaded in any Action, but the Writ doth ſuppoſe that he is impleaded; and if the Defendant appear and ſay, that he is not impleaded, by that Plea he confeſſeth the *Warranty*, and the Plaintiff ſhall have Judgment, *&c.* and the Party ſhall recover in Value of the Lands againſt the Vouchee, which he had at the Time of the Purchaſe of his *Warrantia Chartæ*; and therefore it may be good Policy to bring it againſt him before he is ſued, to bind the Lands as he had at that Time; for if he have aliened his Lands before the Voucher, he ſhall render nothing in Value. *New Nat. Br.* 298, 299. If a Man recover his Warranty *in Warrantia Chartæ*, and after he is impleaded; he ought to give Notice to him againſt whom he had recovered, of the Action, and pray him to ſhew what Plea he will plead, to defend the Land, *&c.* And where one upon a *Warranty* doth vouch and recover in Value, if he is then impleaded of the Land recovered, he may not vouch again, for the *Warranty* was once executed. 23 *E.* 3. 12. In a *Warranty* to the Feoffee in Land, made by the Feoffor; upon Voucher if Special Matter be ſhewed by the Vouchee, when he entered into the *Warranty*, viz. That the Land at the Time of the Feoffment was worth only 100 *l.* and now at the Time of the Voucher it is worth 200 *l.* by the Induſtry of the Feoffee; the Plaintiff in a *Warrantia Chartæ*, *&c.* ſhall recover only the Value as it was at the Time of the Sale. *Jenk. Cent.* 35. If the Vouchee can ſhew Cauſe why he ſhould not Warrant, that muſt be Tried, *&c.*

Form of a Writ *de Warrantia Chartæ.*

GEORGE *the Second*, &c. *To the Sheriff of* W. *Greeting: Command* A. B. *that juſtly*, &c. *be* warrant *to* C. D. *one Meſſuage with the Appurtenances in* S. *which he holds, and claims to hold of him, whereof he hath his Deed or Charter of Feoffment, as he ſaith; and unleſs*, &c. *then Summon the ſaid* A. &c.

The *Count* or *Declaration* in this Writ.

A. B. *was ſummoned to Anſwer* C. D. *of a Plea, that he* warrant *to him one Meſſuage, with the Appurtenances, in* S. *which he holdeth, and claimeth to hold of him, and whereof he hath his Deed*, &c. *And whereupon the ſaid* C. *in his proper Perſon ſaith, that whereas the ſaid* A. *was ſeiſed of the Meſſuage aforeſaid, with the Appurtenances, in his Demeſne as of Fee, and being ſo thereof ſeiſed, by his certain Deed or Charter of Feoffment, which the ſaid* C. *brings here into Court, whoſe Date is the*, &c. *granted, bargained and ſold, releaſed, enfeoffed and confirmed to the ſaid* C. *the Meſſuage aforeſaid, with the Appurtenances, among other Things, by the Name of*, &c. *To have and to hold to the ſaid* C. *his Heirs and Aſſigns for ever; and bound himſelf and his Heirs to* warrant *to the ſame* C. *his Heirs and Aſſigns, the Meſſuage aforeſaid, with the Appurtenances, againſt all Men for ever, by the ſaid Deed, as by the ſame Deed more fully appears: By Virtue of which Grant and Deed of Feoffment, the ſaid* C. *was ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee; and being ſo ſeiſed thereof, one* E. D. *brought againſt him the ſaid* C. *an* Aſſiſe *of* Novel Diſſeiſin *of the Meſſuage aforeſaid, with the Appurtenances, before Sir* F. P. *and Sir* J. F. *Juſtices of the Lord the King, aſſigned to take the Aſſiſes in the County aforeſaid; which ſaid Aſſiſe then and there depending, the ſaid* C. *often required the ſaid* A. *that he would* warrant *to him the ſaid* C. *the Meſſuage aforeſaid, with the Appurtenances: Nevertheleſs the ſaid* A. *hath hitherto denied to warrant to the ſaid* C. *the ſaid Meſſuage, with the Appurtenances, and ſtill denieth to do the ſame; whereupon he ſaith, that he is the worſe, and hath Damage to the Value of Twenty Pounds, and therefore he brings his Suit*, &c.

Warrantia Diei, Is an ancient Writ lying where one having a *Day* aſſign'd perſonally to appear in Court to any Action, is in the mean Time imploy'd in the King's Service, ſo that he cannot come at the Day appointed: And it is directed to the Juſtices to this End, that they neither take nor record him in Default for that Time. *Reg. Orig.* 18. *F. N .B.* 17. See *Eſſoin.*

Warren, (*Warrenna*, from Germ. *Wahren*, i. e. *Cuſtodire*, or the Fr. *Garenne*) Is a Franchiſe, or Place privileged, by Preſcription or Grant from the King, for the Keeping of Beaſts and Fowls of the *Warren*; which are Hares and Conies, Partridges, Pheaſants, and ſome add Quails, Woodcocks and Water-Fowl, &c. *Terms de Ley* 589. 1 *Inſt.* 233. A Perſon may have a *Warren* in another's Land, for one may alien the Land, and reſerve the Franchiſe: But none can make a *Warren*, and appropriate thoſe Creatures that are *Feræ Naturæ*, without Licence from the King, or where a *Warren* is claim'd by Preſcription. 8 *Rep.* 108. 11 *Rep.* 87. A *Warren* may lie open; and there is no Neceſſity of Incloſing it, as there is of a Park. 4 *Inſt.* 318. If any Perſon offend in a *free Warren*, he is puniſhable by the Common Law, and by Stat. 21 *Ed.* 3. And if any one enter wrongfully into any *Warren*, and chaſe, take or kill any Conies, without the Conſent of the Owner, he ſhall forfeit treble Damages, and ſuffer three Months Impriſonment, &c. by 22 & 23 *Car.* 2. *c.* 25. When Conies are on the Soil of the Party, he hath a Property in them by Reaſon of the Poſſeſſion, and Action lies for Killing them; but if they run out of the *Warren*, and eat up a Neighbour's Corn, the Owner of the Land may kill them, and no Action will lie. 5 *Rep.* 104. 1 *Cro.* 548. In Waſte, &c. againſt a Leſſee of a *Warren*, the Waſte aſſigned was for ſtopping Coney-Boroughs; and it was held, that this Action did not lie, becauſe a Man cannot have the Inheritance of Conies; and Action may be brought againſt him who makes Holes in the Land, but not againſt him that ſtops them, by Reaſon the Land is made better by it. *Owen 66.* 3 *Nelſ. Abr.* 530.

Warſcot, Was a Contribution uſually made towards *Armour*, in the Times of the *Saxons.* Leg. Canut.

Warth, A cuſtomary Payment for Caſtle-Guard. *Blount's Ten.* 60.

Waſh, A Shallow Part of a River, or Arm of the Sea; as the *Waſhes* in *Lincolnſhire*, &c. *Knight.* 1346.

Waſſaile, (*Sax.*) A feſtival Song, heretofore ſung from Door to Door, about the Time of the *Epiphany.*

Waſte, (*Vaſtum*) Is where any Spoil or Deſtruction is made in Houſes, Lands, Woods, &c. by Tenants to the Damage of the Heir, or him in Reverſion or Remainder: Whereupon the Writ or Action of *Waſte* is brought for Recovery of the Thing *waſted*, and Damages. *Kitch.* 168. *Waſte* in another Signification is taken for thoſe Lands which are not in any Man's Occupation, but lie Common; which are ſo called, becauſe the Lord cannot make ſuch Profit of them as of other Lands, by Reaſon of that Uſe which others have thereof in paſſing to and fro, &c. but upon this none may build, cut down Trees, or dig, without the Lord's Licence. *Co. Lit.* And *Year*, *Day* and *Waſte* is a Puniſhment or Forfeiture belonging to Petit Treaſon and Felony. *S. P. C. lib.* 3. *Waſte* is ſaid to be *voluntary*, where the Tenant doth it willingly, as if he pull down the Houſes, &c. or *Permiſſive* and Negligent, when he ſuffers it to be done: And the Writ alſo that is given for Relief, is either in the *Tenet*, where it is brought againſt him who hath and continueth in the Eſtate; or in the *Tenuit*, being againſt him that had ſuch an Eſtate, but now it is ended. 1 *Inſt.* 53, 57. Action of *Waſte* is maintainable againſt Tenant by the Curteſy, in Dower, for Life, or Years, and treble Damages, recoverable by the Stat. *Gloc. 6 Ed.* 1. *c.* 5. And this Action may be brought by the Heir for *Waſte* done in his Anceſtor's Time: And be maintain'd by the Reverſioner againſt Tenant for Life or Years, that aliens his Eſtate to a Stranger, who afterwards commits *Waſte*, ſuch Tenant ſtill receiving the Profits; alſo by one Tenant in Common againſt another. 13 *Ed.* 1. 20 *Ed.* 1. 11 *H.* 6. *c.* 5. At Common Law, there is a *Writ* of *Waſte*, for *Waſte* done by Tenants in Dower, or by Guardians; and by Statute, the Action of *Waſte* lies againſt Tenants for Life, or Years, &c. But not againſt Tenant by Statute-Merchant, Staple or Elegit, they not being Tenants for Years; though Treſpaſs lieth againſt them, or Covenant for voluntary *Waſte:* It lies not againſt Tenant after Poſſibility of Iſſue extinct; and the Stat. 13 *Ed.* 1. extends to Jointenants, but not to Coparceners. 1 *Inſt.* 54, 200. 2 *Inſt.* 299. When Action of *Waſte* is brought againſt any one in the *Tenuit*, Damages are only to be recovered, and not the Place *waſted*; but when brought in the *Tenet*, then both are recoverable. 6 *Rep.* 44. 3 *Nelſ. Abr.* 532. If Tenant by the Curteſy, or in Dower, aſſign their Eſtate to another, the Heir ſhall have Action of *Waſte* againſt them for *Waſte* done after the Aſſignment; for notwithſtanding the Aſſignment, the Privity of Eſtate ſtill remaineth; but if the Heir grant over his Reverſion, then the Privity of Eſtate is gone, and he cannot bring *Waſte* againſt them. 3 *Rep.* 9 *Rep.* 138. Tenant by Curteſy, in Dower, for Life, Years, *&c.* muſt anſwer for the *Waſte* done by themſelves, or a Stranger; being left to take their Remedy againſt the Stranger, if he did *Waſte*. 1 *Inſt.* 54. 2 *Inſt.* 145. If a Leaſe be made for Life to one, the Remainder in Tail to another, the Remainder in Fee to Leſſee for Life; and the Tenant for Life doth *Waſte*, he in the next Remainder may have the Action againſt him. 1 *Rep.* 45. A Leaſe was granted to *A.* for Life, Remainder to *B.* in Tail, Remainder to the right Heirs of *B.* who bargains and ſells all his Eſtate to *D.* and then *A.* commits *Waſte*; in this Caſe *D.* may not have this Action, becauſe he hath no Eſtate but for the Life of the Grantor, as to the Remainder in Tail; and the Fee-ſimple paſſeth not till the Tail is ſpent. 1 *Leon.* 88. 4 *Shep. Abr.* 230. There is Tenant for Life, the Remainder to another for Years, the Remainder to a third in Fee, or in Tail to him, or a third hath the Reverſion; if the Tenant for Life doth *waſte*, Action may be brought againſt him preſently: But 'tis ſaid Execution for the Place waſted, cannot be had till the Leaſe for Years be ended. 5 *Rep.* 75 *F. N. B.* 59. If there be Tenant for Life, Remainder for Life, Remainder in Fee, and Tenant for Life commits *Waſte*; the Remainder-man for Life dies, or ſurrenders his Eſtate, in the Life-time of Tenant for Life, then and not before, he in Remainder in Fee may bring *Waſte* againſt Tenant for Life; becauſe their being an intermediate Eſtate for Life, it is not *ad exhæreditationem* of him in Remainder. 5 *Rep.* 76. A Man makes a Feoffment in Fee, to the Uſe of himſelf for Life, and after his Deceaſe to the Uſe of *A. B.* and his Heirs; if the Feoffor commits *Waſte*, it has been held, that the Feoffee ſhall have a ſpecial Writ againſt him. *Hetl.* 79. In Action of *Waſte*, if the Defendant plead he repaired before the Action brought, 'tis a good Plea, but not afterwards. *Jones* 144. And this Plea acknowleges a *Waſte*; though by the Plea *Non fecit Vaſtum* nothing is admitted. *Dyer* 276. 2 *Lutw.* 1539. Where the Defendant in a Writ of *Waſte*, loſeth by Default at the Grand Diſtreſs, Inquiry ſhall be made of the *Waſte*, and to what Damages; but if he loſes by *Nil dicit*, *&c.* the *Waſte* is acknowledg'd, and it ſhall not be inquired of. 2 *Lill. Abr.* 686, 689. Not only all voluntary but permiſſive *Waſte* is puniſhable; but this Action ought to be brought by one who hath the immediate Eſtate and Inheritance in Fee-ſimple, or Fee-tail; and not by Tenant for Life: Though a Parſon may have Action of *Waſte*; and a Tenant by the Curteſy and Heir may join in this Action; and the Tenant ſhall have *Locum Vaſtum*, and the Heir have Damages. If Leſſee for Years doth *Waſte* and dieth, an Action of *Waſte* doth not lie againſt his Executor or Adminiſtrator, for *Waſte* done before their Time. *Wood's Inſt.* 304, 548. 1 *Leon.* 48. *Waſte* may be committed in Houſes, by pulling them down, or ſuffering them to be uncovered, whereby the Timber becomes rotten: But if the Houſe was uncovered when the Tenant entered, it is no *Waſte* in the Tenant to ſuffer the Houſe to fall down. 1 *Inſt.* 53. 2 *Inſt.* 145. To pull down a Houſe, unleſs the ſame be ruinous, and in order to rebuild it of the ſame Dimenſions, is *Waſte*: So it is if the Tenant builds a new Houſe; and if he ſuffers it to be *waſted*, it is a new *Waſte*. 1 *Inſt.* 53. But it has been held, that to build a new Houſe is not *Waſte*; though to take Timber, either for the Building or Repairing ſuch a Houſe is *Waſte*. *Hob.* 234. To permit a Houſe to be burnt by Negligence *&c.* if the Tenant do not repair it, 'tis *Waſte*: But if the Houſe be deſtroyed by Lightning, Tempeſts, Floods, or Enemies, without any Poſſibility of the Leſſee's Preventing it, this is no *Waſte* in the Leſſee. *Kelw.* 87. 1 *Inſt.* 53. And if the Houſe fall down by Tempeſt, or be burnt by Lightning, or proſtrated by Enemies, or the like, without any Default of the Tenant; or was ruinous at his Coming in, and fall down, the Tenant may build the ſame again with ſuch Materials as remain, and with other Timber, which he may take growing on the Ground, for his Habitation, and it will be no *Waſte*; but he muſt not make the Houſe larger than it was: If the Houſe be uncovered by Tempeſt, the Tenant muſt in convenient Time repair it, or 'twill be *Waſte*; and though there be no Timber growing upon the Ground, 'tis ſaid the Tenant muſt at his Peril keep the Houſes from *Waſting*. 1 *Inſt.* 53. To convert a Brew-houſe into Tenements, although of a greater Value is *Waſte*: And if a Corn-mill be converted into a Fulling-mill, *&c.* it will be *Waſte* in the Leſſee; for Things muſt be uſed in their natural and proper Manner, and not be altered. 1 *Lev.* 309. *Cro. Jac.* 182. The taking away or breaking down Wainſcot, Doors, Windows, Benches, or Coppers fixed to the Houſe, is *Waſte*: Though a Diſtinction has been made between outer Doors, and inner Doors, put up by the Leſſee, after the Commencement of his Term; the taking away of one at the End of the Term being adjudg'd *Waſte*, and the other not ſo. 1 *Inſt.* 53. *Moor* 177. And although where any of theſe are fixed by the Leſſor it is *Waſte* in the Leſſee to take them away; yet when they are ſet up by the Leſſee, it hath been lately held, that they may be taken down by ſuch Leſſee before the End of his Term, ſo as he do not thereby weaken the Freehold, but leave the ſame in as good Plight as it was at the Time he fixed them. 1 *Salk.* 368. The Felling of Timber-Trees, whether Oak, Aſh, or Elm, or other Trees in ſome Counties reputed Timber, or Topping them to ſell, or any other Intent but for Repairs of the Houſe, it is *Waſte*; It is the ſame if young Trees are cut where there is other Timber. 1 *Inſt.* 53. Timber is Parcel of the Inheritance, and reſerv'd by Law to the Leſſor: Therefore if it be cut down by a Leſſee, the Leſſor may take it away; and the Leſſee having an Intereſt only in Trees while ſtanding, as in the Fruit, Shrowd, Shadow, *&c.* on this Account if he cuts down Timber-Trees, or doth any other Act whereby they may decay, it is *Waſte*: And if the Leſſee has covenanted to leave the Wood in as good Condition at the End of the Term as he found it, the Leſſor ſhall preſently have an Action of Covenant for Cutting down the Timber; for now it is not poſſible for him to perform his Agreement, or to leave the Wood as he found the ſame: But 'tis otherwiſe, if during the Term the Leſſee doth *Waſte* in Houſes; for thoſe may be repaired before the Term expires. 2 *Rep.* 62. 5 *Rep.* 11, 21. 7 *Rep.* 15. If Timber Trees be growing in the Hedges of a Field or Cloſe, and the Leſſee cutteth them down, the Field ſhall not be forfeited in an Action of *Waſte* brought againſt the Leſſee; but if the Trees cut did grow ſcatteringly throughout the Field or Cloſe, the whole Field is forfeited by Cutting them down. 2 *Lill. Abr.* 686. Where *Waſte* is done in Woods, ſo much ſhall be recovered wherein the *Waſte* is done; and ſo it is in Houſes: Though if the *Waſte* be done here and there through the Whole, all ſhall be recovered. 1 *Inſt.* 54. 2 *Inſt.* 303. To cut Willows, Beech, Maple Trees, *&c.* ſtanding in Defence of a Houſe, or planted for Fencing a Manor, is *Waſte*: So the Cutting down of Fruit-Trees, if they grow in an Orchard or Garden, although the ſame be uſed in Reparations of the Houſe, *&c.* But it is not ſo if they grow in a Field. 1 *Inſt.* 53. A Tenant may cut down Underwood; though where the Law hath appointed a Time for Tenant for Life to fell Underwood, and 'tis not done in that Time, if he do it afterwards 'tis *Waſte*: And if a Tenant ſuffer the young Germins to be deſtroyed, or ſtubs them up, it will be *Waſte*; as is likewiſe Stubbing up a

Quickſet Hedge, &c. 1 *Inſt.* 53, 88. 3 *Nelſ. Abr.* 540. Cutting down green Wood, where there is dry; or more Fire-bote than is neceſſary, is *Waſte:* But Tenants may take ſufficient Wood to repair the Pales, Hedges and Fences; and what is called Plough-bote, Fire-bote, and other Houſe-bote. 1 *Inſt.* 53. The Ploughing of Lands that have not been ploughed up Time out of Mind, is *Waſte*; it is alſo *Waſte* to plough up Woodlands: Though the letting arable Lands lie unploughed is not *Waſte.* 1 *Inſt.* 53. *Dyer* 37. It has been obſerv'd, that if a Tenant converts arable Land into Wood, Wood into arable Land, or Meadow into Arable, Arable into Meadow, or Paſture in Arable; theſe are *Waſte:* For they not only change the Courſe of Husbandry, but alſo the Proof of the Landlord's Evidence of his Eſtate. 1 *Inſt.* 53. If antient Meadow Ground, or Brook Meadow is ploughed up, it is *Waſte:* But where Meadow Ground hath been at any Time arable, or ſometimes Meadow and ſometimes Paſture; it will be no *Waſte* to plough it up. 2 *Roll Abr.* 814. A Leſſee for Years converted a Meadow into a Hop-Ground, and adjudg'd no *Waſte*; becauſe it may be eaſily made Meadow again: But converting it into an Orchard is *Waſte*; though it may be more profitable. 2 *Leon.* 174. It is *Waſte* to ſuffer a Wall of the Sea to be in Decay, ſo that the Meadow Ground is ſurrounded with Water, and rendered unprofitable; though if the Land be overflow'd ſuddenly by the Violence of the Sea, occaſion'd by Tempeſt, it is not puniſhable as *Waſte:* The ſame Law is as to the Repairs of Banks or Walls againſt Rivers; where the Meadows receive Damage. 1 *Inſt.* 53. The not Scouring of a Mote or Ditch, by Reaſon whereof the Groundſils of the Houſe are rotten, is *Waſte. Owen* 43. The Digging for Lime, Clay, Brick, Earth, Stone, or the like; or Mines of Metal, Coal, &c. hidden in the Earth, and that were not open when the Tenant came in, is *Waſte:* But the Tenant may dig Gravel, Clay, Earth, &c. for Reparations of the Houſe; as well as he may take convenient Timber. 1 *Inſt.* 54. 5 *Rep.* 12. To deſtroy Conies, and dig up their Boroughs, is no *Waſte. Noy* 70. Deſtroying Deer in a Park, Doves in a Dove-houſe, or Fiſh in a Pond; or if ſuch ſufficient Stores be not left by the Leſſee, as he found when he entered on the Land, it is *Waſte:* And ſo is doing any Thing by which the Leſſor is abridg'd of his annual Profits, &c. 1 *Inſt.* 53. Action of *Waſte* lies in any of the foregoing Inſtances; and before any *Waſte* is done, a *Prohibition* may be had directed to the Sheriff not to permit it; or he in Remainder, &c. may have an *Injunction* out of the Chancery to ſtay the *Waſte*, and enter a Houſe or Lands to ſee if *Waſte* is committed, &c. *F. N. B.* 55. 1 *Inſt.* 53. 2 *Inſt.* 146, 306. 11 *Rep.* 49. The Proceſs incident to Action of *Waſte*, is firſt a Writ of *Summons* made by the Curſitor of the County where the Land lies, and on the Return of this Writ the Defendant may *Eſſoin*, and the Plaintiff *adjourn*, &c. Then a *Pone* is to be made out by the Filizer of the County, on the Return of which a *Diſtringas* iſſues for the Defendant to appear, and upon his Appearing the Plaintiff declares, and the Defendant pleads, &c. Or if the Defendant makes Default, a Writ of Enquiry goes to the Sheriff to inquire by the Oath of twelve Jurors, what Damage the Plaintiff hath ſuſtained, and then the Party hath Judgment to recover the Treble of it; alſo after Judgment entered, a *Writ of Seiſin* is awarded to the Sheriff to give Poſſeſſion to the Plaintiff of the Place waſted. *Comp. Attorn.* 250, 251, 258, 259. And a Plaintiff ſhall have Coſts in all Actions of *Waſte*, where the Damages found do not exceed twenty Nobles, which he could not by the Common Law. Stat. 8 & 9 *W.* 3. *c.* 11. A common Writ of *Waſte* is of this Form. GEORGE *the Second*, &c. *To the Sheriff of S. Greeting: If A. B. ſhall ſecure you*, &c. *then ſummon by good Summoners* C. D. *that he be before our Juſtices*, &c. *to ſhew why, whereas by the Common Council of this Kingdom of* England, *it is provided, that it ſhall not be lawful for any Man to commit* Waſte, *Spoil, or Deſtruction in Lands, Houſes, Woods or Gardens to him demiſed for Term of Life or Years; the ſaid* C. *in a Houſe, Lands and Woods at* W. *which he holds for the Term of his Life, of the Demiſe of the ſaid* A. *hath made* Waſte, *Spoil, and Deſtruction, to the Diſinheriting of him the the ſaid* A. *and againſt the Form of the Proviſion aforeſaid*, &c.

A Leaſe, *without Impeachment of Waſte*, takes off all Reſtraint from the Tenant of doing it; and he may in ſuch Caſe pull up, or cut down Wood or Timber, or dig Mines, &c. at his Pleaſure, and not be liable to any Action. *Plowd.* 135. But though the Tenant may let the Houſes be out of Repair, and cut down Trees, and convert them to his own Uſe; where a Tenant in Fee ſimple made a Leaſe for Years, *without Impeachment of Waſte*, it was adjudg'd that the Leſſor had ſtill ſuch a Property, that if he cut and carried away the Trees, the Leſſee could only recover Damages in Action for the Treſpaſs, and not for the Trees: Alſo it hath been held, that Tenant for Life, *without Impeachment of Waſte*, if he cuts down Trees, is only exempt from an Action of *Waſte*, &c. 11 *Rep.* 82. 1 *Inſt.* 220. 2 *Inſt.* 146. 6 *Rep.* 63. *Dyer* 184. And if the Woods are, *To hold without Impeachment of any Writ or Action of Waſte*, the Leſſor may ſeiſe the Trees, if the Leſſee cuts them down; or bring Trover for them. *Wood's Inſt.* 551. The Clauſe, *without Impeachment of Waſte*, is common in Leaſes made on Settlements; and on the other Hand it is as common to provide againſt *Waſte* by Tenants, where it is not allow'd by Condition, Covenant, &c.

Waſtel-Bowl, (From the Sax. *Waſ-heal*, *i. e.* Health be to you) A large Silver Cup or Bowl, wherein the *Saxons*, at their Entertainments, drank a Health to one another, in the Phraſe of *Waſ-heal:* And this *Waſtel* or *Waſs-heal Bowl*, was ſet at the upper End of the Table in Religious Houſes for the Uſe of the *Abbat*, who began the Health or *Poculum Charitatis* to Strangers, or to his Fraternity. Hence Cakes and fine white Bread, which were uſually ſopped in the *Waſtel-Bowl*, were called *Waſtel-Bread.* Matt. Pariſ. 141.

Waſtors, Were a Kind of Thieves ſo called; mentioned among Robbers, Draw-Latches, &c. Stat. 4 *Hen.* 4. *c.* 27.

Watch, Is to ſtand Sentry or attend as a Guard, &c. And *Watching* is properly for Apprehending of Rogues in the Night, as *Warding* is for the Day; and for Default of *Watch* and *Ward*, the Townſhip may be puniſh'd. In all Towns, &c. between the Day of *Aſcenſion* and *Michaelmas-Day*, *Night-Watches* are to be kept, in every City with ſix Men at every Gate; and ſix or four in Towns; and every Borough ſhall have twelve Men to *watch*, or according to the Number of the Inhabitants of the Place, from Sun-ſetting to Sun-riſing; who are to arreſt Strangers ſuſpected, and may make Hue and Cry after them, and juſtify the Detaining them until the Morning: And *Watches* ſhall be kept on the Sea-Coaſts, as they have been wont to be. Stat. 13 *Ed.* 1. *c.* 4. 5 *H.* 4. *c.* 3. Every Juſtice of Peace may cauſe theſe *Night-Watches* to be duly kept; which is to be compoſed of Men of able Bodies, and ſufficiently weapon'd: And none but Inhabitants in the ſame Town are compellable to *watch*, who are bound to keep it in Turn; or to find other ſufficient Perſons for them, or on Refuſal are indictable, &c. *Co. Litt.* 70. *Cro. Eliz.* 204. By a late Statute, the *Watch* of St. *James*'s Pariſh, and *Hanover-Square* are regulated; the Veſtry to chuſe a ſufficient Number of *Watchmen*, and one Beadle for each Ward, and appoint Stands, and what Wages or Allowances ſhall be made them; and may make Orders for their better Government,

vernment, &c. The *Watchmen* ſhall apprehend all Rogues, Vagabonds, and other Diſturbers of the Peace, and deliver them to the Conſtable of the Night, in order to be carried before a Juſtice, &c. Veſtries may aſſeſs Houſes, to defray the Charge of *Watchmen* and Beadles, not exceeding 4*d.* in the Pound of yearly Value, and Collectors to Account, &c. Stat. 8 *Geo.* 2. *c.* 15. The like particular Acts, for regulating the *Nightly Watch* in the Pariſhes of St. *Martin* in the Fields, St. *Paul Covent Garden*, St. *Margaret* and St. *John* the Evangeliſt, and St. *Anne*, within the Liberties of *Weſtminſter*; alſo Conſtables ſhall twice or oftner every Night, go about their Pariſhes, and with the *Watchmen* uſe Endeavours to prevent Fires, Murders, and Robberies, &c. and to that End apprehend Malefactors, ſuſpected Perſons, &c. 9 *Geo* 2. *c.* 8. 13, 17, & 19. The *Watch* of the Pariſh of St. *Andrew Holborn* in the County of *Middleſex*, to be under the ſame Regulation, by Stat. 10 *Geo.* 2. *c.* 25. *Watchmen* in the City of *London*, ſee *Conſtables of London.*

Watches, made by *Artificers*, are to have the Makers Names, &c. under the Penalty of 20 *l.* Stat. 9 & 10 *W.* 3. *c.* 28.

Water, In which are included *navigable* Rivers and Streams, the *Statutes* relating to. *Vide Rivers.*

Water-Bailiff, An Officer in *Port-Towns*, for the Searching of Ships. Alſo in the City of *London*, there is a *Water Bailiff* who hath the Superviſing and Search of Fiſh brought thither; and the Gathering of the Toll ariſing from the *Thames:* And he attends on the *Lord Mayor*, having the principal Care of Marſhalling the Gueſts at his Table; and arreſts Men for Debt, or other Perſonal or Criminal Matters upon the River of *Thames.* 28 H. 6. c. 5.

Water-gage, A Sea Wall or Bank, to reſtrain the Current and Overflowing of the *Water:* And it ſignifies an Inſtrument to *gauge* or meaſure the Quantity or Deepneſs of any *Waters.*

Water-gang, (*Watergangium*) Is a *Saxon* Word for a Trench or Courſe to carry a Stream of *Water*; ſuch as are commonly made to drain *Water* out of Marſhes. *Ordin. Mariſc. de Romney Chart. H.* 3.

Water-gavel, Was a Rent paid for Fiſhing in, or other Benefit receiv'd from ſome River. *Chart.* 15 *Hen.* 3.

Water-meaſure, Is greater than *Wincheſter-meaſure*, and uſed for ſelling of *Coals* in the Pool, &c. mentioned in the Stat. 22 *Car.* 2.

Watermen. The Lord Mayor and Court of Aldermen in *London*, have a great Power in the Government of the *Company of Watermen*, and appointing the Fares for Plying on the *Thames*; and the Juſtices of Peace for *Middleſex*, and other adjoining Counties, have likewiſe Authority to hear and determine Offences, &c. *Watermens* Names are to be regiſtred; and their Boats be twelve Foot and a Half long, and four Foot and Half broad, or be liable to Forfeiture: And *Watermen* taking more than according to the Fares aſſeſs'd, ſhall forfeit 40 *s.* and ſuffer Half a Year's Impriſonment; and refuſing to carry Perſons for their Fare, be impriſoned for twelve Months: Alſo none ſhall ply on the River, but ſuch as have been Apprentices to Watermen for ſeven Years, &c. Stat. 2 & 3 *P.* & *M. c.* 16. 29 *Car.* 2. *c.* 7. The *Lightermen* on the *Thames*, and *Watermen* are made a Company; and the Lord Mayor and Aldermen are yearly to elect Eight of the beſt *Watermen*, and Three of the beſt *Lightermen* to be Overſeers and Rulers; and the *Watermen* to chuſe Aſſiſtants at the Principal Stairs, for preſerving good Government; and the Rulers and Aſſiſtants may make Rules to be obſerv'd under Penalties, &c. The Rulers on their Court-Days, ſhall appoint forty *Watermen* to ply on *Sundays*, for Carrying Paſſengers croſs the River; and pay them for their Labour, and apply the Overplus of the Money to the poor decay'd *Watermen:* And where Perſons travel on a Sunday with Boats, they are to be Licenſed and allowed by a Juſtice on Pain of forfeiting 5 *s.* 11 & 12 *W. c.* 21. No Perſons working any Wherry-Boats, or Barges on the River *Thames*, ſhall take an Apprentice or Servant, but ſuch *Watermen* as are Houſe-keepers, &c. on Pain of 10 *l* And no Apprentice ſhall take upon him the Care of any Boat till he is 16 Years of Age, if a Waterman's Son, and 17, if a Landman's; unleſs he hath worked with ſome able *Watermen* for two Years, under the Penalty of 10 *s.* And if any Perſon not having ſerved ſeven Years to a *Waterman*, &c. row any Boat on the ſaid River for Hire, he ſhall forfeit 10 *l.* But Gardeners Boats, Dung-Boats, Fiſhermen, Wood-Lighters, Weſtern Barges, &c. are excepted. The Penalties to be levied by Diſtreſs, for want of which the Lord Mayor, or a Juſtice of Peace, may commit the Offenders to the Houſe of Correction for any Time not exceeding a Month, nor leſs than 14 Days, &c. Stat. 2 *Geo.* 2. *c.* 26. *Watermen* uſing Boats, &c. upon the *Thames*, are not to take any Apprentice under 14 Years old, who ſhall be bound for ſeven Years, and inrolled in the Book of the *Watermen's* Company, on Pain of 10 *l.* And no more than two Apprentices to be taken at one Time, when the firſt hath ſerved four Years, under the like Penalty. No Tilt-Boat, Rowbarge, &c. ſhall take in above thirty ſeven Paſſengers, and three more by the Way; nor any other Boat above eight Paſſengers, and two by the Way, on Forfeiture of 5 *l.* for the firſt Offence, and 10 *l.* for the Second, &c. And in Caſe any Perſon be drowned, where a greater Number is taken in, the *Watermen* to be guilty of Felony, and tranſported: Alſo Tilt-Boats uſed between *London-Bridge* and *Graveſend* ſhall be 15 Tuns, and not under, and the other Boats 3 Tuns. And Rulers of the Company of *Watermen* are to appoint two Officers, one at *Billingſgate* at high Water, and another at *Graveſend*, to ring a Bell for the Tilt-Boats, &c. to put off; and they not immediately proceeding in their Voyage with two ſufficient Men, ſhall forfeit 5 *l.* leviable on their Boats, Tackle, &c. Perſons navigating flat-bottom'd Boats or Barges, not ſubject to the Penalties of the Act 10 *Geo. c.* 31. The *Fares of Watermen* aſſeſs'd by the Court of Aldermen, are from *London Bridge* to *Limehouſe*, *Ratcliff Croſs*, &c. Oars 1 *s.* Skullers 6 *d* *Wapping* Dock, *Rotherhith* Church Stairs, &c. Oars 6 *d.* and Skullers 3 *d.* From either Side of the Water above the *Bridge* to *Lambeth* and *Vaux-Hall*, Oars 1 *s.* Skullers 6 *d.* All the Stairs between *London Bridge* and *Weſtminſter*, Oars 6 *d.* and Skullers 3 *d.*

Water-Ordeal, A Way of Purgation uſed by the *Saxons.* See *Ordeal.*

Waterſcape, (From the Sax. *Waeter*, *Aqua*, & Schap, *ductus*) An Aqueduct, or Paſſage for *Water.*

Watling-ſtreet, Is one of thoſe four Publick Ways, which the *Romans* are ſaid to have made here: This *Street* is otherwiſe called *Werlam ſtreet.* It leads from *Dover* to *London*, and thence to the *Severn*, near the *Wrekin* in *Shropſhire*, extending it ſelf to *Angleſey* in *Wales.* The other three Ways were called *Ikenild-ſtreet*, the *Foſſe* and *Erminage-ſtreet:* And by the Laws of King *Edward the Confeſſor*, theſe four Ways had the Privilege of *Pax Regis.* Hoveden 248. Hollingſh. Chron. c. 19. Leg. W. 1. c. 30. 39 Eliz. c. 2.

Waveſon, Is uſed for ſuch Goods as after Shipwreck do appear Swimming on the *Waves.* Chart. 18 Hen. 8. See *Jetſon.*

Wax-chandlers. Juſtices of Peace ſhall examine the Goodneſs of *Wax Candles*; and *Chandlers* are to take but 3*d.* a Pound for the *Candles*, &c. more than the common Price of the *Wax*, on Pain of Forfeiture and to be fined by the Juſtices, *&c.* Stat. 11 *H.* 6. *c.* 12. *Wax-Chandlers* mixing with their *Wax*, Tallow or other deceitful Stuff, ſhall forfeit the *Candles*; and they are to have Stamps or Marks, which ſhall not be counterfeited under Penalties, *&c.* 23 *Eliz. c.* 8.

Waxſcot, (*Ceragium*) A Duty anciently paid twice a Year towards the Charge of *Wax Candles* in *Churches.*——————*Tributum quod in Eccleſiis pendebatur ad ſubminiſtrationem Ceræ & Luminarum.* Spelm.

Way, (*Via*) A Paſſage, Street, or Road. *Litt.* And where a Man has a *Way* to his Cloſe, he cannot go further without a Preſcription; but 'tis held if he go to a Mill or Bridge, it may be otherwiſe. 1 *Ld. Raym.* 75. See *Highway.*

Weald, or **Wald,** In the Beginning of Names of Places, ſignifies a Situation near Woods, from the Sax. *Weald, i. e.* a Wood: And the woody Parts of the Counties of *Kent* and *Suſſex*, are called the *Wealds*; though miſprinted *Wildes* in the Statute 14 *Car.* 2. *c.* 6.

Wealreaf, (from the Sax. *Weal,* i. e. *Strages,* & Reaf, *Spoliatio*) Is the Robbing of a dead Man in his Grave. *Leg. Ethelred. cap.* 21.

Wear, A great Dam made a-croſs a River, accommodated for the Taking of Fiſh, or to convey a Stream to a Mill. And all *Wears* for the Taking of Fiſh, are to be put down, except on the Sea-Coaſts, by the Statutes 9 *H.* 3. *c.* 23. and 25 *Ed.* 3. *c.* 4. Alſo Commiſſions ſhall be granted to Juſtices, to keep the Waters, ſurvey *Wears* and Mills, and to inquire of and correct Abuſes; and where it is found by them that any new *Wears* are made, or others altered to the Nuſance of the Publick, the Sheriff by *Scire facias* is to give the Perſon making them Notice of it; and if he do not amend the ſame in three Months, he ſhall forfeit 100 Marks, *&c.* Stat. 1 & 4 *H.* 4. 12 *Ed.* 4.

Weavers. Perſons uſing the Trade of a *Weaver*, ſhall not keep a Tucking or Fulling Mill, or uſe Dying, *&c.* Or have above two Looms in a Houſe, in any Corporation or Market-Town, on Pain of forfeiting 20 *s.* a Week: And ſhall ſerve an Apprenticeſhip of ſeven Years to a *Weaver* or Clothier, or ſhall forfeit 20*l. &c.* Stat. 2 & 3 *P.* & *M. c.* 11.

Wed, (*Sax.*) A Covenant or Agreement; whence to *wedd*, a *wedded* Husband, *wedded* Bond-ſlave. *Cowel.*

Week, (*Septimana*) Seven Days of Time; four of which *Weeks* make a Month, *&c.* And the *Week* was originally divided into ſeven Days, according to the Number of the ſeven *Planets.* Skene.

Weigh, (*Waga*) Is a Weight of *Cheeſe* or *Wool*, containing Two hundred fifty-ſix Pounds; and in *Eſſex* the Weigh of *Cheeſe* is Three hundred Pounds. A *Weigh* of *Barley* or *Malt* is ſix Quarters, or forty-eight Buſhels: And we read of a *Weigh* of *Salt*, *&c.* 9 H. 6. c. 8.

Weights, (*Pondera*) and *Meaſures*, Are uſed between Buyers and Sellers of Goods and Merchandize, for reducing the Quantity and Price to a Certainty, that there may be the leſs Room for Deceit and Impoſition. There are two Sorts of *Weights* in uſe with us, *viz. Troy-weight*, and *Averdupois: Troy-weight* contains twelve Ounces to the Pound, and no more; by which are *weighed* Gold, Silver, Pearl, Jewels, Medicines, Silk, Wheat-Bread, *&c.* and *Averdupois* contains ſixteen Ounces in the Pound, by which Grocery Wares, Copper, Iron, Lead, Fleſh, Cheeſe, Butter, Tallow, Hemp, Wool, *&c.* are *weighed*; and here twelve Pounds over are allowed to every Hundred, ſo as one hundred and twelve Pounds make the Hundred *weight.* Dalt. 248. In the Compoſition of *Troy-weight*; Twenty Penny-weights make an Ounce, twenty-four Grains a Penny-weight, twenty Mites a Grain, twenty-four Droits a Mite, twenty Perits a Droit, and twenty-four Blanks a Perit: And the *Troy-weight* is ſaid to be 20*s.* Sterling in the Pound; and the *Averdupois-weight* 25*s.* Sterling. 4 *Shep. Abr.* 194. *Fleta* mentions a *Weight*, called a *Trone-weight*, being the ſame with what we now call *Troy-weight*; and according to the ſame Author, all our *Weights* have their firſt Compoſition from the Penny *Sterling*, which ought to *weigh* thirty-two Wheat-Corns of the middle Sort; twenty of which Pence make an Ounce, and twelve ſuch Ounces a Pound; but fifteen Ounces make the Merchant's Pound. *Fleta, lib.* 2. *c.* 12. By *Magna Charta*, 9 *H* 3. *c.* 25. 14 *Ed.* 3. *c.* 12. 25 *Ed.* 3. *c.* 10. 27 *Ed.* 3. *&c.* There is to be but one *Weight*, *&c.* throughout the Kingdom; but this is to be underſtood of the ſame *Species of Goods*, otherwiſe the *Troy* and *Averdupois Weights* would not be permitted. Every City, Borough and Town, ſhall have a common Balance, with common *Weights* ſealed; on Pain of 10 *l.* the City, 5 *l.* the Borough, and 40 *s.* the Town. 8 *H.* 6. *c.* 5. But only Cities and Market Towns are injoined to have common Balances, *Weights* and Meaſures, by 11 *H.* 7. *c.* 4. And by this Statute, *Weights* are to be mark'd by the Chief Officers of Places, and Sealed, *&c.* Refuſing or delaying to do it, is liable to a Penalty of 40 *s.* And allowing *Weights* not agreeable to the Standard, incurs a Forfeiture of 5 *l. &c.* And the Mayors and ſuch Officers are once a Year to view all *Weights* and Meaſures, and burn and deſtroy thoſe which are defective; alſo fine the Offenders, *&c.* And two Juſtices of Peace have Power to hear and determine the Defaults of Mayors. See the Statutes 17 *Car.* 1. *c.* 19. 22 *Car.* 2. *c.* 8. *&c.* and *vide* Meaſure.

Wend, (*Wendus,* i. e. *Perambulatio,* from the Sax. *Wendam*) Signifies a certain Quantity or Circuit of Ground. *Rental. Regal. Maner. de Wye, pag.* 31.

Were, (Sax. *Wera*) Is the Sum paid in antient Time for Killing a Man, when ſuch Crimes were puniſh'd with pecuniary Mulcts, not Death: Or it is *Pretium Redemptionis* of the Offender. *Leg. Ed. Conf. cap.* 11.

Werelada, (From Sax. *Were,* i. e. *Pretium Capitis Hominis Occiſi,* & Ladian, *purgare*) Was where a Man was ſlain, and the Price at which he was valued not paid to his Relations; but the Party denied the Fact; when he was to purge himſelf by the Oaths of ſeveral Perſons, according to his Degree and Quality, which was called *Werelada.* Leg. H. 1. c. 12.

Wergild, (*Wergildus*) The Price of *Homicide*; paid partly to the King for the Loſs of a Subject, partly to the Lord whoſe Vaſſal he was, and partly to the next of Kin of the Perſon ſlain. *LL. H.* 1.

Weſt-Saxonlage, Was the Law of the *Weſt-Saxons.* See *Merchenlage.*

Weſtminſter, (*Weſtmonaſterium,* Sax. *Weſt-mynſter,* i. e. *Occidentale Monaſterium*) The antient Seat of our Kings; and is now the well known Place where the High Court of Parliament, and Courts of Judicature ſit: It had great Privileges granted by *Pope Nicholas*; among others, *Ut amplius in perpetuum Regiæ conſtitutionis locus ſit atque Repoſitorium Regalium Inſignium.* 4 Inſt. 255.

Whales, And *Sturgeon,* vide *Regal Fiſhes.*

Whale-fiſhing, In the Northern Seas, *&c.* See *Greenland.*

Wharf, (*Wharfa*) A broad plain Place, near ſome Creek or Haven, to lay Goods and Wares on that are brought to or from the Water. 12 *Car.* 2. *c.* 4.

Wharfage, (*Wharfagium*) Is Money paid for Landing of Goods at a *Wharf*, or for ſhipping and taking Goods into a Boat or Barge from thence: It is mentioned in the Statutes 17 *H.* 8. *c.* 26. and 22 *Car.* 2. *c.* 11.

Wharfinger, Is he that owns or keeps a *Wharf.* 12 *Car.* 2. and 22 *Car.* 2. And *Wharfingers* commonly keep Boats or Lighters of their own, for the Carrying out and Bringing in of Goods, in which if a Loſs or Damage happens, they may in ſome Caſes be made anſwerable. *Lex Mercat.* 133.

Wheelage, (*Rotagium*) *Tributum eſt quod Rotarum nomine penditur; hoc eſt, pro Plauſtris & Carris tranſeuntibus.* Spelm.

Wherlicotes, The antient *Britiſh* Chariots, that were uſed by Perſons of Quality before the Invention of Coaches. *Stow's Surv. Lond. pag.* 70.

Whiniard, A Sword, from the Sax. *Winn, i. e.* To get, and *Are* Honour; becauſe Honour is gain'd by the Sword.

White-Aſhes. None ſhall ſhip, lade, or convey away any *White-Aſhes*, to Parts beyond Sea, under the Penalty of 6 *s.* 8 *d.* a Buſhel, Stat. 2 & 3 *Ed.* 6. *cap.* 6.

Whitehart-Silver, Is a Mulct on certain Lands in or near the Foreſt of *Whitehart*, paid yearly into the *Exchequer*, impos'd by K. *Hen.* 3. upon *Thomas de la Linde*, for killing a beautiful *White Hart* which that King before had ſpared in Hunting. *Camb. Brit.* 150.

White-meats, Are Milk, Butter, Cheeſe, Eggs, and any Compoſition of them, which before the Reformation were forbid in *Lent* as well as Fleſh, till King *Hen.* 8. publiſhed a Proclamation allowing the Eating of *White-meats* in *Lent. Anno* 1543.

White-rent, A Duty or Rent payable by the *Tinners* in *Devonſhire* to the D. of *Cornwall.* See *Quit-Rent.*

White-ſpurs, A Kind of Eſquires called by this Name.

Whitſontide, The Feaſt of *Pentecoſte*, being the fiftieth Day after *Eaſter:* And is ſo called, ſaith *Blount*, becauſe thoſe who were newly baptized came to the Church between *Eaſter* and *Pentecoſt* in *white* Garments. *Blount's Dict.*

Whitſon-farthings, Mentioned in Letters Patent of King *Hen.* 8. to the Dean of *Worceſter.* See *Pentecoſtals.*

Wic, A Place on the Sea-ſhore, or on the Bank of a River. 1 *Inſt.* 4. But it more properly ſignifies a Town, Village, or Dwelling-place; and it is often in the *Saxon* Language made a Termination to the Name of the Town, which had a compleat Name without it, as *Lunden-Wic*, i.e. *London Town*; ſo *Ipſwich* is written in ſome old Charters *Villa de Gippo Wico*, which is the ſame Thing, for *Gipps* is the Name, and *Gipps Wic* is *Gipps-Town.*

Wica, A Country Houſe or Farm, and there are many ſuch Houſes now called the *Wick* and the *Wike.* Cartular. Abbat. Glaſton. pag. 29.

Wichencrif, A *Saxon* Word for *Witchcraft*, which occurs in the Laws of K. *Canut.* cap. 27.

Widow, (*Vidua, Relicta*) A married Woman bereft of her Husband, left all alone. *Litt.* The *Widow* of a Freeman of *London*, may uſe her Huſband's Trade, ſo long as ſhe continues a *Widow.* Chart. K. Cha. 1.

Widow of the King, (*Vidua Regis*) Was ſhe that after her Huſband's Death, being the King's Tenant *in Capite*, could not marry again without the King's Conſent. *Staundf. Prærog. cap.* 4. Stat. 17 *Ed.* 2. & 32 *H.* 8. *cap.* 46.

Widowhood, (*Viduitas*) The State and Condition of a Widow.——*Sciant quod Ego Margeria de R. in* Viduitate & *legitima Poteſtate mea, remiſi, relaxavi,* &c. Dat. apud, &c. Ann. 9 Hen. 4.

Wife, (*Uxor*) Is a Woman married; and after Marriage the Will of the *Wife*, in Judgment of Law, is ſubject to the Will of the Huſband; and it is ſaid a *Wife* hath no Will, *ſed fulget radiis Mariti.* Plowd. 344. 4 Rep. A *Wife* cannot contract for any Thing; or bring Actions, &c. without her Huſband. See *Baron and Feme.* *Wife* granted to another, vide *Dower.*

Wigreve, (from the Sax. *Wig.* i. e. *Sylva*, and *Greve, Præpoſitus*) The Overſeer of a Wood. *Spelm.*

Wight Iſland, Was antiently called *Guith* by the *Britains*, whence it had many other Names, as *Icta, Wotha,* &c. *Law Lat. Dict.* See Stat. 4 *H.* 7. *c.* 16.

Wild-Fowl, Are not to be deſtroyed by Nets or otherwiſe, nor their Eggs taken, under divers Penalties by Statute 25 *H.* 8. *c.* 11. 1 *Jac.* 1. *c.* 17. 9 *Ann. c.* 25. Vide *Game.*

Will, or Laſt Will and Teſtament, (*Teſtamentum, ultima voluntas*) Is a ſolemn Act or Inſtrument, whereby a Perſon declares his Mind and Intention, as to the Diſpoſal of his Lands, Goods or Effects, and what he would have done after his Death. *Co. Litt.* 111. The Common Law calls that a *Will* when Lands or Tenements are given; and where it concerns Goods and Chattels alone, it is term'd a *Teſtament:* In a *Will* of Goods there muſt be an Executor appointed; but not of Lands only without Goods, an Executor having nothing to do with the Freehold. 1 *Inſt.* 111. If Lands are given by *Will*, it is called a *Deviſe*; and Goods and Chattels a *Legacy:* And there is this Diverſity between Lands and Goods given by a *Will*, that when Lands are deviſed in Fee, or for Life, the *Deviſee* ſhall enter without the Appointment of others: In Caſe of Goods and Chattels there muſt be the Aſſent of the Executor, &c. *Swinb.* 24. If Lands are given and deviſed by *Will*, the *Will* ought to be proved in the *Chancery*; and of Goods it muſt be in the *Spiritual Court:* A *Will* both of Lands and Goods, may be proved in the Spiritual Court. *Ibid.* A *Will* hath not Force till after the Teſtator's Deceaſe; but then without any further Grant, Livery, &c. it gives and transfers Eſtates, and alters the Property of Lands and Goods, as effectually as any Deed or Conveyance executed in a Man's Life-time; and hereby Deſcents may be prevented, Eſtates in Fee-ſimple, Fee-tail, for Life, or Years, &c. be made: And he that takes Lands by Deviſe, is in Nature of a Purchaſer. *Litt.* 167. A Deviſee is in by Act executed in the Deviſor's Life-time, though it be not conſummated till his Death. *Roll. Rep.* And therefore a Deviſe ſhall take Effect, before a Deſcent: But an Heir may be in the Land by Deſcent, notwithſtanding a Deviſe made to him; and to give a Thing by *Will* to ſuch a Perſon to whom the Law gives it, is as if it had not been given. 2 *And.* 11. *Moor, Ca.* 496. *Styles* 149. Three Things are requiſite to the Perfection of a *Will*; Firſt, The Inception, which is the Writing of it; Secondly, The Progreſſion, being the Publication thereof; and Thirdly, The Conſummation of it, which is the Death of the Party. 1 *Inſt.* 113. But ſuch an Eſtate as by the Rules of the Law may not be conveyed by Act executed in a Man's Life, ſhall not be created, or conveyed by *Will*; as to make a Perpetuity, &c. 1 *Rep.* 85. *Dyer* 12, 33. A Deviſe may be of Lands, Goods, or Chattels, ſimply or abſolutely, or conditionally; and be alſo with a Limitation: And a Rent may be deviſed, or Land reſerving a Rent, with Clauſe of Diſtreſs. 4 *Shep. Abr.* 20. At *Common Law* a Man could not deviſe by *Will*, the Lands which he had by Deſcent, though he might thoſe which he had by Purchaſe: Indeed he might deviſe Lands which he held for a Term of Years, becauſe ſuch an Eſtate is of little Regard in the Law; but not Lands of which he had the Fee-ſimple in Poſſeſſion or Reverſion: Yet in certain *Borough Towns*, the Inhabitants might deviſe the Houſes and Lands which they had by Deſcent; and this was a Privilege which they claim'd by the Cuſtom of thoſe Places. 3 *Nelſ. Abr.* 550. By the Common Law, if a Man ſole ſeiſed of

Lands in Fee, had deviſed the ſame by *Teſtament*, this Deviſe was void; unleſs the Lands were in ſome City or Borough where Lands were deviſable by Cuſtom: But by *Statute* 32 & 34 *H.* 8. *c.* 5. All Perſons having a ſole Eſtate in Fee-ſimple, of any Lands, Tenements, &c. may give and deviſe the ſame by *Laſt Will and Teſtament*, at their free Will and Pleaſure; though if any Part of the Lands be held in *Capite* of the King, then the Party can deviſe but two Thirds of the Whole, the other Third being to deſcend to the Heir at Law, to anſwer the Duties of the Crown, &c. But the Tenure in *Capite* being aboliſhed by 12 *Car.* 2. Deviſes are now good for the whole Lands. *Jenk. Cent.* 260. One ſeiſed in Coparcenary, or as Tenant in Common, in Fee-ſimple, of Lands, may by *Will* deviſe them at their Pleaſure by this Statute: But Lands intailed are not deviſable, only Fee-ſimple Lands, and Goods and Chattels; and *Wills* made by Infants, Feme Coverts, Ideots, Perſons of Nonſane Memory, are not good in Law. Stat. *Ibid.* 3 *Rep.* 30. A Perſon that hath an Eſtate-Tail in Land, with the Reverſion in Fee-Simple, cannot deviſe the Lands in Fee to another, though he ſhould die not having Iſſue; but it is held he may give Lands by *Will* to a Charity, and without either Fine levied, or a Recovery. *Abr. Caſ. Eq.* 172. If an Infant makes his *Will* for Lands, and when of Age he declares it as his *Will*, yet it is void; tho' an Infant at fourteen Years of Age may make a *Will* of his Goods and Chattels. 1 *Inſt.* 89. 2 *Lill Abr.* 696. A Feme Sole makes a *Will*, and gives her Lands to *A. B.* whom ſhe afterwards marries; by this the *Will* is countermanded, for otherwiſe ſhe could not after Marriage revoke it; and if ſhe dies in his Life-time, whilſt Feme Covert, the Deviſe is void. 4 *Rep.* 60. A Feme Covert cannot make a *Will*; but the Husband may bind himſelf by Covenant or Bond to permit his Wife by *Will* to diſpoſe of Legacies, &c. and this will be ſuch an Appointment as the Husband will be bound to perform; though it is properly no *Will*, nor ought to be prov'd in the Spiritual Court: Of Things in Action, or of what the Wife hath as her own as Executrix, by her Husband's Conſent, 'tis ſaid, ſhe may make a *Will*; and this is a *Will* in Law; If in other Caſes, ſhe diſpoſes of any Thing by the Conſent and Agreement of the Husband, the Property paſſes from him to her Legatee; and it is as the Gift of the Husband. *Cro. Eliz.* 27. *Cro. Car.* 219, 220. 1 *Mod.* 211. 2 *Danv. Abr.* 512. If there be an Agreement before Marriage that the Wife may make a *Will*; if ſhe do ſo, 'tis good, unleſs the Husband diſagrees; and his Conſent ſhall be implied till the contrary appear: And if the Husband would not have ſuch *Will* to ſtand, he ought preſently after the Death of his Wife to ſhew his Diſſent; and where after her Death he doth conſent, he can never afterwards diſſent; alſo his Aſſent is good in Law, though he know not the particular Bequeſts in the *Will.* 2 *Mod. Rep.* 172, 173. It is not ſufficient that a Perſon hath his Memory to anſwer Queſtions, when he makes his *Will*; he ought to have a perfect Memory and Underſtanding: But if ſome Witneſſes ſwear that the Teſtator was of good and perfect Mind and Memory, and others that he was not; their Teſtimony is to be preferred, which depoſe that he was of ſound Memory, for the Support of the Teſtament. 6 *Rep.* 23. *Cro. Jac.* 497. A Scrivener who wrote the *Will*, and two others were Witneſſes; the Scrivener ſwore the Teſtator was *Compos mentis*, and the two others that he was not *Compos*; and the Court ſtopt theſe two, being ſuſpected to have been dealt with, till the Verdict was brought in, which found the *Will* a good *Will*, and then committed the two Witneſſes in Order to be proſecuted for Perjury. *Skinn. Rep.* 79. If there are only three Witneſſes to a *Will*, and one of them has a Deviſe of Lands, &c. with reſpect to this Deviſe, the *Will* is void and atteſted but by two Witneſſes, &c. *Carthew* 514. The Stat. 29 *Car.* 2. *cap.* 3. *for Prevention of Frauds*, ordains, That all Deviſes of Lands or Tenements ſhall be in Writing, ſigned by the Deviſor or ſome other by his expreſs Directions, in the Preſence of three credible Witneſſes at leaſt; and no *Will* in Writing ſhall be revoked, but by ſome other *Will* in Writing, or by cancelling the ſame by the Teſtator himſelf, or by his Directions, &c. And where Nuncupative *Wills* by Word of Mouth only, are made for the Diſpoſition of Chattels above 30 *l.* Value, they muſt be declared in the Preſence of three Witneſſes; in the laſt Sickneſs of the Party, &c. and the Subſtance thereof muſt be committed to Writing, in ſix Days, &c. It hath been formerly adjudg'd, if a Man bids another make his *Will*, and before it is done he dies, the *Will* is not good; but if it be drawing up in his Preſence, it might be good for the Deviſes finiſhed. *Plowd.* 10. And if any Attorney takes Notes of a *Will* before Witneſſes, when a Perſon is in his laſt Sickneſs, and before the *Will* is perfected ſuch Perſon dieth; the *Will* made from the Inſtructions may be a good *Will*, though the Teſtator did not live to ſign it. 3 *Nelſ. Abr.* 550. A Man being ſick ſaid before Witneſſes, that he deviſed all his Lands to his Wife for Life, &c. and wiſhed that a certain Perſon was there to make his *Will*; who being ſent for wrote the *Will* from the Mouth of the Witneſſes that heard the Teſtator declare his Mind; and this *Will* being loſt, a Copy was produc'd and teſtify'd to be of the ſame Effect: It was held in this Caſe, that an actual Deviſe by Word, is not ſufficient for a Stranger to write a *Will*, but that there ought to be a Writing, and not only a Deſire; but the writing this *Will* from the Mouth of the Witneſſes, was a good *Will* in Writing: That if a *Will* be found in Writing after the Death of the Teſtator, and 'tis loſt or burnt afterwards, it is good, if it can be prov'd by Copy; otherwiſe, if loſt or burnt before he died, for then 'tis void. *Allen* 54. 3 *Nelſ.* 552. The Teſtator, if he be at that Time of ſane Memory, may deſire another Perſon to ſet his Hand and Seal to his *Will* for him, and if he do it the *Will* is good. 2 *Lill. Abr.* 693. And ſince the Statute 29 *Car.* 2. a *Will* was made by which Lands were deviſed, and no Name ſubſcribed to it, but being ſealed in the Preſence of three Witneſſes was adjudged a good *Will*; for the *Will* was written by the Party himſelf, and his Name in the *Will*, which was held a ſufficient Signing. 3 *Lev.* 1. And it is ſaid a *Will* in Writing ſigned may be good to convey Lands, altho' it be not ſealed; the Statute of *Wills* ſpeaking nothing of Sealing. 2 *Danv. Abr.* 542. Where three ſubſcribing Witneſſes are to a *Will*, it is ſufficient though one of them on the Trial will not ſwear that he ſaw the Teſtator ſeal and publiſh it; if it be proved that he ſet his Name as a Witneſs to the *Will.* *Skinn.* 413. If a *Will* is publiſhed before three Witneſſes, and it be at ſeveral Times, it is good. *Preced. Canc.* 184. A *Will* of Copyhold Lands ſurrendered, ſhall be good though atteſted by only one Witneſs; And the Reaſon is, becauſe it paſſes by the Surrender, and not the *Will*, to make a Title. 2 *Vern.* 700. A Man makes a *Will* in divers Pieces of Paper, and there are three Witneſſes to the laſt Paper, and none of them aver they ſaw the firſt, this is not a good *Will.* 3 *Mod.* 263. As to the Subſcribing of Witneſſes, it is enough that the Teſtator might ſee them; it is not abſolutely neceſſary that he ſhould ſee them do it; ſo that it may be in another Room in the View of the Teſtator, or where the Teſtator is ſick in Bed, and the Curtain drawn. 2 *Salk.* 688. Lands purchaſed after making a *Will*, cannot paſs; for the Teſtator ought to have the Lands at the Time of the Making: But it hath been held, that a new Publication of the *Will* ſhall make the Lands paſs; and if ſuch Lands are deviſed for Payment of Debts, &c. Chancery will make the Deviſe good, without new Publication of the *Will*. 1 *Inſt.* 111. *Plowd.* 343. 3 *Rep.* 25. 2 *Chan. Rep.* 144. A Teſtator deviſed by *Will* all Lands, Tenements, and Eſtate whatſoever, whereof at the Time of his Death he ſhould be poſſeſſed; and after this he purchas'd Lands, &c. And it was reſolv'd, that a Deviſe of perſonal Things is good, tho' the Teſtator had them not at the Time of his *Will*; but a Chattel Real, as a Leaſe for Years, doth not paſs: And a Deviſe of Lands is not good, if the Teſtator had nothing in them at the Time of making his *Will*. *Gouldsb.* 93. 1 *Salk.* 237. Where after the *Will* is made a Perſon annexes a Codicil thereto; or delivers it ſome time after, and ſays it ſhall be his laſt *Will*; or if he ſays, that his *Will* is in a Box, in ſuch a Chamber, &c. either of theſe amount to a ſufficient Publication, to make Lands paſs newly purchaſed. 1 *Roll. Abr.* 618. 2 *Vern.* 209. Though Land bought after making of a *Will*, paſſes not by the Deviſe of all the Land a Man ſhall have at his Death, it not being within the Statute of *Wills*, for he is no Perſon having: Yet if there be Articles for a Purchaſe, and the Purchaſer makes his *Will* and dies before any Conveyance is executed, there the Lands ſhall go in Equity to the Deviſee: So if any Land be conveyed during one's Life, tho' he was not ſeiſed thereof at the Time of making his *Will*, and altho' there be no new Publication. 1 *Chan. caſ.* 39. If one deviſe to a Perſon by *Will* all his Lands and Tenements, not only all the Lands that he hath in Poſſeſſion do paſs, but all thoſe he hath the Reverſion of: But where a Man having Lands in Fee, and other Lands for Years, deviſes all his Lands and Tenements, the Fee-ſimple Lands only paſs; though if he hath only Leaſes for Years, and no Fee-ſimple Lands, by the Deviſe of all his Lands and Tenements the Leaſes for Years paſs, otherwiſe the *Will* would be to no Purpoſe. 2 *Danv. Abr.* 527. The Teſtator was ſeiſed of an Houſe in *A.* and of an Houſe and Lands in *B.* and deviſed to *W. R.* his Houſe in *A.* with all and ſingular his Lands, Meadows, &c. in B. and adjudg'd that his Houſe in B. ſhall not paſs; for though by a Feoffment of Land the Houſes will paſs, *Wills* are to be taken according to the Intent of the Teſtator; and here the particular Deviſe of the Lands, Meadows, &c. excludes the general Intendment of the Word *Terra*, which comprehends both Houſes and Lands. 2 *And.* 123. 1 *Nelſ. Abr.* 652. Words in *Wills* are always conſtrued according to the Intention of the Parties that make them, as near as can be collected; and may have different Conſtruction from thoſe in other Deeds; but the Words and Intent muſt agree with the Law; and if the Words are inſenſible and repugnant, they are void. 1 *Inſt.* 25. *Plowd.* 162. *Hob.* 34. And the Reaſon why the Conſtruction of *Wills* is more favoured in Law than any other Deed or Conveyance, to fulfil the Intent of the Teſtator, is becauſe the Teſtator is intended to be *inops Concilii*, and in a Hurry; and a Deviſe is not a Conveyance by the Common Law, but by the Statute: The Deviſes before the Statutes were by Cuſtom, and as Cuſtom inabled Men to diſpoſe of their Eſtates contrary to the Common Law; ſo it exempted this Kind of Conveyance from the Regularity and Propriety required in other Conveyances: And thus it came to paſs that *Wills* upon the Statute, in Imitation of thoſe by Cuſtom, gained ſuch favourable Conſtruction. 3 *Salk.* 127, 128. A Deviſe by *Will* to a Man and all his Blood, paſſes a Fee-ſimple: So a Deviſe to a Perſon *in perpetuum*, or to one and his Aſſigns for ever; but in a Grant it would be only an Eſtate for Life, for want of the Word Heirs. *Lit.* 586. *Vaugh.* 178. Deviſe of all a Man's Inheritance carries the Fee-ſimple: Alſo Lands given to a Perſon to diſpoſe of at Pleaſure, makes a Fee-ſimple. *Hob.* 75. 1 *Salk.* 228. 2 *Nelſ.* 837. If a Man deviſes that *A. B.* ſhall be Heir of all his Land, and the Deviſor hath Fee, he ſhall have Fee: But if there are no Words of Inheritance in the *Will*, the Deviſee hath no more than an Eſtate during Life. *Mod. cap.* 107. 2 *Nelſ. Abr.* 745, 746. By Deviſe to a Perſon and his Heirs Male, an Eſtate-tail is created; though ſuch a Gift in any other Conveyance would be a Fee-ſimple, it not being ſaid of what Body. 1 *Inſt.* 27. If I give by *Will* my Manor of *D.* to my eldeſt Son, and alſo all my Lands in *S.* in Tail; the Entail limited for the Land in *S.* ſhall not extend to the Manor: But if the Words be, I Deviſe my Manor of *D.* and Lands in *S.* to my Son in Tail, there it ſhall be an Eſtate-tail in both. *Hughes*'s *Abr.* 643. Land is deviſed to *A. B.* and the Heirs Males of his Body, and if it happen that he die without Heir of his Body, that it ſhall go to another and his Heirs; by this *A. B.* hath an Eſtate to him and his Heirs Males, and the ſubſequent Words do not alter it. *Dyer* 171. If a Man deviſes his Land he hath in Fee to a Perſon, paying 10*l.* to *J. R.* altho' no Eſtate is expreſſed, yet he ſhall have it in Fee; if the Intent of the Teſtator does not appear to be otherwiſe. *Bro.* 406, 125. But where a Perſon by *Will* gives Lands in *D.* to the Intent, that with the Profits the Deviſee ſhall bring up a Child, or pay to *A.* 10*l.* or ſo much Yearly; by this, ſuch Deviſee has only an Eſtate for Life. *Bro.* 78. 3 *Rep.* 20. 6 *Rep.* 18. So it is in Caſe of a Deviſe to one without any more Words; or to him and his Heir in the ſingular Number, &c. *Fitz. Deviſe* 16. 6 *Rep.* 16. A Deviſe to the eldeſt Daughter of Land, and that ſhe pay unto the younger Siſter yearly 20*l.* is a Conditional Eſtate; and for Non-payment, the younger Siſter may enter. 3 *Cro.* 146. If one Deviſe his Lands to *J. S.* after the Death of *T. D.* his Son and Heir apparent, by this *T. D.* will have an Eſtate for Life implied, and it ſhall deſcend to him until the Deviſe take Effect. 4 *Shep. Abr.* 40. A Man deviſes Land to his Son and Heir in Fee-ſimple, or to a Stranger for Years, Remainder to the Son and Heir in Fee; if the Heir after the Death of the Deviſor, doth, as he may, refuſe the Eſtate given by the *Will*, and claim the Land by Diſcent; by this the Deviſe will be void: But if the Deviſe be made to the Son and Heir in Tail, with Remainder to another in Fee, there he may not take it in any other manner. *Plowd.* 545. *Dyer* 317, 350. A Deviſe to one who is Heir for Life, Remainder in Contingency, &c. is good: And Deviſes to Infants in *Ventre ſa mere* are good, and the Land ſhall deſcend to the Heir in the mean Time; for the Teſtator could not intend they ſhould take preſently, they muſt be firſt *in rerum natura*. *Lutw.* 798. *Raym.* 28. 2 *Mod.* 292. Where a Term for Years is deviſed by *Will* to *A.* for Life, with Remainder to *B.* this Remainder is good by way of *Executory Deviſe* for the Reſidue of the Term. *Raym.* 164. And a Term may be deviſed to one for Life, with Remainders to ſeveral others for Life, where all the Perſons are *in eſſe*; but if a Deviſe in Remainder be to one for Life, who is not then in Being, there no Limitation of a Term may be beyond it. 1 *Sid.* 451. Deviſe of a Term to one for Life, and if he dies without Iſſue, to another and his Iſſue, &c. is void to the Remainder Man. 1 *Lev* 290. A Chattel Perſonal cannot be given to one for Life, with Remainders to others; though the Uſe may be given by *Will* to one during Life, and the Thing itſelf afterwards to another. *Noy Max.* 31, 99. Deviſes may be to one, to the Uſe of another, and the Uſe ſhall be executed. 2 *Leon.* One by *Will* deviſed, that after his Death *A.* and *B.* his Feoffees and their Heirs, when they were no Feoffees, ſhould be ſeiſed to ſuch Uſes; and it was held a good Deviſe. *Bendl.* 188. Though if there be a Condition in a *Will*, that a Man ſhall not marry a Perſon, *&c.* or a Woman marry, without Conſent, *&c.* and the Legacy be not deviſed over to another; theſe Conditions are void, for Marriages ought to be free. 1 *Mod.* 308. 2 *Nelſ. Abr.* 1162. A Deviſe muſt be not only of a Thing, but to a Perſon certain; and a Deviſe to a Man who ſhall marry my Daughter, or to a Man and his Children, is certain enough. *Swinb.* 293. If where a Legacy is given by *Will*, the Legatee dies before it becomes due, the Legacy is extinguiſhed and gone. A Man deviſes 500 *l.* to his Daughter by *Will*, if ſhe attain 21 Years of Age; in this Caſe, if ſhe dies before that Age the Legacy is gone: But if the Deviſe had been to be paid her at the Age of 21, then it is *debitum in præſenti, & ſolvendum in futuro*, and her Adminiſtrator, *&c.* ſhall have it, if ſhe die before 21. 1 *Lill. Abr.* 457. The Teſtator deviſed a Sum of Money to a Woman at her Age of 21, or Day of Marriage, and then added theſe Words, To be paid her with Intereſt; ſhe died unmarried, and before ſhe was 21 Years old; and it was held that the Money ſhould go to her Adminiſtrator; but if thoſe Words had not been added, it would have been otherwiſe; and ſo if the Money had been deviſed to her, when ſhe came of Age, *&c.* 2 *Ventr.* 342. Where one deviſes a certain Portion to his Daughter, chargeable upon Lands, and payable at the Age of 21 Years, and the Daughter dies before, the Money ſhall ſink in the Land, for the Benefit of the Heir at Law; here if no Time were limited for Payment, or if it were only a Sum of Money generally deviſed by the *Will*, it would go to the Executors, *&c.* of the Daughter. 1 *Vern.* 204. 2 *Vern.* 92. A Leaſe was ſettled by the Father, with Reference to his *Will*, in which he gave 500 *l.* to each of his Daughters, to be paid at the Age of 21 Years, and if any or all died before that Age, then to others; but deviſed no Maintenance to them till their Portions became payable: *Et per Cur.* A Maintenance cannot be decreed, becauſe of the Deviſe over. *Ch. Rep.* 249. If a Man in his *Will* releaſes all his Lands in C. to *A. B.* and his Heirs, it is good; but one cannot releaſe a Debt or Duty by *Will*, though he may give and bequeath it. 1 *And.* 33. 1 *Ventr.* 39. Things in Action, as Debts and the like, although they are not grantable by Deed, may be deviſed by *Will*: But if it be a Thing in Action altogether uncertain, as where one hath Cauſe of Action, to compel a Man to Account, *&c.* this may not be deviſed. *Perk. Sect.* 517. See 2 *Cro.* 371. *Plowd.* 525. Thoſe Things that are annexed and incident to a Freehold or Inheritance, ſo that they cannot be ſevered from it; ſuch as the Wainſcot, and Glaſs of Houſes, or the like, are not Deviſable, but where the Thing it ſelf is ſo. *Kelw.* 88. A Deviſe in a *Will* of the Uſe and Occupation of Lands, is a Deviſe of the Land it ſelf; but 'tis otherwiſe of Goods, for one may have the Occupation, and another the Property of them. *March* 106. If one Deviſe all his Moveables, by this are given all Perſonal Goods both quick and dead, which either move themſelves, or may be moved; as Horſes, Plate, *&c.* and by Deviſe of Immoveables, do paſs Leaſes, Rents, Graſs, *&c.* 4 *Shep. Abr.* 39. A Man gives by *Will* all his Money in ſuch a Cheſt, when there is none there; it is a void Deviſe: But if one give 10 *l.* remaining in a certain Cheſt, where in Truth there is but 5 *l.* this will be a good Deviſe of that Sum: And Error and Miſtake in the Quantity and Quality of the Thing deviſed, where the ſame for the Subſtance of it is certain enough, will not hurt a *Will*. *Swinb.* 281. If Lands are deviſed to *A.* and his Heirs, and he dieth in the Life of the Deviſor, the Heir cannot take the Eſtate, becauſe nothing was ever in the Anceſtor. 1 *Peere Williams* 398, 400. But where a Deviſe in a *Will* is to *A.* for Life, Remainder to *B.* and *A.* dies in the Teſtator's Life-time, *B.* ſhall take preſently: And if the Deviſe of Lands be to two Perſons, and one ſo dieth, the other ſhall have the whole. *Salk.* 238. 2 *Peere Williams* 331. It is a Rule that whereever a Teſtator by his *Will* has not given an Eſtate, or but Part thereof, the Remainder undiſpoſed of deſcends to the Heir, whether it was the Teſtator's Intent he ſhould have it or not; for ſome Body muſt take, and none being appointed by the Teſtator, the Law throws it upon the Heir. *Talb. Caſ.* 52. The *Laſt Will* ſhall ſtand in Force; (but if two *Wills* are made both of one Date, they are both void: And if in a *Will* there are two Deviſes of the ſame Thing, the laſt Deviſe ſhall take Place; for as a latter *Will* doth overthrow a former, ſo the latter Part of a *Will* overthrows the former Part of it. 1 *Inſt.* 112. *Plowd.* 341. It has been adjudg'd, that where there are ſeveral Deviſes of the ſame Thing in one *Will*, the laſt muſt take Place: But where the Deviſe was of Lands to one in Fee, and in the ſame *Will* the ſame Lands were deviſed to another, this 'twas ſaid made them Joint-tenants; and if a Deviſe of Lands is to one Perſon in Fee, and to another for Life, or Years, both may ſtand. 3 *Leon.* 11. A Teſtator having deviſed all his Lands to *A.* in Tail, and in the ſame *Will* deviſed Part of his Lands to B. This latter Clauſe was held an Explanation, *viz.* That *A.* ſhould have all the Lands, except thoſe deviſed to *B.* who ſhall take by way of Remainder after the Death of *A.* without Iſſue; but it would not have been ſo if the Deviſe had been to *A.* in Fee-ſimple, and afterwards Part of the Lands was deviſed to B. in Fee, becauſe one Fee-ſimple cannot be limited after another. *Yelv.* 209. 1 *Nelſ. Abr.* 654. It hath been held, that a ſubſequent *Will* may be made ſo as not to Revoke or Deſtroy, but conſiſt with a former; for the Teſtator may have ſeveral Parcels of Land, which he may deviſe to ſeveral Perſons by ſeveral Wills, and yet all ſtand together: When a Man hath made a Diſpoſition of any Part of his Eſtate, 'tis a good *Will* as to that Part; ſo likewiſe the Diſpoſal of every other Part: They are all ſeveral *Wills*, but taken altogether, they are an entire Diſpoſition of the whole Eſtate: Though they were urged to be but Pieces of the Whole, otherwiſe they muſt be *Codicils.* 3 *Mod. Rep.* 204, 207, 209. When a Teſtator is moved to make his *Will* by Fear and Threatning, or circumvented by Fraud, *&c.* it will be void, or in Danger of being avoided: And if one makes a *Will*, by the Importunity of his Wife, to the Intent he may be at quiet, and not vexed and troubled by her; it ſhall be adjudg'd to be made by Conſtraint, and not good. 4 *Shep. Abr.* 13. A *Will* of a Real Eſtate, 'tis ſaid cannot be ſet aſide in a Court of Equity for Impoſition, but muſt firſt be tried at Law: But it is likewiſe held, there may be Fraud in obtaining the *Will*; of which no Advantage can be taken by Law, that ſhall be relievable in Equity. 2 *Vern. Rep.* 700. There is ſome Difference obſerved between a Deed and *Will*, where gained from a weak Man, upon a falſe Repreſentation; the *Chancery* will make void the firſt, when it is without valuable Conſideration, but not a Man's *Will*, which is revocable. 2 *Peere Williams* 270. A Deed was made between a Father and Son, by which the Father agreed to give the Son ſo much, and he was to pay ſuch Debts, and Sums of Money; and there were ſome Expreſſions reſembling thoſe in a *Will*; as that the Father was ſick of Body, and did give all his Goods and Chattels, *&c.* But the Writing was Sealed and delivered as a Deed: This being given in Evidence, and that he intended it for his *Laſt Will*, the Court held the ſame to be Proof of a *Will*. 1 *Mod.* 170. In the well-making of a *Will*, it is good to obſerve theſe Rules; That it be done in perfect Memory, and by good Advice; let there be two Parts of it, one whereof to remain in the Hands of the Party as made it, and the other with ſome Friend, that it may be the leſs liable to be ſuppreſs'd after the Teſtator's Death; and let the Whole be written in one Hand-Writing, and if it may be, in one Sheet of Paper or Parchment; but if there be more Sheets than one, let the Teſtator ſign and ſeal every Sheet of the ſame before the Witneſſes preſent at the Execution. A Teſtator has Power, notwithſtanding the *Will*, to give away during his Life, any Part of his Eſtate, *&c.* See *Eſtate*, *Executor*, *Revocation*, &c.

Form of a *Will* of *Lands*, and *Goods*, Terms of Years, *&c.*

IN the Name of God, Amen. *I* A. B. *of*, &c. *being weak in Body, but of ſound and perfect Mind and Memory,* (*Bleſſed be God*) *do this Day and Year,* &c. *make and publiſh this my Laſt Will and Teſtament in manner following,* (viz.) Firſt, *I give to my Son* J. B. *the Sum of* 500 l. Alſo, *I give to my Daughter* M. B. *the Sum of* 400 l. Alſo, *I give to my dear Wife* E. B. *the Sum of* 300 l. &c. *to be paid unto them reſpectively, within ſix Months next after my Deceaſe.* Alſo, *I give all that my Meſſuage or Tenement, with the Appurtenances ſituate,* &c. *wherein I now live, to my ſaid Son* J. B. To hold *to him during his Life, and from and after his Deceaſe I give the ſame to my Daughter* M. B. *during the Remainder of my Eſtate and Intereſt therein.* Alſo, *I give and bequeath unto my loving Brother* T. B. *of*, &c. *and* L. D. *of*, &c. *all that my Leaſehold Eſtate, ſituate in*, &c. To hold *to them the ſaid* T. B. *and* L. D. *their Executors, Adminiſtrators and Aſſigns, from and immediately after my Deceaſe, for and during the Reſt and Reſidue then to come, and unexpired of the Term to me granted therein*; Upon *this* Truſt *and Confidence, that they the ſaid* T. B. *and* L. D. *and the Survivor of them, and the Executors and Adminiſtrators of ſuch Survivor, do and ſhall permit and ſuffer her my ſaid Wife* E. B. *to have, hold and enjoy all my ſaid Leaſehold Eſtate to them given as aforeſaid, and to receive and take to her own Uſe and Behoof, the Rents, Iſſues, and Profits thereof, for and during ſo much of the Term to me therein granted, as ſhall run out and expire in the Life-time of her my ſaid Wife; And after her Deceaſe, upon this further Truſt and Confidence, that they the ſaid* T. B. *and* L. D. *and the Survivor of them, and the Executors and Adminiſtrators of ſuch Survivor, do and ſhall out of the Rents, Iſſues, and Profits ariſing from my ſaid Leaſehold Eſtate, well and truly pay, or cauſe to be paid unto my ſaid Daughter* M. B. *or her Aſſigns, for and during ſo much of the ſaid Term to me therein granted, as ſhall run out and expire in the Life-time of her my ſaid Daughter, the yearly Annuity or Sum of* 60 l. *at the two moſt uſual Feaſts*, &c. *by even and equal Portions; The firſt Payment thereof to be made at ſuch of the ſaid Feaſts which ſhall firſt and next happen after the Deceaſe of my ſaid Wife: And upon this further Truſt and Confidence, that they the ſaid* T. B. *and* L. D. *and the Survivor of them,* &c. *do and ſhall permit and ſuffer my ſaid Son* J. B. *his Executors, Adminiſtrators, and Aſſigns, to have, hold and enjoy all ſuch my ſaid Leaſehold Eſtate,* (*charged with the ſaid Annuity of* 60 l. per Ann. *payable to my ſaid Daughter*) *and to receive and take the Overplus of the Rents, Iſſues and Profits thereof, to his and their own proper Uſe and Benefit, from and immediately after my ſaid Wife's Deceaſe, for and during all the Reſt, Reſidue, and Remainder of the Term to me therein granted, which ſhall be then to come and unexpired.* Alſo, *I give all thoſe my Freehold Lands in the Pariſh of*, &c. *now in the Poſſeſſion of*, &c. *to my Wife* E. B. To hold *to her during her natural Life, ſhe making no Waſte or Deſtruction thereupon; and from and after her Deceaſe, I give and deviſe the ſame to my ſaid Son* J. B. *for the Term of his natural Life; and after his Deceaſe, I deviſe the ſame to my Daughter* M. B. *during her natural Life; and after the Determination of that Eſtate, I give and deviſe the ſame to the ſaid* T. B. *and* L. D. *and their Heirs during the Life of my ſaid Daughter* M. *to the Intent to preſerve and ſupport the contingent Uſes and Remainders herein after limited; but nevertheleſs* in Truſt, *to permit my ſaid Daughter* M. *to receive the Rents and Profits thereof during her Life; and from and after the Deceaſe of my ſaid Daughter* M. *then to remain to the firſt Son of my ſaid Daughter* M. *and the Heirs of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, then to the Uſe and Behoof of the ſecond, third, fourth, fifth, and all and every other Son and Sons of my ſaid Daughter* M. *begotten, the Elder of ſuch Son and Sons, and the Heirs of his Body lawfully iſſuing, to be always preferred, and to take before the Younger of ſuch Sons and the Heirs of his Body; and for Default of ſuch Iſſue, then I give the ſame to* S. B. *of*, &c. *for and during the Term of his natural Life; and after his Deceaſe, to remain to his Iſſue in Tail in ſuch Manner as I have limited the ſame to my Daughter* M. *and for Default of ſuch Iſſue, then to remain to*, &c. *and the Heirs Male of his Body begotten*, &c. *And for Default of ſuch Iſſue, to remain to my own right Heirs for ever.* And *all the reſt of my Lands and Tenements whatſoever, whereof I ſhall die ſeiſed or poſſeſſed, I give to my ſaid Son* J. B. *his Heirs and Aſſigns for ever.* Alſo, *I give to*, &c. *ten Guineas apiece to buy them Mourning.* Alſo, *I give to my Servant Man and the two Servant Maids that ſhall be living with me at the Time of my Deceaſe, ten Pounds a piece.* Alſo, *I give to the Poor of the Pariſh where I ſhall die, the Sum of twenty Pounds.* Alſo, *All the Reſt and Reſidue of my Goods, Chattels and Perſonal Eſtate, I give to my ſaid Wife* E. B. *And I make and ordain her my ſaid Wife ſole Executrix of this my Will, and the ſaid* T. B. *and* L. D. *Overſeers thereof, to take Care and ſee the ſame performed according to my true Intent and Meaning; and for their Pains herein, I give and allot to each of them the Sum of*, &c. In Witneſs *whereof, I the ſaid* A. B. *have to this my Laſt Will and Teſtament ſet my Hand and Seal, the Day and Year above-written.*

Signed, Sealed, Publiſhed and Declared by the ſaid *A. B.* the Teſtator, as and for his Laſt Will and Teſtament, in the Preſence of us who were preſent at the Signing and Sealing thereof, A. B.

T. D.
F. G.
J. H.

Probatum, &c. 5 Dec. Anno 1731.

Win, (*Sax.*) In the Beginning or Ending of Places Names, Signifies that ſome Battle was fought, and Victory gain'd there.

Winches, A Kind of Engines to draw Barges againſt the Stream of a River. 21 *Jac.* 1. *cap.* 32.

Windas, or **Windlaſs**, Corruptly *Wanlaſs*, is a Term for Hunting of Deer in Foreſts to a Stand, *&c.* See *Wanlaſs*.

Wind-Mill, A Man may not erect a *Wind Mill* within any Foreſt, becauſe it frights Deer, and draws Company to the diſquiet of the Game. *W. Jones Rep.* 293.

Window Tax, A Duty firſt granted by Stat. 7 *&* 8 *W.* 3. *c.* 18. and has been ſince continued for ever. 5 *Ann.* It is charged on the Occupiers or Inhabitants of Houſes, and not Landlords, and is 6 *s.* for Houſes having ten Windows, but under twenty; 10 *s.* where they have twenty Windows, and under thirty; (but this Duty is made double by a ſubſequent Act,) and 20 *s.* for thirty Windows, or more, &c. Surveyors and Receivers are to be appointed by his Majeſty; and Collectors in every Pariſh, for whom the Pariſhes ſhall be anſwerable, and they may take Diſtreſſes for the Tax, &c. But Cottages not having 5 *l.* a Year Land to them; or Houſes not paying to the Church and Poor, are exempted from this Tax. Vide Stat. 7 & 8 *W.* 3. 8 *Ann. c.* 4. 6 *Geo.* 1. *c.* 21.

Windſor. The Mayor and Bailiffs, &c. of *Windſor* are to maintain the great Bridge there, and receive Tolls for Carriages, Cattle, &c. paſſing over it, and Barges going under the ſame. Stat. 9 *Geo.* 2. *c.* 15.

Wine, (*Vinum*) Is to be tried twice a Year, *viz.* at *Eaſter* and *Michaelmas*; and none ſhall ſell *Wine* but at reaſonable Price, by Stat. 4 *Ed.* 3. *cap.* 22. The Lord Chancellor hath Authority to ſet the Prices of *Wines* by the Butt, Barrel, &c. Perſons ſelling at greater Prices, ſhall forfeit 40 *l.* and no Perſons may ſell *Wine* by Retail, but ſuch as are licenſed by Juſtices of Peace, &c. 28 *H.* 8. *cap.* 14. 7 *Ed.* 6. *cap.* 5. By Statute, *Canary Wine*, *Alicant*, and other *Spaniſh* or Sweet *Wines* were not to be ſold for above 1 *s.* 6 *d.* a Quart, and *Gaſcoign* and *French Wine* not above 8 *d.* the Quart, &c. unleſs appointed at a higher Price: And when the Lord Chancellor, Treaſurer, &c. ſet the Prices of all *Wines*, they are to cauſe them to be written, and Proclamation made thereof in the Chancery in Term-Time, or in the Cities, Towns, &c. where it is to be ſold at thoſe Prices. Alſo the Number of Retailers of *Wines*, in every City and Market-Town, was particularly limited. Stat. 7 *Ed.* 6. 12 & 13 *Car.* 2. The King may grant Commiſſions to Commiſſioners to licenſe Perſons to retail *Wine*; and they may under their Seal of Office grant *Licenſes*, for any Term not exceeding 21 Years, under certain Rents, &c. the Revenue whereof is to be paid into the Exchequer; but the Privileges of the *Univerſities*, and of the Company of *Vintners* in *London*, &c. were ſaved by this Statute, 12 *Car.* 2. *cap.* 25. And the Revenue of Wine-Licenſes is granted to the King, his Heirs and Succeſſors, by the 22 & 23 *Car.* 2. *cap* 6. Merchants, &c. ſelling *Wines*, who ſhall adulterate the ſame, or utter any adulterated *Wine*, are liable to a Penalty of 300 *l.* And Retailers of mix'd *adulterated Wine*, incur a Forfeiture of 40 *l.* Stat. 12 *Car.* 2. 1 *W.* & *M. c.* 34. Alſo if any Retailer of *Wine* ſells it in Meaſures not made of Pewter, and ſealed, he ſhall pay 50 *s.* for every Offence, leviable by a Juſtice of Peace's Warrant, &c. 2 *W.* & *M. c.* 14. But ſee 4 & 5 *W.* & *M.* Perſons retailing *Engliſh* made *Wines*, (on which there is a Duty of 12 *s. per* Barrel) muſt be licenſed by two Juſtices of Peace; and be Keepers of Publick Houſes, by Stat. 10 *Geo.* 2. *c.* 17.

Winter heyning, Is a Seaſon between the eleventh Day of *November*, and the three and twentieth Day of *April*; which is excepted from the Liberty of Commoning in the *Foreſt of Dean*, &c. Stat. 20 *Car.* 2. *cap.* 3.

Wire-Drawers. It is enacted by Statute, that Silver *Wire drawn* for making Gold and Silver Thread, ſhall contain certain Quantities to the Pound-Weight, on Pain of 5 *s. per* Ounce wanting. 9 & 10 *W.* 3. *c.* 39. The Silver *Wire* to be *drawn* for Silver Thread, is to hold eleven Ounces and fifteen Penny Weight, and all Silver to be gilt and uſed in the *Wire-drawers* Trade, ſhall hold eleven Ounces and eight Penny-weight, of fine Silver on the Pound-Weight Troy; and four Penny-weight and four Grains of Gold, to be laid upon each Pound of Silver, on Forfeiture of 5 *s.* for every Ounce made otherwiſe. 15 *Geo.* 2. *cap.* 20.

Wiſt, A Meaſure of Land among the *Saxons*; being the Quantity of Half a Hide, and the Hide 120 Acres. —— *Octo virgatæ unam* Hidam *faciunt*, Wiſta *vero quatuor virgatis conſtat.* Mon. Angl. Tom. 1. pag. 133.

Witam, *Secundum* Witam *jurare*, Is for a Perſon to purge himſelf by the Oaths of ſo many Witneſſes, as the Offence required. *Leg. Inæ, cap.* 63.

Witchcraft, Uſing of was Felony by Stat. 1 *Jac.* 1. *cap.* 12. See *Conjuration.*

Wite, A *Saxon* Word, uſed for Puniſhment; a Pain, Penalty, Mulct, &c. And *Witefree* is a Term of Privilege or Immunity from Fines and Amercements. *Sax. Dict.* From hence come the Words *Bloodwite*, *Lecherwite*, &c.

Witena-gemot, (Sax. *Conventus ſapientum*) Was a Convention or Aſſembly of great Men to adviſe and aſſiſt the King, anſwerable to our Parliament, in the Time of the *Saxons.*

Witens, Were the chief of the *Saxon* Lords or *Thanes*, their Nobles and Wiſe Men. *Sax. Dict.*

Witerden, A Taxation of the *Weſt-Saxons*, impos'd by the publick Council of the Kingdom. *Chart. Ethelwolf. Reg. Ann.* 855.

Withernam, (From the Sax. *Wyther*, i. e. *altera*, & Nam, *captio*) Is where a Diſtreſs is driven out of the County, and the Sheriff upon a *Replevin* cannot make Deliverance to the Party diſtrained: In this Caſe the Writ of *Withernam* is directed to the Sheriff, for the taking as many of his Beaſts or Goods that did thus unlawfully diſtrain, into his Keeping till the Party make Deliverance of the firſt Diſtreſs, &c. It is a *Taking* or Repriſal of *other* Cattle or Goods, in lieu of thoſe that were formerly unjuſtly taken and eſloined, or otherwiſe with-holden. *F. N. B.* 68, 69. 2 *Inſt.* 140. Stat. *Weſt.* 2. 13 *Ed.* 1. *c.* 2. This Writ is granted on the Return of the Sheriff upon the *Alias* and *Pluries* in Replevin, that the Cattle, &c. are eſloined, by Reaſon whereof he cannot replevy them; and it appears by our Books, that the Sheriff may award *Withernam* on Replevin ſued by Plaint, if it be found by Inqueſt in the County, that the Cattle were eſloined according to the Bailiff's Return, &c. Though upon the *Withernam* awarded in the County Court, if the Bailiff doth return that the other Party hath not any Thing, there ſhall be an *Alias* and *Pluries*, and ſo infinite, and no other Remedy there: But on a *Withernam* returned in the *King's Bench*, or *Common Pleas*, if the Sheriff return that the Party hath not any Thing, &c. a *Capias* ſhall iſſue againſt him, and Exigent and Outlawry. *New Nat. Br.* 166. In Replevin, &c. the Sheriff returns *Averia elongata ſunt* by the Defendant; thereupon a Writ of *Withernam* is awarded; and if he return *Nihil*, the Plaintiff proceeds to Outlawry by *Alias* and *Pluries Cap. in Withernam*, and ſo to the Exigent: And there is ſome Difference where the Defendant appeareth upon the Return of the *Pluries Capias*, and when he ſtays longer, and appears on the Return of the Exigent and not before; for in the firſt Caſe his Cattle ſhall not be taken in *Withernam*, but he muſt find Pledges to make Deliverance, or be committed; and in the laſt Caſe, he ſhall not only find Pledges for making Deliverance, but ſhall be fined, and his Cattle may be taken in *Withernam*: In both Caſes, the Plaintiff may declare for the unjuſt Taking, and yet detaining of his Cattle, and ſo go to Trial upon the Right; and if 'tis found for him, then he ſhall recover the Value of the Cattle with Coſts and Damages, or may have the Cattle again by a *Retorn. habendo* directed to the Sheriff; but if it be found for the Defendant, he ſhall keep the Cattle, and have Coſts and Damages for the unjuſt Proſecution. 1 *Brownl.* 180. 3 *Nelſ. Abr.* 553, 554. A Defendant in Replevin may have a Writ of *Withernam* againſt the Plaintiff; as if the Defendant hath a Return awarded for him, and he ſueth a Writ *de retorn. habendo*, and the Sheriff return upon the Pluries, *quod Averia elongata ſunt*, he ſhall have a

Sci. fac. againſt the Pledges which the Plaintiff put in to proſecute, &c. and if they have nothing, then he ſhall have a *Capias ad Withernam* againſt the Plaintiff. *Ibid.* And the Cattle taken in *Withernam* are to be *ad Valentiam, i. e.* to the Value of the Cattle that were firſt taken and detain'd; for 'tis to be underſtood not only of the Number of the Cattle, but according to the Worth and Value; otherwiſe he that brings the *Replevin* and *Withernam,* will be deprived of his Satisfaction. 3 *Lill. Abr.* 690. Where Cattle have been taken in *Withernam,* they have been by a Rule of Court delivered back and reſtored to the Owner, on his Payment to the Plaintiff of all his Damages, Coſts and Expences. *Ibid.* Cattle taken in *Withernam* may be milk'd, or work'd reaſonably; becauſe they are delivered to the Party as his own Cattle, &c. *Contra* of Cattle diſtrained. 1 *Leon.* 302. See *Replevin.*

Witherſake, An Apoſtate or perfidious Renegado. *Leg. Canut. cap.* 27.

Witneſs, (*Teſtis*) Is one that gives Evidence in a Cauſe; an indifferent Perſon to each Party, ſworn to ſpeak the Truth, the whole Truth, and nothing but the Truth: And if he will be a Gainer or Loſer by the Suit, he ſhall not be ſworn as a *Witneſs.* 2 *Lill. Abr.* 700. See *Evidence.*

Woad, A profitable Herb much uſed for the Dying of *blue* Colours, mentioned in the Stat. 7 *H.* 8. *cap.* 2.

Wold, (*Sax.*) Signifies a Down, or open Champion Ground, void of Wood; as *Stow* in the *Wolds, Cotſwold* in *Glouceſterſhire,* &c.

Wolfeſhead, or **Wolferheſod,** (Sax.) *Caput Lupinum,* Was the Condition of ſuch as were *Outlawed* in the Time of the *Saxons*; who if they could not be taken alive to be brought to Juſtice, might be ſlain and their Heads brought to the King; for they were no more accounted of than a *Wolf's* Head, a Beaſt ſo hurtful to Man. *Leg. Edw. Conf. Bract. lib.* 3.

Women, Laws relating to. See *Baron and Feme, forcible Marriage,* &c.

Wong, A *Saxon* Word for Field——*Tres acras Terræ jacentes in le* Wongs, *i. e. in Campis opinor ſeminalibus.* Spelm.

Wood. If any Perſon purpoſely burn any Pile of *Wood,* or bark any Trees, &c. the Owner may recover treble Damages for it in Treſpaſs. Stat. 37 *Hen.* 6. *c.* 6. None may deſtroy any *Woods,* by turning them into Tillage or Paſture, &c. if two Acres or more in Quantity, on Pain of 40*s.* an Acre: And no Perſon ſhall ſuffer his Swine to go in a *Wood* unringed, under Penalties. Where there is *Wood* or Coppice in Common, the Lord may incloſe a fourth Part, &c. 35 *H.* 8. *c.* 17. 13 *Eliz. c.* 25. If Coppice *Wood* is felled at or under twenty-four Years Growth, there muſt be left twelve Standils of Oaks in every Acre, or the like Number of Aſh, Elm, &c. on Pain of forfeiting 3 *s.* 6 *d.* for every Standil wanting; and they are not to be cut down 'till ten Inches ſquare within three Foot of the Ground, or until ſo many Years after left, under the Penalty of 6 *s.* 8 *d.* &c. Stat. 35 *Hen.* 8. *cap.* 17. All *Woods* or Coppices felled at fourteen Years Growth, ſhall be preſerved from Deſtruction for eight Years; and no Cattle be put into the Ground from the Time of felling, 'till five Years afterwards, by 13 *Eliz. cap.* 25. The Statutes 43 *Eliz. cap.* 7. and 15 *Car.* 2. *cap.* 2. provide againſt *Woodſtealing,* ordaining Recompence to be made, and inflicting a Forfeiture of 10 *s.* &c. Burning *Woods,* or Underwood, is made Felony: And Perſons maliciouſly cutting or ſpoiling Timber-Trees, Fruit-Trees, &c. are to be ſent to the Houſe of Correction for three Months, and whipt once a Month, by 1 *Geo.* 1. *c.* 48. Alſo where Perſons deſtroy Trees, Woods, or break open Hedges, the Owners ſhall have Satisfaction from the Inhabitants of the Place, as for Dikes overthrown in the *Night,* provided by 13 *Ed.* 1. under *Approvement:* If the Offenders be not convicted in ſix Months, &c: 6 *Geo.* 1. *cap.* 16. It has been adjudg'd, that if *A.* plants a Tree upon his own Ground, and in growing its Roots extend into the Land of *B.* adjoining, they are Tenants in Common of this Tree: But if all the Root grows in the Ground of *A.* tho' the Boughs overſhadow *B.*'s Land, yet the Branches follow the Root, and the Property of the whole is in *A.* 1 *Ld. Raym.* 737.

Wood-corn, A certain Quantity of Grain, paid by the Tenants of ſome Manors to the Lord, for the Liberty to pick up dead or broken Wood. *Cartular. Burgi S. Petri, MS.* 142.

Wood-geld, is taken to be the Cutting of Wood within the Foreſt, or rather Money paid for the ſame to the Foreſters; or it ſignifies to be free from Payment of Money, for taking Wood in any Foreſt. *Cromp. Juriſ.* 157. *Co. Lit.* 233.

Woodmen, Seem to be thoſe in Foreſts, that have their Charge particularly to look to the King's *Woods* there. *Cromp. Jur.* 146.

Woodmote Is the old Name of that Court of the Foreſt, which is now called the *Court of Attachments*; and was wont to be held at the Will of the Chief Officers of the Foreſt, without any certain Time, 'till ſince the Statute of *Charta de Foreſta.* Manwood, cap. 22. pag. 207.

Wood-plea-Court, A Court held twice in the Year in the Foreſt of *Clun* in *Shropſhire,* for determining all Matters of *Wood* and Agiſtments there.

Woodward, Is an Officer of the Foreſt, whoſe Office conſiſts in Looking after the Woods, and Vert and Veniſon, and preſenting Offences relating to the ſame, &c. And *Woodwards* may not walk with Bow and Shafts, but with Foreſt-Bills. *Crompt. Juriſ.* 201. *Manwood, par.* 1. 189.

Wool, Being a *Staple Commodity* of the greateſt Value in this Kingdom, the Employment of our Poor at home, and our moſt beneficial Trade abroad, depending in a great Meaſure upon it; there have been divers good Laws made to preſerve the ſame intirely to our ſelves, and to prevent its being tranſported to other Nations. The Stat. 27 *Ed.* 3. declared it Felony to tranſport *Wool:* But the Felony was repealed by 38 *Ed.* 3. *cap.* 6. By the 12 *Car.* 2. *cap.* 32. If any Perſon ſhall export any *Wool,* Yarn, &c. he ſhall forfeit the ſame, and for every Pound-weight of Goods 3 *s.* And the Owners of the Ship in which it ſhall be tranſported, being privy to the Offence, ſhall forfeit all their Intereſt in the ſaid Ship; alſo the Maſter and Mariners aſſiſting, all their Goods; and any Perſons may ſeiſe ſuch *Wool,* and ſhall be intitled to one Moiety, and the King to the other Moiety of Forfeitures, &c. The 13 & 14 *Car.* 2. *cap.* 18. made the Tranſportation of *Wool* Felony again; though this being thought too ſevere, the 7 & 8 *W.* 3. *cap.* 28. a ſecond Time repeals the Felony, and ordains, that exporting *Wool* beyond Sea ſhall incur a Forfeiture of the Veſſel, and treble Value; and Perſons aiding and aſſiſting, to ſuffer three Years Impriſonment. By the Statute 9 & 10 *W.* 3. *cap.* 40. the former Laws are explained, and a further Proviſion is made againſt tranſporting *Wool*; by obliging Entries to be made of *Wool* ſhorn, and *Wool* not to be carried near the Sea-Coaſts, but between Sun-riſing and Sun-ſetting, &c. Unlawful Exporters of *Wool,* where Judgment is obtain'd againſt them, are to pay the Sum recovered within three Months; or be liable to Tranſportation for ſeven Years as Felons. 4 *Geo.* 1. *cap.* 11. The *Admiralty* ſhall appoint three Sixth Rate Ships, and eight Sloops to cruiſe on the Coaſts, and ſearch and ſeiſe Veſſels having Manufactures of *Wool* of the Kingdom of *Ireland,* to be exported to foreign Parts; which with the Ships ſhall be forfeited, &c. Stat. 5 *Geo.* 2. *c.* 21. All *woollen* Manufactures, are to be ſhipp'd from *Dublin,* and certain other Ports in *Ireland,* and imported here into *Biddeford*, and Ports named, and none others; and be brought from thence hither in Ships built in *Great Britain* or *Ireland* and duly regiſtred on Oath. 12 *Geo.* 2. *cap.* 21. *Wool-fells*, &c. ſhall be packed up in Leather, or Canvas marked, and not in any Box, &c. on Pain of forfeiting 3 *s.* for every Pound: Alſo no Coverlets, Waddings, or Beds, &c. ſtuffed with combed *Wool* may be exported under the like Penalties as for Exportation of *Wool.* Stat. *Ibid.* Perſons that by way of Inſurance, undertake to carry *woollen* Goods abroad, ſhall forfeit 500*l.* And if they give a Bribe or Reward to any Officer to connive at exporting *Wool*, they are liable to 300 *l.* Forfeiture; and Perſons obſtructing the Officer, or being armed, &c. reſcuing any Goods ſhall be tranſported as Felons for ſeven Years. *Ibid.* See 13 *Geo.* 2. *c.* 8.

Wool-drivers, Are ſuch as buy *Wool* in the Country of the Sheep-Owners, and carry it on Horſeback to the Clothiers, or to Market-Towns, to ſell again. 2 & 3 *P.* & *M. c.* 13.

Woolwinders, Thoſe that *wind* up every Fleece of *Wool*, intended to be packed and ſold by Weight, into a Kind of Bundle, after it is cleanſed as required by Statute, to avoid Deceits by Thruſting in Locks of refuſe *Wool* and Thrums to gain Weight: They muſt be ſworn to perform this Office truly, between the Owner and the *Wool* Buyer or Merchant, by Stat. 8 *Hen.* 6. *c.* 22. 23 *H.* 8. *c.* 17. Perſons winding and ſelling deceitful *Wool*, ſhall forfeit for every Fleece 6 *d.* And if *Wool-packers* do not make good and due Packing, without putting any Locks, Pelt *Wool*, Sand, Earth, Dirt, &c. in Fleeces, Action of Treſpaſs and Deceit lies againſt them, &c. Stat. *ibid.*

Worceſter. A Market for Hops to be held by the Guardians of the Poor of the City of *Worceſter*; and the Liberty of holding the ſaid Market, and all Tolls uſually had by the Mayor, Aldermen and Citizens, ſhall be veſted in ſuch Guardians, for the Uſes expreſſed in the Act 2 & 3 *Ann. c.* 8. Stat. 4 *Geo.* 2. *c.* 25.

Worceſters, and *worſted* Cloths, are mentioned in many of our old Statutes, as 17 *R.* 2. 7 *E.* 4. 14 & 15 *Hen.* 8. *c.* 3. &c. See *Abr. Stat.*

Words, Which may be taken or interpreted by Law in a general or common Senſe, ought not to receive a ſtrained or unuſual Conſtruction: And ambiguous *Words* are to be conſtrued ſo as to make them ſtand with Law and Equity; and not to be wreſted to do Wrong. A Latin *Word* in Pleading, which ſignified divers Things, was well uſed to expreſs that Thing intended to be expreſſed by it: Incertain *Words* in a Declaration are made good and certain by a Plea in Bar, where Notice is taken of the Meaning of them; and *Words* which are in themſelves uncertain, may be made certain by ſubſequent or following *Words.* The different Placing of the ſame *Words* may cauſe them to have a different Senſe, and Conſtruction: A *Word* which is written ſhort or abbreviated, is not good without a Daſh to diſtinguiſh it: And ſenſeleſs *Words* are void and idle; though they ſhall not hurt where it is good without them. Nor ſhall *Words* in Deeds that are needleſs, impeach a Clauſe certain and perfect without ſuch *Words.* 2 *Lill. Abr.* 711, 712, 713, 714. *Hob.* 313. Vide *Scilicet.*

Words Defamatory that are actionable, and Criminal making Libels, and High Treaſon; *Words* how expounded in Wills, &c. See the *Heads.*

Work-houſes. The moſt conſiderable *Work houſe* in the City of *London*, is that in *Biſhopſgate-ſtreet*; wherein ſome Hundreds of idle Perſons are conſtantly employed in beating Hemp, &c. and a great many poor Children maintained and educated. Stat. 13 & 14 *Car.* 2. And in the City of *Briſtol* a great *Work-houſe* is erected, for the better employing and maintaining the Poor, governed by a Corporation, &c. 7 & 8 *W.* 3. So in the Cities of *Worceſter*, *Glouceſter* and *Canterbury*, by the Statutes 3 *Ann.* 13 *Geo.* 1. and 1 *Geo.* 2. Parochial *Work-houſes*, ſee *Poor.*

Wormtak. *Item eſt ibidem, apud,* &c. de Wormtak, *vi ſol. viii den. ſolvend. annuatim ad Feſtum* S. Martini. *Inquiſic. Heref.* 22 *Rich.* 2.

Wort, or **Worth**, (From the Sax. *Weorth*) A Curtilage or Country Farm. *Matt. Weſtm.* 870.

Worthine of Land, Is a certain Quantity of Ground, ſo called in the Manor of *Kinſland* in the County of *Hereford:* And in ſome Places the Tenants are called *Worthies.* Conſuetud. Maner. de Hadenham in Com. Bucks. 18 Ed. 3.

Wreck, (Lat. *Wreccum Maris*, Fr. *Wreck de Mer*, ſometimes writ *Wreche*, *Werec*, & *Seup-werpe*, quaſi *Sea-up werp*, i. e. *Ejectus Maris*) Signifies in our Law ſuch Goods as, after a *Shipwreck*, are caſt upon the Land by the Sea, and left there within ſome County; for they are not *Wrecks* ſo long as they remain at Sea, in the Juriſdiction of the Admiralty. 2 *Inſt.* 167. Where a Ship is periſhed on the Sea, and no Man eſcapes alive out of it, this is called *Wreck:* And the Goods in the Ship being brought to Land by the Waves, belong to the King by his Prerogative, or to the Lord of the Manor. 5 *Rep.* 106. By the Common Law all *Wrecks* belong'd to the Crown; and therefore they are not chargeable with any Cuſtoms, and for that Goods coming into the Kingdom by *Wreck*, are not imported by any Body, but caſt aſhore by the Wind and Sea: But it was uſual to ſeiſe *Wrecks* to the King's Uſe, only when no Owner could be found; and in that Caſe, the Property being in no Man, it of Conſequence belongs to the King, as Lord of the narrow Seas, &c. *Bract. lib.* 2. *cap.* 5. And by the Stat. of *Weſtm.* 1. 3 *Ed.* 1. *cap.* 4. it is enacted, that when a Man, or any living Creature, eſcapes alive out of a Ship caſt away, whereby the Owner of the Goods may be known, the Ship or Goods ſhall not be *Wreck*; but the ſame ſhall be kept a Year and a Day by the Sheriff, to be reſtored to any Perſon that can prove a Property in the Goods within that Time; and if no Body comes, then the ſame ſhall be forfeited as *Wreck.* The Year and Day ſhall be accounted from the Seizure; and if the Owner of the Goods dies within the Year, his Executors or Adminiſtrators may make Proof: And when the Goods are *Bona peritua*, the Sheriff may ſell them within the Year; ſo as he diſpoſes of them to the beſt Advantage, and accounts for them, &c. 2 *Inſt.* 167. 5 *Rep.* 106. *Wood's Inſt.* 214. If a Man have a Grant of *Wreck*, and Goods are *wreck'd* upon his Lands, and another taketh them away before Seizure, he may bring Action of Treſpaſs, &c. For before they are ſeiſed, there is no Property gain'd, to make it Felony. 1 *Hawk. P. C.* 94. If Goods *wreck'd* are ſeiſed by Perſons having no Authority, the Owner may have his Action againſt them; or if the Wrong-doers are unknown, he may have a Commiſſion to inquire, &c. 2 *Inſt.* 166. Goods loſt by Tempeſt, or Piracy, &c. and not by *Wreck*, if they afterwards come to Land, ſhall be reſtored to the Owner. 27 *Ed.* 3. *cap.* 13. Where a Ship is ready to ſink, and all the Men therein, for the Preſervation of their Lives, quit the Ship, and afterwards ſhe periſhes; if any of the Men are ſaved and come to Land, the Goods are not loſt: A Ship on the Sea was chas'd by an Enemy; the Men therein for the Security of their Lives forſook the Ship, which was taken by the Enemy, and ſpoil'd of her Goods and Tackle, and then turn'd to Sea; after this by Streſs of Weather ſhe was caſt on Land, where it happen'd her Men ſafely arriv'd; and it was reſolv'd, that this was no *Wreck.* 2 *Inſt.* 167. If a *Wreck* happens by any Fault or Negligence in the Maſter or Mariners, the Maſter muſt make good the Loſs; but if the ſame was occaſion'd by Tempeſt, Enemies, &c. he ſhall be excuſed: And making Holes in Ships, or doing any Thing wilfully tending to the Loſs thereof, is Felony, by Stat. 12 *Ann.* Which Act requires Juſtices of Peace to command Aſſiſtance for preſerving Ships in Danger of *Wrecks* on the Coaſts; and Officers of Men of War, and other Ships, are to be aiding, &c. under the Penalty of 100 *l.* No Perſon ſhall enter any ſuch Ship, without Leave from the Commander, or a Conſtable, &c. And Perſons carrying away Goods from ſuch Ships, are liable to pay treble Value; but the Perſons giving Aſſiſtance, ſhall be paid by the Maſters a reaſonable Reward for Salvage, &c. 12 *Ann. c.* 18. See *Pilot.* Mariners *Ship-wreck'd* how relieved Abroad, by Stat. 1 & 9 *Geo.* 2. Vide *Mariner.*

Wreckfree, Is to be exempt from the Forfeiture of Ship-wreck'd Goods and Veſſels; which K. *Edw.* 1. by Charter granted to the *Barons* of the *Cinque Ports.* Placit. temp. Ed. 1.

Writing, (*Scriptum*) A ſimple *Writing* of Declaration, not in the Manner of a Deed, made to a certain Perſon, &c. ſhall be good in Law. *Hob.* 312.

Writ, (*Breve*, in Sax. *Writan*, i. e. *Scribere*) In general is the *King's Precept*, in Writing under Seal, iſſuing out of ſome Court to the Sheriff, or other Perſon, and commanding ſomething to be done touching a Suit or Action, or giving Commiſſion to have it done. *Terms de Ley.* 1 *Inſt.* 73. Alſo a *Writ* is ſaid to be a formal Letter of the King, in Parchment ſealed with a Seal, directed to ſome Judge, Officer, or Miniſter, &c. at the Suit or Plaint of a Subject, requiring to have a Thing done, for the Cauſe *briefly* expreſſed, which is to be diſcuſſed in the proper Court according to Law. *Old Nat. Br.* 4. *Shep. Abr.* 245. Of *Writs* there are divers Kinds, in many Reſpects; ſome *Writs* are grounded on *Rights of Action*, and ſome in Nature of *Commiſſions*; ſome *Mandatory* and Extrajudicial, and others *Remedial*; and ſome are *Patent* or open, and ſome *Cloſe* or ſealed up; ſome *Writs* iſſue at the Suit of *Parties*; ſome are of *Office*, ſome *Ordinary*, and others of *Privilege*; and ſome *Writs* are directed to the Sheriffs, and in ſpecial Caſes to the Party, &c. 1 *Inſt.* 289. 2 *Inſt.* 39. 7 *Rep.* 20. The *Writs* in *Civil Actions* are either *Original* or *Judicial*: *Original Writs* are iſſued out of the Court of Chancery, for the Summoning a Defendant to appear, and are granted before the Suit is begun, to begin the ſame; and *Judicial Writs* iſſue out of the Court where the Original is return'd, after the Suit is begun: The Originals bear Date in the Name of the King; but Judicial *Writs* bear Teſte in the Name of the Chief Juſtice: And it is obſerv'd, that a *Writ* without a *Teſte* is not good, for the Time may be material when it was taken out, and it is prov'd by the *Teſte*; and if it be out of the *Common Law Courts*, it muſt bear Date ſome Day in Term, (not being *Sunday*) but in *Chancery Writs* may be iſſued in Vacation as well as Term-Time, as that Court is always open; alſo there are to be fifteen Days between the Teſte and Return of all *Writs*, where the Suit is by Original; but by Statute Delays in Actions by Reaſon of fifteen Days between the Teſte and Return of *Writs* in Perſonal Actions, and Ejectments, are remedied. *F. N. B.* 51, 147. 2 *Inſt.* 40. *Lutw.* 337. 13 *Car.* 2. *cap.* 2. *Writs* in Actions are likewiſe *Real*; concerning the Poſſeſſion of Lands, called *Writs* of *Entry*, or of Right touching the Property, &c. *Perſonal*, relating to Goods, Chattels, and Perſonal Injuries; and *Mix'd*, for the Recovery of the Thing, and Damages. 2 *Inſt.* 39. And *Writs* may be *Poſſeſſory*, of a Man's own Poſſeſſion; or *Anceſtrel*, of the Seiſin and Poſſeſſion of his Anceſtor: And there are certain *Writs* of *Prevention* or *Anticipation*; and of *Reſtitution*, &c. But the moſt *common Writs* in daily Uſe, are in Debt, Detinue, Treſpaſs, Action upon the Caſe, Accompt, and Covenant, &c. which with others muſt be rightly directed, or they will be naught. *F. N. B. Style* 42, 237. And in all *Writs* Care is to be taken, that they be laid and form'd according to the Cauſe or Ground of them, and ſo purſued in the Proceſs thereof: Tho' the *Writ* in ſome Caſes may be general; and the Count or Declaration ſpecial. *Hob.* 18, 84, 251. After the Action is fixed on, for a Wrong done, or a Right detained, ſuch a *Writ* muſt be taken out as is ſuitable to the Action; for the *Writ* is different from the Action; though they are often confounded: The *Writ* is to be grounded upon the Action, and is the Means to bring the Plaintiff to his Right. *Wood's Inſt.* 560. The King's *Writs* cannot be denied to the Subject; and it is regularly true that no Man ſhall be puniſhed for ſuing of *Writs* in the King's Courts, be it of Right or Wrong: But *Writs* may be abated in ſeveral Caſes, &c. *Ibid.* An Original *Writ* defective in Form is abateable; but no Abatement of the *Writ* is admitted after Judgment in the Cauſe, the *Writ* being allow'd by the Pleadings and Proceedings; and a *Writ* that did not purſue the exact Form of the Regiſter, has been held good. 2 *Lill. Abr.* 717. *Hob.* 51. 3 *Nelſ. Abr.* 575. *Writs* Judicial, if erroneous, may be amended; Original *Writs* are not amendable, if the Error be by Default of the Party who gave Inſtructions; yet a new Original may be taken out, where it is not amendable. 2 *Lill.* 716. *Writs* may be renewed every Term, until a Defendant is arreſted; but in *B. R.* if the *Latitat* be not renewed in five Terms, a new *Writ* is to be taken out, and the Plaintiff may not renew the old one. The Sheriffs Bailiffs cannot execute a *Writ* directed to the Sheriff, without his Warrant; and if in a *Writ* ſeveral Perſons are included, (for four Defendants may be in one *Writ*) there muſt be ſeveral Warrants from the Sheriff to execute the ſame. *Comp. Attorn.* All *Writs* are to be return'd and filed in due Time, to avoid *Poſt terminums*; and it is very unſafe to keep *Writs* unfiled, becauſe the Filing them is the Warranty for the Proceedings: And where a *Writ* is iſſued out directed to the Sheriff, when it comes to his Hands, though the Plaintiff requires the *Writ* back again, the Sheriff muſt return and file it in the Court where returnable; unleſs the Plaintiff procure a *Writ of Superſedeas.* 2 *Lill. Abr.* 720. Attachment lies againſt Sheriffs, &c for not executing a *Writ*, or for doing it oppreſſively by Force, extorting Money thereon, or not doing it effectually, through any corrupt Practice. Vide 8 *Rep.* 86. The Court of *B. R.* cannot give Judgment of a *Writ* but where it is before them; and has deferred to quaſh it, becauſe the Defendant was not preſent in Court. 1 Lord *Raym.* 618, 620. See *Arreſts*, *Variance*, &c.

Writ of Aſſiſtance, Is a *Writ* iſſuing out of the *Exchequer*, to authoriſe any Perſon to take a Conſtable, or other publick Officer, to ſeiſe Goods or Merchandize prohibited and uncuſtomed, &c. And there is a *Writ* of this Name iſſued out of the *Chancery*, to give Poſſeſſion of Lands. Stat. 14 *Car.* 2. *cap.* 1.

Writ of Inquiry of Damages, Is a judicial *Writ*, that iſſues out to the Sheriff upon a Judgment by Default, in Action of the Caſe, Covenant, Treſpaſs, Trover, &c. commanding him to ſummon a Jury to inquire what Damages the Plaintiff hath ſuſtained *occaſione præmiſſorum*; and when this is returned with the Inquiſition, the Rule for Judgment is given upon it; and if nothing be ſaid to the contrary, Judgment is thereupon entered. 2 *Lill. Abr.* 721. This *Writ* lies on a *Nihil dicit*, *Non ſum informatus*, or a Demurrer; but not upon a Verdict: And it is executed before the Sheriff, or his Deputy, at the Time of which both Parties, have the Liberty of being heard before the Sheriff, by their Counſel or Attornies, and Evidence may be given on both Sides: It is the Duty of the Jury diligently to inquire what Damages have been ſuſtained by the Plaintiff, and this cannot be without Evidence given them; and if where an *Indebitat. Aſſumpſit* is brought for 100*l.* for Goods, ſold, and the Defendant lets this go by Default; if the Plaintiff at the Executing the *Writ* of Inquiry, gives no Evidence to the Jury of any Goods, ſold or delivered to the Defendant: In this Caſe, the Jury muſt find ſome Damages, becauſe the Defendant hath confeſs'd the Action, and admitted that there is Damage; but there not being any proved, they ought to find only a Penny, or ſome ſuch ſmall Matter. 2 *Lill. Abr.* 721, 722. If a *Writ* of Inquiry be executed without giving due *Notice* thereof to the Defendant, it ſhall be quaſhed. 2 *Lill.* 721. In an Action of Covenant, Judgment was given for the Plaintiff in the *Common Pleas* by Default, and a *Writ* of Inquiry of Damages executed, and final Judgment for the Plaintiff. And on a Writ of Error brought in *B. R.* amongſt other Exceptions, one was, that no Day was given on the *Writ* of *Inquiry*, and therefore it might be a Diſcontinuance; but the Court reſolv'd, that they never give a Day in *C. B.* on this Writ, nor is it neceſſary, becauſe nothing is done but to aſcertain the Damages. 1 *Ld. Raym.* 388. A *Writ* of Enquiry was ordered to be executed before the Lord Chief Juſtice, the Action being laid for very large Damages: And ſuch *Writ* hath been ſet aſide where the Jury gave too little Damages; and a new *Writ* of Enquiry ordered by Rule of Court, on Payment of Coſts, &c. *Mod. Caſ. in L. and E.* 213, 240. A Judgment ſhall not be ſet aſide, after a Writ of Inquiry executed. 3 *Salk.*

Writ of Rebellion, A *Writ* out of the *Chancery*, or *Exchequer*, againſt a Perſon in Contempt, for not appearing in thoſe Courts, &c. See *Commiſſion of Rebellion.*

Wrong, (*Injuria*) Signifies any Damage or Injury, being in Law Conſtruction that which is contrary to Right. *Co. Litt.* Vide *Tort.*

Wronglands, Seem to be ill grown Trees that will never prove Timber; ſuch as *wrong* the Ground they grow in. *Kitch.* 169.

Wudeheth, (From the Sax. *Wude*, i. e. *Sylva*) A Falling of Wood. *Leg. Hen.* 1. *c.* 37.

Wydraught, A Water-Paſſage, Gutter, or Watering-place; often mentioned in old Leaſes of Houſes, in the Covenant for Repairs, &c.

Wyke, Wyka, —— *Et totam* Wykam *cum hominibus, &c.* Mon. Ang. Tom. 2. pag. 154. See *Wic* and *Wica.*

Wyte, *Pœna, Mulcta*; —— Saxones *duo Mulctarum genera ſtatuere, i. e.* Weram, & Wytam. Vide *Wite.*

X.

Xantus, Is uſed for *Sanctus*: Xanta *Dei Lex eſt quæ mortuos vivere docet.*

Xenia, *Dicuntur Munuſcula, quæ a Provincialibus Rectoribus Provinciarum offerebantur: Vox eſt in Privilegiorum Chartis non inſueta; ubi quietus eſſe a* Xeniis *immunes notat ab hujuſmodi muneribus aliiſque donis Regi vel Reginæ præſtandis, quando ipſi per prædia Privilegiatorum tranſierint.* Chart. Dom. Semplingham. *Concedo ut omnia Monaſteria & Eccleſiæ Regni mei a Publicis Vectigalibus, operibus & oneribus abſolvantur:* —— *Nec Munuſcula præbeant Regi vel Principibus, niſi voluntaria.* Spelm. Gloſſ. *Nulla autem Perſona, parva vel magna, ab hominibus & terra Radingenſis Monaſterii exigat, non Equitationem ſive Expeditionem, non ſummagia, non Vectigalia, non Navigia, non Opera, non Tributa, non* Xenia, &c. Memd. Scacc. Anno 20 Ed. 3.

Xenodochium, Is interpreted an Inn, allow'd by publick Licence for the Entertainment of Strangers, and other Gueſts: Alſo an Hoſpital, *In qua valetudinarii & ſenes, i. e. Infirmi, recipiuntur & aluntur.* Vocab. utriuſque Juris.

Xerophagia, A Kind of Chriſtian Faſt; the Eating of dry Meat. *Litt. Dict.*

Xylopola, A Woodmonger, or Dealer in Wood. *Litt.*

Xyſticus, Is a Wreſtler, or Champion: And *Xyſtus* was a covered Place or Theatre, where Men uſed Wreſtling and other Exerciſes in the Winter. *Ibid.*

Y.

Ya and Nay, —— *Quod Homines de* Rippon *ſint credendi per ſuum* Ya & *per ſuum* Nay, *in omnibus Querelis, &c.* Charta Athelſtan. Reg. Mon. Angl. Tom. 1. p. 173.

Yard, Is a well known Meaſure, Three Foot in Length; by which Cloth, Linen, &c. are meaſured: It was ordained by King *Hen.* 1. from the Length of his own Arm. *Baker's Chron.*

Yardland, (*Virgata Terræ*) Is a Quantity of Land, different according to the Place or Country; as at *Wimbleton* in *Surrey*, it is but fifteen Acres, in other Counties it is Twenty, in ſome Twenty-four, and in others Thirty, and forty Acres. *Bract. lib.* 2. *c.* 10.

Yarmouth. There is an Act for regulating the Time of bringing in and ſelling *Herrings* at the Fair of *Great Yarmouth*, fixing the Prices and Quantity by the Laſt, &c. 31 *Ed.* 3. *c.* 2.

Yarn. No Perſon ſhall buy *Yarn* or Wool, but he that makes Cloth of it: And none may Tranſport *Yarn* beyond the Sea, by Stat. 8 *H.* 6. *c.* 5. 33 *H.* 8. *c.* 16.

Yaugh, A *Yatcht*, or little Bark; alſo a Fly-boat, Pinnace, &c. In *Lat.* called *Celox, à celeritudine*, from its Swiftneſs. *Litt. Dict.*

Yeonomus, *Oeconomus*; an Advocate, Patron or Defender. *Vit. Abbat. S. Albani.*

Year, (*Annus*) In the full Extent of the Word, contains a Syſtem or Cycle of ſeveral Months, uſually twelve; and is the Time wherein the *Sun* goes round his Compaſs thro' the Twelve Signs, *viz.* Three hundred and Sixty-five Days, and about ſix Hours. A *Year* is Twelve Months, as divided by *Julius Cæſar*: And the Church begins the *Year* on the firſt Day of *January*, called *New-Year's Day*; but the Civil Account not till *March* the 25th. It appears by ancient Grants and Charters, that our Anceſtors began the *Year* at *Chriſtmas*, which was obſerved here till the Time of *William* 1. commonly called the *Conqueror*; but afterwards, for ſome Time *Year of our Lord* was ſeldom mentioned in Grants, only the *Year* of the *Reign* of the *King*. *Mon. Angl. Tom.* 1. *pag.* 62. There is a *Year of the World*, and a *Year of Chriſt*: And beſides the *Annus Solaris*; the *Lunar Year*, being the Time in which any of the Celeſtial Bodies finiſh their Courſe; and thirty Days, by which the *Egyptians* reckoned. *Year* is alſo taken for Time in general; and the Age of Man. *Litt.*

Year and Day, (*Annus & Dies*) Is a Time that determines a Right, or works a Preſcription in many Caſes by Law; as in Caſe of an Eſtray, if the Owner challenge it not within that Time, it belongs to the Lord; ſo of a Wreck, &c. A *Year and Day* is given to proſecute Appeals; and for Actions in a Writ of Right, &c. after Entry or Claim, to avoid a Fine: And if a Perſon wounded die in a *Year and Day*, it makes the Offender guilty of Murder, &c. 3 *Inſt.* 53. 6 *Rep.* 107.

Year, Day and Waſte, (*Annus, Dies & Vaſtum*) Is a Part of the King's Prerogative, whereby he hath the Profits of Lands and Tenements for a *Year and a Day* of thoſe that are attainted of Petit Treaſon or Felony, whoſoever is Lord of the Manor whereto the Lands or Tenements do belong; and the King may cauſe *Waſte* to be made on the Tenements, by deſtroying the Houſes, ploughing up the Meadows and Paſtures, rooting up the Woods, *&c.* except the Lord of the Fee agree with him for the Redemption of ſuch Waſte; afterwards reſtoring it to the Lord of the Fee. *Staundf. Prærog.* 44.

Yeme, Is often made uſe of for *Hyeme. Law Fr. Dict.*

Yeoman, A Derivative of the Sax. *German*, i. e. *Communis*; and *Yeomen* are a Degree of Commoners, which *Camden* placeth next in Order to Gentlemen, calling them *Ingenuos*, and this is agreeable to the Stat. 6 *R.* 2. *cap.* 4. *Yeomen* are chiefly Freeholders, and Farmers; but this Word comprehends all under the Rank of Gentlemen, and is a good Addition to a Name, *&c.* 2 *Inſt.* 668. Alſo *Yeoman* ſignifies an Officer in the King's Houſe, between the Serjeant and the Groom; as *Yeoman* of the *Stirrup:* And there are *Yeomen* of the *Guard*, &c. 33 *Hen.* 8. *cap.* 12.

Yeoven, (From the Sax. *Ceorian, Dare*) Is the ſame with *Given*; and it was formerly uſed at the End of Indentures and other Inſtruments inſtead thereof. ——— *Yeoven*, the Day and Year above written.

Yew, Is derived from the Greek *ἴαπτω*, to hurt, and probably becauſe before the Invention of Guns our Anceſtors made *Bows* with this Wood, with which they annoy'd their Enemies, and therefore they took Care to plant the Trees in the Churchyards, where they might be often ſeen and preſerved by the People. *Minſheu.*

Yielding and Paying, (*Reddendo & Solvendo*) Comes from the Sax. *Geldan & Gildan*; and in *Domeſday*, *Gildare* is frequently uſed for *Solvere, Reddere*, the Sax. *G.* being often turn'd into *Y.*

Yingman, Mentioned in the Laws of King *Hen.* 1. *c.* 15. *Spelman* thinks may be a Miſtake for *Ingliſhman*, or as we now ſay *Engliſhman:* But perhaps the *Yingmen* were rather *Youngmen*, printed for *Yeomen* and *Yemen*, in Stat. 33 *H.* 8. *cap.* 10.

Yokelet, (Sax. *Jocelet*) Is a little Farm, *&c.* in ſome Parts of *Kent*, ſo called from its requiring but a *Yoke* of Oxen to till it. *Sax. Dict.*

York and **Yorkſhire.** Perſons inhabiting, or thoſe who have any Goods within the Province of *York*, may by Will diſpoſe of all their perſonal Eſtate, *&c.* 4 & 5 *W. & M. cap.* 2. And a Regiſtry of Deeds, Conveyances, and Wills, *&c.* of Lands, is ordained in the *Weſt Riding* of *Yorkſhire*, by 2 *Ann. c.* 4. And ſo in *Eaſt* and *North-Riding*, by ſubſequent Acts. Large Waſtes in the *Weſt-Riding* of the County of *York*, by Conſent of Lords of Manors, *&c.* to be incloſed; a ſixth Part for the Benefit of poor Clergymen, *&c.* 12 *Ann. York* Market is regulated for Sale of Butter, *&c.* which ſhall be viewed, ſearched and weighed before ſold, by Stat. 8 *Geo.* 1. *Yorkſhire Cloths* are to be of certain Lengths and Breadths, under the Penalty of 20*s.* leviable by Juſtices of Peace, *&c.* And narrow woollen Cloths ſhall have the Names of the Maker, Millman, and Searcher ſtamped thereon; and not be ſtretched above a Yard in Length, *&c.* under divers Penalties. See Stat. 7 *Ann.* 1 *Geo.* 1. 11 *Geo.* 1. 7 *Geo.* 2. *c.* 25. 11 *Geo.* 2. *c.* 28. and 14 *Geo.* 2. *c.* 35.

York-Buildings Company, A Corporation or Company erected by Statute for Raiſing *Thames Water* in *York-Buildings*; and this Company having bought the *Forfeited Eſtates* in *Scotland* on the Rebellion *Anno* 1 *Geo.* 1. to inable them to make good their Engagements to the Government, they were impowered to diſpoſe of Rent-Charges, grant Annuities, *&c.* and any Perſons may purchaſe Annuities of the ſaid Company. 7 *Geo.* 1. *cap.* 20.

Ypſibremeta, In Latin *Altitonans*, Signifies God; the Thunderer.

Yvernagium, From the Fr. *Hyvernee*, the Winter-Corn Seaſon. See *Hibernagium.*

Yule, In the *North* of *England*, the Country People call the *Feaſt of the Nativity of our Lord* by the Name of *Yule*, which is the proper *Scotch* Word for *Chriſtmas*; and the Sports uſed at *Chriſtmas* here, called *Chriſtmas Gambols*, in *Scotland* they term *Yule-Games*. A Statute was made not long ſince for the Repeal of a repealing Act paſſed in the Parliament of *Scotland*, intitled an Act for diſcharging the *Yule-vacance*. 1 Geo. 1. c. 8.

Z.

Zabolus, i. e. *Diabolus*, As uſed in many old Writers, *viz. Edgar. in Leg. Monach. Hydenſ. c.* 4. *Oderic. Vitalis* 460, *&c.*

Zachine, A Foreign Coin of Gold. *Merch. Dict.*

Zala, i. e. *Incendium*; from whence we derive the *Engliſh* Word *Zeal.*

Zancha, A Kind of Veſture or Garment. *Litt.*

Zant-willow, A Meaſure containing ſix *Engliſh* Buſhels.

Zatovin, Sattin, or fine Silk; mention'd in *Mon. Angl. Tom.* 3. *p.* 177.

Zealot, (*Zelotes*) Is for the moſt part taken in *pejorem ſenſum*, ſo that we term one that is a Separatiſt or *Schiſmatick* from the Church of *England*, a *Zealot* or *Fanatick.*

Zereth, An Hebrew Meaſure of nine Inches. *Litt. Dict.*

Zeta, A Room kept warm like a Stove; a withdrawing Chamber with Pipes convey'd along in the Walls, to receive from below either the cool Air in the Summer, or the Heat of Fire, *&c.* in Winter: It is called by our *Engliſh Hiſtorians* a Dining Room, or Parlour. *Osborn. vita S. Elphegi apud* Wharton. *Angl. par.* 2. *p.* 127.

Zigarus, A Strolling Thief, or Gipſy. *Litt.*

Zodiack, (*Zodiacus*) A Circle in the Heavens, containing the Twelve Signs through which the Sun paſſes every *Year* of Time. *Litt.*

Zuche, (*Zucheus, Stips ſiccus & aridus*) A withered or dry Stock of a Tree.——— *Rex, &c. Quia accepimus per Inquiſitionem, quod non eſt ad Dampnum ſeu præjudicium noſtrum aut aliorum, ſi concedimus dilecto valecto noſtro* Richard. de S. *omnes* Zucheos *aridos, qui Anglice vocantur* Stovenes *infra Haiam de* Backwood, *infra Foreſtam noſtram de* Shirewood, *&c. Placit. Foreſt. Anno* 8 *Hen.* 3. This ſeems to have been the Writ of *Ad quod Damnum* iſſued, on granting of *Zuches* or dead Wood in a Foreſt, *&c. Rex conceſſit* Thomæ de C. *omnes* Zucheos *aridos, vocat.* Stubs, *arborum ſucciſorum in Foreſta de G. ibidem capiend. per viſum Cuſtodis Foreſtæ ultra Trentam.* Pat. 22 Ed. 3.

Zygoſtata, Is a Clerk of the Market, to ſee to Weights, *&c. Litt. Dict.*

Zythum, A Drink made of Corn, uſed by the old *Gauls*; ſo called from the *Seething* or Boiling it, whence *Syder* had its Name.

A TABLE

A
TABLE
OF
References to all the Arguments and Reſolutions of the Lord Chief Juſtice HOLT;
IN THE
Several BOOKS *of* REPORTS, *under proper general Heads.*

A.

Abatement. 1 Show. 75. Ibid. 402, 403, 404, 5 Mod. 144. 1 Salk. 2.

Acquittal. Mod. Caſ. 216, 217. 5 Mod. 405.

Actions. 1 Salk. 15, 16. Ibid. 26.

Additions. Mod. Caſ. 198, 199.

Adminiſtrators. 1 Show. 351. 1 Salk. 251. Ibid. 285. 3 Salk. 161. 3 Mod. 276.

Adultery. Fareſl. 78, 79, 80, &c. 2 Salk. 552.

Amendment. 5 Mod. 16, 69. 1 Salk. 50. Mod. Caſ. 268, 274, 285. 1 Salk. 51. Mod. Caſ. 263. 1 Salk. 52.

Antient Demeſne. 1 Salk. 57.

Appeals. Carthew 54, 55, 56. Skinn. 670, 671. 1 Salk. 63.

Apprentices. Carth. 162, 163. 1 Show. 267, 268. 1 Salk. 66. 3 Salk. 41. 2 Salk. 611. Mod. Caſ. 227, 259, 260.

Arreſts. Fareſl. 52, 53.

Arreſt of Judgment. 1 Salk. 77.

Aſſets. Carth. 126, 127, 129. Ibid. 245, 246.

Aſſignments. 1 Show. 340, 341. 3 Salk. 5. 1 Show. 348.

Attornies. Fareſl. 50. Mod. Caſ. 16. Ibid. 187.

Awards. 1 Salk. 83. Ibid. 70, 71. Mod. Caſ. 35. Ibid. 160, 176.

B.

Bail. Skinn. 683, 684. 5 Mod. 454, 455. 1 Salk. 97, 98. Ibid. 100. Mod. Caſ. 122. Ibid. 266, 267, 268. 3 Salk. 55, 56, 58. Mod. Caſ. 304.

Bankrupts. 3 Salk. 61. 1 Salk. 110.

Bargain and Sale. 1 Salk. 171, 113. Mod. Caſ. 162.

Baron and Feme. Skinn. 323, 324. 1 Salk. 116, 118. Mod. Caſ. 171.

Bills of Exchange and Notes. 1 Show. 125. 127. Ibid. 155, 156. Ibid. 317, 319. 3 Salk. 68. Skinn. 343. 3 Salk. 70. Skinn. 410, 411. Fareſl. 87. 1 Salk. 126, 127. Ibid. 283. Mod. Caſ. 36. 37. Ibid. 80. 1 Salk. 131. Mod. Caſ. 147.

Bonds. 3 Salk. 73. 2 Salk. 463. 3 Salk. 118. Mod. Caſ. 260. 1 Salk. 172.

Borough Engliſh. Mod. Caſ. 120, 121, 122.

Bridges. Fareſl. 54, 55. Mod. Caſ. 255.

Buildings. 3 Salk. 247. Mod. Caſ. 116, 314.

C. Car-

A TABLE.

C.

Carriers and Coachmen. Skinn. 625. 1 Salk. 282. 3 Salk. 11.

Certiorari. 1 Salk. 200.

Challenge. 3 Salk. 81.

Church. 1 Salk. 164. Carth. 360. Skinn. 716. Mod. Caſ. 189, 190. 3 Salk. 88.

Churchwardens. Carth. 118.

Colleges. 1 Show. 74. Carth. 92, 93. 4 Mod. 241.

Commitments. 5 Mod. 21, 23. Skinn. 598. 5 Mod. 80, 81, 84. Ibid. 416.

Commons. 3 Salk. 13, 14.

Conditions. 3 Salk. 95.

Conſpiracy. Mod. Caſ. 169, 185.

Conſtables. 2 Salk. 502. 1 Salk. 176.

Convictions. Mod. Caſ. 17. Ibid. 41.

Copyhold Eſtates. 1 Show. 87. Carth. 205. 4 Mod. 153. 3 Salk. 99, 100. Mod. Caſ. 66.

Coroners. 1 Show. 329. 1 Salk. 377. Fareſl. 10.

Corporations. 4 Mod. 36. 1 Show. 280. 3 102, 103. 1 Salk. 192.

Covenants. 1 Salk. 198. 3 Salk. 298.

Courts. 1 Salk. 144, 149. Fareſl. 4, 5, 6, &c. Ibid. 85, 103.

Cuſtos Rotulorum. 3 Mod. 32. Ibid. 172, 295. 1 Show. 527, 507.

D.

Damages. 1 Salk. 218. 5 Mod. 77. Carth. 416. Skinn. 595. Mod. Caſ. 153. Ibid. 305.

Deaths of perſons. Carth. 246.

Debt. Fareſl. 89, 90.

Deceit. 1 Salk. 211. Ibid. 283.

Declarations. Carth. 86. 1 Salk. 324.

Deeds. 1 Show. 59. Carth. 77. Skinn. 315. 3 Salk. 119, 120. Fareſl. 38. 2 Salk. 498. Mod. Caſ. 217. 1 Salk. 215.

Deer. Carth. 509. Fareſl. 134.

Default. 1 Salk. 216. Mod. Caſ. 8.

Demurrer. 3 Salk. 122.

Departure. 1 Salk. 222. Mod. Caſ. 115.

Deputies. 1 Salk. 95.

Diſcent. 1 Show. 93. 3 Salk. 129. Mod. Ca. 241.

Diſcontinuance. 1 Salk. 324.

Diſtreſs. Ibid. 248.

E.

Eccleſiaſtical Courts. 5 Mod. 70, 71. Ibid. 450.

Ejectment. Skinn. 300. 2 Salk. 421. Fareſl. 67. 1 Salk. 257, 259, 260.

Entry. 1 Salk. 246.

Error. 1 Show. 76. Carth. 41. Ibid. 205, 283. Ibid. 520. 5 Mod. 67. 1 Salk. 264. 3 Salk. 145, 148. Fareſl. 155. Mod. Caſ. 208. 1 Salk. 265, 266.

Eſcape. 1 Show. 174, 177. 1 Salk. 272.

Eſtates. Mod. Caſ. 106, 107.

Eſtoppel. 3 Salk. 151.

Eſtreats. 1 Salk. 55.

Evidence. Skinn. 623. Ibid. 639, 673. 3 Salk. 154, 155. 2 Salk. 690. 1 Salk. 284. Ibid. 286, 288.

Execution. 5 Mod. 377. Carth. 420. 1 Salk. 264, 392.

Executors. Skinn. 274. 1 Salk. 296. 5 Mod. 145. 1 Salk. 299, 304. 3 Salk. 162. 1 Salk. 312. Mod. Caſ. 144.

F.

Fees. 1 Salk. 331, 332, 333.

Felons Goods. Skinn. 357.

Fines. Carth. 412. 1 Salk. 341. 3 Salk. 168.

Fiſhery. 2 Salk. 637. Skinn. 677.

Forcible Entry. 2 Salk. 587.

Forgery. Fareſl. 151.

G.

Gaming. 5 Mod. 13. 1 Salk. 344. 3 Salk. 176. Mod. Caſ. 129.

Good Behaviour. Fareſl. 29.

Grants. Mod. Caſ. 170, 171.

Guardians. Carth. 386.

H.

Habeas Corpus. 1 Salk. 349, 350. Ibid. 352.

Heirs. 1 Show. 248. 3 Salk. 179.

Heriots. 1 Show. 81.

Highways. 1 Show. 270. Mod. Caſ. 163.

I.

Jamaica. 4 Mod. 225.

Imparlance. Mod. Caſ. 243.

Indictments. 1 Salk. 371, 380. Mod. Caſ. 77, 100, 168. 3 Salk. 20.

Infants. Carth. 123. 1 Show. 169, 170. 3 Mod. 310.

Informations. 5 Mod. 464. Carth. 227. 1 Salk. 372, 367.

Inquiſitions. Mod. Caſ. 95.

Inns of Court. Skin. 685.

Jointenants. 1 Salk. 391, 392.

Judges, and Judgments. 3 Salk. 212. Ibid. 305. Skin. 591. 1 Salk. 396, 398. Ibid. 400, 403. Fareſl. 47, 53. Ibid. 39, 49, 95, 115, 139. Mod. Caſ. 184, 191.

Juriſdiction. 1 Show. 255. 3 Salk. 79.

Jurors. Carth. 465, 466.

Juſtices of Peace. 4 Mod. 51. 3 Salk. 27. Fareſl. 99.

Juſtification. Carth. 74. Skinn. 587. 2 Salk. 628. 3 Salk. 47.

K.

King. Fareſl. 78. 3 Salk. 265.

L.

Labourers. Mod. Caſ. 205.

Leaſes. 1 Show. 316. 1 Salk. 346. Carth. 259. Skinn. 330. 2 Salk. 413. 5 Mod. 381. 3 Salk. 222. 1 Salk. 368. Mod. Caſ. 215.

Lecturers. 3 Salk. 87.

Letters Patent. Skinn. 657, 659. 2 Salk. 497.

Levari facias. Skinn. 617, 618.

Libels. 2 Salk. 417, 661. 3 Salk. 225, 226.

Limitation. 1 Show. 341. 5 Mod. 426. Carth. 471.

London. 5 Mod. 320. Carth. 482.

Lottery. 1 Salk. 210, 292.

M.

Mandamus. 1 Show. 365. 5 Mod. 11. Ibid. 316. 3 Salk. 230. 2 Salk. 429, 430, 431. Mod. Caſ. 152.

Marriage. 5 Mod. 412. Mod. Caſ. 155, 172. 3 Salk. 16. 2 Salk. 437. Ibid. 438.

Merchants. 2 Salk. 445.

Miſnomer. 3 Salk. 236. 1 Salk. 6.

Money. Skinn. 573. 2 Salk. 597.

Monopolies. 2 Salk. 447.

Mortgages. 1 Salk. 246.

Murder. 1 Salk. 335. Skinn. 667. Kel. 121, &c.

N.

Ne exeat Regnum. Fareſl. 9.

Negroes. 2 Salk. 666.

Nolle Proſequi. Mod. Caſ. 261, 262.

Non Compos. 3 Salk. 301.

Nuſance. Ibid. 247.

O.

Offices. 4 Mod. 280. Carth. 306.

Outlawry. 2 Salk. 495.

P.

Pardons. Carth. 121. 1 Show. 284. 2 Salk. 499, 500. 4 Mod. 63. 3 Salk. 264.

Parliament. Carth. 233, 234. 1 Salk. 20. 2 Salk. 502, 503, 510. 3 Salk. 18. Mod. Caſ. 50.

Pawns and Pledges. 3 Salk. 268, 269.

Peculiars. Mod. Caſ. 308.

Peerage. Skinn. 517.

Perjury. Skinn. 403. 5 Mod. 348. Carth. 422.

Phyſicians. Carth. 494.

Play-houſes. 5 Mod. 142. Fareſl. 17.

Pleadings. 1 Show. 290. Skinn. 299, 300. 2 Salk. 515, 517. 3 Salk. 209. 1 Salk. 179. 3 Salk. 273. Mod. Caſ. 236.

Poor. 3 Mod. 271. Skinn. 620. 2 Salk. 473, 481, 486, 491. Ibid. 524, 526. Carth. 515. 2 Salk. 527, 531, 532. Mod. Caſ. 97, 98. 3 Salk. 259, 260. 1 Salk. 406.

Poſt-Office. 5 Mod. 456. 1 Salk. 17.

Practice.

A TABLE.

Practice. Skinn. 273.

Preſentation. 1 Salk. 43.

Privilege. Skinn. 582. 1 Salk. 1. 2 Salk. 545. 3 Salk. 283.

Privileged Places. 3 Salk. 45, 92.

Prohibitions. 2 Salk. 549, 550. Fareſl. 80, 121, 122. Ibid. 137, 147. 3 Salk. 289. Mod. Caſ. 252.

Property. 3 Salk. 290.

Q.

Quantum meruit. 1 Salk. 557.

Qui tam, and Tam quam. 3 Salk. 7.

R.

Recognizances. Fareſl. 10.

Records. 2 Salk. 566, 567.

Recoveries. Carth. 212. 2 Salk. 569, 676. Fareſl. 21, 22.

Releaſes. 1 Show. 46. 3 Mod. 279. Fareſl. 75.

Remainders. Skinn. 351, 352. 2 Salk. 577. 3 Salk. 300.

Remittitur. 1 Show. 404.

Rents. 3 Salk. 109.

Replevin. 2 Salk. 581. Mod. Caſ. 102, 103.

Reſcue. 3 Salk. 311. 2 Salk. 586.

Riots. 3 Salk. 317. 5 Mod. 405. 2 Salk. 595.

Rivers. 1 Salk. 357.

Robbery. Carth. 146. Fareſly. 157.

S.

Scire facias. 2 Salk. 599, 600. 3 Salk. 321.

Servants. 1 Show. 95. 3 Salk. 234. 2 Salk. 438, 441.

Seſſions. 2 Salk. 606.

Sheriffs. 4 Mod. 273. 5 Mod. 438. Mod. Caſ. 154, 299.

Ships. 1 Show. 13, 30. Ibid. 104, 179. Carth. 27. Skinn. 278. 1 Salk. 33. 3 Salk. 23.

Simony. Carth. 485.

Slander. 2 Salk. 697, 698. Fareſl. 107. Mod. Caſ. 23. 3 Salk. 190.

Statutes. 1 Salk. 212. 3 Salk. 330, 331. Mod. Caſ. 62.

Stocks. 1 Salk. 112.

T.

Tail. 3 Salk. 337. 2 Salk. 619.

Taxes. 2 Salk. 615. 3 Salk. 340. Carth. 439. Mod. Caſ. 214.

Tithes. Carth. 70. 2 Salk. 551.

Toll. Carth. 358. 4 Mod. 323.

Traverſe. 3 Salk. 357.

Treaſon. 4 Mod. 166, 395, 401. Skinn. 579. 2 Salk. 631, 633, 634.

Treſpaſs. 3 Salk. 359. Mod. Caſ. 127. 2 Salk. 643.

Trials. 2 Salk. 648, 649.

Trover. Mod. Caſ. 212.

Truſts. 2 Salk. 679.

U.

Vagrants. Mod. Caſ. 240.

Venue. Mod. Caſ. 222, 265. 2 Salk. 670.

View. 2 Salk. 665.

Uſes. Carth. 262. 3 Salk. 334, 387.

Uſury. Carth. 252. Skinn. 348.

W.

Wager of Law. 2 Salk. 683.

Wagers. 1 Show. 157.

Wills. Skinn. 320, 413. 3 Salk. 127, 394. 1 Salk. 234, 237. Mod. Caſ. 26.

Witneſſes. Carth. 144. 5 Mod. 15, 74, 75. 2 Salk. 689. Fareſl. 19.

Writs. Mod. Caſ. 133, 310.

N. B. Theſe References are inſerted in the Order of Time.

FINIS.